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OFFICIAL REPORT

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

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House of Lords

Tuesday 22 November 2016

2.30 pm

Prayers—read by the Lord Bishop of Coventry.

Nurses: Training

Question

2.36 pm

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government how many individuals completed training to become qualified nurses in England in 2015.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the latest data available from the Higher Education Statistical Agency show that approximately 23,000 nursing students qualified from higher education courses regulated by the Nursing & Midwifery Council in England in the 2014-15 academic year.

Lord Clark of Windermere (Lab): I thank the Minister for his considerate Answer and his personal commitment to the health service. I much appreciate it, but does he appreciate that the figures he has provided today mask the true picture of nursing in this country? Will he accept that the coalition Government in 2010 made a massive mistake when they made those savage cuts in nurse training? Even with the increases of late, there are still only 0.6% more nurses now than there were in May 2010, which is in spite of a 31% increase in hospital admissions. Does the Minister accept that the staff of the NHS are keeping the ship afloat? Can the Government offer some concessions to the generosity, commitment and dedication of those staff?

Lord Prior of Brampton: My Lords, there were 3,500 more nurses working in the NHS in 2015 than there were in 2010. In retrospect, we did not anticipate in 2010 the Mid Staffordshire crisis and the Francis report, which led to a very substantial increase in nursing levels after about 2013. The noble Lord is right; we were short of nursing throughout that period. We are addressing that now with a 15% increase in nursing places and we expect that by 2020 there will be 40,000 more nurses than there were in 2015.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware of the fact that the Blair Government introduced only one standard for nursing? You had to have five A-levels and take a university degree. The abolition of the state-enrolled nurses, who would have made—and did make—a marvellous contribution, has been very retrograde. Now we are dependent on a large number of foreign nurses. In every hospital that I have visited, we rely on them completely. Why can we not have that intermediate level of training back?

Lord Prior of Brampton: My Lords, as my noble friend probably knows, we are introducing nursing associates into the NHS. There are a thousand in place today, and a further thousand will come in next year. That is the bridge between healthcare support workers and degree-trained nurses. We recognise that there should be another route into nursing—not just the university route, but a more traditional apprenticeship route.

Lord Willis of Knaresborough (LD): My Lords—

Baroness Watkins of Tavistock (CB): My Lords—

Noble Lords: Cross Bench!

Baroness Watkins of Tavistock: My Lords, can the Minister comment on the ratio between nurses retiring from the service and those coming in? I too welcome the potential development of the nursing associate—although we need to get it right—and graduate-entry nursing, but we still need a system to rapidly increase the number of registered nurses over the next five years. I do not believe that the figures illustrate that we will be replacing like with like in terms of numbers.

Lord Prior of Brampton: My Lords, the best estimate of Health Education England is that, making reasonable assumptions about the attrition rate of students and the retention of existing nurses, by 2020 we will have 40,000 more registered nurses working in the NHS than we do today.

Lord Willis of Knaresborough: Will the Minister accept—at last—that simply providing more training places and increasing the number going through both the associate route and the graduate apprentice route is only part of the solution? At the moment we are losing a huge number of nurses, with roughly 10% of our graduate registered nurses going through attrition each year, as the Minister accepted. Two years ago, the Secretary of State gave a mandate to reduce attrition by 50%. Can the Minister tell the House how successful that has been, and can he put in the Library the figures showing how many fewer people are leaving the profession simply because we are not looking after, nurturing or caring for our existing workforce?

Lord Prior of Brampton: I think that there is some confusion here. The attrition rate that I was referring to was the one in nursing schools, which on average has been running at about 9.5%. Attrition among the regular workforce, which I think the noble Lord is referring to, is clearly a huge issue for us. Interestingly, we have set up a return-to-practice initiative, which has brought a thousand nurses back into the profession at a cost of £2,000 per person. That is extremely good value if we can persuade people to come back into the service. The noble Lord is absolutely right: people retiring early or leaving early is potentially very damaging for the service. However, I reiterate that the figure of an extra 40,000 nurses in the NHS by 2020 is arrived at after making reasonable assumptions about the level of attrition among the existing workforce.

Baroness Wheeler (Lab): My Lords, the Minister has told the House that there is strong evidence to suggest that moving from bursaries to nurse student loans will increase the availability of nurses. Can he explain exactly what this evidence is and when he considers that the Government will be in a position to publish an independent assessment of the impact on both current recruitment levels and addressing the serious shortage of qualified nursing? Does he accept that the Government's move to bursaries is particularly risky in the light of the possible threat to EU qualified nurses?

Lord Prior of Brampton: It is not possible to carry out an independent assessment at the moment, as we will not know the rate of applications to nursing schools until January 2017. The courses have consistently, over many years, been oversubscribed by about 40,000 people so, even if there is a fall-off in the number of young men and women who want to become nurses, a significant number of people would like to go to nursing school but are not able to get in at the moment. I think we will have to wait until January before we can be sure whether the switch from bursaries to loans is having an impact.

Nigeria
Question

2.44 pm

Asked by ***Baroness Cox***

To ask Her Majesty's Government what assessment they have made of the continuing intercommunal conflicts in the northern and Middle Belt states of Nigeria; and what assistance they are providing for those displaced by these conflicts.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we remain deeply concerned by recurrent clashes involving pastoralists and local farmers, particularly in the Middle Belt. We call on all parties to find a peaceful solution. We welcome President Buhari's commitment to ending intercommunal violence and addressing the economic and environmental challenges that fuel tensions. The Government support a range of initiatives and economic projects to build bridges between communities across Nigeria through the £39 million Stability and Reconciliation Programme.

Baroness Cox (CB): My Lords, in thanking the Minister for her sympathetic reply, may I ask whether she is aware that last week I was in northern and central belt states of Nigeria and found deeply disturbing evidence of continuing violence by Boko Haram, with the abduction of many hundreds more women and girls in addition to those from Chibok, and growing attacks by Islamist Fulani herders on non-Muslim communities, which have spiralled since May 2015, killing civilians, driving them from their villages and occupying their lands? One such attack happened just last week when we were there, in Kauru, Kaduna state, where 41 villagers were killed. Will Her Majesty's Government ask the Government of Nigeria what measures they are taking to fulfil more effectively their duty to protect ethnic and religious minorities?

Baroness Anelay of St Johns: The noble Baroness is right to draw the attention of the House to the terrible plight of those who suffer the devastating consequences of intercommunal conflict. I note that she is careful, and right to be careful, to differentiate between the activities of Boko Haram and those of the Fulani—the pastoralists and the farmers—and the conflict there. The result for those who suffer is appalling, whoever the aggressor may be. Therefore, I can say to the noble Baroness that we call on all parties to find a peaceful solution to the underlying causes of these incidents, as I did when I visited Kaduna. We work closely with the Government of Nigeria on these matters.

Baroness Northover (LD): My Lords, the International Development Select Committee in the Commons, in its report on Nigeria, cited climate change as fuelling the conflict in this area. Now that the UK has finally ratified the Paris climate change treaty, what will be built into our actions in Nigeria to mitigate this problem?

Baroness Anelay of St Johns: The noble Baroness is right to remind us of the report's conclusions. When I was in Kaduna state the impact of desertification was drawn to my attention, particularly on the Fulani, who, having been tribal herdsmen for centuries, and having moved across country, felt that they had to go deeper into Nigeria. We work very closely with the Government of Nigeria, using DfID and ODA funds to ensure that we can provide some economic support. We particularly want to support some of the peace clubs, which bring together the various conflicting groups that find themselves trying to fight for the same access to land and therefore their livelihoods.

Baroness Berridge (Con): My Lords, as the Minister outlined, the issue of the Fulani herdsmen has always been a transnational phenomenon. Will the Minister please outline whether there are any proposals for regional meetings for the many countries affected by this issue? In particular, have we had any requests for assistance from the Commonwealth country Cameroon, whose northern part is sandwiched between this area of Nigeria, Chad and the Central African Republic, which are areas of instability affected by this phenomenon?

Baroness Anelay of St Johns: My Lords, our representatives in post—our ambassadors and high commissioners—work on a regional basis. In particular, we have a regional approach to security matters. My noble friend raises an important issue about the impact on Chad, because Lake Chad has been drying up, which has caused people to be displaced and further conflict. However, it is a matter also for ECOWAS to address.

Lord Collins of Highbury (Lab): My Lords, I welcome the Minister's reference to supporting President Buhari's attempts to meet different elements within the country, and to the £39 million for peace and reconciliation. I

want to ask two other questions. What expertise is this country able to provide in building peace and reconciliation, in addition to the money? Will the Minister reassure the House that these funds will not be affected by any future review of DfID spending?

Baroness Anelay of St Johns: My Lords, although I cannot predict what the multilateral aid review will conclude or whether publication is expected before Christmas, I will say that DfID's £39 million Nigeria Stability and Reconciliation Programme currently supports a range of initiatives across the country to reduce the conflicts and to build bridges between communities, including, as I mentioned briefly, the peace clubs. We are now in a position where more than 4,000 girls and nearly 3,000 boys take part, advocating in their respective communities for peaceful coexistence and contributing to the resolution of communal tensions. The young people can decide the future.

The Lord Bishop of Coventry: My Lords, my diocese is linked to the Anglican diocese of Kaduna, so I know something from the first-hand testimony of the bishop of the effects of communal violence in the Middle Belt states of Nigeria. Some very good reconciliation work is being undertaken there, as we have heard, and it is helpful to hear the assurance of the Minister on DfID funding for such projects. Perhaps I may ask her a little more specifically whether the Government are able to exert any influence on the Nigerian Government to ensure the return of land to communities that have been forcibly displaced.

Baroness Anelay of St Johns: My Lords, there are two parts to this. The first is the displacement of those who have suffered from the appalling and atrocious attacks by Boko Haram, and the only real solution to people being able to go back to an area where the infrastructure has been destroyed is a long-term political solution. We are assisting the Government of Nigeria, particularly from the security point of view. With regard to the conflict over land because of desertification, and the issue of the Fulani and the farmers, there is a government Bill currently before the Nigerian parliamentary system to establish grazing reserves, routes and cattle ranches. It is important that that Bill takes into account fully all the sensitivities of both farmers and herdsmen.

Syria and Iraq: Genocide

Question

2.51 pm

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what progress is being made in bringing to justice those responsible for genocide and crimes against humanity, particularly against Yazidis, Christians and other minorities, in Syria and Iraq.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, the Government believe that there needs to be accountability for the crimes committed in Syria and Iraq. We continue to support the UN Commission of Inquiry on Syria and have launched a global campaign to bring Daesh to justice. We are working with the Government of Iraq to bring a proposal before the UN to gather and preserve evidence in Iraq as a first step.

Lord Alton of Liverpool (CB): My Lords, tomorrow is Red Wednesday, when Westminster Abbey, Westminster Cathedral, a synagogue in north London and many other public buildings, including the Palace of Westminster, will be floodlit in red to commemorate all those who have been subjected to genocide or persecuted for their faith. Does the Minister recall that on 20 April the House of Commons declared that ISIS is responsible for genocide, the crime above all crimes? Can she therefore tell us how many British-born ISIS recruits have been brought to justice in British courts? Further, with Russia's withdrawal last week from the International Criminal Court, are we talking to other Governments about the creation of a freestanding regional tribunal to bring to justice those who have been responsible for these crimes of genocide?

Baroness Anelay of St Johns: My Lords, the noble Lord has asked several important questions and I will try to encapsulate them. Perhaps I may first comment with regard to Russia. When Russia grabbed the headlines about leaving the ICC, it was when I was going to the International Criminal Court in The Hague. I was perfectly well aware that the Russians had never ratified, although they had signed, the initial treaty—they made a play of the headlines, but there we are.

As regards the prosecution of Daesh fighters, it is the case that these have already begun, and I can certainly write to the noble Lord with details of the cases that have been taken in this country. However, around 60 countries have legislation in place to prosecute and penalise foreign terrorist fighters for their activities, and to date at least 50 countries have prosecuted or arrested such fighters or facilitators. On the matter of how a tribunal might be set up, it is possible of course that some form of international or hybrid justice mechanism may prove to be appropriate, but it is too early—and not for us alone—to prejudge that.

Lord Shinkwin (Con): My Lords, as the order of scale of the genocidal crimes perpetrated by Daesh becomes ever clearer, are Her Majesty's Government aware that the Parliamentary Assembly of the Council of Europe recently called on the International Criminal Court to accept the existing jurisdiction that it has to prosecute foreign fighters complicit in the atrocities? Can my noble friend tell me whether Her Majesty's Government will assist the International Criminal Court in that endeavour?

Baroness Anelay of St Johns: My Lords, my noble friend is right about the resolution of the Parliamentary Assembly of the Council of Europe. When I was in The Hague last week, I made it clear both to the president of the ICC and the chief prosecutor that the UK continues fully to respect the independence of the Office of the Prosecutor to determine which situations are subject to preliminary examination. I emphasised,

[Baroness Anelay of St Johns]
both publicly and privately, that the United Kingdom has a fully co-operative relationship with the ICC and an obligation to respond to all requests for assistance from the Office of the Prosecutor, and will do so.

Lord Gordon of Strathblane (Lab): My Lords, as well as punishing existing genocide, is there not a case for trying to prevent genocide in the future by tackling its precursor, which is frequently an education system that actively preaches discrimination against minorities? Can the Minister use her influence with DfID to ensure that our aid budget is used positively to help countries preach tolerance within their communities but at the very least to ensure that none of it is used actively to preach discrimination against minorities?

Baroness Anelay of St Johns: My Lords, the DfID aid budget is indeed used to ensure that those who need humanitarian aid receive it but also to address the issue of education. For example, a preliminary project in Iraq is looking at how to ensure that teachers are able to deliver education in a way that means that the next generation will not have some of the prejudices that have unfortunately been seen in some—only some—of the present generation. The Government of Iraq work very closely with us for peace and reconciliation.

Baroness Smith of Newnham (LD): My Lords, what further discussions have Her Majesty's Government had with other members of the Security Council, particularly Russia and China, about the suffering of minorities at the hands of Daesh? What discussions do they plan to have with the incoming United States Administration?

Baroness Anelay of St Johns: My Lords, following the launch by my right honourable friend the Foreign Secretary in September of the global campaign to bring Daesh to justice, we ensured that we had discussions with the other members of the Security Council—who were already aware of what was about to happen. We are making good progress in discussions across the United Nations on designing a system whereby evidence can be collected to bring Daesh to justice. Although I know that we have our differences with Russia over the way in which it has carried out some of its activities in Syria, I am hopeful that it may be in a position to support a process of bringing forward evidence in conjunction with the Government of Iraq—because it is Iraq led—so that the United Nations can then have a resolution before it which could be accepted by all.

Lord Collins of Highbury (Lab): I welcome what the Minister has said regarding the commission of inquiry. Just to amplify the last point, how are the Government building a consensus for that? I acknowledge the difficulty at the United Nations, but is not the first step surely to get wider support for that commission of inquiry?

Baroness Anelay of St Johns: My Lords, I think that I must be clearer in my answer and differentiate between the commission of inquiry, which we fully support and which continues as it is, and the work that we will now undertake with the Government of Iraq to present a resolution to the United Nations which would focus on collecting an evidence base. That is a different process. Our diplomats both in the United Nations and around the world are working hard to achieve support for that, including with our allies in the United States.

Lord Singh of Wimbledon (CB): My Lords, while members of ISIS responsible for open slave markets and the systematic humiliation of Yazidi and Christian women must be brought to justice, does the Minister agree that the systematic bombing—to near extinction—of the people of Syria by both Russia and the West is also a war crime for supposed strategic interests? Does she also agree that the constant repetition of the mantra that Assad must go does nothing whatever to address the underlying religious tensions?

Baroness Anelay of St Johns: No, my Lords, I do not agree. It is the case that 68 members of the global coalition have come together in a signal of international intent to ensure that there is a government in Syria chosen by the Syrian people. It is Assad who is the block upon that: he is the major cause of the conflict and the major cause of death for those who have died—between 85% and 90%. He provides a rallying cry for Daesh. I am afraid that on this occasion, although on many others I can agree with the noble Lord, he and I will have to have different opinions.

Prisoners: Indeterminate Terms

Question

3.01 pm

Asked by ***Lord Beecham***

To ask Her Majesty's Government, in the light of the concerns raised by the Chief Inspector of Prisons over the number of prisoners still serving indeterminate terms under the now abolished Imprisonment for Public Protection system, whether they are planning to reduce the number affected; and if so, when.

Baroness Goldie (Con): My Lords, this report rightly highlights concerns about the management of IPP prisoners. We are committed to helping the progression of IPP prisoners without compromising either the integrity of the parole process or, importantly, the assessment of risk. We are setting up a central unit to speed up the process, and we are working with the Parole Board to process cases as efficiently as possible.

Lord Beecham (Lab): My Lords, the issue of imprisonment for public protection has been frequently raised in this House, notably by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. This unfortunate legacy of the Labour Government leaves almost 4,000 prisoners—4.5% of our overcrowded prison population—remaining in prison after serving their prescribed sentence; 40% of them have served five or more years over their tariff. The Chief Inspector

of Prisons, the chairman of the Parole Board and Michael Gove have all called for action. What steps are the Government taking, and with what resources, as part of the promised IPP review, and what is the projected date for issuing a report? Or does IPP stand for "inordinately protracted policy-making" at a time of unprecedented problems of violence, disorder and self-harm across our massively overcrowded and understaffed prisons?

Baroness Goldie: I thank the noble Lord for acknowledging the genesis of the problem. No one is disputing that the sentencing system introduced back in 2003 was defective. It is a matter for commendation that that system has now been abolished. However, that does not help us in discussing how best to advance the position of the prisoners within that cohort now affected by that former sentencing system. The noble Lord asked what we are doing: I gently point out to him that the figures are encouraging. He will be aware that the number of releases is increasing and, thankfully, the population within this cohort is diminishing. Those are exactly the trajectories we want to see. He will also be aware that the Government, in conjunction with the Parole Board and the National Offender Management Service, have an action plan that has greatly assisted in mitigating the problem. I remind the noble Lord, however, that we should not lose sight of the context in which people are placed in prison. These prisoners were put there at the decree of the original sentencing court by a judge familiar with the circumstances of the case and of the accused. It is very important that we do not forget the obligation of public safety and that we are clear that any releases must be consistent with a robust risk assessment.

Lord Wigley (PC): My Lords, is the Minister aware that the report shows that more than 80% of IPP prisoners were beyond their tariff expiry date, and that three-quarters of these were category C and D prisoners, some of whom were held in local prisons where offending courses are just not available? Will the Government accept the report's leading recommendation that IPP prisoners should be held in prisons appropriate to their security classification, with facility to support risk reduction and rehabilitation?

Baroness Goldie: I am not unsympathetic to the general point advanced by the noble Lord. As I said to the noble Lord, Lord Beecham, improvements are under way. I do not dispute for one moment that there have been delays in the system—everyone acknowledges that—but it is also important to acknowledge the positive steps taken by the Government, the independent Parole Board and the National Offender Management Service. Indications are that improvements are being effected. For example, with effect from today we have revised the statutory Parole Board Rules so that parole panels can release IPP prisoners without progressing to an oral hearing. That is one of a number of measures intended to ensure that prisoners who apply for parole get a proper opportunity for a hearing and a proper assessment of their circumstances. As I said earlier, the overriding consideration must be risk assessment and what is safe for the public.

Lord McNally (LD): My Lords, the Minister once again emphasises public protection. Is she aware that all the people advocating a change in the system are equally determined to protect the public? Will she confirm that all the measures she announced today will probably still leave more than 2,000 IPP prisoners in custody well into the next decade? Will she acknowledge that this continuation is not only unfair to the individuals but doing real damage to the reputation of our criminal justice system? That is the problem—no one is blaming the Ministers now. I ask her to refer this matter to the Justice Select Committee, to call for evidence that could perhaps get us out of this situation. What she announced today will not.

Baroness Goldie: I say to the noble Lord—and perhaps with greater brevity than his question—that he will be aware that the cohort of prisoners coming within this category have committed serious offences by any definition. He will also be aware that what I described earlier to the noble Lords, Lord Beecham and Lord Wigley, was just one of a number of measures. Many measures have already been taken, including increased resource. The proof of the pudding is in the eating. We are seeing a welcome lowering of the trajectory for those detained in prisons, and an increase in the trajectory for those being released. That is the direction of travel we want.

Asset Freezing (Compensation) Bill [HL]

Third Reading

3.07 pm

Bill passed and sent to the Commons.

Bread and Flour Regulations (Folic Acid) Bill [HL]

Third Reading

3.07 pm

Bill passed and sent to the Commons.

Modern Slavery (Transparency in Supply Chains) Bill [HL]

Third Reading

3.08 pm

A privilege amendment was made.

Bill passed and sent to the Commons.

Contracts for Difference (Allocation) (Excluded Sites) Amendment Regulations 2016

Motion to Approve

3.09 pm

Moved by ***Baroness Neville-Rolfe***

That the draft Regulations laid before the House on 11 October be approved.

The Minister of State, Department for Business, Energy and Industrial Strategy (Baroness Neville-Rolfe) (Con): My Lords, the regulations amend a statutory instrument made under the Energy Act 2013. The

[Baroness Neville-Rolfe]
instrument makes some straightforward amendments to the current regulations to strengthen the non-delivery disincentive mechanism. This mechanism is an important part of the CfD scheme. It encourages developers to stick to the delivery milestones in their contracts and sets a penalty for developers who apply for, and win, a CfD but then either fail to sign the contract or terminate it early. In the first CfD round, two small solar projects failed to sign their contracts. Both had bid at a price that was considered by the industry as not economically viable at the time. It is right that we tighten up the regulations to ensure that such speculative projects are not able to enter future rounds. Two others did not meet their milestone requirements in the view of the LCCC—the Low Carbon Contracts Company, not, of course, Leicestershire County Cricket Club.

Before I go into more detail about how the mechanism currently works and how we propose to change it, I will touch briefly on the latest developments around the CfD scheme. On 9 November we published further details on the second contracts for difference allocation round. This has put an end to the uncertainty that the industry was facing and is a key plank in our commitment to move to a low-carbon energy mix, help tackle climate change and meet our carbon budget requirements. In the announcement, we gave investors, developers and the supporting supply chain the certainty necessary to drive forward investment. Some £290 million of the annual support for new renewables projects has been allocated to the upcoming round.

The noble Lord, Lord Grantchester, will be pleased, in view of what he said in our previous debate, that we have also reaffirmed that £730 million per year will be available to support renewables through the CfD during this Parliament. In our announcement we also set out key parts of the allocation process, including strike prices and supply chain guidance. The supply chain guidance is an important part of the package. It is a compulsory requirement for projects of 300 megawatts and over, and means that projects must provide the Secretary of State with a "good degree of confidence" that the project will make a material contribution to the development of the supply chain. That is all part of the Government's commitment to growing and strengthening the industrial base.

We have already seen a number of positive developments, particularly in the offshore wind industry, where investment is supporting long-term supply chain development, which is also of lasting value to the UK economy and helps to build a competitive supply chain that is ready to export. This has included investment in the ports of Great Yarmouth and Lowestoft to support Greater Gabbard and East Anglia ONE, as well as the development of the Siemens blade factory in Hull.

This draft instrument will help to strengthen the next CfD allocation round by making sure that developers who win a contract face an appropriate penalty if they do not deliver it. The non-delivery disincentive sets out a penalty for developers who apply for and win a CfD but then either fail to sign the contract, or terminate it early. This may prevent other potentially viable projects receiving a CfD and tie up budget that could otherwise have been used to deliver our objectives. It is right and proper that this behaviour should be discouraged and developers should pay a price. The non-delivery disincentive exclusion already prevents developers from applying to any subsequent round in respect of the same site for 13 months after a CfD is awarded. The intention is to prevent companies who fail to deliver on contracts from entering a future round with essentially the same project. This amendment will extend this exclusion to include the first of any rounds occurring in the following 11 months, so up to a maximum of 24 months. It allows us the flexibility to run rounds less frequently but maintain the same protection against developers gaming the system.

3.15 pm

We consulted on these changes earlier in the year and had 21 responses from a range of stakeholders. I am grateful for all the responses we received. A couple of respondents called for more stringent powers, notably performance bonds or similar financial penalties. We considered this approach but decided against it, as we are keen not to prevent smaller developers with less-deep pockets from being able to participate in auctions.

In addition to extending the exclusion period, we propose some further, minor changes. First, these changes will clarify the description of the site to which the exclusion will apply, to make it clear that the site which will be excluded is limited to that of the main generating structures of the CfD unit that failed to deliver its project. For example, if a developer won a CfD for an offshore wind farm extension and failed to deliver it, the exclusion would apply only to the extension, not to the entire offshore wind farm. Secondly, the changes will amend the non-delivery rules to bring the point at which a site becomes excluded by reason of non-delivery into line with the point at which it becomes excluded for failure to sign the CfD contract. Thirdly, following alterations to the termination events in the CfD terms and conditions, these amendments will extend exemption protection to projects terminated due to a sustainability change in law. This gives developers an important protection and was supported in the consultation. I commend these important draft regulations to the House.

Lord Grantchester (Lab): My Lords, I thank the Minister for her introduction of these regulations, which are limited in scope and technical in nature. As she says, they will deter non-delivery of contract projects by excluding participants from taking part in future periodic allocation rounds should they not fulfil certain aspects of their projects. I am happy to agree to the regulations today as they would deter applicants to the CfD scheme from making speculative bids for projects that are unlikely to be delivered, thereby tying up parts of the budget for the scheme so that it cannot be delivered. As allocation rounds are being run less frequently than originally anticipated, this would ensure greater delivery of the wider objectives of investment in power-sector decarbonisation.

The Minister has already spoken of some of the effects in the first round but perhaps she could clarify a little further why these measures are being introduced. Can she explain the overall difficulties seen in the

evidence from the non-delivery of projects in the first round of contracts for difference allocation? Has there been a certain amount of "hogging" or poor fulfilment of the projects by some participants in the first round? The Explanatory Memorandum was relatively quiet on the consultation outcome and reported generally supportive responses.

I am grateful to the Minister for confirmation that the sum coming forward to support renewable investments in the second round will be the one that has been widely reported. Is she satisfied that there is an adequate appeals process should the applicant consider that he or she has been unfairly treated? Are there adequate provisions for genuine non-compliance should circumstances out of the applicant's control result in poor fulfilment? Is she satisfied from the experience of the first allocation round that interpretations of what it means not to have delivered are adequately defined?

I would like to follow up on one further aspect of these regulations. What happens to projects that make slow progress or are even abandoned? Can that part of the budget be reallocated to a later round, or are there some residual rights of the applicant to fulfil the project? It is not clear from the memorandum whether the CfD is terminated as a consequence such that it could not be recycled in an orderly manner. The impact assessment considers the overall CfD scheme, objectives and process without considering these regulations specifically. Is there a risk that exclusions to future bidding rounds could give rise to a series of legal actions that could undermine the allocation process more generally?

I would be grateful if the Minister could clarify those aspects of how the regulations might work in practice so that the operation of CfDs will continue to bring forward schemes at least cost to the electricity consumer over the longer term.

Baroness Neville-Rolfe: I thank the noble Lord for his helpful remarks and his welcome for these regulations. As I said earlier, the contracts for difference scheme is designed to incentivise the significant investment we require in our electricity infrastructure to keep our energy supply secure, to keep costs affordable for consumers and to help meet our climate change targets. The instrument being debated today enables us to maximise the effectiveness of future CfD allocation rounds by increasing disincentives for non-delivery and preventing those who have failed to deliver a project in the past from gaming the system.

In my opening remarks I ran through the reasons for the failure of the two small solar projects and the other two projects that failed to meet the milestone requirements of the LCCC. I am satisfied in general that the contractual details and exemptions before us are fit for purpose, especially as amended by these regulations.

The noble Lord asked about using up proceeds of frozen CfDs. We always keep under review the total budget allocated to CfD projects. If any projects that are successful in the next auction fail to sign their contracts or have their contracts terminated we will consider—I think this is probably what the noble Lord wants to hear—the possibility of recycling budget to future auctions. This decision will, however, depend on factors including the pipeline and what will ensure the best value for bill payers. We do not expect this to be significant. In the first auction, as I have said, there were the two small solar projects that failed to sign their contracts and the two projects that had their contracts terminated out of a total of 25. I think I explained last time that there was an overspend against the levy control framework for that period so there was no scope for recycling on that occasion.

On legal action—which is always something I am rather cautious about commenting on—complaints can be made to the LCCC. Ultimately, judicial review would be the legal remedy and there is normally an appropriate and narrow window for this.

As I think we are agreed, this is another step—a small but important technical milestone—towards getting the next CfD auction going. I look forward to the work on the supply chain in the new year and to the auction commencing in April. In the meantime, I commend these regulations to the House.

Motion agreed.

Higher Education and Research Bill

First Reading

3.24 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Environmental Permitting (England and Wales) Regulations 2016

Motion to Approve

3.24 pm

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

That the draft Regulations laid before the House on 10 October be approved.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the draft 2016 regulations consolidate and update the rules that enable businesses to carry out a wide range of activities without harming the environment or human health.

As noble Lords know, businesses that manage potentially damaging activities—such as landfill sites, sewage treatment plants, disposal of waste electrical and electronic equipment and flood risk activities—require an environmental permit in order to operate. The environmental permitting regime, in place since 2007, sets out the rules for applying for and regulating permits and rationalises the previous regimes into a common framework. A key component is that it allows applicants to make one application and be issued with one permit for a single site, where previously they would have required several permits. It is designed to

[Lord Gardiner of Kimble]
make the process of obtaining a permit more predictable for businesses while maintaining a strong level of environmental protection.

The Environment Agency is the regulator for activities involving waste operations and radioactive substances, while local authorities regulate, for example, solvent emission activities and certain types of installation and mobile plant. The regime contains different levels of control, based on risk: exclusions, which are very low-risk activities that may be undertaken without any permit; exemptions, which are lower-risk activities that may be undertaken after registering, which is free; standard rules permits, for specified activities; and bespoke permits, for unique or higher-risk activities.

The draft regulations consolidate the previous legislation, which has been the subject of 15 sets of amendments. The consolidation and updating of the legislation will make the rules more accessible and transparent, helping to reduce the administrative burden on businesses. The consolidation is primarily a tidying-up exercise done in the interests of good administration. The principles of environmental permitting, and in particular the strong protection of the environment, remain. Those who responded to the 2015 public consultation exercise welcomed the consolidation.

Although this is primarily a consolidation exercise, there are two areas of substantive change. The first concerns an exemption for the crushing of fluorescent lamps. This type of tube lighting is commonly found in large offices and other buildings such as hospitals. Many of these lamps contain mercury, which is considered hazardous to humans and the environment. The exemption for the crushing of these lamps is called exemption T17. It allows the use of specifically designed mobile crushing equipment to reduce the volume of waste lamps before they are collected. The mercury emissions are captured by the equipment and the crushed material is then transported to a permitted site later in the day. This provides lamp recyclers with an alternative to collecting and transporting lamps whole.

The draft regulations restrict the situations in which the T17 exemption can be used, reducing the quantity of lamps that can be crushed at a site. They also clarify the conditions for operation of the lamp-crushing equipment required by EU law, making it clear that impermeable surfaces and waterproof covering are required for areas where crushing is carried out.

This change prevents large-scale lamp-crushing operations being carried out without a permit, while allowing smaller-scale operations to continue under the exemption but with enhanced conditions. It strengthens the protection of human health and the environment and levels the playing field for competing businesses that use different approaches to the collection of lamps for recycling. It does so while maintaining flexibility in lamp-collection options for the recycling industry, thereby minimising the impact on collection costs for business. The consultation on this change was carried out at the start of this year and received a positive response.

As a result of this amendment, a permit will now be required in some cases where there was previously an exemption. However, at present we are aware of only one business that is considering applying for a permit, and note that it responded positively to the consultation proposal.

The second change concerns the rules on dredging. There was an error in an earlier amendment to the regulations which transferred flood-risk activities from the previous scheme which regulated those activities into the permitting regime. It concerns the rules for an exemption from the need to apply for a permit for dredging by the Canal & River Trust and other organisations with the statutory function to undertake dredging—called statutory undertakers—such as navigation authorities.

Unfortunately, the amending regulations made in April 2016 inadvertently brought those statutory undertakers into the scheme because of a typographical error. We want to rectify that. The amendment reinstates the position that existed under the previous scheme, where those organisations with a statutory function to undertake dredging did not have to apply for a permit.

Following the consultation on bringing flood-risk activities into the environmental permitting regime, it was made clear in the Government's response of January 2016 that the intention was to replicate this exemption from the requirement for a permit. We are therefore putting this right.

The regulations will continue to ensure that the environment and human health are protected from harmful activities, while also making the law more accessible and thereby reducing burdens on business. For these reasons, I commend the regulations to the House.

3.30 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the noble Lord for his explanation of the new regulations. As he rightly pointed out, this is in effect a consolidation exercise. The original 2010 regulations have since been amended some 15 times, making it difficult for businesses, charities and voluntary bodies to navigate their way around the permit system. As he also pointed out, the permit system covers a very wide range of activities—including the handling of asbestos, the use of landfill, managing mining waste, the collection of waste electronic equipment, the protection of groundwater and the control of industrial emissions—so it is easy to understand how complex the system has become. The fact that the consolidated regulations cover nearly 300 pages is testament to that.

We therefore accept that this is primarily a tidying-up exercise that will make the legislation more accessible and restrict the need for multiple applications. As the noble Lord pointed out, two specific changes have been made. One is to add restrictions to the number of fluorescent lamps containing mercury that can be crushed without a permit and the other is to amend the flood defence permit system to enable organisations with a statutory function, such as the Canal & River Trust, to dredge without a permit, as had previously been the case. Both of these are sensible amendments and we are happy to support them.

We are content to support these consolidating regulations as far as they go. There is, of course, a wider debate to be had about the further steps necessary to reduce pollution, improve our air and water quality

and embrace the circular economy, so that we design waste out of the system altogether, perhaps leading to fewer permits being needed. It will be interesting to hear at some point how the Government intend to deliver on their promise to leave the environment in better shape than they found it in these important areas of pollution and waste.

There is an increasingly pressing question about the future of the regulations in a post-EU world and the process that will ultimately take place to review them. Can the Minister update us on the department's thinking in this regard and the extent to which all such pieces of legislation will be included in a great reform Bill? But I realise that I am straying slightly from the main point at issue today. I hope that the noble Lord can give us some responses, but I will reiterate that we support the regulations.

Lord Gardiner of Kimble: My Lords, I am most grateful to the noble Baroness for her comments and questions. Having seen the document, my heart sank at its many pages, but in fact the framework is 50 pages and there are a lot of schedules. It is inevitably complex, but we want to get it right. It is important that it is part of a tidying-up exercise. I have no doubt that your Lordships and the other place will be considering other elements of the environment and environmental permitting in the years ahead. The noble Baroness is absolutely right. We want—as would any Government—the environment to be left in a better condition than the one we find it in now. That is a laudable aim, and we are working to that end with not only proposals in the 25-year plan for the environment, but many other aspects which perhaps we will debate at other stages in proceedings in this House.

On the question of the United Kingdom leaving the EU and the subject of environmental permitting, the first thing to say is that, as the Prime Minister has said, while we remain a member of the EU, the Government will continue to implement and apply EU legislation. Of course, the outcome of the negotiations with the EU will determine what arrangements apply in relation to EU legislation in future, once we have left the EU. The Government's intention is to repatriate all the environmental permitting regulations into British law, as the noble Baroness said, via the proposed great repeal Bill. The environmental permitting regime will, as I say, remain under regular review, with proposed amendments to the rules expected between now and when we leave the EU. I see this very much as an evolving situation as we seek to work on the environment.

As I hope I have outlined, these are part of a continuum of updating the rules on permitting and putting them into a single piece of legislation—indeed, making them easier to find and to understand. We have made some changes which I believe improve the rules on the crushing of florescent lamps, and which will help us to protect the environment better, and a change has been made to reinstate the position for the Canal & River Trust and others with a statutory responsibility for dredging. As the noble Baroness has acknowledged absolutely, it is important that they will be exempt from the requirement to hold a permit for dredging because that is precisely part of their remit.

We wish these regulations to be part of our intention to leave the environment in a better condition than the one that we found. I commend these regulations to the House.

Motion agreed.

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016

Motion to Approve

3.37 pm

Moved by ***Lord Dunlop***

That the draft Order laid before the House on 13 October be approved.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, the purpose of the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 is to modernise the system of fatal accident inquiries—often referred to as FAIs—in Scotland. The Act is in line with the recommendations of the noble and learned Lord, Lord Cullen of Whitekirk, following his independent review of FAI legislation in 2009. The Act received Royal Assent on 14 January 2016, and the order before your Lordships is made under Section 104 of the Scotland Act 1998. The Section 104 mechanism allows for necessary or expedient legislative provision to be made by the UK Parliament in consequence of an Act of the Scottish Parliament. Certain provisions in the 2016 Act will be given effect in the rest of the UK where that is required, and will make expedient substantive legislative provision in relation to matters reserved to Westminster.

Noble Lords may be aware that fatal accident inquiries are held to establish the circumstances surrounding certain deaths occurring in Scotland. Mandatory FAIs must be held when someone dies in legal custody, or when someone dies as the result of an accident related to their work. FAIs are broadly equivalent to coroners' inquests in England and Wales, which are independent judicial inquiries conducted into the facts surrounding a death that is sudden, unexpected or unnatural.

Among the changes brought forward by the 2016 Act is one to extend the categories of death in which it is mandatory to hold a fatal accidents inquiry in Scotland. The categories for which mandatory FAIs will be held have been extended to include deaths of children in secure accommodation and in police custody, irrespective of location. These changes relate to devolved matters and so it is right that the Scottish Parliament has legislated for them. This Section 104 order will enact changes to reserved matters to ensure they are consistent with the new Act of the Scottish Parliament. It also makes some substantive policy changes, including making clear that it will become mandatory for an FAI to be held into deaths of service personnel in the course of active duty in Scotland. Until now, this has been at the discretion of the Lord Advocate.

[Lord Dunlop]

The order also proposes that a military death in the offshore area of the continental shelf adjacent to Scotland would require a mandatory FAI. This brings legislation in Scotland on investigations into military deaths in line with the rest of the UK to the extent that every military death in Scotland will, in future, be subject to a judicial inquiry. This new category of mandatory FAIs will be treated in similar fashion to others—for example, in relation to the power of the Lord Advocate to decide that an FAI is not required because the circumstances of death have been sufficiently established in other proceedings.

These proposed changes have taken on added significance in recent days following the death of Lance Corporal Joe Spencer of 3rd Battalion The Rifles at RAF Tain. Lance Corporal Spencer tragically died near Inverness, three weeks ago today, on Tuesday 1 November, in what the Ministry of Defence has described as a "live fire accident". I am sure that I speak for the whole House in offering our condolences to Lance Corporal Spencer's family, friends and colleagues. In legal terms, the mandatory requirement for a fatal accident inquiry, proposed in this order, is not retrospective. Even if the death is found to have been in the circumstances provided for, it will not apply to the death of Lance Corporal Spencer. Instead, the existing arrangements under the Fatal Accidents Act 1976 will apply, and it will be within the discretion of the Lord Advocate to rule on whether an FAI is held.

This sad incident, none the less, highlights the importance of the order and illustrates why the UK and Scottish Governments, Ministers and officials, have worked closely together to bring it about. I hope that your Lordships will agree that this collaboration represents another example of the UK Government's commitment to work with the Scottish Government to make the devolution settlement work effectively. I beg to move.

Lord Hope of Craighead (CB): My Lords, I join the Minister in expressing condolence to Lance Corporal Spencer and his family for that tragic incident.

I welcome what the noble Lord has said about the introduction of a mandatory FAI in the case of servicemen who die in Scotland or outside the mainland in territorial waters. If these deaths occur in England, there is a mandatory inquest. One of the problems has been the imbalance between the mandatory system in England and Wales and the discretionary system in Scotland. It makes good sense that they should be on the same basis.

Another point worth noting is that the FAI system is very well equipped for a thorough investigation as to the reason for the death, which is not always available in inquests because of the way in which they are organised in England and Wales. It has caused problems for the Supreme Court in dealing with cases which arise overseas, such as deaths occurring during the situation in Iraq. The Scottish system is well equipped and there is no question that introducing a mandatory system provides a very sound basis for finding out exactly why these tragic incidents occurred and also making arrangements to avoid, if possible, a repetition of the same event. I welcome very much what the Minister has said.

3.45 pm

Lord Wallace of Tankerness (LD): My Lords, I add my condolences to those of the Minister and the noble and learned Lord, Lord Hope.

I welcome the proposed changes and the opportunity taken in the Section 104 order to extend the categories where a mandatory fatal accident inquiry is carried out. The Minister will be aware that there has been concern for some time because the bodies of service personnel who are killed not in the circumstances he described but in foreign parts are generally repatriated to England, and therefore the jurisdiction has been an English jurisdiction, albeit that the families of the servicemen involved may well be in Scotland. Concern has been expressed about this and I know that efforts have been made to resolve it. I have lost track of whether any progress has been made. Will the Minister take this opportunity to indicate what the position is?

Lord McAvoy (Lab): My Lords, I add my condolences to those expressed to the family of Lance Corporal Joe Spencer. It befits this House that such condolences are offered.

I thank the Minister for the usual clarity with which he explained the order, which we welcome. The legislation makes much-needed changes to update and improve the system of FAIs. These are tragic cases and are incredibly difficult for the families affected. It is right that we should do everything we can to establish what happened to their loved one, and to make sure that lessons are learned for the future.

The changes made by the 2016 Act go some way to improve the system. The Cullen review made its recommendations seven years ago now, so it is welcome that we have reached this point of action. There has been a wait to see this system updated. This order allows the 2016 Act to be implemented in full, so we are happy to lend it our support. As has been mentioned, particularly welcome are the provisions on the death of military service personnel. This issue has been made painfully resonant in the past few weeks by the tragic death of Lance Corporal Spencer. We again send our thoughts and condolences to his family and friends.

I thank the noble and learned Lord, Lord Hope of Craighead, for the specific, experienced point of view he brought to this brief debate. I echo the words of the Minister that this UK Parliament stands ready, as I think it always has, to make devolution work not only in Scotland but in the other devolved Assemblies in the country.

Lord Dunlop: My Lords, I thank all noble Lords who have taken part in this short debate for their contributions and for their support for this order.

I very much agree with what the noble and learned Lord, Lord Hope, said about the system in Scotland being well equipped to deal with these inquiries.

To pick up the point made by the noble and learned Lord, Lord Wallace, the law on service personnel dying abroad has been re-enacted as Section 7 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. I think I am right in saying that, where a death occurs abroad and the body is repatriated, the Lord Advocate has discretion to launch an inquiry into such a death. If I have not covered his point fully, I am happy to write to him but I hope that deals with it.

The order allows for the 2016 Act to be given effect in the rest of the United Kingdom where that is required and, as has already been said, to bring the treatment of military deaths in Scotland in line with the rest of the UK. On that basis, I commend the order to the House.

Motion agreed.

Article 50 (Constitution Committee Report)

Motion to Take Note

3.49 pm

Moved by ***Lord Lang of Monkton***

That this House takes note of the Report from the Constitution Committee *The Invoking of Article 50* (4th Report, HL Paper 44).

Lord Lang of Monkton (Con): My Lords, as I understand it to be the will of the House that the next two Motions be debated together, I will speak to the Motion in my name, to be followed shortly by the noble Lord, Lord Boswell of Aynho, who will speak to his Motion. I welcome the opportunity that today's debate brings the House to consider issues that arise from both your Lordships' Constitution Committee's report on the invoking of Article 50 and the European Union Committee's report on parliamentary scrutiny of Brexit. I hope there may be benefit in debating these in tandem, as they are complementary in nature, and I look forward to the debate.

In our committee's report, we did not feel qualified to offer a firm view on whether, as a matter of law, the Article 50 trigger should be dealt with by the royal prerogative or by involving Parliament, particularly since that very question was then before the High Court. Following the judgment handed down by the Divisional Court, the Government are now pursuing their case in the Supreme Court. The Government are of course fully entitled to appeal against the earlier judgment, and the Supreme Court is there to respond. However, there is all the difference in the world between appealing a court judgment and attacking the judges who delivered it, so I feel in no way inhibited from commenting on the disgraceful behaviour of certain quarters of the press and some Brexit campaigners, with their vicious vilification of three distinguished judges. The judges pronounced in good faith on a pure question of law. The attack on them was shameful. I find it strange, to say the least, that those who during the referendum campaigned most passionately to "take back control" should then choose to breach a core principle of our unwritten British constitution—namely, upholding the independence of the judiciary—and that they should do so by attacking judges who, in a British court, delivered a judgment that placed great emphasis on another core principle: the sovereignty of Parliament.

Our committee recognised, when considering the options for invoking Article 50, that there were persuasive arguments on both sides. But we concluded that, whatever the legal outcome, the constitutional position was clear. I quote from our report:

> "It would be constitutionally inappropriate, not to mention setting a disturbing precedent, for the Executive to act on an advisory referendum without explicit parliamentary approval … The Government should not trigger Article 50 without consulting Parliament".

I just referred to the advisory referendum, and it is true that, technically, it was advisory. But it is also true that the Government gave repeated undertakings to implement the outcome, whatever it might be. That adds force to the need now for all sides to agree that the Brexit question was answered by the referendum result. It is now time for Parliament to honour the decision that it placed in the hands of the electorate and for Parliament to carry it through. To paraphrase Dicey, the will of the people is not known but by the laws of Parliament. I do not see that as dismissing the outcome of a referendum but rather as an injunction to Parliament to implement it. The fact that both the holding of the referendum and the implementing of the result featured in the governing party's manifesto at the last election adds force, in this House, to the argument. Parliament therefore has a duty to see that the will of the people is carried out. We live, however, in a representative democracy, not a direct one. In the end it is for Parliament to decide, not for the Government alone. Whether referendums are a good thing is a discussion for another day.

Your Lordships will have noted that Scotland and Wales have successfully applied to intervene in the appeal to the Supreme Court, claiming in Scotland's case that any Bill to trigger Article 50 would require the consent of the Scottish Parliament. We had indicated in our report that we did not think such a Bill would require legislative consent from the devolved legislatures. However, if a Bill is brought forward, further thought may need to be given to its effect in light of any appeal decision. We had also earlier railed against the use of declaratory legislation in the Scotland Act and against citing the Sewel convention as a convention in legislation because of the uncertainty that could generate. I shall not comment further in advance of the Supreme Court judgment except to say that regardless of the outcome, it will be essential for the Government to work closely with the devolved Administrations over Brexit, as they have undertaken to do, and for this Parliament to work with the devolved legislatures in providing appropriate scrutiny.

When the Supreme Court reaches its judgment, it may say that the royal prerogative is appropriate, or it may decide that Parliament must approve the triggering of Article 50. It may or may not decide the form of that approval, whether by legislation or by resolution; at present, we can only speculate. If by legislation, the Government may choose to present a short, tightly drawn Bill, or a longer one touching on aspects of the

[Lord Lang of Monkton]
negotiation process. We do not know. Legislation would create greater certainty, particularly if it were to lead, as seems inevitable, to the subsequent displacement of existing primary legislation. We suggested in our report that it could be used to set some preconditions to the triggering of the article, as part of the UK's "constitutional requirements". However, the time for that has probably passed, and time is an important factor in the calculation.

It would certainly seem unwise to include in a Bill any terms that disclosed aspects of the Government's negotiating position, thus weakening their hand in Brussels. A resolution, whether passed through the elected House alone or through both Houses, could prove a swifter process than a Bill, but its authority would be open to subsequent challenge. Separate Motions for a resolution would be needed in each House. They would be amendable and might therefore lead to different resolutions emerging. I believe it is essential that the invoking of Article 50, which triggers the implementation of the electorate's decision, needs to be with the approval of both Houses of Parliament. Unlike a resolution, statute law trumps other forms of law, and that is what I support. I also understand that the Government have indicated that, if the earlier judgment is upheld, that is the course they are likely to take.

Whatever the outcome in the Supreme Court, and whatever form is used to invoke it, Article 50 need not affect the process and form of the subsequent negotiations. It starts the clock and that should be done in a clear-cut and concise way. Parliament's involvement in the subsequent negotiations has already been underlined by my noble friend the Minister, and by others in government. The Constitution Committee, like many others in both Houses, stands ready to play its part in that process.

I now defer to my noble friend Lord Boswell of Aynho, whose Select Committee has already produced an admirable report on how Parliament should be more fully involved, and surely has a further vital role to play. I beg to move.

3.57 pm

Lord Boswell of Aynho (Non-Afl): My Lords, I am grateful to the noble Lord, Lord Lang of Monkton, for his eloquent introduction to the debate, and to his committee for its authoritative analysis of the important questions of domestic, constitutional and political principle that arise in relation to the issue of a notification under Article 50. We also await the judgment of the Supreme Court, and I shall not dwell further on Article 50.

What my committee's report seeks to do, in contrast, is to give an appreciation and a structured outline of the whole Brexit process, and to identify the points within that process where parliamentary involvement will be required. We have broken the process down into four phases: a preparatory phase, in which we now find ourselves; a phase of formal negotiations in accordance with Article 50 of the EU treaty; the ratification phase, when Parliament will be asked to approve whatever agreement has been reached; and finally the implementation phase, when Parliament gives effect to the agreement in domestic law.

This is a logical sequence, but not necessarily a chronological one. In reality, these phases will have to overlap. Indeed, I welcome the Government's intention to proceed with implementing key elements of withdrawal, by means of its great repeal Bill, in tandem with the negotiations. It is of course vital that once any agreement is ratified and takes effect, there be as seamless a transition as possible to a new legislative framework.

But these are all points of process; what really matters is the substance. What will Brexit actually mean for the people of this country and of the European Union? Will they, for example, be able to move freely within Europe in search of jobs? Will existing rights, whether of employment, property or residence, be respected? And what will Brexit mean for businesses? Will they be able to trade freely across borders? Will United Kingdom airlines be able to fly between European cities? Will EU fishermen continue to fish in UK waters? Will police forces still be able to extradite criminals to and from the European Union? The list of questions is almost endless and covers the whole bandwidth of government.

The EU Committee and its six specialist sub-committees are currently considering these questions. I warn noble Lords that we will be publishing a series of short reports in coming months, possibly as many as 20, covering what we see as the key issues—the ones that will most affect the prosperity and security of our nation and people in the years ahead.

The Government, of course, are asking these same questions as they prepare their own negotiating position ahead of triggering Article 50. But that is the rub. They are exploring all these vital questions largely in secret, and we all know next to nothing about the process whereby they are finalising their approach to the negotiations, let alone the goals they have set. Our report is a plea for effective, structured parliamentary scrutiny of the substance of Brexit. Too much is at stake for Brexit to be left to government alone, and for Parliament, as the seat of our democracy, to be restricted to providing a rubber stamp.

We have all heard Ministers' refusal to offer a running commentary and their rejection of parliamentary micromanagement of the negotiations. With respect, these are Aunt Sallies. Nobody imagines that Parliament can itself conduct tough negotiations that will take place behind closed doors. However, if the Government do not expose their strategic thinking to scrutiny early in the process and embrace the opportunity of genuine dialogue with stakeholders within Parliament and beyond, they risk alienating those whose support they will ultimately have to rely on if the final agreement is to be implemented successfully. That is why in Chapter 2 of our report we conclude that "accountability after the fact" is simply inadequate, and it is why, in paragraph 35, we recommend that both Houses of Parliament,

"be given an opportunity to debate and approve the negotiating guidelines, at least in outline".

That is absolutely fundamental to the legitimacy of the whole process. Incidentally, in my experience it would also be the expectation in most, if not all, other European Parliaments, were they to find themselves in this position.

Ministers have said in response that they cannot go into the negotiations with all their cards face up—they need to keep something back. There is of course an element of truth in that, but it is not always wise to clutch all your cards close to your chest. Occasionally, you need to play one to draw other cards out. In my view, the whole process of negotiation is one of creating a favourable atmosphere by gradually exposing your hand, and if, in doing that, you have the express endorsement of a sovereign Parliament at your back, you will be much stronger in your negotiating position.

So the Government need to strike a balance. They need to offer enough information to secure parliamentary and public buy-in, but not so much as to undermine their ability to negotiate in detail and to make the trade-offs that will certainly ultimately be needed. That is the theme of Chapter 5 of our report, on scrutiny of the negotiations. We feel that the negotiations cannot be a black box out of which an agreement magically emerges after two years. Parliament must be actively engaged in scrutiny throughout the process. That, I suggest, is why it is imperative that the House designate a specific committee to take the lead in scrutinising the negotiations. Only such a committee can provide the consistency and continuity of membership and staff to engage in sustained, thoughtful scrutiny over a period of at least two years, building up, one would hope, a relationship of trust with government, while of course respecting the confidentiality of sensitive information.

Some noble Lords may say, "Yes, but look at the number of debates we have been having on Brexit and at the number of Questions being tabled; surely more than enough is going on without appointing a committee to scrutinise Brexit". But that misses the point. This House performs three key functions. It scrutinises legislation—and there is more than enough legislation coming down the track to keep this House and its legislative scrutiny committees busy. It is also properly a forum of public debate on major issues, and our debates, as this afternoon in the Chamber, perform a vital function in that regard. However, the House's third core function is to scrutinise the Executive, and that scrutiny function needs different and distinctive structures.

The European Union Committee, which I chair, has scrutinised successive Governments' policies towards the European Union, formerly the European Community, for the more than 40 years of our membership. It is not glamorous work. It is done largely by means of correspondence, supplemented by public and private meetings with Ministers and officials, and draws on the skills of highly expert Members and staff. It has teeth, thanks to the scrutiny reserve resolution. It works and it is still needed. It holds Ministers to account and acts as a vital discipline for officials, exposing and interrogating sloppy thinking, and it ensures that there is an audit trail for the many decisions taken by Ministers on our behalf in Brussels. Of course, it always leaves open the possibility that, on issues of major importance, it can make a report to the House and initiate a wider debate. That is what the House should aim for as we go into these negotiations: effective and sustained scrutiny conducted by a properly resourced and expert committee, drawing on the skills of Members and staff of the House, respecting the confidentiality of sensitive information and making reports to the House as appropriate on the key issues of principle that will undoubtedly arise, but with our emphasis throughout on fleetness of foot and flexibility rather than on covert obstructionism.

For such a scrutiny model to work, the Government will need to make a positive commitment to engaging with Parliament and to providing a steady stream of information to committees. The Secretary of State for Exiting the EU has already been helpful in indicating that Parliament will have equality of arms with the European Parliament in access to information relating to the negotiations. The noble Lord, Lord Bridges of Headley, has also been enormously courteous and generous in talking to Members across the House and listening to their concerns, and I would like to take this opportunity to express my personal thanks to him. But I hope he will agree with me that it is time now to focus our efforts on how we can all, working together, make a success of Brexit.

In conclusion, effective, engaged parliamentary scrutiny is not a threat to Brexit or the national decision. It is, or should be, the Government's candid friend, and the best way to ensure an outcome that commands parliamentary and public support and that works to our benefit. I look forward to the debate and to the Minister's response.

4.08 pm

Lord Hunt of Wirral (Con): My Lords, I declare my outside interests as set out in the register and in the fourth report of the Select Committee on the Constitution, of which I am a member. I join my noble friend Lord Lang of Monkton in commending this report warmly to the House. I pay particular tribute to our clerk, Antony Willott, and his entire team, all of whom did a first-class job, ensuring that we heard all the necessary evidence and marshalled our arguments effectively. The fourth report of the European Union Committee, which has just been introduced by the noble Lord, Lord Boswell of Aynho, is also an excellent piece of work.

The House does not need me to remind it that we are in extremely choppy waters and largely uncharted waters at that. In the run-up to the referendum it soon became abundantly clear that a substantial majority of parliamentarians in both Houses felt that it would be in the best interests of the United Kingdom to remain within the European Union, but the people of the country were not persuaded. Much has rightly been made of the fact that the referendum was technically consultative and not binding, but that was done deliberately and after much thought, and it was approved by Parliament. That was not an accident. It was done in my view not to empower Parliament to ignore the will of the people but to ensure that Parliament should continue to play a vital historical role in safeguarding the national interest whatever the result of the referendum.

I join my noble friend in quoting from paragraph 24 and the reference to how constitutionally inappropriate it would be for the Executive to act on an advisory referendum without explicit parliamentary approval. The big decision of whether to remain within the

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political institutions of the European Union was handed to the people of the United Kingdom, but it was never intended to change the fundamental nature of our delicate constitutional balance, which has evolved over centuries. Indeed, one of the most powerful arguments on the leave side was that we need a reassertion of the authority and role of the United Kingdom Parliament in our national life.

On 3 November the High Court issued its judgment on the so-called Brexit case, and I join my noble friend in regretting the rough and tumble that that judgment received in the press the following morning. As various Ministers have subsequently reaffirmed, a free and independent press is an important element of our way of life, but so too is an independent judiciary and it should never be unfairly traduced for doing its job when others have demanded that it should. For many of us, the coverage of that judgment was both unfair and personally unkind. The key part of the judgment is set out in paragraph 5 where the High Court said:

"It is agreed on all sides that this is a justiciable question which it is for the courts to decide. It deserves emphasis at the outset that the court in these proceedings is only dealing with a pure question of law. Nothing we say has any bearing on the question of the merits or demerits of a withdrawal by the United Kingdom from the European Union; nor does it have any bearing on government policy, because government policy is not law".

That statement is accurate and it puts paid to any suspicion voiced by some that the High Court was actively and inappropriately engaged in seeking to extend its remit.

Even I believe, however, that this state of affairs is a matter of some regret. The Government and Parliament were more than capable of working this out for ourselves, as these two excellent reports demonstrate. There is no criticism of anyone in this, but the involvement of the courts is an unnecessary sideshow as we all seek to protect the best interests of the nation at a time of great uncertainty. In responding to that judgment the Secretary of State, David Davis, stated:

"To leave the European Union was the decision of the British people. It was taken after a 6:1 vote in this House to put that decision in their hands. As the Government told voters: 'This is your decision. The government will implement what you decide'—no ifs, no buts. So there can be no going back; the point of no return was passed on 23 June".—[*Official Report*, Commons, 7/11/16; col. 1255.]

Whatever my views were in the run-up to the referendum, I can only agree with and echo the Secretary of State's words now. I also agreed with the crucial point made in another place by the Prime Minister on 24 October, when she said:

"The UK is leaving the EU, but we are not leaving Europe, and we are not turning our backs on our friends and allies".—[*Official Report*, Commons, 24/10/16; col. 26.]

The question now therefore is how best to proceed and how best to ensure that the national interest is protected as we move forward to a future outside the structure of the European Union. Perhaps I am just cautious by nature but, so far as the interests of British business are concerned, I strongly feel that we in this place need to think long and hard about how to deal with the customs union and the single market—which I remind many of my colleagues on this side was largely the invention of a Conservative Government led by the late Margaret Thatcher.

As my declared interest, I disclose a long-standing connection with the world of financial services, particularly with insurance. I believe that the UK insurance and reinsurance sector is the jewel in our crown, bringing much-needed stability to businesses, individuals and families, and in times of crisis to the economy as a whole. I must tell this House that there is considerable concern in the insurance sector and the crucial broking community about the terms of our departure from the European Union. More than 2,750 UK insurance brokers passport out to the EU and more than 5,700 passport in. The UK is the leading general insurance market in Europe. Members of the Association of British Insurers wrote around £3.6 billion using EU branches last year. For us to maintain this position, many colleagues in the wider insurance sector have told me in no uncertain terms that it is vital that they should be able to continue trading freely in the European single market once we have left the EU.

That is why I hope that Ministers will seek to secure an agreement on transitional arrangements for financial services before that definitive new trading agreement with the EU is negotiated. It is unlikely that a reliable agreement on passporting arrangements could ever be agreed in a short, two-year period. I would go further: surely we now operate on a five-year cycle, so I urge my colleagues to do their best to persuade our partners to agree an extension to five years. That would also enable the British public to have their say in the customary manner on the negotiated outcome at the general election in 2020.

The calm, considered and informed discussions that are the hallmark of this place are inevitably very different from the trademark cacophony of a national referendum campaign. The advocates of different forms of Brexit may all claim a popular mandate for the particular outcome that they seek, but it is not true. For better or worse, we live in an age in which public confidence in politics and politicians is at an embarrassing all-time low. When we said in our report that there must be a role for Parliament in the process of triggering Article 50, we were not attempting to arrogate to ourselves the capacity to overturn the referendum. There is and must be no question of setting ourselves above the people. Sovereignty ultimately belongs to the people; they entrust it to us on a temporary basis only. This is not merely about the amour propre of parliamentarians. On the contrary, we are seeking the opportunity to prove how effective we can be in taking a mature and balanced view as we work to defend and promote the national interest in the challenging times ahead.

4.19 pm

Baroness Suttie (LD): My Lords, as the previous speakers have shown, there is a great deal of consensus in this House on the need for effective parliamentary scrutiny of the Brexit process. Both reports before us this afternoon are excellent, balanced and measured in their approach. In the EU Select Committee report, I highlight the conclusions contained in paragraph 35, which calls for both Houses to be given an opportunity to debate and approve the negotiating guidelines, and in paragraph 62, which calls on the Government to

grant equivalent access to information to this Parliament as will be given to the European Parliament during the negotiations. Not to do so would, I believe, be politically unacceptable.

Sadly, we are living in an age when a balanced, rational and measured approach is viewed with deep suspicion by many of those who believe that we must quickly pursue a hard Brexit no matter what the cost to future generations, including a future generation who mostly did not vote to leave the European Union. As the noble Lord, Lord Lang of Monkton, said so powerfully, it is somewhat ironic that many of the same people who were calling for us to take back control during the referendum campaign and return decision-making to the British Parliament and the British courts are now strangely reluctant to allow the British Parliament to scrutinise the Brexit process effectively and have publicly criticised our valuable independent judiciary.

I will briefly tackle three subjects in my remarks this afternoon: the benefits of parliamentary scrutiny, the role of the devolved Administrations in parliamentary scrutiny, and the impact of our current UK debate on the Brussels side of the negotiations.

The Government regularly state that they will listen closely to the views of Parliament but that they will not give "a running commentary" on the state of the negotiations. However, does the Minister acknowledge that in the negotiations on the Maastricht treaty in 1991 under a Conservative Government, a Motion was brought before the House on the negotiating strategy? Moreover, in 1996, on the Amsterdam treaty, the then Conservative Government published a White Paper clearly setting out their negotiating strategy in considerable detail, which was then followed up in a debate in Parliament.

Brexit is an unprecedented challenge to this country and the impact of the decisions that we take in the next few months will be felt for generations to come. As the report from the Constitution Committee states, it is unfortunate that:

"The triggering of Article 50 has become, in many people's eyes, a symbol of Government and Parliament's decision to accept the referendum result".

Parliamentary debate and scrutiny offers the Government a chance to reframe their position in a much more positive direction. Surely, shining a light into what our future will look like strengthens rather than weakens the decision-making process.

I went to Brussels a couple of weeks ago to gauge the mood post-referendum. Having worked for 10 years in the European Parliament in Brussels, I know that it is a transactional place where deals are done based on a complex mixture of relationships, enlightened self-interest and a genuine belief in the importance of maintaining the rules of the club. In the conversations I had with senior former colleagues they acknowledged that they need British trade but they believe that they can find that trade elsewhere, if necessary, if we insist on going outside the rules. It is also clear that the strident messages coming from this side of the channel are really testing their patience. In such a climate, there is very little appetite to accommodate demands for an à la carte solution.

As a Scot now living in Broadstairs on the Isle of Thanet—where Mr Farage stood at the last election—I believe that I have been exposed to the post-referendum emotions following the very different results in the different parts of the UK. Both now feel equally strongly that their point of view should be respected: Scotland voted 62% to remain and Thanet voted 64% to leave. I am sure that I do not need to stress the strength of feeling in Scotland and in the Scottish Parliament on this matter, but as someone who was firmly against Scottish independence I believe the road ahead needs to be treated with the utmost care.

Northern Ireland also voted to remain and the complexities of maintaining the Good Friday agreement once the UK is no longer in the EU are not to be underestimated. The involvement of the devolved Administrations in the Supreme Court decision early next month makes an already complex situation very much more so, as other noble Lords have said. Can the Minister spell out in more detail how the devolved Administrations will be consulted and involved in drawing up the negotiating framework and what he understands to be the constitutional arrangements should any devolved Parliament or Assembly vote against triggering Article 50?

In conclusion, I believe it is in the country's as well as the Government's own best interest to allow Parliament to have its say both on triggering Article 50 and on the negotiating mandate which will have such a profound impact on the future of this country.

4.25 pm

Lord Kerr of Kinlochard (CB): It is a pleasure to follow the noble Baroness, Lady Suttie, who knows a great deal about EU matters. It is also a pleasure to speak in the debate on two such admirable reports.

I do not intend to say much about the Article 50 report now, because the issue is with the Supreme Court. I merely mention two developments that have occurred since the Constitution Committee finished its excellent report. First, on 13 October, the President of the European Council, Mr Tusk, confirmed that a notification under Article 50 was not irrevocable, thus confirming the view taken at the time Article 50 was drafted by the leading legal adviser to the European Council. Of course, it is not the case that such a withdrawal could be lightly done or would be lightly received; there could well be a political price to pay. The point is simply that, in EU law, the institutions believe that it is possible to withdraw one's notification.

Secondly, there is what the No. 10 spokesman said immediately after the High Court ruling:

"Government lawyers … made clear … that, as a matter of firm policy, notification of withdrawal will not be withdrawn".

I am no lawyer, but as I read "a matter of firm policy", implicitly the government spokesman was conceding that, legally, it could be withdrawn. However, the Supreme Court is about to speak on this.

I very much agree with the thrust of the report from the Constitution Committee, in particular with paragraph 43 that it would be,

"constitutionally appropriate that the assent of both Houses be sought for the triggering of Article 50".

[Lord Kerr of Kinlochard]

That seems the key point. Whichever route is chosen, whether it is an Act of Parliament or a resolution of both Houses, will presumably be settled by the Supreme Court. I am confident that, if the Supreme Court decides that the Government are correct and an Act of Parliament is not required, the Government will nevertheless submit a resolution, which will proceed through both Houses. I am confident of that because I cannot see any downside in it. The Government must be aware that this House and the other place would pass such a resolution by a large majority, for the reasons given by the noble Lords, Lord Hunt and Lord Lang. It is not possible to decide after the referendum that it produced the wrong result—the result is the result is the result—so there is no doubt that, for many of us with a heavy heart, the resolution would be carried.

I therefore rather agree with the noble Lord, Lord Hunt, that the Supreme Court case is a bit of a distraction and side issue. It seems that we are going to be given a vote. I also believe that that is correct because, in the end, the Government are bound to see that it is right to have a full debate on what kind of Brexit they intend to seek. The referendum, as the report of the committee chaired by the noble Lord, Lord Lang, pointed out, does not tell us that. The referendum answered a binary question, but it did not tell us what kind of Brexit we should be going for. That is what we now need to consider.

I agree with paragraph 6 of the Constitution Committee's report, that the issue is,

"where among the range of potential outcomes the final settlement by which the UK leaves the EU will be made".

I add only that Article 50 is clear that we cannot dictate the terms of our own departure; the 27 will also have their view. What is important for us now, however, is that the Government should be open and honest with the country about the terms they will propose when they trigger Article 50.

Up to now, that is not happening. Our debates in this Chamber are extremely well informed and have all the public resonance of one hand clapping. Anyone who as a child has played solitary tennis against a brick wall knows that the wall is better than the hedge. If you hit the hedge, nothing comes back. That is the nature of our debates. I have the highest regard for the noble Lord, Lord Bridges of Headley, but I hope that today he will prove to be a brick rather than a privet.

I agree with all of the report from the committee chaired by the noble Lord, Lord Boswell, but what struck me most was the astonishing quotation in paragraph 28, from the Secretary of State for leaving the EU—I refuse to say "Exiting"; it is not a verb. Mr Davis is quoted as saying:

"Before Article 50 is triggered, there will be a frustrating time, because we will not say an awful lot. We will say a bit; we will lay out guidelines but, as the Prime Minister said, we will not give a running commentary on it, because that would undermine our initial negotiating stance from the beginning".

I find that really hard to construe. Our initial negotiating stance will not be a secret from the foreigners for very long, because when we say it, they will hear it. How could it be undermined by being presented to the people and Parliament in advance? Would it not be strengthened? Would the Government's negotiating hand not be rather stronger if they could point to the fact that the country, and Parliament, was with them, had heard them and supported, or did not dissent from, what they were trying to do?

If, as I suspect, the real reason is that the Government are in some difficulty in deciding exactly what their initial negotiating stance is to be—perhaps because the Foreign Secretary has failed to convince his colleagues that it is possible to have one's cake and eat it for all the dossiers—might it not help the Government to decide what they should ask for, if there were an informed public debate about just that?

So, in my view, we need a Green Paper now. In my view, Mr Davis was absolutely right when he first spoke of a White Paper. I am sure that we need a White Paper and am pretty confident that we will get one, although I worry that we may get it rather late in the day. Ominously, he has gone a little quiet about the White Paper. I think that we need a Green Paper first. It would not directly concern the triggering of Article 50, nor what is going to happen, and nor would it directly concern the Article 50 negotiation as such. It should concern the framework for the future relationship between us and the Union that we left.

To quote from paragraph 2 of Article 50, the negotiators are required before they complete the Article 50 negotiation—which is the divorce negotiation—to take,

"account of the framework for … future relationship".

A Green Paper could be a first draft of our prospectus, or proposals, for what that framework should be, and it would set out facts and options. A White Paper would be harder and would come closer to the time of the negotiation, but a Green Paper could explain to the country—which, frankly, does not know—what membership and non-membership of the customs union, and what membership and non-membership of the single market, actually mean.

What did the Prime Minister mean when she said in relation to a customs union that it was not a binary choice? I am not sure quite what she meant because it is, on the face of it, a binary choice, although some exclusions might be possible. I am not sure that it would be compatible with WTO rules to be members of the customs union only for certain goods—perhaps, for example, motor cars. I suspect that would not be possible.

I am not sure quite what assurances we can have offered to Nissan, therefore, or what assurances we could offer to Northern Ireland and the Republic in relation to the border between them, if we leave the customs union. But I think that the country is as ignorant as I am about this, and I think that the Government should come clean before they make up their mind. The Government should be telling the country what the choices are and what the upsides and downsides are of the various options. I know that the Foreign Secretary and Dr Fox believe that we must leave the customs union. I can understand that—for Dr Fox, it must be an existential issue—but it seems to me that it is not absolutely clear where Mrs May

stands. Perhaps before she makes up her mind, she might like to see parliamentary debate on the basis of a Green Paper.

Is it the Government's view that we could, or perhaps should, leave the EU but retain partial sectoral membership of the single market? Sometimes, that seems to be the Chancellor of the Exchequer's view. We might remain members of the single market in financial services, for example. For myself, I am not sure whether our partners across the channel would be willing to see such cherry picking, particularly in the light of the Prime Minister's Birmingham speech rejecting any role in this country for the Court of Justice or for regulation written in Brussels. Could we stay on the field, carrying on playing but bringing our own referee and playing to our own rules? I am not sure. That could be a tricky negotiation.

It follows that I am not really sure what soft Brexit means. I am not sure that there is a feasible soft Brexit; I fear that may be wishful thinking. Mr Tusk said on 13 October that the choice is "hard Brexit" or "no Brexit". I would like to think that we were looking for smart Brexit, which might mean a phased Brexit. In my view, it is not essential that everything happens at precisely the same time. It could be that timetables had different dates for different events.

Yesterday, we saw Mrs May assuring the CBI that she understood the need to avoid a cliff edge, and the commentators all interpreted that as meaning that some kind of transitional, temporary or interim deal would be required. Yes, I see the argument, but I have difficulty with it. Building a bridge requires clarity about where you want to be on the other side. It is difficult to envisage concessions for an interim arrangement that would not be accepted in a permanent arrangement. One needs to have a degree of clarity, and agreed clarity, about where one is heading—which brings us back to the framework for the future relationship. That is where we should concentrate now.

I would say that there are elements of that framework that it would be possible for the UK to signal its thinking on right now. For example, I believe that the Prime Minister's Home Office experience will lead her to think that continuing close co-operation with the EU that we left on issues such as terrorism, drugs, crime and people trafficking is a good thing, and that an institutional arrangement for such co-operation would be desirable in the UK interest. I believe that would also be seen as desirable by the 27 in their interest.

Secondly, I believe that the Foreign Secretary will by now have realised that it is not really wise to boycott EU meetings if one thinks they might come up with the wrong answers. If one thinks that, the thing to do is to go and make sure that they do not. That is his job. I suspect that he will come to understand that working closely with EU partners—in future, former EU partners—will remain important to British foreign policy after Brexit. Could not our draft of the foreign policy pillar of the future framework be written on precisely that principle and say just that? We will want arrangements for co-ordination on foreign policy, security policy, exchange of intelligence and action on sanctions in future. I believe that will be our position. It probably is our position now, although we have not said so yet to anyone.

Thirdly, I believe that the Government are probably listening to the research community and the universities. I believe the Government probably think that they will, in the end, propose an arrangement whereby we contribute financially to, and receive support from, the EU research programmes, and the networks survive. I think that will be the Government's position. I suspect that, privately, it is their position now. I do not see any downside in making clear that that would be where we would want to be in a framework negotiation.

It could be argued that to offer positive proposals at this stage for the future framework would give away our negotiating capital. That is nonsense. Much of the Article 50 negotiation—the money negotiation—will be a rough, zero-sum negotiation, but most of the framework negotiation will not be. In the framework negotiation, one will be talking about common interests, mutual interests, and will be trying to define the right future structures for pursuing these interests.

I believe that highlighting these themes now would bring benefits, not costs. In fact, I think it is becoming very urgent to do so. As the noble Baroness, Lady Suttie, said, the atmosphere in Brussels is not good and is getting worse. The Birmingham speeches, the sense that the Government are talking only to themselves, making policy in an echo chamber, the gratuitous insults from the Foreign Secretary, the random pronouncements of various Ministers, usually immediately followed by a slap down from No. 10, leave our friends—and we still have some friends in Brussels—close to despairing. They fear that there is no plan, and that when one emerges it may be rather unrealistic. They see a growing risk that the Article 50 negotiation will fail, and we will go over the cliff edge into legal chaos.

I think this is probably exaggerated, and some of these concerns could be met and would be met if the Government were to present at least a partial prospectus setting out aspects of the future relationship that they would like to see. I believe that on some aspects—I gave three candidates—they could agree now on what it is they want and there would be no downside to coming clean about it. As the noble Lord, Lord Hunt, said, Mrs May has said that, when we leave the EU, we will not be leaving Europe. Excellent. Could we not define and explain what we mean by "not leaving Europe"? That would counter the stuff in the press here that is so widely read in Brussels.

I think that a smart Brexit is not impossible, but it needs smart preparation, and I am not sure it is getting it now. Smart preparation means beginning a new, real dialogue with Parliament. The determination of precisely what kind of Brexit the country wants must entail a role for Parliament. It means being smart about the signals we send across the channel—smarter than we are being right now.

4.45 pm

Lord MacGregor of Pulham Market (Con): My Lords, it is a great pleasure and a daunting experience to follow the noble Lord, Lord Kerr of Kinlochard, whose knowledge of the practical working details of

[Lord MacGregor of Pulham Market]

the Community and of the whole area is more or less unrivalled. It is very helpful to all of us to have his views and experience.

My own direct experience of the EU is dated—to the 1980s and early 1990s—and limited: it was when I was at MAFF and then Secretary of State for Transport. I have to say that sometimes I felt my MAFF experience meant that the former was a full-time Brussels commitment. I have many memories of the difficulties but also of the opportunities that arise. The noble Lord, Lord Kerr, and other noble Lords steeped in EU work have particular knowledge of EU negotiations, and not least the timescale and intensity of what we now face, of which I believe our fellow countrymen are totally unaware. That is a theme that I want to come back to.

Here I follow my noble friends Lord Lang and Lord Hunt: the almost hysterical reaction from some of the media and elsewhere to the recent High Court judgment, with headlines like "The Judges Versus the People" and "Enemies of the People", to quote but two, was ill-judged, unfair and uncalled-for. The judges were not expressing a political view about withdrawal from the EU but simply stating that such a withdrawal requires parliamentary approval in the form not of a vote but of a statute. I quote:

"Parliament having taken the major step of switching on the direct effect of EU law in the national legal system by passing the European Communities Act 1972 as primary legislation, it is not plausible to suppose that it intended that the Crown should be able by its own unilateral action under its prerogative powers to switch it off again".

In other words, far from undermining the people and presuming more powers for themselves, the judges were actually performing their proper constitutional role and upholding the supremacy and powers of Parliament itself.

The judges were not the only ones to make this point; as my noble friend Lord Lang pointed out, our own Select Committee, of which I am a member, in its report on the working of Article 50 published in September, before the High Court hearing, concluded that,

"an Act could make clear that Parliament had given its authority to the Government to start a process that might well lead to existing legislation being repealed or substantially amended,"

and that any Act of Parliament would ensure that any constitutional uncertainties were avoided. That is an important point that we made. So I believe the judges were completely justified in the position that they took. I emphasise the vital role of both Houses in all these matters—and that is what we were endeavouring to make clear in our report.

I turn to the EU Committee's excellent report on *The Process of Withdrawing from the European Union*. One needs only to dip into it to see how tortuous and complex the negotiations will be. I have two questions for the Minister arising from the report. First, conclusion 15 on page 5 states:

"There is nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations".

I ask the Minister: is that a possibility and what will the terms be?

Paragraph 30 of the report states:

"One of the most important aspects of the withdrawal negotiations would be determining the acquired rights of the two million or so UK citizens living in other Member States, and equally of EU citizens living in the UK".

The report describes this as a "complex and daunting task". The Minister will know that this is already causing great concern to many such citizens. Can he give us any information as to the progress on this matter and some consolation to those concerned?

The comments of Sir David Edward and Professor Derrick Wyatt in paragraphs 31 to 60 make compelling reading. One little practical point resonated with me, when they were referring to the difficulty of some of the negotiations. They took as an example member states that would have interests other than those absolutely being discussed in the Council at the time. Professor Wyatt said:

"If I am a hypothetical east European country, with a very obvious and genuine interest in both the position of my nationals resident in the United Kingdom and the future access of the UK, I might not be interested in fisheries as such but I might want to block a deal on fisheries unless I get what I want on transition and future access for my nationals".

That is just one simple example of where all the complexities will arise.

In comments in chapter 5 about the length of the negotiations, Sir David said:

"The long-term ghastliness of the legal complications is almost unimaginable".

There is another clear example of the complexities of the negotiations. I do not envy the negotiators.

In paragraph 54, the committee, referring to its evidence, concludes:

"No firm prediction can be made as to how long the negotiations on withdrawal and a new relationship would take if the UK were to vote to leave the EU. It is clear, though, that they would take several years—trade deals between the EU and non-EU States have taken between four and nine years on average".

The report continues:

"It would be in the interests of the UK and its citizens, and in the interests of the remaining Member States and their citizens, to achieve a negotiated settlement. This would almost certainly necessitate extending the negotiating period beyond the two years provided for in Article 50".

I think we all recognise that it is likely to be extended beyond the two-year period, but it is the implications for further trade deals and so on that I do not believe that the British public are yet aware of.

It would be in the Government's interest to prepare the public for a long haul. I have not even had time to comment on the role of the European Parliament, wider international trade negotiations and so on. They, too, are self-evident but are not being talked about by the public as a whole.

In conclusion, the committee's report on the process of withdrawing from the European Union deserves the widest possible circulation. I do not think that the complexities and timescale of the forthcoming negotiations have yet begun to sink into the public consciousness.

4.53 pm

Lord Teverson (LD): My Lords, there have been few times in recent decades when there have been more divisive issues within the United Kingdom. The start of the 1980s and the miners' strike was perhaps equal

to it, but the EU referendum that we have all passed through was a time of great division within our country. It was a time when people were unable to judge what was truth and what was not, and I think the voters generally assumed that everything that they were being told was not the truth. There was a divide between younger and older people; certainly, my own two daughters were left far more desolate by the result of the European referendum than I was. There was a division between those who live the metropolitan life and those outside. There was division between the four nations of our country, with a different result in Scotland and Northern Ireland from that in Wales and England. I suspect that in Northern Ireland there was a hardening of community relations as a result of the referendum.

So there is a great division in our country and one that needs to be healed. Those in favour of Brexit, who won that referendum, often remind us that there have never been a larger electorate than those who voted for withdrawal from the European Union. It was a decisive result. On the other hand, I could say that more people never voted against something, in terms of the 16 million who voted for remaining within the European Union. There is a huge challenge in trying to bring this country together following that momentous decision. It seems to me—and I say this in a non-partisan way—that the way in which the Prime Minister and the Government are currently approaching this is to seed further division rather than building bridges to mend those divisions.

One of the ways in which the Government could start to put that right and make the 16 million people who voted the other way feel slightly more valued than they are at the moment is to involve a much wider community in terms of how this nation moves forward. It seems obvious that the most important way to do that is through Parliament and to use debates and propositions to Parliament to communicate far more widely and use it as an amplification to our electors and citizens more broadly. That is a fundamental role of Parliament and such an easy way in which the Government could start to find a way of healing. We could all collectively, not just in Parliament but more broadly, find a consensus—as much as we can find consensus—or a smart way to move forward from where we are at the moment. My sincere feeling is that the Government cannot get through this process all the way that they need without having that consultation and much broader conversation, and taking them seriously rather than just listening and giving no feedback what ever, as the noble Lord, Lord Kerr, said so well. That is fundamental to the parliamentary role. It is about healing the nation rather than just the fact of the constitutional position of a parliamentary democracy.

The other area is around tone; again the noble Lord, Lord Kerr, said something on this. We have had a number of interesting meetings and evidence sessions within the European Union Committee, led and chaired by the noble Lord, Lord Boswell. One of the most interesting was when we undertook our Irish inquiry. We were very privileged as a committee, and indeed, as a Parliament, to have two former Taoiseachs come before us—Bertie Ahern and John Bruton. They are both very well-regarded statesmen within Europe. One of the questions I asked was: "If you were advising the British Government, what advice would you give them in terms of negotiations towards Brexit?". John Bruton came back very quickly and said very firmly that the most important thing is for the British Government to argue a common cause of not just what is good for the United Kingdom but what is good for Europe as well. Yet I do not sense that tone in the conversations, or the lack of conversations, that the United Kingdom is having at the moment with our allies and—to-be-former—fellow member states in Europe.

That has not been helped, whether by the Foreign Secretary deciding not to turn up at a meeting of European Foreign Ministers to talk about the President-Elect of the United States, who he has already insulted—I agreed with his earlier comments—by the Secretary of State for Brexit describing Guy Verhofstadt, the negotiator for the European Parliament, a key institution in this, as Satan; or by the Prime Minister understandably, but wrongly, sounding aggressive and standing up for the United Kingdom in the typical way at a Conservative Party conference. None of these things helps the national interest at all.

In terms of tone, it is a question of who the Government speak to. I think it was the Foreign Secretary—it was certainly one of the Secretaries of State—who talked to a Czech newspaper and gave far more information about the future negotiations than had been given to ourselves or the British press. Nobody in this House knows the details of the Nissan deal whatever. That all shows that the Government are not trying to be inclusive, show a way forward and bring the nation together. The tone is around individual conversations, excluding everybody else.

The last thing I will say echoes the comments of many other Members of this House. The Government need to get real. I say that with respect, because the task that the Prime Minister has is one of the most difficult that any British Prime Minister has ever faced in modern times: how to extricate ourselves from the European Union. However, they have to come forward to Parliament and therefore to the nation with what their negotiating position will be. The opposition on the other side of the table will know that proposition as soon as we present it. Let us have a White Paper or a Green Paper to make sure that we are fully involved in that. If we do not undertake that exercise, do not include Parliament and with it the rest of the nation and the 16 million who voted for remain, as well as the 17 million who voted for Brexit, this will continue to be a very divisive process and one that will fail. That will not be in the national interest.

5.02 pm

Lord Higgins (Con): My Lords, we should be immensely grateful to the chairmen of the committees, who have presented two reports of considerable importance given the general confusion about what is going on following the referendum result. It is interesting that the House of Lords is taking the lead in providing such reports. I hope they are regarded as obligatory reading in another place and that the Library, which has been producing excellent information, will ensure that it is reflected in the other Library. I also hope that as things progress,

[Lord Higgins]
the various Select Committees of both Houses—particularly the departmental ones in the other place—make a considerable contribution.

Those of us who sat through debates on the Bill that set up the referendum will be only too aware that it was an advisory referendum. That is an important point to stress but, as my noble friend who opened the debate pointed out, it was against the background of considerable political commitment to implement whatever the referendum produced.

We ought to spend a moment considering the whole issue of referendums, because one thing has emerged clearly from both the Scottish and EU referendums: they can be immensely divisive, and so they proved to be. They show clear divisions of opinion and create a situation in which it is easy for the public to be lied to and misled. I think that happened to a very significant extent in the referendum on our European Union membership.

I personally have always been totally opposed to referendums. They are often said to be democratic. However, they are not democratic in the sense in which that is usually meant in this country. We have a representative parliamentary system of democracy but the reality is—I think this is increasingly apparent—that that can come into conflict with a referendum result. There is a huge difference between those two situations. A referendum takes a very generalised approach and is open to a lot of confusion, whereas in a parliamentary democracy the Houses of Parliament can take into account all the arguments in great depth and detail, subject them to scrutiny and make sure that minorities' interests are taken into account. It is absolutely clear that the referendum we have just had is effectively the dictatorship of a majority. That is something we ought to be concerned about.

We should be grateful for the very clear statement on this issue in the Constitution Committee's report, which points out:

> "The legislation that enabled the EU referendum did not set out how the result would be implemented … Parliament may wish, in future, to ensure that detailed consideration is given to how the result of any referendum will be implemented in advance of the vote … occurring, and … whether explicit provision should be made in the enabling legislation … to implement the outcome … or … instruct the Government",

on how they should act. After the in some ways rather sordid events of the last referendum, we must sit back and decide whether we want to go along the referendum route at all. If we never have another referendum, I, for one, would not be upset.

On the more detailed provisions, the Government's reaction has been to treat—

Lord Robathan (Con): If there were to be another referendum, which side does my noble friend think would win? Contrary to what is written in some newspapers, a lot of people say to me, "I voted remain but actually, I am delighted with the result and I am working towards a very good end for Brexit".

Lord Higgins: Since I am not in favour of any more referendums, that question does not arise. However, I certainly do not think we can go on having a continuous series of referendums in which we decide whether the result of the previous one was right or not. That would not be a very satisfactory situation.

I find the Government's attitude somewhat puzzling. I do not understand why the Prime Minister seems so determined not to allow Parliament to play a role, to the extent that the matter was submitted to the courts. Surely we want an element of co-operation now, which I hope we will have. None the less, the Prime Minister has seemed very reluctant to have any parliamentary involvement if she can possibly avoid it. It is worth mentioning a specific point regarding the courts. In an earlier report the Select Committee took the view that the decision to implement Article 50 could be reviewed in the course of the two-year period. At the end of the two years, what has been negotiated might well be clearly less favourable than the situation pre-Brexit, and we will want to change our minds. The Select Committee's previous report said that it was clear that we would be able to change our minds. In considering this matter the court took a common ground between the two sides before it, but it is still rather undecided. I hope that when the Supreme Court considers the matter further, it will be made clear whether we can change our mind during the two-year period.

Finally, on the way the negotiations are to be conducted, the summary of the European Union Committee's report makes it clear that:

> "It is inconceivable that these negotiations should be conducted by the Government without active parliamentary scrutiny".

The report then looks at the various ways that might take place and suggests a middle course whereby Parliament is involved and there is interchange between the Government and Parliament. The paragraphs I have referred to and the summary effectively set out a shopping list of the information Parliament ought to have during the negotiations. There is a good shopping list on page 3 of the report. I hope the Minister can confirm that that is an appropriate way for us to proceed and that the Government will ensure that, while we will not have a running commentary, Parliament will none the less participate to a considerable extent throughout this process until we are able to reach a final decision. At that stage, Parliament will need to decide whether the deal that has been struck is better than the situation we had before Brexit.

5.12 pm

The Earl of Kinnoull (CB): My Lords, it is a pleasure to follow the noble Lord—as ever, logic and common sense ran throughout his remarks. I declare my interests as set out in the register of the House and in particular as a member of the European Union Select Committee. I also add my thanks to our chief clerk, the very excellent Chris Johnson, and his clerking staff for their work. It was a short and intense inquiry and drawing together the many strands into a cogent report was a testing task, and he did it very well. I also pay warm tribute to our chairman, the noble Lord, Lord Boswell, ever the provider of a bon mot in our long meetings.

In what is an incisive report, the Constitution Committee has yet again tackled a complex issue with great clarity and admirable brevity. I certainly found it very helpful. The conclusion of the report, in its final paragraph, notes:

"Parliament and the Government should, at this early stage, take the opportunity to establish their respective roles and how they will work together during the negotiation process".

The all-consuming national conversation that is Brexit has a common single theme, and that is, in various forms, a demand for clarity. There is of course a wide understanding that one cannot have clarity where such clarity would be damaging to the United Kingdom's interests, or where it is not reasonable to feel that clarity can yet exist. However, it is hard for this House to hold the Government to account properly on the matter of clarity when we ourselves are unclear as to how we will scrutinise Brexit.

The framework for our scrutiny is a matter for the House, and I know we all agree that we need to move quickly to establish that. The European Union Select Committee report, in chapter 9, "Internal arrangements", addresses how this clarity might be achieved. As a star-studded cast—the noble Lords, Lord Kerr and Lord Boswell, and the noble Baroness, Lady Suttie—has said, I stress that good scrutiny is a great help to the Government and to the nation, endorsing good outcomes, analysing tough situations, and using the knowledge and experience that is to be found in the Select Committees greatly to help and guide negotiations.

In our report, at paragraph 98, the committee states:

"we reiterate the recommendation in our July 2016 report, that the House of Lords can best contribute to effective parliamentary oversight of the negotiations by also charging a specific Select Committee with explicit responsibility for scrutinising the negotiations".

I feel that Select Committee should, and must, be the European Union Select Committee. This is not a sort of land grab; it is simply a practical point. I make it with two important provisos, which I will come to in a second.

There are 25 members of professional staff in the European Union Select Committee structure. Members of this House who are part of that structure comprise nearly 10% of the House. I am told that former members comprise another nearly 10%. In short, the committee and its sub-committees are a deep repository of experience and knowledge and have the resources to be effective right away. I have a great fear of an "all new" structure as, in my long experience, "all new" structures take time to bed in, take time to mature and would be unlikely to "hit the deck running". This option, to my mind, would be most unwise for our House to follow.

I turn now to my provisos. To make sure we do not trip over each other, I feel, first, that the committee should have a regular interaction with the Liaison Committee on a formal basis. Secondly, there should be a regular and formal interaction with the chairmen of all the standing committees of the House. After all, it is important that we use the full resources of the House on Brexit matters. I certainly accept that the other committees must be part of the scrutiny process and continue to undertake inquiries that, through this structure, will be carried out in a co-ordinated fashion. I believe this, or a similar framework, would give satisfactory clarity as to how the Lords will conduct Brexit scrutiny. To go back to what I first said, I think we can then justifiably hold the Government to account for lack of clarity on their side.

Regarding clarity about what access to information the scrutiny function has, this is unclear as well. However, we have been much helped by the words of David Davis, to which the noble Lord, Lord Boswell, referred earlier. I shall quote them in full; they are very brief:

"We will certainly match and, hopefully, improve on what the European Parliament sees".

Indeed, laid out in box 1 of chapter 5 of our report is what the European Parliament is meant to see. This is therefore what will be available, and I feel it should be available, although I feel that "data room" rules should apply to all Members who access "data room" information. In other words, that would mean a confidentiality agreement, which I suspect would not be dissimilar to the Official Secrets Act regime of the Intelligence and Security Committee of Parliament.

In summary, for scrutiny I would ask for framework clarity as soon as possible and urge the Leader of the House, the Senior Deputy Speaker and appropriate others, including the chairmen of the Select Committees, to agree on a framework very rapidly and bring proposals forward to the House for adoption. Clarity on access to information can follow on afterwards as it will need the consent of government. At the end of my first, rather long, point, I would like to ask the Minister: does he agree that clarity on Lords' scrutiny on Brexit would be helpful from the UK's and the Government's perspective?

So much for scrutiny; I now turn to my second, final and much shorter theme, which is communication. Being in the privileged position that I am on the EU Select Committee, I am more than aware that a lot of commendable government Brexit work is going on. This is augmented, in my case, by various private briefings from City sectors, and I would like to associate myself with the words of the noble Lord, Lord Hunt. I come from an underwriting background, and I think it would be a great pity if the underwriting excellence and "world-leading-ness" of the London market were to be damaged in any way by the Brexit process. I am very grateful for the chat that I have already had with the Minister on that point. Of course, briefings from the private sector come from everyone on the planet. I find that it does not matter whether it is a taxi driver or a very senior person on a board; they all want to talk about it and give their view.

I am struck that the media seem entirely to lack understanding and certainly promote a lack of understanding among the public, and I think that this should be addressed at a very early stage. The Scottish Government reportedly have more than 40 professional staff whose sole aim is to put out their message by and in the media and directly to the people. I do not know how many communications staff there are in the department for Brexit at the moment but, as I listened to the noble Lord, Lord Kerr, talk about smart Brexit, I thought, "Gosh, that needs to be put out to the public, because it is a very appealing thought". However, I suspect that there are not nearly enough people in the department to do that at the moment. Accordingly, I urge the Government desperately greatly to beef up their Brexit communications function in numbers of people and capability, and I close by asking the Minister to comment on that thought.

5.21 pm

Lord Inglewood (Con): My Lords, at the outset, I join those who have commended the work of the two committees and their chairmen, and say that I share the general thrust of what has been said hitherto in the debate. Secondly, as someone who until just the other day was the chairman of a newspaper company—albeit a local newspaper company—I join in the comments about the treatment by certain newspapers of the High Court judges. It seems to me that they completely failed the test of fairness in that there was no evidence to justify what was said.

Our joining of the EU in the 1970s and, now, our withdrawal are events that amount to a constitutional revolution and are sui generis. We need to recognise that quite separately from the political issues and other merits involved, and I do not intend to discuss them this afternoon.

The referendum vote in June was, on the surface, a binary choice—but, of course, it was not really that, as a number of us pointed out before the referendum. The decision to leave opens up numerous possibilities and poses many more questions than it answers. The Prime Minister has told us that Brexit means Brexit. On one level that is absolutely correct and on another it is completely meaningless, but perhaps most usefully it simply describes the consequences of a majority of voters voting to leave the European Union. That means that we now have to take decisions about a series of options, which range from so-called soft Brexit to so-called hard Brexit—and there seems to be absolutely no consensus about that. To put it another way, our relationship with the European Union might range anywhere from that enjoyed by Norway and Switzerland to that of North Korea. All are within the compass and definition of Brexit.

Against this background, what should the Government do and what should Parliament do? It seems to me that the Government's response is essentially their own affair within the constraints of the law and of politics. However, the position of Parliament is perhaps less clear, as nothing quite like this has ever been done before. On top of that, we no longer live in a world where there is a complete demarcation between home and abroad—as was the case, for example, 100 years ago, when ambassadors were plenipotentiaries, whereas now they appear to be salesmen.

The reality is that in a politically and economically interdependent world it is not possible to decouple from abroad unilaterally. The process through which this country is now going will have huge repercussions domestically—politically and economically—and diplomatically, and Parliament has to engage directly with these matters. We are not, as the noble Lord, Lord Kerr, said in his evidence to the Constitution Committee, withdrawing from some relatively small international treaty. It is generally accepted that this is a once-in-a-generation, or even a once-in-a-century, change which is likely to have a far greater and more long-lasting impact than, for example, the result of any general election.

As has already been said, in the recent Brexit/Miller case in the High Court, it was ruled that Article 50 cannot be triggered without parliamentary approval. I believe that a process of proper parliamentary scrutiny and accountability should be attached to any grant of approval that might be given. On the other hand, were the Supreme Court on appeal to set that aside, I still think that Parliament should insist on political involvement, not least because leaving the EU and the terms of so doing will, as my noble friend Lord Gardiner said in his remarks just before this debate began, set the framework for the great repeal Bill. The only realistic way for Parliament to play a full role in scrutinising and dealing with any possible great repeal Bill is to get involved in the process of withdrawal. The Government have offered consultation, and of course that is welcome—but it is insufficient in the way it has been put forward.

From my perspective, it seems that there are three parts to this. The first is that before Article 50 is served, Parliament should be given a clear indication of the journey of travel posed and the generality of the type of Brexit sought. It does not seem to me to matter what colour paper that may be, but we need to get the evidence. Apart from anything else, I am sure it is inconceivable that the Government would go into these negotiations aiming to fly blind. This might, by analogy—although the comparison should not be stretched too far—be a bit like the Long Title of a Bill.

Secondly, it is agreed that, once discussions are under way, there should be scrutiny by committees. That of course seems sensible. In addition, I believe that there should be, from time to time, regular but not too frequent full debates on the Floor of the House. I say that because a number of Members of your Lordships' House are not members of the relevant committees or any committees; some issues—for example, those arising out of the possible future of the European arrest warrant—are not merely technical but have much wider significance in the context of Northern Ireland and the Good Friday agreement; some things that are being debated may have very considerable ramifications for the state of the union between England and Scotland; and there may be events in the outside world that have a profound impact on the wider politics of all this, and they should not be ignored.

Thirdly, the draft final agreement should be approved by both Houses before it is signed, just as Bills are signed off by both Houses before they go for Royal Assent. If Parliament does not like what the Government bring forward for Brexit, it must know that the Government have to go back and ask for something different. Otherwise, you run the risk of complete legal anarchy and muddle.

There is also the possible matter of compromising our negotiators. However, for many years, business has been conducted in the Council of Ministers, much of it in private, where the generality of the UK's position is known but the detail is confidential. This seems to have worked administratively entirely satisfactorily, so I do not think that it is a real-world problem, if carried out properly.

Finally, on the matter of certainty, Brexit will inevitably be a drawn-out—possibly a very drawn-out—process. Clearly business wants and likes certainty; as someone

involved in business, I know that only too well. But it is more important to get it right in the long run. Compared to that, short-term certainty is a second-order issue.

5.28 pm

Lord Beith (LD): My Lords, the Constitution Committee, under the wise leadership of the noble Lord, Lord Lang of Monkton, gave the Government some helpful advice. I do not really understand why the Government did not take the advice—I fail to see why they did not go ahead and seek parliamentary approval to invoke Article 50. The appeal to the Supreme Court is pointless, unless the Government's wish is in some way to re-establish the primacy of Crown prerogative, even when to do so would enable them to overturn statutes by executive action. That leads me to fear that, in relation to both Article 50 and the Brexit negotiations, the Government's wish is to minimise parliamentary involvement. Warm words have not allayed my suspicions, which are based on the positions that the Government have taken so far.

The Constitution Committee's clear view is that invoking Article 50, assuming it to be irreversible, requires parliamentary approval as a matter of constitutional propriety and practical utility. Of course the Government may want to go to the European Court of Justice and demonstrate that it is possible to revoke Article 50, but Sir Humphrey would regard that as a courageous course for a series of reasons that I will not go into.

As the noble Lord, Lord Boswell, pointed out, there are four distinct stages to this process and Parliament needs to be involved in all of them. In practice, it is naive to imagine otherwise. As his committee points out:

> "Too much is at stake for the Government to seek to limit parliamentary scrutiny to establishing accountability after the fact".

I describe the stages slightly differently. The first one is Article 50 and the negotiating stance on which the Government seek to invoke it. The second is the process of negotiation. The third is approving an agreement and deciding whether the British people should be given an opportunity to accept or reject that agreement, while the fourth is implementation, which of course is completely impossible without Parliament. I shall make two points about two of these stages.

First, it is completely unrealistic for Ministers to suppose that the negotiation stage will be conducted in secrecy. The negotiations will involve the Commission, the European Parliament and 27 national Governments in addition to ourselves. They will leak, if not like a sieve at least as much as my old watering can; and in any case, as the European Union Committee has pointed out, the European Parliament will have access to all documents and can require formal responses to its recommendations. As the EU Committee argues, this Parliament must have at least the same level of access. There has been some indication that the Secretary of State has accepted this principle, but he is only one of a triumvirate, and who knows what the other members of it will think. They will probably tell us quite soon.

Sometimes it will be to the advantage of our Government's negotiators if they are seen to be under pressure from the UK Parliament on a point they are being pressed to concede, but there will be a stream of informed and sometimes biased speculation coming out of the process that will give rise to debate and questioning here in this Parliament. Of course the outcome of the negotiations will have a profound effect on the livelihoods of millions of our citizens, so these things must be debated.

My final point concerns a very serious fear. If the Government are intent on limiting the role of Parliament at all stages of this process, those who thought that they were bringing power back to the British democratic system will find that they have been cheated. If the vast corpus of European legislation comprising tens of thousands of regulations, directives and legal judgments extending into most corners of public policy and private rights is to be migrated into UK law by a single Act followed by a mass of secondary legislation, it will be a disaster. Secondary legislation which has not gone through a proper amendment process in both Houses will necessarily be littered with defects—we know that from experience. It is also wrong in principle that rights should be taken away or amended by such a process. The people who voted to bring back UK parliamentary sovereignty will find that they have created executive supremacy over laws they thought they would gain the ability to change. It could be the biggest transfer of power from Parliament to the Crown since the Civil War. Not for the first time the attractions of a revolution against the established order, even one achieved in a democratic referendum, will fade when the revolution ushers in a regime that is more authoritarian than that which it replaced, and one less able to deliver prosperity and security.

5.33 pm

Lord Bilimoria (CB): My Lords, I congratulate the noble Lord, Lord Boswell, and his committee on their excellent report. We should acknowledge that this House has huge authority but also that, within it, one of its most reputed parts is the European Union Committee and its sub-committees. It is one of the most respected bodies not only in both Houses of Parliament but throughout Europe. The European Union Committee is held up as an authority to be listened to and respected. When it says that it believes that Parliament can play a vital role in offering constructive and timely comment on both the process and the substance of the negotiations and that such scrutiny will contribute to a greater sense of parliamentary ownership of the process, strengthening the Government's negotiating position and increasing the likelihood that the final agreement will enjoy parliamentary and public support, I think that we should listen.

The committee has said that Parliament has a duty here, which is the crux of this whole matter. Let us go all the way back to Oliver Cromwell and what he did when King Charles went too far. The principle of parliamentary supremacy was then established once and for all. Cromwell was the most famous alumnus of my college at Cambridge, Sidney Sussex, and his statue still stands outside Parliament even though he was

[Lord Bilimoria]

responsible for killing a King. The principle of parliamentary supremacy was established when things went too far. Let us fast forward to today. We are talking about a situation where we must ask: is it the will of the people that Brexit means Brexit, or is it for parliamentary democracy? Then it is all about the individual who is to sit on the Woolsack, where for centuries we had the legislature, the judiciary and the Executive all in one person—completely conflicted but not giving rise to a problem for centuries. There was no need to establish the Supreme Court because we had a perfectly good working system right here in the highest court in the land, the House of Lords.

Now, this is all about the balance and the wonderful unwritten constitution of ours, a delicate thread that has been woven through the centuries and has built the strength and foundation of this amazing country. That foundation lies in the rule of law, and respect for the fairness and independence of our judiciary is at its crux.

The noble Lord, Lord Kerr, in his submission to the committee said:

"This is not the Montreux Convention or the Antarctic Treaty. We are talking about something that … will affect almost every area of public life in this country … Vast areas of domestic policy will be affected, and policy choices possibly foreclosed … by this negotiation. Therefore, it follows that this is a treaty where there absolutely needs to be very full parliamentary scrutiny".

The committee said that:

"It would be constitutionally inappropriate, not to mention setting a disturbing precedent, for the Executive to act on an advisory referendum without explicit parliamentary approval—particularly one with such significant long-term consequences. The Government should not trigger Article 50 without consulting Parliament".

That is the crux of it. What was the Prime Minister thinking? Why try to ride roughshod over Parliament? Why try to bully us and disturb our wonderful convention and history? Let us be honest: as I said earlier, this referendum result was democratically definitive, but the figures were 52% to 48%, representing 17 million people and 16 million people respectively. We keep talking about the will of the people, but what about the will of the 16 million? Any responsible constituency MP says, "I have been elected by the majority of my constituents but I look after the interests of every individual in my constituency whether they voted for my party or not".

One of the recommendations is:

"We recommend that the new Committee appointed to scrutinise Brexit should incorporate the existing scrutiny functions of the European Union Committee".

Does the Minister agree that that should happen? No one has mentioned so far the fact that the report talks about the wonderful concept of parliamentary diplomacy. Parliament should play an active diplomatic role throughout the Brexit process and the European Union Committee is perfectly placed to do that. Again, does the Minister agree with that?

In the speech she made yesterday to the CBI, the Prime Minister said:

"For this is a true national moment. The decision of the British people on 23rd June gives us a once-in-a-generation chance to shape a new future for our nation".

But what about the generations ahead?

I turn to the legal ruling that has led to all this. Kenneth Armstrong, professor of European law at the University of Cambridge—and here I declare an interest as chairman of the advisory board of the Cambridge Judge Business School—has written an article entitled *Victory for Parliamentary Democracy* in which he states:

"However, while the outcome of the referendum has given the Government a political mandate to withdraw from the EU, the legal power to notify must be exercised within legal limits. The High Court has concluded that where an exercise of the Royal Prerogative would remove legal rights, derived from EU law but made available in domestic law by Parliament through the European Communities Act, only Parliament can legislate for such rights to be removed".

It cannot be any clearer than that. Government lawyers argued that the prerogative powers were a legitimate way to give effect to the will of the people, but the summary of the judgment stated that,

"the Government does not have the power under the Crown's prerogative to give notice pursuant to Article 50".

Of course, this has scared Nigel Farage, who said that we were heading for a "half-Brexit." The noble Lord, Lord Kerr, the author of Article 50, seemed to suggest that once we invoke Article 50, we may be able to retract from it during that process. This is a debatable issue.

Just recently, the Government decided not to implement the recommendations of the Strathclyde review, with the Leader of the House stating:

"We recognise the valuable role of the House of Lords … The Government are therefore reliant on the discipline and self-regulation that this House imposes upon itself".

But then came the threat:

"Should that break down, we would have reflect on this decision".—[*Official Report*, 17/11/16; col. 1539.]

How many times have I been told by people in the other place: "Watch it. Don't go too far, otherwise that'll be the end of you lot"? I have heard it outside as well: "You unelected Peers pushed this too far. Your days are numbered". However, the House of Lords has killed only five statutory instruments supported by Governments since 1945. Let us get real: this House, when it boils down to it, does not filibuster; this House does not block for the sake of blocking; this House does not throw out legislation; we debate it in the best interests not of one party or another but of the country. Three senior members of the Conservative Party, including Dominic Grieve, the former Attorney-General, have said that the Government should withdraw their appeal to the Supreme Court and just get on with it.

We talk about a transitional deal. The noble Lord, Lord Inglewood, said that Brexit would be a long-drawn-out process. It will take two to 10 years. The elements of it are not as simple as exiting the European Union. What about the treaties, whether it is staying in the single market or in the customs union or doing trade deals? The Prime Minister saw this in action in India—I was there when she was. She thought that she could go there with Liam Fox and come back with trade deals. Before she went out, it was announced that Indian IT workers' minimum salaries would be increased by 50%. One of India's main exports is its excellent IT services, from which our public services and private

sector benefit. Suddenly, they are told that salaries will be 50% higher, which makes them less competitive. When the Prime Minister was there, she spoke about returning to India Indians who had overstayed—that has built a lot of friendship as well. Then, when she had 35 university leaders there with Jo Johnson, she did not mention higher education or universities once in her opening speech; she did not even meet the university leaders, whereas Prime Minister Modi, one of the most powerful people in the world, said humbly that the mobility of India's youth in education was crucial. We send out negative messages about international students; we still treat them as immigrants and include them in our net immigration figures; and we think that we can do trade deals with India. Dream on.

Canada took eight years to do a trade deal with the EU—it was 1,600 pages. The noble Lord, Lord Kerr, spoke about that. What do the Europeans think about all this? We know for a fact that the whole world thinks that we should not leave the European Union—I know that; India is a perfect example. Anyone I speak to in India—civil servants, government or business—says, "You shouldn't leave the European Union". The whole world except Donald Trump thinks that we should stay in the European Union. What about what the Europeans think? We talk about great negotiations—"They need us more than we need them". What nonsense. Forty-five per cent of our exports go to the EU and 55% of our imports come from it. We are net importers from the EU; we are only 8% of its exports, and that is spread out between 27 countries. Get real. Twenty-seven countries, encompassing nearly 500 million people, will be negotiating against us. We are not in the strongest negotiating position here. According to the Dutch Finance Minister, Boris Johnson has said things which are "intellectually impossible". The Home Affairs Committee heard that the Brexit campaign had created a dangerously toxic EU debate where facts did not matter.

I do not have the time to re-run the referendum, but the crux of it is that there was a definitive democratic vote to leave the European Union—but based on what? I have met people who said: "I voted to leave the European Union because I wanted to save the NHS", because they believed the claim on the leave battle bus about £350 million a week being put back into the NHS, a claim in front of which Nigel Farage and Boris Johnson spoke on TV time and again. People voted for different reasons, based on lies.

As the EU Committee's report states:

> "The forthcoming negotiations … will be unprecedented in their complexity".

The basis is highly complicated and the outcome is far from certain. Does the Minister agree, as many noble Lords have suggested, that there should be a Green Paper, let alone a White Paper, on this?

The Prime Minister wants to use the royal prerogative. One of the strongest areas in which such a prerogative can be used is in going to war—a Prime Minister does not need to consult us; they can go to war. Have they done that in recent history? In 2011, with Libya, the Government granted a vote. In 2013 and 2015, with Syria and Iraq, the Government granted a vote. The Government have not exercised the prerogative, yet here is something that will affect the whole of this country, including our security, and the Prime Minister thinks that she can just go ahead without such a vote. A headline to an article written by Vernon Bogdanor, previously of Oxford University and now at King's College London, states:

> "The EU referendum shows how the sovereignty of Britain's people can now trump its Parliament".

That is the big issue here. Is Parliament sovereign? Here is the irony of it all: "Vote leave and take back control. Take back control of our Parliament". And then Parliament is just cut out of it, and that is convenient. That is hypocrisy. It is contradictory and hypocritical.

I said before the vote and straight after it that there would be repercussions. The first vote of no confidence in this country by the world was the devaluation of the pound—it fell by as much as 20% and is still 15% lower than its pre-vote value. That is the first sign of the uncertainty, which could then lead to higher interest rates, which could then lead to inflation, which could then lead to our economy not growing as quickly, which could then lead to problems for every citizen of this country.

I conclude by referring to the way in which our judges were attacked. I remember when I came as a student to this country and heard Lord Denning, then Master of the Rolls, speak. It was a speech that I will never forget. Then the noble and learned Baroness, Lady Hale, was criticised, including by Iain Duncan Smith, who said that there would be a constitutional crisis. And then the judges were called "enemies of the people". The noble and learned Baroness said in response:

> "It is unfortunate that isn't made clear to the British public, because it is very important they understand what the role of the judiciary is, which is to hear cases in a fair, neutral, and impartial way. You have to be independent and true to your judicial oath and cannot allow yourself to be swayed by extraneous considerations that have nothing to do with the law".

When at the Lord Mayor's Banquet last week the Lord Mayor, Andrew Parmley, praised the judges, he got the biggest ovation of the evening. Our judiciary are respected as the finest, the most just and the fairest in the world. They are independent. There is no way that we should ever dare to criticise them.

This House has the greatest depth and breadth of expertise of any parliamentary Chamber in the world. It would be a waste for it not to be consulted. The point being made by the committee is that this House and Parliament need to be consulted on Article 50 right at the beginning, right through the process and right after it. That is what is at stake here. We need to be part of this process throughout, because our role is that of the guardians of the nation. Whether or not it is smart Brexit, as the noble Lord, Lord Kerr, called it, what is at essence is that we will do our best for this country and nothing else.

Baroness Goldie (Con): My Lords, I remind your Lordships that in a debate of this type, with the exception of those from the Front Benches, contributions are normally about 10 minutes. I think that that would help the conduct of proceedings.

5.50 pm

Lord Bowness (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Bilimoria, who has painted the picture as it is far more graphically than I will be able to do. I thank my noble friend Lord Lang of Monkton and the noble Lord, Lord Boswell of Aynho, for their introduction of, and explanation of, their respective committees' reports.

I do not believe that, given the magnitude of the matters that are to be decided in this Brexit issue, it could be right that Parliament should have no involvement until the end of the negotiating process or that its role should be reduced to merely debating the situation and asking questions in a vacuum. I say to my noble friend on the Front Bench that, if Ministers maintain their current position that the Government's negotiating position cannot be disclosed, and no answers are given to questions other than that, "we will seek the best deal for the United Kingdom," all the debates and questions will become a meaningless exercise and uncertainty will continue. Asking questions is all very fine but, if there are no answers on the most straightforward of points, it becomes fruitless. I ask the Minister to accept that there are certain matters upon which it could not do any harm at all to give a straightforward and positive answer. It need not become a red line in negotiations, but at least we could be assured that the Government would be trying to achieve helpful outcomes in a variety of different areas that are of concern to people.

The European Union Committee's proposals for the revised remit to meet the current situation must make sense, given the respected role that the committee has played and the authority that it enjoys in other parliaments. In its conclusions and recommendations, the report speaks of a middle ground, where Parliament will respect the Government's need for room to manoeuvre and at the same time be able to monitor the conduct of negotiations and comment on the negotiating objectives as they develop. Whether one was in favour of remaining or leaving, and whether or not one is a Member of this Parliament, this is a reasonable position to adopt, whatever one's opinion.

Like other noble Lords, I will not express a view on the implication of Article 50 and how that should be invoked, but I must endorse and adopt the words of my noble friend Lord Lang and other Members regarding the attacks on the High Court judges. I hope that we shall see no more comments of that kind about the judiciary, and that the Government and all Ministers will be robust, and stand in favour of the rule of law whatever is the outcome of their appeal. If the Government were to lose the appeal to the Supreme Court, it had been my personal hope that it would become clear that the matter could be dealt with by way of a resolution rather than by legislation. But I listened to my noble friend Lord Lang of Monkton on the relative benefits of legislation and a resolution, and I am slightly less convinced about my original view than I was.

I hope that the recommendations and conclusions of these two reports will find favour across the House, among those who were originally remainers and those who were originally leavers. There seems to be a view among some leavers that anyone who thinks that any aspect of our leaving should be open to question in Parliament is somehow seeking to subvert the outcome of the referendum.

I thought, and I still think, that the referendum and the campaigns will rank among the greatest political mistakes and disasters of our time. But I accept the result, as do most of the defeated remainers, in a way in which I rather doubt, if the result had gone the other way, the leavers would have done. However, we should not be, and will not be, diverted from trying to seek to influence the kind of Brexit that we have. After all, the leavers did not know—or they did not tell us during the referendum—what they had in mind in any detail, so no particular Brexit deal was endorsed by the vote. None of the questions posed by the noble Lord, Lord Boswell, in his introduction were answered—certainly during that campaign. People voted to leave for a variety of different reasons—as, no doubt, did those who wanted to stay.

I believe the Government when they say that they want the best deal for Britain. I believe that the best deal for Britain is to remain as close to our partners, friends and allies in Europe as possible. It will involve not merely looking after our economic and security interests but having regard to the interests of the European Union, which—and I know that this is not a view shared by all—has been a huge force for good on our continent. Perhaps if successive Governments, particularly the last one, had made this clear over the years, we would not be where we are today.

I have the privilege of leading the UK delegation to the OSCE Parliamentary Assembly, and I know from colleagues in countries within the European Union, and from others in countries that are not members of the EU, how much store they set by membership and how much they regret our pending departure. I refer particularly to those in the western Balkans who have seen us as their champions along the road to membership. They wonder what sort of European Union there will be without us and how far away membership has become. This is an area of past instability; an area in which Putin's Russia is interested. Nothing in our arrangements for our departure or future relationship with the European Union, and its aspiring members, should be allowed to put their European future at stake. The support that we give to these countries in their journey towards the European Union should continue, even if we have decided to head for a different—if today unknown—destination.

As we launch ourselves on to the world stage, these near neighbours should not be forgotten. Our future relations with the European Union are vital and the negotiations will be difficult. Our rhetoric and, in some cases, our misplaced sense of humour need to be controlled. A column in the *Times* yesterday stated that,

"Brexiteers' bar room bravado will backfire".

I endorse that. The other member states believe in Europe and regret our leaving and the effect it might have on the Union. This must be recognised, especially by members of the Government who go to visit and represent the United Kingdom.

We have said that until we leave we will remain full and participating members of the European Union, so I ask my noble friend—if it is not too difficult a question to answer—how did the Foreign Secretary's decision to boycott the special meeting following the US election fit with that? Was it worth the potential ill-will that it might have created? In our hurry to accommodate, flatter and—apparently—lay out a red carpet for President-elect Trump, I hope that we will appreciate the need to recognise the sensitivities of our current partners, many of whom feel bruised by our decision to leave. We need their good will and we should not believe all our Brexit propaganda that they need us more than we need them. We need each other.

These two reports are a balanced set of recommendations that respect the referendum result, the role of government and the need for there to be a proper role for Parliament, too. I hope that the Minister will acknowledge this without reservation or equivocation.

5.58 pm

The Earl of Sandwich (CB): My Lords, I follow much of what the noble Lord, Lord Bowness, has just said, especially about what the countries of eastern Europe are saying about Brexit. I declare an interest as a remainer and a referendum unbeliever. However, I am not with those who wish to rerun the referendum, and I joined this debate in the hope that we will move swiftly towards reconciliation with the EU, albeit as a trading partner or associate member. Of course, this will be with the benefit of advice from our European committees, as has been well established today.

The important political issue before us is quite separate from the legal issue, which has been the subject of the case made in the High Court. It is the rights of individuals, the legislative supremacy of Parliament and the limits of executive power, and I will return to that.

The Government's appeal will be heard in due course by the Supreme Court, which in this case will also act as guardian of our constitution. Quite separate from this point of constitutional law is another question, that of representation: whether by promoting the referendum as a means of settling such a crucial issue we have—as the noble Lord, Lord Higgins, was saying—impaired our present system of sending Members of Parliament to Westminster to represent us. The Minister may not be briefed to answer that.

This debate concerns the role of Parliament. We have already heard a strong case for the involvement of both Houses in the Government's plans, if and when we see them. The specific recommendations of the EU Committee are divided into four phases. Of these, we should discuss the first two stages because they are imminent. I wish that the committee had spent more time on the preparatory phases, on which I will focus.

The Government complain that they cannot provide a running commentary, and the committee accepts that. What the Government can and should provide is an outline of their intentions, a point my noble friend Lord Kerr made more strongly than any of us can. We need a framework. As the Constitution Committee says, Parliament should play a central role. Parliament is not an elite, as sometimes portrayed in parts of the media, but an institution—my noble friend Lord Bilimoria was strong on this—set up to represent the people. It is the successor to that which stood up to the Crown, notably in 1642, and in 1688, 1832 and successive reforms since. Brexit, while in the vernacular describing a legitimate populist movement, cannot replace the system we already have, one tried for centuries through our largely unwritten and yet powerful constitution. The noble Lord, Lord Hunt, made these points, too.

We are not mandated by the referendum, which was an indicator of public support for a single idea. That idea is still in a vacuum. It will have no shape or form until first the Government and then Parliament give it such through discussion and finally legislation. The Government seem to rest their case on the referendum and an "in" or "out" decision, but they know that leaving the EU cannot be so simple, involving as it does years of disengagement. Look at trade: all the arrangements made over 40 years for 44% of our exports and more than half our imports must now be replaced by new agreements. Where will we find the experts to carry this out? What status for the UK is proposed? Will it be that of the EEA, Norway or some associated status? Will a customs union or single market be willing to take us?

Look at devolution, another aspect mentioned at the beginning of the debate, and its EU counterpart of subsidiarity. The whole point of these treaty changes was to enable regions and EU members themselves to shed some powers outwards. EU law has therefore become enmeshed in sub-national and regional law, and these strands cannot simply be pulled apart. There are also EU laws and institutions already incorporated into UK law. On crime prevention, can we look forward to the same co-operation with the EU as before?

These things may seem obvious but surely the public should be told about them. Not even the keenest Brexiter will argue that we can simply float offshore when there are vital issues of defence, security and immigration at stake. Recently we opted back into measures like the European arrest warrant, Europol and Eurojust. That was a Conservative Government recognising the need to co-operate on these issues. How can those instruments be replaced?

This surely leads to the question of red lines and what Parliament should discuss now instead of awaiting the pleasure of the Executive. Now that the Prime Minister and her Cabinet have had months to think about this, why can they not come up with broad principles in a Green Paper, as mentioned by my noble friend Lord Kerr? I do not foresee any blocking by Parliament—nobody has mentioned it—which is what the Brexit media say the Government fear. I would like to see engagement at stage one. Parliament needs to see what is broadly proposed and can be discussed with MPs and Peers before Article 50 is triggered. This could surely be done between January and March.

Some issues governed by EU law cannot even wait for discussion, as mentioned already. The Government should announce them as soon as possible. They are issues such as the status of EU citizens here and our own citizens in Europe, mentioned by the noble Lord, Lord MacGregor. Pressing issues of funding affect

[The Earl of Sandwich]
universities—mentioned by my noble friend Lord Bilimoria—and rural areas, for which the Government have provided too little comfort so far. These questions need to be decided now, as has been argued repeatedly.

In this revising Chamber, we offer not a decision but a second opinion based on our expertise and experience. That is universally recognised and in a sense the Government are encouraging us to offer that—but it cannot be in a vacuum. Having reread the recent Brexit Statement, I wonder whether the Government took the point that it is not just time for debates of our own reports that we seek but—the Minister might like to focus on this—the application of the wisdom in those reports to the Government's own plans and intentions. Surely the least the Minister will say today is that the Government intend to have an outline of these plans in time for us to debate them before next March.

Finally, the issue many of us are concerned about is not Article 50 but executive power. Parliament has continually sought to control the Executive and, once again, the Executive assume that they alone have the right to direct the course this country is to take. Parliament could again be presented with a fait accompli, albeit dressed up in the appearance of a choice. We must face that. We are currently on a fault line, running across America and Europe, between those who fear centralised power, uncontrolled migration and liberal economics, and those who wish to defend shared alliances, universal human rights and free movement of goods and people. This is a dangerous moment in history that cannot be left to a one-off decision of the people. It should be openly discussed in our Parliament before we move towards what I accept is inevitable change.

6.07 pm

Lord Balfe (Con): My Lords, first, I thank my noble friend Lord Lang and the noble Lord, Lord Boswell, for their excellent reports. Secondly, I draw attention to my entries in the register, many of them concerning my various European roles. I was also strongly in favour of remain. We made a foolish decision: 43 years on from joining the EU, we appear to be deciding that we will be the only major industrialised country in the world that is affiliated to no one at all in particular and will somehow try to negotiate our way through a morass of technical agreements in the modern world.

I serve on one of the sub-committees, as the noble Lord, Lord Boswell, knows. Representatives of the Norwegian Government came to see us. They told us of the hundred treaties, the whole department of the Norwegian Government that exists to monitor their relations with the European Union and, in particular, that very valuable section of the Norwegian department responsible for ringing Stockholm as the only way they can get their viewpoint put forward in the EU. Of course, that can be ignored when Stockholm does not like it.

I will deal first with the matter of Article 50. I do not understand why the Government do not come to Parliament for a vote. They would not lose it: in the Commons it would be made a matter of confidence and in the Lords we would not defeat it. Why do they not come? Why do they not want to hear what we have to say, particularly since we do nothing else but talk about Brexit? We have a debate virtually every hour on the hour about some aspect of it or other, so why not come here to talk about Article 50? That is on page 8 of the report by my noble friend Lord Lang—the noble Lord, Lord Bilimoria, quoted from it.

I turn now to the European scrutiny. In the report by the noble Lord, Lord Boswell, the Secretary of State is quoted as assuring the committee that it would be unacceptable for the European Parliament to have greater rights of scrutiny over the negotiations on Brexit than Westminster does. However, the European Parliament will be regularly scrutinising every aspect of those negotiations. It is going to be a running commentary. Paragraph 54 states that:

> "What is striking is not only that the European Parliament, as Lord Kerr put it, 'will have access to all the negotiating documents', but that it will have such access 'at every stage'".

This is in the summary with a list of the documents to be supplied.

I ask noble Lords—and noble political parties, if they are noble—what attempts they are making to talk to their MEPs. I know of very little talking. Surely they should be part of our gathering: we should be talking to them—they are the representatives on the other side of this fence. We need a structure whereby we can talk to our colleagues in Europe. However, we also need a structure in our political parties—I look particularly at the Opposition here—whereby we can talk to our political friends in other countries, because they will have an enormous impact on this dialogue.

Some noble Lords may remember that I have a particular interest in Scandinavia and the Baltics. Those countries are absolutely distraught by this decision. Britain used to be the sensible voice at the negotiating table; its contribution was to help build the blocking minority. If Britain was against something, it was generally for a fairly sound reason, and Sweden, Finland and the Baltics would look at it and say, "Yes, well". Then, in Berlin, they would say to their friends: "Look, I think we had better listen to these people because they might just get a blocking minority".

When Britain goes, the pressure will move to Berlin. Berlin will no longer be able to stand in the centre; it will have to take a much stronger role. It is a role that—having recently been there—I can tell you that it is not looking forward to taking. Britain can take a strong role and the worst that people will say is that we are throwing our weight around. Unlike Britain, however, if Germany tries to take a strong role it brings out all the animus of years ago. That is why the Germans do not like it and are very unhappy at our leaving. We have been the sensible people who have helped to deliver a European Union that works: when we look at things we ask whether they will work. If we are to have this dialogue about dissolution, we must look much more closely at the European Parliament, what it wants and what we can actually do, because at the end of the day, as Article 50 so accurately states:

> "It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament".

I finish with a few words about that. If we trigger Article 50 in March 2017 we will be looking for the consent of the European Parliament in the early months of 2019. What happens in 2019? Yes, you have guessed: there is an election. Half the people in the European Parliament will be demob happy because they will not be coming back, and the other half will be appealing to their Twitter accounts and the like and reacting accordingly: they will make the Government of Wallonia look like the most sober, respectable negotiators who ever went into a Canadian trade agreement. You will run into every possible problem.

I predict—it may not happen—that 27 countries of the European Union will decide that they wish to lengthen the negotiations. The noble Lord, Lord Kerr, will immediately spot that this cannot be done without Britain. If, however, 27 countries say to the United Kingdom that they wish to lengthen the negotiations by a year because of the European Parliament elections and all sorts of extraneous things—apart from the fact that the negotiations will not be finished anyway—it will be very difficult for us to say, "Oh no, we're off—bye!". It will just not work that way, will it?

What will happen then? We will have some sort of extension, and then we will have an election in the United Kingdom. I would not for the life of me propose it, but I wonder what would happen if one of the political parties were to go into that election saying not that it was going to overturn the decision—no, no, no—but that it intended to pause and review the process. Some noble Lords may know that one of my specialities is mortality rates. Demography means that the majority will be somewhat diminished by mortality, if I am to believe the voting profile by age. It may well be that a younger generation says: "Oh God, we have an opportunity to get out of this: we can pause". We do not know what might happen after the pause. So I say: be careful, as my daughter is fond of saying, of what you wish for, because you may end up with something that you did not want at all.

6.19 pm

Lord Maclennan of Rogart (LD): My Lords, it is a privilege to follow the noble Lord, Lord Balfe, and I congratulate the noble Lord, Lord Boswell, and my chairman, the noble Lord, Lord Lang, on their excellent reports.

Western Europe has seen 70 years of peace. I fear that Britain's exit will unravel the knitted union and that western Europe may face further disruptions and wars. The referendum was a mistake, in that it was an advisory referendum but the Conservative Party suggested that the Government would take the advice. That it was a great mistake was emphasised by the departure of David Cameron as Prime Minister. He made a commitment in his manifesto to stand by the public's decision. That should not have happened.

Parliament is not sufficiently involved in the negotiation process. We won the High Court case on the invoking of Article 50, and the Government are appealing it. The court case will be a matter of law. It seems to me that Parliament is the representative of the public and should be aware of what the Government intend. We have no idea how the Government propose to negotiate, or of their objectives. We have no idea how they would present this negotiation to the public. We must recognise that the negotiations should be made available to Parliament and that we should have a Green Paper setting out the Government's objectives and the alternatives. We have a representative democracy and it is worthwhile setting up both Houses of Parliament to consider what the Government's objectives are. We should be involved in the negotiations.

The noble Lord, Lord Boswell, said that what matters is the substance of Brexit and I totally agree. We need short reports covering the issues; he mentioned 20, which may be too few, but we need to know because we have been members of this Union for a very long time. It has made our law, which we will have to unravel if we are to separate from it. We know next to nothing of the Government's position. Both Houses of Parliament should agree to issue guidelines. Parliament must be involved in the scrutiny of the legislation that will be forthcoming. We should not wait for the conclusion but should appoint a committee to supervise the negotiations. It should of course respect the confidentiality of the negotiations but should also have knowledge of the heads of agreement and the head objectives. The role of Parliament is critical. As a number of people have said in this debate, we are not leaving Europe. However, we need to know what structure of Europe we can belong to, and we have to see what the Government think about this.

I also wish to put forward the objectives of Scotland and Northern Ireland, which have voted against Brexit. How are they to be involved in the negotiations? Will they be involved in preliminary talks? Will the devolved Governments be involved in the process? What structure do the Government have—and intend to have—for these countries, which are so keen to remain members? I wonder whether we could reopen the issue if we find that the negotiations render us into a downturn of the economy.

Donald Tusk has said that withdrawing Article 50 is perfectly possible, as the noble Lord, Lord Kerr of Kinlochard, said. If Article 50 can be withdrawn, I wonder what the Government will say if they find that the negotiations are hopelessly unreal and hopelessly damaging to this country. Will they permit that to be made public?

6.27 pm

Lord Hannay of Chiswick (CB): My Lords, the two reports we are debating deal with matters of the greatest significance for our nation's future as we prepare to leave the European Union. Others have underlined their importance. I could not put the matter better than it is put in paragraph 2 of the first of those reports—that of the Constitution Committee. It stated:

> "Constitutional change of such magnitude must be approached carefully and scrutinised appropriately, with the roles and responsibilities of both Government and Parliament set out clearly in advance".

It is a pity that the Government have so far declined to do that—but it is not too late to remedy the omission. I hope that the Minister will begin this evening and that the Government will, in the weeks ahead and before the deadline they have set for triggering Article 50

[Lord Hannay of Chiswick]
before the end of March, do precisely that—whether or not they are compelled to do so by a ruling of the Supreme Court. If most of my remarks today relate to matters on which I do not entirely agree with the reports, or to querying omissions from them, that does not detract from my view that they are both excellent analyses, for which the House owes both committees a debt of gratitude.

I do not want to dwell at length or in detail on the question currently before the Supreme Court as to whether the Government are entitled under the royal prerogative to trigger Article 50 without Parliament's say-so; it would be better to await the court's ruling. But it is surely supremely ironical, as several other speakers have said, that so many of those who campaigned for us to leave the European Union and their raucous supporters in the press, who asserted that only in this way could the sovereignty of Parliament be restored, are now lining up to support bypassing Parliament in this matter. It is, perhaps, too much to hope for logic and consistency in politics—but this pushes the outer limits of inconsistency rather a long way.

On the question of the potential revocability of Article 50, I really do not know on what basis the Government have stated so categorically that reversal is impossible. Since Article 50 is completely silent on the matter and neither says that it is possible nor that it is not, it would seem to be a rather heroic assumption; something that Sir Humphrey might well have told his Prime Minister was, "Very, very courageous, Prime Minister". I contest, however, the suggestion in the report that the question of revocability is primarily a legal one. I believe that if the circumstances were to arise in which the UK wished to withdraw its triggering of Article 50 it would be and would be seen to be a predominantly political matter, to be handled politically by all concerned, not simply passed on to a court.

As to the manner in which Parliament might authorise the Government to trigger Article 50 through primary legislation, a resolution or Motion—the three options set out in the Constitution Committee's report—I was rather puzzled to find no reference to a quite recent precedent which, although it may not be identically analogous to present circumstances, was surely close enough to be of some relevance. This precedent was the procedure followed in 2013 and 2014 when the Government wished to trigger the provisions of Protocol 36 of the Lisbon treaty that allowed the UK to withdraw from all the European Union's pre-Lisbon justice and home affairs legislation and at the same time negotiate to rejoin 35 of the most significant measures.

Those two issues were brought before both Houses in the form of an amendable resolution. Triggering and rejoining were approved by both Houses—although admittedly the Commons took rather longer to approve the rejoining than we did. The Government then negotiated the rejoining package with the Council and the Commission—reporting to Parliament from time to time—and returned to Parliament with the modestly changed outcome which was approved, as were the necessary changes to our domestic legislation to give effect to that outcome. The protagonist of that procedure was none other than the Home Secretary who, strangely enough, was called Theresa May. Might it not be wise for the Government to give some consideration to that precedent just in case they do not win the day in the Supreme Court?

One matter that gets aired rather frequently—this is a quite different matter—is the contention that for the Government to set out their broad approach to the Brexit negotiations as part of the triggering process would undermine or fundamentally damage their capacity to negotiate effectively. That simply does not stack up. It does not match the reality of negotiating in Brussels. Whatever opening statement we make at the outset of the negotiations will immediately be in the public domain. The concept of negotiating confidentiality when you are dealing with 28 Governments and several European institutions is simply not credible. Is Parliament—the two House of Parliament here—to be the last to be told about that opening position? Is it to be the only participant not to have a chance to comment on the Government's broad approach?

No one is suggesting that the broad approach should be spelled out in minute detail. That will be a matter for the negotiations themselves. Let us hope the Government will come to see the advantages. My noble friend Lord Kerr of Kinlochard set them out very fully, in particular the desirability of giving more prominence to the areas where we want to continue working intimately with our European partners. He named three areas: justice and home affairs, science and co-operation, and a common foreign and security policy. There are real advantages if we spell them out in advance, not disadvantages.

I have one final point. There was a proposal in the European Union Committee report—which the noble Lord, Lord Boswell, so eloquently introduced—that this House should establish its own Brexit committee. What on earth has happened to that? Surely this makes the most obvious and simple sense. Why is it not being taken forward? Why are we allowing the other place to steal a march on us? After all, it set up its Brexit committee about a month ago. I hope the Minister will be able to respond in some measure to the points that have been raised. As I said in another of our rather frequent debates on Brexit, it really is getting just a little bit tedious and frustrating simply to be sending notes up the chimney to Father Christmas.

6.35 pm

Lord Desai (Lab): My Lords, I want to dwell on the distinction made in the Constitution Committee's report between resolution and legislation. It is very important that the Government introduce a resolution confirming that they accept the result of the referendum, so that, whatever delays are involved in invoking Article 50, the people do not think that their will is being denied. Although the margin overall was 4 percentage points, the margin in England was 7 percentage points and England voted with the same difference, 2 million votes, in favour of Brexit as did the entire country—so the rest of the country cancelled out between remain and leave. England made the difference and the English public will be extremely angry if their will is going to be thwarted. So I think a short resolution confirming that Parliament accepts the referendum result would be good.

Then we may want an Act—legislation, again as recommended by the Constitution Committee—which would lay out what the Government should do before invoking Article 50. We should have a lot of parliamentary input in the process before and after, but during the divorce negotiations we should have a limited presence. I have once before advocated a Joint Committee of both Houses of Parliament which would have the information from the Government on Privy Council terms. We cannot really have, between this House and another place, 1,500 people trying to micromanage the Government's negotiations. But a Joint Committee of both Houses of Parliament under Privy Council rules could be given all the information by the Government. It would be able to advise the Government on how to proceed and that would both give Parliament a voice in the procedure and not be too public. One difficulty in making it public is that we have a very vicious press. It will attack people for whatever reasons, as it already has done. It is very important that the Government can keep their cards close to their chest while negotiating with Europe.

I agree with the noble Lord, Lord Kerr—one dare not disagree with him, I would say—that we need a smart Brexit. The correction I would make is that we need a quick Brexit and a smart framework of negotiations. We want a quick Brexit because we want to get out of this mess. Let the divorce be quick and let the cohabitation negotiations be fruitful and beneficial, because once we get the Brexit thing out it is not just the 27 we have to get on with; the other n minus 27 with whom we have to negotiate trade treaties are also waiting out there, and the quicker we do Brexit the better off we will be.

6.39 pm

Lord Davies of Stamford (Lab): My Lords, this has been quite an unusual debate; almost every contribution has been very effective and penetrating, and two or three have been quite memorable. I am grateful to be able to speak in the gap. I do not need more than a few minutes. I just want to ask the Government three simple questions that I think are in the mind of every member of the public who takes an interest in this matter.

The first has already been asked by two of the Minister's noble friends, the noble Lords, Lord Higgins and Lord Balfe, so I hope if I ask it again towards the end of the proceedings there is a chance it might get an answer: why have the Government been so desperately anxious to cut Parliament out of the loop over Article 50? No one has given an explanation of that, but the proceeding is quite extraordinary and the public are entitled to know why. I hope we will not be told that it is in order to save time, because it really would be the most terrible insult to Parliament to be told that to consult it was a waste of time. Anyway, it would be an untrue explanation because, by appealing the decision of the High Court, the Government have lost more time—at least six or seven weeks—precisely in order to be able to prevent Parliament from getting in on the action. In other words, it is quite clear that time is not the consideration in the Government's mind. So there is a mystery here, and the mystification of the public on this point ought to be brought to an end. We ought to hear from the Minister tonight exactly what the real motives of the Government have been in this extraordinary matter.

Secondly, why have the Government not clearly and unambiguously dissociated themselves from the shameful attacks on the judges that were made after the High Court's judgment—attacks that included the phrase "Enemies of the people", a phrase popular with the most murderous and terrible fascist and communist regimes of the 20th century? That was a quite extraordinary piece of hysterical demagogy, and it is amazing that someone should resort to such terms in any civilised democracy. Yet the best that the Government could do was come out with a statement— drafted, presumably, by some spin doctor at No. 10, because identical statements were produced by the Lord Chancellor and the Prime Minister—that started with just one sentence, a perfunctory acknowledgement of the principle of the independence of the judiciary. That was coupled with another single sentence talking about the freedom of the press—quite gratuitously, because the freedom of the press had never been attacked or raised in that whole context. The effect of the combination of those two sentences, drafted and conveyed in that way, was actually to put forward the idea that maybe the Government had some secret sympathy with what the press had been saying about the judges, which of course would be utterly deplorable. The Minister has an opportunity tonight to put that terrible impression to rest and to dissociate himself unambiguously and clearly from those mischievous, appalling and unforgivable words.

My third question is a fundamental one, to which the public have a right to a clear answer from the Government: what is the Government's concept of parliamentary sovereignty? If I ask the Government whether they believe in parliamentary sovereignty, I know they will say yes, but what do they mean by it? Specifically, do they accept the definition in the High Court's judgment, which I think is the most lucid and authoritative definition that I have ever seen? It is not original because, of course, the concept is not original—it has been going on for a long time; I remember reading the words of Sir Edward Coke on the subject as a schoolboy and trying to memorise them for examination purposes—but it is very clearly set out in the judgment, which is likely to become a locus classicus on the subject in future. Do the Government accept that? Do they accept what followed from that, as explicitly stated by the judges, that therefore the referendum, since Parliament did not explicitly decide otherwise, was in fact advisory? I ask the question particularly because, on two or three occasions, I have heard government Ministers from the Front Bench refer to an "instruction" given to Parliament by the electorate. The Minister will accept that instruction is quite incompatible with sovereignty. By definition, you cannot be sovereign and subject to instructions from outside. That is a matter of the logical use of language. Can we hear tonight from the Government what their concept of parliamentary sovereignty is and whether they accept the definition in the High Court's judgment?

6.44 pm

Baroness Ludford (LD): My Lords, in commending both reports and the remarks of the noble Lords, Lord Lang and Lord Boswell, I note that it is important to remember that what we are talking about is the UK's own domestic arrangements and constitutional requirements in the Article 50 withdrawal process. We determine these ourselves, not by any instruction from Brussels. Even if the Luxembourg court got involved via a reference from our own Supreme Court, or indeed from a national court in another member state, that would be purely to answer a point of EU law—"Is Article 50 legally revocable?"—though I happen to believe that politics may well overtake that question eventually; it would not be to address, let alone to decide, our own domestic arrangements. I hope, though I say this more in hope than expectation, that the press will remember that.

Both reports were written before the High Court judgment and do not depend on it. As the Constitution Committee report notes, it is the political and constitutional significance of decisions relating to the UK's membership of the EU that makes the involvement of both Houses absolutely justified. The committee also notes, as did the noble Lords, Lord Higgins, Lord Bilimoria and Lord Balfe, among others, that the Government ought to want to work with Parliament in the spirit of co-operation—indeed, perhaps to share the burden of responsibility. The Constitution Committee was in fact very clear and strong in its language:

"It would be constitutionally inappropriate … for the Executive to act on an advisory referendum without … parliamentary approval—particularly one with such significant long-term consequences".

Those are very strong words.

Between them, the two committees amplify that strong argument. First, enacting the result of the referendum should require at least the same level of parliamentary involvement as a decision to authorise military deployment. If that point has been conceded in the last few years, why are we even talking about it now? Secondly, Parliament would have to legislate to implement any relationship with the EU, so the Executive must ensure that they have proper parliamentary approval for the process leading up to that new relationship. Thirdly, one consequence of Brexit is that many key aspects of domestic policy could potentially be determined not by Parliament but in negotiations conducted behind closed doors, which is invidious. The Brexit Secretary has said that the Government are determined,

"to build national consensus around our approach".—[*Official Report*, Commons, 5/9/16; col. 38.]

How better to do that than in Parliament?

We on these Benches entirely agree with the thrust of the two reports that Parliament must be involved in all the stages—I cannot now remember if there are three or four—of the Brexit process. "Taking back control", as my noble friend Lord Beith said, does not mean handing control to the Executive. Parliament's demand is to be involved in setting the strategy, not, as Mr Davis has claimed, in micromanaging to deprive the Government of room for manoeuvre or indeed, as the Chancellor said in an interview at the weekend, an involvement in the tactics of the negotiations. It is the overall picture that Parliament needs to be involved in.

Parliament adds value to the process of the Brexit negotiations. We are not to be regarded as some pesky nuisance. Our active scrutiny can assist the Government in a proactive way to achieve a successful outcome. All we need to do is look around on these Benches at the amount of expertise. On options, risks and opportunities, we are expecting 20 or so short reports on the impact of Brexit from the EU Select Committee under the noble Lord, Lord Boswell, and I believe they will provide a wealth of material. Far from undermining the Government's negotiating stance, parliamentary approval of the negotiating guidelines can strengthen the Government's hand, as several noble Lords have mentioned, when dealing with their partners in the negotiations. Indeed, we can protect the Government from the wild and irresponsible hard Brexiteers in their own party. One senior commentator has remarked that,

"The expectation that May will be pushed around by the Tory party right wing explains some of this pessimism",

about the possible breakdown of Article 50 talks and Britain crashing out into a hard WTO-only exit, which of course would be disastrous for the economy, business, jobs and citizens.

So the Government are not respecting the will of the people—that much used and abused mantra. If they were, they would be planning a referendum on the outcome of the negotiations, because you cannot respect the will of the people if you do not allow them a say in the final outcome. They are not seeking a national consensus. All they seem to be doing is obeying the will of the Tory right-wing and UKIP, and that is not the same thing at all.

My noble friend Lady Suttie dealt with the refusal to give information on the Brexit terms on the basis of the "no running commentary" excuse. She cited the precedents of previous treaties. The noble Lord, Lord Hannay, cited the example of the justice and home affairs mass opt-in. There is plenty of precedent for keeping Parliament informed. Indeed, Ministers are doing plenty of whispering to their friends in the press. It is quite insulting to be told that Parliament, uniquely, cannot be kept informed.

I fear that it gives the game away on the real reason for the Government's doctrine of unripe time that there is in fact no political consensus in government; it is really about time that there was. Many of us are weary of the Prime Minister talking in "Brexit means Brexit"-type riddles, which is becoming as demeaning to the Government as it is disrespectful to Parliament and the people.

The Secretary of State for Exiting the EU gave a pledge that we would not be second-class to MEPs. Indeed, my noble friend Lord Teverson provoked that promise. This means, as the report tells us, access to all the negotiating documents and at every stage of the negotiations, giving feedback and being listened to and responded to through a sort of flexible scrutiny reserve process. It means being told the response to Parliament's concerns. Of course, it means safeguarding confidential information.

The reality so far is very different. The Government have already taken a number of steps without any reference to Parliament, leaving us to read the tea

leaves. In no particular order, we have had the following. The noble Lord, Lord Hill, resigned his Commissioner post, so we lost the financial services portfolio. The Government renounced the presidency slot in 2017—perhaps inevitably, but it was done without any reference to Parliament. The Government said that they are giving priority to curbs on free movement of people, even if it means leaving the single market; but they are leaving UK and other EU nationals who have taken advantage of freedom of movement rights in total limbo, which is shameful. The Government have said that they want us to be outside the jurisdiction of the Court of Justice of the European Union, which will be very problematic for future relations. They have announced the fact but no details of a deal that satisfies the car company Nissan, which begs the question of whether that could fall foul of state aid rules and whether some special inclusion in the customs union for cars is expected.

All this has happened without Parliament being given any chance to influence the Government's stance. Finally, we have had signalling of a slashing of corporation tax which, along with the rhetoric of some in their party, makes some people fear that the Government are set to make the UK the Singapore of the north Atlantic, which could make recognition and equivalence regimes much more difficult to achieve. The Government have also opted into the new Europol regulation, which is extremely good news, but begs the question about future security co-operation, which is vital.

I conclude by asking for the Prime Minister, instead of giving drip-drip to the press and making inscrutable utterances, to articulate her choices. Parliament, with or without a Supreme Court judgment, must be fully involved in the pursuance of them. Taking back control means no less.

6.54 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I join others in thanking the noble Lords, Lord Lang and Lord Boswell, and their hard-working committees, for these very thorough, clearly written—always appreciated—and forward-thinking reports. I also thank them for the debate today, although I doubt whether we need to debate Article 50. There should be no need for discussion on it, as the Government—albeit not the noble Lords, Lord Kerr and Lord Hannay—accept that, once triggered, there is no going back. There is then the inevitable withdrawal from the EU and the deprivation of certain rights from British citizens. Consequently, it can only be Parliament, not the Crown, which takes the trigger action that leads to that inevitable result. The unanimous, unambiguous High Court ruling was that,

"the Secretary of State does not have power under the Crown's prerogative to give notice pursuant to Article 50",

of the treaty.

At one level, that is fairly obvious. Had some Prime Minister suddenly woken up one morning, posted off a letter to Brussels invoking Article 50 without a referendum or even a Cabinet decision, it would still have been an irrevocable move. But if the Government's argument on Crown prerogative is right, it would have been "in accordance with" our "own constitutional requirements". It would therefore be unstoppable by Parliament—if the Government are right that Article 50 cannot be stopped—so it would happen. We could sack the Prime Minister who had done the deed, but we could not undo the deed. As the judges said, the referendum was only advisory, so in law—albeit not in politics—this Prime Minister, even after the referendum, would be doing something with no statutory authority from the people or from Parliament. Indeed, as the noble Lord, Lord Lang of Monkton, reminded us, and as was mentioned by the noble Lords, Lord Hunt of Wirral and Lord Bilimoria, the Constitution Committee stated:

"It would be constitutionally inappropriate, not to mention setting a disturbing precedent, for the Executive to act on an advisory referendum without explicit parliamentary approval".

The question is: why on earth are the Government appealing against that decision? It is what I think the noble Lord, Lord Hunt of Wirral, called an unnecessary sideshow, and the noble Lord, Lord Kerr, called a distraction. Do the Government really want to deny Parliament a say in Article 50, and at what cost to our economy? Increasingly, business is saying, "Please get on and tell us what your negotiating plan is". Just yesterday, the president of the CBI called on the Government to "minimise the uncertainty", asking her to set out what the Government will prioritise in their negotiations. As he said, the CBI membership is,

"100 per cent committed to making the best of Brexit",

which,

"means maintaining tariff-free access to the European market … maintaining … global trade deals … making the best … of talent available globally".

But, experienced negotiator as it is, the CBI also said:

"We're not asking for a running commentary—but we are looking for clarity and—above all—a plan".

It is not surprising that it wants some clarity as, in the Czech Republic, Boris Johnson said,

"probably we will need to leave the customs union".

That would be a major step with enormous implications for our exporters and consumers. Indeed, falling back on WTO rules would be the most destructive of the settlements available, leading to fewer jobs, less investment and, probably, a poorer population. Can the Minister clarify whether that particular statement of the Foreign Secretary is indeed the settled government view and, if not, what is?

As the CBI recognises, leaving the customs union and reverting to WTO rules could not even be in place within two years. It has asked the Government to commit to transitional arrangements, as it fears a clock striking midnight when the two years are up, and a cliff edge—a sudden, overnight transformation in trading conditions, with firms stranded in a regulatory no-man's land.

It appeared yesterday that the Prime Minister acknowledges the danger of a cliff edge, although today we hear that she may not after all want an interim deal. Does she acknowledge, as we have learned from our discussions with member states and—yes, I say to the noble Lord, Lord Balfe—Members of the European Parliament, both in the Labour Party and from other PES countries, and indeed from sources close to the Commission, that such transitional arrangements would depend on the final departure package?

[Baroness Hayter of Kentish Town]

Indeed, such transitional arrangements would probably require all 27 sets of ratification through perhaps 36 different bodies. Such transitional arrangements anyway would need to cover the journey from the point of exit to the final position. That means that the EU27 would need to know where that final position is—the end of the bridge, in the words of the noble Lord, Lord Kerr. To agree a bridge, we have to know where exactly on the other side will be our final position. It will also probably mean knowing when we will remove ourselves from the four freedoms which the EU sees as fundamental to the single market.

That is what the Government should now be discussing as they draw up their framework for negotiations, using all the skill and experience, as we have heard, of your Lordships' House in what are going to be fiendishly difficult talks, with challenging trade-offs to navigate. As the EU Committee stressed, these,

"negotiations ... will be unprecedented in their complexity",

and it "is inconceivable that" they,

"should be conducted …without active parliamentary scrutiny".

David Davis said to his party conference last month, when talking about EU partners:

"If we want to be treated with goodwill, we must act with goodwill".

He might well have been referring to Parliament. If the Government trust us, they will find that we respond positively.

So I revert to the question posed by the noble Lord, Lord Balfe, and my noble friend Lord Davies: why are the Government not bringing Article 50 to Parliament? Why are they taking the appeal to the Supreme Court, wasting valuable energy and time, to say nothing of money or the public's patience? Is it simply obstinacy on the part of the Prime Minister because it was not the original decision? The focus of her time and effort should be preparing for the very complex—"tortuous" was the word used by the noble Lord, Lord MacGregor—set of negotiations which will follow. The bargaining will be hard. Tough choices will have to be made. How much more expedient it would be for the Prime Minister to be at that negotiating table with the strength of a parliamentary vote—freely requested—behind her, rather than a resisted vote, dragged out of her by the highest court in the land.

As our own Constitution Committee said before the original court case, it was always going to be better to go to Parliament rather than using the prerogative. That is the best and perhaps the only way to build a national consensus and bring the county together once more on this—having an informed, mature conversation with the British people and their representatives. In the words of the noble Lord, Lord Boswell, getting a parliamentary and public buy-in to that final deal is why we favour a parliamentary vote.

Even now, at this late hour, we call on the Government to return to Parliament its rightful role in taking this momentous step. I hope that opposite me is a brick wall, in the sense that we get back some answers rather than these questions just being lodged in the hedge.

7.04 pm

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, I am delighted to be likened to a brick wall. When my wife says that talking to me is like talking to a brick wall I shall remind her that it is a compliment.

I thank the members of the Constitution Committee and the European Select Committee not just for securing this debate but for their extremely interesting and useful reports. I also thank all noble Lords who contributed to this very good debate.

From the outset I want to stress the importance that I personally attach not just to the role of Parliament but to the Select Committees in the process before us. I hope to continue to draw on the invaluable expertise and experience that I have heard, and been able to use, in recent months. I intend to continue to have as many meetings as I can with members of those committees. I am grateful to the Constitution Committee for agreeing to extend the deadline for the Government's response to its report given the legal sensitivities that currently exist. I assure noble Lords that the Government will respond formally to the EU Select Committee's report in line with the usual timeframe.

However, clearly this debate gives me an opportunity to set out the Government's thinking on a number of the issues raised this afternoon, and I shall begin by outlining the guiding principles that underpin our approach. The first principle is one of which noble Lords will be well aware—that we must respect the view of the electorate expressed on 23 June to leave the European Union. The Government, as I have said before at this Dispatch Box, are determined to deliver on what the people of the United Kingdom voted for. There must be no attempts to rejoin the EU through the back door and no second referendum. On that point I welcome the comments made previously by the shadow Leader of the House, the noble Baroness, Lady Smith, that the Opposition will not seek to block Brexit. I hope that that approach will be followed by all sides of the House and, meanwhile, that the scrutiny of the process of the legislation will be constructive, as I am sure it will be, with this House exercising its usual discipline and restraint.

The second principle is that we respect and value the role of Parliament, and the third principle is to negotiate in the national interest. I bracket those two principles together, as clearly a balance needs to be struck if we are to respect both those principles. We do indeed want to be as open and transparent as we can with Parliament. However, it is also crucial, as a number of your Lordships have said this afternoon and previously, that the Government negotiate from the strongest position possible. Revealing too much information before triggering Article 50 will, as a number of your Lordships know, weaken our hand. Indeed, the EU Committee of this House has noted that point. Getting the balance right is clearly a core aspect of the debate today, as my noble friends Lord Boswell and Lord Lang said, and it is something on which we are very focused—a point I will return to.

The final principle governing our approach is to respect the rule of law and abide by due process. That obviously means respecting the ruling of the Supreme

Court as regards Article 50, and respecting the independence of the judiciary. In response to the noble Lord, Lord Davies, I thoroughly concur with what my noble and learned friend, Lord Keen, said a couple of weeks ago at this Dispatch Box:

"My Lords, we have a judiciary of the highest calibre".

Sadly, however—and I say this as a journalist myself—that cannot always be said of the media and the press. As my noble and learned friend also said:

"Sensationalist and ill-informed attacks can undermine public confidence in the judiciary, but our public can have every confidence in our judiciary, a confidence which I believe must be shared by the Executive".—[*Official Report*, 8/11/16; col. 1029.]

Lord Davies of Stamford: I am grateful for that, but it does not really answer the question. The question is not whether the Government are in favour of the independence of the judiciary but whether they dissociate themselves from the appalling remarks made in the press about the judgment in the High Court.

Lord Bridges of Headley: I think I did answer that point. I am sorry to say that some comments in the media can at times be sensationalist, but at the same time, we obviously want to respect the freedom of the press. Above all, in this case, I concur with the thrust of the noble Lord's point: we absolutely must respect the rulings of the Supreme Court in this case and the independence of the judiciary. Respecting the rule of law and abiding by due process also means respecting our obligations and responsibilities as a member of the EU up until the day we leave, and respecting parliamentary precedent and procedure as regards the legislation that we shall need to pass as we leave the European Union.

With those principles in mind, I shall approach the issues we are debating under two broad headings: first, the process we are following, up to and including the triggering of Article 50; and secondly, the process that will follow. Let me first, very briefly, chart the democratic process that has been followed so far to leave the European Union, which my noble friend Lord Hunt referred to, in an attempt to bring out the interaction between representative and parliamentary democracy on the one hand, and direct democracy on the other.

In 2013, as your Lordships will remember, the then Prime Minister announced that if a Conservative majority Government were to be elected, they would deliver an in/out referendum—a policy which was in the Conservative Party manifesto. The people voted for that Government, and MPs then voted—by a majority of six to one—to hold a referendum. In the referendum campaign, the Government made it clear that they would respect and implement what the people decide. The referendum itself delivered a bigger popular vote for Brexit than that won by any UK Government in history. The people have therefore voted twice: once for a Government to give them a referendum and then in the referendum itself. Parliament voted to give them that referendum without any conditions attached as to the result.

I heard what my noble friend Lord Higgins and the noble Earl, Lord Sandwich, said about their being non-believers in referendums in our parliamentary democracy, but that argument was meant for when Parliament and this House were debating the referendum itself. I hear what has been said but think that it is now an argument for another day.

Regarding the role of referendums in our parliamentary democracy, I think that my noble friend Lord Lang quoted that noted jurist and constitutionalist, AV Dicey. I too would like to quote AV Dicey. Back in 1911, he wrote that the referendum is the only institution that could,

"give formal acknowledgement of the doctrine which lies at the basis of English democracy—that a law depends at bottom for its enactment on the consent of the nation as represented by its electors".

The referendum, he wrote,

"is an emphatic assertion of the principle that nation stands above parties".

I turn now to the actual process of triggering Article 50. It is the rule of law—the principle that I referred to earlier—that has guided the Government's approach. I am certainly in agreement with paragraph 9 of the Constitution Committee's report: Article 50 is the only lawful route through which the United Kingdom can leave the EU under the treaties. As a matter of policy, the Government's view is that, once given, our notification will not be withdrawn. We are committed to leaving in accordance with any legal and constitutional requirements that may apply. The Government have outlined their case and what we believe is the right and proper process to leave the EU under domestic law following established precedent with regard to international affairs.

As your Lordships will know, we have argued that triggering Article 50 is a prerogative power and one that can be exercised by the Government. It is constitutionally proper to give effect to the referendum in this way. As such, we disagree with the judgment of the High Court in England and Wales and are appealing that decision. The Government therefore await the final decision by the Supreme Court and, as I have said, we will abide by its decision. Let me repeat once again: the Government fully respect the independent role of the judiciary in deciding those cases.

I hope your Lordships will understand if I refrain from entering any further into the specifics of the ongoing legal challenge. There will be a hearing in the Supreme Court beginning on 5 December. It is expected to last four days, and a judgment will be reached in due course after that. But whatever happens in the Supreme Court, there will be further parliamentary scrutiny before Article 50 is triggered. We have been making time available for a series of Brexit-themed debates in the other place and in this place which will allow Parliament to make its views clear on a variety of topics. We welcome this House's likewise debating this but I also note—how could I not?—the recommendations in the report and the numerous contributions made from all sides of the House today regarding the Government's approach to the negotiations and the scrutiny of our position before those negotiations—or stage 1, as the noble Earl, Lord Sandwich, called it—and furthermore, as he rightly said, the application of the lessons learned from the debates held in this place and the other place and the extensive consultation that the Government are having with business. There were a number of powerful contributions on that point, especially from the noble Lords, Lord Kerr, Lord Teverson, Lord Maclennan and Lord Hannay, and the noble Baroness, Lady Suttie, to name just

[Lord Bridges of Headley]
a few. Naturally, when we trigger Article 50, we want people to be aware of our overall approach, not least to give as much certainty and clarity as we can, and to build a national consensus.

I am sorry to disappoint the noble Lord, Lord Kerr —one of his balls is disappearing into a hedge. I am sorry that all I can say at this stage is that we have noted the calls for this and we will consider the best approach, taking into account what has been said in today's debate and in the Select Committee's report. The issues around Brexit, as I have said at this Dispatch Box before, are indeed highly complex, as the noble Baroness, Lady Hayter, said. They deserve very careful consideration, including as the Government continue to consider the customs union.

One of the issues raised in a number of noble Lords' speeches is, for example, a transitional arrangement. I and my ministerial colleagues are fully aware of this issue in discussions that we have had with representatives of the financial services sector and of other industries right across the board. We have said that we wish the process of Brexit to be as orderly and as smooth as possible—a point which my right honourable friend the Prime Minister repeated at the CBI yesterday. We very much hope that our European partners will also see such an approach as in their interest too, as trade is obviously two-way. I assure your Lordships that we are looking at this issue among all the others that have been raised.

I would also like to address the point that a number of your Lordships made, including my noble friend Lord MacGregor—the position of EU nationals in the UK and UK nationals there. I would draw his and your Lordships' attention to what the Prime Minister said at the CBI yesterday—that she wants an early agreement in the status of UK nationals in Europe and EU nationals here.

As regards the process of drawing up our negotiating position—

Lord Hannay of Chiswick: I wonder if the noble Lord could come back yet again to a suggestion that was made in this House several times but that the Prime Minister did not cover, which is to say clearly that we on our side—the United Kingdom—will not call into question the rights of EU citizens in our country unless anyone else does that to our citizens. If we were to say that, it would make it quite clear, beyond peradventure, that we were not going to raise that issue in a negative sense. Why cannot we say that?

Lord Bridges of Headley: I hear the point that the noble Lord makes with his considerable experience. All I would say is that the Government's position is clear and, as I said, the Prime Minister wishes to have an early agreement on this issue. I cannot go further than that right now.

I would like to go on to refer to a couple of points that the noble Baroness, Lady Suttie, and the noble Lord, Lord Maclennan, made about the involvement of the devolved Administrations in the process of establishing our negotiating position. As has been said before, we will give every opportunity for the devolved Administrations to have their say as we form our strategy and we will look at suggestions that they put forward. As regards mechanism, the joint ministerial committee has been set up to enable discussions with devolved Administrations and government and has started to meet.

I turn to parliamentary scrutiny once Article 50 has been triggered. There are three strands of activity that I am sure Parliament will wish to scrutinise: the process of the negotiations themselves, the outcome of those negotiations and the passage of the great repeal Bill.

I start with the scrutiny of the negotiations. I welcome the fact that your Lordships, especially the Select Committees, are thinking hard about how your Lordships can co-ordinate scrutiny of my department's work and the negotiations overall. Clearly, the Commons Select Committee for Exiting the EU as well as your Lordships' EU Committee and its sub-committees will play crucial roles. But as the EU Select Committee report highlights, the issue of what information should be made available, and when, is a matter that we clearly need to agree upon. We have committed as a Government—and I commit again here—that Parliament will have access to at least as much information as members of the European Parliament. That is a point that my noble friend Lord Higgins referred to, as did the noble Earl, Lord Kinnoull, and the noble Lord, Lord Beith.

The EU Select Committee's report goes into helpful detail in exploring what information the European Parliament will receive. I am very grateful for that. I assure your Lordships that my ministerial colleagues and I are considering the mechanisms for transmitting this information in such a way as to ensure that there can be timely debate and scrutiny on the negotiations, while at the same time ensuring that complete confidentiality can be maintained. For example, we are closely watching the recently opened TTIP reading rooms to see what the advantages and disadvantages of this approach are. Of course, we do not yet know the extent to which the previous and most relevant precedents will be followed by the institutions of the EU, not least because there is no direct precedent for an exit negotiation of the kind that we are about to enter into, so we do not yet know precisely what level of information the European Parliament will receive. However, your Lordships should be in no doubt that we will honour the commitment that my right honourable friend the Secretary of State gave to the committee.

The noble Earl, Lord Kinnoull, referred to the role of Select Committees in this House and the co-operation between them. I am aware that the Senior Deputy Speaker—the noble Lord, Lord McFall—and the Liaison Committee, which he chairs, have been on the front foot in seeking to ensure that the work of your Lordships' committees benefits from closer than normal communication and co-operation between committees. He has established an informal forum in which the chairmen of the relevant investigative and legislative Select Committees will share notes to try to avoid unnecessary duplication of effort. The Government stand ready to lend their assistance to this forum, as well as to continue to talk directly to the committees themselves, when called upon to do so. I will certainly reflect on the noble Earl's points about the media and communications.

As regards the end of the negotiations, as I have said before, the Government will observe in full all relevant legal and constitutional obligations that apply. The precise timing, terms and means by which we leave the EU will be determined by the negotiations that follow the triggering of Article 50. The Government, though, are very clear about the obligations of the Constitutional Reform and Governance Act 2010. That Act is clear that both Houses of Parliament have a role in approving treaties as set out in the Act, which is a point my noble friend Lord Inglewood raised.

The noble Lord, Lord Beith, referred to the great repeal Bill. This will be a significant piece of legislation. As with any legislation, parliamentary scrutiny is invaluable, and it will certainly be invaluable on this. We are indeed considering the very best approach to ensure that Parliament, including the various committees, has the appropriate opportunities to scrutinise the Bill. We will set out the content of the Bill in due course and the best approach to involving Parliament in a meaningful way in what will be a very important piece of legislation.

There are a number of other excellent points in these reports which bear close consideration. My noble friend Lord Balfe and others talked about the role of this Parliament and others in creating close links with the European Parliament. I should mention that my right honourable friend the Secretary of State was in Brussels today talking to MEPs. I entirely endorse the points that were made in the committee's report about the role that Parliament can play in this process.

The electorate's decision to leave the European Union was indeed a pivotal moment in our nation's history. As the noble Baroness, Lady Smith, said last week, the role of Parliament is clearly not to block Britain's departure but to scrutinise the steps that the Government now take in delivering it. The issue at hand is the balance we strike between, on the one hand, transparency and accountability, and, on the other, protecting the national interest and not binding the Government's hands. Getting this balance right is something that the Government are completely focused on. From this debate, I know that your Lordships are very mindful of that. Each of us knows the responsibilities that we have in this House to kick the tyres of government policy, which may be uncomfortable for those of us standing at this Dispatch Box. But each of us also knows that, as Members of an unelected Chamber, there are limits to what we might do. In the weeks and months ahead, I am sure that your Lordships will reflect carefully on getting this balance right, as the Government most certainly will do.

I remain committed to working with your Lordships and involving this House as much as we can in the months ahead. I once again thank all those who have spoken tonight, and I thank above all those who have contributed to the work of the committees for their contributions to the debate. I am sure that there will be more to come.

7.24 pm

Lord Lang of Monkton: My Lords, there is another debate waiting to start and the hour is advancing so I shall have to be brief. Fortunately, and happily, the reply that my noble friend the Minister has just given to the debate was so comprehensive and thorough that my task is made very much easier. I thank him for that on behalf of everyone who has spoken in the debate, and for the energy and commitment that he has shown throughout the time he has occupied this position on behalf of this House's interest in Brexit matters.

This has been a serious and well-informed debate and I thank all those from all parts of the House who have spoken, particularly the leading spokesman for the Liberal Democrats the noble Baroness, Lady Ludford—and, for the Labour Party, almost on her own until the very last minute, the noble Baroness, Lady Hayter. We heard particular expertise from the Cross Benches, which we almost take for granted but value very much indeed. I am grateful that each committee's report was well received, not just by those members of the relevant committee who had helped to write it. We tried very hard to get them right. It is encouraging if the House thinks that we did.

As well as the many familiar points that were made during the debate, lots of individual, interesting, specific and new points were made that are novel and worth pursuing. That makes the debate more worth while than it might otherwise have been, and so does the fact that there was not complete unanimity on every single aspect of what was debated. There have been many variations on a theme but I think the central message that came through came from the speech of my noble friend Lord Boswell of Aynho right at the beginning, when he said that the Government must make a positive commitment to engaging with Parliament. That sums up a lot of the sentiment expressed in the course of the last few hours. I earnestly hope that today's debate and the two reports may contribute to improving the handling of our nation's approach to Brexit and to what follows.

Motion agreed.

Brexit (EUC Report)

Motion to Take Note

7.26 pm

Moved by ***Lord Boswell of Aynho***

That this House takes note of the Report from the European Union Committee *Brexit: Parliamentary Scrutiny* (4th Report, HL Paper 50).

Lord Boswell of Aynho (Non-Afl): My Lords, this has been a long and intensive debate and I need add very little. I express my personal thanks to the noble Lord, Lord Lang of Monkton, and his committee and to all those who have participated in the debate, which has opened new chapters in the complexity of this matter as well as rehearsing many of the old ones and the principles under which we should go forward. I thank the members of my own committee for their role in preparing our report. I also thank our staff, who are always exemplary in producing order out of chaos and confusion, as I have not had a previous opportunity to do so. We have a sense tonight of order behind this. Finally, I commend the Minister, to whom I referred in my earlier speech, for exemplifying his continuing commitment to getting these very difficult issues right. That is the right spirit in which to embark on this.

[LORD BOSWELL OF AYNHO]

In this month when some of our thoughts are perhaps across the pond with the United States, the Minister may remember the anecdote of the former President Coolidge, who found himself seated on the left of a lady at a dinner, who made it very clear that she was under a wager to get four or more words out of the President, to which he responded, "Madam, you lose". All I would say to the Minister is if, by peradventure, Her Majesty's Government should find themselves continuing with such a situation, through either terseness or coyness, we would all be the losers because we need an element of engagement, which I hope this debate has brought tonight. In that spirit, I beg to move the Motion standing in my name on the Order Paper.

Motion agreed.

Agricultural Sector (EUC Report)

Motion to Take Note

7.29 pm

Moved by ***Baroness Scott of Needham Market***

That this House takes note of the Report from the European Union Committee *Responding to Price Volatility: Creating a More Resilient Agricultural Sector* (15th Report, Session 2015–16, HL Paper 146).

Baroness Scott of Needham Market (LD): My Lords, I am grateful to have the opportunity this evening to debate our report on such an important issue for our farming sector. In one way I rather regret that it has taken so long to find an opportunity to debate this, but the fact that our report predates the referendum adds a different dimension to our work. I had the privilege to chair the EU Energy and Environment Sub-Committee for three years, and I can honestly say that it was the most rewarding work I had done in my 16 years in the House. I therefore thank each of the members with whom I served, including those who, like myself, have been rotated off. However, I will mention two noble Lords in particular.

First, I thank the noble Lord, Lord Boswell of Aynho, chairman of the European Union Committee. His leadership and encouragement on the main Select Committee was invaluable, and I am certain that he will continue to be as supportive to the current EU sub-committee chairs as he was to me. His wisdom and experience will be much needed by the House as we approach this immensely complicated challenge of withdrawal from the EU. Secondly, my noble friend Lord Teverson is now chairman of the sub-committee. I have no doubt that as chairman he will lead it through these challenging times and ensure that it plays its proper role in informing the debate on Brexit. I also place on record my admiration of and thanks to the committee clerks, policy analysts and committee assistants with whom I worked. Without their skill and total commitment to the role of this House, we would not be able to function. Finally, special advisers are often the unsung heroes. In this case I thank Dr Dylan Bradley and Professor Berkeley Hill.

As your Lordships may know, the remit of the sub-committee I chaired includes not only agriculture but fisheries, environment, energy and climate change. While the topic of this report was agriculture, it went much further. Like many of the inquiries we undertake, it was cross-cutting, and the evidence led us to think as much about the environment and rural development as it did about farming.

The report was published on 16 May and its title, *Responding to Price Volatility: Creating a More Resilient Agricultural Sector*, summarised the motive for conducting the inquiry and our main findings. Our headline recommendation was that the European Commission should consider restructuring the common agricultural policy and focus it mainly around the provision of public goods, aiming for an eventual merger of the two pillars that currently govern direct payments on the one hand, and rural development on the other. We were of the firm view that wherever possible, agricultural policy should facilitate the provision of public goods, such as a well-managed environment. Those conclusions hold as well for life outside the EU as they do for life in it.

We found that price volatility is an inherent feature of agricultural commodities markets, and that adverse effects at farm level are caused much more by unanticipated periods of sustained low prices than by increased levels of volatility. This was a significant conclusion because it leads to different recommendations. We examined the issue of direct payments and found that although they continue to provide a degree of financial stability, helping farmers to withstand protracted periods of low prices, they can also reduce incentives for innovation and efficiency gains.

We drew another significant conclusion on insurance. We heard from some that the US insurance model could be adopted in the EU as an alternative to Pillar 1 arrangements under the CAP. I was perfectly open to this possibility, as I think other members of the committee were. However, having heard all the evidence, we strongly concluded that while insurance undoubtedly has a role to play in unexpected and catastrophic events, the case for a wider application—as a replacement for Pillar 1 or as a future outside the EU—was simply not convincing.

We highlighted that much more work needs to be done by the UK Government and the European Investment Bank in developing and adopting appropriate financial instruments, which may help farmers access much-needed finance. Significantly, we also drew attention to the desperate need to equip farmers with improved business skills and the expertise to calculate and manage their production costs and overheads. We also recommended that the UK Government work to identify the main barriers which prevent farmers exiting the sector.

The official response from the European Commission was received in July, and the Commissioner described our work as,

"a valuable input to the upcoming discussion on the Common Agricultural Policy post 2020".

The fact that he wrote that after the referendum suggests that it really was positive, whatever the future for British agriculture. The Government's response

noted that, following our vote to leave the EU, the Government would work with the industry to,

"look at a future package of measures and support for farmers and the environment".

Their response continued:

"It is premature to say what that might look like, but the Government will be mindful of the Committee's recommendations as we develop a new policy and funding framework for UK farming".

This is encouraging for the committee. I would be grateful if the Minister shed further light on how this new thinking has developed some five months later.

We were also encouraged that the response included an agreement that an agricultural policy must deliver public goods, and the assurance that the management of natural resources will be considered when the Government begin to,

"look at the future of farm support in the UK".

It was also acknowledged that the Government recognise the concerns about barriers to exiting, as well as to new entrants to the sector. I am also told that the Minister of State, George Eustice, has since written to the committee explaining that the Government will use some of the so-called exceptional adjustment aid made available under the CAP in response to the persistent challenges faced by dairy farmers, and that they will be trained in new risk management tools and benchmarking skills, as the committee's report suggested.

I note with interest that the Government's response gives an assurance that they will consider the recommendations emerging from the Commission on access to financial markets and risk management tools when developing domestic alternatives to the CAP. That task force has now reported, so I would be grateful if the Minister clarified the Government's response to that work.

There is no doubt that there are immense challenges ahead for the agricultural sector. There is uncertainty about the new UK agricultural policy and about what a trading regime for agricultural and foodstuff products with the EU and the rest of the world will look like. Together, these two concerns underline an immediate need for UK farmers to develop better resilience to future price shocks and market developments.

Reviewing and replacing the CAP could be an opportunity for the UK to develop an agricultural policy which promotes competitive and environmentally sustainable farming. It could be an opportunity to move away from direct payments towards a system that gives farmers subsidies to deliver certain public goods, such as environmental stewardship and high animal welfare standards, as suggested in the committee's report. It could also be an opportunity to think afresh about how to create a more resilient, innovative and effective agricultural sector. There are real concerns for farmers: some 55% of total UK farm income comes from CAP support. Farmers and rural communities across the UK receive substantial and essential funding for agri-environment projects, farming and infrastructure projects from both Pillar 1 and Pillar 2. These will all need to be replaced by similar UK schemes, or they will fall away once the UK withdraws. I welcome the Chancellor's statement on 13 August, in which he guaranteed that current levels of support would remain until 2020. That gives some short to medium-term comfort, but of course, it does not address the longer-term problems in an industry already beset by volatility.

Another challenge is that of trade in agricultural goods once the UK has left. Nearly two-thirds of UK agricultural exports measured by value go to the EU, while 70% of agricultural imports measured by value come from the EU. Food supply chains are immensely complicated nowadays. Some components of processed food products start their life cycle in the UK, are processed in another member state and then return to us for consumption. Any change arising from those trade patterns is bound to impact on UK farmers as well as the wider food processing industry.

In leaving the single market, we will leave the rules that govern our current trade arrangements with the EU and with the world. The EU's external tariff barriers on agriculture and food are high, and in the absence of a preferential trade agreement with the EU, the UK agriculture and food sector could find itself subject to high import tariffs and reducing exports. In fact, tariffs affect the whole supply chain because they cover both imported products and inputs such as machinery, feed and fertilisers. I do not underestimate the potential for negotiating future trade agreements with the wider world but as recent examples have shown us, free trade agreements take a very long time to negotiate and are immensely complicated, particularly in the area of agricultural goods. Therefore, there will be added uncertainty for UK farmers about the future of their imports and exports post-Brexit.

The agricultural and farming sector is vital to all of us. As a society, we are dependent on a secure, affordable and high-quality food supply, as well as on the public goods which farmers deliver. Rural communities across the UK are still sustained by the agricultural sector, the funding it receives and the jobs it creates. So now, more than ever, the agricultural sector needs certainty and political clarity to strengthen its resilience. I encourage the UK Government to deliver on these points as a matter of urgency.

7.40 pm

Baroness Byford (Con): My Lords, it is a great pleasure to follow the introduction by the noble Baroness, Lady Scott of Needham Market. I was lucky enough to be one of the people who served under her chairmanship on several different reports. Some of the comments that come through this last report reminded me of one of our early ones, on innovation in agriculture. One of the key challenges of that was about how we get knowledge and good practice transferred from science to normal working on-farm. I was quite interested looking through the report to find that again reflected.

The noble Baroness and her committee really are to be congratulated on their report, which looked at price volatility and creating a more resilient agricultural sector. The recommendations were concluded before the June referendum result, as has been referred to, and hence the findings are even more key than they were at the time of publication, because clearly now we have an additional challenge.

Yesterday's torrential rain can leave nobody in any doubt that climatic fluctuations are becoming a more regular feature. They are one of the causes of

[Baroness Byford]
price volatility. When considering this, the committee felt that subsidised insurance schemes should not replace the current provision of direct income support through CAP. Following the decision to leave the EU, the Government will need to work with the industry to consider other methods for future insurance schemes, as the noble Baroness has referred to. In their response to recommendation 2, the Government confirmed that Defra has already set up the facility to give grants of up to £20,000 per farmer, available through the farming recovery fund. Could my noble friend the Minister clarify whether these payments are available immediately after a natural disaster, or whether there is a delay? My understanding is that there is sometimes a delay, which puts huge pressure on those farmers who are directly affected at the time.

Price volatility in agricultural commodity markets undermines the ability of farmers to make investment plans with confidence. Longer periods of low prices have resulted in the reduction of livestock herds, most noticeably in the dairy industry where farmers continue to exit the business, or in the switching of crops grown for food or fuel. These are some of the considerations facing farmers when taking decisions about future investments. As has been said, farmers take a long-term view. New buildings, machinery and diversification schemes all come at a price; uncertainty and lack of confidence in future profit make those decisions even harder.

I apologise; I should have acknowledged at the beginning that we have family farming interests and we receive the basic farm payment.

Neither the Commission nor the UK Government is solely responsible for providing information support. Those in the farming community, both here and in member states, have opportunities to help each other, through co-operatives, marketing products, and closer chain links between the food grown on-field and that eventually ending up on the plate. The AHDB, RASE—the Royal Agricultural Society—and its Innovation for Agriculture charity all have a part to play. If one is looking for added value, one could turn to organisations such as LEAF, of which I have had the great privilege of being president for the last year. Value is added to the goods produced and is recognised easily by the purchaser. These organisations promote high-quality, healthy food, something which all of us could aspire to.

The key to creating future resilience will come from science and technology, as referred to in the report. If anybody happened to be here last week listening to the Chief Scientific Adviser, Sir Mark Walport, as I was, they will realise what an important key to volatility and to the long-term future the whole question of science and technology can be. Within that is the question of how you manage risk.

In relation to recommendation 11, the Government's response to funding of the agriculture sector reminds us that this Government have invested some £300 million from the public sector, alongside some £500 million being invested from the private sector. One of the things that comes out clearly from the report, which I was really pleased to see, is that it is looking to a future where both sectors work closely together. It is not a question of one source of funding being provided by the Government while farmers do the rest. There is a definite blending of the two, for the benefit of the whole.

Additionally, we have help from the UK agricultural tech strategy; £160 million is allocated to this, of which £77 million has already gone to 100 projects. It is key that the data from these projects and from other research are shared, available and passed down to farmers to enable best practice. One of the big challenges perhaps not picked up in the report, which I would like to have seen, is the question of how we get that information to the very hard-to-reach farms. So often the smaller farms—which are on their own and do not have big business plans—are the very ones needing that sort of help. Unless I missed it in the report, that was one aspect about which I thought, "I wish, I wish".

We are obviously waiting for the Government's 25-year plan for food and farming and their plan for the environment. I hope that the Minister may be able to say a little more about that in his winding up.

As we all accept, volatility is here to stay. The most important thing is that we build in risk provision to try to alleviate it in planning our forward businesses. The committee also quite rightly recognised the difficulty of forward planning for tenant farmers. It recommended that longer-term tenancies would aid those tenant farmers in seeking diversity and strengthening their stability. As the noble Baroness said, it also reflected on retirement schemes and equally, at the other end, on the encouragement of new entrants. To digress a little bit, I would particularly like to congratulate my noble friend Lord Plumb, who is not in his seat tonight, who has instigated a very good mentoring scheme and the welcoming and admitting of new young people into the industry. If I were looking at the other end, I would also mention the Addington fund, which helps people when they are retiring to find somewhere to retire to. At the same time, it often provides for little units in which they can continue to do some form of work. There are things going on in this country and I am sure in Europe too, which the committee could not cover. I hope the noble Baroness will not mind my having added them in my contribution tonight, because it is extremely important that we are aware of what goes on outside as well.

I mentioned science and technology. It offers us a chance of better animal breeding programmes, of tackling the big challenge of disease control with animals and with plants, of the better use of soil and water, and— if I might say it again—the ending of the appalling waste of food that we have seen. Again, I congratulate Sub-Committee D on its excellent report. A third of the food that we produce is wasted. If we are trying to restrain the amount of volatility that there is around, one good way would surely be to use the food we produce in a better way and reduce waste.

I congratulate the Select Committee. The questions that it has posed, both on the Commission and on government here, are very apt and very timely. I suspect that the response will be slightly different from what it would have been had we had this debate before the June referendum result was known. However, the use of public money and the input from our own financial

institutions, the political decisions that affect volatility—I think of the Russian trade ban, which has had implications over recent years—and the way in which we can work together to produce food in the long term are all hugely important.

The noble Baroness talked about the importance of insurance and how we might deal with that, as well as the importance of future financial development. I was very pleased to get some facts and figures on the loans that our banks have been making. Some £24 billion is available to farmers, of which about £17 billion has already been called upon this year. The work of banks, including the European Investment Bank, is crucial when looking at how to build sustainable and productive farming in the future. Ultimately, the goods that we produce are not just about the environment; they are about the basic necessity to produce food for all of us to eat. The way in which we do this is hugely important if it is also to be of benefit to the environment.

The committee has done an excellent job in bringing things together for us to reflect on tonight. I am sorry that I have been able to touch on only a few of the aspects, but there is much in the report and, through the noble Baroness, I congratulate and thank the whole committee. I look forward to the Minister's response.

7.51 pm

Lord Teverson (LD): My Lords, I should like to record what a privilege it is for me to take on the chairmanship of this committee and what a privilege it is to have followed my noble friend Lady Scott of Needham Market, whose reputation, work and leadership on the committee were absolutely excellent.

This report is, in a way, the last of a series of "own initiative" reports, because at the moment we have a programme of Brexit reports which are taking up all our time. I hope that we are about to complete our report on fisheries, and that will be followed by reports on the environment, agriculture and energy security. I think that that will keep us busy for the next few months.

Without wanting it to sound as though too many congratulations are being expressed around the House, I was delighted to hear that the noble Baroness, Lady Byford, had become president of LEAF, an organisation for which I have huge regard, having seen some of its work in the past in Cornwall. I wish her well in that role.

Price volatility and natural disasters and events are part of agricultural life. As the noble Baroness mentioned, in the south-west, where I have my home, we are again experiencing a series of floods, which affect the agricultural community even more than many other sectors of society.

Intervention used to be one way in which the European Communities dealt with price volatility. My business career was in supply chain management and the freight industry. I remember operating a cold store in the 1980s. We had some space in it which our contracted customers were not using, so we thought that we would put in a pitch for a bit of European intervention storage. The great thing was that we got a fantastic revenue boost from that, but that was not all, because a full cold store is far cheaper to operate than a half-empty one, so we saved costs as well. I express a public thank-you to the 1980s European taxpayer for the great amount of money that we made out of that. That is why that system had to end as a regular feature. We all remember the wine lakes, the butter mountains and the intervention milk powder that occurred at that time.

However, as my noble friend Lady Scott said, at the moment there is some emergency intervention, which has been approved by the Government. The Minister, George Eustice, came back to the committee and referred to this report, and some of the intervention money will be used in some of the more creative intervention ways. Therefore, I think that the committee has already had a success in that area, and I welcome the Government's response in that regard. I shall not talk at great length on this issue because, although it is important, it is not my report.

I particularly liked the move towards innovation in the report. I had not even thought about the financial instruments that could be used. They may be limited, but it is important that managers in the agricultural sector think in that way, as having those tools is very important.

Management in this area, as in any business, is absolutely crucial. One particularly important thing that I have certainly seen in Devon and Cornwall is not just management and management plans, which can be very dry, but the ability to understand and deliver marketing and to understand added value, as well as the ability to find niches in markets. It is important not to be an accepter of prices for commodities within agriculture but to produce products that are special and are of added value to consumers. That is one of the key areas where there is still much to be learned.

As my noble friend said, Brexit has come through since the report was published, and there will be huge challenges. I cannot believe that we will have regular area payments much beyond 2020. I cannot see British taxpayers putting up with that system as it is at the moment. It will just have to change—the pressures will be too great—and this report is even more important in that context. Regrettably, we may not be able to take advantage of the European Investment Bank. I hope that we will, although I cannot see that we will be a shareholder and have board membership of the EIB. However, I hope that there will still be ways in which we can exercise those funds.

We really do have a challenge as we move agriculture beyond the European Union, but I think it is one area where there are huge opportunities for improvement in the Brexit settlement. That will be the subject of a report of this committee, on which I look forward to the contribution from my fellow members in due course.

7.58 pm

The Earl of Kinnoull (CB): My Lords, it is a pleasure to follow the noble Lord, Lord Teverson, who, as ever, was energetic and interesting. I declare my interests as set out in the register of the House, and in particular as a recipient of EU farm subsidy, both personally and as a trustee of the Blair Charitable Trust.

[The Earl of Kinnoull]

I also congratulate the noble Baroness, Lady Scott, her committee and their clerking staff on a very thought-provoking and excellent report. I note that all the issues teased out in the report are still very much live following the June vote. It is a wide-ranging report, but I shall make just three points tonight.

The first is in respect of recommendation 4, which would see a scheme that enables farmers,

"to save in times of plenty and withdraw in times of need".

It was heartening to read in the Government's response what I certainly interpreted as general enthusiasm, and certainly what seemed to be praise, for the Australian farm management deposits scheme, which goes a good deal further in providing support to protect farming than our own current tax averaging measures.

Of course, there is another volatile business operating in the UK, which has done so for hundreds of years, that is important to Britain and which has an excellent method of allowing participants to save in times of plenty: my own alma mater, Lloyd's of London. The personal reserve funds system has been successfully in place for decades. I cannot help but think that something closer to this, rather than the tax averaging scheme, would be immensely beneficial to the farming community. It is well understood by the Revenue, and I dare say it is understood by one or two farmers as well. Can the Minister confirm that this analogous and successful situation will be considered when—and I quote from the Government's response to the report—

"Going forward, the Government will work with industry to develop new arrangements for agricultural support"?

My second point relates to recommendations 7 to 9, which are all about new financial tools. I have spent a lifetime in the City surrounded by financial tools, and therefore I have a pretty clear idea about who often makes the money out of these tools. I am of course very worried about that. I therefore plead that any tools that are dreamed up are very simple. I must say that the vast majority of farm offices will be like ours—ours is in the kitchen and takes place usually on Sunday mornings; it is not well set up for analysis or a complicated financial tool. I certainly would be worried that these tools could be vehicles for egregious profit by the private sector. In other words, we do not want the lions of Goldman Sachs to eat the shepherds of Perthshire.

I observe that there are already two types of volatility to be addressed. The first is market volatility. I feel that the personal reserve scheme, similar to the Australian one and indeed our own Lloyd's arrangements, would be a very good start for dealing with that. The other volatility relates to natural perils, which is a fancy way of saying storms and floods—another area I have spent a lifetime fiddling around in.

About 10 days ago, the Minister and I had a brief exchange about Flood Re, a new government-backed scheme that provides effective and cheap insurance to private home owners in flood-prone areas. The scheme only started in April this year, and the Minister has reported to the house that 53,000 policies have already been ceded to Flood Re. It is a collaborative system between the insurance industry and government. It is very interesting and, at this early stage, appears to have borne fruit. The noble Baroness, Lady Scott, touched on my second point, but would the Minister agree with me concerning Flood Re, and would he feel that this might be the basis of an approach for the farming community going forward to manage the natural perils risk?

My third and final point concerns recommendation 11. Here, the noble Baroness, Lady Byford, was ahead of me a bit. The recommendation concerns agricultural research. I note again the very warm statements in the Government's response, and I commend them for that. I am a great believer in research.

This evening, there has been no mention of the forestry industry in the UK, with its more than 40,000 jobs, and adding, as it does, more than £1.7 billion to the UK economy every year. I should say that, only a few months ago, I would have had to declare an interest as a member of the council of the Royal Scottish Forestry Society, but I came off that just over a year ago. This industry, which I love, is greatly threatened by tree disease, pests and the grey squirrel. I have to declare another interest as the chairman of the United Kingdom Squirrel Accord, which consists of 34 UK bodies including the Governments, the main governmental bodies, and voluntary sector and private bodies, and is trying to deal with the squirrel problem. Trees between the ages of 10 and 40 are being killed off by grey squirrels ring-barking trees, and this affects up to 70% of plantations. This has effectively stopped forestry plantations of broad-leaf trees on a commercial basis in the south-east of England. The disease, pest and grey-squirrel issues are examples of issues that we can respond to through scientific research—something that I know the Minister is very well aware of and I have had many discussions with him about it.

So I close by asking the Minister whether he agrees with me about the importance of recommendation 11, and whether he would give some hope to the forestry industry that their case for research money to deal with their threats is under consideration.

8.05 pm

Lord Trees (CB): My Lords, it is a pleasure to contribute to this debate led by the noble Baroness, Lady Scott. I would like to acknowledge her leadership of the committee, on which I have been privileged to serve, and her leadership of this inquiry. As a new boy coming to this House, it was my first committee and she has certainly taught me how to chair a committee.

Farming is and always has been a challenging business, but the industry has been under particular pressure in recent times. This debate is not about Brexit—noble Lords may be grateful for that—and it is probably true to say that, while Brexit may focus and accelerate changes in farming, a major evolution of the industry is inevitable and would have to happen anyway.

In the EU Committee report, in which I participated, the challenges of agricultural economics divide into two issues: what I think of as macro issues, which are beyond the control of individual farmers, and micro issues, over which farmers have some control. With respect to the former, our report highlighted a number of major issues. These include, among others, politically motivated policies such as the recent sanctions against Russia, which impact international markets and adversely

affect market opportunities; adverse weather events; and changes in international demand, for example the reduced demand in China for milk and milk powder. In these instances there are good reasons for Governments to intervene and introduce mitigation measures. Immediate aid may be occasionally justified—for instance, the recent EU package of €1 billion in two tranches in 2015-16, particularly for the dairy sector, which was very welcome. But, as our report recommends, they are justified only in certain situations.

There are, however, more structural measures that can be introduced to aid farmers to cope with price volatility. Tax averaging, which was announced in the 2015 Budget, is a welcome means of smoothing the adverse year-on-year fluctuations in the profitability of farming enterprises. Another measure, not yet available but which was alluded to by my noble friend Lord Kinnoull and which was highlighted in the committee's report, is the creation of public investment deposit schemes. This is a financial measure to allow farmers to bank profits in good years, earn interest and then withdraw funds in bad years to top up income. This seems a very fair and reasonable mechanism and has, for example, been introduced in New Zealand as the income equalisation scheme and in Australia as farm management deposits. Have Her Majesty's Government seriously considered the possibility of introducing this type of scheme here?

Certainly the biggest cushion against price volatility are the direct farm payments paid under CAP. In England, the Farm Business Survey indicated that in 2014-15, 56% of farm income was derived from direct payments under CAP. Let me make it clear that I have huge respect and admiration for the hard work and commitment of our farmers, but, as has already been said, this degree of subsidy and the reasons for which it is given are increasingly difficult to justify. It is likely that the scale and nature of this support will change post-2020 and that other solutions for coping with price volatility will be essential.

Turning to the micro issues over which farmers have some control, it was clear from our inquiries that the economic efficiency of farms in the UK is highly variable. We also heard evidence that price volatility is no bigger a problem now than it was historically; rather, the major problem recently has been sustained low prices, as the noble Baroness said. The costs of production vary substantially between enterprises, which means that the more competitive can withstand lower prices while others struggle. It was even suggested to us that the levels of subsidy have not been helpful in incentivising innovation and increases in efficiency. One notes, for example, that total factor productivity in agriculture in the United Kingdom has risen markedly more slowly over the past 20 years than in other comparable countries, including some within and others outwith the EU.

Key measures to enable greater efficiency have already been mentioned by other noble Lords. They include increased advice and information with respect to both the technical and business aspects of farming, greater communication of exemplars of best practice and the benchmarking of key parameters such as costs of production. Some of these can be achieved by farmers operating co-operatively, although we heard that on occasion there was some reluctance to share commercial data—which may be understandable but is self-defeating. Some of this knowledge transfer is achieved through national systems and consultancy services, but, where farmers have to pay for services, their uptake may be less than optimum. The example of Menter a Busnes in Wales is impressive and I note that generally the organisation does not charge farmers for its advice; it is funded by winning competitive tenders from the Welsh Government or the EU.

Notwithstanding measures to increase competitiveness, it is a sad reality that some enterprises will cease to be viable, as indeed has already happened. The chill wind of economic pressure will surely blow even harder in the coming years, but it is incumbent on us to mitigate the social consequences of that while moving to a more sustainable industry. In that respect, what are the Government doing to enable those farmers who wish to leave farming to do so with dignity and with appropriate support which recognises their profound historical contribution to our country?

Farming support from the taxpayer will increasingly move to support the important provision of other public goods, as has been referred to by several noble Lords. This will justifiably recognise and reward the crucial role of farming in the stewardship of our countryside as well as buttressing the rural economy. But we also should not lose sight of the critical role of farming in producing food of quality to high environmental and animal welfare standards. Research and the application of research into such things as GMO, improved animal health and precision farming, among other things, offer great opportunities to maintain or increase food production while freeing up land for other public good purposes.

Our food is incredibly cheap and we need to recognise that and value it more. We waste obscene amounts of food in the home—as an earlier speaker mentioned—with a report by WRAP estimating that by weight some 70% of UK post-farm gate food waste is produced by households. In the pursuit of even cheaper food it is tempting to rely increasingly on imports, but in doing that there is a risk of simply exporting poor environmental care, bad animal welfare and exploitative wages, as well as increasing political vulnerability. While we will never be self-sufficient in food, I maintain that it is strategically and economically important that we produce as much of the food we need as possible in a sustainable way, balancing the competing needs for land. That is not only good for food security but enables us to control all aspects of how our food is produced. To this end we need a dynamic, innovative and above all competitive farming industry. I am sure that we have the farmers who can deliver that and meet the challenges ahead.

8.14 pm

Lord Selkirk of Douglas (Con): My Lords, it is a great pleasure to follow the noble Lord, Lord Trees, who has enormous knowledge of this area, perhaps stemming from his experience as a professor of veterinary medicine. Perhaps I may say that it is also a great pleasure to follow the noble Baroness, Lady Scott of Needham Market, who has put so much of her valuable expertise into this report. I declare an interest as the

[Lord Selkirk of Douglas]
chairman and director of a small family company which owns a number of fields and currently has an interest in possibly one wind turbine. In this capacity I receive a small annual salary.

I start by mentioning that at present there are somewhere in the region of 476,000 employees in the agricultural sector and other closely related areas of work, which is a substantial figure. As well as helping to provide us with a supply of safe and nutritious food, farmers also play an extremely important role in the way our land, the wider environment and the rural economy are managed. Last year, CAP payments to the United Kingdom totalled around £3 billion. After the referendum result, as has been mentioned, the Chancellor promised in August that the Government would replace any financial shortfall suffered by farmers as a result of leaving the EU until the end of the decade. However, farmers will need continuing reassurance that the Government are working on a plan that will give them reliable support into the next decade and beyond. There is also the issue of access to the single market and to the migrant labour on which many farmers depend.

In their response to our report, the Government said that it was premature to comment on what a future package of measures would look like. However, can the Minister give us an assurance that the Government will honour the commitment given by the Prime Minister that British farming, which they described in their response as,

"the bedrock of the food and drink industry",

will remain profitable, competitive and resilient?

Perhaps I may press the Minister on two aspects of future policy planning which came to the fore as the Energy and Environment Sub-Committee took evidence on how to create a more resilient agricultural sector and formed the series of recommendations contained in the report. I want to concentrate on a subject mentioned also by the noble Baroness, Lady Byford, and the noble Lord, Lord Trees: the call for more efficient ways to spread knowledge gained from research throughout our farming communities. This involves the important issues of benchmarking against external criteria and improved delivery of IT services such as broadband throughout the country. The report recommends:

"The UK Government should identify examples of best practice of knowledge exchange and dissemination wherever it is to be found and actively support them".

The inquiry found that facilities for the exchange of knowledge and training differed throughout the UK. On page 51 of the report, the committee states that it was impressed by the knowledge exchange services offered by Scotland's Rural College, which encompasses many campuses within Scotland. The college combines research, education and consultation for rural clients.

Can the Minister report on what progress is being made in this area so as to ensure that when research produces results that could benefit the wider farming community it can be swiftly and effectively broadcast and used to help establish best practice? Is enough encouragement being given to the farming community to promote benchmarking? The report states:

"There is a long term business case for equipping farmers in all parts of the UK with the knowledge and expertise to calculate and manage their costs of production and overheads. Farmers should share their data with their peers to facilitate this benchmarking".

During the committee's inquiry we were told that Defra was working on a 25-year plan dealing with food and farming and on another, separate 25-year plan covering the environment. Other evidence received by the committee stressed that agricultural and environmental matters are strongly interlinked. The Minister at Defra, George Eustice MP, agreed that the agriculture plan would touch on environmental matters but said that the environmental plan was,

"the right place to deal with all the environmental issues, including looking at things such as soil, climate change, water resources and everything else".

However, the committee came to the conclusion that, given the significant connections and interaction between agriculture and the environment, these two policy areas should not be treated as separate entities. It was concerned that there appeared to be insufficient understanding of the way in which the two areas were interconnected and of the value of natural capital, meaning the world's stock of natural assets such as soil, air, water and all living things.

As a result of the referendum, we realise that there will have to be a pause in work on the 25-year plans. The Government have said that they will now take stock and consider any new arrangements. I note that in their response to the report they say that agriculture and environment policies are interconnected. Notwithstanding the change in circumstances, can the Minister assure us, in so far as he is able to today, that it will still be possible for the Government and Defra to continue to proceed on the basis of developing a highly desirable unified approach to the extremely important areas of agriculture and the environment?

8.21 pm

Baroness Parminter (LD): My Lords, like others, I commend the noble Baroness, Lady Scott of Needham Market, and her committee on this report. Like the noble Baroness, Lady Byford, I was rotated off the committee, but I have benefited from her chairmanship in the past. I thank her for that as I do for the report. There is always a bit of a delay in debating our committee reports. In the case of this one, some rather significant events have taken place in between and a whole new set of challenges has been put on the plate of agriculture that it will have to contend with.

As the committee says, price volatility is an inherent feature of farming and will remain a normal risk to be managed by farmers as part of their business strategy. What is clearly not a normal risk is whether we remain a member of the single market, given that if we leave the EU customs union trade will be subject to tariffs and that, after decades of tariff-free access, prices will inevitably rise.

If we leave the single market, UK farming will be particularly badly hit, given that farmers generally face tariffs that are far higher for agricultural produce than for any other types of goods. Most farms are small businesses operating on tight margins and some, especially in the livestock sector, are dependent on exports. Tariffs can be hefty: 47% on milk, 40% on cheese, 59% on beef and 40% on lamb. Arable producers face levies of 40% on unmilled wheat, and around 10% on

fruit and vegetables. It is a huge issue for UK farm businesses, with 82% of our meat exports going at the moment to the EU, as do 75% of our dairy exports and 74% of our cereals.

This is to say nothing of the loss of the protection against cheap foreign imports from which UK agriculture has benefited through high EU tariffs and strict rules, such as those around the use of growth hormones. In particular, the UK beef industry benefits from the protection against imports from countries such as Argentina and Brazil. If we were to sign free trade agreements with other beef-exporting countries, those tariffs and rules would inevitably be in the mix.

Of course, the other major factor—in addition to whether we remain in the single market—that will affect the resilience of our industry in the future is, as other noble Lords have mentioned, the replacement for the CAP. The Government have promised to guarantee spending at current levels until 2020—but, given ministerial views, it seems unlikely that subsidies will be maintained at the same level indefinitely. For those of us who recognise the environmental issues around the common agricultural policy, of course it is time for a change. But for an industry with notoriously low margins—with Defra reporting that 70% of mixed and grazing livestock farms generated incomes below £25,000 in 2014-15—any rapid reduction in agricultural support would have an adverse impact on many farmers' ability to survive. Moreover, any removal of subsidies would have to take into account the fact that European farmers would still receive generous state support, thereby giving them a competitive advantage.

The report makes some incredibly useful recommendations in the context of where the CAP moves next. This is still very pertinent as we look to what we in the UK determine for our own agricultural policy post-CAP. It highlights the failings of the current subsidies and points the way forward with, as my noble friend Lady Scott of Needham Market said, the payment for provision of public goods. It is an incredibly important recommendation that was prescient when it was made.

The report coherently argues that agriculture has a critical role in the provision of public goods, such as high food safety, animal welfare standards, environmental stewardship, woodland management and footpath management. It contends that this role should be recognised in policy and the funding framework and that the replacement of the common agricultural policy should be based mainly around the provision of public goods.

I say to the noble Baroness, Lady Byford, that I do not necessarily see such a tension between the provision of food security and public goods. If we are providing food for our nation that is healthy, from animals that are not routinely overdosed with antibiotics, and from land that is not subject to the overuse of nitrates, pesticides and other inputs, that is a provision of a public good: public good being healthy food as well as the other public goods around access to land, land management and woodland creation. So I would not say that there is necessarily a tension there, although I recognise that there are competing demands—to which the noble Lord, Lord Trees, rightly referred.

Baroness Byford: The reason I mentioned that was because, when the CAP was introduced, it was actually to encourage farmers to produce more food. Then we ended up with food mountains, and that is why the CAP's direction changed. It really goes back to square one, because there are people who believe that we could produce food without having any subsidy and that all the subsidy, or whatever it might be, should just go for environmental development. That is why I said that, in some ways, there is a slight contretemps between the two. I do not see it as a long-term problem, but it is a real issue.

Baroness Parminter: I am very grateful for that response. I absolutely echo the noble Baroness's understanding of the historical position and where the CAP came from. Equally, I agree that there are some elements in the current debate about the future of the common agricultural policy in the post-Brexit context who think that the money should go just to the environment. My position is that we have to have the provision of healthy food and we have to have environmental protection. It is about producing both healthy food and a healthy environment.

For me, one of the ways that this has to be explained to the public—and, as my noble friend Lord Teverson rightly said, there is not going to be any political will to deliver subsidies because a lot of people see farmers just as an industry in the same way as aerospace or the car industry are industries—is to say that farmers are receiving support for providing a new national health service, which is healthy food, healthy environments and access to the countryside. If we can get to a language that talks about farming support for a national health service, that is a way in which the public might be persuaded and political will might therefore be delivered, in order to guarantee the funding that farmers need to survive. As I mentioned, I absolutely agree that the idea that farming can survive without subsidies, particularly in areas such as the uplands, is cloud-cuckoo-land. As other Members asked, how and when will the Government consult on designing their post-2020 agriculture policy? I know we ask this question at every debate but it is important to keep reiterating it.

Another thing the report is equally clear on—it was just mentioned so eloquently by the noble Lord, Lord Selkirk of Douglas—is the need to integrate the policy with the proposed 25-year environment plan. The report well makes the case that they should dovetail so that the agricultural policy can support the delivery of the 25-year plan and display a much more explicit link between outcomes and the use of public funds. To that end, will the framework for the plan be published this side of Christmas, as has been suggested? Will it contain clear targets that will go on to be enshrined in legislation for improving the quality of our air, water, biodiversity and woodlands so that the public can support the farmers in their role as providers of the healthy food and healthy environment on which we all depend?

8.30 pm

Lord Grantchester (Lab): My Lords, this is an excellent report and it has been an excellent debate, and I thank all contributors. I start by declaring my interest as a

[Lord Grantchester]
dairy farmer in receipt of EU funds, a past chairman of a farmers' co-operative and a previous owner of a farm shop.

My experience in dairy farming could be characterised as periods of sporadic profitability interspersed with frequent challenges. There is disease, where I could name foot and mouth and the current spread of TB among others. There are political challenges, due to changes in deregulation and CAP support as well as the present Brexit uncertainty. There is severe weather, such as storms and climate change experiences over the past few winters. "Quite normal then", I expect your Lordships are thinking.

The agricultural market could be characterised as one where the farmer generally has little influence in the supply chain, the market does not really work for anybody, cost and price in commodities are largely decoupled, world trade is distorted by differing support for agriculture by all Governments, and environmental and international developments drive wider and deeper challenges. Some of this analysis was mentioned by the noble Lord, Lord Trees, and I am grateful to him for drawing attention to the various smoothings in the volatility of returns over the years.

While no one is proposing a return to product price support, the result has been that the prices of agricultural produce have been driven down below costs of production, whereby direct income support through the BPS has become a larger and larger percentage of overall returns. This has not been conducive to investment. Where there have been periods of profit, this has often resulted in oversupply, initiating another downturn, sharp price reductions, another loss of good people and skills, poor levels of behaviour in the supply chain and further unfair shifting of business risk. This makes improving the ability of farm businesses to cope with unpredictable price and cost movements a key priority.

I thank the committee for this excellent and timely report, and thank the chairman, the noble Baroness, Lady Scott of Needham Market, for her comprehensive introduction to our debate. One significant conclusion is that adverse effects at farm level are caused more by unanticipated periods of sustained low prices than increases in levels of price volatility.

The UK's decision to leave the EU will bring additional uncertainty to an already volatile marketplace. Following the vote, the weakening of the pound has supported farm output prices but risks the increase in costs of key inputs such as fertiliser which are themselves globally traded commodities. Inflation generally is likely to increase by 3% next year. Interestingly, the Agriculture and Horticulture Development Board has produced an analysis that examines five possible trading relationships between the EU and the UK.

The noble Baroness, Lady Parminter, spoke of the huge impact of tariffs following Brexit. I am grateful that the Government have announced that current levels of support will continue until 2020, as was also welcomed in the remarks by the noble Lord, Lord Selkirk of Douglas, while ongoing challenges in the level of support were highlighted by the noble Baroness, Lady Parminter. This support will provide a steady state, to a certain degree, allowing serious consideration of the issues raised in this report following the Brexit vote.

The report contributes by providing answers to the main challenge of designing a new architecture needed to replace the CAP and to provide shape to the Government's 25-year strategy for agriculture. This challenge represents a unique opportunity to rethink the UK's food system to make it fully responsive to the exacerbating predicaments of inadequate nutrition and unfairness in the supply chain, as well as to the environment and the impacts of food production on climate. This is highlighted in recommendation 14 of the report.

I congratulate the noble Baroness, Lady Byford, on becoming president of LEAF. I very much value the words of the noble Earl, Lord Kinnoull, and those of the noble Lord, Lord Selkirk, on the interlink between the environment and agriculture.

The UK certainly needs a comprehensive and coherent food and farming policy. The backdrop of a more sustainable agriculture will be provided by continuing to move from direct income support towards a better recognition of public goods being adequately valued and rewarded, as proposed by recommendation 15 and debated tonight between the noble Baronesses, Lady Byford and Lady Parminter.

Concurrently with this, improving the competitiveness of agriculture within the marketplace, and capturing these returns, certainly needs to be addressed. This cannot be overstressed. I urge the Minister and the Government to consider this most carefully, and I draw attention to the recent report of the Agricultural Markets Task Force, set up by the Agriculture Commissioner, Phil Hogan, entitled *Improving Market Outcomes*: *Enhancing the Position of Farmers in the Supply Chain*. There is a strong need to assess relationships along the whole supply chain. Farmers should not be the main shock absorbers in the supply chain. Unfair trading practices have to be identified and targeted by an effective regulatory framework.

An example of this recently came in a letter, from the food processor Müller Wiseman, introducing a new supply contract with such an element. The European Commission report of 29 January 2016 on unfair business-to-business trading practice in the food supply chain states that,

"one party should not unduly or unfairly shift its own costs or entrepreneurial risks to the other party".

Although it is not within the Minister's department's responsibilities, the extension of the groceries adjudicator role to being able to examine relationships along the whole supply chain could be vital and build on the very successful monitoring of the practices of the retail supermarkets. I look forward to the Government's response, following the closure of the call for evidence on 10 January.

The supply chain also needs to look at value chain integration, with effective value-sharing mechanisms between each element along the supply chain, to establish a fairer link between producer prices and the added value accruing along the chain. The supply chain needs more diversity, innovation and incentives for

improvement. I am glad that the noble Lord, Lord Teverson, in his remarks, drew attention to marketing and adding value.

Co-operation and competition law is another key area for the Government to consider. While the dairy farmers' processors combined, following the severe crash in farm prices after foot and mouth, to raise the wholesale price to more sustainable levels, the competition authorities found suppliers guilty of combining against the interests of the consumer, who could have had lower prices. The Minister's department needs to consider carefully the taskforce's recommendation that,

"the Commission should unambiguously exempt joint selling … from competition law if carried out by a recognised producer organisation or association of producer organisations".

A large element of all recent reports and recommendations—included here under recommendations 6, 7, 8 and 9—is the promotion of finance instruments to manage the risk and volatility of farmer pricing. The Government's response is, quite rightly, to proceed most carefully following the anticipated report from EKOS Limited. Availability and expense could prove difficult, coupled to the added risk that is once again pushed on to the farmer. I share here the concerns expressed by the noble Earl, Lord Kinnoull.

Key elements of the report are contained in recommendations 11, 12 and 13, which concern research, training and benchmarking, which were highlighted in the remarks of the noble Baroness, Lady Byford, and the noble Earl, Lord Kinnoull, and data sharing and transfer, referred to by the noble Lords, Lord Trees and Lord Selkirk. The Government's response is to be welcomed, especially in their commitment to fulfil a broadband universal service obligation by 2020, even though this falls somewhat short of ambition.

A key recommendation of the report is recommendation 3: that the Government,

"should consider how Rural Development funding can be used to accelerate structural change and create opportunities for new entrants into farming".

The industry and some rural organisations have been slow to recognise this and rise to the challenge of providing advice and schemes to encourage and progress this development, although the noble Baroness, Lady Byford, mentioned some excellent schemes which are just beginning. The noble Lord, Lord Trees, also drew attention to an orderly exit process.

The greater challenges are to create pride and trust in the agricultural industry, to improve its perception and image for the public and to provide attractive career paths and increase the quality of the delivery model. I look forward to the ongoing dialogue over the challenges ahead and welcome the remarks of the noble Baroness, Lady Parminter, that this timetable may be adhered to by the Government. My one question to the Minister is: what are his key elements that are going to deliver change?

Baroness Byford: Before the noble Lord sits down, perhaps I could just correct him. Two noble Lords have mentioned as a fact that I am president of LEAF. I must have expressed myself badly: I have been president of LEAF for the last 10 years and very proud to have been so. I have just handed over to Her Royal Highness the Countess of Wessex, as I am moving on to become patron. I did not want this not to be corrected at some stage but did not like to interrupt either of the noble Lords.

Lord Grantchester: I thank the noble Baroness, Lady Byford, for correcting us. I always had the impression that she was closely involved with LEAF and I apologise for not realising that sooner.

8.43 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I too congratulate the noble Baroness, Lady Scott, on securing this debate and I acknowledge warmly all that she has achieved during what I might call her term of office. Her committee has produced an excellent report on price volatility and the steps that could be taken to help farmers adapt. The report draws on the experiences of farmers, banks and academia and, as we know, it was published before the result of the referendum. I am conscious that any discussion of the CAP and long-term opportunities for British farming now take place against a very different backdrop. I should at this juncture declare my own farming interests as set out in the register and say that our farming partnership is the recipient of CAP funds.

Farmers in the UK grow the ingredients that underpin our biggest manufacturing sector. Collectively, food and farming contribute £109 billion to the economy, including more than £10 billion from farming directly. British farmers are renowned for the quality of their products, the highest standards of animal welfare, and the traceability and transparency that gives confidence to consumers. They also play a vital role in managing our countryside.

I acknowledge the considerable price volatility that farmers endure. In the last two years the dairy sector has been particularly hard hit, experiencing the challenges of global overproduction, falling demand and the effects of the Russian embargo. These have pushed down milk prices and reduced farm incomes. Some farmers have taken the painful decision to stop producing milk. Others have cut back their production or their plans for new investment. In recent weeks, as part of these volatile market conditions, some processors have substantially raised their farm-gate milk price. Some farmers are receiving more than 30p a litre if they sell direct to supermarkets and specialist cheesemakers. Others are struggling with prices below 20p. The market is complex, with considerable uncertainty for many farmers.

The Government take volatility and low prices extremely seriously. Volatility remains a feature of agricultural markets and I have no doubt there will be further challenges. My noble friend Lady Byford asked about the farm recovery fund. In the last two years the Government have made substantial funding available to help farmers get back on their feet following the severe flooding. Indeed, last year the Government appointed a special envoy at ministerial level to work on the ground with affected farmers in Cumbria and Yorkshire to ensure that support was rapidly delivered and any practical problems could be resolved. I well understand what my noble friend is saying. It is very

[Lord Gardiner of Kimble]
important that we are as rapid as we can be in helping farmers get back on their feet. The Government will continue to support hard-hit farmers in difficult circumstances, as my noble friend mentioned.

The Government have already taken steps to help producers in one way. We have introduced a new system of extended tax averaging which applies from April 2016. Indeed, in reading the report I note that the committee felt that this was a "positive development". I am grateful to the noble Lord, Lord Trees, for also highlighting this. This system enables farmers to spread their profits for income tax purposes over five years. These reforms provide extra security to enable farmers to plan and invest for the future. All farmers are eligible and the scheme has been designed to be as simple as possible to operate.

I am grateful to the noble Lord, Lord Grantchester, for his support. My noble friend Lord Selkirk referred to the Chancellor's confirmation on 13 August this year that to provide more certainty for the agricultural sector all structural and investment fund projects, including agri-environment schemes, signed before the Autumn Statement will be fully funded, even when these projects continue beyond the UK's departure from the EU. In addition, he guaranteed that the current level of agricultural funding under CAP Pillar 1 will be upheld until 2020, as part of the transition to new domestic arrangements.

The noble Lord, Lord Teverson, asked about a number of points. A further package of EU funding was agreed by Ministers in July. The share of funds allocated to the UK was €30 million. Reflecting the committee's advice, we are looking to direct some of these funds to support risk management training for livestock farmers to help improve their resilience. We will keep the committee in touch with our plans, including the outcome of the risk management training and the level of engagement by farmers. I think that is a very positive message.

The noble Baroness, Lady Scott, asked about the Government sharing their plans to develop domestic alternatives to the CAP. Early guarantees on funding have been made. Supporting our farmers and protecting the environment will be an essential part of our exit from the EU and I look forward, as do all my ministerial colleagues, to working with industry, rural communities and the wider public to shape our plans for food, farming and the environment outside the EU. We will be launching a major consultation on what that future is to look like. I am not yet in a position to oblige the noble Baroness, Lady Parminter, with the exact timing, but we are well seized of the importance of this work—more about that in a moment.

British producers are dedicated to their farms, their industry and their way of life. I know many of your Lordships from the countryside know how much dedication there is. There is also huge dedication to their livestock. One of the things that we at Defra are remarking to ourselves is the huge importance of animal welfare standards. We think this is an essential part of brand Britain. At home we have 65 million consumers on the farmers' doorsteps who I believe increasingly value the high-quality food that is here. Indeed, there is a growing global appetite for UK food and drink as populations in major developing countries become more affluent.

As we negotiate the terms of our exit, we need to grasp the opportunities it presents to secure a vibrant future for British farming. I believe a desire for a strong farming sector and a well-managed environment are compatible, and we will work towards that end. Indeed, I reassure my noble friend Lord Selkirk and the noble Baroness, Lady Scott, that the need for a joined-up bold vision is what has inspired the 25-year plans that we will publish for food and farming and the environment. Defra and its organisations such as the Environment Agency, APHA, the RPA and Natural England will in future be more integrated, operating towards clear long-term goals.

As the noble Baroness's report has shown, science and technology have huge long-term potential to boost efficiency and profitability on farms. Indeed, my noble friend Lady Byford stressed this with impressive figures for both public and private investment. We in this country are fortunate that we have some of the most visionary scientists in the world at research centres such as Rothamsted Research and the John Innes Centre. I say to the noble Earl, Lord Kinnoull, that I was delighted to see the research at John Innes that had been commissioned by Defra on disease-resistant ash trees. I believe this will be part of the research that is going to be so beneficial to us. As Minister with biosecurity responsibilities, I am very conscious of tree diseases and pests, whether insects or mammals. We want a glorious treescape in this country, and the work we are doing on tree resilience and tree health is an indication of the importance we place on this. We also have world-famous colleges and universities like Cirencester and Harper Adams training a new generation of farmers.

As has been mentioned by my noble friend Lady Byford, the Government are putting £160 million into the agritech strategy to make the UK a world leader. Innovation centres for livestock, crop health, precision engineering and data will help to transfer the latest knowledge and techniques from laboratory to farm. We are developing a food innovation network to ensure that ambitious entrepreneurs are linked up to the latest scientific knowledge. We want our farmers to have access to the best technology available so that they can remain competitive and contribute to the growth of the rural economy. In addition, we are improving our resilience to animal disease by investing in state-of-the-art laboratories and the upgrade of our biocontainment facilities at Weybridge—I am going to visit Weybridge on Friday—which will strengthen our ability to fight diseases like swine fever and avian flu.

In a world of volatility but also great opportunities, the people who will reap the fullest advantage will be those with skills, innovation, investment and indeed ambition. The best managers in farming are investing in developing expertise, adopting the best available techniques and harnessing the right technology to boost productivity and profits. We would like to see this practice spread right across the industry, which I hope will give reassurance to my noble friend Lord Selkirk.

The Government are seeking to raise skills levels across the workforce by trebling the number of apprentices in food and farming. We need to examine new models of farming such as share farming or franchises, which will allow new people and ideas to come into the industry. I am so pleased that my noble friend Lady Byford mentioned my noble friend Lord Plumb. My goodness me, what a friend he has been to agriculture and the countryside throughout his long life. The report raised some valuable questions about tenancies. We want a viable future for all farm businesses—including owner occupiers and tenants—as part of a strong, dynamic and flexible British farming industry.

The report makes an excellent case for exploring new financial instruments—something that the noble Lord, Lord Teverson, also highlighted in his speech, and I welcome him to his new post. These could help farmers access new forms of funding to modernise and invest. We need more capital going into the right investments to improve productivity and resilience in farming and throughout the food chain. As has been mentioned, the Government have appointed EKOS Ltd to identify the potential for loans, guarantees and equities in UK farming. We expect to receive its report within the next few weeks.

The noble Earl, Lord Kinnoull, and the noble Lord, Lord Trees, referred to wider international models such as the Australian farm management deposit scheme, which was highlighted in the committee's report. I also note the Canadian scheme. The noble Earl also highlighted Flood Re as a template. It was undoubtedly a successful outcome of government working with industry, and we are keen to look at whether insurance schemes could be used to benefit the farming industry.

As the committee recommends, the Government have worked closely with the AHDB and the financial sector to explore the potential for futures markets in UK farming and other tools for managing risk. As was mentioned by the noble Baroness, Lady Scott, and the noble Lord, Lord Grantchester, on 14 November the EU markets task force published a report aimed at helping farmers absorb the shock of price volatility or prolonged periods of low prices. In order to stimulate futures markets, it recommends more awareness-raising and training in the farming community and farmers' organisations and more reliable market data in which the markets will have confidence and faith. We will study the report with interest, assessing with the industry which elements would be most helpful for British farmers. Again, spreading knowledge of this will be immensely important.

My noble friend Lord Selkirk and the noble Lord, Lord Grantchester, referred to broadband. As I am a member of the technical skills task force, I am very conscious of the importance of this to rural areas. Public investment in improving broadband is nearly £1.7 billion. My department is working closely with DCMS and its delivery body to press for improvements in coverage, and I am personally well aware of enhancing in rural areas both mobile connectivity and broadband. We also need to be improving planning and regulatory conditions for rural businesses. This would help to create a highly skilled rural workforce, creating strong conditions for rural business growth and making it easier to live and work in rural areas, particularly by overcoming housing constraints and improving access to affordable childcare for working parents.

Farmers should receive a fair price for their produce, and the Groceries Code Adjudicator has an important role to play in changing behaviours in the supply chain—the noble Lord, Lord Grantchester, referred to this. The Government have launched a call for evidence to explore the case for extending the adjudicator's remit. This recognises the concerns raised by other suppliers in the grocery sector—particularly primary producers and farmers—who are not covered by the code. The Government want to do all we can to help these businesses, and we look forward to hearing their views and others from right across the agrifood supply chain.

The noble Baroness, Lady Parminter, and the noble Lord, Lord Teverson, in speaking about the post-Brexit era, raised the importance—the supreme importance—of international trade to our country. Indeed, it is at the heart of our approach. Growth in world trade and prosperity will bring substantial opportunities to sell our high-value, high-quality food and drink as long as we are at our most resilient and competitive. That is why, in the coming weeks and months, Ministers will be crossing the globe banging the drum for great British food and drink. Indeed, my honourable friend the Secretary of State returned from China only last weekend, where she emphasised the importance of our trading relationship and promoting the quality and safety of British food. She also met Chinese food businesses to promote our food industry and support inward investment.

Last month, in Paris, the Secretary of State launched an ambitious new action plan to increase exports and bring a £2.9 billion boost to the UK economy. The new international action plan for food and drink identifies nine markets across 18 countries with the best potential for growth, including India, the USA and Canada, China and the Gulf. Across these countries, work is under way to secure new access—notably, market access for beef and poultry to Japan, lamb and beef to the USA, and pork to China. Together, over the next five years the Government and industry will help exporters sell more overseas and provide business support, mentoring and training to give new companies the confidence and skills to start exporting.

I am conscious of what we owe the noble Baroness and her committee members for their invaluable report. It was very encouraging to hear that my ministerial colleagues have already been picking up and running with it—George Eustice has responsibility for food and farming in particular. I think this shows the importance of the work of this House and your Lordships in this regard. The issues that have been raised are central to securing a resilient and competitive UK farming industry for the longer term. Farming is the backbone—that was my word, although I do not mind bedrock—of rural Britain, producing food and the stewardship of the countryside, and importantly the environment. This Government are absolutely clear about the importance of vibrant and sustainable rural communities that are sustained on a strong economy, making them great places to live, work and visit.

[Lord Gardiner of Kimble]
Our task is to put our shoulder to the wheel to ensure that we leave the European Union in the best way we can for our country. We must ensure that Britain's agricultural and horticultural sectors have a positive and vibrant future.

9.03 pm

Baroness Scott of Needham Market: My Lords, I thank everyone who has participated in this debate. I had not thought about it until my noble friend Lord Teverson mentioned it, but this might be the last proactive report of the sub-committee. It has been a tribute to the huge amount of farming experience that exists both in this House and in the committee. Nowhere could that be better seen than in the noble Lord—who I will describe as my noble friend, because I think he is—Lord Curry of Kirkharle, without whom I think our committee report would have been much poorer. Unfortunately, he was unavoidably detained on his way to the debate this evening and was unable to take part. I think we are the poorer for that.

I was very heartened to hear about the Government's commitment to the agritech strategy because this general theme of the importance of research, data-sharing, knowledge transfer and innovation was recurring through every speech. When members of the sub-committee went on a site visit to see a young farmer brimming full of ideas and innovation, we asked him where he was getting them and learning and he said "YouTube". His ideas are coming from around the world. It is a very good example of the importance of good rural broadband and what you can do with it, as opposed to broadband which takes eight hours to download a two-minute video. Good, superfast broadband is essential.

With regard to financial measures, I hear and have a lot of sympathy with the point made by the noble Earl, Lord Kinnoull—that most farmers are small businesses and complex financial instruments are simply not going to be of help to them. On the other hand, there may be others that do, so it is about the appropriate level of tools. It is certainly almost an extension of the tax-averaging into something like a New Zealand, Australian or Canadian deposit system, which seemed to have support from around the House on the Joseph's lean-and-fat-years principle.

The Minister has heard the very strong feelings from across the House about the need to integrate the 25-year environment and farming plans. It does seem odd that the same department cannot integrate the two plans, because to us they are inextricably linked. That is particularly important as we move into the post-Brexit environment. If farmers are to receive considerable financial support from the public, the Government will have to make the case and explain why the money is going to them rather than the health service, education or anything else. That can only be done by framing the debate within this whole question of public goods. The Minister will have heard the very strong views about that. I again thank the Minister and everyone else for participating in this debate.

Motion agreed.

House adjourned at 9.06 pm.

Grand Committee

Tuesday 22 November 2016

National Citizen Service Bill [HL]

Committee (2nd Day)

5 pm

Clause 5: Business Plan

Amendment 19

Moved by ***Baroness Finn***

19: Clause 5, page 2, line 24, after second "the" insert "primary"

Baroness Finn (Con): My Lords, Amendments 19 and 23 are in my name and those of my noble friends Lord Maude of Horsham and Lord O'Shaughnessy. Their purpose is to insert the word "primary" before the reporting requirements on the exercise of functions for both the business plan and the annual report. While I appreciate that this is a small word change, we argue that its insertion is critical for two reasons. First, it would prevent the new organisation drowning in excessive bureaucracy; secondly, it is consistent with the draft royal charter which refers in Article 3 to the primary functions of the NCS Trust.

One of the main reasons for the success of the NCS thus far has been its flexibility to respond rapidly and positively to feedback on the programme and to adapt quickly to change. This flexibility is essential when engaging with teenagers. To mire the trust in excessive bureaucracy will hinder, and potentially kill, its ability to adapt quickly and innovatively to new challenges. If the trust is expected to produce a business plan every year about every one of its activities, that would have the regrettable effect of stymieing the NCS's ability to innovate and to engage with emergent trends, platforms or partnerships.

The new body should of course publish a business plan that lays out the primary functions of delivering the National Citizen Service. This will allow transparent scrutiny of the unit cost of delivery as well as its broader stakeholder engagement. Such scrutiny, which will permit proper accountability, is completely appropriate. However, to insist on more onerous reporting requirements, which would be inconsistent not only with the draft royal charter but with other public bodies, including other royal charters, would detract from the NCS's ability to deliver a quality and engaging programme.

If the NCS is to achieve its hugely ambitious programme to grow threefold in the next three years, it is vital that it sticks to its core vision while retaining the ability to be nimble. To allow this, the reporting requirements should be kept as straightforward as possible, not weighed down by ever more onerous obligations. I beg to move.

Baroness Barker (LD): My Lords, I have a number of amendments in this group, whose purport is somewhat different from that set out by the noble Baroness, Lady Finn.

When this legislation is passed, the National Citizen Service will no longer be a start-up; it will be a sizeable body with a very sizeable budget. Therefore, it is not unreasonable to expect that its reporting requirements will be different from those which it currently has as a very small community interest company. As such, and not a charity, the NCS has a lower level of financial reporting requirement than many of the organisations with which it has to do business and from which it has to commission its services.

I make no apology for the number of the amendments in this group which deal with accountability. I appreciate that we are talking about a royal charter body but the voluntary sector has had one of the worst years on record and has suffered a great deal in terms of its reputation and public support, precisely because it has not been living up to the higher standards of reporting which it should demonstrate—way above the public sector.

These amendments stem, to a large extent, from the acknowledgment of the noble Lord, Lord Maude, on Second Reading, that the NCS was deliberately set up to sit apart from the rest of the voluntary sector while being almost entirely dependent on it for the delivery of its outcomes. The NCS is, and will be in the future, a central commissioner of services from the voluntary sector, and as other resources diminish that will become increasingly important as a larger percentage of the money available for volunteering will be tied to this scheme. The greater freedom of action a body has, the higher standard of accountability it should aspire to. That is why the level of detail we require about any charity's accounts is much higher than for anywhere in the private sector. The lack of competition to the NCS makes it wise to require a greater degree of transparency and detail in its reporting than we might have otherwise. Recent examples like Kids Company and Work Programme show that the lack of a requirement for proper accountability can be extremely damaging. It is with that in mind that we have proposed a number of amendments.

Given its purpose and set apart though it is, this organisation cannot deliver co-ordination with other voluntary organisations unless it has good relationships with them. It therefore does not seem unreasonable to ask it to set out how it will establish those, and, after a financial year, to report back. It is claimed that this organisation has an important, and, in the view of some noble Lords, unique contribution to make to the lives of young people. It is therefore important to require it to show that it sits alongside the main trends within the voluntary sector. For example, many people working in community organisations serving the Muslim community are saying to the Government—consistently and in many different ways—that the Prevent agenda is not working. It would therefore be remiss of us not to require the NCS—if it does have the role being described by its advocates—to actively work with those charities to ensure that community cohesion and diversion from extremism are part of its achievements.

Amendment 31, which requires that the NCS's annual report includes its efficiency and effectiveness, is justifiable given that it is not up against competitive challenge. It is also not unreasonable to require diversity among its

[Baroness Barker]
trustees. But of all these amendments, the two that matter the most are Amendments 28 and 29. It is right that Parliament should know the extent to which the trust has collaborated with and resourced the rest of the voluntary sector given that it will be one of the few sources of money for volunteering. It is also right that its report should include comparisons with alternative provisions. I have not yet been able to find a report giving the unit cost of the NCS including its overheads. Will the Minister give us that figure in his response? There is a suggestion from a number of other voluntary organisations that it is a very costly programme in comparison to them. I would very much welcome a response on that because before we commit this large resource to a body which is going to be set down in stone we should have some answers about the level of accountability that we can expect.

Baroness Scott of Needham Market (LD): My Lords, I shall speak to Amendment 27 in this group. At the risk of incurring the wrath of the noble Baroness, Lady Finn, it adds to the reporting requirements of the NCS. In my experience, having to provide a detailed business plan and reporting back mechanisms does not have to stifle innovation. Most of the most innovative organisations and businesses around the world have detailed business plans and they report to shareholders, so I find the argument quite difficult. Indeed, I shall go further and say that business planning tools used properly can generate innovation and the reporting requirement can make an organisation focus on the things that those who are funding it believe are important. They can be a driver for innovation, not a barrier to it. The NCS, like any body in receipt of quite large sums of public money, will find that it will be overwhelmed with freedom of information requests if it does not willingly provide the information at the beginning.

In my amendment I am seeking to introduce to the business planning and reporting requirements measurement against the implementation of the Public Services (Social Value) Act 2012. When it was passed, the Act was based on two thoughts. The first was that public procurement generally tends to be at scale and cuts out SMEs and smaller organisations, and the second was that the cumulative spending power of public bodies could be much better used in the economic development of local areas than is usually the case. A review carried out last year by the noble Lord, Lord Young, suggested that the Act had those impacts. It has worked well, but it is underused. I was very pleased that the Government more or less accepted those arguments when they accepted my amendment to the Bus Services Bill and included a reference to the Act in the statutory guidance.

Evidence to the Select Committee on Charities currently sitting in your Lordships' House has contained many references to the difficulties faced by small charities in participating in public procurement exercises, and a number of them have specifically referenced the Public Services (Social Value) Act as a useful vehicle for being able to do that, and they would like to see it more widely used.

The NCS is going to be a huge provider. On our previous day in Committee, the noble Lord, Lord Stevenson, talked about the problems of scaling up. I worry about that too. The NCS has written to me very fully and outlined the work that it has been doing with small local providers in a pathfinder scheme. It has given an undertaking that it wishes to widen and deepen its approach. I welcome that, but the recurring theme in this debate is about protecting the commitments currently made by the NCS into the future because it can commit only with its current board and current chair. Unless we have something in the Bill we cannot accept that those commitments will go on for ever.

There are a number of reasons why the Government should accept this amendment. The use of public money to support small and medium-sized charities will add to their sustainability and begin to avoid what someone has described to me as the growing Tesco-ification of the charity sector. There is also an issue about larger providers squeezing out smaller subcontractors. The NCS can use its considerable purchasing and contracting power to ensure fairer treatment. That would be the right message to send out to the sector, which is feeling a little beleaguered and unloved by government. It would help to ensure that more cash is used locally, generating local jobs. It would also help to create genuinely local solutions with providers which understand their neighbourhood. Anyone who does school visits regularly knows how very different areas can be, even those that are geographically quite close together.

Finally, there is something about risk. A larger number of smaller contracts is inherently less risky in terms of collapse or mismanagement than putting all the eggs in just a few baskets. One of the keys to innovation is size, and smaller local providers would be much more innovative and at less risk than the large ones.

5.15 pm

Baroness Royall of Blaisdon (Lab): My Lords, I shall speak to the amendments in my name. I understand the arguments made by the noble Baroness, Lady Finn, that the organisation wants to put all its energies into ensuring that it maximises the number of young people going through the programme—that is absolutely right and proper. But I do not regard reporting on the various measures that we wish to be reported on as onerous in any shape or form. When the report comes before Parliament every year, which is a very welcome measure, Parliament needs to be able to judge what is happening and judge the impact of this very important initiative. Unless we have a breakdown of the impact in various ways, we shall not be in a position to judge or to celebrate all the success—nor will we be in a position to say that the NCS is doing a great job but it needs to flex this and that and do things slightly differently. So I am not trying to impede the work of the NCS in any way; I am trying to build trust in the NCS and, unless we have measured impact, we are not going to build the trust that we want to build. It is important that we know the number of participants who have fully completed the programme, which is the subject of one of my amendments, and the extent to which participation targets have been met. They are just measures, and they are sensible and basic ones.

Amendment 30 says that the annual report must compare the extent to which the NCS Trust obtains value for money and talks about,

"comparison with other youth related provision",

by organisations with similar aims. There are other organisations, such as the scouts, which provide fantastic value for money. I know that the NCS will also provide fantastic value for money, but I want to enable organisations such as the scouts to be able to deliver for the NCS. In due course, the NCS will have to flex how it works to some extent to ensure that the scouts can be a provider, as it were, for the NCS.

Amendment 37 says that the annual report must address,

"the extent to which young people have been involved in setting the strategic priorities of the NCS Trust".

I do not know the extent to which young people are involved in setting the priorities at the moment, but yesterday I went to a terrific event organised by Step Up To Serve, because it is "I Will" week. It has so many young people on its board, which is fabulous, and they really are setting the agenda for quality volunteering for those between the ages of 10 and 20. I would like to know that young people are really going to be involved in setting the priorities for the NCS, because it is their programme and they know what is best needed for them.

My Amendment 38 says that the annual report must address,

"how many young people have gone onto participate in other social action opportunities, and … the extent to which the NCS programmes impact the wider youth … sector".

I shall not bang on again about City Year and all those things, but it is part of the journey, so I want to ensure that the report can demonstrate each year that the NCS really is part of the social action journey for young people from 10 to 25.

I am very grateful to the Minister, who in his letter after Second Reading said that the Government agreed that a "longitudinal study" of the life outcomes of NCS graduates was an excellent suggestion and that he was looking to see how such a study could be developed within the work already done to get evidence about the NCS's long-term performance. That is really important because in a few years' time, we want to be able to demonstrate that the NCS is making a qualitative difference to young people's lives.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have one amendment in the group, Amendment 47. It is the last in a group of 18. The prior 17 would impose various duties on the NCS Trust. Some of these seem to be entirely sensible. Measuring the impact of what is being achieved is good, so I very much support the thought behind Amendment 25 in the name of the noble Baroness, Lady Royall, on how many individuals complete the programme, although an annual report that did not contain that would be a sad one. I am less enthused by Amendment 39 about the open-ended requirement to consult the voluntary sector. That seems to be a recipe for a talking shop and would not necessarily achieve very much.

I do not doubt the good intentions behind the amendments in the group, but as we know, the road to hell is paved with good intentions. Amendment 47 attempts to go beyond hope, expectation or intention to the reality of what has happened. It would do so by requiring an independent review of the whole of the NCS Trust's commissioning process. We would thus be able to examine its performance in areas a number of which are the subject of the other 17 amendments in the group.

Amendment 47 focuses widely but particularly on those issues that have been the subject of a good many discussions and comments at Second Reading: how easy is it for small providers to obtain contracts? What barriers have been identified that stop them? What additional benefits have been found for our society arising from the whole process? That last issue has been commented on in the last few minutes, so I will not repeat it, but the Committee needs to be aware of the level of risk aversion among commissioners. It is something we need to guard against for the NCS Trust.

A number of voluntary groups are invited to bid. The fact is that if you ask 12 to bid, there are 11 losers. Therefore, the amount of time wasted on that can be very great. My noble friend Lord Maude has had a valiant blast against the use of pre-qualification questionnaires, or PQQs. That is another hurdle for smaller groups to get over. His weed killer has worked pretty well in central government, but PQQs seem to be alive and well and living reasonably persistently at local government level. Perhaps we need to think about that. There are then lengthy tender documents that take a lot of compiling. Then there are the monitoring processes, which can be very lengthy and extensive, and can be changed in the middle. All those issues and features combine to deter, to put off, to disadvantage smaller voluntary groups.

The day before our meeting last Wednesday a small charity came to speak to me, because I have been involved with this process. It said that it had an example where the commissioner clearly believed it was unsuitable and that it should not be given the job. The charity was persistent, in a rather brave way. It went on to complete the process, against considerable odds and adversity. Then it was disqualified because, in the final contract, where it had to sign the document at the end, the words said, "Sign inside the box". The signature had touched the side of the box. That was sufficient reason for the commission to say, "Sorry, you haven't declared, you're off". One thinks that this is an extreme example, but these sorts of things come up again and again. We need to ensure this does not take root in the NCS commissioning process and that these non-tariff barriers, if you like to call them that, are identified and dealt with.

The purpose of the amendment is to make sure that we can find out what has actually been happening. It is supported by the NCVO. It provides this important independent overall review, with some special focuses to it. On reflection, I probably would not have chosen a review after 12 months—that is probably a bit too soon. So it might be a review after 24 months, to give more time to see how things settle down, but that is a detail. I hope my noble friend will accept that there is a principle here of something worth pursuing, which deals with some of the other concerns raised by noble Lords on both sides of the Committee, and we can explore how to build it into the Bill at the next stage.

Lord O'Shaughnessy (Con): My Lords, I was pleased to put my name to the amendments tabled by my noble friend Lady Finn. I support everything she said

[LORD O'SHAUGHNESSY]
about making sure that the bureaucratic workload is kept to a minimum so that the NCS Trust can focus on its primary role.

I have great sympathy with the idea of the annual reports and the business plan focusing on particular areas of interest, such as diversification of intake, performance, and so on. But there are a couple of reasons why I think it would be a mistake to put it in the Bill and why this more elegant solution from my noble friend is a better approach. First, we cannot possibly anticipate all the things that the NCS, as it succeeds and flourishes between now and whenever—into infinity—could need to focus on from year to year. Inevitably, those challenges will change and we cannot possibly anticipate every single reporting requirement that might be needed to focus on the issue or the challenge of the day. Today, it might be disability; in three years' time, it could be ethnic minorities, or anything. To put in a small number of things that we can think of now might focus the attention of the board on reporting things that actually in future years might be less important than others. That would be a mistake.

Secondly, all the issues that have been brought up by noble Lords as important focuses for the business plan and the accounts are covered in the royal charter. In the interests of brevity, I will not read out all the relevant bits of the royal charter but pages 7 and 8 talk about the primary functions,

"enabling participants from different backgrounds to work together in local communities".

The charter says:

"In exercising its primary functions, the objectives of the NCS Trust are … to promote social cohesion",

and,

"to expand the number of participants".

The trust is also to,

"have regard to the desirability of … promoting social mobility … personal and social development … ensuring value for money",

and so on. I think that all the good points that have been made about the sorts of things that the NCS should be reporting on in its annual report and planning for in its annual business plan are covered—perhaps not completely and that is worth a look—in the royal charter.

Having the Bill say that the NCS should report and plan for the primary functions in relation to what is in the royal charter is the correct balance between making sure that the things that we care about are reported on and leaving flexibility with the board to focus on those things that are perhaps more important from one year to the next, rather than putting in the Bill things which might just narrow attention on to a small number of issues, which may not be the most important things in any given year. That is why I think inserting them as primary functions is helpful in clarifying what is important and what we should hold the NCS accountable for, but allowing some flexibility for the board to report on the things that are most pressing in any given year.

Baroness Royall of Blaisdon: My Lords, much of what the noble Lord has just said is eminently sensible. Clearly, things change from year to year and the Bill is going to last in perpetuity, as it were. I will retable some amendments on Report. I hope that the Government will look at the charter to make sure that every aspect we have been speaking about today is truly covered. We will see what happens with amendments on Report but I would like the Minister to say what issues the Government and Parliament would expect the report to cover in 2017, 2018, 2019 or 2020—for the foreseeable future. Yes, priorities can change but I want to ensure that my priorities are covered in the annual report.

5.30 pm

Lord Blunkett (Lab): I have no amendments in this group, so I hope that noble Lords will forgive me for speaking briefly. It is unarguable that we should have the maximum transparency for the new body and sensible measures of comparability. We should be able to take account of value for money and impact, although those are two separate things: value for money is crucial in the wise use of public expenditure, whereas impact—this is why the longitudinal study is so important—is what happens down the line. I just caution the voluntary sector to be careful what it wishes for in terms of other organisations receiving varying amounts of public funding while requiring for others what they might find difficult for themselves.

To put that in context, in the last Parliament I was asked and was happy to be the transitional first chair of Youth United, which sought to bring together the uniformed organisations to increase impact in areas of deprivation. The need to do that, pressed by His Royal Highness Prince Charles, was that, on the whole, those areas of great deprivation were not covered in the same way and the impact was not as great as would be expected or desired. Some of the money that went in came from the LIBOR fines. When those fines are levied, they become public expenditure, albeit, as we might describe it, as "the Chancellor's slush fund", where there is as little transparency and openness as I have ever come across, in bidding processes or in acknowledgement of what has happened to the money down the line.

I just counsel that we build in the necessary requirements to ensure that money is used extremely wisely and we do not, to use the words of the noble Baroness, Lady Barker, go down the road of Kids Company. We need to be clear what we expect of the outcomes. As I tried to say on Second Reading, that is not just about numerical targets; it is about outcome measures as to how the impact is held on to, in terms of those young people—where they have come from, where they go to and their participation post the NCS experience. I just repeat: for big and small organisations alike, be careful what you wish for.

Lord Stevenson of Balmacara (Lab): My Lords, those are wise words and they will ring in the ear long after my noble friend Lord Blunkett has uttered them. We should bear them in mind throughout this debate.

I do not want to say much about this, because the purpose of these probing amendments is to invite the Minister to reflect on how he wishes to take this forward and we should listen to him carefully. I will make two points. First, what is decided about the reporting functions must be the corollary of what we have decided about the structure. Rather than repeating

the debate on the first amendment last week, I think that it is obvious that, if the structure adopted is the royal charter body, for example, it will bring with it the implications of a non-departmental public body. Therefore, the auditing by the NAO will be brought to the Public Accounts Committee and there will be a virtuous cycle of accounting and reporting, which we are well used to and will probably cover one aspect of this.

On the points that have been made more generally, this organisation will serve a much wider public purpose than simply to operate a number of courses or to commission those courses. The report is to Parliament, which raises much wider questions about what you would need to do. As has rightly been said, many of these measures are not numerical, so it would be interesting and challenging to see how one could frame that in a way that would both be a formal account—a measure of the consumption of resources and the impact of those resources in terms of diversity and reach—and provide information that will allow those who have to engage with this body to anticipate and work closely together with it. I echo the wise words of the noble Lord, Lord Hodgson, about the need for a broader cut through this—not just an annual report, but a commissioned report looking at some of the wider indices. That might be annual, but I agree that it perhaps needs to happen a bit later. That might be a way of framing this. I look forward to hearing what the Minister has to say on the matter.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): I am grateful to all noble Lords for their contributions. A large number of amendments in this group are to do with reporting requirements or the business plan. In the interests of time, I will be brief in my response. I hope I do not come across as negative, because I do not mean to be. We are grateful for suggestions of improvement to the Bill, which has received almost unanimous support, and I realise that these are meant to be constructive. We are listening and will take careful note of all the points raised. As I agreed last week, there are some areas which we can explore further, such as reporting on disabled participants.

There was a recurring theme in many noble Lords' contributions: there are many other things they would like the NCS to do. I want to make the point at the outset—because it goes through the whole of Committee stage—that we are very keen that the NCS concentrates on what it is meant to do and is doing well and we do not want it distracted. From my experience, this is a fatal temptation in business and in government programmes. As I said at the beginning of Second Reading, we want the Bill to set up the NCS in perpetuity so that it is able to do, and to continue to do, what it has been doing well.

Nearly 20 amendments have been tabled specifying additional reporting requirements for the trust, in addition to the seven requirements already in the Bill. I hope that the Committee sees that this risks being excessive, bearing in mind that some noble Lords have argued cogently that we must not stifle this enterprising and growing organisation. There must be a balance between the reporting essential to maintain public confidence in the NCS and allowing the trust space to focus on quality delivery. While we think that we should keep the mandatory reporting requirements in the Bill at a high level, I propose that the Government write to the trust to seek its assurances that its reporting will be thorough and will take into account the views of this House, as expressed in the various amendments. I am happy to commit to doing that.

Amendments 19 and 23, in the names of the noble Baroness, Lady Finn, and the noble Lords, Lord Maude and Lord O'Shaughnessy, would restrict the NCS Trust's annual report and business plan to refer only to its primary functions. On the one hand, for understandable reasons, the noble Lords want to minimise reporting requirements; on the other, it is clear from many other noble Lords, who would like to add reporting requirements, that they feel that the report and business plan should refer to the full breadth of functions as set out in the royal charter. These are the tools through which Parliament and the public can hold the NCS to account. I hope noble Lords will see that we have tried to strike a reasonable balance with the reporting requirements in the Bill.

I thank the noble Baroness, Lady Barker, and the noble Lord, Lord Wallace, for their amendments. Amendments 21, 28 and 39 relate to how the trust consults and collaborates with the voluntary sector. The noble Baroness, Lady Barker, asked about the cost. In 2014, the average cost per participant was just over £1,500. This does not include overheads and we do not have a combined figure for those. Of course, value for money is one reason why the NAO is involved under the Bill. The NCS does not, and should not, exist in isolation. NCS graduates already have access to an online opportunities hub, which promotes volunteering opportunities. The trust's primary functions require it to ensure that the NCS is accessible to all. If it is to do this, it will have to collaborate with other organisations with the right reach.

That being said, the NCS Trust is being established to arrange for the delivery of the NCS programme—to commission services. It is not being established as an infrastructure body, or representative body for the voluntary sector. Therefore, it would not be right to mandate the trust to report on how it has resourced the voluntary sector, as Amendment 28 would prescribe. The trust works with more than 200 providers, over 80% of which are public or voluntary sector organisations. They are resourced by the trust by entering into a contract with it, but the trust's purpose is not specifically to resource the voluntary sector. Asking the trust to report on this, therefore, is not appropriate.

We agree that the trust's relationship with the voluntary sector is vital, but we believe it is the trust's job to report on its performance to Parliament. Other organisations would have a perception of the trust's performance based only on their interactions with the trust or the programme. That will, in every case, be limited in some way. We do not believe Amendment 39 to be an appropriate ask of the trust as it is not necessary to require it to consult with the sector before completing an annual report. Furthermore, the trust does not contract with voluntary sector organisations alone; it oversees many relationships across the private, public and voluntary sectors to achieve its core aim: the provision of the NCS in England.

[Lord Ashton of Hyde]

Amendments 29 and 33, as well as Amendment 30 tabled by the noble Baroness, Lady Royall, consider how the NCS sits alongside other programmes. The NCS has a specific structure. It is two or four weeks long and while different providers bring different approaches, all of them have to deliver the core components of the NCS as co-ordinated by the trust. Whether or not it is unique—I realise that there are different interpretations of that word in relation to the NCS—it is a short programme, designed to be accessible to all young people. It cannot be compared with much longer or part-time programmes.

Having said that, the trust must always look to learn from the youth sector, in this country and abroad. Where there are programmes that deliver outcomes similar to those of the NCS—social cohesion, social engagement and social mobility—it is the trust's job to draw on best practice and shared learning. This year has been a case in point. The trust is co-ordinating an autumn pathfinders project, working with 18 organisations that are trialling innovative methods of delivering the NCS to help extend its reach into local communities.

Amendments 29 and 30 would require the trust to compare its value for money with that of relevant programmes. We have to be careful that anything we ask of the trust in statute is a duty it can reasonably be expected to fulfil. It would not be practical to mandate the trust to compare its outcomes with the value for money of other programmes. It would need to have significant amounts of information about other schemes to accurately compare value for money. This is not information that the trust can or should be expected to gather.

Amendment 31 would require the trust to report on its efficiency and effectiveness. I will respond also to Amendment 36 from the noble Baroness, Lady Royall, which would require the trust to report on how it has met its targets. I can be clear on both points. While the trust will report on its performance with rigour, the National Audit Office will become its auditor. The Bill will ensure that the NAO has the power not merely to audit the trust but to conduct reviews into its efficiency and effectiveness. This will include the extent to which it has achieved its targets. The NAO will undertake these reviews robustly. Therefore, we do not think it necessary to require the trust to report on this as well. Its accounts will be open to sufficient scrutiny by the NAO and Parliament.

Amendments 32 and 34 concern reporting on the trust's board. The Government agree that the make-up of the board is very important, but the trust does not entirely control board appointments. It is the monarch, acting on the Prime Minister's advice, who makes the final appointments, following a competition run by the chair. It would therefore not be reasonable to expect the trust to report on something over which the Government have the final say. The Government will, of course, have to comply with the public sector equalities duty when making these appointments, so they will need to take the considerations raised here firmly into account. Independence and integrity are requirements under the public appointments code. Appointments will be made after competitions that are fair, open and merit-based. The royal charter provisions will ensure that the Government have sufficient oversight of the trust's members, meaning that they will not have to rely on the trust's self-reporting each year. They will, on a continual basis, be able to ensure the diversity, independence and integrity of the board.

I thank the noble Baroness, Lady Royall, for her contribution. Her Amendment 25 raises a useful point of clarification. It asks that the reporting on the number of participants includes those who have completed the programme. The Bill specifies that the trust will have to report on the number of participants for each year and I assure the noble Baroness that this will include the number of young people who graduate from the NCS.

5.45 pm

Turning to Amendments 37 and 38 in the name of the noble Baroness, Lady Royall, we agree that young people must be central to the trust's strategic thinking but we do not believe it would be right to prescribe such reporting processes in the Bill. In order to meet its primary functions, the trust will have to conduct ongoing consultation with young people on how they respond to the programme. This relates directly to the development of strategic priorities. The trust already brings together groups of NCS leaders to represent the programme nationally and I assure the noble Baroness that we will work with it to ensure that young people are at the heart of its activities on a day-to-day basis. In addition to the board of directors, the NCS national youth board has a key role in working with the NCS Trust to ensure that the voice of young people is at the heart of the NCS. The national youth board consists of 21 NCS leaders from last year's cohort, sponsored by five alumni from the previous year's board. It represents every English region, as well as Northern Ireland, and works with 19 regional youth boards across the country.

Similarly, it would not be reasonable to mandate the trust to continue to report on young people's actions post-NCS. This would rely largely on young people's self-reporting, which would vary, and accurate reporting would be difficult. However, I assure the noble Baroness that the trust is committed to supporting the wider social action journey for young people and offers them the opportunity to feed back on further opportunities they have taken up. This provides valuable anecdotal evidence of the impact of the NCS, which will continue to be shared by the trust as it carries out its promotional function.

The second part of Amendment 38 talks about impact on the wider sector. As I have said before, Clause 6 requires the trust only to report on itself. It cannot be reasonably expected to report accurately on its impact across the wider sector. This would require it to access a huge amount of information about other organisations' annual activities and involve it in a large amount of extra administrative work. The trust will, however, need to work with a diverse network of providers to deliver the NCS so naturally it will report on these relationships when describing how it has met its strategic aims.

I thank the noble Baroness, Lady Scott, for Amendment 27, which requires the trust to report on its compliance with the Public Services (Social Value)

Act 2012. The NCS Trust, as a contracting authority, will be subject to the social value Act and I assure the noble Baroness that it does apply: the trust will be expected to behave no differently from any other organisation that comes under its scope. In fact, the Act does not require relevant authorities to report on their compliance with its provisions and to mandate for only the NCS Trust to report on its commissioning processes would be unusual. We need to give the trust space to focus on delivering the outcomes required of it.

Lastly in this comprehensive group of amendments, I come to Amendment 47, in the name of my noble friend Lord Hodgson. This would mandate an independent review of NCS commissioning. The NCS Trust is due to undertake a new round of commissioning in 2018 once the Bill has passed through Parliament. The Government will be working with the trust during this period to ensure that it abides by the latest best practice for commissioning and procurement. There is a dedicated team in the Department for Culture, Media and Sport which works with the trust to oversee and support its contracting rounds and I assure my noble friend that we will continue to review the trust's commissioning behaviours as a matter of course. The trust's own reporting to Parliament, combined with that of the NAO, will provide an ongoing picture of its commissioning practices. The Bill has been introduced to ensure that Parliament can raise concerns if required. This accountability to Parliament will ensure that the trust continues to work innovatively and flexibly to find the best possible providers for the NCS.

In conclusion, this is a question of balance. The amendments adding to the reporting requirements underline that the NCS is an important programme and we must ensure that we use it to its full potential. Equally, we must allow the trust to focus its resources and time on delivering a quality programme, not overly prescriptive reporting. Your Lordships have argued both cases. I believe that the Bill, as drafted, strikes the right balance between the two, but I am committed to writing to the trust to express your Lordships' view on what it should report. I hope with that assurance, the noble Baroness will feel able to withdraw her amendment.

Baroness Royall of Blaisdon: My Lords, may I ask a question about the opportunities hub? I think the Minister said that the graduates of the NCS have access to the opportunities hub. If that is the case, it would be very good if all young people, even those who were not NCS graduates, had access to an opportunities hub so that all young people, not just those who were fortunate enough to go through the NCS, could see what the possibilities of volunteering were for them.

Lord Ashton of Hyde: Yes, I can see the point there. I believe, but could not swear to it, that it is open only to graduates at the moment. But I am certainly happy to look at that. We can come back to it later.

Baroness Barker: Perhaps the Minister could consider one point, which was made by the noble Lord, Lord Blunkett, when he said that it was important that the NCS be subject to comparison with other charities. Having listened to what the noble Lord, Lord O'Shaughnessy, said about the charter, does the Minister accept that some of us understand that it is quite possible for the NCS to be evaluated in the terms set out in the Bill, but that nowhere in any of this is there a requirement for there to be a comparison with any other service? Could he therefore explain, perhaps in writing, where it should be possible for anyone who wishes to to compare the work of the NCS Trust with the rest of the sector to find out the data on that? Is it the National Audit Office?

Lord Ashton of Hyde: I will certainly consider what the noble Baroness has said and will write to her if there is anything more. I think this goes back to what the noble Baroness said at the beginning of the previous day in Committee about the uniqueness of the NCS Trust. The NCS Trust is unique and therefore a direct comparison, especially with the charitable sector, which has been referred to a lot, is not necessarily appropriate. This is not a charity. I take the point that it uses a lot of taxpayers' money and it must be held accountable but I do not think there is a direct comparison with it as a commissioner of work from the voluntary sector. It is not part of the voluntary sector itself. That is off the top of my head, but of course I will go back and check with my officials that I have not said something awful.

Lord Hodgson of Astley Abbotts: The Minister gave a very thorough and lengthy reply to all these amendments. I am seeking clarification. Is he saying that the Government believe that an internal letter written by the Government to the NCS Trust and a no doubt very worthy investigative body at DCMS answers all the points that have been made in this group of amendments, that the Government do not intend to make any movement towards any of the points that have been made this afternoon, that in the Government's view the situation as presently described provides a perfectly adequate balance and a perfectly adequate way of ensuring that small groups of charities are not squeezed out, and that we are going to depend on an entirely internal process with once a year an overview at the very high level from the National Audit Office? Is that where we have arrived?

Lord Ashton of Hyde: I do not think that is exactly what I said in the course of my very lengthy remarks, but we are in the middle of two different views here, possibly represented by my noble friends Lady Finn, Lord Maude and Lord O'Shaughnessy on one side and practically all other noble Lords on the other. I may be miscategorising that. We think there should be value for money and accountability. That is part of the point of the Bill and why the National Audit Office will come in, why parliamentary committees can hold the NCS to account and why we have asked it to report in these seven categories. They are not just numeric; they include more qualitative things such as the quality of the programmes provided or arranged by the NCS Trust.

On my noble friend's point about where we leave it, as I said in my remarks, we think this is a good balance. I said that we would write to the NCS Trust because we expect it to report on relevant provisions, but we do not want to mandate it in the Bill with a host of extra reporting requirements.

Baroness Finn: I am grateful to the Minister for his remark that the NCS should not be distracted from its core purpose and should continue to do what it has been doing so well. It should stick to its knitting, as it were. I also thank him for his other reassurances on reporting requirements. I am delighted that he will write to the trust board to ask about priorities for annual reporting requirements. In the light of the Minister's remarks, I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Amendments 20 and 21 not moved.

Amendment 22

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

22: Clause 5, page 2, line 27, at end insert "preceding the year"

Lord Stevenson of Balmacara: My Lords, we have just had classic probing amendment debate which is being replaced by the debate on my group which is, of course, a series of laser-like pounces on the drafting of the Bill. I apologise for dealing with such nitty-gritty, but they reveal one or two other things behind them. I will make the points very quickly and look forward to the response.

My first point is on the timing of the business plan. Business plans are business plans and they will change and vary as we go forward, but as the business plan is in the Bill, attention is drawn to it. The Bill currently states:

"The Secretary of State must lay a copy of the published business plan before each House of Parliament".

That is presumably because it is the intention of the Secretary of State to get the views of Parliament, if any, on the business plan.

That sets up my next point, which is that the business plan has to be published before 1 June in the financial year concerned, which seems slightly odd. First, why June? The peak of the activity of the NCS will usually be over the summer period, which gives rather a short period to allow anyone to comment on the content of the business plan. Secondly, most people would want to comment on a business plan before the year in which it takes place, so to do it in the June of the financial year of the programme suggests that two months will have already elapsed and the money will already have been spent, so it limits the effectiveness of the comments. I suggest to the Minister that there is a problem here, in which case the dates might be changed, but if that is the intention, then a slight change in the phrasing to suggest that the business plan must be published no later than 1 June of the year in question might give us a better chance of making sure it is available in time to have some serious comments available to the organisation.

We are now all too well aware of how easy it is for royal charters to be changed by Ministers. Amendment 48 would restore balance to the process. The Bill would state that the charter may be amended provided that no amendment contradicts the NCS Bill once it has gained Royal Assent. I understand that the Bill is meant to be superior to the royal charter, but it would surely be bad practice to have a Bill that says one thing and a royal charter that says another, although I have discovered one mistake to that effect. I therefore suggest that a change should be made so that an amendment can be made to the charter only if it does not contradict the NCS Bill. I look forward to support for that idea.

I am concerned about the transfer scheme in the schedule but not because there is anything wrong with it. It is good that the schedule provides the proper requirement that good consultation takes place, but it goes on to state in paragraph 5(3),

"it does not matter whether consultation takes place before or after the passing of this Act".

That seems a little cavalier to the staff interests which might be involved. I know it is a small organisation and it may be that there are other procedures that I am not aware of, but in this case I wonder whether the Minister might take this back and consider again whether the consultation should be completed before the Act is concreted, because it will set out the arrangements under which the staff are to be employed. In a parallel way, Amendment 54 asks that the unions, should there be any involved in this, and I hope there are, should also be involved in that process. I beg to move.

6 pm

Lord Ashton of Hyde: My Lords, I thank the noble Lord for raising those points. To take them in order, on Amendment 22, the fact that the business plan is being published before June in the financial year with which the plan is concerned is intentional. The business plan needs to cover the forthcoming work. I agree that ideally we would want it as early in the financial year as possible. We have allowed the NCS Trust a reasonable period of time to produce the plan, but the requirement to publish it before June will ensure that it will precede the bulk of the year, to include the trust's busiest time, as the noble Lord mentioned, which is overseeing the programme during the summer holidays. I will think about the noble Lord's suggestion of "no later than June" as opposed to "before June". I cannot see that it makes a huge amount of difference, but I will certainly think about it, without any guarantee of doing anything about it.

The noble Lord's Amendment 48 mirrors what is in Article 15.1 of the charter by making it explicit that amendments to the charter must not contradict the provisions of the Bill. The noble Lord could not resist mentioning that he had found a difference between the Bill and the charter, but I acknowledge it. It is perfectly reasonable for him to mention it yet again. I assure the noble Lord that the Bill, when enacted, will have primacy in law over the royal charter, as he said, which is an essential legal principle. However, given that the charter governs how amendments to its own contents can be made, I argue that the requirement need sit only there.

Amendments 53 and 54 concern Schedule 1, which outlines the transfer scheme for the trust. The Government and the current NCS Trust agree that conducting a proper consultation prior to Royal Assent, which we hope will be early next year, would not be practical. We would want to make sure that it is exactly that:

an open consultation, which gives all relevant stakeholders the time to give their considered views. Other noble Lords, including the noble Lord, Lord Blunkett, have been clear that the transition between old and new bodies will need time. The Government agree. I agree to write to the noble Lord about transition arrangements. We expect this to take between 12 and 18 months. The staff consultation is a critical element of this. We should not be rushing into it now before the rest of the transition has begun.

We agree with the noble Lord's point on Amendment 54. Schedule 1 requires the Secretary of State to consult with those persons considered likely to be affected and those that appear to them to represent their interests. I can clarify for the noble Lord that the existing clause is designed to capture, in the usual way, staff and unions as appropriate. I hope I have laid out the Government's ambition clearly and that the noble Lord will feel able to withdraw the amendment.

Lord Stevenson of Balmacara: I thank the Minister for his consideration. I am sorry that there was a 0-4 scoreline, but these things happen. I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Clause 5 agreed.

Clause 6: Annual report etc

Amendments 23 to 38 not moved.

Clause 6 agreed.

Amendment 39 not moved.

Clause 7: Notification of financial difficulties

Amendment 40

Moved by ***Lord Cromwell***

40: Clause 7, page 3, line 34, at end insert—

"(c) there is an investigation into, or allegations of, inappropriate or criminal behaviour of—

(i) the NCS Trust or an NCS provider, or

(ii) an NCS Trust or an NCS provider employee or volunteer, in relation to their activities with the NCS Trust or the NCS provider."

Lord Cromwell (CB): My Lords, before I speak to the amendment, I draw the Committee's attention to the wonderful painting on the opposite wall, showing Daniel who would, no doubt, have been a graduate of the NCS, had he been able to. Is it my imagination, or is he pointing a rather admonishing finger at the Minister? Noble Lords can be the judge. I thank the Minister for meeting me to discuss the amendment. I give my overall support to the Bill and what it seeks to achieve. Indeed, I have already proposed to my twin sons, who were 16 last Monday, that they should sign up to the programme.

The most obvious feature of the Bill is that it enables the NCS to gain access to very substantial amounts of public money, both to expand its own work with young people and to subcontract a network of other bodies also working with young people. Given the financial implications of the Bill, there is provision for an immediate report to the Secretary of State if the organisation gets into financial difficulties. That is appropriate and seeks to learn the lessons from other bodies that have received substantial public money and ended up in an unhappy situation. One such has been referred to repeatedly in the Committee's discussions today and previously.

Amendment 40 simply seeks to introduce a similar requirement should allegations or evidence occur of other forms of impropriety or inappropriate behaviour with young people. This would learn the lessons from the distressing cases of other organisations charged with looking after young people and children where abuse and other criminal acts occurred which were tolerated, ignored or, indeed, covered up, sometimes for decades, while wrong behaviour continued unchecked. Although we hope it will never occur, it would be naive to suppose that a network of organisations and people working with children will never give rise to such incidents or allegations, whether well founded or not.

The acid test is whether, should such an allegation or incident occur in one of the organisations being funded, the Secretary of State would want to know immediately. My strong belief is that the Secretary of State would want to know at once. When the Minister and his officials met me recently to discuss the amendment, there was some suggestion that the requirement might already be covered more generically somewhere in the documents of the NCS. I look forward to hearing further from the Minister on that point. My strong view is that, even if there is some clause deep in the NCS text that could be interpreted as enabling the NCS to be held to account post facto if it eventually emerges that something has occurred or been alleged, it would be far more helpful to have in the Bill, in clear, unequivocal terms, a responsibility to report to the Secretary of State as an automatic and immediate action so that the matter is put beyond doubt. This would make it far more likely that such matters would be addressed promptly, rather than emerging painfully and traumatically later. There is a great temptation for any organisation, particularly where funding is at stake, to believe that such matters are better dealt with—or, perhaps, contained—locally rather than shared upwards. As noble Lords will know, there is an inquiry struggling to get under way in the other place into areas where such lapses of judgment in the care of children have occurred in the past.

Finally, I am wary of anything in the Bill which will burden the NCS, or those with whom it works, with any additional administrative burden or cost. The amendment will not do so: it is a simple requirement to notify immediately in the event of an occurrence and not a regular or time-consuming administrative task. There is much to support in the Bill, and I hope that my straightforward amendment will enable a modest but important enhancement. I beg to move.

Lord Ashton of Hyde: My Lords, the noble Lord, Lord Cromwell, makes the case that, in the same way that the Government should be informed in the case of serious financial issues, it should be informed in the event of a criminal allegation or investigation. We absolutely

[Lord Ashton of Hyde]
agree that the Government must be informed should an investigation or allegation of this kind occur. It is important to note that the royal charter, the trust's constitutional document, specifies that it must,

"treat the need to safeguard and promote the wellbeing of participants as the paramount consideration",

so we are in evident agreement about the importance of the trust's responsibilities in this area.

I understand that the noble Lord's intention here is to make these responsibilities explicit. We agree that such important matters must be absolutely clear, so perhaps we might discuss with him later how we may go about doing just that. For example, the noble Lord's amendment does not distinguish between different types of criminal behaviour; he does not mean safeguarding alone. We would need to give some consideration to proportionality here and to which offences government needs to be informed of. With that commitment to consider this further, I hope the noble Lord is satisfied that he can withdraw the amendment.

Lord Cromwell: I thank the Minister for his comments and look forward to a further chat with him and his officials. I beg leave to withdraw the amendment.

Amendment 40 withdrawn.

Amendment 41 not moved.

Clause 7 agreed.

Clause 8 agreed.

Clause 9: HMRC functions

Amendment 42

Moved by ***Baroness Barker***

42: Clause 9, page 4, line 5, at end insert—

"( ) Her Majesty's Revenue and Customs must—

(a) inform the NCS Trust and the Secretary of State annually of the costs of fulfilling its duties under this Act; and

(b) include this cost in its annual report under section 6(4) of the Government Resources and Accounts Act 2000 (resource accounts: scrutiny)."

Baroness Barker: My Lords, the Minister and I have differed on whether the term "unique" is applicable. In this regard it certainly is, because the NCS will have the unique privilege of being advertised to every 15, 16 and 17 year-old by Her Majesty's Revenue and Customs. I thank the Minister for the explanations that he gave to noble Lords not just at Second Reading but in meetings about how that will happen and about the rationale for choosing the HMRC, which is the body with the most accurate information about 16 and 17 year-olds. He will know, because we had a discussion, that I have a reservation about a very small group of 16 and 17 year-olds for whom this may present a problem—that is, transgender young people, who may be written to using names that are no longer appropriate, and so on. That issue is not to be solved within the Bill; it is a wider issue than that, but I hope that it is one that, given the universal nature of this contact, the Government might give some consideration to.

The value of being able to contact every 16 and 17 year-old is immense. Quite how valuable it is we will come to know only in years to come when we have the annual reports, which will tell us whether the body has achieved the universal coverage of young people expected of it. In the meantime, it might be valid to know the cost of doing this, so we have come forward with the amendment. It is, again, a matter of reporting to high standards. Charities are often required in their annual reports to make declarations about help that they have had in kind. I know that it is not intended that the body be a charity, but none the less it seems to me that government could be open about the extent to which the trust is having this additional, not to say unique, promotion to young people, so that we and all others who will watch this organisation intently can see how well it performs, given the unique nature of its support. I beg to move.

6.15 pm

Lord Cope of Berkeley (Con): My Lords, I am unhappy about Clause 9 standing part of the Bill. I should make it clear straightaway that this marketing ploy—I think it was described as such by the Minister, or he may have used a similar phrase—is a brilliant idea as far as the NCS is concerned, but it is a rotten idea as far as HMRC is concerned. That is the basis of my opposition to this clause.

HMRC has for centuries guarded its data on individuals passionately and with great care. That is, after all, statutory. That is why we have to amend the law in order to allow this to happen. However, it is more than that. It believes that it is essential for the collection of tax. I was a Treasury Minister in the Commons, and I remember very clearly that sometimes there were clauses in Finance Bills which were designed to catch particular things that were happening in the tax system where a fiddle was going on or somebody was trying to do something that HMRC did not like. It would never disclose, even to me, the Minister who was going to have argue about it in the Commons, the names of the taxpayers, even if they were great companies, that might be involved in the tax arrangements. That is how carefully it guarded its data, yet they are to be used for this marketing ploy.

I am concerned, not least about the slippery slope argument. If HMRC is pushed into doing this for the NCS, there are all sorts of messages that the Government constantly want to put out to the population and to particular members of the population, such as road safety or health issues such as stopping smoking or having a flu jab. There are all sorts of matters where it is very desirable that the Government should put out those messages, but if they are all allowed to be put out by this mechanism—my goodness. When you get a letter from HMRC you will have to empty it into the waste paper basket just as you do with magazines nowadays with all the sales literature and charity appeals that fall out of some of them. That is why I am very cautious about whether we should allow this clause into the Bill. In particular, I want to put a peg in the slippery slope to try to ensure that it does not happen in other Bills for quite other purposes.

There is one other point about the drafting of the Bill. This is what I think of as the Portia point. HMRC and the NCS will be able to send messages to

young people, carefully defined and, as we discovered the other day, defined more narrowly than Clause 1 and the scheme as a whole, or to their parents or carers. If HMRC sends a message of this kind to an 18 year-old, that is illegal and HMRC will be committing a crime. If it sends it to a childless couple, a grandparent or someone else, it will be going beyond what is allowed in this clause. I suggest that some consideration might be given to that by those who draft these things. However, my major point is to try to make sure that if this goes through—and I shall not oppose it, of course—it should not be a precedent for HMRC sending out messages to all sorts of groups whom the Government wish to influence or to sell something to.

Lord Lucas (Con): My Lords, since this is HMRC and it refuses to use email, presumably this is printed material. If it is sending it out to this group of kids, that is a couple of million kids a year and their parents, at £1 a time when you include the postage and the printing. This is not cheap stuff. I read the wording of this clause to allow the National Citizen Service to include anything in here. It says what is in here. It can include advertisements for other charitable services or perhaps for a bank to raise a bit of money for itself. This seems a very widely drafted clause, and I am not at all sure that it achieves the purposes that have been set out for it.

Lord Stevenson of Balmacara: My Lords, I have an amendment in this group. This is one of my favourite topics. I have raised it in every Bill I have worked on, with no success at all, usually to substitute "must" for "may". On this occasion, I noticed rather late in the day that there are two "mays" in this clause, and I have to be careful that it is not the first one, because that would play directly into the hands of the noble Lord, Lord Cope, who has made quite clear his reservations about this arrangement, which is going to provide the necessary oxygen to try to fuel the excitement that will be felt right across the country when letters drop into the houses of those who might be eligible to join. He might want to hold his choler a little longer because the Digital Economy Bill, which is coming down the track very shortly, contains swathes of permissions for data to be shared, not only within Whitehall, which is perfectly understandable, but wider, to local authorities and others. The noble Lord ain't seen nothing yet. It is going to be quite interesting to see how that plays here.

I am sorry to have taken up the Committee's time. My amendment deals with Clause 9(3) in the context of communicating information. I think it has probably come from the draftsman's pen because "may" and "must" are drafted as "may" throughout. There is probably a word processor instruction to make sure that no "musts" ever appear. But surely on this occasion we are talking about information that has to be derived by the NCS from its own resources, and it must be that information that goes out. Therefore, it is right on this occasion that it should be "must".

Lord Ashton of Hyde: My Lords, I thank noble Lords for bringing us to Clause 9 and the new power for HMRC, which has caused a lot of comment in the course of the Bill. I reiterate that this is not the only marketing measure the NCS Trust will use. Your Lordships need only to look at its Twitter account to see its social media presence. However, this power is a means of ensuring, as far as government can, that as many young people as possible have the opportunity to hear about the NCS. HMRC will send on the information but it will not feel or look like an HMRC communication. My speaking notes say it will be colourful and exciting—I am sure it will—and it will be written by those at the trust who know how to communicate with young people effectively.

Amendment 42 in the names of the noble Baroness, Lady Barker, and the noble Lord, Lord Wallace, alludes to the importance of ensuring that the cost of HMRC writing to young people is value for money. The charter specifies that in all it does the trust must have regard to value for money and I think this is a principle that we all agree on. HMRC will recover the costs it incurs from the use of its staff, time and resources. These costs will therefore be met from the budget allocated to the NCS rather than from HMRC's own budget. It is HMRC policy to do so and therefore, as an operational matter, it will need to inform the Secretary of State for Culture, Media and Sport. The expenditure will therefore be included in the NCS expenditure listed in DCMS's accounts.

The noble Lord, Lord Stevenson, raised the subject of who will be the author of the information HMRC sends out to young people or their parents or carers. I made the point that HMRC will act almost as a delivery service for the NCS Trust—a post person, if you like. The noble Lord's amendment is in keeping with that in changing the ability for the trust to determine the content of the communication into an obligation to do so. Although "may" is one of my favourite words, we agree with him. This is something I intend to return to on Report.

On my noble friend Lord Cope's wish to omit the whole clause, I understand his point. As a humble Treasury Whip, I too stood at the Dispatch Box and argued for the need for confidentiality of HMRC information, because it has been shown to aid taxpayer confidence and therefore increase the tax take. However, I respectfully disagree with the argument that this will open the floodgates. HMRC is using the data—only names and addresses—on the NCS's behalf specifically to prevent it leaving HMRC custody and to keep it confidential. It will maintain its centuries-old commitment to keep confidential all information about individual taxpayers. In fact, this is about not taxpayers, but child benefit recipients. HMRC suits this purpose because it has central government's best data on young people because of child benefit data. At the age of 16, young people receive their national insurance number from HMRC, which marks the transition to adulthood. At the same time, they become eligible for the NCS, an experience we want to become a rite of passage. The same is not true of road safety or flu jabs, which are ongoing concerns and have a closer affinity with other parts of the public sector, such as the NHS and the DVLA.

With those explanations, I hope noble Lords will feel able not to press their amendments.

Baroness Barker: I thank the Minister for his response. He will appreciate that, because no other organisation is given this benefit in kind, it is something which

[Baroness Barker]
noble Lords will look at with considerable care in future years, not least to see its efficacy. However, I beg leave to withdraw the amendment.

Amendment 42 withdrawn.

Amendments 43 to 45 not moved.

Clause 9 agreed.

Amendment 46

Moved by ***Lord Lucas***

46: After Clause 9, insert the following new Clause—

"Duty of care

(1) The NCS Trust has a duty of care to young people who participate in its programmes.

(2) The NCS Trust may discharge this duty by—

(a) assuring the quality of its programmes by—

(i) setting out publicly the standards which its programmes, and those organising them, should meet,

(ii) setting out publicly the process which it will follow in assuring these standards,

(iii) arranging for the assurance process to take place, and

(iv) publishing the results of the assurance process;

(b) collecting information on the experience of every young person at the end of each programme, and making reasonable efforts to do so again several months later, and then—

(i) publishing a digest of this information at programme and school level, and

(ii) making the data available to researchers subject to reasonable safeguards;

(c) organising and publishing biennially a longitudinal evaluation of the performance of its programmes and their long-term effects;

(d) establishing a system to—

(i) facilitate complaints and the raising of concerns,

(ii) take effective and appropriate action in respect of each complaint or expression of concern,

(iii) record the complaints or concerns and the action taken,

and including a summary of this in its annual report;

(e) publishing the basis on which it recommends other organisations to its alumni, or to young people who are not yet old enough for its programmes, including—

(i) a list of organisations that it recommends, and

(ii) the material it makes available on its website and to participants in its programmes, containing information on such organisations."

Lord Lucas: My Lords, this amendment is about openness. It sets out all the ways in which the National Citizen Service should be open with us and others involved, in particular parents and carers, as to what is going on, the standards that it expects and how it enforces those standards. It is set in the context of a proposed new clause that says, "If you are open in these ways, then that is enough to satisfy your duty of care to the children concerned".

The NCS is bound to be on the end of endless lawsuits. You cannot have this number of children in odd situations without things going wrong. The NCS is the obvious organisation with money. Charities never have enough money to make them worth suing; the NCS has pots. Giving the NCS some degree of protection seems worthy to me, but the main purpose of the proposed clause is openness.

The easiest thing for me to do is to ask the Minister to reply, then I will pick up on anything he says that I disagree with. I beg to move.

Lord Ashton of Hyde: My Lords, I thank my noble friend for briefly taking us through the amendment, the intention of which relates in part to the concerns raised by the noble Lord, Lord Cromwell. As I have said, the trust's draft royal charter stipulates that the NCS Trust's paramount concern is the well-being of young people participating in the programme. To fulfil this obligation, it must ensure a proper duty of care to those young people. The Bill leaves the trust with the operational freedom to determine how best to do this but the Government and Parliament can hold it to account for how it performs.

I am pleased to confirm to my noble friend and the noble Baroness, Lady Royall, that we support a longitudinal study as a means to evaluate the NCS and have done some work in this area, monitoring certain participants year on year to track benefits. We have, however, avoided going into this level of detail in the Bill to allow the trust scope to innovate in the future—evaluation practices and terminology might change. When I responded to the first group of amendments I made the point that we have to allow the trust as much freedom as possible to use its own expertise. We agree, though, that it is essential that it reports on the quality of the programme and Clause 6(2)(c) makes this a requirement. I hope my noble friend will be satisfied with these commitments for the time being and feel able to withdraw the amendment.

Lord Lucas: My Lords, I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Amendments 47 to 50 not moved.

6.30 pm

Amendment 50A

Moved by ***Lord Faulkner of Worcester***

50A: After Clause 9, insert the following new Clause—

"Heritage railways and tramways: NCS programmes

(1) Nothing in this Act shall prevent a young person from working as a volunteer on a heritage railway or tramway, as part of a programme provided or arranged by the NCS Trust.

(2) In carrying out its functions under this Act, the NCS Trust may not act in a manner which has the effect of preventing a young person from working as a volunteer on a heritage railway or tramway as part of a programme which is not provided or arranged by the NCS Trust.

(3) In this section—

(a) "young person" has the same meaning as "child" in section 558 of the Education Act 1996, save that the person referred to must have attained the age of 12 years;

(b) "heritage railway" and "heritage tramway" have the same meanings as in regulation 2 of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006; and

(c) "volunteer" means a person who engages in an activity which includes spending time, unpaid (except for any travel and other out-of-pocket expenses), doing something which aims to benefit the heritage railway or heritage tramway concerned."

Lord Faulkner of Worcester (Lab): My Lords, I apologise to the Committee and to the Minister for tabling Amendment 50A so late, but it has taken a while to establish whether or not my objective can be accomplished by the addition of a new clause. I am extremely grateful to the Public Bill Office for advising me on the wording of the amendment.

Like every other noble Lord who has spoken, I warmly endorse the Bill's objective of encouraging the participation of young people in projects and programmes that benefit them and our society in general. The purpose of my amendment is to ensure that in one particular sphere of activity these objectives and programmes are not unintentionally placed in jeopardy by the Bill. That sphere of activity relates to the operation of heritage railways and tramways.

I declare an interest as president of the Heritage Railway Association, a not-for-profit body which serves as a trade association established to support the 200 or so preserved railways—many operated by steam—and heritage tramways that exist in the country. The sector makes a considerable contribution towards tourism, leisure activities and local employment. It also plays an important part in encouraging young people to serve as volunteers, so making a material contribution to the running of these enterprises. In return, the railways and tramways provide young people with training and work experience, and help to instil in them teamwork and leadership skills, which is very much in line with the objectives of the National Citizen Service Trust.

In the circumstances, your Lordships might wonder why it is thought necessary to add this new clause to the Bill. The Heritage Railway Association has been advised by leading counsel that existing legislation—specifically, the Employment of Women, Young Persons, and Children Act 1920—throws doubt on the legality of engaging young volunteers in the running of heritage railways and tramways, as it expressly excludes the employment of children in an industrial undertaking. The definition of "industrial undertaking" includes railways, and "child" is now defined by Section 558 of the Education Act 1996 in effect to mean an individual who has not yet reached 16. It had long been assumed that "employment" had its usual meaning of "work under a contract of employment", but counsel has advised that it extends to include work carried out in a voluntary capacity. So the 1920 Act, passed to prohibit the exploitation of women, young persons and children in an industrial setting—an entirely worthy objective—has been found to make unlawful the voluntary engagement of youngsters on heritage railways, which of course did not exist in the 1920s.

Given the highly appreciated input made by young volunteers to the operation of heritage railways and, more importantly, the need to continue to foster such input for the benefit of the youngsters themselves, and for the future of the railways, we need to secure a resolution of this dilemma. Having explored other ways around the problem, the only feasible solution would appear to be to seek an amendment to the law. I hope that, in any such legislation, the applicable age limit could be set somewhat lower, as a child's interest is said to crystallise at about 12. Parental approval would be mandatory, of course, and the railway would need to keep a register of the children involved, as the 1920 Act already stipulates. The standard safeguarding, health and safety, and supervisory requirements would necessarily apply.

I believe that an amendment such as this would be looked on favourably by the Office of Rail and Road as enforcing authority. I further believe that, as a result of an exchange of correspondence that I had with Nicky Morgan when she was Secretary of State for Education, that department is also sympathetic to the need to resolve this issue by amendment to the law. Hence the reason for this proposed new clause, to make it clear beyond doubt that the Bill is not to be interpreted in this way. One such issue that might give rise to uncertainty could be the fact that, while the rest of the Bill provides for a lower age of 15 for its application, the clause reflects the heritage rail sector in favouring a minimum age of 12 for its volunteers, in the belief that, on the basis of expert opinion, a person's interest is more likely to endure at that age.

I wish to make it clear that the proposed new clause would in no way limit the application to children and young people of standard health and safety, safeguarding and supervisory requirements of existing general legislation. The rest of the proposed new clause is self-explanatory. I beg to move.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord for his amendment. He reminds us all of the value of heritage railways to this country and how important their upkeep is. I agree that many heritage railways are reliant on volunteers for their maintenance and operation. I also agree that volunteering for a heritage railway can provide young people with many of the skills that the NCS wishes to instil.

On the noble Lord's concerns about the existing law, I agree that there should be no barriers to young people volunteering their time to support heritage railways. NCS participants work with the local provider delivering the programme to choose a local cause, or charity, to work with during the social action phase of the NCS. Sometimes the provider will invite local charities to present to the young people; sometimes the young people themselves have a clear idea about what they want to dedicate their efforts towards. We agree that it would be wonderful if a group of young people were to choose a local heritage railway as the focus of their efforts—either to fundraise for it or to spend time on site.

I understand the noble Lord's reasons for tabling this amendment—to seek to amend the law in this area. While it may not be appropriate to do this in this Bill, which does not identify particular areas in which the trust should or should not intervene, I commit to take away the points raised today and to engage with the noble Lord to explore the issue further. There are

[Lord Ashton of Hyde]
other things that we need to look at, such as what we mean by "young people" and making sure that it is consistent across the Bill. I hope that the noble Lord accepts my points on this and my commitment to look at the matter further, and feels able to withdraw it for the time being.

Lord Hodgson of Astley Abbotts: I had not cottoned on to this issue before, but I have been listening to this debate. There is, of course, the Canal & River Trust. I am not sure whether a canal would fall within the requirements of the 1920 Act as mentioned by the noble Lord, Lord Faulkner.

Lord Faulkner of Worcester: Yes, my understanding is that canals are also regarded as industry, so they would be covered by the 1920 Act.

Lord Hodgson of Astley Abbotts: That is an important area, where there is a lot of work going on. It is an important charity and it gathers together a lot of volunteers. It is working very hard with regional groups—so if this conversation goes on, could its requirements also be built into the discussion that the Minister is having with the noble Lord, Lord Faulkner?

Lord Ashton of Hyde: The noble Lord makes a good point which also illustrates why it takes time to go through all the ramifications; for example, this would not be just canals. I am sure there are many other organisations which might fall foul of the Act that the noble Lord talks about. That is something to consider, and it may therefore be why it is not possible in the time to add it to this Bill, but I will take that on board and I accept the point that it could apply to more than just railways.

Lord Faulkner of Worcester: I am most grateful to the Minister, who has gone considerably further than I feared he might be able to this afternoon, particularly in reinforcing the point that there should be no barrier to young people volunteering their time to work on heritage railways. That sentence is extraordinarily helpful. I accept with great gratitude the offer to discuss this further with him before Report. I would love the noble Lord, Lord Hodgson, to be part of that discussion so that we can talk about volunteers on canals as well. I beg leave to withdraw the amendment.

Amendment 50A withdrawn.

Clauses 10 to 12 agreed.

Clause 13: Extent

Amendments 51 and 52 not moved.

Clause 13 agreed.

Clauses 14 and 15 agreed.

Schedule 1: Transfer Schemes

Amendments 53 and 54 not moved.

Schedule 1 agreed.

Schedule 2 agreed.

Bill reported without amendment.

Committee adjourned at 6.42 pm.