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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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

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House of Lords

Tuesday 5 December 2017

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Oaths and Affirmations

2.36 pm

Baroness Jowell took the oath, and signed an undertaking to abide by the Code of Conduct.

Rural Poverty

Question

2.37 pm

Asked by Baroness Jones of Whitchurch

To ask Her Majesty's Government what actions they plan to take to tackle rural poverty.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, government policy is based on economic prosperity and helping people out of poverty. The Government are again increasing the national living wage and tax thresholds, investing more than £9 billion in affordable housing, introducing the warm home discount, reforming the energy company obligation and providing 30 hours of free childcare. All these are intended to help people and families with low incomes across the country.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that reply, but he will have seen the latest figures showing that UK poverty levels are increasing, with a 30% increase for children just in the past year. This is particularly damaging in rural areas, which are already being left behind economically in comparison to growth in the cities. This is a direct result of the Government's policies. We know that rural employment is too low, low skilled and insecure. The abolition of the Agricultural Wages Board is making matters worse for those who work on the land. Further, young people in rural areas do not have easy access to decent schools, training opportunities or post-16 education. When are the Government going to accept their responsibility to tackle rural poverty and the lack of social mobility in these areas, which is holding their prosperity back?

Lord Gardiner of Kimble: My Lords, I entirely agree that we need to advance on these subjects. That is why I am pleased to say that since 2010 we have 600,000 fewer people in absolute poverty—a record level—200,000 fewer children in absolute poverty, 300,000 fewer working-age adults in absolute poverty, 3 million more people in work and 954,000 fewer workless homes. That is the way in which we will ensure prosperity across the country and, in fact, it is why rural areas have lower unemployment. We are working extremely hard on a range of issues to ensure rural prosperity; the Government are doing all they can on that.

Baroness Eaton (Con): My Lords, can my noble friend update your Lordships' House on childcare policies and their impact on rural communities?

A noble Lord: I bet he has got an answer to that.

Lord Gardiner of Kimble: Well, of course I have got an answer to that, my Lords. I have good hearing. Childcare is a hugely important part of the beginning of anyone's journey, and that applies both to working families and to children. Two of the areas trialled on the childcare provision were in rural counties, to ensure rural proofing. In fact, there are 15,500 more teachers working in state-funded schools in England than there were in 2010. I am sure that all noble Lords agree that that is a very good thing.

The Duke of Somerset (CB): Does the Minister agree that the speedy rollout of truly fast broadband in the countryside, not the phantom speeds bandied about by Openreach, would lead to a much greater supply of jobs and thus an increase in prosperity?

Lord Gardiner of Kimble: My Lords, this morning I had a meeting about rural enterprise with many of the interested parties. A leader of one local enterprise partnership said, "If we can crack connectivity, we will have cracked almost everything". I entirely agree. This is a challenge in rural communities and for business. We are on track, with 95% of UK homes and businesses scheduled to have access to superfast broadband by the end of this year, and are seeking to increase that to 97% over the next few years. However, the universal service obligation is important as a safety net and we are looking at all sorts of innovative ways of getting to hard-to-reach areas.

The Lord Bishop of Winchester: My Lords, housing is a key factor in evaluating poverty. In the county of Hampshire alone, over 20,000 people are on council-house waiting lists, with over 4,000 of them in the New Forest. Given that the Government have recently announced significant new funding for new housebuilding and new affordable homes, can the Minister give us a clear indication of the expected spending on homes for social rent in rural areas?

Lord Gardiner of Kimble: The right reverend Prelate raises another important issue, that of affordable housing in the countryside. Between 2010 and 2017, 119,000 affordable homes were delivered in rural local authorities in England. We want to do better, which is why the Government have increased funding for the 2016 to 2021 affordable homes programme in England to more than £9 billion. Clearly, I—and other Ministers—want to ensure that rural housing associations bid for this programme, because it is important to ensure it for multigenerational situations in villages.

Lord Watts (Lab): My Lords, the Government set out a whole batch of measures that they are proposing to deal with poverty, yet poverty is increasing. What is going wrong with the Government's policy?

Lord Gardiner of Kimble: The answer to all these issues is a growing economy. Last year, we were the fastest-growing G7 economy. That is a very strong point. After all, it is through a growing and successful economy that we will do all the things that we want and need to do. That is why £70 billion is being devoted to low-income families and why we have record low unemployment. That is a very good thing.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, with ever-increasing house prices in rural areas, local working families are priced out of the market. The right-to-buy scheme has not led to new housing replacing those sold. There are now large numbers of essential workers unable to afford to live in rural areas. Do the Government agree that it is time for them to provide homes for essential workers, such as care workers, teachers, nurses, firefighters and front-line police officers?

Lord Gardiner of Kimble: My Lords, that is why I mentioned the £9 billion in the affordable homes programme scheme. We did this precisely because we want people working in the countryside to be able to ensure that communities tick and that they have affordable homes. Last week I was at a very interesting rural affordable housing development in Warwickshire—another fine example of the many sensitively built and small-scale schemes doing exactly what we need to do to keep villages vibrant.

Lord Elystan-Morgan (CB): My Lords, while rural poverty is of course of immense importance, does the Minister not agree that as far as rural areas are concerned there is a comprehensive disadvantage? In almost any heading of amenity they come a long way down in the list. It is a question of not just poverty but a whole range of amenities.

Lord Gardiner of Kimble: My Lords, as a Government we want to ensure that disadvantage is eradicated, but I am very proud of coming from a rural background. Rural areas are wonderful places to live, work and play. They are beacons of excellence in looking after our natural environment. In truth, unemployment, poverty and homelessness are lower in rural areas. I very much want us to ensure that all these indices are reduced wherever we are in the United Kingdom.

Brexit: Irish Border *Question*

2.46 pm

Asked by Lord Dykes

To ask Her Majesty's Government what response they have received from the European Union negotiating team to their proposals on the Irish border problem.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, there is much agreement between the UK and the EU on the proposals for how to address the unique circumstances of Northern Ireland and Ireland in the light of the UK's withdrawal from the European Union. We remain firmly committed to avoiding any physical infrastructure on the land border between Northern Ireland and Ireland. We welcome the Commission's commitment to this in its guiding principles paper.

Lord Dykes (CB): My Lords, see how grateful the DUP is for the £1 billion of taxpayers' money to keep Mrs May in power without any real mandate. Will the Minister please tell Mrs May what is now obvious:

Brexit is becoming a total disaster and the PM must now save our country's future and the precious Anglo-Irish agreement?

Lord Callanan: I congratulate the noble Lord on having the foresight to get a Question on this on the Order Paper for today. He will be unsurprised to know that I do not agree with him. There was a referendum on the subject. We feel we have to respect the results of that referendum.

Lord Hain (Lab): My Lords, why was anybody surprised by yesterday's negotiating car crash in Brussels? Unionists were quite legitimately always going to insist that they could not be put in a status distinct from the rest of the UK. At the same time, to maintain the Irish border as open as it has been alignment would be needed on trade, customs and regulation. Surely the answer is to apply that alignment across the UK, then the problem is solved.

Lord Callanan: As the noble Lord is aware, we are leaving the customs union and the single market. Northern Ireland will be leaving them with us.

Lord Trimble (Con): Will the Minister agree that a lot of the problems yesterday stemmed from the fact that people were leaking inaccurate accounts of what was in the Government's paper, and were not making it clear that the proposal for some form of regulatory alignment was heavily conditioned and of very limited application? If that information had been put into the public domain earlier in the day, would not things have gone much more smoothly?

Lord Callanan: My noble friend speaks with great authority on this subject, having been one of the architects of the Good Friday agreement. We all know the political sacrifices he made to bring that about. I pay tribute to him for that. I do not think it would be helpful for me to go into a blow-by-blow account of whataboutery on the negotiations. We are only half way through the negotiations. We will come back and make a Statement when we have agreement, but at the moment this is an ongoing, delicate situation.

Lord Wallace of Saltaire (LD): My Lords—

Lord Davies of Stamford (Lab): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Liberal Democrat Benches.

Lord Wallace of Saltaire: My Lords, I had always understood that if you are not in the customs union you cannot have frictionless trade; there would have to be some form of documentation and checks. Will the Minister confirm that or explain to us what sort of magical technological solution there is that can provide frictionless trade without common membership of the customs union?

Lord Callanan: My Lords, we have always been very clear that the unique circumstances in Northern Ireland require unique solutions. That is recognised by the European Commission and it is recognised by Ireland. Michel Barnier has said that. The model that we use for the Northern Ireland-Irish border will not necessarily be a precedent for what happens elsewhere.

Lord Kilclooney (CB): My Lords—

Lord Davies of Stamford: My Lords—

Lord Tomlinson (Lab): My Lords—

Baroness Evans of Bowes Park: My Lords, this really is not acceptable. It is the turn of the Cross Benches, then we will hear from the Labour Benches—but one Member of the Labour Benches.

Lord Kilclooney: My Lords, as one living on the border with the Republic of Ireland, I ask whether the Minister is aware that most people in Northern Ireland welcome the Government's proposals for maintaining the common travel area, for having no physical structures at the border and for 80% of our trade not to be controlled by customs. Can he confirm that, even today, in the context of membership of the European Union, Irish customs and United Kingdom customs operate not at the border but on either side of it?

Lord Callanan: The noble Lord speaks with great authority on this subject and I know he has contributed a lot to the peace process over the years, which is something we want to maintain. There is a lot of truth in what he has said.

Lord Davies of Stamford: My Lords—

Lord Tomlinson: My Lords—

Noble Lords: Oh!

Baroness Evans of Bowes Park: My Lords, I am afraid, with that kind of approach, we will hear from the Conservative Benches.

Lord Howell of Guildford (Con): My Lords, is there not some confusion here between regulatory alignment and regulatory recognition? Is not the latter principle one on which there is perfect freedom for the whole United Kingdom, including Northern Ireland, to make arrangements for outside trade in due course for continuing the smooth and reasonably frictionless low or non-border controls in Northern Ireland? What is the problem?

Lord Callanan: Of course, the wording is very important, but I am very clear that alignment is not the same as having no diversity.

Lord Tomlinson: My Lords, does the Minister accept that nobody has asked him to give a “blow-by-blow account”, which is how he referred to the questions he had been asked? Noble Lords have asked him to give a straight explanation, first, of what went wrong and, secondly, of how the Government propose to rectify it.

Lord Callanan: I thank the noble Lord for his helpful question. We are trying to reach agreement at the moment. This is an ongoing negotiation. We were always very clear that Monday was the first staging post towards this. I have no doubt that there will be further discussions towards the end of the week. When we have reached agreement, we will come back and report it to the House.

Lord Cormack (Con): My Lords, should we not heed the wise words of the noble Lord, Lord Trimble, but at the same time remember that in the referendum on 23 June last year a significant majority of the people of Northern Ireland voted to remain?

Lord Callanan: The referendum was held on a UK-wide basis, and the people of the UK voted by a majority to leave the European Union.

Royal Navy: Staffing Question

2.53 pm

Asked by **Lord West of Spithead**

To ask Her Majesty's Government what is the naval manpower ceiling required to ensure that all ships, air squadrons and submarines in the planned naval programme are fully staffed.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Government are committed to investing in growing the Royal Navy for the first time in a generation, utilising the department's whole-force approach to deliver defence needs. The naval service will continue to adapt to ensure that it has the correct number of personnel to operate, maintain and support all its ships, submarines and air squadrons. This whole force includes service personnel, the Royal Fleet Auxiliary, civil servants and contractors.

Lord West of Spithead (Lab): My Lords, I thank the Minister for his Answer—I have to say that my flabber is totally gasted. The bottom line is that there is a real issue with manpower within the Royal Navy. A ceiling is needed which allows some flexibility to recruit people of various types so that you have a little bit of spare so that you can man ships. The fact that we have laid up one Type 45, one Type 23 and HMS “Ocean” and that we are swapping Royal Marines for sailors shows that there is a real problem within our manpower. Is there any intention at all to honour the pledge given by the coalition Government to up the number above 400 towards the 4,000 limit, so that we will then be able to man our ships? And why have we stopped production of the Royal Navy and Royal Marines monthly personnel statistics and the pocket brief, so that we cannot see what is happening?

Earl Howe: My Lords, statistics are published on a regular basis but it has been decided that there is very little virtue in doing it month by month. On the noble Lord's first question, he will know that the 2010 SDSR predicated a manpower figure for the Royal Navy that has now been superseded by about 1,600 personnel. There will be 400 more, measured against the current complement, by 2025. So we can genuinely

[EARL HOWE]

talk about a growing Navy. We can also talk about a growing budget. There has been huge investment in the Royal Navy in the past few years, and that has gone not only into personnel but into cutting-edge equipment as well.

Lord Trefgarne (Con): My Lords, is it not the case that members of the Royal Naval Reserve can very often be deployed in support of their regular colleagues in the Royal Navy, often in specialist roles, to the overall advantage of the system?

Earl Howe: My noble friend is absolutely right. The maritime and, indeed, the RAF reserves are often used to provide individuals and small teams for specific roles, and their training is designed to integrate them with the regulars. In fact, my noble friend may be interested to know that there are reservists already serving on the offshore patrol vessels, supporting regulars, at the moment.

Baroness Crawley (Lab): My Lords, as I am sure the Minister is aware, Plymouth—a city I know very well—is home to 700 Royal Marines. Speculation is rife in the city about a reduction in their numbers and their locations. What comfort can the Minister give those 700 Royal Marines about their future in the defence of our country?

Earl Howe: My Lords, I hope that the comfort that I was able to give the House in last week's debate on the Royal Marines will have reassured many in Plymouth that there is no question of scrapping the Royal Marines. What is going on at the moment is a national security capability review, which is looking at numbers and capabilities and seeing how we can invest and spend our growing defence budget in the most intelligent way. But the ability to transfer personnel and equipment from ship to shore will remain highly relevant to the Royal Navy's capabilities.

Lord Campbell of Pittenweem (LD): My Lords, what is the Minister's view of the evidence given yesterday to the Public Accounts Committee by officials from his department, who said that more should be spent on defence, not least because of the adverse impact of the depreciation of the pound on the defence budget?

Earl Howe: My Lords, the depreciation of the pound is certainly an issue that we are wrestling with. To a certain extent, the Ministry of Defence hedges against currency devaluation but we cannot do that indefinitely into the future. We are protected to a large degree at the moment. But it is one of the reasons why we need an NSCR exercise such as the one going on at the moment, which is about not only investing in capability wisely but doing it in a cost-informed way.

Lord Anderson of Swansea (Lab): My Lords, there has recently been good news about co-operation with the French on naval capability. Does the Minister anticipate any further developments of this sort, where we co-operate with our close allies?

Earl Howe: Yes, indeed. One of our objectives is to strengthen our bilateral relationships, not only with the French but with Germany and other countries in Europe. But, as the noble Lord will be aware, the UK and France have had a long history of working together on operations and exercises, and the Combined Joint Expeditionary Force is a realisation of the commitment made in the Lancaster House agreement for our forces to train and operate alongside each other.

Lord Davies of Stamford (Lab): My Lords, following the Minister's answer just a moment ago about foreign currency exposure and the procurement of military equipment, would it not be sensible—in the light of recent, rather uncomfortable experience—to extend the period of that hedging to cover the full delivery and payment period for the relevant project at the time when the contract is signed and the project is undertaken?

Earl Howe: Certainly, that idea is under consideration, but I am not qualified to make a judgment as to whether a particular form of hedging, or the timing of a hedging contract, is opportune. That is for more skilled minds than mine.

Lord Clarke of Hampstead (Lab): My Lords, in all this talk about cuts and the debate last week on the Royal Marines, is there any saving grace for the most famous military band in the world, the Royal Marines Band? Has the band been ring-fenced to make sure that this nation does not lose such a valuable asset?

Earl Howe: My Lords, I am sure all noble Lords would agree that the Royal Marines bandsmen are the finest in the world, alongside those of the other Armed Forces. But on a more serious note, I emphasise to the noble Lord that the stories that have appeared in the press about what options may be on the table are pure speculation at the moment. No decisions have been taken on any of those options.

Nepal Question

3 pm

Asked by The Earl of Sandwich

To ask Her Majesty's Government what action they will take to support political stability and peaceful development in Nepal following the general election in that country.

Baroness Goldie (Con): My Lords, the completion of local, provincial and federal elections this year will be a landmark moment for Nepal, and it represents an important step in effective implementation of the constitution of 2015. I understand that turnout levels have been encouraging. The UK Government will work closely with the newly elected Nepali Government, as we have previously, to secure a lasting political settlement. This is a vital basis for future political stability and sustainable economic growth that will benefit the Nepali people.

The Earl of Sandwich (CB): My Lords, I thank the Minister for her encouraging reply, especially regarding the election. She will know that Nepal is at last emerging from many years of conflict. It has had emergencies,

political confusion and new Governments every year, for 26 out of 27 years. Will the Government therefore now stand by their 200 year-old friendship with Nepal and help that country towards national reconciliation, because many people have recent memories of the civil war? Will they help its people towards human rights, poverty eradication, political stability and the economic progress denied them for so long?

Baroness Goldie: I think there will be agreement across the Chamber with the noble Earl's sentiments. One of the constructive ways in which the UK Government are helping is of course through DfID. The DfID Nepal office invested £96 million during 2016-17 and will have a budget of £92 million for this year. As the noble Earl will perhaps be aware, that office works across three broad themes: harnessing opportunities for transformational change; delivering immediate benefits for poor people; and safeguarding Nepal from future shocks and stresses by helping with reconstruction and climate change issues. That goes a long way towards helping at grass-roots level with the very issues that rightly concern the noble Earl. He mentioned the important matter of reconciliation. There is a Truth and Reconciliation Commission, established by the Government of Nepal, which we applaud. We support its objectives and hope that, when it finally reports, its report will be published.

Lord Collins of Highbury (Lab): My Lords, I very much welcome the noble Baroness's response and her mentioning of DfID's programmes. DfID's programme for governance support has been critical in ensuring that the elections take place, or have taken place, relatively violence free. But there have been reports of violence, particularly in the Terai region, including pre-election violence and human rights violations. Can the noble Baroness tell us whether the Government are concerned about these reports, and whether she will step up the programme of governance support through DfID to ensure that there is a sustainable democracy in Nepal?

Baroness Goldie: I thank the noble Lord, Lord Collins, for raising a very important point. Yes, we are concerned at the continued election-related violence, including the use of improvised explosive devices. The UK has issued a statement condemning the attacks and calling on all parties to mutually respect the freedom of peaceful expression and assembly, as laid out in Nepal's laws and constitution. We also call on the security forces to comply with existing national and international standards when carrying out their duties. On the broader issue of human rights, the United Kingdom Government have been very prominent in urging Nepal to respect the need for a properly managed regime of human rights, and for tangible evidence that those are not only respected but implemented.

Baroness Berridge (Con): My Lords, the 2015 constitution was welcome in every regard, except the provisions relating to freedom of religion or belief which, as my noble friend may be aware, were built upon in October by a law being passed that criminalises blasphemy in similar language to the laws in Pakistan and criminalises attempts to convert somebody. Will the

Minister please outline what representations we have made to the Nepalese Government to ensure that religious minorities—Christians and Muslims, who are under increasing pressure—get to share in the development and prosperity that we are all hoping for for Nepal, particularly bearing in mind that the UK Government have invested £1 billion in a hydro-electric project in Nepal? I am sure our Christian and Muslim populations would be keen to see that everyone benefits from that investment.

Baroness Goldie: I thank my noble friend for her question. She raises an important issue and one that has invited considerable comment. During the drafting of the Criminal Code Bill 2014, to which my noble friend referred, our officials in Nepal met the Ministry of Law, Justice and Parliamentary Affairs to discuss the Bill and raise the need for compliance with international human rights standards, which include ensuring the protection of the right to change religion. The Minister for Asia, my right honourable friend Mr Mark Field, raised this matter with the Nepalese ambassador to London on 9 October 2017, and the British ambassador to Nepal raised it with the Nepalese Prime Minister on 16 October 2017.

Lord Dholakia (LD): My Lords, more than 2 million Nepalese work outside the boundary of Nepal, maybe even more because of the porous boundary of the country. Many of these people send remittances home to alleviate their family's poverty. The conditions under which these people are employed, particularly in Gulf countries, are very deplorable. What discussions have the Government had with those countries to ensure that the basic human rights of these workers are protected?

Baroness Goldie: The noble Lord raises an important point. Nepal is an independent, modern, free-standing democracy, as manifest by the recent and ongoing elections, and it is for Nepal to determine what it wishes to do in relation to its citizens who may be resident in other countries. The UK has always been vocal in urging respect for human rights, and we have been vigilant in condemning breaches of human rights wherever we have thought them to be occurring. The other aspect of the question raised by the noble Lord is in relation to the economy of Nepal, which is greatly dependent on remittances from its citizens coming back to the country. There is a desire to see the indigenous economy in Nepal broaden and grow. My noble friend Lady Berridge referred to hydropower, and that is certainly one of the untapped potential areas for development. The recent Arun III mega hydro project, which is shortly to start construction, is a very welcome indication of what is possible.

Terrorist Attacks

Statement

3.08 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I will now repeat a Statement made in the other place earlier today by my right honourable friend the Home Secretary entitled "Report on Recent Terrorist Attacks". The Statement is as follows:

[EARL HOWE]

“Mr Speaker, I would like to make a Statement on David Anderson’s report published today on recent terrorist attacks in London and Manchester.

The attacks which took place this year shocked us all. Our thoughts remain with the victims of the attacks and all those affected by them. I am conscious that many will still be suffering acutely. However painful, it is essential that we examine what happened so that we can maximise the chances of preventing further attacks in the future.

At the outset, I would like to remind honourable Members of the context. Andrew Parker, the director-general of MI5, recently said that we are facing ‘a dramatic upshift’ in terrorist threats, and as the so-called caliphate has weakened, Daesh has increasingly turned its attention to encouraging people to launch attacks in their home countries. Indeed, there is simply more terrorist activity, partly inspired and also enabled by terrorist propaganda and instructional videos online. Plots are developing more quickly from radicalisation to attack, and threats are becoming harder to detect, partly due to the challenge of accessing communications that are increasingly end-to-end encrypted.

MI5 and Counter Terrorism Policing are currently running well over 500 live operations—a third up since the beginning of the year—involving roughly 3,000 active subjects of interest. In addition, there are more than 20,000 further individuals—or closed subjects of interest—who have previously been investigated and may again pose a threat. I would like to pay tribute to MI5 and the police, who work tirelessly to keep us safe. I can announce today that they have now disrupted 22 Islamist terrorist plots since the murder of Lee Rigby in May 2013, including nine since the Westminster attack in March this year.

I now turn to the reviews. Counter Terrorism Policing and MI5 have conducted a thorough review process. I received from them 10 highly classified documents which analyse the attacks and potential improvements to operational practices. In June, I commissioned David Anderson QC to provide independent assurance of, and external challenge to, the reviews. I am today placing a copy of his unclassified assessment of the reviews in the House Library, and copies will also be made available in the Vote Office.

David Anderson concludes that the reviews have been carried out in an ‘impressively thorough and fair’ manner, and he endorses, so far as he feels qualified to do so, the conclusions and recommendations. Based on the MI5 and police reviews, David Anderson explains that:

‘In the case of the Westminster attack, Khalid Masood was a closed subject of interest at the time of the attack. Neither MI5 nor the police had any reason to anticipate the attack’.

Regarding the Manchester Arena attack, Salman Abedi was also a closed subject of interest at the time of the attack, and so not under active investigation. In early 2017, MI5 none the less received intelligence on him, which was assessed as not being related to terrorism. In retrospect, the intelligence can be seen to be highly relevant. Had an investigation been reopened at the time, it cannot be known whether Abedi’s plans could have been stopped. MI5 assesses that it would have

been unlikely. Across the attacks, including Manchester Arena, David Anderson notes that MI5 and CT Policing got a great deal right. However, in relation to Manchester, he also commented that,

‘it is conceivable that the attack ... might have been averted had the cards fallen differently’.

In the case of London Bridge, Khuram Butt was an active subject of interest who had been under investigation since mid-2015. A number of different investigative means were deployed against him, but they did not reveal his plans. His two conspirators had never been investigated by MI5 or CT Policing. In regards to Finsbury Park, neither MI5 nor the police had any intelligence about this attack. Taken as a whole, MI5 and CT Policing conclude that they could not,

‘find any key moments where different decisions would have made it likely that they could have stopped any of the attacks’.

None the less, they go on to make a total of 126 recommendations.

The recommendations made in the MI5 and police operational review fall into four broad categories. First, there needs to be a concerted effort to enhance MI5 and the police’s ability to use data to detect activity of concern, and to test new approaches in the acquisition, sharing and analysis of data.

Secondly, MI5 should share its intelligence more widely and work with partners such as local authorities on how best to manage the risk posed by closed subjects of interest in particular. We are considering undertaking multiagency pilots in a number of areas, including Greater Manchester, and I have already started discussing how to take this forward with Andy Burnham.

Thirdly, there should be a new approach to managing domestic extremism, particularly extreme right-wing groups, where their activity meets the definition of terrorism. Fourthly, there are a large number of detailed and technical changes which could be made to improve existing operational counterterrorism processes.

David Anderson ends his report with several reflections. First, intelligence is imperfect and investigators are making tough judgments based on incomplete information. This unfortunately means that not every attack can be stopped. As we do not live in a surveillance state, it will always be a challenge to law enforcement to stop determined attackers getting through. Despite this, we should remember that most attacks continue to be successfully disrupted. Lastly, David Anderson concludes that even marginal improvements are capable of paying dividends that could tip the balance in favour of the security forces in future cases.

I have discussed these reviews at length with David Anderson, and separately with Andrew Parker and the Metropolitan Police Commissioner, Cressida Dick, as well as their senior teams. I am grateful for all their work and am confident that they have asked the right questions and drawn the right conclusions. I am clear, as are they, that the implementation of the recommendations is crucial.

There will be those who seek to apportion blame for the attacks. We should be united in our clarity that it lies squarely with those whose cowardly acts killed 36 innocent people this year, and with those who encouraged them. At the same time, we must learn all

that we can from these attacks, and make sure that our overall counterterrorism response is equal to the shift we have seen in the threat.

I turn now to the next steps. Bringing those responsible to justice is our priority. We must not do anything that jeopardises the criminal prosecutions that are being pursued in relation to Manchester and Finsbury Park. The coroners' investigations will probe the matter further and independently assess the circumstances of the deaths. Inquests have already been opened into the attacks and suspended where criminal investigations are continuing. It is right that those inquests proceed wherever they can. If the coroners consider that they cannot fully deal with the relevant issues, that is the point at which to decide whether an inquiry is needed. We are ruling nothing out.

I welcome the Intelligence and Security Committee's intention to make these attacks its top priority, and I have already discussed this with my right honourable friend the Member for Beaconsfield. As I outlined, implementation of the recommendations will be crucial. I have asked David Anderson to provide an independent stock-take of progress in a year's time, but linked to implementation are resources. We will shortly be announcing the budgets for policing for 2018-19. I am clear that we must ensure that counterterrorism policing has the resources needed to deal with the threats we face.

Finally, these recommendations need to fit into the broader government review of our counterterrorism strategy. That review reaches well beyond MI5 and CT Policing to look at the whole-of-government response and at how we can work better with communities, the private sector and international partners. I conclude by thanking David Anderson for his independent assurance of these reviews. I again pay tribute to the excellent work of the police and MI5.

I end as I started. The thoughts of everyone in this House and the other place are with the victims, their families and all those affected by the attacks. I commend this Statement to the House".

My Lords, that concludes the Statement.

3.18 pm

Lord Rosser (Lab): My Lords, I thank the Minister for repeating the Statement made earlier in the House of Commons. We share the view expressed that responsibility for these awful incidents rests solely on the shoulders of the perpetrators. We all owe a debt of gratitude to our intelligence and security services and the police for the work they do seeking to protect us from acts of terrorism. Without their commitment and dedication, this country would not feel like a safe place to live. We know only too well from an act of terrorism here on our doorstep that their commitment and dedication can result in loss of life—in this instance, of a police officer doing his duty to the full. We should all be grateful to David Anderson QC for his report, although our first thoughts must be with the families and loved ones of those who died or suffered life-changing injuries in these awful incidents.

Those who have the burden of responsibility of protecting us are entitled to expect our full support. Her Majesty's Inspectorate of Constabulary has recently

reported that policing is under significant stress. Officer numbers have declined significantly since 2010 and further reductions in numbers of officers and police staff are on the way. A government claim that reserves totalling £1.6 billion are available to the police has been dismissed by Her Majesty's Inspectorate, which said that not only was the figure £200 million less than the Government had claimed but also that two-thirds was already earmarked to be spent.

The chair of the National Police Chiefs Council has been quoted as saying, "We've made £1.6 billion efficiency savings in the last five years and predict we'll save another £0.9 billion in the next five. This at a time when HMIC recognises policing is under significant stress from rising demand and reported crime that is increasingly complex with ... budgets due to fall in real terms over the next three years". The Metropolitan Police Commissioner has warned of cuts to officer numbers if her force has to make a further £400 million in savings because of budget pressures. The indicative profile of the counterterrorism police's grant allocation over the next three years sees a reduction of 7.2% in its budgets. Can the Minister say what the Government now intend to do to address that situation in the light of the Anderson report and the continuing, indeed increased, terrorist threat?

The Anderson report refers to the work of MI5 and counterterrorism police in improving their co-ordination and reliance on community policing, even though the Government have previously attempted to maintain, in the face of reductions in community and neighbourhood policing numbers, that counterterrorism and community policing are unrelated activities. What do the Government intend to do to bolster community policing, now that they have been told, not for the first time, that it is a vital part of counterterrorism activity, building confidence and trust among communities and securing crucial intelligence?

David Anderson has said that, in the case of the Manchester terrorist attack, MI5 and counterterrorism police,

"could have succeeded had the cards fallen differently".

How do the Government interpret that? We know that the police and security and intelligence services have more people who should be monitored than they can properly cope with. Do the Government intend to increase the resources available to address that reality?

Another area that is important in countering terrorism is the effectiveness or otherwise of border controls. Currently, scarce resources are available to be spent on telling people who have lived in this country for over 50 years that they face deportation before bundling them off to an immigration detention centre. On the other hand, resources are not available to prevent 11 people in a lorry from apparently being smuggled into this country undetected by border controls and found in a layby in Wiltshire only when they start banging on the side of the vehicle—11 people who could have constituted a terrorist threat. Is it not time that the Government had a hard look at not only whether they are providing sufficient resources to our hard-pressed security and police services to counterterrorist threats but whether they have their priorities right in how the resources available should be used?

[LORD ROSSER]

The Statement refers to the fact that the Government will shortly be announcing the budgets for policing for 2018-19. The Home Secretary has said that she is clear that we must ensure that counterterrorism policing has the resources needed to deal with the threats that we face. In the Statement, the Home Secretary also said:

“I would like to remind honourable Members of the context. Andrew Parker, the director-general of MI5 recently said that we are facing ‘a dramatic upshift’ in terrorist threats”.

If the Home Secretary is to deliver on what she has said, and the Government with her, about the need to ensure that counterterrorism policing has the resources needed to deal with the threats that we face, it has to be very clear in announcing the budgets for policing for 2018-19 that no one will have any grounds for saying that the police and counterterrorism activity are being left underresourced.

Lord Paddick (LD): My Lords, I too thank the Minister for repeating the Statement and associate these Benches with the Home Secretary’s sentiments concerning those affected by the terrorist outrages. As the noble Lord, Lord Rosser, has just reiterated, there is no doubt that the blame for the suffering that was inflicted remains with those who carried out these criminal acts and those who supported them. As far as I am concerned, we have the best intelligence and policing services in the world.

It is important to explain what a “dramatic upshift” in terrorist threats actually means. Having been briefed by those at the highest level, my understanding is that the number of people being influenced by extremist propaganda, particularly online, who are then tempted to conduct unsophisticated attacks such as those at Westminster, London Bridge and Finsbury Park, is increasing. Can the Minister confirm that it is the volume rather than the degree of sophistication, the amount of strategic planning or the co-ordination that is seeing a “dramatic upshift” in the threat?

In the case of the Westminster, Manchester and Finsbury Park attacks, which were apparently carried out by so-called “lone wolf” attackers, can the Minister explain how end-to-end encryption mentioned by the Home Secretary would have made any difference to the likelihood of those attacks being prevented? Bearing in mind that in all these attacks, except the London Bridge attack, none of the murderers was under active investigation, how would their communications have been monitored, whether end-to-end encrypted or not? In the case of the one attacker who was an active subject of interest, can the Minister confirm that the investigative means that were deployed against him could have overcome end-to-end encryption? Is it not the fact that end-to-end encryption is a global issue that cannot be banned, and that we should be focused on what we can do something about, rather than on what we can do nothing about?

Can the noble Earl confirm that David Anderson agrees with MI5 and Counter Terrorism Policing’s conclusion that they could not,

“find any key moments where different decisions would have made it likely that they could have stopped any of the attacks”?

The Home Secretary reflects David Anderson’s conclusion that intelligence is imperfect and investigators are making tough judgments based on incomplete information,

and she promises to deliver the resources Counter Terrorism Policing needs to deal with the threats we face. Does the Minister agree that a vital part of the intelligence picture is provided by community policing, to which the noble Lord, Lord Rosser, alluded? The day after the London Bridge attack, a neighbour of one of the attackers told journalists how he thought that the man was being overfriendly and was asking about hiring a van without using a credit card on the day of the attack. Despite, as the Home Secretary said, a “number of” investigative means being deployed against him, this intelligence, which might have been discovered by a community policing team to whom the neighbour may have had links, did not surface until afterwards.

Her Majesty’s Inspectorate of Constabulary and the Commissioner of the Metropolitan Police, among many others, have warned about the erosion of police resources and the demise of community policing. Despite assurances from Ministers to the contrary, the facts are that police budgets continue to fall in real terms. For example, the Metropolitan Police has already had to make savings of £600 million, with £400 million of cuts in the pipeline. Does the Minister agree that effective community policing is as important, if not more important, against the current unsophisticated threat, as Counter Terrorism Policing, and that community policing must also have the resources needed to deal with these threats?

Earl Howe: My Lords, I am grateful to both noble Lords for the very appropriate sentiments that they have expressed in relation to these terrible attacks. They asked about police numbers and the police budget. Overall police numbers is a big subject and it is probably appropriate that I write to them as comprehensively as I can with the details of the approach that the Home Office is taking.

As regards counterterrorism policing in particular, however—that is surely our focus for these purposes—we will, as the Statement made clear, shortly announce the budgets for policing for 2018-19. Ministers are absolutely clear that we must ensure that counterterrorism policing has the resources needed to deal with the threats that we face. We agreed £24 million of additional funding for CT policing this year, following the recent attacks and the move to “critical”. We will continue our regular dialogue with the National Counter Terrorism Policing Headquarters and wider policing to understand demand in relation to the increasing complex threat that we face from terrorism.

It is, however, worth reflecting that, when it comes to policing in the community, it should be incumbent on all of us—communities as a whole—to play our part in being vigilant. We have, through various means, encouraged communities to report on suspicious activity. To defeat terrorism, CT policing launched the national awareness campaign, Make Nothing Happen. The campaign urges the public to act on their instincts and report suspicious activity, including all types of extremist behaviour, to the police.

I was asked by both noble Lords about the words used by David Anderson in relation to the Manchester attack, when he said that MI5 and counter-terrorism policing got a good deal right and,

“could have succeeded had the cards fallen differently”.

MI5 and the police conclude in their reviews that a successful pre-emption of the plot would have been unlikely had an investigation been open on the basis of the available intelligence. Ministers have probed this issue carefully both with David Anderson and with MI5 and the police, and having done that, we believe that the decisions made by MI5 and the police were entirely reasonable. However, while the scope of the inquests relating to the Manchester attack has not been set, I expect that the coroner will want to consider whether the state could have prevented the deaths. In any event, it is vital that we learn the lessons from these attacks. There are, as I have mentioned, 126 recommendations arising from the reviews, and we will be working with MI5 and the police to ensure that they are implemented.

I was asked about border controls. Of course, that is a very relevant topic when we consider the number of individuals who have travelled to Syria and parts of Iraq during the recent conflicts there. The flow has reduced considerably in recent months. Approximately 850 UK-linked people of national security concern have travelled to engage with the Syrian conflict. We estimate that just under half of these will return to the UK and more than 15% have been subsequently killed while fighting in the region. Everyone who returns from taking part in the conflict in Syria or Iraq must expect to be investigated by the police to determine whether they have committed criminal offences and to ensure that they do not pose a threat to our national security. Where there is evidence that criminal offences have been committed, those responsible should expect to be prosecuted under the full weight of the law.

The noble Lord, Lord Paddick, asked whether the intensification of the threat was a reflection of the volume of cases that the security services and the police are dealing with. Broadly, the answer to that is yes. Much of the radicalisation that we are concerned about is, of course, radicalisation online. The internet must not be used as a safe space for terrorists or for those who mean us harm. The noble Lord will know that the Government were at the forefront of encouraging Facebook, Microsoft, YouTube and Twitter to jointly launch the global internet forum to counter terrorism this year. Collectively, the launch of the forum and the development of the hash-sharing database is welcome progress, with 40,000 hashes so far. On an individual basis, since the Prime Minister led an event at the UNGA on preventing terrorist use of the internet, we have seen the companies be more public with their efforts, which is welcome. Recently, YouTube stated that 83% of its extremist videos had been taken down after being identified automatically, and Facebook stated that 99% of removed terrorist content is automatically detected, and 83% of original and uploaded copies are removed within one hour of upload.

On end-to-end encryption, which the noble Lord, Lord Paddick, asked me about, encryption of that kind undoubtedly makes the job of MI5 and policing harder—there is no getting away from that. As I am sure he will understand, there is a limit to what I can say about these particular cases and the part that end-to-end encryption played in them. For example, there is a potential prosecution relating to the Manchester attack, which none of us would want to compromise. However, the noble Lord is right that end-to-end encryption

cannot be banned. His part in the passage of the Investigatory Powers Act, which I am sure we both remember with a good deal of pleasure, will remind him that we had long debates on this subject during which it was made clear that end-to-end encryption was something that the security services and the police had to live with.

3.36 pm

Lord Singh of Wimbledon (CB): My Lords, while we owe a great debt of gratitude to MI5 and the security services, does the Minister agree that in itself their work does little to tackle the causes of terrorism and of extremism? Does he agree that that cause lies in the misuse of outdated religious texts to incite impressionable youngsters to commit outrages?

Earl Howe: My Lords, yes, I agree with that. My right honourable friend the Prime Minister was clear in her statement of 4 June that “enough is enough”. We need our counterterrorism strategy, which is currently being worked up in the Home Office, to keep up with a number of fast-moving areas. One is most definitely to tackle terrorist ideology and to deny online safe spaces to terrorist communications, part of which will be to ensure that warped doctrine does not reach the internet. However, we also need to deny safe spaces in the real world so that malign and misleading published material is not promulgated.

Lord Mackenzie of Framwellgate (Non-Affl): My Lords, I welcome the Statement repeated by the Minister and the report. Does he agree that the report illustrates well the importance of surveillance and good intelligence in preventing—in many cases—large-scale conspiracies to commit terrorist acts? However, it is of course more difficult with lone-wolf attacks, which are probably inspired over long periods of time without the necessary ingredients of a large-scale conspiracy. It is extremely difficult to prevent those offences. Consequently, all we can hope to do—I hope the Minister agrees with me—is to minimise the damage done once one of those attacks is commenced. The answer to that is more armed response officers in the area. Is there any plan to increase the number of armed response officers on the streets of the United Kingdom?

Earl Howe: My Lords, I pay tribute to the noble Lord’s knowledge and experience in this area. He will know that policing requirements are assessed almost day by day, and a particular situation may well require more armed police officers to be stationed in particular locations. I cannot generalise about that, but I am sure that noble Lords will all be conscious that the Palace of Westminster has seen a much tighter degree of security from armed police in recent months, for which we should be grateful.

On the noble Lord’s general point, I agree. Surveillance is important but, as David Anderson himself acknowledges, it is impossible for the authorities to prevent every single terrorist attack. In his executive summary he says in terms that the recommendations, if accepted, would not remove the risk of a terrorist attack—to do so would be manifestly impossible in a free society. He also mentions that MI5 and CT policing have thwarted 20 Islamist terrorist plots in the past four years, resulting in 10 life sentences from the seven

[EARL HOWE]

plots that have so far come to trial. So we can point to some signal successes achieved by MI5 and the police, but they cannot possibly be expected to pick up lone-wolf attackers.

Baroness Warsi (Con): My Lords, I thank my noble friend for repeating the Statement. I agree that it is the responsibility of us all to ensure that we do all we can to prevent these terrorist attacks. Much of this evidence is now in the public domain, but can he confirm that in each of the attacks by so-called Muslims—Khalid Masood, Salman Abedi and Khuram Butt—these individuals had been reported to the authorities by friends, family or members of the communities in which they worked and operated? In the light of the Government's commitment, can he also undertake to ensure that all those attracted to terrorism are prevented from going down that route, and that the Government will look again at the recommendation of David Anderson, Human Rights Watch and individuals in the security services and the police to now have an independent review of the Prevent strand of the Contest strategy?

Earl Howe: My Lords, as the Statement made clear, a number of the attackers in each of these incidents were, to put it loosely, on the radar of the authorities as either open or closed subjects of interest. I am afraid I am not aware of how exactly those people's names came to the attention of the authorities but, if I am able to shed further light on that, I will of course inform my noble friend.

I hope my noble friend will agree that, if we did not have the Prevent strategy, we would need something very like it, because it is all about taking an end-to-end approach in the community and ensuring that partners work together to share information and that those who are vulnerable and susceptible to malign indoctrination are protected and not radicalised. I will write to my noble friend to let her know where the thinking in the Home Office has reached on the progress of the Prevent strategy, but I think it is doing very good work, and we can point to some welcome statistics on the number of people who have been successfully counselled.

The Lord Bishop of Peterborough: My Lords, from these Benches I very much welcome the Statement and the sentiments in it, particularly its focus on the direct victims. However, there are also indirect victims of such attacks—those who are made to feel more afraid simply to go about their daily lives. That includes a lot of people, not least many in our Muslim communities. Does the noble Earl agree that, as a result of these attacks, it is very important to do all we can to increase the feeling of safety among those in Muslim communities, seeing them not just as people who must be targeted for information but as people who are part of our wider community and whom we must cherish and care for, helping them to feel safe and welcome? This includes not just community policing but many other areas of work with them, and it includes a very strong focus on dealing with right-wing extremism, which would threaten those communities.

Earl Howe: The right reverend Prelate makes a series of excellent points and I of course agree that we need to remember that there are sometimes hidden

victims in all this, not least in our ethnic minority communities, who may feel—wrongly, in my view—that they are being put under pressure or discriminated against. However, that feeling needs to be addressed, and I know it is very real among some communities.

On victim support more generally, we are very aware of the need to ensure that effective, comprehensive and co-ordinated support is available, which is why the Government created a new cross-government victims of terrorism unit earlier this year. We have worked closely with each local area affected by the attacks, alongside the police, the third sector and other agencies, to make sure that support to victims is comprehensive and effectively delivered.

Lord Blair of Boughton (CB): I noticed that the Minister responded to the noble Lords, Lord Rosser and Lord Paddick, by saying that our focus must be on counterterrorism policing. I worked in that field for nearly 10 years, and I am afraid that that is not the answer. Counterterrorism policing, as a budget, is likely to take money from other parts of the police budget—it is a continuum. As both noble Lords said, community policing is a vital part of the counterterrorism process and if, as in Norfolk, the decision is taken to remove all the police community support officers, we are failing in our approach. It is not right to say that the focus must be on counterterrorism policing as a budget; I ask the Minister to consider that as a mistake that has been made for at least the last 15 years.

Earl Howe: I of course take note of the noble Lord's very well-informed comments. I undertook to write on the whole issue of policing and the approach the Home Office is taking, and I will make sure that his observations are factored in to that letter.

Lord Marlesford (Con): The Statement makes it clear that, as Islamic State has been expelled from most of the territory it occupied in Iraq and Syria, there has been a great dispersal of those fighters. The Government said that 850 potential fighters went out to join ISIS—there can be no clearer commitment to the objectives of terrorism than having done that. Of the 850, we gather, 15% have been killed, some 400 have already returned and 300 remain, perhaps waiting to return. Has the time not come to make it absolutely clear that anyone who has left this country to fight for ISIS should not be allowed back? We cannot afford to take that risk, or to pay the huge costs of dealing with them if they do come back. Do the Government have legislative power to stop them coming back and if not, will they take such powers?

Earl Howe: My Lords, I will be advised on whether this is correct but my understanding is that the authorities have sufficient powers to apprehend and intercept anyone who is known to have joined a terrorist organisation overseas when they return to this country, and those people should expect to be subject to arrest and detention where appropriate. There are provisions in law for removing passports from certain individuals, but I would need further advice as to the conditions of those, and I will write to my noble friend about that.

Lord Christopher (Lab): My Lords, I got the impression while the noble Earl was speaking that the general public might have no real comprehension that they, too,

have a part to play, and think that this is essentially something that can be left to the services. I am old enough to recall what we did just before the last war with the “Careless Talk Costs Lives” and similar campaigns. On the whole, those were remarkably successful. I am sure that no one wants to panic, but I believe that someone could examine how that was done. For example, people buy considerable quantities of certain chemicals. Every year, I buy two hundredweight—to use an old term—of a certain chemical for gardening purposes, although I will not mention the chemical. I was asked what I use it for. The noble Earl has mentioned a similar example. Actions like that could provide the public services with more information than they get now.

Earl Howe: I am grateful to the noble Lord for his suggestions; indeed, they resonate very closely with comments made by David Anderson in his report, when he talked about the need for the public sector and the private sector to work together rather more than they do to keep the public safe. I would go further. The Government cannot and should not seek to carry out their work without drawing on the significant expertise that the private sector and, indeed, private citizens can offer. This is not about spying on innocent people; it is about enlisting the support of retailers, for example, both online and physical, to report any suspicious activity. We know that schemes such as Neighbourhood Watch have been extremely successful in their own way in preventing household crime. Perhaps that is something that could be developed rather further to encompass the kinds of crime that we are now discussing.

Baroness Hussein-Ece (LD): My Lords, one of the terrorists, Khuram Butt, is reported to be an acolyte of Anjem Choudary, who virtually became a household name. He was given the oxygen of publicity and a platform to carry on spewing his vile hatred. That is something that we need to take into account and stop.

Unfortunately, preachers inspired by the Wahhabi faith are still coming over from Saudi Arabia and preaching in mosques up and down the country. That is going on. I spoke recently to the family of a young man who is now distant from the family. He has been groomed and cut off from his family. He has dropped out of university and all he does is go round preaching. I am not saying that he would go out and do something but he has been groomed. What is being done to monitor the situation? These imams are coming over from Saudi Arabia and being given platforms in British mosques where they should not be and have no business. What is being done? Are they being monitored, and what is being done to prevent them entering the country in the first place?

Earl Howe: My Lords, whenever there are reports of imams or anyone else preaching seditious material or any other kind of malicious doctrine, those reports are followed up. As the noble Baroness will know, the full force of the law is there to bear down upon them. The challenge is to find out where these people are and who they are. That is something that the community as a whole can play a part in highlighting. It cannot solely be for the police to do that. Indeed, it is important that communities should not feel that they are being spied upon all the time.

Baroness Manningham-Buller (CB): My Lords, does the Minister agree that one of the things that is encouraging about David Anderson’s report is the clear evidence of a complete lack of complacency in both the Metropolitan Police and MI5 and the self-criticism of their own performance? That has led to their producing 126 recommendations. David Anderson, as far as he goes, supports those recommendations, and we know that the ISC will look at them in detail. As the Minister said, there will also be other ways in which their performance will be scrutinised in the inquests. I, for one—and, obviously, I declare a strong interest—am proud that everyone I know who has been working on this, working extremely closely with the Met, has looked with great self-criticism at their own performance.

Perhaps I may be allowed to answer the noble Lord’s question. A great amount of information from the public reaches both the police and the Security Service. That does not undermine the discussions on the need for community policing, but many plots have been stopped because of information from members of the public in the first instance. People are not ignorant of the need to help.

Earl Howe: My Lords, I am grateful to the noble Baroness, with her extensive experience in this field. She is of course right that we can be proud of how the police and MI5 have addressed their own performance in the way that these cases have been investigated. David Anderson is very clear that their process was thorough and fair. Nevertheless, it is reassuring to us all that we did commission David Anderson to do this exercise. It was not that the police and MI5 were not trusted to do the job but, on some occasions, we need that added element of reassurance which we have received clearly from Mr Anderson.

Brexit Negotiations

Statement

3.56 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I shall now repeat in the form of a Statement the Answer given to an Urgent Question in another place:

“Mr Speaker, negotiations regarding our exit from the European Union are ongoing as we speak. Indeed, we are in the middle of an ongoing round, and as such I will have to be more circumspect than usual. We held further talks in Brussels over the past few days and progress has been made, but we have not yet reached a final conclusion. However, I believe that we are now close to concluding the first phase of the negotiations and moving on to talk about our future trade relations. There is much common understanding, and both sides agree that we must move forward together.

Our aims in this negotiation remain as they always have been. In particular, on the issue of Northern Ireland and Ireland, we have been clear that we want to protect all elements of the Good Friday/Belfast agreement, to maintain the common travel area and to protect associated rights. We want to ensure that there is no hard border between Ireland and Northern Ireland.

[LORD CALLANAN]

We recognise that, as we exit, we must respect the integrity of the EU single market and the customs union, but we are equally clear that we must respect the integrity of the United Kingdom.

There remain some final issues to resolve that require further negotiation and consultation over the coming days. Our officials are in continuous contact, and we expect to reconvene in Brussels later this week for further negotiations. I or the Prime Minister will formally update Parliament once this round of negotiations concludes, as I have done for every round so far. As was made clear by the comments from President Juncker and President Tusk yesterday, all parties remain confident of reaching a positive conclusion in the course of the week”.

3.58 pm

Baroness Hayter of Kentish Town (Lab): My Lords, all that without a blush. I thank the Minister for repeating a somewhat embarrassing response, given yesterday’s climbdown. Indeed, it seems that the only negotiations taking place are between the Government and the DUP, or within the Government, which is part of the Prime Minister’s failure in the election campaign.

Yesterday unravelled over regulatory alignment. However, just as Scotland, Wales and London are saying, “If such a deal is good enough for Ireland, it is good enough for us”, so also if there is to be regulatory alignment with the EU, which we support, surely it must be UK-wide. Can the Minister ask the Prime Minister to rethink her hasty decision to rule out remaining in the customs union regardless of cost, border controls and checks—and indeed, Northern Ireland?

Lord Callanan: I thank the noble Baroness for her question, but I am slightly perplexed by the attitude of the Opposition Front Bench in another place. John McDonnell has said:

“I think people will interpret membership of the single market as not respecting that referendum”.

Barry Gardiner, the Shadow International Trade Secretary, has said that a permanent customs union is “deeply unattractive”:

“As a transitional phase, a customs unions agreement might be thought to have some merit. However, as an end point it is deeply unattractive”.

He has also argued that remaining in the customs union would be a “disaster”. Perhaps the noble Baroness should talk to her colleagues before she criticises us.

Baroness Ludford (LD): My Lords, the Government claim that they are clear that we must respect the integrity of the United Kingdom, yet the wording being discussed yesterday was only about continued regulatory alignment on the island of Ireland. I understand that, in the other place this morning, the Brexit Secretary tried to square the circle by asserting that regulatory alignment will apply to the whole of the United Kingdom. Can the Minister affirm that it is now government policy for the whole of the UK to stay in the single market and the customs union? In that context, I welcome what seems to be the evolving position of the Opposition. Better still, will the Minister tell us that

government policy will soon be to allow the British people, in this context of chaos, to choose to remain in the EU?

Lord Callanan: The Liberal Democrats have obviously forgotten that the British people have already made a choice on the matter. The Liberal Democrats put the option to remain in the EU to the British people at the last election, and they got 7% of the vote, I think. However, it would be wrong for me to comment on the details of negotiations at this stage. These are sensitive matters and we should not prejudice ongoing negotiations, as we have not yet reached agreement. Talks continue; yesterday, the Prime Minister confirmed in her statement to the press that we expect them to continue throughout the week in both London and Brussels. The noble Baroness can be assured that, when we have a conclusion, we will report back to the House.

Lord Strathclyde (Con): My Lords, can the Minister confirm that the Government’s policy will not put the integrity of the United Kingdom at stake and will always support the four constituent parts of the United Kingdom to be treated the same?

Lord Callanan: I agree totally with the noble Lord. The whole of the United Kingdom voted to leave the European Union; the whole of the UK will leave the European Union.

Lord Alton of Liverpool (CB): My Lords, has the Minister had the chance to look at the report that I sent him last week? It was launched formally here in Parliament last night and concerned the position of the Irish in Britain and how they will be affected after our withdrawal from the European Union. Will he agree to place in your Lordships’ Library a copy of his response, particularly relating to the implications for the 1949 Ireland Act and the common travel area?

Lord Callanan: The noble Lord asks a good question. I have seen his letter and report. The situation of the Irish in the United Kingdom is of great personal interest to me. I will send him a reply in due course and would be happy to place a copy of it in the Library.

Lord Lea of Crondall (Lab): My Lords, at the present time, the Government are the Conservative Party, with the help of the DUP. If the Labour Party were in government, it would be legitimate to put questions to the Government in the shape of the Labour Party. In the Statement—on page 2 in the printed version—there is a Rubik’s cube. It wants to ensure no hard border; it wants to recognise the integrity of the single market and the customs union; and it wants to respect the integrity of the United Kingdom. As stated, that Rubik’s cube is impossible to solve unless we stay in the European Economic Area in some shape or form. If the Minister disagrees, on what basis does he do so?

Lord Callanan: My Lords, we agree with the Shadow Chancellor and the Shadow International Trade Secretary that remaining in the customs union and the single market would be a disaster for the United Kingdom. They are not correct on many issues, but they are on

these ones. It is taking so long to reach an agreement because these are difficult and complicated areas. Given the history of Ireland and Northern Ireland, it is particularly important that we get the discussions right, reach an agreement and respect the Good Friday agreement, but that we respect the referendum that took place.

Lord King of Bridgwater (Con): My noble friend Lord Strathclyde referred to the Government's commitment to Northern Ireland being part of the United Kingdom. That is also the commitment of the Government of Ireland, originally under the Anglo-Irish agreement and now under the Good Friday agreement, if that is the wish of the majority of the people in Northern Ireland. The Irish Government are completely committed to that. Against that background, both Governments are committed to there being no hard border. Is not the sensible thing now to get on with the negotiation about what sort of trading relationship we will have? Yes, in the present situation we need to agree our financial obligations and the issue of EU citizens here, but the second issue of exactly how we deal with the Northern Ireland situation is something that will emerge out of the agreement on the trading arrangements.

Lord Callanan: My noble friend speaks with the benefit of great experience on this matter, considering some of the previous jobs he has had. I completely agree with him. It is important that we get these talks finished off so we can get on to discussing the substantive area, trade, out of which will fall an agreement on the Northern Irish border.

Lord Hay of Ballymore (DUP): My Lords, I also very much welcome the Statement from the Minister, especially the line,

"we are equally clear that we must respect the integrity of the United Kingdom".

That is very important. I listened to some Peers earlier, on the Question from the noble Lord, Lord Dykes, blaming the Democratic Unionist Party. I make it clear that the finger should be pointed at Dublin. Dublin's officials were continually briefing over the weekend, which did not help the situation on Monday when the Prime Minister arrived in Europe. The Democratic Unionist Party's position has been clear for a number of months, publicly and to the Government. We will reject any deal that would divide Northern Ireland from the rest the United Kingdom and which would see Northern Ireland being treated differently from the rest of the United Kingdom. That is the position with the Government, as with ourselves. Will the Minister agree that any deal that weakens the constitutional position of Northern Ireland within the United Kingdom cannot be acceptable either to the people of Northern Ireland or to the Government?

Lord Callanan: The noble Lord makes some valuable points. These are issues of great sensitivity and complexity. It is very important that we consult all parties before we go further. We are determined to try to get a solution, but it cannot be at the expense of breaking up the United Kingdom.

Lord Davies of Stamford (Lab): My Lords—

Lord Pearson of Rannoch (UKIP): My Lords—

Lord Elystan-Morgan (CB): My Lords—

Lord Taverne (LD): My Lords—

Baroness Goldie (Con): It is in fact the turn of the Liberal Democrats; then we will see what time permits.

Lord Taverne: My Lords, will the Minister explain how any member of the Government could possibly reconcile the idea that part of the United Kingdom would be subject to regulations in effect of the European customs union and the rest would not? Is the position of the DUP on this occasion not impeccably logical?

Lord Callanan: I think for the first time I find myself in agreement with the Liberal Democrats.

Proceeds of Crime Act 2002 (Search, Seizure and Detention of Property: Code of Practice) Order 2018

Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018

Proceeds of Crime Act 2002 (Recovery of Listed Assets: Code of Practice) (England and Wales and Scotland) Regulations 2018

Criminal Finances Act 2017 (Consequential Amendment) Regulations 2018

Motions to Approve

4.09 pm

Moved by Lord Young of Cookham

That the draft orders and regulations laid before the House on 23 October be approved.

Lord Young of Cookham (Con): My Lords, we know that criminals are increasingly adept at finding new ways to hide the proceeds of crime. That is why, earlier this year, we legislated through the Criminal Finances Act to provide law enforcement agencies with new powers to strengthen and extend existing powers to trace and recover criminal assets. Most relevant for the purposes of this debate are new powers to seize and forfeit assets such as precious metals, precious stones and artistic works.

Codes of practice protect the public by ensuring appropriate and proportionate use of new powers. In this case, they include search and seizure powers, which are used by a wide range of law enforcement officers in connection with various investigations.

Three of the statutory instruments put before the House today bring into force revised and new codes of practice providing guidance on the use of Proceeds of Crime Act—POCA—powers for the search, seizure and detention of property to support enforcement of confiscation orders; on search powers for cash that is

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 suspected to be unlawful in origin or purpose; and on search powers relating to the new power to seize certain listed assets. The final instrument makes a minor and technical amendment to an existing provision in POCA to take account of the creation of the new power to forfeit listed assets.

POCA provides strong powers for the fight against crime, and particularly against serious and organised crime. These powers may involve significant interference with the privacy and property of persons suspected of certain offences, and the purpose of these codes of practice is to guide law enforcement officers in the lawful and proportionate exercise of the powers. They are therefore a safeguard to ensure effective and consistent use of the powers.

The POCA powers available to law enforcement have been significantly strengthened by the Criminal Finances Act 2017. Once commenced, the new powers will give officers important new tools for the recovery of criminally obtained assets, thus playing a key role in the Government's commitment to make the UK a more hostile environment for those who seek to move, hide and use the proceeds of crime and corruption.

Noble Lords may recall that when this legislation was undergoing its parliamentary passage, the Northern Ireland Assembly was dissolved. That meant that a legislative consent Motion could not be obtained. The Minister for Security made a commitment in the other place not to commence any legislation relating to devolved matters without the appropriate consent in place. Keeping with that commitment, the new and amended POCA powers to which the codes relate will not, initially, be commenced in Northern Ireland. As a consequence, the necessary rules of court, and equivalent codes of practice governing devolved functions, will not be in place.

We are working with the authorities in Northern Ireland to commence these powers as soon as possible. Codes of practice are currently in use in Northern Ireland in respect of existing powers in the Proceeds of Crime Act 2002. The new powers and the amendments to existing powers in the Criminal Finances Act 2017 will not be commenced in Northern Ireland until a legislative consent Motion can be obtained. As a result, the codes that are laid before noble Lords in so far as they apply to Northern Ireland will continue to make provision for the existing POCA powers but not for the amendments and new powers in the Criminal Finances Act 2017.

In Scotland, a separate—combined—code of practice has been drafted in respect of searches by constables in relation to the civil forfeiture of listed items of property and the civil forfeiture of cash. A public consultation is being undertaken. The code is expected to come into force in the spring.

Two of the codes before noble Lords are revisions of previous codes issued under POCA and closely follow those issued to police officers under the Police and Criminal Evidence Act 1984. The third code is new, but it, too, is modelled on the PACE procedure. The codes provide an important safeguard and reassurance that the powers in POCA are being used appropriately and proportionately.

The new powers giving rise to these codes have already been approved and debated extensively by both Houses. We are therefore not debating the powers themselves today; rather, we are considering the codes which give guidance on their use.

The amendments to POCA which require the new and amended codes of practice are: the new power to forfeit listed assets such as precious metals, precious stones and artworks; the expanded powers relating to search and seizure to prevent the dissipation of property that may subsequently be used to satisfy a confiscation order; the extension of search powers to a range of law enforcement agencies, notably the Serious Fraud Office; and the extension of the definition of “cash” for the purposes of cash seizure and forfeiture powers to include gaming vouchers, fixed-value casino tokens and betting receipts.

POCA stipulates that the Secretary of State must prepare and publish a draft of any new or revised code, consider any representations made and modify the draft as appropriate. A public consultation on all the codes before your Lordships was carried out this summer, and amendments were made to the drafts accordingly. The responses were generally supportive of the codes of practice but contained certain specific suggestions or recommendations that we were able to address.

The first order brings into effect a new code of practice providing guidance on the use of search powers for the recovery of listed assets, such as precious metals and stones, that are suspected of being unlawful in origin or purpose. In essence, this builds on the existing powers relating to the forfeiture of criminal cash.

4.15 pm

The second code of practice relates to search powers in England and Wales to prevent the dissipation of property that might be used to satisfy a confiscation order. This has been revised to take account of the extension of powers to the Serious Fraud Office—a direct result of the Criminal Finances Act, which amends the Proceeds of Crime Act—and the change to streamline the authorisation procedures for the use of the powers by certain civilian financial investigators. As a result, civilians can now get authorisation from police officers.

The final code relates to search powers that support the seizure and detention of cash. This is an update to the existing code and has been revised for three reasons: first, due to the addition of gaming vouchers, casino tokens and betting receipts to the instruments that can be forfeited under these powers; secondly, because of the extension of the search powers to SFO officers; and, thirdly, to provide that civilian staff in the police seek authorisation on the use of the search powers from police inspectors.

Collectively, the three orders will bring the codes of practice into effect, ensuring that effective, up-to-date safeguards are in place and enabling full commencement of the POCA amendments I have described. All the amendments arise from new powers introduced via the Criminal Finances Act 2017.

The last instrument makes a technical amendment to an existing provision in POCA. The approach in POCA, which I believe all noble Lords will all agree with,

is that once property has been recovered under POCA it cannot then become subject to further recovery action under the Act, because this would be recovering the same property twice. As a consequence of the new forfeiture powers introduced by the Criminal Finances Act, further powers needed to be added to that safeguard. These regulations provide that property forfeited by the High Court under the new listed items powers cannot subsequently become liable to future civil recovery action.

The use of these powers will be guided by the revised codes of practice. They are an important safeguard to ensure the targeted, proportionate and effective use of POCA powers, balanced against the rights of individuals and communities. I beg to move.

Lord Rosser (Lab): I thank the Minister for that explanation of the purpose and content of the four orders we are considering, which we support. Clearly, they do not have quite the same attraction for Members of your Lordships' House as the business we discussed prior to this, judging by the attendance in the Chamber at present.

The orders seek to ensure that powers are used appropriately and proportionately by those exercising them, as well as giving those exercising them the necessary powers to achieve the required objectives in recovering the proceeds of crime. As the Minister said, the orders bring into force revised codes of practice and one new code of practice, providing guidance and procedural requirements for the exercise of certain functions under the Proceeds of Crime Act 2002. The revised and new codes are required because of amendments to POCA made by the Criminal Finances Act 2017, which was passed last April—in the days when this Government had a working majority in the House of Commons and before this Government gave a certain large sum of money to secure a smooth, lasting and harmonious working relationship with the DUP.

That brings me to the issue of Northern Ireland and these orders. As the Minister said, a legislative consent Motion has not been obtained because the Northern Ireland Assembly was dissolved during the passage of the Criminal Finances Act. The Minister said that the Government were working with the authorities in Northern Ireland to commence the powers as soon as possible. Does this mean that further legislative measures are on the way or are such measures all covered by these orders? Which powers are the Government working with the authorities in Northern Ireland to commence there as soon as possible? Is it just the new powers and amendments made under the Criminal Finances Act 2017, to which the revised and new codes of practice we are discussing relate, or powers unconnected to these codes of practice? Who are the authorities in Northern Ireland to which the Minister referred? What are the actual or potential consequences on the effectiveness of the matters covered by the Criminal Finances Act in relation to proceeds of crime, not only in Northern Ireland but in Great Britain, of not being able to obtain a legislative consent Motion and bring them into operation on the intended day?

Since one of the orders apparently covers Northern Ireland—the Proceeds of Crime Act 2002 (Cash Searches: Code of Practice) Order 2018—can the Minister say

why that order includes Northern Ireland, in view of the issue over a legislative consent Motion not being obtainable? The Commons Minister stated when it was discussed there that,

“there is nothing in these codes relating to the new powers that is a devolved matter in the competence of the Northern Ireland Assembly”.—[*Official Report*, Commons, Delegated Legislation Committee, 4/12/17; col. 4.]

Is the answer to the question I have raised that the order to which I refer covers an aspect of POCA that is not devolved?

A second point relates to the resources that will be available to ensure that the new powers and provisions in the Criminal Finances Act 2017, to which the revised codes relate, can be effectively implemented. For example, the codes cover the extension of certain authorities and powers to the Serious Fraud Office. There is also a new code of practice providing guidance, as the Minister said, on the use of search powers for the recovery of listed assets that are suspected to be the proceeds of crime or intended for use in crime. New codes are of little relevance if the resources are not there to bring their content into operation.

What steps have the Government taken recently to satisfy themselves that the necessary resources are available to implement effectively the powers and authorities to which these codes relate? What are the asset recovery rates of the agencies concerned, and how have those changed over the last five years? Do the agencies have a target figure they are expected to achieve and are they achieving it? Are the Government satisfied with the performance of the agencies concerned on asset recovery and, if not, what action is being taken? Finally, can the Government give an assurance that, since the codes refer, I believe, to immigration officers, among others, the important powers covered by these codes will not be conferred on outside bodies acting for the Government, such as G4S and Serco?

Lord Paddick (LD): My Lords, we also support these instruments and see the importance of extending the ability to recover criminal assets to precious metal and precious stones. There is a serious concern in some communities, for example with drug dealers who display their wealth ostentatiously, that young people should not be encouraged to go down that route by such behaviour. The police and other law enforcement agencies sometimes have difficulty in proving substantive offences against such people, so for them to be able to seize such precious metal and precious stones where people are not able legitimately to account for them is an extremely important move.

It is a concern that these powers will not be able to be commenced in Northern Ireland. This highlights again the importance of Northern Ireland in matters that the country is concerned with at this time.

It is important that these agencies have the necessary resources to implement the powers to which these codes of practice relate. While it is possible that fewer resources will be required to seize assets than would be necessary to prove sometimes difficult substantive offences against the individual, we are content with these instruments.

Lord Young of Cookham: My Lords, I am grateful to both noble Lords for their support for these measures, and I will try as best I can to answer the questions raised.

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I can confirm that the powers cannot be applied to G4S. I repeat the assurance my ministerial colleague gave yesterday in another place.

Questions were raised about Northern Ireland. As I explained when I introduced the order, the new powers and the amendments to existing powers in the Criminal Finances Act 2017 will not be commenced in Northern Ireland until a legislative consent Motion can be obtained. As a result, the codes that are laid before the House, in so far as they apply to Northern Ireland, will continue to make provision for the existing POCA powers, but not for the amendments and the new powers in the Criminal Finances Act. In answer to the question about how this is done, the statutory instruments will apply the codes in Northern Ireland and the limitation I have just referred to is in the wording of the codes themselves rather than in the statutory instruments that bring the codes into force. The approach we have taken in drafting the codes is that it is clear in the wording that guidance on the new powers introduced by the Criminal Finances Act will not apply to Northern Ireland for the reasons that I have just given. It is clear, however, that the rest of the code that provides guidance on the use of existing powers will apply to Northern Ireland. If it would help both noble Lords, I would be happy to drop them a line explaining which bits apply now and which bits will apply later.

In answer to the question about who we are corresponding with, I imagine we are corresponding at official level within Northern Ireland. If and when an LCM is obtained from the Assembly, the codes will be revised to remove the restrictions in relation to Northern Ireland. In response to the noble Lord, Lord Rosser, this will require further consultation and debates in Parliament, and the revised codes will be brought into force by further statutory instruments, so we will go round the course again.

I have here a list of which sections of POCA relate to England and Wales and which extend to Northern Ireland. Rather than read it out—it is long and complicated—I think it would be best if, as I said a few moments ago, I wrote to noble Lords and placed a copy of the letter in the Library.

Lord Rosser: I thank the Minister for that. It will be extremely helpful. In writing that letter, will the Minister set out whether the fact that the provisions will not apply in Northern Ireland at this stage, and may not apply there for some time, will have any detrimental effect on their application in Great Britain as opposed to Northern Ireland? I am not entirely clear what the detrimental effects will be for Northern Ireland or for Great Britain of the provisions of these instruments not being applicable in Northern Ireland until some date that is not yet known.

Lord Young of Cookham: It would clearly have been better if there had been a Northern Ireland Assembly in operation and we could have got an LCM and extended the powers throughout the United Kingdom. As we cannot extend them to Northern Ireland, some of the new provisions that were introduced in the Criminal Finances Act earlier this year will not immediately be applicable to Northern Ireland. To that extent, therefore,

the Act will not be as effective as we initially hoped. However, it will come into effect in the rest of the United Kingdom, and the terrorist financing amendments will commence as that is a reserved matter, not a devolved matter.

I was asked about resources and whether these powers will place more resource burdens on law enforcement at a time of pressure. These powers extend and strengthen the powers in POCA. They add to the toolkit, rather than being powers to use in isolation. As such, they may be used in a strategic fashion that may save money.

The powers are making the use of POCA more effective and more streamlined. In addition, due to the terms of the asset recovery incentivisation scheme, the more an agency recovers, the more it receives. In the past two years, we have amended the scheme that distributes the money recovered under POCA. A £5 million topslice of the amounts recovered is now available for bidding for national schemes to support further asset recovery work. In addition, where more than £184 million is recovered, under the old terms of the asset recovery incentivisation scheme, the Home Office will return 50% above that threshold to the regional organised crime units.

I hope I have been able to address the issues raised in this short debate and repeat that I am grateful for the broad support. I beg to move.

Motions agreed.

Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018

Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2018

Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2018

Motions to Approve

4.30 pm

Moved by Lord Young of Cookham

That the draft orders laid before the House on 23 October be approved.

Lord Young of Cookham (Con): My Lords, the three orders before your Lordships give effect to revised codes of practice, providing guidance on the use of investigatory powers in the Proceeds of Crime Act 2002—our old friend POCA—and on the use of powers in relation to “terrorist property” under the Anti-terrorism, Crime and Security Act 2001—ATCSA.

POCA and ATCSA provide strong powers in the fight against organised crime and terrorism, enabling investigations and the recovery of assets which are the proceeds of crime or which are used to fund terrorism.

These powers may involve significant interference with the privacy and property of persons suspected of certain offences, and the purpose of these codes of practice is to guide law enforcement officers in the lawful and proportionate exercise of those powers. They are therefore a safeguard to ensure effective and consistent use of the powers.

The codes may be revised, or new ones created, in the light of legislative changes, and the revised codes now before your Lordships reflect the changes made to POCA and ATCSA by the Criminal Finances Act 2017. I ask noble Lords to note that two of these codes relate to POCA: one contains guidance for law enforcement officers and is issued by the Secretary of State, while the other contains guidance for prosecutors and is issued by the Attorney-General. The third code relates to ATCSA and contains guidance for officers, and is issued by the Secretary of State.

The three codes build on previous codes issued under POCA and ATCSA and closely follow those issued to police officers under the Police and Criminal Evidence Act 1984. The POCA and ATCSA powers available to law enforcement have been significantly strengthened by the Criminal Finances Act 2017. The codes need to be updated as a consequence of these amendments. Once commenced, the new powers will give officers important new tools to assist with investigations and with the recovery of assets. This is a key part of the Government's commitment to tackling all levels of crime.

Noble Lords may find it helpful if I clarify the territorial extent of the powers subject to the codes of practice we are considering today. Noble Lords may recall that when this legislation was undergoing its parliamentary passage, the Northern Ireland Assembly was dissolved, which meant that a legislative consent Motion could not be obtained. The Minister for Security made a commitment in the other place not to commence any legislation relating to devolved matters without the appropriate consent in place.

I assure noble Lords that we are working with the authorities in Northern Ireland to commence these powers as soon as possible. For the time being, however, the codes, in so far as they apply to Northern Ireland, will cover only existing POCA powers. The new powers for terrorist financing will be commenced in Northern Ireland, since terrorist financing, as I said a moment ago, is a reserved matter. The ATCSA provisions apply across the whole of the UK and thus include Scotland. The POCA provisions to which these codes relate are for England and Wales and Northern Ireland only, and do not extend to Scotland.

We plan to commence the majority of the new and amended POCA and ATCSA powers on 31 January 2018. Once approved, the codes before your Lordships will come into operation at the same time, enabling the full operation of the powers. Of course, the powers to which the amended codes relate have already been debated by your Lordships, and the Criminal Finances Act received Royal Assent in April. Again, therefore, we are not debating the powers themselves today: rather, we are considering the codes which give guidance on the use of those powers.

Briefly, the amended codes of practice are required as a result of the introduction of new investigation powers and some amendments and extensions of existing ones, and new seizure, detention and forfeiture powers under ATCSA. POCA and ATCSA stipulate that the Secretary of State must prepare and publish a draft of any new or revised code, consider any representations made and modify the draft as appropriate. I can assure noble Lords that a public consultation has been undertaken on all the codes that I am referring to today.

One order gives effect to a revised code of practice providing guidance on the use of powers of investigation by law enforcement officers under Chapter 2 of Part 8 of POCA.

The revised code caters for new and amended powers introduced by the Criminal Finances Act, including unexplained wealth orders and changes to the way in which disclosure orders may be applied for and used. UWOs will enable an enforcement authority to require an individual or company to specify how property in the order was obtained, and may state that specific documents or information are to be provided in order to establish whether certain assets have been legitimately obtained.

The section relating to disclosure orders has been significantly revised. In addition to confiscation and civil recovery investigations, appropriate officers will now be able to apply for disclosure orders in a money-laundering investigation. In addition, the code includes the exercise of investigation powers in two new categories of investigation that were introduced by the Criminal Finances Act: namely, detained property investigations and frozen fund investigations. These new investigations support the new powers to forfeit certain listed items of property, such as precious metals and stones, and to forfeit funds in bank or building society accounts where the relevant property derives from or is intended for use in unlawful conduct.

Persons who may apply for these orders are clearly set out in the revised code, as are the procedure and statutory requirements for applying. The code also highlights the points that enforcement authorities and appropriate officers should consider before making an application.

There is a similar investigation code providing guidance for prosecutors using powers under Chapter 2 of Part 8 of POCA, which is issued by the Attorney-General, and the order bringing that into effect is also before your Lordships today. I can assure noble Lords that the Attorney-General's revised code mirrors the form and substance of the Home Secretary's revised investigation code. As such, we are debating the codes jointly and, in this instance, I am speaking on behalf of the Attorney-General.

The third order gives effect to a revised code of practice, made under the Terrorism Act 2000, for officers exercising asset recovery powers conferred on them through the terrorist property provisions of Schedule 1 to ATCSA. This code has been updated to reflect the amendments made to the Terrorism Act—TAct—and ATCSA by Part 2 of the Criminal Finances Act 2017, including a new power to administratively forfeit terrorist cash and new civil recovery powers to seize, detain and

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 forfeit listed terrorist assets and to freeze and forfeit terrorist money held in bank and building society accounts.

The orders before your Lordships will bring all the relevant codes of practice into effect, ensuring that effective, up-to-date safeguards are in place and enabling full commencement of the POCA and ATCSA amendments that I just described. We are working towards a common commencement date for the powers covered by these codes of 31 January 2018.

I make no apology for repeating the important point that the revised codes are an important safeguard to ensure the targeted, proportionate and effective use of the POCA and ATCSA powers. Among other things, the codes ensure that officers consider the rights of the individual and the community more widely and that they follow a structured process when arriving at a decision to use the relevant powers, and also when executing them. The codes also ensure that a full audit trail in relation to the use of the powers will be recorded. It is of note that the training which all investigators obtain from the NCA ensures that investigators are familiar with these codes.

The codes form an important safeguard which ensure that the powers are used in an effective, considered and targeted manner. I beg to move.

Lord Rosser (Lab): I again thank the Minister for his explanation of the purpose and meaning of these orders. On the Proceeds of Crime Act 2002 (Investigations: Code of Practice) Order 2018, the Criminal Finances Act 2017 amended some investigation powers, introduced new powers and widened the definitions of an investigation for the purposes of POCA. Where relevant, those changes are reflected in the revisions to the code of practice. The same applies to the Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors: Code of Practice) Order 2018, which relates to the exercise of functions by the Director of Public Prosecutions, the director of the serious fraud squad and the Director of Public Prosecutions for Northern Ireland, as well as officers of the Serious Fraud Office.

In relation to the second order, paragraph 8 of the Explanatory Memorandum on the consultation outcome states:

“Two responses were received ... and the draft code ... was amended as appropriate”.

From where did the two responses come, and what changes were made to the draft code of practice in the light of those responses?

The Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2018 brings into force a revised code of practice, which will enable officers to discharge their functions in respect of existing terrorist asset provisions by including guidance on operational requirements for officers on the exercise of the various new powers created by the Criminal Finances Act 2017. I shall not ask about the content of the consultation responses primarily because, apparently, there were none. We support these orders.

Lord Young of Cookham: I am very grateful to the noble Lord for his support. I asked the same question as he did about the responses that we received to

the consultation. I was told that they were technical and minor. I do not have at my fingertips the names of those who responded, or what the technical and minor changes were, but I shall, of course, write to the noble Lord when I have that information, which I hope he finds illuminating.

Motions agreed.

Trade and Customs Policy

Motion to Take Note

4.42 pm

Moved by Baroness Fairhead

That this House takes note of the future of United Kingdom trade and customs policy in the light of Her Majesty's Government's white papers *Preparing for our future UK trade policy* (Cm 9470) and *Customs Bill: legislating for the UK's future customs* (Cm 9502).

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, I am delighted to stand before you today and open this important debate. Trade is a vital part of the UK and world economy, and is a key driver of growth and prosperity. It helps business by promoting efficiency and innovation and encouraging knowledge sharing; it helps working people by creating jobs; and it helps consumers by ensuring that more people have a wider choice of goods and services at lower costs, making household incomes go further.

Free trade can be a force for good, but that does not mean trade without rules; it needs to be underpinned by global rules, and it has to be fair. There is a balance to be struck between all parts of the UK, and between protecting UK businesses while also taking consumers and the broader economy into account—and that is what we are trying to achieve.

When the UK leaves the EU, it will leave the EU customs union. This clearly has implications for trade and, indeed, that is what we are debating today. So in these Bills we are aiming to provide continuity and a smooth transition, avoiding a cliff edge, so that businesses and people can be confident that these trading relationships will continue. We have to ensure that the UK can operate as a fully functioning independent trading country, whatever the outcome of the Brexit negotiations.

In my opening remarks, I intend to focus on the two Bills that have recently been introduced in the other place: the Trade Bill and the Taxation (Cross-border Trade) Bill. I shall come to the White Papers in due course because, importantly, they provide us with a platform to continue discussion and engagement over the coming months.

We are very fortunate in this House to have Members, among whom are my noble friends Lord King, Lord Lang, and Lord Young of Graffham, and the noble Lords, Lord Hutton, Lord Darling and Lord Mandelson, who hold a vast wealth of experience and expertise in matters of trade—as do a number of noble Lords from all across the House who I know are down to speak today.

I say right from the beginning that, while the Trade Bill is intended to cover transitioning of existing agreements, not future ones, we will consult widely on future trade policy and the appropriate means of ensuring parliamentary scrutiny. I am very keen to work in particular with noble Lords across the House to help the UK get in the best possible position as we leave the EU. That is why this debate today, which is very much part of the early engagement, is particularly important.

The Trade Bill contains the following provisions. It will create powers that enable the UK to transition trade agreements that currently exist between the EU and other countries, and that the UK is part of via our membership of the EU. This will prevent disruption to UK businesses, workers and consumers by enabling the UK to maintain its existing relationships. It will create the powers needed to implement the World Trade Organization's Agreement on Government Procurement, known as the GPA, as an independent member instead of as part of the EU. As noble Lords will know, the GPA is a plurilateral agreement between some WTO members that opens up public procurement markets. This will maintain UK businesses' access to public contract opportunities, worth collectively around £1.3 trillion per year, while ensuring that we get the best deal for taxpayers in the UK.

The Bill will also establish a new independent UK Trade Remedies Authority to provide a safety net to protect domestic industries from unfair and harmful trading practices and any unforeseen surges in imports which cause injury. Free and open trade has a positive impact on the UK's prosperity, but it needs to have the appropriate checks and balances. The Bill will also allow data on trade to be collected and shared with relevant bodies, such as the Department for International Trade and the new Trade Remedies Authority, to help them perform their essential public functions. This will help us build up a rich picture of UK trading patterns and help government identify new opportunities and ways in which we can support British businesses.

The second Bill we have introduced is the Taxation (Cross-border Trade) Bill, previously known as the customs Bill. This Bill deals only with matters of taxation. Whatever the outcome of the negotiations, we will need a functioning customs regime to enable the UK to charge customs duty on goods when we exit the EU, and the powers to apply trade remedies and deal with trade disputes in line with international law by imposing additional customs duties. One of the sensible steps we can take now is to provide the legislation to create this regime.

The Taxation (Cross-border Trade) Bill will therefore: allow the UK to charge customs duty on goods, including those imported from the EU; allow the Government to set out how, and in what form, customs declarations should be made; set out rules relating to the collection, administration and enforcement of import duty; and give the UK the freedom to impose additional rates of import duty, including those resulting from trade remedies investigations. It does this primarily by creating a new UK trade remedies framework to be overseen by the independent Trade Remedies Authority.

Full details of how the trade remedies framework will operate have not been determined. We are thinking very hard about how to strike the right balance between the two important objectives of providing a safety net for UK industries, while ensuring we do not place unnecessary costs on the UK's downstream industries and consumers. We sought views on this when we published our trade White Paper, and engaged with key stakeholders to hear what they think. We remain keen to receive input to make sure that we get the working in the best interests of the whole of the UK.

The Bill also enables the Government to implement preferential import duty rates pursuant to arrangements with other countries or territories. This will enable us to give effect to duty rates in free trade agreements and to continue our current preferential trading arrangements with the British Overseas Territories. Finally, the Bill will also enable us to create a UK unilateral trade preferences regime for developing countries. That means that the UK will continue to provide preferences that support economic and sustainable development.

The UK, with the support of this House, has been a proud advocate of supporting developing countries to reduce poverty through trade. I think we can all agree that an important way to help end poverty—and aid dependency—is through inclusive economic growth, jobs, investment and trade. Unilateral trade preferences are a key part of that aim. They act by reducing or removing tariffs on imports from developing countries without requiring market access in return. This boosts trade, which is good not only for the exporting country, but for British business and consumers. The Bill will allow us to ensure that countries receiving unilateral trade preferences under the current EU arrangements will continue to do so and will still benefit from the same level of preferential rates on their exports to the UK when we leave the EU. It also allows us to consider, in future, how we can make our unilateral trade preferences regime even more generous and easy to access. That is certainly this Government's intent.

I turn now to the White Papers, which look to our future. They set out principles designed to guide our approach to establishing an independent trade and stand-alone customs regime outside the EU. As the Government consider the options for our future customs arrangements, they will be guided by what delivers the greatest economic advantage to the UK, and by three strategic objectives: continued trade between the UK and EU member states that is as free and as frictionless as possible; the avoidance of a hard border on the island of Ireland; and the establishment of an independent international trade policy. The Government are clear that cliff-edge changes are in no one's interests. That is why we want a smooth transition, which is at the heart of the two published White Papers. It is also why we are proposing an implementation period: so that businesses and Governments—in both the UK and the EU—will have time to adapt.

As my right honourable friend the Prime Minister set out, the current evidence points to the need for an implementation period of around two years. However, the form it takes will be a matter for the negotiations; we will need to cover issues beyond customs and trade. While the exact nature of our future relationship with

[BARONESS FAIRHEAD]

the EU is a matter for the negotiations, there are sensible—indeed responsible—steps that we can take now to prepare for the future.

Therefore, while our immediate priority is to ensure a smooth transition, we recognise the importance of the UK being able to forge ambitious new free trade agreements with countries around the world after we leave. As we set out in our trade White Paper, we want to garner views both on the substance of the future free trade agreements, and on what would be the suitable amount of scrutiny for aspects of such agreements that go beyond the setting of import duty rates. That is why the Taxation (Cross-border Trade) Bill proposes a power to accommodate import duty rates agreed in future trade arrangements, but does not provide for the implementation of any aspects of future free trade agreements with new countries.

The Bills are a vital step towards getting us ready for exit, and the White Papers help us prepare for the future and the future trade agreements that we want to forge outside the EU. The White Papers provide a starting point for our engagement and discussion, both on future trade agreements and on the scrutiny arrangements for such agreements. On these, and on the Bills, we are keen to hear as many views as possible.

4.54 pm

Lord Whitty (Lab): My Lords, I thank the Minister for that explanation of the Government's position, which was rather clearer than what leaps out from the White Papers and the explanations of the Bills.

I thought my prominent position in the batting order today was in compensation for me being almost last in the debate on the Budget last night. However, more logically, it probably relates to the fact that almost exactly a year ago the noble Baroness, Lady Verma, and I co-chaired committees that produced the document on options for trade. At that time we already asserted that trade negotiations would inevitably take some considerable time longer than two years. We also said that whatever change was needed, we would need a transition arrangement. We also said that the least disruptive change for Britain would be to stay within the single market in the EEA. Shortly after that, of course, the Government ruled out in the Lancaster House speech the EEA option and the customs union option. Instead of referring to a transition period, they have continued—like the Minister today—to refer to it as an implementation period. The Government continue, even now, to refuse to accept that they need longer to negotiate a full, bespoke free trade agreement, which is now the preferred option, and that they can still do that in time for March 2019.

More recently, there has been slightly more realistic talk from the Government. David Davis spoke to the Select Committee about a bare-bones agreement by that time, and in different contexts they have referred to an in principle or heads of agreement by March 2019. I welcome this increased realism. However, even that is a tough call, and it means ratification by the European Parliament, which would have to start in October 2018. In addition, of course the free trade agreement itself, which would not come into play until after we had left the EU, would probably be a mixed agreement and

therefore require ratification by the parliaments of the 27 member states—no doubt the noble Lord, Lord Kerr, will correct me in a moment. Therefore speed is not exactly on the table in concluding this agreement, even if we have the substance right.

I welcome what the Minister says about the measures being taken to regulate the position under the WTO and to establish our own means of deciding our own tariffs. I welcome also the measures on government procurement and state aid, and on the issue of the trade remedies body. Indeed, my committee is looking at state aid and competition issues post Brexit, which will be helpful. However, on the bigger issues, the Government need to stop prevaricating and explain to the nation where we are. A transition period needs to be a transition period; it is not simply an implementation period, because we will not have agreed what exactly we are going to implement. It needs to be, in effect, a standstill period, during which we can negotiate the full details of a free trade agreement—assuming that we have a bare-bones agreement to start with. It will also probably be used to negotiate a full-scale security agreement. In addition, in the context of this debate, we will need that time to develop and test new customs procedures and the systems they involve on this and the other side of the Channel, and to familiarise business with them, staff them up and make sure that they operate properly.

During the transition period, it seems almost a no-brainer that, while we will have left the European Union, we should stay within the single market and the customs union. That is the standstill option. It will have to last for at least two years and, if necessary, for longer because we do not want two switchovers for British business and trade patterns.

Indeed, we may, as some witnesses to the committee have recently said, need both a standstill period and an implementation period. However, if the Government or the EU maintain their position that 19 March will be the leaving point, we will need a period of stability when we may well be outside the EU politically and constitutionally but we will still be subject to its rules. I recognise that that is a difficult political sell for some within the Conservative Party; nevertheless, it is the rationale and the logic of the position.

However, we must now look beyond that transition period. We need to look at what kind of free trade agreement we want, how it will operate and how it will impact on the subject matter of this debate. In any trade deal, negotiated tariffs should be lower than they otherwise would have been—therefore, in this context, lower than the current common external tariff between ourselves and the EU. Not all of them will be at zero but, even if they are, or if most of them are, that will not fully achieve the alleged objective of the Government to achieve frictionless trade. The reality is that outside of a single market and a customs union, there is really no such thing as entirely frictionless trade. Therefore, a zero tariff across the board does not mean “frictionless”.

At lunchtime I, along with a number of other noble Lords, attended a seminar of customs experts. The message that came across was somewhat complicated and, in some ways, depressing. For businesses—had

they been present, as some were—and particularly for small businesses and those with complex multinational supply chains, this is all a headache; indeed, it is a severe migraine. There will almost certainly be additional administration and significant costs. There may be serious delays and businesses may eventually be faced with a deterrence to trade. A lot of those companies are not aware of the complexities, because for 40 years they have not had to operate with them.

Many small companies export only to the European Union and to nowhere else, and they will be faced with much more complex transport, customs and taxation procedures than they have been used to. They will also have to face the rules-of-origin requirements. The EU will need to treat the UK the same as it does other most-favoured nations under some of the other trade agreements that it has around the world. Of course, trading into the EU also requires regulatory equivalence for goods, agricultural products and the whole range of services, which are unaffected by tariffs but will be affected if they need differential regulatory provisions. Regulatory equivalence relates to standards and a regulatory regime, but it also relates to the specific sectoral regulatory requirements. As people keep emphasising, we start from the great advantage that we are currently equivalent and indeed pretty much identical in relation to many regulations, but, as part of a free trade agreement, we will have to agree with the EU a procedure for dealing with proposals on either side of the new relationship for divergent regulations, and we will also have to agree a very clear resolution procedure between the two sides.

At this point, we need from the Government the rapid development of new customs systems and protocols. They will need to be, as far as possible, digitally based but they will be subject to checking and inspection, and borders, ports and airports will mean that the system may not be entirely invisible, as some are hoping for. They will also have to cover differential VAT and excise duty reconciliations, as well as straightforward customs provisions. Therefore, we also need a two-year period in order to develop these systems. Current improvements in the HMRC system have not yet been tested and will need to be scaled up substantially. I understand, as of lunchtime, that the EU improved system will not come into full force until 2025. Therefore, we will need some fairly hefty work on both sides of the channel to ensure smooth, let alone frictionless, trade.

This is a nightmare for a lot of small businesses, and they need taking through it very carefully. Last week, the noble Baroness, Lady Verma, and I met a trade association that explained its anxieties. It represents small, sophisticated electronics companies that have specialist markets in the EU, multi-sourced components and multinational supply chains. One company produces ventilation equipment in Britain and exports it to the EU, but 30% to 40% of its components are made in the EU. It asks questions such as: is there a minimum level of EU content in order for tariffs not to be charged, or for administrative costs to be avoided? What if the components are not of EU origin—as some still are—but are partially EU and partially third country? Is there a minimum level at which that has to be declared? How will origin composition need to be

recorded and reported, and with what level of evidence? Will that company suffer duties—if duties there are—on the total value? What records will it need to keep? What checks will it face? Will that mean delays at Dover, Calais or Boulogne for exports or component imports? The company is worried about such things, and about continuing acceptability of the product standards to which it has hitherto worked; hence, it is also worried about continued regulatory equivalence. It and hundreds and hundreds of other exporting companies require clarity, they require it soon, and they need the Government to start that mentoring process now and take them through it.

I hesitate to say something about the Irish border—so I will not. I will leave that for another occasion.

The Minister touched on the situation of the Crown dependencies, because we do have other borders with the EU. I would like her to explain the position on Gibraltar. What about small British territories in the Caribbean whose markets and supplies are with French and Dutch territories in the Caribbean? How will the customs arrangements work in those very small, very independent—and in most cases, recently devastated—Caribbean communities, which are part of the Government's responsibility and are covered by this provision? I ask that question from left field, but if the Minister could reply to it now or in writing, I would be very grateful.

I will spare the Minister my current views on the Irish situation.

5.07 pm

Lord Kerr of Kinlochard (CB): As the legendary and topical Irishman said when asked for directions to Dublin, “If I wanted to get to Dublin, I wouldn't be starting from here”. It seems to me that it might have been a good idea before the October Conservative Party conference speech to stop and consider the possible effects on the Good Friday agreement, and perhaps to consult our co-signatories to the 1998 agreement—the Irish Government—and the devolved Administrations before concluding that Brexit meant leaving the customs union and the single market. However, we are where we are. The easiest way to solve the present problem would of course be to reinterpret what Brexit means and to consider, as the costs of leaving become clearer, whether it might not be better to avoid the damage to our trade that will be done by leaving the customs union and the single market.

It was a pleasure to hear the Minister introduce this debate in such an elegant way. It is less of a pleasure to follow the noble Lord, Lord Whitty, because he made most of the points I wanted to make—and rather better than I would have.

The two White Papers we are debating today are rather contrasting. I do not mean to be rude to the Minister, but the Chancellor's is a sort of technical explanation of a Bill, and I find it extremely useful. On reading Dr Fox's, I was reminded of Dr Pangloss: there is a lot of aspiration and assertion, but not a lot of facts. So I thought I would suggest eight facts to keep in mind. It would have been 10, but the noble Lord, Lord Whitty, pinched a couple of them on the way.

[LORD KERR OF KINLOCHARD]

Fact one is that it is worse than the noble Lord, Lord Whitty, said. It is not just a matter of time. Legally, one cannot negotiate a trade agreement under Article 50. It is not possible. Article 50 is about divorce, settling the debts and setting the dates. That is all. Yes, one is enjoined by the treaty to agree a framework for the future relationship, guidelines and ground rules. I have been arguing for over a year that we would do very well to submit our own draft framework. I do not understand why we insist that it is for the other side to put forward all the papers. We would have done ourselves some good if we had submitted a draft long ago. But the draft cannot amount to a free-trade agreement or an association agreement because they come under the different rules of Articles 216 and 218.

The Secretary Of State for Exiting the European Union was quoted in the *FT* yesterday as saying that if we leave the EU before we have a trade deal,

“trying to finalise an FTA under those circumstances would be very disadvantageous from a negotiating leverage point of view”.

That is if we have left before we do it. But that is what will happen. He is quite right. It is very disadvantageous from a negotiating point of view, but the inconvenient fact is that we cannot do trade under Article 54 or until we have left. That is a fact.

The second fact is that a free-trade agreement, as the noble Lord, Lord Whitty, said, will take several years—perhaps five—to negotiate and ratify. I imagine that it will be a mixed agreement, as he said, so ratification will add another couple of years. The Canadian deal took seven and it is still not in force. A deeper agreement than the Canadian one, extending to services, might take longer to negotiate and will certainly face greater ratification problems. It certainly cannot be done by 2021—the end of this standstill period—so another hiatus will be coming up. That is a fact.

The third fact is that the standstill agreement that is being talked about is one that the EU has been offering since April. It is in its April guidelines. It is in the Florence speech so it seems that the Prime Minister is now ready to accept it. It would only be a standstill. It comes in after we have left, so we would no longer have a vote in Council, judge or Commissioner and we would no longer have Members of the European Parliament, but we would agree to respect, in the Prime Minister’s words, all the rules and regulations of the EU during that period. We would be enjoying, if that is the word, a sort of colonial status. It might be politically a little ignominious but economically very convenient, except that it would lapse after two years and the second hiatus would then come in. The standstill agreement does not avoid the cliff edge; it merely postpones it. It gives businesses more time to do the packing as they prepare to leave, but it does not avoid the cliff edge. It would be wrong to call it a transition or an implementation period because, by the time it ends in 2021, we would have nothing agreed to transition to and nothing to implement. It cannot therefore provide the certainty that employers and investors now seek. That is a fact.

I will add another equally inconvenient fact. Many I meet in the business community say, “Ah well, the can will be kicked down the road. The usual solution

to the problem is that you say now that it will take two years, but it will stretch for longer than that”. Under the treaty, it cannot do so. The Commission and Council lawyers looking at the divorce treaty already have grave difficulties in accepting that it can cover the colonial period when you have left but are still respecting the rules of the club. There is no colonial article in the treaty or any provision for this state. Moreover, it is odd to have a relationship with a third country that is not covered by any of the articles of the treaty; it will be a first. The European Parliament lawyers say that it is completely impossible, while the Commission and Council lawyers seem to have compromised on two years as a maximum that cannot be stretched. I am afraid it will probably remain the view that you cannot do as the French say and make the temporary the provisional and then the permanent. Legally, that will not happen, so the cliff edge will still beckon.

Dr Fox’s White Paper states that during the standstill period we will be able to negotiate new trade deals with third countries. That is right because the standstill period will begin only after we have left. In practice, our first concern will probably be to try to salvage a share of the third country access that we currently enjoy under agreements negotiated by the EU. The Minister referred to that in her introductory speech and she made it sound rather simple, as does page 28 of the White Paper. However, it would not be simple at all because it is not a matter of arithmetic, of dividing it up. Trade diplomacy is a form of mercantilist arm-wrestling. We have seen that already in the reactions of Australia and New Zealand to the division of quotas agreed between us and our European Union friends. They were instantly rejected by the Australians and the New Zealanders. It is not simply a question of dividing our share from their share; the third country will want to grow the cake.

Nor will it be easy to replace in these third countries the market share that we will be losing in the European Union. The reason for our large export trade with the European Union is principally because it is quite close. The member states are our neighbours. There is a pretty much infallible rule when talking about trade in goods that the trade halves as the distance doubles. It is really hard to see how we can replace in distant parts what we will be giving up close to home. That is not in Dr Fox’s White Paper but it is a fact.

How good a deal with the EU will we get eventually? To coin a phrase, the key is in regulatory alignment. Tariffs are not the problem these days when we talk about trading goods. The greatest obstacle is not tariffs but differential standards. In services, of course, the greatest obstacle is regulatory misalignment. It is not just in Ireland that the issue of regulatory alignment is important; it is the key to the whole negotiation. A month ago in London, the American Secretary of Commerce, Mr Ross, told the CBI and others that if we hope for greater access to the US market, we must break with EU regulations and standards and adopt American ones. Three weeks ago in Brussels Mr Barnier asked in public whether the UK’s aim was to limit or to maximise divergence from the EU regulatory model we have been working to build for 44 years. Nobody in Brussels knows the answer. I do not think anybody in London or the Cabinet knows the answer, because the

issue has been ducked up to now. To hold the coalition that is the Cabinet together, it has been important not to ask the question but to pretend instead that one can have the cake and eat it. However, the crunch point is coming quite soon. The moment we start talking about trade, the EU will need and want to know where we are going. If the Cabinet decides that we will go with Dr Fox, insisting on adopting American standards or setting our own autonomous national standards and regulatory systems, I do not see how we can get anything better than the Canadian deal, which is very light on services and would therefore be very bad for us.

I have only two more facts to go. Fact seven is that the EU's existing free trade agreements include most favoured nation clauses. That means that if a third country, as we would be, gets a better deal for any particular category of goods or services than the South Koreans, Singaporeans or Canadians got—or than the Japanese will get—the EU is obliged to upgrade the deal for the third country in question and is not entitled to claim any compensation in better terms for its exports to that third country. That could be a disincentive for the EU to offer us a much better deal than Canada. You will not find that in Dr Fox's White Paper, but it is a fact. The most favoured nation clause, which we were extremely keen on while a member of the club—because we were trying to liberalise the EU's external trade—will now be a weapon against us. We will find it very disadvantageous.

Fact eight is simply to cheer noble Lords up. We do not have to go there. A notification under Article 50 is not an irrevocable act. As more inconvenient facts emerge, and as the costs of leaving the EU become clearer, it is important that people understand that the people of this country have the right to say that we should take back the Prime Minister's March letter. We are still free to choose not to move to colonial status in 2019, nor to stormier waters in 2021. We have not crossed the Rubicon. It is still up to us.

5.22 pm

Baroness Verma (Con): My Lords, it is always a pleasure to follow the noble Lord, Lord Kerr. I will try to calm the waters. I thank my noble friend the Minister for introducing the debate to your Lordships' House. It provides us with a timely opportunity to discuss the hugely important subject of future trade and customs policy.

The real challenge for the Government is in getting all parts of the UK to agree to the terms that the Prime Minister laid out on taking office: no single market and no customs union. Yet the situation of the Irish border demonstrates clearly the complexities of reaching consensus and what appears to me to be the inadequate preparedness of the Government. Yesterday's news reporting was evidence of the incredible complexity and sensitivity of the discussions.

Members will be aware that the EU Select Committee and its sub-committees have produced a number of related reports over the past year, including *Brexit: the Options for Trade*, *Brexit: Trade in Goods* and *Brexit: UK-Irish Relations*. The reports have taken large amounts of evidence from businesses, academics, trade organisations and Ministers, and they enabled the committees to lay out objectively the opportunities

and challenges arising from leaving the EU. However, there were significant warnings that uncertainty and the slow progress being made would undoubtedly start to impact seriously on business investment decisions if the Government failed to ensure that real progress was made with the negotiations.

The results of the referendum are known: some 4% more of the voting British public voted to leave. However, now it is the duty of the Government and the Prime Minister to ensure that we leave with terms that benefit all the people of the UK; that all who live in the UK believe and feel they will not lose out from our exit from the EU; that the UK will maintain a strong relationship with Europe; and that people working here or in Europe will continue to build on the current opportunities we enjoy.

It is hard to understand what a seamless and frictionless border means in the context of the UK-Irish border. I for one certainly struggle with how, in the time remaining, the Government intend to have a bold and ambitious agreement, the freest possible trade and a bespoke arrangement unique to the UK.

The Government must not believe they have the mandate or position to respond with meaningless responses on the important and detailed work that the committees have carried out here and in the other place, hiding behind the so-often used phrase: "We cannot comment on ongoing negotiations". Our reports lay out clearly and in detail the many issues and challenges that need to be addressed if we are to see our deep and special partnership maintained with our EU partners.

Many of the proposals contained in the Government's position papers on Brexit are untested and without precedent. It is critical for all of us—from the job and wealth creators to the workforce at large—to believe that real pragmatism and honesty are in place to tackle the mammoth task ahead. It is certainly not in any of our interests for self-serving politicians to get in the way of what is inevitably a massive task of necessary compromises and demands to maintain a strong trading relationship with our biggest trade partner, the EU.

In the Government's position paper, *Preparing for our Future UK Trade Policy*, the Government have expressed a desire,

"to ensure continuity in relation to our trade around the world", and that we,

"avoid disruption for business and other stakeholders".

That is a welcome starting point given the scale of the trade that the UK carries out with the EU: the EU accounted for 43.1% of the UK's exports of goods and services and 53.9% of its imports. Business, the associated supply chains, the associated services and the required skills and people all demand a high level of certainty and consistency.

It is crucial that we understand what a transition period will consist of. We all understand that these are discussions for negotiation, but I will ask my noble friend the Minister specifically about transitional arrangements and the EU's preferential trade arrangements with third countries. The paper lays out the Government's commitment to seeking continuity in arrangements for trade with countries,

"covered by EU third country FTAs and other EU preferential arrangements".

[BARONESS VERMA]

These must be negotiated with the 60-plus countries that are signatories to the EU's agreements and not with the EU. Will my noble friend confirm that the Government expect to have in place individual transitional deals the day we leave the EU with all countries covered by current EU FTAs, all states party to EU preferential arrangements and the EEA countries and Switzerland, or does she envisage a different scenario? If the latter, could she shed some light on what that would look like?

Will my noble friend say how discussions with Norway and Switzerland are going to ensure that, post Brexit, we avoid a hiatus with two of our largest trading partners outside the EU? Have the UK Government managed to allay the obvious concerns they may have?

The Government have placed huge emphasis on their intention after Brexit to,

"boost our trade relationships with old friends and new allies".

Will my noble friend tell us how the Government plan to spend the additional £0.1 billion allocated to the Department for International Trade's resource budget for 2017-18? Are our old friends and new friends expecting significantly different terms on visas and job prospects, given that the Government want tighter immigration levels?

The EU External Affairs Sub-Committee wrote to the Minister of State last week on the new trade remedies regime that my noble friend mentioned in her opening remarks. We all agree and accept that a robust trade remedies framework will be essential if we are to make a success of our new trade policy. Is my noble friend able to tell us what progress has been made on the new framework? I know she said that the Government are working for the best possible framework, but I am sure she can say what she feels are the key objectives for the new trade remedies regime.

I will touch quickly on how the paper relates to the WTO. There have been voices of concern from a number of quarters. The EU Committee also expressed deep concern last year that negotiation of the UK's schedules of concessions may prove to be less straightforward than the Government have pinned their hopes on. It is of course critical that the views of other WTO members be considered, especially on tariff quotas and on whether the UK's and the EU's actions are seen as "modification" rather than "rectification" of the schedules. How confident is my noble friend that, if necessary in the case of a no-deal scenario, the schedules will be agreed in a timely fashion, and how content is she with the pace of the negotiations? What to her mind is a bare-bones deal?

I shall not comment on the White Paper on the customs Bill but focus on the Government's overall approach to customs after Brexit. As I said in opening, the situation in which the Government find themselves reflects complexities that can be ironed out and agreed on only with a sensible timeframe. In any attempt to rush what are hugely sensitive issues, achieving room for manoeuvre can prove extremely challenging, the Irish border being exactly a point of illustration.

The EU External Affairs Sub-Committee considered in the autumn the Government's document, *Future Customs Arrangements: A Future Partnership Paper*.

It was extremely disappointing that neither of the two options outlined in the paper was presented with sufficient detail to allow us to examine properly what the "new customs partnership" option would look like, because, in the Government's own words, it is an "innovative and untested approach". Surely we are right to feel somewhat apprehensive. Given that we have less than 16 months before we depart from the EU, it is clear that a whole plethora of questions need to be answered on what a customs framework will look like.

My noble friend will be aware that the committee wrote to my noble friend Lord Callanan on 31 October requesting details of the preparatory work that the Government are undertaking before they start negotiations on customs with the EU. I will remind my noble friend of the areas around which the letter was framed: entry and exit declarations; membership of the common transit convention; mutual recognition of the authorised economic operators scheme; a technology solution for ports, and other customs co-operation, assistance and data sharing. The committee has received acknowledgement of the letter from my noble friend, but we are awaiting a response on those issues. Perhaps the Minister can comment on them and assure the House that we will receive a detailed response from the Government on the issues we have raised.

As a former Minister, I am aware of the immense pressures that Ministers are working under. That said, I was and remain of the view that, as servants to the British people, it is critical that we keep our population informed, enabling honest discussions and decisions to be made in the interests of all in our United Kingdom.

One such honest discussion is on the concern raised in our committee's report, *Brexit: Trade in Goods*, about the costly administrative procedures for businesses and the varying levels of delay in the consignment of goods, let alone issues raised by our committee and other committees on rules of origin, passporting rights and membership of EU agencies that give us the passage to operate across the globe. Have the Government undertaken an assessment of the cost implications for businesses that they outlined in the future customs arrangements paper? What support in preparedness for these transitions has the business community asked from the Government, and have the Government calculated the scale of financial and time impacts on supply chains and associated providers? The noble Lord, Lord Whitty, and I met people from a trade association. He has cited one example; I could cite many more.

In our report, *Brexit: Trade in Goods*, we drew the House's attention to our concerns about the new customs declaration service, or CDS. We said that we were concerned that the introduction of a new IT system for customs, planned for the year that the UK leaves the EU, may add to the complexity of the trading conditions facing businesses in the face of Brexit. Will my noble friend update the House on the progress of the CDS, both the development and implementing stages? What information programmes will be made available to businesses and how will this work be complemented with our European partners?

The noble Lord, Lord Whitty, referred to our committee's report, *Brexit: the Options for Trade*, published in December 2016. If the Minister has not read it, I heartily recommend that she and her colleagues do so, as it lays out a number of very well thought-through and doable recommendations and conclusions. I will end on one; it is on page 71, at paragraph 263. The last sentence states:

"We urge the Government to establish at the outset of negotiations a clear 'game plan' for a future transitional agreement, with specific proposals as to what form it should take".

We must not allow ourselves to sleepwalk into chaos. The job of this House and the other place is to provide for all the possible outcomes we could face. The people of the UK expect us to work hard on their behalf, but they also expect honesty and integrity in the debate. We make a difference; let us not find ourselves short in performing our duty.

5.37 pm

Baroness Quin (Lab): My Lords, it is a pleasure to follow the speech of the noble Baroness, Lady Verma, who reminded us, as did my noble friend Lord Whitty, of the valuable work done by the European Union committees in this House.

Despite the publication of the two documents before us today, on trade and on customs policy after Brexit, there remain huge unanswered questions. First, I want to look at the aim of frictionless trade with the European Union—this is very much the topic of the moment, given the events of yesterday in Brussels. How can frictionless trade be achieved when we are outside the single market and the customs union? The irony of the two papers is that we seem to want to get as close to the EU as possible while at the same time moving away from it. There is almost a secret admission in the papers that what we have now is very much in our economic interest.

There is the whole question of regulatory divergence. It has often been put to us that, outside the EU, we will be free to make our own rules, but if we want frictionless trade, it cannot be in our interest to have regulatory divergence from the European Union. Regulatory divergence may give us more theoretical freedom to do our own thing, but it will not lead to frictionless trade and we cannot have both.

The papers also make a great deal of consultation with industry, and I welcome the fact that the Government have launched widespread consultation the length and breadth of the UK with devolved authorities and with industries both large-scale and small. However, if the outcome of the consultation is a strong message from the majority of business that is against the Government's policy of leaving the single market and customs union, will they think again as a result?

I have read briefing papers recently from a huge variety of our major industries, both in the manufacturing sector and the services sector, and they all seem extremely worried about our future outside the single market and the customs union. Furthermore, I have been struck by the number of industrial sectors which, rather than resenting European regulation, feel on the whole that they have had a huge role in creating and shaping that regulation. They worry that there will be a massive loss of influence for them once they no longer have a

seat at the table. They feel that they have been setting the agenda in Europe, in many ways. That is a very different picture from that painted by many during the referendum campaign.

Understandably, the papers in front of us talk a lot about the prospects for trading with the rest of the world outside the European Union. Of course we want to conquer new markets and do better in existing markets outside the European Union but these things are not an alternative to European Union trade; they are complementary and additional to it. Certainly, over recent years, Germany has exported on average about five times as much to China as we have done—it can do that while being firmly part of the European Union. The irony is that, as was reported last week in a number of newspapers, our exports to the European Union have improved in recent months but our trade deficit with the rest of the world has worsened.

Much is made of our ability to negotiate free trade deals post Brexit, and that is certainly mentioned in the papers in front of us. But, again, there are many uncertainties here. Obviously, the United States is mentioned as a very important market. The noble Lord, Lord Kerr, referred to that. Personally, I was very keen, unlike some in my own party, to see a free trade agreement between the United States and the European Union. I saw huge benefits in that, particularly for some of our smaller-scale exporters and specialist exporters in the agricultural sector, for instance, which are handicapped by American rules, which make it very difficult and a huge bureaucratic procedure to export to the United States. But the United States under President Trump now seems less keen to prioritise a deal with us over one with the European Union, and in any case we know that the programme on which he was elected is much more protectionist than the one followed by President Obama. The question is: will we be a priority for third countries or blocs to negotiate with, or will they favour the much larger European Union trading bloc? This is a valid question, which needs to be asked. I noticed an interesting quote in the *Evening Standard* yesterday, which was covering the new V&A museum in China. It quoted a Chinese spokesman as saying:

"You should be leading the EU, not leaving it".

Trade deals require dispute resolution mechanisms, which the Minister referred to in her opening speech. In this respect I simply cannot understand the Brexiteers' paranoia about the European Court of Justice. There are many people in this House who have longer ministerial experience than I do, but when I was Minister for Europe I made a lengthy visit to the European Court of Justice; earlier, as a Member of the European Parliament, I was involved in helping constituents take cases to the European court. In those cases and judgments, there was a ruling in favour of our own citizens. As a result, I have tended to see the European Court of Justice as an ally rather than an enemy, and as an organisation which carries out the responsibilities that the member Governments of the European Union have entrusted to it.

I see two big ironies in the current situation. The Government believe strongly in free enterprise—understandably and rightly—but ironically this present situation is making industry more dependent on politics

[BARONESS QUIN]

and on the negotiating competence of government politicians than at any other time I can remember in our history. It is also ironic that many pro-Brexit politicians used to say to us that the European Union would be absolutely fine if it was just a common market, yet it seems to be that common market—that single market that Britain did so much to create—that we are turning our back on. I do not really understand why.

I accept the point made by the noble Lord, Lord Kerr, that tariff rates are not the most important things now, but I also worry that in a harsh trading environment any changes to tariffs or non-tariff barriers—sometimes even marginal changes—or suddenly becoming penalised by the rules of origin, which my noble friend Lord Whitty mentioned, can be the difference between export success and failure. Coming from a part of the country—the north-east of England, which voted largely in favour of Brexit—where we have a good exporting record, I am very worried that we will make the economic situation worse in my part of the country, rather than better, as a result of this overall approach.

The noble Baroness, Lady Verma, urged the Government to be honest with people about these issues. That theme was also mentioned by the noble Lord, Lord Tugendhat, and others in the debate yesterday. The Government really should admit that the current arrangements are better than the alternatives, certainly with regard to the situation in Northern Ireland and the Republic. The best way to resolve the concerns of the Irish Government and those of the DUP and Northern Ireland is to maintain these arrangements, not destroy them. The arrangements also allay the concerns of Scotland and, indeed, of London and other parts of the UK, which have also talked about the possibility of having separate arrangements, but I agree with the Government that it would be a nightmare if within the United Kingdom common market we had all kinds of different trading and customs arrangements. Living very close to the Scottish border, I feel that issue very strongly indeed.

The hard-line Brexiteers often present themselves as patriots and accuse those who do not share their views of talking the country down. But by not facing the problems honestly, the Government and their hard-line supporters are letting the country down and endangering our future as a United Kingdom. Surely that is something that none of us wants to see happen.

5.46 pm

Lord Empey (UUP): My Lords, I refer the House to my registered interest as a vice-president of the Institute of Export & International Trade, which is an educational charity.

A number of statistics are included in the very helpful Library Note, and they do not make particularly good reading. Although the European Union is by far our largest export market, it is also an organisation with which we have a huge deficit—some £82 billion, according to the note. I have an issue with the whole approach of this country towards trade and the generation of economic activity. With all the resources that we have, both academic and in the City of London, and all the international experience we have had over many

years, why has this country effectively turned its back on business? This goes back to the 1970s and even beyond. It became unfashionable to have smelly factories—we needed to concentrate on all the services—but we still need a core element of manufacturing in this country. We have largely turned our back on that.

I believe that a large amount of the trouble goes back to our education system and our approach to education. One of the things that is at the root of our failure to improve our economic performance is basically a form of snobbery. For instance, let us look at the difference between ourselves and a country such as Germany when it comes to vocational education. Here, an engineer is someone with an oily rag who goes in through the back door, but there Herr Ingenieur is regarded highly and with respect. We therefore have our whole approach wrong, from the ground up, and that is why this country's relative economic performance has over many years been declining.

I welcome the Minister to the Dispatch Box, but I say to her that our approach to trade, and to business generally, has been not as good as it should have been. Look at our competitors: they tend to be more active and aggressive when it comes to getting into markets. Reference has just been made to our economic performance in China, and while that is improving, it is from a minimalist position. We are not focused as a country on trading, yet that was where this country built up its entire background around the world. We talk about global Britain, but we have become terribly parochial. Our approach to education and the message that we send out to our young people is at the core of this fundamental weakness. Political clout in the world also comes with economic clout, yet we are seen as a country that is not moving forward in that regard. The Government and the Minister will have to address that.

Let us come to the City of London—to finance and our approach to taxation. We do not incentivise companies to trade, but we could use the tax system. A simple matter, for instance, is that the Institute of Export and International Trade provides qualifications for people in exporting. Your Lordships would not go to get your car fixed by a mechanic if that person had no qualifications, or to a dentist if they had no qualifications. Why do we risk the farm—risk the company—on people trying to export if they have no qualifications? We do not give a tax incentive to companies to encourage people to take that training.

The City of London is, allegedly, the financial capital of the world, so how is it that major companies in this country cannot win contracts, say, to build trains but are beaten by a German company? It is not because the trains are any better but because the German company could produce a better financial deal. How is it that the City of London, which is supposed to be the financial capital of the world, cannot beat anybody? I just do not understand why we do not say to the City of London and to companies, which are awash with cash in many respects at present, that we will incentivise them if they invest in something productive, instead of giving money to Russian oligarchs to buy houses that will lie empty in this city.

We need an entirely new approach to trade. It has to be front and centre and we should trade-proof all government policy by asking, “What is this doing to help grow our businesses or raise wage levels?”. We talk about poverty endlessly in this House, quite rightly, but it is basically caused by a lack of money. People are just not getting wages that would make them self-sufficient. Nobody—or, I suspect, very few—would want to languish on social security. But at the end of the day, if we do not put those issues at the front and centre of our policies, something is radically wrong.

I come to some of the issues that concern our international trade, such as tariffs versus standards. With the recent decline in our currency, tariffs are less of an issue but standards remain key and, of course, they come right into the Brexit process.

The noble Lord, Lord Whitty, said in his opening remarks that he would not delve into the Irish question, but I am afraid that I am not going to be so reticent. The fact is that yesterday, no matter how you measure it, was a bad day for the United Kingdom. It was bad because we have made statements which involve inventing a new language: we have “frictionless” now, which is a great word, and all sorts of things. We have to put it all in perspective. The amount of trade done across the Northern Ireland border is, in European terms, minute. It is done by a relatively small number of significant companies, allied to a lot of local people, particularly around agriculture, produce and animals. Why do we have to invent new phrases? What does “regulatory alignment” mean?

Can the Minister confirm this for me? If she cannot do it tonight then I am sure she will write to me. I was led to believe that when the document was leaked, it spooked a whole lot of people. Some people may have seen pieces of paper but did not pick up their significance; others, who may have believed that they had great influence over the Government, suddenly discovered that their influence was not that great after all. They discovered that, shock-horror, a UK Government were going to put a national interest first instead of a regional interest. This is not a new phenomenon to some of us who have been involved with negotiations over the years. However, a scenario has been put to me that people have misunderstood the phraseology and that the document did not mean that Northern Ireland and the Irish Republic would be permanently aligned with whatever Brussels decided on regulatory performance. But it would mean that the regulations that have already been agreed between the north/south bodies established under the Belfast agreement and the North/South Ministerial Council would stay as a fixed point.

There was then the revelation earlier today, when the Urgent Question was being answered in the other place, that regulatory alignment would apply to all of the United Kingdom. Forgive me, but that piece of arithmetic just does not add up. I believe that there are solutions to our border issue. The starting point is that everybody agrees that we do not want to go back to the past. We have spent 20 years getting rid of this obstacle, which is in our own minds as well as elsewhere. I am a totally convinced unionist and do not want to see, in any shape or form, a diminution of Northern Ireland’s position in the United Kingdom. However,

we agreed a number of regulations. I was a Minister who set up, with our southern counterparts, two of the largest north/south bodies, InterTradeIreland and Tourism Ireland. As Energy Minister, I also did deals for gas pipelines and the electricity interconnector, so I have some grasp of the issues involved.

I believe that we could have a customs relationship between Ireland and the rest of the United Kingdom because 90% of Ireland’s goods go either to or via the UK, which is a land bridge across to Europe. We could also guarantee that we will not allow the integrity of the single market to be damaged by people who try to subvert it by bringing in goods that are not up to standards, or to use the Republic of Ireland as a back door in. All of that is possible; it is also possible, through working with the relevant customs authorities and other intelligence bodies, to communicate between Brussels, ourselves and Dublin so that we can find a way through. Can the Minister tell us whether that regulatory convergence or alignment would apply to regulations currently in force, such as those on animal health, or to new regulations that will come in over time? If it does, that will inevitably mean a divergence between our part of the United Kingdom and Great Britain. I would really want to know the answer to that question.

Coming to the bigger picture, the way that things have unfolded will make matters terribly worse because, if there is to be any change to it, who will be seen to have backed down? This matters a lot in Irish politics, as one well knows. There are so many games being played. People are seeking to be successors to the president of the European Union, there is a minority Irish Government, there is a minority Government here, people are jockeying for position, and we are caught in the middle of all this. We must remember that we have to think about our own people. Their future jobs and prospects are out there, and I have to say that the biggest mistake the former Prime Minister, David Cameron, made was preventing Her Majesty’s Government making any preparations for one of the two possible outcomes of the referendum. We are now finding that we are playing catch-up in so many different areas. We are well behind where we should be at this stage.

Finally, I return to the point I made at the start. We want to see this country re-established as a significant trader in the world, but we have to go back to basics. That starts in the classroom and in the attitude. It starts in where government sees the priorities lying. Economically, we should incentivise our businesses through the tax system so that, if they put their money into something that is going to be productive, they will get a better return from that than from putting it into property. We saw the crisis in the Irish Republic a few years ago over property. Money was sloshing around, and the crisis left a debt that will take two or three generations to clear. Please revisit the whole concept of where our economic policy lies.

I believe there is enough talent and qualified people in this country to find a way through this so that we end up as a really global Britain, not one that will inevitably be crippled by continuing deficits. Remember, it is more than 30 years since this country ran a

[LORD EMPEY]

trade surplus, and anybody in a corner shop will tell you that as we have continued to lose money like that for 30 years, when we come to a shock, as we inevitably will in the next couple of years, whether we get a good deal or a bad deal, we have no reserve, and that is where we are weak.

6.02 pm

Lord Monks (Lab): My Lords, I, too, welcome the noble Baroness, Lady Fairhead, to the Dispatch Box this evening and thank her for her presentation of the government documents on trade and customs. I have to say that even her skilful presentation could not disguise the huge amount of wishful thinking that exists in the Government's position on these two subjects. I also welcome the lament expressed by the noble Lord, Lord Empey, for too much of UK manufacturing. Whether we are inside or outside the EU in the future, it certainly needs a lot more attention than it gets in British public life at the moment. Like my noble friend Lord Whitty, I will leave my comments on Ireland at least until I have seen the evening news, because when you are in this Chamber you do not know quite what is going on outside.

To return briefly to wishful thinking, the feeling that having independent trade deals with countries around the world will more than compensate for the costs associated with leaving the EU seems to me wildly misplaced. The harsh reality is that by casting ourselves adrift, not only from the EU but from the European Economic Area, we put ourselves in an environment where we will be trying to negotiate deals not just with the EU and its 27 member states, with all their different interests to be taken into account, but with the 60 other countries that currently have trade deals with the EU. I make that 87 countries to negotiate with just to get the same geographical coverage as we have now. I am talking not about the quality of those agreements but just about some sort of arrangement with them.

I agree with those who say, as several noble Lords have in this debate, that we have to level with the British people and be very honest about how things lie. Membership of the EU has been unencumbered by tariffs or rules of origin checks. My noble friend Lady Quin reminded us that the single market was Mrs Thatcher's baby. It was her vision. She wanted the common market. When, at their first meeting in Downing Street, Jacques Delors asked, "What do you want?", she said, "I want a big market". That option is still there for the Government, but at the moment it is being rejected. It ensures common product regulations and standards, basic worker rights on health and safety, information, consultation and equality, good consumer and environmental standards and, importantly, the right to deliver services across the continent. That is what we have. That is what we enjoy at the moment, and that is what we have to try to replace in some way if and when phase 2 ever gets off the ground. What a task we are setting ourselves. We should tell the people how hard it is going to be.

I agree with noble Lords who said they wished we were trying to lead Europe rather than leave it, not least because trade is inversely proportionate to the

geographical distance between the countries concerned, as the noble Lord, Lord Kerr, explained. We also need to bear in mind that many of the countries earmarked by the Government as friendly targets for future trade deals are right on the other side of the world—as far away as you can get in some cases. At the moment, Australia accounts for 1.7% of our exports, India the same and New Zealand 0.2%. Even those countries, with their close historic and cultural ties with this country, will be very tough on trade talks, as they were a few weeks ago on agriculture in the case of Australia and New Zealand. Can the Minister tell us whether the Anglosphere countries, such as Canada, Australia, New Zealand and the United States, are prepared to open their markets to British beef exports soon? When will they lift the bans that were imposed as a result of the BSE crisis? The EU did it years ago, in 2006. The European Court of Justice made it do it. One or two countries, such as France, did not want to, but the ECJ made them. That is also something that will be lost as we go down the current route that the Government are setting. It is part of the wishful thinking that there will be friendly countries out there anxious for deals generous to us. The true picture is more like an episode of the BBC's "Blue Planet": a frightening ocean full of all kinds of predators seeking to burst out from the depths to circle and pick up some of the choicest parts. Some of our choicest parts, such as pharmaceuticals and financial services, are already being eyed up greedily by other countries to pick them off if they possibly can.

The EU apparently favours a replica of the EU-Canada proposed deal—the CETA agreement—for the UK, and I can see why. If I were in its position, I would do the same thing. CETA covers most manufacturing, an area where, as has been said, we have a big trade deficit with the EU. It does not cover much in the way of services, such as audio-visual and, crucially, financial services, where the UK has a big balance of payments surplus, so a CETA deal would not be a good deal for the UK. Wishful thinking is not an intelligent basis for these trade talks. I have yet to learn what the Government are really seeking in their comprehensive free trade deal in phase 2 of the negotiations, if and when they get going.

In the absence of a hard-headed, clear approach, the Government must think again and look again at the option that several noble Lords have mentioned. Do we have to exit the single market and the customs union? Can we not stay in the European Economic Area? Can we negotiate a Norway-plus deal rather than a Canada-plus deal? It is far from the ideal option and would not be anything like as good as what we have at the moment. It risks the charge of being a colonial arrangement, as the noble Lord, Lord Kerr, said. There is no doubt about that. We would be a rule-taker rather than a rule-maker, although I am sure we would still find ways of having a significant influence on crucial decisions if we were in that position as this is a much bigger country than Norway in the constellation of European states. If we are to stick to the result of the referendum, however, it is the only option that minimises the damage of Brexit, as others have said, and solves the Irish border issue. It is the only way I can see to keep at least some cake and possibly be able to eat it.

It is a better bet than Canada-plus. If the Government will not take this kind of changed approach as the difficulties mount up, as they inevitably will, the moment is surely arriving when Parliament itself—this House and the other place—will have to consider what to do. The situation is very serious, and the sooner the country is aware of the limited nature of our options the better.

6.10 pm

Viscount Waverley (CB): My Lords, parallel preparations in advance of final Brexit implementation are essential, even though the end product is yet to be determined. As a reluctant but optimistic Brexiteer, I have no difficulty with a paper entitled *Preparing for our Future UK Trade Policy*. The principle of free trade and the goal of enabling continuity, boosting global trade relationships, supporting developing countries in reducing poverty, and a rules-based framework for trade remedies and trade disputes are objectives that allow the UK to hold its head high.

I have spoken on multiple occasions over the months on such matters and will not repeat what is already on public record. The covering note on the cross-border trade Bill, however, presents a Rubik's cube of complex legal and technical issues within equally complex political constraints. It is that lack of clarity around political constraints that makes the technical analysis a testing exercise, such that businesses have no alternative but to prepare for the contingency scenario of no agreed customs arrangement.

It is hoped that this month will shed light on the probable Brexit end game. While a hard Brexit is still on the cards, given the continuing uncertainty, renewed focus on delivering the ideal scenario of frictionless trade, with an interim implementation period, would appear more sensible. Brexiteers should understand, and accept, that frictionless trade will be perceived by some as though we are still in—but surely this is a small price to pay to ensure overall readiness. I have also come to accept, albeit reluctantly, that addressing detail through secondary legislation is acceptable in the circumstances.

In essence, this is about an orderly withdrawal of the UK from the EU. Questions arise, however. Excise and VAT regimes must function effectively on exit day, so what is the Treasury's preferred option? Is it a continued waiver from entry and exit summary declarations? Is it to remain a member of the Common Transit Convention, so that goods will not need to complete import and export declarations at each new border crossing? Is it to seek mutual recognition of authorised economic operators and press for bilateral implementation of a technology-based solution for roll-on roll-off ports? Will the Government be supporting the adoption of these simplified procedures, including presentation waivers, the use of the CTC and self-assessment? Or would the Treasury prefer an option of a virtual border, where the UK, in partnership with the EU, operates a regime for imports that will remain in the EU market even if they are part of a supply chain in the UK first?

Leaving the EU without a negotiated agreement will necessitate other EU countries having infrastructure in place for the two-way process of importing and exporting to work effectively. Is there any evidence

that such preparations are under way? To achieve frictionless trade, the Government must ensure that all departments and related agencies operating at the frontier are joined up. The main cross-channel port countries of Belgium, France and the Netherlands will need to alter their systems to accommodate UK imports and exports. Beyond budgetary issues, this will require co-operation and direction from the Commission. Preventing disruption will require both sides to be prepared for changes.

I spent a large part of yesterday evening scouring public-source EU documents. It is a given that, as of the withdrawal date, the United Kingdom will no longer be part of the customs and VAT territory of the Union. However, in one of those documents, in the subsection, "Modes of Transport", in each of the sections pertaining to "Maritime", "Air", "Road and Rail", "Postal Shipments" and "E-commerce", the following words appear:

"These changes will be implemented when all the ... IT systems will be available".

Would the Minister care to comment on this prospect? What is being anticipated, by whom, and at what cost over what period? From what I understand from the excellent briefing this morning, the EU is not expected to have its systems ready until 2025—a point made by the noble Lord, Lord Whitty. So even if we were to enjoy a transition period of two years, it would take us to March 2021. What is the process that would be enacted during the period 2021 to 2025?

We are at a critical juncture in the Brexit journey today. The Irish frontier complexities loom over the negotiations. The question of no divergence on regulatory alignment remains the bogey. I have not been to the large logistics centre on the Chinese side of the Kazakh frontier, but it might be that relevant lessons could be learned given the long-haul shipments that eventually reach Europe.

I have previously raised the possibilities and benefits of an integrated digital economy platform in relation to cross-border challenges. Given that 60% of global B2B trade currently runs through the systems of the leading 12 technology companies, signing up 150 of their leading customers would be sufficient to ensure that the digital economic platform captures around 60% of global trade by 2030. I understand that the Global Coalition for Efficient Logistics—GCEL—stands ready to demonstrate the potential of its digital technology in respect of trade between Northern Ireland and the Republic, in order to enable trade to take place between the two in a manner satisfactory to all parties and without the need for a physical border. I am aware that principals will be in the UK Friday and Saturday, and I have little doubt that a meeting of interest to the Minister and her department could be arranged.

Very briefly, and as a concluding thought, I will flag the concerns of SMEs, many of which have never prepared documents for a customs exit or entry clearance—again, a point made by the noble Lord, Lord Whitty. It stands to reason that a lack of experience, staff and resources for dealing with significant changes, procedures and paperwork will become a challenge. Would the Minister consider placing this issue in her in-tray for consideration? What possible training exercise might be readily entered into?

[VISCOUNT WAVERLEY]

The greater the divergence between EU and UK regulations and product standards, the more customs capacity the UK will need to develop. The Minister should recognise constraints at the physical border and consider moving checks inland. The UK currently has access to more than 20 EU systems used to track the movement of goods and vehicles. Although an FTA could grant the UK permission to continue to use at least some of these, no deal could require the UK to build and integrate new systems from scratch.

Finally, I have two quick observations. I listened very carefully to the noble Lords, Lord Whitty and Lord Kerr, as I have done to all noble Lords. Two thoughts emerged. Will the Government draw up a comprehensive list of FAQs—frequently asked questions—to address the issues as we move along this journey? That would be very helpful for all our good friends around the country to understand where and what the game is, what they must do, how they should do it, and so on.

Secondly, the noble Lord, Lord Kerr, referred to his Article 50. As no one can judge the political future environment, there may well be a need to consult the people. In anticipation of this, could we jettison the term “second referendum” and instead vote on the “final outcome”—a point raised at a joint meeting that the noble Lord and I attended?

Many other challenges remain. However, I will leave it there for the moment.

6.21 pm

Baroness Golding (Lab): My Lords, I lived in and represented North Staffordshire—the Potteries—for many years, so it will not come as a surprise that I will make a short contribution to the debate on a small number of the many concerns affecting the future of just one industry: the ceramics industry.

It is well known that, over a number of years, UK ceramic manufacturers have been vulnerable to illegally priced imports by state-subsidised Chinese competitors. The European Union has been instrumental in combating these unfair practices by introducing anti-dumping duties, enabling the UK ceramic industry to stabilise and grow over recent years.

Our Government have acknowledged that free trade must operate within a rules-based system, but there is concern in the ceramics industry that the opportunity is being missed to build on the strengths of the EU’s trade defences and improve their effectiveness for UK manufacturers. One area which the industry thinks could be improved is the removal of the lesser duty rule in calculating the level of injury to the domestic industry in dumping investigations. Only nine out of 32 main users of trade remedies around the world apply a mandatory lesser duty rule, and its removal would certainly help British manufacturing. I hope that the Government will take note of that.

The ceramics industry has also expressed to me its concern over the dumping of imported goods below their normal value, such as their domestic price. Given that distorted economies such as those of China and Russia will be included in our market, strong parliamentary input to our trade rules will be essential to enable the industry to keep the Government up to date with what is happening throughout our country.

The ceramics industry directly employs 22,200 people, with many more in the supply chain. It generates annual sales of more than £2 billion. There are so many items of concern to the industry. The Government should listen to the industry and its unions, for it is they who will bear the brunt if the Government get all this wrong. Those are a number of small concerns in a not very big industry—but an important industry in North Staffordshire.

6.24 pm

Lord Cope of Berkeley (Con): My Lords, as I have ministerial experience both as a Northern Ireland Minister for security and, subsequently, for Customs and Excise—as it then was—in the Treasury, I cannot resist commenting on the events this week concerning customs and trade across the Irish border.

The start of the problem—we must recognise that it will be a problem throughout this whole process—is that we live in the age of the tweet and the leak, so private diplomatic choreography leading to a carefully planned and phrased communiqué is a thing of the past. It makes many things, including international agreement, much more difficult, but it is no use being nostalgic for a vanished age. The Brits seem to have been playing the game by the old rules, so they arrived at a typical Brussels formula which meant different things to different people, particularly when put into individual phrases.

However, agreement seems near and, I believe, possible. The message is: do not give up and do not allow noisy spectators to put you off your game. Remember, after all, that the Belfast agreement was not eventually arrived at until quite late on Good Friday—well after it was supposed to be.

The argument was never about the Northern Ireland border alone. It is almost as much about Dover and Heathrow as it is about Belleek and Killeen. There was never any question of setting up border crossing points on the road, railway and canal links across the Northern Ireland border. They would not work practically or be acceptable for normal life in the border areas. Ministers in both London and Dublin said from the start that crossing points were unacceptable. It suited some, particularly in Dublin, to pretend that they were likely, but that always looked to me like a bogey put up to claim the credit for having resisted them when they did not happen. No one has been publicly arguing in favour of crossing point barriers—perhaps Brussels has been privately pushing for them to be threatened as a necessary consequence of Brexit, but that is because it wants to make Brexit impossible.

We are leaving the EU. That means that we expect that in due course there will be divergence of both customs duties and regulations. I think it is impossible to have totally frictionless borders in those circumstances. I prefer the phrase, “as frictionless as possible”. I think that that is more achievable. What concerns me today is the practical consequences. It is not only about customs duties. Indeed, as the noble Lord, Lord Kerr, said, regulations and standards are more important. So, for that matter, are indirect taxes, excise and so on.

The UK border—not only in Northern Ireland but the border all around the United Kingdom—is now, and has been for many years, a very important fiscal border.

VAT and excise duties differ, as does agricultural support, and so on. Smuggling has long been and is now a paying proposition for those who can get away with it. Customs and other authorities on both sides of all our borders have fought it with some success for many years, and there will be no change in that. I do not mean that no smuggler has ever been successful for a time on any of our borders—either the Northern Ireland one or the English Channel—but other smugglers have ended up in jail and, no doubt, some will in future.

The difference in rates of indirect tax is likely to continue to be much higher than that in customs duties for many years to come, and the incentive to smuggle will still be in favour of smuggling excisable goods—tobacco and alcohol—rather than those relating to customs duties. Customs formalities everywhere are, these days, already mainly carried out electronically, away from the borders.

A new customs declarations system has been mentioned already, and it is forecast to be ready by March 2019. Like my noble friend Lady Verma and her committee, I would like the Minister to tell us, if she can, if it is still on course for that date. It will, of course, take time after that to bed in and for business to absorb it. That timescale is not capable of a precise forecast, but we all know that it will be a year or two before it fully works and works smoothly. In that context, it is essential that HMRC increases its staff to deal with the huge increase in customs declarations that is anticipated after the transitional period. We were told this morning at the seminar to which the noble Lord, Lord Whitty, referred—I think I am correct—that customs declarations were likely to increase from 50 million a year currently to 300 million. That is an enormous increase. Clearly, the statistical arrangements and IT arrangements will have to be able to deal with that. Can the Minister confirm that those figures are approximately correct?

It is also true that many smaller companies will be involved in such matters for the first time and will need help from Her Majesty's Revenue & Customs and others. Applications for accreditation of the authorised economic operator are now apparently taking about a year to process. That is unacceptable, particularly if the so-called self-assessment customs declarations are to be confined to those with full AEO status, although I hope that that will not be the case. That is particularly serious, of course, if there is no deal—but it is essential in any case, even if there is.

The common transit convention for transit of goods is also important, but it seems to me that the EU would be being particularly difficult if it did not accept that UK membership should continue, as it will help its companies quite as much as ours—so it should not attempt to frustrate continued UK membership. Continental companies widely use trucks, and so on, to bring stuff to, for example, UK airports for onward transmission, particularly to the United States.

The noble Lord, Lord Whitty, and others, including the noble Lord, Lord Kerr, spoke about the timings and difficulties ahead during the transitional period. The difficulties, of course, are not only difficulties for government in negotiating all these complicated agreements with so many people; they are also difficulties for business. Companies have often said over the years

to me and others, “We can live with your regulations and your forms when we know them, but not with the Government changing them all the time”. That, of course, is true in general, but it will be even truer over the next few years. The period that faces us involves massive changes in procedures for customs and trade generally. It will be very expensive and difficult for government and companies, large and particularly small, and part of the problem is the timescale. The Government must do all that they can to bring greater certainty to the situation as soon as possible. If they know what faces them, businesses and others can prepare. As part of that, we look forward to these two Bills.

6.34 pm

Lord Liddle (Lab): My Lords, first, I apologise to the noble Baroness, Lady Fairhead, for not being present for the opening of her speech. That is a great breach of protocol in the House, and I feel very apologetic for it. Secondly, I welcome the Minister to her new role. I am afraid that it is a bed of nails, being a Trade Minister, particularly as we move into the era of trying to negotiate our independent trade deals—and I am afraid that the thrust of my brief remarks will be to try to make those nails a bit sharper so that she realises some of the awful responsibilities that she has taken on, in my view.

My view is that the Government are prioritising the creation of an independent trade policy when they have no need to do so to respect the referendum vote. We could remain in the customs union and leave the European Union, but the Government are determined that we must leave the customs union in order to be able to conduct this independent trade policy. We know already what the downsides of it are, and we know that it raises the risks of chaos at the ports, because the customs arrangements are not in place—and we know that it could potentially set off a chain of events in Ireland that could lead to a serious threat to the Northern Ireland peace process. We already know that, so why are the Government continuing doggedly to pursue that objective?

I am going to ask a series of questions, although I am obviously not expecting a set of instant answers. I would like in due course to receive from the Minister some answers to the questions that I am going to put.

First, have the Government carried out a full economic assessment of the benefits and costs of their decision to have an independent trade policy? Have they compared staying in the customs union and relying on the EU to negotiate trade agreements as against having an independent position?

Secondly, if they have done that analysis, will they please let us all see it? I remain unconvinced that the losses that we will suffer from essentially giving up a free trade arrangement that we have for the 40%-odd of trade with the European Union will be made up, or more than made up, by the gains from trade deals that we can do with the rest of the world. So let us have a proper analysis of this—and is it available?

Thirdly, our trade comes in three categories. This is very broad, but there is the 40%-odd that is the European single market, the 30% or so covered by deals that the EU has negotiated on behalf and the other 30% or so

[LORD LIDDLE]

where there are no arrangements at present between the EU and those countries. Where there are no trade agreements, can the Government tell us which of the countries they will prioritise? Is the United States at the top of the list and, if so, can the Government tell us what their negotiating objectives are for their deal with the United States?

When I worked at the European Commission for the Trade Commissioner, they always used to ask, “What are our offensive interests?”. This gives you a flavour of the world of trade, with the bitter battles between offensive and defensive interests. I would like to know what our offensive interests are in relation to the United States and how far they differ, if at all, from the offensive interests that the EU had in the TTIP negotiations. My instinct is that they would be pretty much the same.

How do our defensive interests differ from those of the rest of the EU? At one time, I think that there probably was a real difference, in that Britain would have been less concerned about agricultural protection and would have been prepared to give more on agriculture to get more from the Americans than, say, France, Italy and Spain would have been. However, I am not so sure about that now, as Michael Gove seems resistant to the idea that we should accept agricultural goods into this country that do not comply with our very high standards. Parliament has a right to know where the Government stand on this. Is it their policy to maintain EU standards and not relax them, and therefore exclude this bargaining chip from their negotiations? If that is their policy, it undermines why we are undertaking all this separately from the rest of the EU.

Second in line is India, or it might be, anyway. Would India come near the top of the list? I suppose that it would. Do the Government really believe that Britain has some kind of special relationship with India? If so, can they explain to me why the Germans export three times as much to India as we do? I am very sceptical about a trade agreement with India. I know from my Brussels experience what India’s offensive interests are in terms of trade negotiations with Europe. There is one simple answer—lots of visas for Indian workers to come and work here. How does that square with the Government’s commitment to take back control of our borders and cut immigration? Where is the consistency in the Government’s policy? How does this square with Mrs May’s refusal to abandon the target of cutting immigration to 100,000 a year? I do not see why anyone in India should take seriously a British negotiator who turns up on their doorstep unless the negotiator can state clearly what the Government’s policy is. I bet that we will not hear what it is, as I do not think that the Government know what it is because it is contradictory and all over the place.

The EU has all these agreements with countries that we must now, somehow or other, turn into agreements that we have, as the noble Lord, Lord Kerr, said. The Prime Minister went to Japan with great fanfare. The great triumph of that visit on the trade front, as far as I could see, was that the Japanese Prime Minister said, “We will give you exactly what we have negotiated with the EU”. If that is the limit of what we are likely to get—setting aside all the complications which the

noble Lord, Lord Kerr, mentioned about how you renegotiate quotas and all that—is it really worth while having this independent trade policy? I am very sceptical about that. Therefore, can we have a proper analysis? Can the Minister say what the gains will be, as against the losses we know about, in terms of the barriers to free trade with our European partners as they are now?

The phrase of the week is “regulatory alignment”. Do the Government accept that if we depart from regulatory alignment with the EU in order to negotiate independent trade deals with other countries, we will inevitably face tighter customs controls and more difficulties in trade with the EU? How has that trade-off been assessed? I do not think that there has been any proper analysis or reasoning of this decision to have an independent trade policy. I believe that it is all based on religious faith and ideological obsession with the idea of a global Britain that can rule the waves in economics in the 21st century as we ruled them in politics in the 19th century. We are sacrificing the free trade we have for a set of very uncertain benefits. I would like to hear a coherent statement from the Government on where they stand, as that has been completely lacking.

6.46 pm

Baroness Murphy (CB): My Lords, I am surrounded by trade experts and I am no trade expert, so I speak largely from the gut. I cannot be the only person in this Chamber—I know that I am not from the voices I have heard around me—who finds myself in despair over the performance of our Government in the negotiations leading up to some kind of trade exchange in Brussels. I did not want them in the first place because I cannot see, as many others cannot, what possible improvements in trade over and above what we already have could be achieved by what we are hoping to get in Brussels now. By abandoning the common market and the customs union, it seems to me that we are abandoning things that we have taken so much trouble to build up over the last 40 years.

Secondly, I was ashamed to see our Prime Minister unable to negotiate on the UK’s behalf as a result of what I consider the fickle decision of the DUP to intervene. However, that may be the Prime Minister’s fault. As she had a special relationship with the people in the DUP, you would have thought that she might have turned to the nearest Irish woman or Irish man that she could find before she started these negotiations, but she did not.

My main purpose today is to talk about those members of the Cabinet who are still talking about the possibility of an ultra-hard Brexit and crashing out of the European Union with no deal at all. From what we know about how trade works and how trade deals are done, it seems to me quite unconscionable that we could contemplate such a thing.

The White Paper before us is very pretty. I have never seen Dr Fox with such a big smile on his face. There is a little picture at the front of Britain with laser beams going out from it. I thought that it was a butterfly at first and then I realised that it was the UK at the centre of the world, as the noble Lord, Lord Liddle, said, just like that old Mercator projection

that used to hang in our geography classroom at school, which depicted Britain at the centre of the world with all the pink bits round it. Ours still had India in pink, in the early 1950s, I am afraid, as we had an old map. That reminded me that this image harks back to when we ruled 25% of the world. Britain got rich plundering that empire, and I find it quite frightening that pro-Brexit groups should be so deluded as to think that we could so easily remake links that were—in the face of our history—difficult to maintain when we had them, and refashion others that we so casually abandoned when we joined the EU. This trade policy White Paper is, of course, largely aspirational since we have no idea at all what kind of deal is likely to be achieved with the EU: it is riddled with “don’t knows” and uncertainties. As we heard, in another two years at the end of the negotiations, we will probably be on another cliff.

Behind the news of this lurks this persistent and dangerous threat. The more the Prime Minister yields to the EU, the more some cavalier Brexiteers argue that Britain should leave without any deal. The little Englanders hate the concessions that have been made, especially over money. One can predict that the second phase of the negotiations will prove to be even more painful, with the EU sticking right to the rigid line on trade. It would be an unmitigated disaster: it is not the right tactical approach; it is actually an absurd idea. Unfortunately, some really believe that “no deal” would not really be so bad. I believe that there are eight famous economists who agree that it would be perfectly fine, even if there are 8,000 other economists who say it would be crazy. Britain could revert to trading on World Trade Organization terms, but that is not an automatic outcome.

Britain’s relationship with the EU is far more intimate than that of most countries. We have already heard that the EU accounts for 43% of our goods exported and half of its imports; more than that in services, which make up 80% of British GDP, and almost half of exports, so the EU market is crucial. Until that is accepted, I cannot see what we are negotiating about. Theresa May has dismissed a Canada-style free trade deal for reasons that we might understand: it would mean a restriction on our mutual market access. However, we should remind ourselves that the Canada negotiations took seven years, and it has not even ratified it yet, no doubt waiting to see what will happen with our negotiations.

It is also misleading to claim that the rest of the world trades with the EU on WTO terms. The Institute for Government has pointed out that all big countries have bilateral agreements on customs co-operation, data exchange and standards. Only seven countries in the world trade with the EU on WTO terms alone, and they are pretty small fry, such as Cuba and Venezuela, which are rather disheartening bedfellows. Reverting to WTO rules is not simple, as we have already heard. It requires a division of EU import quotas, for example on beef, lamb and butter. Big food exporters such as Brazil, Argentina and America are unlikely to be thrilled with that, nor indeed if we got them would our farmers be very thrilled. The WTO proceeds by consensus among its 164 members. It makes negotiating with the 27 EU countries look easy peasy, does it not?

A no-deal Brexit would undoubtedly damage other EU countries, but Britain would be hit the hardest. Of course it would perhaps mean not paying the divorce bill, which would jeopardise the position of British citizens in the EU and EU citizens in Britain. Amid the recriminations that follow a breakdown of relationships in any divorce with its bad blood, the EU would surely look to its own interests first. We would fall out of all those many EU organisations that we are so dependent on, from Euratom to the European Medicines Agency. I know a little about that agency. We now know that it is going to move to Amsterdam. It will cost us about £532 million: that is our UK cost to move that institution since it is a direct consequence. With it will go at least 800 jobs. There are about 100 very senior people who might move to Amsterdam with it, but that would be all. Not only will we lose that agency and all it brings with it, but it plays host to tens of thousands of national regulators and scientists each year from across the continent, who come to London to negotiate and talk about deals. It puts our own industries in a very favourable position from the point of view of being able to understand what is going on. It seems ludicrous to me that many people voted for Brexit because they thought there would be more money for the NHS. To anyone with analytical nous, this would clearly be a non-starter. It makes it all the more sad that we are going to lose one of these extremely important regulators. Crashing out of the EU would be an absolute no deal for all kinds of reasons, not only in respect of medicines, the pharmaceutical industry and the other things that I know most about, but for all those other incredibly important industries.

The customs White Paper is another bland set of aspirations that ignores the huge problems created by Brexit. I have only one question for the Minister on this. What options in this White Paper appear to her to be superior in the short or longer term, or even as good as the arrangements that we already have? Further interim solutions that give business no certainty seem inevitable, as the paper admits.

I have probably covered many issues that other people have already covered more expertly than I can. I would like to stay within the customs union and single market, but I would much more prefer the solution suggested by the noble Lord, Lord Kerr, of withdrawing our invocation of Article 50. The economic health of our nation is at stake, and I would like the Minister to confirm that the economic health of the citizens of this nation means more to her Government than mollifying the whingeing Brexiteers.

6.56 pm

Lord Horam (Con): My Lords, I welcome the noble Baroness, Lady Fairhead, to her post. Like me, she is a northerner who went to St Catherine’s College, Cambridge, and ended up working for the *Financial Times*, so her pedigree is—I assure you—immaculate. The noble Lord, Lord Liddle, said that my noble friend’s new post was a bed of nails. He ought to know, since he is a northerner as well, that northerners think nothing of beds of nails. We deal with them every day, with élan. So it is an absurd idea that she will find this a difficult post. I think she will enjoy it, although I agree that it will probably be a bit of a slog.

[LORD HORAM]

The noble Lord, Lord Whitty, led off the Back-Bench contributions to this debate, along with my good and noble friend Lady Verma. They were the co-chairmen of the EU sub-committee on which I was happy to serve. As they mentioned, we produced a report on the options for trade, and reality has taken quite a long time to seep into the higher levels of government. One of the firmest conclusions we drew was that there had to be a transition period—transition or implementation, call it what you will—simply because a detailed agreement could not possibly be finalised in the time available under the Article 50 arrangements. The transition period really has to be based on the status quo. To do otherwise would simply mean two sets of negotiations; and one set is bad enough, but two would be ridiculous. That was implied in the Prime Minister's speech. Not only that, but it will need some legal underpinning. That period cannot exist in thin air, so I expect that there will be a Bill in the next calendar year that we will have to discuss in the House. I hope there will not be too many attempts to put red lines into that necessary Bill, because it is important that we get through it.

The other issue about the transition period is definitely more controversial, and that is the length of time. The noble Lord, Lord Kerr, said, as his third fact, I think, that a trade deal could not possibly be agreed inside two years. With respect, that is not a fact, because we have not got there yet, although I have to agree that the broad evidence is fairly heavily on his side at the moment. However, I remind him that we are in a sense reverse-engineering here. All the examples that he and other noble Lords have quoted have been of bringing together divergent trade situations. Here we have a single trade situation that we are trying to prevent diverging. As I say, that is reverse-engineering, and surely that can be completed in less time than engineering away from the status quo.

I also very much doubt—I would be interested in hearing the noble Lord's view on this; perhaps we can discuss this when the debate is over—whether the European Commission itself has been thinking of a two-year transition period. Surely, if it thought that two years was sufficient, it would not be inconsiderate of the time it might take to do a real deal. I doubt that it would set itself up to fail. It, too, seems ultimately to want a deal. Therefore, if it is thinking of two years, it must feel there is a reasonable chance of getting the deal done in that time. I am therefore not unoptimistic about the two-year period, which seems to be the one that has been settled on, although I agree that it is difficult.

Finally, there is the end game, which is also a question. In our report we set out the four inevitable choices: the European Economic Area, the customs union, the WTO basis and a bespoke agreement, which is what the Government want. I will leave out the EEA, because the Government have ruled that out because of the four freedoms and the European Court of Justice; and nobody wants no deal, although I fully agree that it could happen by accident if there were ultimately no agreement. That could happen at almost any time by accident; those things do occur. We are therefore left with the customs union—a single customs union, leaving aside the single market, which is a separate issue—and a bespoke agreement.

Clearly the disadvantage of a customs union is that we could not pursue our own trade policy. That is a significant disadvantage and we need to consider it carefully. On the other hand, to remain in the customs union is clearly less disruptive than removing ourselves from it. Indeed, that is the only way to ensure we get this treasured adjective “frictionless”. Anything outside a customs union will have some friction. It may not be sufficient friction to light a fire, but it will be some sort of friction. Michel Barnier said the other day that the only way to get a frictionless agreement is to remain inside the customs union.

If we remain inside the customs union we will also, we hope, keep the 45% or so of our trade that is with the European Union; and do not forget the 11% or so which comes to us by means of the EU free trade area agreements that have already been agreed. We are therefore talking about nearly 60% or so of our trade. As the noble Lord, Lord Kerr, said—and here I agree with him—“Why do we have so much trade with the European Union? Because it is nearby”. He also said—again rightly; he has got two out of three right on this occasion—that trade halves as distance doubles. I know that from personal experience. As it happens, many years ago I built up a company with—the Minister will be interested to know—a fellow graduate of St Catherine's College. It is a highly successful medium-sized company, with about 250 employees, and 92% of our sales are outside this country. Therefore I know about doing deals with distant countries, and they are more difficult, for obvious reasons—culture, distance, and so on. So it is not a question of like for like, somehow conjuring up a similar amount of trade from outside the European Union and its affiliates to what we might lose if we remained inside. To remain inside the customs union is also the only sure way of solving the Irish question. No other way is as satisfactory as that.

What is becoming apparent to many people now, to put it in economic terms, is the opportunity cost of all the effort that government is having to put into Brexit by comparison with the other problems that we face in so many different parts of our world. The National Health Service, our education service and all the rest of it require attention, and all that was heavily brought out in the economic debate yesterday. The amount of time the Government are having to spend on all this has a huge cost, which is a great pity.

Finally, on the customs union, the truth is that in 1974 many people thought that they were joining an economic arrangement. They did not fully appreciate that it was also a political arrangement. That has become more and more apparent as the years have gone by. I suspect that if you put it to people now that we could get rid of the Parliament and all the political connotations of the European Union and retain our membership of the customs union, they might well buy it as a simple solution without, as it were, throwing the baby out with the bathwater. You never know; as the months go by, “Events, dear boy, events”, to quote Harold Macmillan, might move us a little further towards that conclusion.

None the less, I understand why the Government want to have a bespoke solution, as is set out in the White Paper. Quite apart from the politics of the

matter we should, as the Minister herself said in her introductory remarks, be a fully independent trading nation, and we cannot do that without a clean Brexit. In addition, although we are all being lobbied by companies and industrial organisations of one kind or another very rigorously at the moment—for obvious reasons; I do not doubt their concern—we should not necessarily overestimate or overweight existing interests. As I know from my personal experience, businesses change with remarkable speed. A business that was in one area 20 years ago will be quite different today, so we should not overestimate the present at the expense of the future. To have the independence and flexibility of being totally outside the European Union would give us the sort of control that we need to deal with that situation.

Above all, I agreed with the noble Lord, Lord Liddle, when he said that he hopes that people do not approach this matter and make these profound choices for our country in an overly ideological spirit. We all have to put the interests of our country first. That is why we are here: in the interests of our country. We will have to try to get as objective as possible an evaluation of where the best interests of Britain lie, and I hope that that will be achieved.

Finally, the way the Prime Minister has dealt with the conflicting pressures upon her over the last few months has been extraordinary. The noble Lord, Lord Liddle, mentioned a bed of nails, but there is a higher bed of nails, as I think the Minister will agree. I certainly hope that her week ends better than it has begun; she certainly deserves that.

7.08 pm

Lord Leigh of Hurley (Con): My Lords, I also take this opportunity to welcome my noble friend Lady Fairhead to this House and her position. I thank her and congratulate her on arranging this debate—somewhat bravely, under the beady eye of her predecessor. It is a privilege to take part in this debate on a subject so vital to the future of our country.

We have heard today of the importance of our trading relationship with the EU. Indeed, as a bloc it is our most significant trading partner, with some £236 billion of exports in 2016. Why then, many have asked, would we destroy that by leaving the customs union—which we will? To this I say two things, which form the basis of my speech today. The first is that we must reject the premise of the question: we are not seeking to destroy that trade. It is in no one's interests that we erect trade tariff barriers, so we must all remind ourselves that we start with the building blocks of free movement of goods. We must, as these two papers say, simply make the case to avoid protectionism and maintain low or no tariffs, which, I hope, will lead to mutual gain for us all.

The second is to encourage more dynamic thinking on how we plan our trade policy. In 2020, Europe, including the UK, will represent 10% of the world's population. By 2050, once you take out the UK, it will be 6.5%. If you take out non-EU European countries, it will be lower still. None the less, getting our relationship right is the subject of today's debate.

We have a lot to gain and should not be despondent or be put off by the many in this House and elsewhere who are downcast or in despair. Future trade should

be easier in many jurisdictions, and the current situation in the EU is not as wonderful as some make out. I am reminded of the observation that my noble friend Lord Bamford, the chairman of JCB, made in this House in a post-Brexit debate. He related that farm tractors must comply with at least 10 individual and different pieces of national road legislation within the EU.

The fifteenth of December is a date etched on everyone's mind. It is the date when the EU Council will meet to determine whether sufficient progress has been made to go to the second stage. However, it is etched on my mind for another reason, as it is also the date of the economic and financial dialogue between the UK and China—an annual event at which public and private sector organisations meet to agree how to boost co-operation, trade and market access in business and finance. I find it comforting that we are working hard within the UK and outside the EU to secure the most prosperous trading relationships for Britain, and it is auspicious that these two events happen to align.

This is not ideological. It is not to regain an empire but to maximise our ability to trade globally outside the customs union on which we must focus. I do not apologise for considering the UK the centre of my world. My world is in fact mergers and acquisitions. Inbound mergers and acquisitions have also maintained a robust pace. In the 12 months following the EU referendum, international acquisitions into the UK rose by 11%. To date, one major impact of Brexit has been to boost the role of foreign buyers in the UK deal flow, led of course, as it always has been, by the United States.

Returning to options for maximising trading opportunities with the EU, I commend the Government for the recent White Paper on the customs Bill, not least because it makes clear the importance of a two-year implementation period—please note, “implementation”, not “transition”—to give sufficient time for businesses to plan and for Governments to implement the new regime. This should also help UK firms being cut out of supply chains because of the perception of a lack of certainty over future arrangements. However, as a word of warning, I am a member of the Chartered Institute of Taxation, which reports examples of businesses already altering supply chains, as that is the only way at present to plan with any certainty. For example, stock currently sold by the UK to European customers will now be warehoused within the EU to service that market, the stock never reaching the UK, having obviously been sourced from abroad. In that way, firms seek to avoid potential barriers to trade that cannot be predicted accurately at this time.

This White Paper helpfully seeks to build on the existing regimes but paints a picture of the future where the UK has the maximum flexibility—in particular, through secondary legislation. I believe that it hints that this might lead to a different set of rules from those that the EU adopts in the future, although it does not specifically say so. The first option available, of a “highly streamlined customs arrangement”, certainly looks the most attractive—in particular, remaining a member of the common transit convention. Negotiating the mutual recognition of authorised economic operators,

[LORD LEIGH OF HURLEY]

known as AEOs, is a must-have for both category (S) for security companies and category (C), which grants customs simplifications. I agree with the noble Viscount, Lord Waverley, that we must pay particular attention to SMEs. I make a plea for SMEs to be offered an “AEO lite”, as many of them, as the noble Viscount said, have never prepared for a customs exit or entry clearance and have never filled out the forms, although these days you do not fill out the forms; you make an entry on a website. Otherwise, many SMEs will struggle for AEO status. When I looked into this, to my surprise I found that only 600 companies in the UK have AEO status—all of them very large organisations.

The new “customs partnership” proposals are radical and could be a very innovative and sensible way forward. My only question, which I appreciate the Minister may not be able to answer now, is: where will disputes be settled? Will it be with our old friend the European Court of Justice? In common with the European Union (Withdrawal) Bill, perhaps I may also ask what happens to disputes arising between now and exit day? It seems logical that these would fall under the “business as usual” UCC rules, but which jurisdiction would oversee such disputes and what rights and remedies would be available?

Incidentally, in the other place Cheryl Gillan has raised the uncomfortable question of disputes pre-exit, many of which arose several years ago and which may now not go to the ECJ but clearly ought to, as these disputes arose under the old regime. The Francovich principle, which is not discussed in these two briefings, urgently needs more thought.

However, I should like reassurance from the Minister on one point in particular: taxation. I note that the important Making Tax Digital project, which involves important changes to submission, record-keeping and VAT reporting, is due to be implemented at almost the very same time as the Article 50 two-year period comes to an end. Your Lordships’ House discussed the issue in the debate on the 2017 Finance Bill. I had the honour of serving on the Economic Affairs Sub-Committee on the Finance Bill, which focused on Making Tax Digital. Can the Minister say whether the indirect tax industry, and indeed HMRC, will be able to cope with such a confluence of change?

However, I stress that there is much to commend in the Government’s attempts to provide certainty. The two-stage approach implied in implementation will help maintain our trading relationships not just with the EU but with all the other countries with which the EU has signed deals. We need continuity for those arrangements too. Can the Minister comment on the engagement with and response from businesses that she has had to date on these important matters of continuity with the EU and the trade deals with third countries? Can she also say whether the mooted implementation arrangements are easing pressures on location decisions in particular?

I commend the recognition in the White Paper that future deals will require proper scrutiny but, given that this is a money Bill, will the Minister confirm that the Government will respond to this White Paper, setting out exactly how these future arrangements will be scrutinised, as we will not discuss them further here?

This debate was in danger of becoming too polarised between, on the one hand, those who would have us stay in the customs union via the EEA—surely a failure to deliver on the democratic nature of Brexit—and, on the other hand, those who would have us too simply walk away with no deal. This debate today has done much to reassure me that there is a middle way and that it is being thought through properly. A middle way that would allow us to leave the customs union yet maintain as frictionless a trading relationship as possible with our friends in the EU is what we need. This White Paper sets a path to get us there but, as well as drafting the necessary legislation, the Government must also communicate—so much of this is about confidence. I look forward to hearing from the Minister how we can reassure UK businesses that matters are in hand.

7.18 pm

Lord Campbell-Savours (Lab): My Lords, I had no intention at all of speaking in this debate until last week, when I heard that the customs Bill was a money Bill. That basically means that we can have no influence whatever on the legislation because, by the time it gets to us, the Commons will have made up its mind and any proceedings in this place after Second Reading will basically be of no consequence. Indeed, the subsequent stages of the Bill will probably be taken formally.

In the 1960s, I was in business in Lancashire and one of my tasks was to appear regularly at the Long Room at Dover Western Docks, submitting entries on the component imports needed in our manufacturing operation. That was nearly 50 years ago. As the years went by, we sent trucks for component collection overseas, particularly to Italy and often through Mont Blanc and occasionally the Brenner Pass—all before we had entered the European Union. That is the background of my experience in the matter.

Unknown to me, a cousin of mine, John Shirley, was later to establish a freight-forwarding agency in the Western Docks area in Dover, so he is on the front line in this whole discussion. Over recent weeks we have had a number of conversations about Brexit, with reminiscences from me and direct experiences from him. His primary market has been non-EU—Albania, Bosnia, Croatia, Kosovo, Macedonia, Montenegro, Slovenia and Serbia. He is multilingual, he talks to the drivers, he hears their concerns and complaints and obviously he has mixed feelings about what is happening. He does not want a cliff edge, but the route we are on troubles him.

I recently sent him the PAC and Home Affairs Select Committee reports and asked him for a memorandum setting out his concerns, which I wanted to hear on the basis of his front-line experience. In response, he immediately flagged up demurrage as an issue and said:

“The slightest error in a customs entry would mean rejection. Rejection would mean the truck standing not for hours, but for days and when it comes to lengthy periods of time which are not the fault of the driver or the haulier we are talking about late delivery to the offload point and demurrage. Currently the accepted amount ... is £250 a day. This is just the bare minimum and we, as freight forwarders, broker the number of days payable by the shipper to the haulier. Trucks cost money. They are driver accompanied and have to be kept running day and night in order”.

to make an income.

“To give you some examples: in February this year we had four trucks held at an airbase in Dalmatia for a fortnight and the USAF agreed to pay”,

demurrage of,

“£14,000! Last year, Samaritan’s Purse, running their shoebox”,

Christmas,

“appeal had three trucks stuck at customs in ... Serbia for three days costing them £2,250! In Kosovo 2 years ago a truck with a load of humanitarian aid ... was stuck at customs from the Thursday to the Tuesday. The haulier ... sought 5 days’ demurrage from us but also ... the £900 penalty they had been stung with for failing to turn up at the reload point at the agreed time and day.

In Britain there are ... a number of household names who like to externalise their costs. If the driver turns up ... half an hour early the haulier or shipper gets fined; if he turns up half an hour late again there is a fine”.

If a non-EU truck gets stuck in Dover the customer can say,

“‘We can’t take the truck now till Friday’, and it is only Tuesday! This is a huge cost to the haulier”.

I am sure Ministers know where I am going: with the arrangements that are in hand, we are in danger of introducing great delays into the process. Someone is going to have to pay for it, and it will not be the Revenue: it is likely to be the haulier.

I turn now to CEMT—third-country permits. He says:

“I would like to bring to your attention what may happen to British hauliers”,

if, outside the EU,

“they are put in an identical position to hauliers from”,

non-EU states,

“who have to obtain third country permits in order to load in say Italy for Holland. There are only limited numbers of the CEMT permits ... A haulier with 10 trucks will typically get only one permit and that permit ... remains with the driver the whole length of the journey. If British hauliers are outside the EU they will no longer be able to load from here to Budapest for example, then reload for Paris and again reload back up to Manchester unless they have a CEMT permit. These permits are not universal for the EU. Depending on their ... routes British hauliers may need a Hungarian CEMT, an Italian CEMT and or an Austrian CEMT. Britain will have to negotiate with all 28 countries individually”,

to secure those entry arrangements. I hope that officials are well abreast of this issue; otherwise, there are problems in store.

I turn now to IPR and OPR—inward and outward processing relief. I will again quote from the Shirley memorandum. To illustrate the problem, let us take the rag trade, when,

“a designer sends drawings and trimmings from Manchester to a Macedonian factory ... where they make up twenty types of jacket and thirty types of skirt ... When”,

the garment,

“arrives in Dover the entry clerk has to deduct from all the different types the amount of green buttons or red buttons or blue lace or red piping that went out of the factory from the cost of each and every finished garment. The entry can run to many pages and take all day to prepare”.

If that is perplexing, imagine a piece of electronic equipment with multi-sourced components, which would all have to be taken into account.

Then, there is the issue of stacking, both here and abroad. This is the nightmare scenario. There were plans for a large lorry stacking area near Dover, but there was opposition. I understand that Highways England is now considering a large site near the M20 and perhaps even holding freight on the M20 in an exercise described by the agency as,

“HGVs in the centre of the motorway rather than coast bound using steel barriers or moveable barrier systems”.

That is called stacking. Clearly, the Highways Agency is anticipating that—and of course, it also means demurrage charges.

But of course, it goes further. During the Brexit Committee evidence session last week, which I managed to see a portion of, I had the feeling that the witnesses were far more concerned about arrangements at northern European ports, including issues such as documentation clearance, stacking abroad, delay and perhaps even a more casual approach in Europe to the treatment of our trucks leaving this country—all of which we will have no responsibility for, and little influence over.

I turn now to the proposed electronic border, backed up with number plate recognition, in-country clearance and trusted trader status both here and abroad—what I regard as,

“a white van smuggler’s dream”.

The proposed vehicle number plate recognition system might work in Northern Ireland and perhaps at the Channel ports. Jon Thompson of HMRC seemed very reassuring when giving evidence. I personally had some experience of this in the early 1970s, before our entry into the Union, when we would register at the Mont Blanc tunnel entrance and clear at Cluses, 40 kilometres further up the road. You could, with trusted trader status, run a few Cluses-type operations in Northern Ireland as an alternative to destination clearance—which, I understand, is what the Government believe will happen. But there are three major problems: first, white van evasion; secondly, number plate switching on trailers, which is very easily carried out; and thirdly, of course, the DUP.

This brings me to my final point: soft border clearance procedures. Jon Thompson of HMRC seems confident that CDS, which has been referred to, will deliver. But, given the huge increase in traffic for clearance on duty, VAT compliance and animal health, should we be so confident?

I go back to the Shirley memorandum, in which he states:

“If we take the figures given to me by Paul Wells, Managing Director of Channel Ports Ltd and extrapolate them, we come up with some very interesting scenarios. Regardless of whether the actual transmission of an entry is electronic or not it still requires an entry clerk to prepare it by looking at the invoice, checking the value and currency, the weights, the number of packages, the truck number, calculating the VAT and or duty and obtaining it from the importer and sending it over to Motis ... who pass it on to customs. Paul said that there are only 200 entry clerks left in East Kent but in 1992”—

before all this—

“there were 2,000. The number of trucks has gone up by 400% of which”,

we are told,

“only 1% currently need an entry, so a hard border will need 400% more entry clerks”—

[LORD CAMPBELL-SAVOURS]
in other words, nearly 8,000.

“We can also surmise that they will need their counterparts in Europe”,
so it is estimated that a further 7,800 entry clerks will be needed across Europe.

It was all best summed up by Chris Lewis, editor of the *Freight Business Journal*, which is an excellent publication if you want to keep abreast of Brexit transport issues. He said:

“One nettle that the UK may have to grasp in the run-up to Brexit is the shortage of trained customs officers ... the Government lost no time in downsizing HM Revenue & Customs capabilities in this area, removing trained officers from many ports and putting a good proportion of those that remained at its centralised operation in Salford ... France now has 35 times as many customs officers as the UK ... And it's not only frontline strength that has been reduced. Many ... of HMRC's top level managers with trade expertise have now retired”.

He writes an editorial every month on these matters and they are a very interesting read.

I really hope that we know that what we are doing and that we are taking into account these issues that I have raised today, which are the little things that could turn into mammoth problems unless they are dealt with at an early stage.

7.31 pm

Lord Price (Con): My Lords, as this is the first time that I have spoken in your Lordships' House since I stepped down as the Minister for Trade Policy, I will start by congratulating the Minister on her appointment and wish her every success. I also thank the dedicated, hard-working and extremely able civil servants who supported me during my time in office, in particular Rob Cook and latterly Matt Fry, who ran my private office, and the senior team in trade policy led ably by John Alty, who oversaw an increase in their department number from 45 at the time of the EU referendum to around 550 this autumn. They will need all that resource as they take on the unprecedented task of establishing the UK's independent schedules at the WTO, rolling over the current EU third-party trade agreements, establishing new trade agreements, supporting DExEU in its work on a new trade deal with the EU, and putting in place a UK trade remedies regime.

The trade Bill and the customs Bill will provide the necessary framework for the department to carry out that work, and I am wholly supportive of the Government's approach. The Bills bring to life the Prime Minister's clearly stated objectives: that Brexit means Brexit and we are leaving the EU; that we will strike a comprehensive free trade agreement with the EU; that we will strike new FTAs with other countries; and that we will avoid a cliff edge for businesses. Although I voted to remain, I can see that the UK, as the world's fifth-largest economy, is perfectly capable of having a successful, independent trading future. It is clear to me that continued membership of the single market is not consistent with the vote to leave the EU. No fewer than 18 European Trade Ministers told me independently that the four freedoms and single market membership are indivisible—you cannot cherry pick, in their words.

Alternatively, membership of the European Economic Area or the Customs Union will constrain the UK's economic opportunities around trade. We will be followers

on regulation and will be obliged to offer third-party countries the same inward tariffs as Europe negotiates—but will then have to independently negotiate our own export and investment agreements with the same third-party countries, putting UK businesses at a disadvantage.

All of that makes a comprehensive FTA with the EU the most economically literate outcome. Our first step must therefore be to try to maintain what we already have. To ensure that there is no cliff edge and to make things as straightforward as possible for business, the Government plan to set out our independent schedules at the World Trade Organization which will replicate, as closely as possible, our current EU schedules. This will provide continuity for businesses that trade with countries not currently covered by bilateral agreements, such as the USA, China, India and others.

You cannot drop out of the multilateral trading system, and I am sure that the tried and trusted approach of using actual historic usage to determine future tariff rate quotas will be hard to overturn if any appeal is forthcoming. I welcome the Government's approach to signing the UK up to existing plurilaterals in the WTO such as the GPA. These will continue to provide consistency for UK businesses. I cannot find common cause with those who suggest that we should adopt unilateral tariff reductions at the WTO. While it would undoubtedly reduce the cost and increase the range of goods and services open to consumers, it would produce a damaging shock to a currently underproductive UK economy and make the chances of reciprocal arrangements almost impossible, creating a permanent disadvantage for UK businesses.

Lest we forget, around 75% of all taxes are raised directly or indirectly from business. Its success pays for our schools and hospitals. There is an inextricable link between the success of business and what a society can sustainably afford. That is why I applaud the further consistency of trade that will come from rolling over or grandfathering our current EU third-party FTAs, EPAs and association agreements, as set out in the White Paper.

Following the referendum, I visited 35 countries and met 75 Foreign Ministers. They all agreed that they wanted continuity of trade, and for the existing arrangements to apply post March 2019. They all committed to a process of working to secure that, not wanting a break and to fall back to less favourable WTO terms. I welcome the Government's continuing support of EU FTAs not yet fully ratified with Canada, Singapore, Japan and Vietnam, and I hope that these, too, can be grandfathered once we have left the EU. There is certainly an appetite for that to happen.

Then there are the new agreements. The Prime Minister has announced nine working groups to explore new FTAs covering 15 countries. They will take time to deliver, post Brexit, but they are real. As I travelled the world, there was an enthusiasm to trade with Great Britain. I welcome the fact that the Government will continue to offer the poorest countries duty-free, quota-free access to the UK and adopt the generalised scheme of preferences for the next tier, as well as grandfathering the existing asymmetric economic partnership agreements in Africa, the Caribbean and the Pacific.

Lastly, I welcome the Prime Minister's commitment to a transition period to allow time for all these things to fall into place. It is a sign of understanding to business that the challenges as well as the opportunities are recognised. The vision that the Government paint of an open, liberal, free-trading Britain competing on a global scale with reciprocally reduced tariffs and access is economically compelling, but not something that I suspect businesses or employees are yet prepared for. Our productivity needs to increase by around 18 percentage points just to meet the average of the G7 countries—let alone be a global leader. This may not be the vision of Brexit that many voted for, and expectations will need to be carefully managed.

The whole endeavour will not be easy. Many say that it is the most difficult peacetime challenge that we have faced. Some realism as to the scale of the task would be welcome on all sides. However, I see little point in adopting an "I told you so" approach to the inevitable and previously debated challenges of Brexit or in repeating points on how difficult it all is—save in a way to constructively improve our position or to check understanding.

The EU nations have rallied in common cause to enhance their economic position and we should now do the same. Hopefully, having tackled Brexit as swiftly as we can, we can move on to the substantial social issues that this country faces at the beginning of the 21st century: those of fairness for all and how we adjust to benefit successfully from the new digital era.

7.40 pm

Baroness Henig (Lab): My Lords, it is not always an unalloyed pleasure to be the last speaker in a long and serious debate such as this one, but being sandwiched between the former Trade Minister and the present one is a great honour. It gives me the opportunity both to welcome the noble Baroness, Lady Fairhead, to her role in this House and to pay tribute to the noble Lord, Lord Price, for all the hard work he has put in and for his indefatigable global networking on behalf of the UK. The noble Lord, Lord Horam, referred earlier to his northern origins, and I think I am right in saying that both the noble Lord and myself are alumni of Lancaster University, so that continues the northern theme that we have heard about.

My interest in, and knowledge of, trade matters stems in part from an inquiry I was involved in as a member of the EU Sub-Committee on External Affairs into the Transatlantic Trade and Investment Partnership. That opened my eyes to the fundamental and often brutal realities of trade negotiations: the vested interests to be accommodated; the complex range of issues to be managed; and the balancing of producers' and consumers' interests. Most important of all was formulating a coherent communications strategy to explain all the bargaining and concessions to domestic interest groups and to the general public. When we reported, we noted that despite the great benefits that TTIP was likely to bring to Europe and the UK, members of the EU were comprehensively losing the publicity war to critics of the deal. We said at the time that the Government needed to take action to counteract this.

After what happened yesterday, no one can be in any doubt about the difficulties which lie ahead, and it is therefore really important, as the noble Lord, Lord Price, has just said, that the Government should take a realistic view of trade deals and what needs to be done to negotiate them successfully. Thus far in the Brexit negotiations, as we have heard, a lot of wishful thinking has been on display, along with an obstinate refusal to face facts and acknowledge difficulties. I am afraid I have to say that there is an awful lot of wishful thinking in this White Paper. The noble Lord, Lord Kerr, described it rather aptly as Panglossian. An effective trade policy means being very clear about what is involved and what the risks are. I would therefore like to ask the Minister first of all how the Government, and specifically the Department for International Trade, are going to build a broad consensus to support their policies.

Trade negotiations, as is now abundantly clear to us, are hugely political affairs. They involve backing some interests over others, some groups over others—such as farmers over consumers, or perhaps tomorrow's industries over today's—protecting some industries and exposing others. A wide range of consumer and producer groups will have their views, as well as social media experts and the Twitterati. As the noble Lord, Lord Cope, reminded us, we are in a new age of communications and all of this is going to be in the public sphere. We have already had a taste of it with the widespread disparagement of chlorinated chicken and hormone-treated beef which a deal with the United States might bring into the UK. There has already been a lot of discussion about that.

How do the Government intend to handle such controversies, because they are bound to arise? The White Paper is not actually much use. It states that we want to be "transparent and inclusive". I would say to that: get real. The Government will need a good communications strategy and the ability to build a consensus to support its proposed trade deal objectives. I would go further and say that such a consensus will need to span the political parties. If it does not, countries with which we are negotiating will be able to exploit internal divisions to their advantage. How is such a consensus to be achieved? What has happened so far in the Brexit negotiations and in the way the Government have dealt with their parliamentary and other critics does not inspire any confidence. Yet trade experts such as members of the UK Trade Forum, people with first-hand experience of putting together trade deals, are in agreement that establishing such a consensus is fundamental to success.

Were we, for instance, to make the US our first negotiating partner, as my noble friend Lord Liddle suggested we might, we would be running considerable risks of the sort we saw with TTIP, perhaps of the deal being undermined by a campaign of orchestrated opposition focused on the threat of big United States drugs cartels holding our NHS to ransom, or of cheaper food undercutting British agricultural output and lowering food standards. That could in turn torpedo the success of future deals. What does the DIT propose to do to counter this threat? All we learn from the White Paper is about the importance of ensuring that,

[BARONESS HENIG]

“concerns are heard and understood, and the right facts are available”.

I do not think, in this social media age, that such wishy-washy sentiments are going to cut much ice.

My second set of questions, which are not covered in the White Paper at all, relate to parliamentary scrutiny. What will the process be for overseeing trade negotiations and scrutinising emerging agreements? We know that trade agreements are liable to be long and complex. The agreement between the EU and Canada runs to some 30 chapters, with 454 pages of text plus annexes. Will Parliament have any input and powers, for example, in terms of agreeing the negotiating mandate at the beginning of the process? Which parliamentary committee will be able to see draft texts and get regular briefings from the negotiating teams? Obviously, there will be the need for some confidentiality, but at the same time it is absolutely crucial that when the deal is finalised, Parliament and the public they represent are broadly happy with the outcome. Can the Minister tell us what plans have been made in terms of enabling Parliament to oversee trade policy, to be able to raise issues as negotiations proceed, and then to ratify the deals when they are concluded? There are many experts in this House who would want to know how all that is going to work.

My third area of concern relates to the devolved Administrations. It was pretty obvious, long before yesterday’s debacle, that there are serious issues to be faced in this area. Again, the White Paper casts no light on the really crucial questions such as what powers in terms of trade policy will be devolved to Scotland, Wales and Northern Ireland. To what extent will the UK be negotiating on their behalf? Will they have the same powers in terms of negotiations as the UK Parliament? Will they be able to exercise a veto, particularly in the areas in which they have delegated powers? Not long ago we saw how Wallonia in Belgium threatened to derail the Canada-EU deal. How will the Government ensure that this will not happen with United Kingdom trade deals while at the same time respecting devolution powers? The White Paper sheds no light on this. What it talks about, I think rather platitudinously, is building,

“support for our vision across all four nations”,

and seeking their input. Perhaps the Minister could explain in a more tangible fashion how relations with the different devolved UK Governments, in terms of the specific elements of trade negotiations, will operate.

My final point concerns the domestic context within which trade policy is being developed. We know that the UK is facing some serious economic problems. We know about low productivity and the lack of some essential skills in the workforce, along with the ever larger gap between London and the south-east on the one hand and the rest of the country on the other in terms of output and contribution to the national economy. The White Paper talks blithely of delivering wealth and opportunity across the country. How will that be done? What will change? There is agreement, even from those who want to leave the EU, that in the short to medium term, coming out of the single market

and customs union will make us poorer before the new trade deals, such as they are, are negotiated. How will that economic pain be distributed?

The White Paper talks of taking views from “the English regions”. How will that be done? Many areas are already—perhaps rather belatedly—recognising the big problems that Brexit will bring and formulating solutions. We have already heard from my noble friend Lady Golding about the concerns of the ceramic industry in her area. The fishing industry in Grimsby has raised the issue of establishing a free port. Who will decide such measures? How will the Department for International Trade avoid all-out war between different parts of England fighting for an economic edge in this brave new world? We have already heard that the mayors of Liverpool and London are asking for a Brexit opt-out. Different parts of the country will obviously push for their own interests; it is not clear to me how those different regional interests will be reconciled. We do not have a coherent regional strategy, as far as I can see.

If we are going to be successful as an independent trading country, we need far more realism about what success entails than what is in the White Paper, which skirts around and avoids all the hard choices and contentious issues that will inevitably arise. I hope that the Minister can reassure me that thinking has moved on since the White Paper was produced and I hope that she can answer at least some of my questions.

It strikes me that, when we were a member of the EU, a lot of the politicking and contentious lobbying went on in Brussels. Of course, the UK was shielded from a lot of that and was able to blame Brussels when it was not possible to accommodate a lot of the interests. That will no longer be possible; the Government will have to face the full force of all the lobbying and competing business interests from all quarters. I want the Department for International Trade and the Government to give some realistic answers and I want some assurance that the Department for International Trade is ready to take on the big challenges that we all know we will inevitably face.

7.52 pm

Baroness Kramer (LD): My Lords, as the first of the winding-up speakers, I want to say that I have sat through many debates in this House, including in the position of Minister, and I do not think I have ever heard a debate that was more informed, contained more expert knowledge, raised more challenges and took a more intelligent approach to a crucial issue. It has been a privilege to sit through today’s debate.

I say that in welcoming the Minister, the noble Baroness, Lady Fairhead, to her place. However, I have a concern: the noble Baroness, Lady Henig, just used the word “platitudes”. Unfortunately, when Brexit is raised in any kind of discussion or debate in this House, the Minister commonly replies with platitudes and fairly simplistic answers, similar to those in some of the papers before us. That is no longer acceptable, if I may say so. We are now in the late stages of phase 1 of Brexit negotiations. I believe that there will be opportunities to exit from Brexit, but I set that aside. We are at a point where platitudes will no longer serve

and where not only this House, but the British public more generally—a number of people talked about the importance of transparency—need a detailed response that addresses the many, seemingly almost intractable, sets of issues.

Following the referendum, when the current Government came into place, there was an almost euphoric sense that Brexit would be simple and cost-free—that there was an upside and virtually no downside. It was in that spirit that many commitments were made that pushed us into a corner where we have a Government who say, “We are going to leave the single market and the customs union”. A year ago, when I held discussions with Government Ministers, it was impossible to get any of the facts without being told that we were simply hearing from whinging people. The situation is very different today; I give the Government credit for it. I do not know how much Theresa May’s views have changed, but I am certain that David Davis’s views have changed. Now, there is a recognition of the extraordinary complexity, challenges and dangers involved, and that the process will be one not of new opportunity—at least not for many years—but of damage limitation. That means that the Government are in a position where they can open their mind and rethink the decisions that are essentially taking us out of the customs union.

A number of people talked about the importance of frictionless trade, but in a meeting—I think the noble Viscount, Lord Waverley, the noble Lord, Lord Whitty, and I were at the same meeting—it was absolutely evident that the only way to have frictionless trade is to have an identical process to the one we have today, with no change whatever. That is the precondition for frictionless trade. The noble Lord, Lord Cope, used the phrase “as frictionless as possible”, but that is as long as a piece of string. Once we move out of the customs union, we move into a regime in which divergence constantly increases: we go from the moment of least friction to moments of increasing friction. Around friction, there are costs, which will be borne by our businesses and, ultimately, the residents of this island. The Government have to face up to—and ought to be coming to us with—a realistic and detailed assessment of those costs, the burdens that will be placed on businesses and the consequences for the ordinary people of this country.

As we all know, we are part of an integrated supply network across Europe, where physical goods move unimpeded across our border—often more than once a day, particularly for larger companies. That is the whole just-in-time concept, about which we had very little discussion but which is critical to the economics and efficiency of virtually every one of our major industries. It underpins lower-cost production and makes the UK a place where it is viable to build a business.

I was a Transport Minister, so perhaps I know the automotive industry best. From talking to companies in the sector, I know that 350 trucks move through Dover every day. That is an extraordinary amount of product. The Minister will know that Dover alone sees 10,000 trucks a day move through, roll-on and roll-off. I do not know whether noble Lords have seen it;

I have. I have been down there and looked at the traffic movements in Dover. It is like watching a ballet: a constant, unbroken stream of trucks rolls on to and off ferries. There are no checks whatsoever at Dover because the friction that they would introduce to the system would destroy just-in-time and the businesses that it underpins. As somebody said today at the meeting that I and other noble Lords were at, there is absolutely no slack in the system for just-in-time—there cannot be any delay. For people who do not understand how just-in-time works, I have talked to some of the automotive industries: product leaves the European factory at 8 am, to be in the UK production line at 11 am. It is that tight; the consequences of any disruption are extraordinary, but absolutely no one has produced a viable scheme that does not disrupt those timings.

I turn to tariffs. I recognise that there are those among the Brexiteers who are happy to go to WTO rules. I am glad we heard the noble Lord, Lord Price, say that doing so made no sense—particularly instead of a zero-tariff regime—and would have utterly shattering consequences for our domestic industry. In fact, I find the whole suggestion that we can go to WTO rules completely irresponsible.

Many people have said that tariffs do not matter and that it is the non-tariff barriers that are crucial, but there are some industries for which tariffs absolutely matter. Again, I speak as a former Transport Minister. The 10% tariff that would be applied to our automotive sector under WTO rules would frankly destroy most of the automotive industry in this country. I do not think that is an exaggeration. I suggest that anyone who questions that talks with the industry directly. Tariffs of 35% for the dairy industry would clearly be devastating. There are not many ways to overcome that because any attempt to subsidise gets us in trouble with state aid rules.

We will have really serious problems if tariffs become part of that picture, but of course the issue is non-tariff barriers. We did not have much of a discussion about rules of origin, which are a very large component of the non-tariff barrier problem. It is a complete nightmare. Talking a little off piste at the meeting we were at today with one of the food producers, who works for a major company, he tried to explain to me that to complete rules of origin he has to account for every drop of milk in making his food product if he goes through a customs barrier. That milk could come from three or four different places, but every single drop has to be tracked. It is the same for the sugar, the flour and every other component that goes into those foodstuffs. The challenge, burden and administrative demands that that leads to are huge: export declarations, licences and other kinds of supporting evidence. They are myriad and a nightmare. We have talked in the past about the importance of cutting red tape in this country. Frankly, I cannot think of a way that we can introduce more red tape through a single measure than by leaving the customs union.

Of course, it becomes worse if we divert from any EU rules. This is the whole issue of regulatory alignment. Again, a very good example was given at the meeting today. What do you do if the EU is completely resistant to the idea of GM food? I understand why, but we are

[BARONESS KRAMER]

quite likely to make trade agreements with countries that would permit GM to come into the country. If any GM maize is fed to a chicken, that chicken cannot be sold to the EU. How do you track the detail, demands and complexity of this? It is astonishing.

The Government have said that there will be an electronic solution. What solution? Everyone I have talked to says that none of the existing systems can possibly cope with anything of this kind. The noble Viscount, Lord Waverley, mentioned that digital clearances at the EU are not targeted for completion until 2025. We also heard from customs experts that HMRC's new computer system, which is meant to be up and running by 2019, is not scalable to the level required for this system. It simply is not. I tend to trust people who tell us that we have problems with our IT systems because they have been right virtually every time in my lifetime.

On the authorised economic operator system and trusted trader, I say to the noble Lord, Lord Leigh, that there is a reason why only 600 UK companies—I thought it was only 500—have signed up to it. It is extraordinarily complex and delivers very little. It is nowhere near any kind of answer to providing smooth electronic systems at any kind of reasonable cost. Around this House so many people have talked about SMEs' problems. If they cannot be included in these systems they will be at a permanent disadvantage in trying to compete to be part of supply chains and in trying to grow. Surely they are the backbone of our economy. Anybody who thinks that small businesses can easily adapt to new digital opportunities should be involved in some of the debates and discussions we have had on digital quarterly tax reporting. The Government keep carving more and more people out of that regime because it is so impossible, burdensome, costly and time-consuming to make those kinds of adaptations.

I will talk just for a moment about free trade agreements with countries other than those in the EU. The noble Lord, Lord Price, implied that we can do a kind of transfer over of the 58 agreements the EU has negotiated with other countries that we separate from if we leave the EU. My conversations suggest to me that the Government have finally accepted that there cannot be a rollover: these agreements die and there has to be a new agreement put in place. Surprisingly, the various players on the other side of this picture are turning out to be much more difficult. Everyone assumed that they would simply sign on the bottom line, and they are not doing so. Again, a number of noble Lords referred to trying to split access quotas between the remaining 27 and the UK, but that is a minor problem. We are hearing that a number of the countries see this as a great opportunity to get much better terms than they had before. They intend to use a unique opportunity, not to walk away from it.

To go back to rules of origin, one of the shockers for me in this was to understand the way rules of origin interact with free trade agreements. I admit that until a few weeks ago I was not aware of how this worked. I take the automotive sector again as a typical example. Under free trade agreements around the world, the zero tariff is available only to a country that

is exporting an automotive product that has 60% local country content. The highest UK content for any car we export is 43%. That is unusual; the average is 10%. The industry says that it is pretty much impossible to increase the number of suppliers in the UK to push up that number. They have been trying to do it for years.

Economies of scale matter. For example, if you are going to produce ball bearings for your cars, you will do it in one place for the whole of Europe. You cannot afford to put up a separate supplier for a product of that kind in the UK. I do not know how many other products this applies to. I gather it is a really serious issue in the food processing industry. We need to understand how all that works. Here is another issue raised in the meeting today. Perhaps the food product a producer is selling meets rules of origin content, but say it is a flour-based product, we have a bad harvest and at the last minute he needs to switch his source of supply. He might then fall foul of rules of origin content and suddenly face a tariff. All these questions have to be answered so that businesses can plan and deal with them.

I lived for nearly 20 years in the United States. Whenever I hear people talk about creating free trade deals with the United States, I really do begin to laugh. The issue primarily in dealing with the United States is that the trade barriers are at state level. They are never engaged in the free trade discussions that the United States enjoins with any other country. That is one of the reasons why it is considered one of the most protectionist countries in the world. We have had plenty of evidence that from the United States' perspective an agreement would essentially put America first and means the adoption of American rules. The notion that it will be a rollover strikes me as extraordinary.

Viscount Waverley: I apologise for breaking in. Will the noble Baroness agree with the governor of Virginia, who was recently in London, who, when asked, said it would take a minimum of two years to negotiate a free trade agreement with the United States?

Baroness Kramer: If we can negotiate a free trade agreement in two years with United States it would be a miracle. Trade negotiations are complicated—there is so much at stake. Everybody in this Chamber knows that. I wish we could simply acknowledge it and start to factor it into the thinking and planning we are dealing with. The noble Lord, Lord Kerr, essentially said that it will take some five to seven years to negotiate a trade agreement with the EU, where we start from a position of no divergence. We have to become realistic. That is one of the things I ask of the Minister. She must know that most of what goes down in print frankly does not have any tang of realism to it. It is so much about wishful thinking.

I shall make some remarks on transition and then I will sit down. I have talked to a number of companies which believe that transition will be a genuine standstill arrangement, because that is the only outcome they can contemplate. I know of no company which thinks that transition will be the beginning of change; they believe that it buys two years of peace in which they can think about what to do, understand what the end game is and work out how they will then respond to it.

But that is not what I am hearing from government. Transition is a very different period in which change is ongoing. I suspect that companies will not be in any position to deal with it.

I want also to pick up an issue raised by the noble Lord, Lord Kerr: is there any way to negotiate a standstill arrangement once one leaves the EU, or is the only way to get a genuine standstill the two-year extension of Article 50? The noble Lord is shaking his head. At least, that helps with this situation. Trying to work out transition will be extraordinarily complex. I hope that we will hear from the Minister something that takes us much further along the path of understanding how the Government intend to deal with this situation and a genuine assessment of the consequences.

8.11 pm

Lord Mendelsohn (Lab): My Lords, I join my voice to those who have said that this has been a remarkable debate. Those people who enjoy reading the previous day's *Hansard* over a morning coffee are in for a real treat.

I join others, too, in paying tribute to the noble Lord, Lord Price, for the work that he did when he was Trade Minister. This has been the first opportunity to say so. It was excellent to be able to see him in public service. He did a great job. I am sorry that he is not there, not because I wish to see the Minister replaced but because a bit of additional strength to the department would be no bad thing in this context. However, it is always good to see the now-familiar noble Baroness the Minister, who made an excellent initial presentation that was certainly better than the White Papers that we were reading, which I confess were somewhat tough going—they are not vintages, but we are none the less dealing with something that has to take place and where there is, unfortunately, quite a vacuum.

We have to understand the context here. I hope that we do not end up always recreating the debate over Brexit, but those who wanted to leave have to demonstrate that there is a better case and greater prospects from doing so. They should not be afraid of having to meet that challenge and test. Just as they were able to present to the public the argument that things would be better outside, so they still have to meet the test of demonstrating that it is a better path, as was the challenge posed by many speakers today.

My fear is that the context in which we are debating this is quite difficult. I do not think that anyone who was there will forget hearing the noble Lord, Lord Prior, introduce the industrial strategy White Paper, when he talked about the problem we have in the country of very low GDP growth, terrible productivity—in fact, last quarter saw the worst performance in 200 years—and the terrible prospect of declining wages over the next 10 years. It will be another lost decade. It is a massive challenge to try to introduce such a change as we are and to deal with our trade strategy and policy.

That is largely because we were not exactly dealing with the finest trade performance before. Those who have participated in the many such debates that we have had previously will remember debating the then Chancellor's target, when he established it in 2012, of doubling exports to £1 trillion. At that time, we had UKTI and a branding campaign. In 2015, the OBR

projected that exports would be £630 billion in 2020—that was a third less. In 2016, UK exports were £544.8 billion. It is argued that global trade has slowed, but others have had a much better export performance. We knew that we had to achieve a much better export performance because our future and our economy depend on exports. Some 30% of our economy relies on exports, as do one in four jobs. We have always had to improve trade policy but have consistently failed to do so.

That target, from which the Government were moving away in 2015, I think I saw being buried in a Select Committee earlier this week. It is a real problem, because we are looking at a new trade policy where we cannot establish a figure nor what the impact of it will be. We cannot establish how much further that will take us forward in addressing our economic prospects. What we can see is some research which is troubling. The ICAEW concluded that, after what it described as an expensive advertising campaign, just 53% of all UK small businesses were exporting, which is exactly the same figure as in 2014. SME trade promotion is getting much worse—many of us are familiar with complaints about trade shows and the like. We have huge problems with our overall trade performance.

Even when we look at the prospects for services, our greatest potential attribute, we note that all surveys, including by the British Chambers of Commerce, show that the main target markets for our companies are the USA, Germany, France, China and the UAE. As the noble Lord, Lord Leigh, said, much of our trade will be dependent on areas outside the EU—90% of all growth over the next period will come from outside the EU, a third being China. We are not the first people to realise that; in fact, one thing we are turning away from is a concerted EU effort to address that as well. Many EU countries have been much better in their trade and export performance as a result of recognising that much earlier, so this is not all new.

Our test is to be realistic, to have a correct estimate of our position and to be entirely realistic about the prescriptions that we have. We have to make sure that we test these prognoses. We have to be straight about the fact that trade deals are quicker under the EU and take longer as a single nation. Look at the difference between the performance with Korea and the EU and somewhere such as Australia. Trade deals with the EU are comprehensive in scope, whereas for individual countries they are more difficult. That is a considerable challenge to us.

We have to be straight about the rest of the world in respect of the WTO quotas. This is a zero-sum game. We have introduced the British policy of Brexit and thought that the rest of the world will just say, "That is wonderful". There is no greater zero-sum game in international diplomacy and the exercise of national interest than in trade. Is it any surprise that America, Australia and countries in Latin America have objected to a simple carving-up of the EU quotas in the WTO, which we thought would be straightforward? This is going to be the permanent story. The idea that the USA is going to simply roll over and change all its markets to satisfy us for Brexit—I just cannot see it. We have to be completely and seriously realistic.

[LORD MENDELSON]

We can talk about transitions, implementation periods, cliff edges, timescales—all these sorts of things—but let us be absolutely clear that it is going to be bumpy and uncertain. We are in unprecedented times. We are trying to muddle through and we are treading water, and that is our condition. It is in that context that we will have to look at whether or not the White Papers and the Bills are fit for purpose, offer the best possible alternative for us and demonstrate that the Government have put together the right resources with the right plan and have the right practical approach.

I will cover just a few issues. The trade White Paper explains the Government's intention to transition existing EU free trade agreements and European partnership agreements so that, for example, the EU-South Korea free trade agreement will be replicated as a UK-South Korea free trade agreement. According to the EU's website, more than 80 countries have signed an agreement with the EU. Around 30 of those agreements are fully in place and 50 are partly in place, including CETA. I would be grateful if the Minister could confirm these numbers and the details of how many EU trade agreements the Government are seeking to replicate.

Many of the EU agreements we have signed involve some of our most important trade partners outside the EU, including Switzerland, Canada, Singapore, South Korea, Norway, South Africa and Israel. By my rudimentary calculations, we export more than £60 billion each year to countries where we have an agreement in place through our EU membership, highlighting the importance of ensuring consistency in our trade with those countries after Brexit.

The Government have described transitioning as a “technical process” and essentially a formality. That is true if each country gives its consent, and some legal experts believe that it may not be so straightforward even then. It would be very interesting to get some idea on this from the Minister, especially after what has been said in the other place: with which countries do we have an agreement in principle to roll over the deal in its entirety and how many, and which, countries have notified us that they might wish to make modifications? As for those countries that have not yet agreed in principle to transition their deals, is this a matter of DIT resource, or are there more fundamental barriers to agreement?

There is also the question of by what process we will achieve the transition—or grandfathering—of EU FTAs. Will the Minister confirm whether the UK will be acceding to the existing agreements as an annexed party, or will we be seeking new, identical agreements with each country the EU currently has a trade agreement with? What level of scrutiny will Parliament be afforded during the transition process?

Will the Minister also clarify the Government's plans for EU trade agreements that remain in negotiation, such as with the USA, Japan, India and Thailand? The fact that the EU has struggled to reach agreement with some of these countries should of course act as a reminder of the challenge that awaits the UK post Brexit and the importance of putting the right trade policy framework in place early on.

Transparency, public consultation and scrutiny will be important to ensure that a future trade policy has democratic legitimacy and will boost growth in a way that is more positively felt across all sections of society—especially with the warning of the noble Lord, Lord Prior, in our ears. It is welcome that the trade White Paper has a section titled “Trade that is transparent and inclusive”, but it looks like a missed opportunity that the Trade Bill itself includes no provisions at all in this area, despite the Secretary of State promising a, “major consultation mechanism for new free trade agreements”.

Regarding parliamentary scrutiny, the White Paper says merely that the Government will, “respect the role of Parliament”.

Will the Minister explain what this means? At present, the Government can negotiate and sign a trade deal in secret and ratify it via the negative procedure for secondary legislation without debate. Does the Minister think that this is sufficient for trade agreements with wide, long-lasting implications, or will a greater role for parliamentary scrutiny and accountability be established?

It is welcome that the White Paper and the Trade Bill accept the case for an independent UK trade remedy framework in the context of the mess we are likely to get into. The Government's proposals for the UK Trade Remedies Authority include an economic interest test, but will the Minister explain why social and environmental criteria have not been included, and whether there are any plans to do so?

We are also somewhat in the dark about what will happen to trade defence measures that are in place currently through the EU. Will those be replicated? I would be grateful for an update, including on what consultation the department is carrying out with industry on this point. Of course, one important thing to understand about the value of our relationship with the EU is that trade defence measures are very hard to exercise on your own; they are much easier in concert with others.

No doubt the Government will seek to make the Bills we are likely to have as technical as possible, dealing only with a transition process. I am not sure that this will be sufficient. I am not sure that the position is one where we can just roll over what was done before. That is not practical and it ducks the important issues about being clear about what needs to be done. There is a realism on the scale of the task that we have to get used to, and there are ways forward. We need clearer goals and realistic language. We need a trade policy in line with our industrial strategy. We need to boost our capacity for conducting trade in the department and in other parts of government.

We are where we are. I am in business: every new business takes longer and costs more; every deal is more complicated and requires more work than was planned in integrating it. We have to face up to what is likely to be the most difficult part of the process—ensuring that we have some sort of stability. I fear that there will be an economic consequence to it and that we are now debating how to fill a vacuum. The vacuum has to be filled, but when the Bills finally arrive in this place, we will have to conclude whether we are being served an acceptable filler.

8.24 pm

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, I am very grateful for the insightful contributions that have been made during this evening's debate from right across the House. I join the noble Lord, Lord Mendelsohn, and the noble Baroness, Lady Kramer, in congratulating the House on the intelligence, insightfulness and specificity of the concerns. We are very fortunate to have, in the Chamber, Members of the House who between them have decades of experience at the helm of trade policy. I am particularly pleased that we heard this evening from my noble friend Lady Verma and her co-chair on one of the EU Committees, the noble Lord, Lord Whitty, as well as from the noble Baroness, Lady Quin, and the noble Lords, Lord Kerr of Kinlochard, Lord Campbell-Savours and Lord Liddle. This considerable experience will be invaluable in helping us to ensure that our trading arrangements after we leave the EU provide the greatest continuity and certainty for businesses, employees and consumers.

The noble Lord, Lord Kerr, mentioned some of the complexities. I think the exact point of these debates is that we can flush them out and make sure that we deal with them. This will be the first of a number of debates to be held on the Floor of this House and I look forward to the continuing contribution that the House will make to helping us ensure that we have our sights on the right priority areas. A number of important and very pertinent points were raised during the debate. I will try to answer as many of these as I can, and am happy to write to noble Lords with a follow-up where I cannot.

A number of noble Lords talked about negotiations with the EU. The UK is committed to securing the most frictionless trading relationship possible and we are very supportive of an implementation period. I am glad that my noble friends Lord Price and Lord Leigh also supported the implementation period. I should have done this at the beginning, but I would like to give my own tribute to my noble friend Lord Price, while he is in the Chamber, for all his achievements in his role of Trade Minister. He did an outstanding job.

Turning back to the EU negotiations, it would be wrong of me to comment on their detail. These are sensitive matters and we do not want to prejudice the negotiations. But it was made clear in the comments of the Prime Minister, President Juncker and President Tusk yesterday that all parties remain confident of reaching a positive conclusion. Noble Lords will recognise that this is not the subject of the White Papers or the Bills. Our aim is to achieve a comprehensive trade agreement with the EU while also building our relations with third parties, so let me turn to that.

A number of noble Lords, including my noble friend Lady Verma and the noble Lord, Lord Whitty, spoke about the importance of a smooth transition. That is why we have placed emphasis on the transitional adoption of trade agreements. Countries potentially in scope of these types of agreement—around 40 of them—account for 13% of the UK's trade. My noble friend Lord Leigh made some positive comments about the impact of leaving the EU in galvanising industry, but it is important that we maintain the effects of

the agreements that we have in place. Our aim is to provide continuity and certainty, to avoid cliff edges for business.

A crucial element of ensuring effective transition is enabling any obligations that are created to be reflected in our laws. The legislation that we have brought forward will ensure that these agreements can be fully implemented and remain operable over time. But, as many of your Lordships pointed out, having the legal power is one thing; we must also have the agreement of our trading partners. This important point was raised by the noble Lord, Lord Kerr, and my noble friend Lady Verma. We are clear that this is a technical exercise to ensure continuity, but our trading partners are equally convinced. Benefits flow both ways and they have reiterated this point to Ministers and officials alike. It is clear that it makes practical sense at first to provide continuity. I am pleased that my noble friend Lord Price confirmed that they were supportive of this fact in his negotiations.

In response to a direct question from my noble friend Lady Verma, we have already had very productive engagements with all the concerned countries that she mentioned, such as Switzerland and Norway. For this reason, we continue to believe that it is a realistic ambition to transition these agreements.

My noble friend Lord Leigh raised the issue of parliamentary scrutiny of trade agreements. Let me assure noble Lords that the trade agreements that we will be transitioning have already been subject to a scrutiny process at EU level. They have also been overseen in the UK by Select Committees. In addition, many of these agreements have been ratified by Parliament through the Constitutional Reform and Governance Act process. To be absolutely clear, the Trade Bill that has been introduced in the other place does not provide for the implementation of trade agreements with countries with which the EU does not have an existing trade agreement. To be clear, it will not be used for the implementation of future free trade agreements with new countries.

In response to a question asked by the noble Lord, Lord Liddle, about which countries are a priority, we are talking to a number of countries about future trading options, including full FTAs—but, as noble Lords know, we cannot negotiate while we are a member of the EU. We are using instruments such as joint trade reviews—collaborative analysis of the mutual trading relationship—and we are exploring what may be possible with partners, but it is too early to say what it will mean in a particular country.

The noble Lord, Lord Kerr, asked about the UK being able to do a better deal with the EU than Canada, which is light on services. Services are an essential element of the economies of the UK and the EU, so we will be seeking an ambitious free trade agreement between the UK and the EU which will be of greater scope and ambition than any preceding agreement, because we realise how important it is.

The noble Baroness, Lady Henig, talked about the scrutiny process for free trade agreements. We have been very clear that we are involved in engagement. One of the elements will be the substance of the free

[BARONESS FAIRHEAD]

trade agreement and the other will be the exact scrutiny process. We are welcoming views to make sure that we get it right.

As outlined in the trade White Paper, the UK remains committed to a transparent, fair and rules-based approach to international trade and we are inviting views on that. We are committed to developing it in a transparent and inclusive manner, consistent with the need not to damage our negotiating position. We will be involving Parliament, the devolved Administrations and the devolved legislatures, as well as local government, business, trade unions, civil society and the public from every part of the UK, because they must have an opportunity to engage. Since the publication of the White Paper, we have been engaging with a range of stakeholders around these issues and will be looking to benefit from best practice across the world. We understand that we do not hold all the answers and we are committed to taking into account all views.

The noble Baroness, Lady Henig, also asked about the devolved Administrations. Continuity in trade must be for the whole of the UK. The Trade Bill creates powers designed to be held concurrently by the devolved Administrations and the UK Government for existing trade agreements. This will ensure that, where it makes practical sense for regulations to be made once for the whole of the UK, it is possible for this to happen. This gives greater certainty for business, minimises legal risk and reduces the volume of legislation. I assure noble Lords that the UK Government will not normally use these powers to amend legislation in devolved areas without the consent of the relevant devolved Administrations, and not without first consulting them. Under the Bill, every decision that the devolved Administrations can make before exit they will be able to make after exit. Decisions have not been taken on the legislative framework, and we will be working closely with the devolved Administrations on our future policy in this regard. On engagement, the Secretary of State has met his counterparts in Scotland and Wales and is planning to meet them regularly, and our officials are engaging with their counterparts in Northern Ireland.

My noble friend Lady Verma spoke about the Trade Remedies Authority. The UK Trade Remedies Authority is to be a new, non-departmental public body, independent of government. We have carried out an extensive assessment of other countries' trade remedies systems, structures and case loads, including those of Australia, Canada, the EU and the United States. Our proposed model is designed to ensure that industries and consumers have confidence in an independent and objective investigative process. The Trade Remedies Authority will apply a framework, set out in legislation, which will provide UK industry with a safety net against unfair trade practices and unforeseen surges in imports but which will also ensure that unnecessary costs are not imposed on consumers or downstream.

The strong support of the noble Baroness, Lady Golding, in favour of Staffordshire ceramics was noted. We will aim to provide transparent thresholds for the application of measures, including a market threshold providing a *de minimis* rule, to avoid costly investigations into cases destined to fail. The economic interest test will provide a balance between regions, primary producers,

downstream industries and consumers. The lesser duty rule will ensure that effective remedies are in place without imposing unnecessary costs. The evidence that we have shows, for example, that imports of certain steel products that were subject to EU trade remedy measures with the lesser duty rule in August 2017 were down over 90%. We think that gets the balance right, which is why we are doing it.

The noble Baroness, Lady Golding, also asked how we intend to manage trade remedies with China under the UK system. On leaving, we will operate our own WTO-compliant trade remedy system. There is provision in the Taxation (Cross-border Trade) Bill to define alternative dumping methodologies that will enable the UK system to account for particular market situations. For businesses with existing measures in place, the continuity of those measures is a valid concern. We launched a call for evidence on that on 28 November as a first step to identifying what matters to UK businesses. That is a vital start to the way that the UK responds.

Turning to the customs union, I set out in my opening remarks the strategic objectives that will guide our assessment of the options for the future outside the EU customs union. The noble Baroness, Lady Murphy, asked what the Government's preferred option is. The customs White Paper, and the future partnership paper before that, set out the two options—the highly streamlined customs arrangement and a new partnership—that most closely meet those objectives. The Government look forward to continuing to discuss these two models with businesses and with our partners in the EU.

We have also been clear that, in order to avoid unnecessary disruption for businesses in both the UK and the EU, there is a strong case for an implementation period, which I think has received quite a lot of support in this House. We are keen to ensure that affected parties will have to adapt only once to any new arrangements.

The noble Lord, Lord Whitty, asked about arrangements for overseas territories, and Gibraltar in particular. As he will know, they are not part of the EU customs union, and set their own tariffs on goods entering the territories. The new legislation will allow the Government to continue to provide tariff-free trade between the UK and the overseas territories. The Government will continue to work with them to ensure that their priorities are taken into account.

A number of noble Lords focused on the state of preparedness. The noble Lord, Lord Whitty, and the noble Baroness, Lady Verma, both committee chairs, and my noble friend Lord Cope talked about the need for certainty. The noble Baroness, Lady Kramer, talked knowledgeably about “just in time”. The noble Viscount, Lord Waverley, asked how the Government will continue to facilitate trade. The White Paper made clear that the Government are committed to exploring the scope for streamlining the movement of goods across the UK's borders, including through seeking to negotiate mutual recognition of authorised economic operators, greater use of technology at the border and other simplifications for business, including self-assessment and other procedures.

I have spoken with people at HMRC on the systems point that a number of noble Lords raised, in terms of making sure that we can cope with customs. HMRC is replacing its old system, CHIEF, with a new system called CDS—if any noble Lords are aware of that. CDS is on target to meet its planned delivery date of January 2019. This was the conclusion of an NAO report into CDS in July 2017.

I believe that the CEO of HMRC has also talked about the need to staff-up on exit and hiring 3,000 to 5,000 people. We are also very aware of the particular issues about roll-on roll-off, and realise that it is about space and timing. We are trying to do what we can both unilaterally and on a bilateral basis, targeting the areas where there are the most particular issues.

The noble Viscount, Lord Waverley, made a number of suggestions that we might use to help speed the process, and I shall certainly pass them on to my officials, because we need to take any examples and suggestions forward.

On Northern Ireland, the noble Lord, Lord Empey, who has extraordinary expertise in this area, reiterated the importance of not going back. The Government have been clear that we seek to avoid a hard border in Northern Ireland. This is one of our key strategic objectives for any customs arrangements. We know that the movement of goods across the land border is key to the economies of Northern Ireland and Ireland, and both the UK and the EU recognise the unique circumstances on the island, so we welcome the European Commission's call for flexible and imaginative solutions. We remain committed to the Belfast agreement and the common travel area, and I know that there are ideas on small businesses, when 80% of their trade goes across border.

The noble Lord, Lord Empey, also talked about our approach to trade and the importance of education. Coming from an education background with Pearson, I support that. I hope that he has seen the creation of a new department, DIT, whose role is to support companies to export more, open new markets and promote our business, supported by finance, as an important step. He asked why we do not use the tax system to incentivise trade and investment. The Government are trying to create the right environment. For example, the recent Budget acted on business rates, increased levels of infrastructure investment, boosted R&D spending and laid the foundations for the UK to become a world leader in new technologies.

Continuity is at the heart of our approach, so it follows that the Bills introduced in the other place are designed to provide maximum continuity for UK businesses, workers and consumers. A cliff edge in our trading arrangements is in no one's interest.

Lord Campbell-Savours: Are discussions now taking place with the French, Belgian and Dutch authorities about what will happen with trucks being held in stacks going into Ostend, Dunkirk, Calais and the Hook of Holland?

Baroness Fairhead: I thank the noble Lord for his question. The answer is yes. The roll-on roll-off situation has been highlighted as an issue, because when companies have been exporting to the rest of the world, they are used to all the compliance, but we have roll-on roll-off, which is all about space, availability and time to get through and make sure that it is through. We are looking at both unilateral and bilateral aspects, focusing on the ports with the most significant issues. Through that, we are entering into conversations to see what can be done, because we realise that there is real complexity and there are practical issues.

I hope that noble Lords will see that the steps that we are starting to take are practical and that we are trying responsibly to create powers so that we do not have a cliff edge and can cope with any outcome.

It has been abundantly clear in today's debate that there is huge depth of understanding of the complexities in this House. My colleagues in the Government and I are committed to involving all those in this House with this expertise. My right honourable friend the Minister of State for Trade Policy, Greg Hands, and I have already held one open-door meeting for noble Lords. I assure Members of this House that we want to provide regular forums where we can discuss our future trading arrangements. We need to have those sorts of honest discussions and will take on board some of your Lordships' suggestions as we work that through. I shall do all that I can to involve noble Lords across all the Benches so that we can work together in what your Lordships have yourselves described as a spirit of honest, intelligent co-operation, with the shared aim of providing UK businesses, workers and consumers with maximum continuity in their trading relationships as we leave the EU.

Motion agreed.

House adjourned at 8.45 pm.

