Vol. 794
No. 231

Tuesday
8 January 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday 8 January 2019

2.30 pm

Prayers—read by the Lord Bishop of Gloucester.

RAF: Operational Conversion Unit

Question

2.36 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government how many F35B jets will make up the Operational Conversion Unit (OCU); and when the OCU will have its full complement of aircraft.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Lightning operational conversion unit is due to form as 207 Squadron and return to the UK in July 2019. Initially the squadron will comprise five aircraft. The squadron will expand to support continuing force growth into the next decade as more F35 Lightning become operational, including the formation of 809 Naval Air Squadron in 2023.

Lord West of Spithead (Lab): I thank the noble Earl for his Answer. We have said in the past that there would be 12 aircraft in the OCU. I would like clarification: will these all be F35Bs? There is some muttering about getting F35As. Could I have an answer to my Written Question, which was: do we still consider that we need a strike group of 35 on board to fulfil the task for which the carrier was built, which is theatre entry to do a number of raids on IADS and other targets over a period of four days? That would seem to predicate a need for at least 70 aircraft afloat in a national emergency, plus, presumably, the OCU, and taking attrition rates into account.

Earl Howe: My Lords, the first tranche of 48 aircraft will be the F35B, which is capable, as the noble Lord knows, of operating from land and the "Queen Elizabeth" class aircraft carriers. Decisions on subsequent tranches of Lightning will be taken at the appropriate time. Of course, the number of aircraft deployed will depend on the circumstances and the nature of the deployment. The minimum number to be deployed will be one squadron; that is, 12 aircraft. The plan is for full operating capability in 2023, with two squadrons, but of course there is scope for each carrier to have as many as 36 aircraft deployed on it.

Lord Campbell of Pittenweem (LD): My Lords, the noble Earl will be aware that the Defence Secretary, in an interview with the *Sunday Telegraph*, made the rather surprising admission that it was his ambition to open some new military bases in the Far East and the Caribbean. Can we be satisfied that any decision of that kind will not undermine the original commitment to purchase 138 F35 aircraft, particularly given the fragile state of the equipment budget?

Earl Howe: Yes, I can give the noble Lord that assurance. The potential opening of new bases in two particular parts of the world is certainly something we are looking at. But I assure the noble Lord that this will not impact on the procurement programme for the F35B.

Lord Soley (Lab): Can the Minister elaborate on his second answer, when he referred to the appropriate time for future decisions? Can he give us some indication of what is meant by "appropriate time" and when that appropriate time might be?

Earl Howe: I cannot be exact on that. We have either contracted for or have letters of intent for 48 aircraft, as I said earlier. Towards the end of that delivery schedule, clearly, we will need to look at the next tranche. That could be in four or five years' time.

Lord Howell of Guildford (Con): While we are speaking of combined air and naval power, has my noble friend noticed the reports that British shipbuilding of warships may now be resuming a world role, after many years of most warships being built in Japan, Korea and other places? If that comes about, is it not to be greatly applauded?

Earl Howe: My noble friend is absolutely right, and we are encouraged by the response we have had to the publication of the *National Shipbuilding Strategy*, which should ensure the re-energising of our shipbuilding capability in the UK when it comes to Royal Navy warships.

Lord Hamilton of Epsom (Con): Was it not inevitable, when the noble Lord, Lord West, ordered two aircraft carriers and there was no money to pay for them, that enormous pressure would be put on the procurement budget, not least in terms of ordering the F35s, which cost £100 million apiece?

Earl Howe: My Lords, while we recognise the considerable cost of the carriers, we should reflect also upon their utility and considerable benefit in enabling us to project power in a way we have never been able to before, bearing in mind the versatility and capability of the F35B, which takes us into a new realm of strike capability.

Lord Newby (LD): My Lords, the Minister said that the Government were contemplating opening new bases in two particular parts of the world. Which two parts of the world does the Ministry of Defence have in mind, and how on earth could additional bases, which are very far from the UK, be funded, given that there is already a massive black hole in the MoD equipment budget?

Earl Howe: My Lords, there is not a black hole in the equipment budget, and that statement can be underlined when it comes to the F35B. It is too early for me to give the noble Lord a specific answer; we are looking at this matter in the round, and it is at a very early stage at the moment.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, perhaps the Minister will consider reopening the base in Belize as part of the reconsideration? I declare an interest as president of the All-Party Group for Belize.

Earl Howe: My Lords, we recognise the utility of Belize as a training area, and it is indeed one of the options we are looking at.

Lord Tunnicliffe (Lab): While we recognise that we have had to live without aircraft carriers, and then with aircraft carriers but without aircraft, when will the carriers be optimally equipped? The Minister seemed to imply in an earlier answer that that would be when 24 aircraft could be embarked and fully crewed. When will that be, how does that compare with the original plan, and what is the critical path: fully trained pilots or aircraft deliveries?

Earl Howe: With regard to whether the critical path is aircraft or indeed pilots, we clearly need both, and we are on track and within budget to deliver both in accordance with the planned rollout. For example, this will see initial operating capability for carrier strike—one squadron consisting of 12 frontline F35s and 18 pilots—in December 2020. Full operating capability, consisting of two squadrons, will be achieved in December 2023.

Lord Naseby (Con): Is it not to the great credit of Her Majesty's Government that this project has been taken forward regularly and provides suitable armaments for Her Majesty's Navy? However, are there safeguards in the contract for the subsequent purchase of the second tranche of aircraft to ensure that we are not held out to dry by the United States?

Earl Howe: Obviously, before contracts are signed I cannot give an assurance about the safeguards that might be in those contracts. However, I can tell my noble friend some encouraging news, which is that the unit price for an F35B is currently $115.5 million, compared to $161 million for aircraft that were delivered in 2012. Therefore, while the final contract negotiations remain ongoing for the next tranche of aircraft that we wish to see delivered, we expect the downward cost journey to continue.

National Health Service: Nurses

Question

2.44 pm

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

To ask Her Majesty's Government what plans they have to increase the number of nurses working in the National Health Service in England.

Baroness Manzoor (Con): My Lords, we are committed to ensuring that nursing remains an attractive career so that the NHS builds on the record number of nurses currently on wards, but we need to do more. We have put in place several actions to address this, such as improving staff retention, return to practice, overseas recruitment and sickness absence, expanding nursing associates and reviewing language controls.

Lord Clark of Windermere (Lab): I thank the Minister for her Answer. Does she accept that the 41,000 nursing vacancies in the NHS conceal even worse problems? The number of district nurses has been cut by 50% and the number of both mental health nurses and school nurses has been cut by over a quarter. Does the Minister accept that the long-term plan for the NHS will work only if proper attention is paid to staffing issues? Can she confirm there is currently no money for any future staff training and reform in the budget, which depends on the Department of Health and Social Care's education and training budget? How confident is she that that money will be forthcoming and when will we hear how much it will be?

Baroness Manzoor: My Lords, I agree with much of what the noble Lord said. There is a shortage of nurses in the NHS: 41,000 vacancies, as he rightly identified. To put that into context, our policies have enabled the NHS to put more than 13,400 more nurses on our wards since 2010. We are not complacent. We have increased nurse training places by 25% from September 2018. To reassure the noble Lord, there are more than 52,000 nurses in training. Although there are more applications than places, we know that we need to do much more work with universities. On the NHS 10-year plan, the noble Lord rightly identified that the training budget has not been set yet. We will do that by the spring. My noble friend Lady Harding is taking a quick look at the forward plan, the type of vacancies and how we can recruit more nurses into the NHS.

Baroness Jolly (LD): My Lords, it was encouraging to see in yesterday's plan a commitment to an extra 5,000 funded clinical placements for trainee nurses from the next academic year, 2019-20. Can the Government indicate when the funding for those places will be guaranteed? Are we certain that training places are available to absorb this welcome jump in demand?

Baroness Manzoor: There were 22,200 acceptances to study nursing and midwifery in 2018, compared with 22,575 in 2017, which we estimate will increase the final number of students on nursing and midwifery courses by a further 650. The numbers are coming through, but we recognise that we need radical campaigns to ensure that we attract more people into nursing, particularly in the community.

Baroness Meacher (CB): My Lords, bearing in mind the loss to the NHS of more than 23,000 nurses from the EU as a direct result of the referendum, what special measures do the Government have in mind to ensure absolutely free movement from the EU of people wishing to come and work in the NHS as nurses, doctors or other professionals to ensure that the NHS long-term plan can be implemented?

Baroness Manzoor: The noble Baroness is absolutely right to say that we need the staff to deliver the long-term plan and that without them we cannot do that; it is very important. We recognise absolutely that

Brexit is a pressure on the system, but we should also recognise that 4,800 more professionals from the EU are now working in the NHS than there were at the date of the referendum. We are of course lifting the cap on Tier 2 visas so that more nurses and skilled clinical staff will be working within the NHS. We value EU and international staff because they genuinely make a difference to our NHS.

Baroness Rawlings (Con): My Lords, if there is the shortage of nurses that the Minister describes, will the Government consider auxiliary and volunteer nursing staff along the lines of VADs in the past? I declare an interest as a former VAD nurse.

Baroness Manzoor: I recognise the point made by my noble friend and she is right to say that we need a diversity of people coming in to the profession. We have plans to train up to 5,000 nursing associates through the apprenticeship route through 2018 along with up to 7,500 in 2019. That offers a foundation course from which student nurses can move into other areas, involving either further apprenticeship or nurse degree courses.

Baroness Thornton (Lab): Following the question the Minister answered about the European Union, while I am happy that she has confirmed that nurses from the EU are still welcome, what about the proposed threshold of £30,000, which I gather is in the immigration purposes, when the average starting pay for a nurse is £23,000? Perhaps the noble Baroness could enlighten the House on what is happening in the discussions between her department and the Home Office?

Baroness Manzoor: I would like to reassure the noble Baroness that we work very closely with the Home Office. As a transitional measure, our temporary workers route will allow employers to bring in migrant labour at all skill levels for short periods, subject to strict conditions. Many jobs in the NHS, along with senior care roles, are still at skill levels above RQF 3, which is the equivalent of A-levels. Migrants will be able to come to the UK through our new skilled worker routes. We will also be asking the Migration Advisory Committee to keep salary levels under review. However, at the moment, as far as I am aware, there are no plans to curtail those.

Army: Divisional Manoeuvre and Deployment Training

Question

2.52 pm

Asked by ***Earl Attlee***

To ask Her Majesty's Government when they propose to deploy a largely fully formed and supported division into the field for divisional movement and manoeuvre training.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Army has a substantial and sophisticated exercise programme in place to ensure that it is trained and ready to operate at the divisional level. This includes training with allies and partners. There are currently no plans to deploy an Army division into the field for training.

Earl Attlee (Con): My Lords, I thank my noble friend the Minister for that reply. In the face of a resurgent and irresponsible peer opponent, rather than massively increase military capability and defence expenditure, would it not be far more cost effective to test, demonstrate and perfect our supposed ability to deploy at divisional strength against a peer opponent?

Earl Howe: My noble friend makes a very good point. The issue to stress in this context is that if we were to fight at divisional scale, we would likely be doing so as part of a multinational force, probably NATO. The Army therefore regularly exercises with allies and partners, and a good example of that was Exercise Trident Juncture held last November, which involved some 50,000 personnel from 31 allies and partners. That was a really good opportunity to test every element of our war-fighting capability on land.

Lord Tomlinson (Lab): My Lords, the proposal from the noble Earl, Lord Attlee, is to have troops ready for deployment training. However, it is important that in such an exercise we only deploy troops who are available for deployment. Will the Minister link that to the comments that were attributed to the Ministry of Defence this weekend about the fact that more than 20% of the total staff of the Army are medically unfit for deployment?

Earl Howe: My Lords, the press coverage on this has been somewhat overdramatised. A person can be medically downgraded for a whole variety of reasons, most of which are minor and temporary and do not prevent them fulfilling their core duties. A good example would be a sports injury. Medically non-deployable, another category of personnel, can include more serious circumstances but also includes pregnancy, which—my brief says—is a self-limiting condition.

Lord Robathan (Con): My Lords, is there not one issue underlying both this Question and that from the noble Lord, Lord West? There are insufficient funds in the defence budget, and if we wish to live up to our international obligations and our aspirations, and to defend this country and our interests abroad in the way we say we do, we may need to spend more on defence.

Earl Howe: My noble friend makes an extremely important point, and we in the Ministry of Defence are always very conscious of the point he has stressed. But it is also important for all three armed services to look at the resources they have to see how they can use them even more effectively. The SDSR in 2015 and the modernising defence programme recognise the changed threat that faces us, and as a result the Army will be able to generate a more capable war-fighting division, at higher readiness, as part of the Joint Force 2025 programme.

Lord Tunnicliffe (Lab): My Lords, I note that it is not the intention of the Government to deploy and manoeuvre at a divisional level, but I assume it is a capability we believe we have. Is that a capability we

[LORD TUNNICLIFFE]
have? Do we have the logistics capability and the trained staff necessary for the complex task of manoeuvring large bodies of troops?

Earl Howe: My Lords, yes, the Army is already prepared to deliver a division, albeit at best effort. As I have just said, it is working towards its Joint Force 2025 structures that will deliver a more capable force at higher readiness. The point the noble Lord makes about enablers and logistics is well made. The exercises in which the Army has participated recently have been a very good test of those enablers.

Lord Campbell of Pittenweem (LD): Does the Minister agree that the exercise proposed by the noble Earl, Lord Attlee, in his Question is much more satisfactory than any desk-bound exercise, if I may put it that way, not least because it allows the demonstration of capability as a practical illustration of deterrence and provides reassurance for our allies? Why does the Army not take the opportunity of a showcase to show that it possesses all these qualities?

Earl Howe: With respect to the noble Lord, in effect it has done so. Exercise Saif Sareea in Oman, for example, which the noble Lord will be aware of, demonstrated very capably the Army's ability to deploy in strength overseas with partners. I can reassure the noble Lord that the training the Army undertakes, both in the field and by way of simulation, is fully up to the standards he would expect and enables the Army to be confident of its ability to field a division.

Lord Reid of Cardowan (Lab): My Lords, the essential prerequisite for putting an Army into the field is the capacity to recruit enough soldiers. Without that, you can do very little. We now have the smallest Army since the Napoleonic wars. We have a reduced target of 80,000, which we have failed to meet by several thousand, and we have just launched a campaign through newspapers and the media to recruit snowflakes. This must terrify the Russians. Who is responsible for this? Is it Ministers, civil servants or the outsourced company that has failed so miserably to produce our soldiers?

Earl Howe: My Lords, the responsibility for Army recruitment lies chiefly with the Army itself in conjunction with Capita, with which it has a partnership agreement. I completely accept that Army recruitment figures have fallen seriously short of target. A great deal of work is going on to remedy that. Encouragingly, the number of applications to join the Army over the last year is at a five-year high. The challenge now is to improve the conversion rate between those who apply and those who join, and there are signs of progress in that area as well.

Migrants: Channel Crossings

Question

2.59 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what discussions they have had with the government of France about ensuring that migrants crossing the English Channel are dealt with in a humane way.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the United Kingdom ensures that all migrants crossing the English Channel are dealt with in a humane way. We have deployed two additional Border Force cutters to the UK to help protect those being placed in life-threatening positions, as well as to further secure our border. The Home Secretary spoke to Interior Minister Castaner last week and has invited him to London for further discussions.

Lord Roberts of Llandudno (LD): Is the Minister concerned that, on 29 March, we will depart from the European Union and, when we do, we will also go out of the Dublin III agreement? That means that no country will be obliged to rehome those for whom this is the first country in Europe that they come to. In the United Kingdom, whether we have transitional arrangements or some sort of other deal, we alone will have to look after those who reach our shores, with no other recourse. Do we have any plan at all for what we will do on 30 March, which is 79 days away?

Baroness Williams of Trafford: My Lords, I am not concerned that, when we leave the European Union on 29 March, we will in any way resile from our obligations to give refuge in this country to people who need it.

Lord Roberts of Llandudno: That was not the question.

Baroness Williams of Trafford: I am coming to the noble Lord's point about Dublin. We have resettlement schemes for people in the MENA region but, if we have a deal, Dublin III will apply during the transition period. If we leave without a deal, we will not be bound at all by the Dublin regulation. Nevertheless, this Government are committed to continuing the long history of giving asylum in this country to people who need it.

Lord Dubs (Lab): Will the Minister confirm that, in our discussion with the French authorities, we will set a high stake on the right of migrants who have reached Britain to claim asylum in this country, and those who have reached France to claim asylum in that country? That is a fundamental right under the Geneva convention, and it seems to be being weakened by some of the statements of the Home Secretary.

Baroness Williams of Trafford: My Lords, there has been a long-established acceptance that people seeking asylum should claim asylum in the first safe country they reach. The noble Lord is shaking his head slightly but, if a migrant or asylum seeker arrives in France or Italy, they should seek asylum in that country. If they do not, and decide as some have to take the treacherous journey across the channel, they not only put their lives in danger but are going against the Dublin convention.

Baroness Lister of Burtersett (Lab): My Lords, does not the "first safe country" principle rather let this island nation on the west of Europe off the hook from its responsibilities to asylum seekers globally? Given this, and given the Government's proper concern with

safety, should they not do much more to open up safe and legal routes for asylum seekers, as called for by the British Red Cross and others?

Baroness Williams of Trafford: My Lords, when noble Lords make this point, I am never quite sure whether they feel that asylum seekers should claim in the first safe country or that they should then go on to other countries. However, claiming in the first safe country is the swiftest way for those fleeing torture and persecution to get protection.

The Lord Bishop of Gloucester: My Lords, children granted refugee status in the UK have no rights to family reunion. This sets the UK apart from all other European countries. What are the Government doing to ensure legal protection and mental health support for these children? Will they consider granting rights to family reunion?

Baroness Williams of Trafford: My Lords, the last thing that the Government want is for children to be sent across in order to bring their families across. We do not want children to act as a pull factor for people to make these unsafe journeys. We do not intend to change that principle.

Baroness Smith of Basildon (Lab): My Lords, I listened carefully to the Minister's answers and she seemed to imply that the Dublin regulation appeared to be the responsibility of those claiming asylum and refugees. Does she not understand that it is in fact burden-sharing between countries, which have an obligation—we have an obligation—to protect those who seek asylum? The House would find it helpful if she could give a more adequate answer than she has so far.

In the Minister's Statement yesterday, when my noble friend Lord Kennedy of Southwark raised this point with her, she spoke about the various agencies that were working together and co-ordinating, such as Border Force, Immigration Enforcement, the coastguard and the National Crime Agency. How many people smugglers, who bring people into the country and put them in danger, have been prevented from doing so? How many of those criminals have been detained, and how many have been prosecuted?

Baroness Williams of Trafford: On the last question first, I will try to give the noble Baroness details. I am not sure that I will be able to obtain the figures, but I will certainly try. She made a point about the Dublin regulation being an obligation or burden on the person claiming asylum. In fact, as she knows, it is an EU-wide agreement that asylum seekers will claim in the first safe country they reach. To suggest that they should do it any other way is dangerous to the lives of those people.

Universal Credit

Statement

3.06 pm

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, with the leave of the House, I will repeat as a Statement an Answer given to an Urgent Question in another place by my right honourable friend the Minister for Employment. The Statement is as follows:

"Mr Speaker, universal credit is a vital reform that overhauls a legacy system that trapped people out of work. With six different benefits administered by three different government departments, it was utterly confusing for claimants. All new claimants now receive universal credit. In the future, we will move claimants who have not changed circumstances from legacy benefits to universal credit in an approach known as managed migration.

It is right that the Government should seek to align provision for all, in order to eventually operate one welfare system. The department has long planned to initially support 10,000 people through this process, in a test phase, before increasing the number of those migrated. This first phase will give us an opportunity to learn how to provide the best support, while keeping Parliament fully informed of our approach.

Universal credit is proceeding as planned, with no change to the timetable of completing managed migration by December 2023".

My Lords, that concludes the Statement.

Baroness Sherlock (Lab): My Lords, I thank the Minister for repeating that Answer. I woke on Sunday to news suggesting that universal credit rollout was being delayed. Joy, I confess, was unconfined in Sherlock Towers and doubtless all around the land. But it was not so. It seems that the Government are pressing ahead with the 1.4 million people currently getting universal credit, and another 1.5 million people will join them in the next year. So any delay seems to relate only to the regulations on managed migration, which Ministers had told us were incredibly urgent. These are very controversial because, rather than transferring people across to universal credit, in practice the DWP will simply end legacy benefit claims and invite people to apply for the new benefit. The DWP was to pilot it this summer and roll it out to some 3 million people from next year.

Our Secondary Legislation Scrutiny Committee urged Ministers to take only the powers and regulations to run the pilots and then come back to the House before going for the full rollout—so I hope that maybe that is what the Government are doing. But Ministers down the other end could not confirm this at all.

I do not want a general bit of debate or flannel: I just want to know what is being delayed and until when. So will the Minister tell the House whether the Government are delaying consideration of the managed migration regulations until after the pilots have been evaluated? If so, how will they get the powers to run the pilots and introduce the concession they have made on the severe disability premium? If they are not doing that, what on earth is going on?

Baroness Buscombe: I will respond by saying first that perhaps we should ask the press what on earth is going on. The news that there is a delay is wrong. The Government previously committed to hold a debate on the affirmative regulations in relation to managed

[Baroness Buscombe]
migration, and that will happen in due course on the Floor of the House. We will debate them as and when parliamentary time allows, but we will also make sure that we meet our commitment to severe disability premium recipients. To ensure a start date from July 2019 for those 10,000 people, we have long said that we will work with a test and learn process.

The noble Baroness talked about a pilot. We have always called it a test. It is perhaps just different terminology. In my response to a debate put to the House by the noble Lord, Lord Bassam of Brighton, on 1 November, I made it very clear that we were always going to have the test and learn phase starting at the end of July 2019, whereby we would manage-migrate only 10,000 people through the following 12 months. A debate will be held on the regulations to allow for the managed migration.

Lord Kirkwood of Kirkhope (LD): My Lords, I welcome this change in so far as it separates the regulations in the first phase to do the testing and learning. It was argued for very forcefully by the scrutiny committee and others. I welcome the Government paying attention to that. However, a timing issue flows from it, because if we do not get the evaluation of the test and learn phase in time to be useful when the comprehensive spending review comes around later this year, we are going to be short of money. If we are to learn anything between now and July, time is very short, so the managed migration regulations need to be laid and they need to be evaluated in time to be useful to get resource put into universal credit in the longer term for the future.

Baroness Buscombe: I very much take on board what the noble Lord said. This has been very much part of our thinking in the department. It is very important that we make sure that we have an opportunity to debate the managed migration regulations prior to the end of July 2019 and the pilot phase—as it is now popularly referred to, rather than, as we have called it, the test and learn phase—whereby we will be co-designing the whole system with 70 stakeholders working with us to make sure that we get this right. So there is no question of us not being very cognisant of the fact that we want to ensure that we protect recipients of the severe disability premium so that they do not in any way have a gap in receipt of their severe disability premium. We want to make sure that that happens as soon as possible.

Baroness Wyld (Con): My Lords, in the debate at the end of last year, I asked the Minister specifically about those with mental health illnesses who are struggling with the complexity of the system. In the light of recent changes, can my noble friend say a little more about the specific support that will be available to those struggling with mental health conditions, and how they will be helped to manage their way through this process?

Baroness Buscombe: I thank my noble friend for this question, because of course our focus is very much on all claimants. Each claimant has a different bespoke need. The reality is that they have a work coach and a caseworker supporting them in a bespoke way that never existed under the legacy system. In relation to those who are particularly vulnerable and have particular mental health issues or disability needs, we are committed to gathering better data to support those claimants and to prioritise this as part of the wider Work Programme for universal credit. Anything we do will be introduced incrementally and could cover a broad range of complex needs rather than focusing on one particular group.

We have been focusing very much on training staff and increasing the number of staff. For example, we have introduced a function to pin key profile notes so that they are instantly visible to all staff helping a claimant. After a small trial, this feature was rolled out in September last year. We are thinking all the time about how we can help people in a bespoke way. A number of Peers who joined me at the Department for Work and Pensions at the end of last year saw for themselves the work that we do and how we focus to the best of our ability on what will be 8 million people when the whole system is fully rolled out, each and every one of them having perhaps a slightly different issue but being part of the system that works for everyone.

Baroness Lister of Burtersett (Lab): My Lords, perhaps I may go back to my noble friend's question. We will be debating exactly the same regulations that were laid last year, with their sink-or-swim approach that has been widely condemned by the Social Security Advisory Committee, any number of parliamentary committees and all the voluntary organisations on the ground. The only thing that has changed is that the regulations that we were told had to be agreed by 12 December have disappeared.

Baroness Buscombe: My Lords, the noble Baroness is wrong to say that the regulations have been widely condemned. Why do 70 different stakeholders want to work with us if they condemn what we are trying to achieve? I feel very strongly about this. The noble Baroness herself came to the department to see the fantastic work done by our work coaches. She may laugh at what our employees do day in and day out, 24/7, to help benefit claimants in a far better way than ever happened under the legacy system where, frankly, people were left to—

A noble Lord: Nonsense!

Baroness Buscombe: I am sorry. Under the legacy system people lived, as it were, in the shadowlands of dependency. We are lifting people out of poverty and encouraging more people into work. The universal credit system is working but we want to make sure that, prior to the volume migration of those on legacy benefits, we work carefully and slowly with the 10,000 people who are coming forward so that we do it correctly. It is also important to make sure that we protect those with a severe disability premium.

The Lord Bishop of Durham: My Lords, I thank the Minister for the time that she has given to a number of us. The session that we had at the DWP was very informative and helpful, and I thank her for it. However,

I am still confused as to why, when we met the Minister, we were told that these regulations had to be dealt with before Christmas, yet we are still not clear exactly what regulations we will be asked to debate. Can she please clarify that?

Baroness Buscombe: My Lords, I am trying to clarify it to the best of my ability. The reality is that, as I have already said, we want to make sure that we protect those with a severe disability premium and we need to do that by the end of this month. I think that noble Lords will accept that at the moment we are in an unusual place when it comes to the parliamentary system and the timetable, but I am absolutely clear that, when parliamentary time allows, we will debate on the Floor of this House affirmative regulations for managed migration.

Seaborne Freight

Statement

3.18 pm

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, with the leave of the House, I will repeat in the form of a Statement the Answer given by my right honourable friend the Secretary of State for Transport to an Urgent Question in the other place. The Statement is as follows:

"Mr Speaker, as you know, this Government are working towards ensuring that we leave the European Union in March with a sensible agreement for the future through the withdrawal agreement that this House will consider next week, but any responsible Government need to plan for all eventualities.

As part of this work, the Department for Transport has been undertaking a wide range of activities to mitigate the impact on the transport system of a potential no-deal EU exit, particularly around the movement of freight. My department has, for example, delivered measures, including passing the Haulage Permits and Trailer Registration Act, which puts the systems in place if a permit system is required and to ensure that UK HGVs can continue to be used in the EU.

We have also put in place Operation Brock as a replacement for Operation Stack, in order to deal with disruption at the Channel ports. This is not simply a Brexit-related measure. We do not want to see any repeat of the issues that Kent faced in 2015 with the closure of the M20. Operation Brock should mean that during any future disruption at the ports, for whatever reason, the motorway is kept open while we prepare the long-term solution of a lorry park.

Yesterday, Kent County Council and my department carried out a live trial of one part of Brock, on the route from Manston. We were satisfied with the number of vehicles that took part, which was more than enough to determine a safe optimum release rate from Manston to the Port of Dover via the A256, causing minimal traffic disruption along the route.

This is a range of examples of the sensible contingency planning that a responsible Government are carrying out to make sure we are prepared for a range of outcomes. But we are committed to ensuring as frictionless as possible movement across the UK border whatever the outcome. However, without planning there could be significant disruption to the Strait of Dover, particularly if no agreement is reached.

Given the importance of these routes to the UK economy, it is vital that we put in place contingency plans to mitigate against any disruption that might occur in a no-deal scenario. Now the department is working with the Port of Dover and the Channel Tunnel as well as our French counterparts, at both official and ministerial level, to ensure that both operate at the maximum possible capacity in all instances.

Those discussions are positive and I am confident everyone is working constructively to ensure that the Dover-Calais route, and particularly the Port of Dover and the tunnel, continue to operate fluidly in all scenarios.

However, in order to ease any pressure on those routes, my department has completed a proper procurement exercise to secure some additional ferry capacity between the UK and the EU. Following this process, three contracts were awarded to operators, totalling a potential £103 million. Almost 90% of this was to two well-established operators: £46 million to Brittany Ferries and around £42 million to DFDS.

These contracts provide additional capacity on established routes, through additional sailings and in some cases additional vessels, into ports in northern Europe and other parts of France. A third, smaller contract worth £13.8 million potentially was awarded to Seaborne Freight, a new British operator, to provide a new service between the Port of Ramsgate and Ostend.

Now let me stress, no money will be paid to any of these operators unless and until they are actually operating ferries on the routes we have contracted. No money will be paid until they are operating the ferries. No payment will be made unless the ships are sailing and, of course, in a no-deal scenario money will be recouped through the sale of tickets on those ships.

But as the House, I believe, knows, Seaborne is a new operator looking to reopen the route, which closed five years ago. As a result, we ensured that its business and operational plans were assessed for the department by external advisers, including Slaughter and May, Deloitte and Mott Macdonald. This included Seaborne's plans to charter vessels for service, as is common across many transport modes including airlines and rail operators. We also conducted searches on the directors of Seaborne, via a third party, and found nothing that would prevent them contracting with government.

Mr Speaker, I make no apology for being willing to contract with a new British company, particularly one which has a large number of reputable institutional backers. We contracted with Seaborne Freight as the service it proposes represents a sensible contingency in the event of disruption on other routes.

I am pleased that this award supports the Port of Ramsgate, which operated as a commercial ferry port as recently as 2013 and has taken ro-ro services as recently as last year. I am looking forward to seeing

[Baroness Sugg]
ferry services resume from this port. The infrastructure work to make that possible has already started and is one of the most visible and symbolic elements of how seriously my department is taking contingency planning for all Brexit eventualities".

3.23 pm

Lord Tunnicliffe (Lab): I thank the Minister for repeating that incredible answer to the Question in another place. The Transport Secretary has awarded a £14 million contract to a company with no money, no ships, no track record, no employees, no ports, one telephone line and no working website. The Minister calls this a sensible contingency plan; I call it a crisis. In a crisis, you turn not to the lowest bidder but to the contractors that can ensure safety and reliability. I have two specific questions. First, what risk assessment has been carried out in awarding the contract to Seaborne Freight and were issues such as shipping experience, maritime safety and financial robustness taken into account? Secondly, what guarantees can the department provide on the uninterrupted delivery of critical goods such as food and medicine?

Baroness Sugg: I thank the noble Lord for his question. As I said, 90% of the contracts were awarded to established operators. With Seaborne, the proposal was subject to technical, financial and commercial assurance as part of a standard due diligence procedure consistent with that undertaken on all government contracts. Our contractual arrangements with Seaborne clearly reflect its status as a new ferry operator, and it is obliged to meet a number of stringent time stage requirements to demonstrate that it can provide an effective service, with break clauses in the Department for Transport's favour if it fails to meet them. I reiterate the point that no taxpayers' money will change hands unless these services are provided.

Baroness Randerson (LD): My Lords, from my ministerial experience, I recall that the usual due diligence process involves ensuring that the company has appropriate experience—Seaborne has none—and that it is financially secure. I wonder who its shadowy financial backers are. It also requires directors to be of good financial standing. Can the Minister tell us whether the unpaid tax bill of the managing director's previous company, which went into liquidation, has now been paid?

The statement refers to three very reputable companies which are supposedly involved in the due diligence process. Can the Minister assure us that all three signed off on the awarding of this contract, and if one or two of them did not, can she tell us which? Have the Permanent Secretary for the Department for Transport or the director asked for written ministerial direction in this case?

Finally, has Seaborne now signed a contract with Ramsgate and Ostend ports? On 3 January they had not even done that, let alone begun building or requisitioning the ships. Clearly no one looked properly at the company's website—unless, of course, they were wanting to order a pizza.

Baroness Sugg: My Lords, we conducted searches on the director of Seaborne via a third party and found absolutely nothing that would prevent the company contracting with the Government, which is why we went ahead. There was no ministerial direction in this case. The company has been working to open the service for over two years. Since we have given them the contract, it has been developing that service, and there will be updates in the near future.

Lord Campbell-Savours (Lab): My Lords, I understand that international haulage operators are today threatening to drop their channel business because of the risk of customs delays and that those who remain are upping their costs by 5%. Can the Minister confirm this? And how can the Ramsgate-Ostend freight service be viable when the cross-channel freight rate for vehicles, which is linked to the Channel Tunnel rate, stands at £180 per container or lorry? That was the rate in 1981 and is still the same 37 years later. Is it not true that numerous attempts have been made to rekindle that service and all have failed? Is it not also true that after dredging—even at those rates—a full ship, two-rotation, sixteen-sailings-per-day service is still not viable? Is this just a joke?

Baroness Sugg: I assure noble Lords that this is not a joke but part of our contingency planning. We are concerned that in the event of no deal, there will be disruption at the port of Dover. Our first priority is to minimise that disruption on the narrow straits, but we are aware it is a real issue, which is why we are making these contingency plans and why we are looking at alternative ways of ensuring that trade carried on ro-ros can continue to come and go from this country.

Baroness McIntosh of Pickering (Con): My Lords, would my noble friend consider other ports, which do not require dredging and which operate ferries? I declare an interest: I represented the port of Harwich for 10 years as a Member of the European Parliament, and I was a frequent user of DFDS when it operated ferries to Denmark. Would my noble friend consider looking at the option of a new ferry service out of the port of Harwich? I am sure the port would benefit too from this revitalised process.

Baroness Sugg: As I said, the current work at Ramsgate will certainly benefit that area. With this procurement, the Government set the criteria of the additional freight capacity, within which the port of Harwich would have been in scope, but we did not specify the origin or destination ports. We left that up to the commercial operators. We regularly engage with a wide range of ports across the country, including Harwich, and we will continue to discuss how the Government can support them in the development of the maritime industry.

Lord Berkeley (Lab): My Lords, could the Minister explain her comment that no money would be paid to this company until the service is started? It actually started dredging at the weekend. Who is paying the probable millions that will be spent on dredging? Are the Government or someone else paying? Secondly,

who will guarantee the traffic on this ferry service, if it ever starts? Who will set the prices? As my noble friend Lord Campbell-Savours said, it is an open competition now between these ferries. Will the Government direct trucks where to go?

Baroness Sugg: My Lords, the dredging of Ramsgate, which the noble Lord said is already happening, is separate from this contract. We have a prioritisation process in place to ensure we can facilitate trade in the goods that we need to. That is an ongoing process that will continue up until we reach a deal with the European Union.

Lord Davies of Stamford (Lab): My Lords, when did any British Government in any field last place a major contract with a company that had no experience whatever of operating? Are the Government confident that the contract given to Seaborne Freight is fully in accordance and fully compliant with our rules on public procurement and the European public procurement directive?

Baroness Sugg: My Lords, we are absolutely confident that it is fully compliant. We duly published the details of the contract. As with many operators in the maritime sector, it is not uncommon for it not to own its own vessels. Many operators charter them through third parties, as Seaborne is doing.

Lord Adonis (Lab): My Lords, who is paying for the dredging at Ramsgate? The noble Baroness did not answer that question.

Baroness Sugg: It is not part of this contract. I believe that the cost is around £1.5 million. I will have to get back to the noble Lord with the exact details of who will pay for it.

Lord Harris of Haringey (Lab): My Lords, can the Minister give us a clear statement that there are no financial connections between Seaborne Freight and close family members of any Minister?

Baroness Sugg: I can certainly reassure the noble Lord that I am not aware of any such connection. This contract has been brought about to try to facilitate the easing of trade should we be in a no-deal scenario. There is certainly no ulterior motive to it.

Lord Naseby (Con): My Lords, does my noble friend accept that a great many of us recognise that what the Department for Transport has done broadly to meet the possible problems at the end of March is greatly welcome? Nevertheless, it seems that this particular contract is not exactly straightforward, to put it mildly. Against that background, it might be beneficial if Her Majesty's Government and the department found an alternative supplier for the 10% of this supplementary work on a more regular basis, perhaps on a standby basis, if and when this contract does not quite produce what it is put forward to do.

Baroness Sugg: My Lords, we are confident that we will be able to provide the facilities to carry goods to and from for the 90% of the procurement contract. Should the contract with Seaborne fail we will of course look to make alternative measures. I thank my noble friend for his comments. As I said, the Department for Transport is making a number of contingency plans in the event of no deal. I am certainly not saying that no deal is an ideal situation or indeed one that we want to be in. We are trying to avoid it through getting agreement to the Prime Minister's deal.

Financial Services (Implementation of Legislation) Bill [HL]

Committee (1st Day)

3.34 pm

Motion

Moved by ***Lord Taylor of Holbeach***

That the House do now resolve itself into a committee on the bill.

Lord Taylor of Holbeach (Con): My Lords, I beg to move.

Amendment to the Motion

Tabled by ***Baroness McDonagh***

Leave out from "do" to the end and insert "not resolve itself into a committee on the bill until the Committee stage of the Trade Bill is set down in House of Lords Business".

Baroness McDonagh (Lab): My Lords, I shall speak to the amendment in my name on the Order Paper. It is a Christmas miracle: I now have evidence that Santa Claus exists. The Trade Bill finished Second Reading on 11 September, and with the looming date of 29 March, I thought, "Gosh, we are going to get it back in October", but there was no Trade Bill to be seen. It had to be November, but there was no sign of the Trade Bill anywhere. It must be December, then, but no sign of the Bill. So, on 19 December, I went to see the clerks and put down this amendment. I know many of my colleagues also started to ask to questions about the Trade Bill. It is a miracle: we get back from Christmas, and we have four days for Committee at the end of January.

This is part of a wider political strategy. I understand that some incompetency is involved in this—of course there is Chris Grayling—but this is part of a bigger strategy. Six months ago, the Government adopted a kick-the-can-down-the-road strategy, where every day when they got up they hoped something better would happen. When they realised that was not going to happen, they adopted a new strategy, called the cliff-edge strategy. We saw it at the weekend with the Prime Minister's media interviews, and with the Answers to Questions yesterday from the Minister the noble Lord, Lord Callanan. The strategy is that "Either you agree

[Baroness McDonagh]
with me, or I will wreak chaos and havoc on this House and this country". It is never true when people tell you there is only one way. There are always other options, and the possibility of preventing chaos.

While I say today that I will not be moving this amendment and pressing it to a vote, I put the Chief Whip the noble Lord, Lord Taylor, on notice: if there are any further delays in legislation, any holding up of Bills that should go back to the other place, any dumping of hundreds of SIs without the time given to debate them, I will have no hesitation bringing such a Motion or amendment back to the House.

I think nearly a majority of Back-Benchers in every group in this House feel the same way. Even if the Government are not going to prevent chaos, we are.

Amendment to the Motion not moved.

Motion agreed.

Clause 1: Power in respect of EU financial services legislation with pre-exit origins

Amendment 1

Moved by ***Baroness Bowles of Berkhamsted***

1: Clause 1, page 1, line 3, leave out "or" and insert "and"

Baroness Bowles of Berkhamsted (LD): My Lords, for the purposes of the Committee stage of this Bill, I declare my interest as in the register as a director of the London Stock Exchange plc.

This Bill, as was elaborated at Second Reading, is intended to provide a way to land so-called in-flight legislation. However, as many noble Lords also observed during Second Reading, the scope for amendment of that legislation is wide and not limited to the type of onshoring provisions of the withdrawal Act. Indeed, there is no promise of onshoring at all. This point is noted by the Delegated Powers Committee in paragraph 17 of its report on this Bill. The fact is that there is just a wide power to make legislation related to any of the provisions in any of the legislation in subsection (2) or specified in the list in the Schedule. There are no provisions defining how close it must be to that legislation, and the power is not anchored only to withdrawal from the EU.

We should not lose sight of the fact that the mechanism is an alternative to primary legislation. Although the power is time-limited, I do not consider that that is sufficient control to replace primary legislation entirely. It cannot be left open for the Government to cherry pick, to diminish, to add or to do things that depart from expectation, in terms both of the policy in the EU instruments that the power covers and the policy that has been laid out by government with regard to relations with the EU after Brexit.

The doubt starts right at the opening words, which state:

"The Treasury may by regulations make provision … corresponding, or similar, to … any of the provisions, of any specified EU financial services legislation".

The use of "or" clearly implies that the regulation may make provisions that are corresponding but not similar. A simple suggestion may be to make a penalty for a failure in a corresponding position, but not the same penalty. So, too, could it be the other way round: a provision may be similar but not corresponding. A penalty may be moved to somewhere else or attached to a different provision. We often talk in particular about criminal penalties, when we are equalising them out between different types of provisions.

Amendment 1 would replace "or" with "and" so that it said "corresponding and similar", thus making the objective clear: it corresponds to a particular EU provision and it is in similar terms. That seems to be a good and clear start to the Bill rather than the imprecise start that it currently has.

On its own, the amendment would not solve all the problems, including the Government's plea for some flexibility. In other amendments in later groups, I probe how that might be done. Other noble Lords have amendments in this group which suggest further limitations on power. As it has fallen to me to speak first, I shall briefly comment on them

Amendment 3, tabled by my noble friend Lord Sharkey, makes a good point about not changing the primary purpose of the EU legislation, and it could sit alongside my Amendment 1 as well as standing alone. Amendment 5, tabled by the noble Lord, Lord Davies of Oldham, and others, would limit the provisions to the circumstances of withdrawal from the EU. I am interested in the debate around that point. How far would the Government intend to stretch the term,

"adjustments in connection with the withdrawal"?

What other form of amendment not connected to withdrawal might they be contemplating?

Amendment 7, by the noble Lord, Lord Tunnicliffe, progresses the limitation to reflecting the UK position outside the EU. In later groups, I have put forward some probing amendments that would limit the scope of amendment in other ways but which are a little more permissive, so, for now, I reserve my own position on Amendments 5 and 7 save to say that, if it is not feasible to construct suitably restrained flexibility, limitations of the kind set out in Amendments 5 and 7 would have to become the default position. I beg to move.

Lord Sharkey (LD): My Lords, I shall speak to Amendment 3. At Second Reading, there was much discussion of the wide powers that the Bill gives to the Treasury via secondary legislation. All the amendments in this group deal with that issue.

Clause 1 contains clear Henry VIII powers. It allows the Treasury to make policy and new laws entirely by means of statutory instrument. It even allows such new laws to be wholly unrelated to the UK's exit from the EU. Unusually, it allows these new laws on to the statute book without any parent primary legislation. There will be no parent Acts for these new laws: no context, no detailed parliamentary discussion and no effective parliamentary scrutiny.

3.45 pm

We should be clear that the affirmative SI procedure does not provide proper, full parliamentary scrutiny. SIs are not amendable; they offer only the choice of acceptance or rejection, and rejection by this House is very rare. It has rejected six affirmative SIs in the last 68 years. The prospect of future rejection stands at zero as long as the Labour Party maintains its current reluctance to reject. Amendment 3 seeks to address and limit the use of SIs in the Bill.

As the Bill stands, Clause 1(1) gives the Treasury absolutely unrestrained discretion over the creation of new laws and new policies by SI. The words "adjustment" and "appropriate" do not restrict the Treasury's room to act. Both these words are capable of very wide interpretation, and, in any case, the Treasury is to be their interpreter. My probing amendment sets limits on how these words may be interpreted in this context. It sets limits to prevent the creation in law of entirely new policies by SI. It does this by requiring that the exercise of the Treasury's regulation-making power does not extend to significantly altering, expanding or running contrary to the primary purposes of the specified EU legislation. I am advised by the Legislation Office that inserting this restriction in page 1, line 8 after "legislation" means it will also apply to the words "adjustment" and "appropriate" in lines 9 and 10 on page 1. That is certainly its intent.

There is no justification for giving the Treasury unfettered power to make new financial services policy and law by delegated legislation. That is especially true when these SIs would be orphans. They would have no relevant parent Act and no meaningful scrutiny. Amendment 3 moves the powers closer to those of Section 8 of the EU withdrawal Act, which allows only changes necessary to remedy defects of the incorporation of EU law into UK law after the UK leaves the EU.

This is also in line with the recommendation made in paragraph 16 of the report of the DPRR Committee published on December 18. This said that:

"The power to make adjustments is a very broad one with no restrictions on what the modifications may relate to or the circumstances in which they may be made. In the absence of any explanation, we consider the power to be inappropriate in so far as it relates to EU legislation that has already been adopted. We recommend that the power should in that case be limited (by analogy with section 8 of the EUWA) to a power to remedy deficiencies arising from the UK's withdrawal from the EU".

I have also added my name to Amendment 5, in the names of the noble Lords, Lord Davies of Oldham and Lord Tunnicliffe. That amendment also sets out to limit to withdrawal matters the exercise of the regulation-making powers, although it may prove a little too restrictive in dealing with the in-flight files, as may Amendment 7.

The Government are looking to give themselves quite unnecessarily wide powers in this Bill. It is surely unnecessary, as well as unwise, to allow HMT to create new policies and laws for our critical financial services industry without full, proper parliamentary scrutiny. The promised consultations are no substitute for primary legislation. Nor, emphatically, is our affirmative SI procedure. We should restrict this Bill's delegation of powers in the light of departure from the EU to do two things: to rectify any defects in retained EU law, and to incorporate into UK law elements of the specified in-flight legislation. Amendment 3 is aimed at imposing those restrictions.

Lord Davies of Oldham (Lab): My Lords, there is no need for me to repeat the arguments put forward in respect of the earlier measures considered here, so I will speak predominantly to Amendment 5. I looked carefully at the Minister's summing up at the end of Second Reading. These issues had been articulated widely and we did not think that the Minister was at that time in a position to make forthright improvements, but we are worried now because we are now in Committee and we all recognise the privations of time. It seems to me that, with issues as serious as they are, the Minister ought to consider whether there is a basis for discussion between us outside the Chamber to resolve what, after all, is an essential part of the Bill but is not satisfactory, as it reads at present, to the Opposition parties.

Amendment 5 limits the adjustments—I notice that the word "adjustments" covers a multitude of potential activity and I am not sure that I am entirely happy with that as a defence of where the Government expect the Treasury to go—that the Treasury may make to specified EU financial services legislation to,

"adjustments in connection with the withdrawal of the United Kingdom from the EU".

At present there is no restriction on these adjustments: they could be made in the context of circumstances other than the main purpose of the Bill. We must all recall that this is a Bill of a very specific kind; namely, to cope with a no-deal situation, with the expectation on the Government's side that it will not become law—that is, it will not be necessary for it to become law because a deal will have been achieved. That is a position that verges on the optimistic at this point, but of course it will be clarified by debates both in this House and in the Commons over the next few days.

As currently drafted, the Bill allows the Treasury to make any adjustments it may consider appropriate. That is the dreamland of the Treasury. I should think it is probably the dreamland of any adviser to the Minister, or any Minister, on any Bill, that he should have that capacity; that there should be provision for adjustments to be made subsequently. Of course, these will be adjustments that the Treasury—the Government—considers to be appropriate. That is scarcely anything other than a pretty outrageous position to adopt.

I also want to comment on Amendment 7, which limits the adjustments—that word again—that the Treasury may make to provisions of specified EU financial services legislation

"to preventing, remedying or mitigating deficiencies in retained EU law",

and prevents the regulations under Clause 1 from making policy changes,

"other than to reflect the United Kingdom's new position",

if we have a deal and have left the EU, vis-à-vis the European Union. The wording of this amendment comes directly from what the Minister said to the House at Second Reading. It comes from the Government's own explanation of the powers they are using under

[Lord Davies of Oldham]
the EU withdrawal Act for onshoring SIs. I cannot see how the Government can resist accepting the concept of this amendment. They surely do not want to arrogate to themselves powers different from those defined in Amendment 7, which follow the position the Government have adopted up to now. But the Minister must be sufficiently anxious that, in addition to the amendments we have just discussed, from both the Liberal Benches and ours, we have real anxieties about the way in which the Bill stands before the House. The response we received at Second Reading satisfied none of us; otherwise, we would not have felt moved to table these amendments. We will need to make progress because as far as the Opposition are concerned, these are central issues to the Bill if it eventually becomes law.

Baroness Liddell of Coatdyke (Lab): My Lords, at Second Reading it was obvious to many of us across the House that the Bill was a useful safety net for in-flight legislation. As such, there was a spirit of collaboration and helpfulness. However, since then we have received the report of the Delegated Powers and Regulatory Reform Committee, which is quite scathing about some of the inconsistencies in the Bill. I quote from paragraph 5:

"Furthermore, the assumption that the Bill will only apply in a 'no deal' scenario has led in our view to inconsistencies in the drafting of the Bill".

I still recognise the importance of getting the Bill on to the statute book but we cannot allow it to become a blank cheque. It is important to recognise that there are inconsistencies in the Bill. Indeed, the Delegated Powers Committee drew attention to the comments it had made during its consideration of how HMRC was covered in the withdrawal Bill, saying:

"We judge powers not on how the Government say that they will use them but on how any Government might use them".

The Minister is an extremely honourable man, probably one of the most honourable in your Lordships' House. It would be of enormous value to the Committee if we could get this cleared up. It may not be possible at this stage but certainly by Third Reading we should at least have something in the record of the debate that deals with these inconsistencies on a sequential basis. Noble Lords have already referred to some of the difficulties. There will be further opportunities to explore these in the amendments that we will be considering in due course. But this is an important and necessary piece of legislation and it does not help anybody to have gaps left in it that can create difficulties for the future.

Lord Adonis (Lab): My Lords, my noble friend Lady Liddell has made an extremely important point. As the debates and scrutiny have progressed and further information has become available on the Bill since it was initiated, the concerns have become greater.

In my experience with legislation, as Ministers—particularly Ministers of the calibre of the noble Lord, Lord Bates—explain issues to the House and seek to meet concerns, there is normally a narrowing of points of difference. But in this case the points of difference have expanded as it has become clear that the extent of the powers granted under the Bill is much greater than originally explained; they were, as my noble friend said, to do with in-flight provisions. As we have elucidated the scale of the potential breadth of these powers, the concern has become greater, not only because of the report which my noble friend referred to but because we have now been able to look at the list of measures to which they will apply. We have also been able to study the Minister's speeches at Second Reading, which have led me to be considerably more concerned than I was before.

In his opening and closing speeches at Second Reading, the Minister said, in essence, that in the event of provisions coming forward which are not to do with continuity or in-flight but are basically to do with us either anticipating changes that will be made by the European Union or implementing those which have been made in the institutions of the European Union—to which we may or may not have agreed ourselves—the Government have the right to implement them on their own judgment, by decree, provided that it is within a two-year period. I think we will be pressing the Minister time and again—and, to be blunt, this may well lead to him losing significant parts of the Bill on Report—on the fact that there is a complete answer to the situation in which he finds himself.

4 pm

In any area to do with legislation which is not a continuity provision or a very narrowly defined in-flight provision, the normal, primary legislative provisions should apply. In his speech at Second Reading, the Minister referred to a number of directives and provisions that are in the pipeline, including the prospectus directive and so on, and said that we have to have these powers because they are so important to our financial services industry. My response to him, and I look forward to his reply, is: yes; these are important issues, but they are vital issues to do with the law of the land. A lot of contentious issues are embedded in those proposals, which is precisely why we have our primary legislative procedures to deal with them. We have Second Reading, Committee, Report and Third Reading, and these stages take place in both Houses. In the Minister's Second Reading speech he said, "But of course, this will be by the affirmative procedure, so they can be debated". But the affirmative procedure provision does not give any opportunity to amend whatever. It effectively neuters this House, because we have only the nuclear option of entirely rejecting provisions; we can neither amend them nor in any satisfactory way send them back to the House of Commons for further consideration. The only way we can do that effectively is by rejecting them, and if we do that, we get accused of behaving unconstitutionally. My response to the Minister—I look forward to his reply—is: in the areas where this is not to do with continuity or in-flight provisions, why is it not satisfactory for us to follow our normal legislative procedures and require primary legislation to be enacted where changes to the law are proposed? What does not make that applicable in this case?

If I may anticipate the Minister's response, I suspect that he might say something about needing to respond quickly and something about the legislative burden.

On responding quickly, this issue arises all the time in respect of legislation, and it is not satisfactory for the Government to make major changes to the law of the land by decree simply because they do not believe that there is enough time for Parliament to debate them. That argument could apply to all legislation at any time, and it does not seem to justify the powers in the Bill. On there not being enough parliamentary time, I am sorry to keep returning to this, but parliamentary time is a commodity at the disposal of the Government and this House. When it comes to major changes to the law of the land, such as significant reforms to financial services regulation—things like the prospectus directive that the Minister refers to will apply to potentially every company in the country, affecting vitally their business and their ability to compete in the global marketplace—it is perfectly reasonable that this House and the Government should make enough time for us to debate propositions in a way that they can be amended and go through the normal legislative procedures. No case is made for the provisions set out in the Bill.

Lord Hodgson of Astley Abbotts (Con): The noble Lord has already referred to the two-year sunset clause. Does he accept that in the short run, the imposition of the Brexit deadline will require things to be done quickly, and in those circumstances, if the sunset clause were shorter, would he be happier?

Lord Adonis: My Lords, the sunset clause is for two years, which is nearly half a Parliament. The fact that there is a sunset clause does not somehow legitimise everything that takes place in that period. There is no case for these provisions at all. Let us be clear that we are talking about further changes to the existing law; these are the provisions that are causing such difficulty for many of us in the House. We are prepared to grant the Minister powers to simply transpose existing provisions into UK law—indeed, I am not even sure that under the European Union (Withdrawal) Act he needs legal powers for that. The key issue here is that it all concerns further changes to the law. The statute book constantly needs to be capable of being updated; the whole purpose of Parliament is to debate further changes to the law, and we have established procedures which go back to time immemorial for doing that. They involve Second Reading, Committee, Report and Third Reading stages in both Houses of Parliament.

There is no reason whatever for subverting those principles simply because the Government are overloaded, which is essentially the argument at the moment. The answer is either not to make those changes in law, if effectively they can be made only by exercising powers by decree, or to create the necessary time to do so, which means the Government having the right priorities in what they put before Parliament. We always have to set priorities. As a former Minister, I know that what you do and do not put in the Queen's Speech and the legislative programme is a matter of priorities. If necessary, the House must sit for longer.

Finally, if it comes down to whether this House should sit somewhat longer to debate major changes to the law of the land on financial services, I for one feel that it is our duty to sit here, debate these changes and not give the Government the power to legislate by decree. I hope that the noble Lord, Lord Hodgson of Astley Abbotts, feels the same because he has been responsible for financial services regulation in the past. That is effectively the power being granted here, potentially in significant areas that are not to do with simply transposing existing or in-flight European law into UK law. I am sorry to say this to the Minister, but the objections to the Bill are fundamental, not incremental. He may well find that, unless he can meet those objections, substantial parts of the Bill will be removed by the House on Report.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I thank noble Lords for contributing to the debate and speaking to their amendments. Let me set out the Government's position regarding the amendment moved by the noble Baroness, Lady Bowles, and the amendments spoken to by the noble Lords, Lord Sharkey and Lord Davies. I will then come back to some of the points made during the debate by the noble Baroness, Lady Liddell, and the noble Lord, Lord Adonis.

I will speak to Amendments 1, 3, 5 and 7 together, if I may. They relate to the breadth of the amending power, which was central to the speech of the noble Lord, Lord Adonis, and the ability to account for the UK's specific position outside the EU for the two years in which the power would operate. As I understand it, Amendment 1, moved by the noble Baroness, Lady Bowles, stems from her concern—repeated by all Members who spoke in the debate—that the power is currently drafted too broadly. The amendment would require that no legislation can be made under this Bill which is corresponding but not similar, or vice versa, to the original EU legislation. It is clearly important that we go into the precise definition of each term, as they have different interpretations and implications. In doing so, I hope that we will add to the body of information that can be referred to in future to clarify the Government's intent in this process.

First, we take "corresponding" to mean "identical in all essentials or respects". The term "similar" means "having a resemblance in appearance, character, or quantity without being identical". In practice, of course, the legal interpretation of the two terms can vary, with some judging that "corresponding" affords a wider latitude. However, it is nevertheless clear that on the basis of the current drafting, any exercise of the power would need to be limited in subject matter and purpose. It will be possible to exercise the power only to achieve the aim of the original EU legislation, with an option to make adjustments to account for the specificities of UK markets, rightly reflecting the fact that we will no longer be a member of the EU. It will not, therefore, allow for wholesale changes to the character and intent of the original legislation.

For example, if the Government were implementing a file on pensions regulation, they would need to seek to achieve the same purpose, even with adjustments, and remain focused on that subject matter—not extend it to another policy, such as insurance. However, the Bill provides the ability to best reflect UK circumstances in the implemented legislation, which is key. The intent is to clarify that, in a no-deal scenario, the UK has the tools to ensure that it remains an attractive and competitive

[Lord Bates]
place to do business and continues to implement the latest international standards, with regulation that reflects the best interests of UK markets and those international standards. The wording suggested in the amendment would allow provisions to be made under this Bill only should they be corresponding and similar. This would require the legislation as it is implemented to fulfil two different legal standards simultaneously. We consider that this would be a highly uncertain legal bar to pass and in some cases it may even make the power essentially unworkable.

I would also like to reassure the Committee that the formulation "corresponding, or similar" is well established and has been used—to provide recent examples—in the Pension Schemes Act 2015 and the Recall of MPs Act 2015. I hope that this will reassure the noble Baroness regarding the limitations that will apply and the formulation "corresponding, or similar", for which there are precedents. In short, the current wording is already intended to ensure that the powers under this Bill cannot be used to create substantively new policy outside the bounds of the original EU legislation.

I turn to Amendment 3 tabled by the noble Lord, Lord Sharkey. I understand that this comes from a similar place, intending as it does to forbid the Government's amending legislation in such a way that it would create significant new policy separate from the original EU legislation, a concern also expressed by the noble Lords, Lord Adonis and Lord Davies. I hope that my response to the amendment of the noble Baroness, Lady Bowles, will provide noble Lords with some degree of the reassurance that is needed. As drafted, the Bill would not allow the Government to significantly alter, expand or run contrary to the primary purposes of that original legislation.

I turn now to Amendments 5 and 7, tabled by the noble Lords, Lord Tunnicliffe and Lord Davies, and spoken to by the noble Lord, Lord Davies. They would limit the power in the Bill to make adjustments in a similar manner to the limitations in the EU withdrawal Act—limiting changes to legislation purely to a fixing of legal deficiencies. I understand the concern across the Committee that the power in this Bill goes beyond that of the EU withdrawal Act. I have already touched on the importance in a no-deal scenario of ensuring that European Union legislation implemented in domestic law best serves the interests of UK financial services, so I will not rehearse the same arguments again at length. However, I will reiterate that we cannot be certain about what files will look like once they are finalised or of the context in which the files will be implemented. The powers in the EU withdrawal Act are strictly limited, and the purpose of the legislation we are making under the Act is to ensure that there is a workable legal framework in place at the point of exit and to minimise disruption to financial services firms and their customers who currently operate under the existing EU rules. It is therefore appropriate to keep any changes made on exit day to a minimum.

There is a fundamental difference between this legislation and the EU withdrawal Act, and this comes directly to the point raised by the noble Lord, Lord Adonis. The withdrawal Act deals only with the legislation which has been agreed at the EU level, with the UK present at all stages of the negotiations. As my noble friend Lord Hodgson pointed out in his intervention, this Bill provides a temporary solution, specifically in a no-deal scenario, to deal with the dynamic regulatory landscape for the financial services industry after the UK has left the EU negotiating table and taken its own path. This is a different challenge that requires a different solution.

Lord Adonis: I am grateful to the Minister for giving way. In that case, why should there not be primary legislation?

Lord Bates: For the points I will come to in a minute, which the noble Lord has slightly pre-empted. Obviously he has read the wind-up speech I gave at Second Reading—the arguments about volume of legislation and timeliness remain consistent—but I will come back to that.

Lord Flight (Con): Would I be correct in describing the reason for that legislation as enabling us to meet equivalence requirements going forward if we have not otherwise dealt with things?

Lord Bates: Equivalence is one of a range of considerations that could be taken into account at that point.

4.15 pm

Baroness Kramer (LD): We will have amendments discussing equivalence more directly later, but will the Minister confirm that nothing could be done to step away from or undermine equivalence, or does this allow that? That is certainly the way it has been read by most Members of this House.

Lord Bates: We will have the debate under the future group of amendments on equivalence. We are not setting here the test or the bar as one of equivalence. We are simply talking about the specific directives and regulations before us and mentioned in the Bill: the 15 here; the four already agreed, which are mentioned on page 1 of the Bill; and the further 11 mentioned in the schedule accompanying it, which have not yet been agreed. Because they have not been agreed and may be under debate or amendment without the UK at the negotiating table, we are simply adding in that greater level of power to say that the UK, in the event of leaving without a deal, would need to look after the interests of the UK financial and industry sector and could not give a blank cheque in the opposite direction to the EU to pass whatever regulation that we would automatically implement because of adherence to a notion of equivalence. That cannot be right for UK financial services. We need to look at what comes to us, then act within the interests of the UK financial services sector at that time.

I will deal with some of the specific points raised. The noble Lord, Lord Sharkey, talked about the recommendation of the Delegated Powers and Regulatory Reform Committee. I pay tribute to the work it did on

this and the quick turnaround and punchy conclusions it arrived at. We are considering its recommendations, which the noble Baroness, Lady Liddell, asked us to look at. I will be happy to meet with noble Lords ahead of Report to discuss where we stand. I thank the Delegated Powers and Regulatory Reform Committee for its work and recognise that it raised some very pertinent issues. We want to look at them in greater detail, and I would be happy to discuss that with noble Lords ahead of Report.

I hope I have gone some way to addressing noble Lords' points at this stage. We will come to a number of the other points in future debates and groups.

Lord Sharkey: It seems the Minister has relied heavily in his responses on Clause 1(1)(a) by using this to demonstrate that there is really a tight restriction on what kind of things can be done by Clause 1. But he has not at all mentioned Clause 1(1)(b), which in many ways is the root of the problem because it contains the word "adjustments" and the phrase "consider appropriate". To many of us, that seems to extend without limit the reach of the Treasury's powers. That was the underlying purpose behind almost all the amendments in the first group. Could the Minister speak to Clause 1(1)(b)?

Lord Bates: I am happy to do that. As the negotiations on these files continue, further amendments may be agreed, proposed or dropped that the Government will wish to domesticate or remove using the powers under this Bill. As the final outcome on many of these files is still unclear, we need to make sure that we can bring them into UK law in a way that works best for UK markets. This might, for example, include areas where the final parts of legislation could, if unchanged in a no-deal scenario, present inconsistencies with the UK regulatory framework, with global standards or with the UK's position as an open global financial market. It is important therefore that we have the power to adjust these inconsistencies when bringing them into UK law. I acknowledge that this is a—

Baroness Kramer: I am sorry, but the Minister just said that Clause 1(1)(b) allows an interpretation not to remain with the objective described in the European directive. His whole argument under Clause 1(1)(a) was that the words "corresponding" and "similar" provide, in different legal ways, for us to take steps only where it is consistent with the objective of the European directive. He is now directly saying that Clause 1(1)(b) allows us to take steps that are directly opposed to or completely inconsistent with the European directive. Could he provide us with some clarity on this? It seems that the power allows the Government to move in any direction they wish, and that is exactly the issue we are trying to raise here. Under those circumstances, is that for Parliament to decide or for the Treasury to decide through statutory instrument?

Lord Bates: I thank the noble Baroness for her intervention. There is a difference between the two elements and between the use of "adjustments" and the terms used earlier, "similar" and "corresponding". Effectively, they relate to the two different groups that we have here. The first group is those for which we have been party to the negotiations and to agreeing. Following engagement, we know that the industry is keen to see those transposed into UK law, and we support it in that respect. Then there are those other elements that are incomplete, the final shape of which we do not yet know. Once the final shape is known—in all likelihood, that will be after the date in this scenario and once we have left the European Union and the negotiating table—we will have the power to adjust. Those are the two different elements.

Lord Adonis: My Lords, the noble Lord speaks as if there is not that power at the moment. There is: it is the power to introduce primary legislation. The Government do not lack this power; it is the power the Government have, in all cases, to recommend to Parliament changes in the law. What he has not made the case for is why the power should be given to the Government to make these changes by decree, which is, let us be clear, what Orders in Council amount to, with just a straight yes/no power in respect of the whole provision. He has not made that argument at all.

The Minister says that it is restricted, but the restrictions are entirely unsatisfactory. There is a time restriction of two years, which is more than enough time for the Government to do what they like with large parts of the statute book. The second, to which the Minister has just referred as though it is some kind of safeguard, are the measures listed in Schedule 1. But the list is incredibly extensive. These are fundamental and wide-ranging changes to the law, which in many cases, as the noble Lord himself has just said, we will not have played a part in agreeing within the democratic institutions of the European Union. Effectively, the Minister is saying that we will neither have played a part in agreeing them within the democratic processes of the European Union, nor will this Parliament have a proper role to play. The only people who will agree them are the Minister, the Chancellor of the Exchequer and a few officials in the Treasury, and we will then be expected to rubber-stamp them. I am afraid that that is totally unsatisfactory.

Lord Bates: That is not the case. I accept that the noble Lord is presenting a caricature of the situation that proves a particular point, but of course that is not what will happen. First of all, certain guarantees are presented in terms of reporting, which we will come on to again later. There are certain processes in terms of scrutiny of secondary legislation, not only by the Secondary Legislation Scrutiny Committee, which does incredible work and of course has a role set out in Standing Orders as to how it must scrutinise secondary legislation. Also, the affirmative SIs must be debated in your Lordships' House. In addition to that, we have also undertaken that there should be proper engagement with the industry in talking about this and with other stakeholders too. There is a wide range of things.

We will delve deeper into some of the points in the noble Lord's own amendments later. I appreciate that the role and purpose of Committee is to elicit from the

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Government further explanations about what these terms mean. We may have a difference about whether the noble Lord's view is shared by the Front Bench, and whether all these matters should be dealt with by primary legislation in 15 Bills or by secondary legislation, which has been the convention, particularly when it comes to financial services.

Baroness Kramer: My Lords—

Lord Bates: I will just finish this point if I may. That is why the noble Lord, Lord Tunnicliffe, and I and indeed the noble Baronesses, Lady Kramer and Lady Bowles, spent so much time in Grand Committee talking through various pieces of secondary legislation on financial services. That has been the conventional way in which we have worked. The noble Lord, Lord Adonis, believes that the legislation ought to be primary in this case. That is his view. It is not the Government's view and it is my job to outline the Government's view on this. We are following established procedures and providing powers under scrutiny to allow us to deal with a unique set of circumstances, which we have never had to deal with before.

Baroness Kramer: My Lords, this is genuinely a question of clarification. Is the Minister saying to me—I cannot read it in the language of the Bill—that Clause 1(1)(b), which states:

"with any adjustments the Treasury consider appropriate",

excludes the category of in-flight legislation described as,

"specified EU financial services legislation"?

I assume that it includes that. Therefore, the Minister's argument is that the Government will have to stick with the underlying objective for specified EU financial services legislation—which is what Clause 1(1)(a) is talking about—but the same legislation can then be overturned and dealt with completely differently under Clause 1(1)(b), which frankly allows adjustments as long as a piece of string. That is what I am trying to clarify. I understand that they are two different groups, but paragraph (b) surely applies to both groups.

Lord Bates: Perhaps it would be helpful at this stage to agree that these issues will be addressed in future groups. We will choose some wording—if not today, then certainly before Report—that is quite rightly required by the Committee to reassure itself about what is and is not referred to in that respect. With that, and with the undertaking to meet with colleagues specifically on the report of the Delegated Powers and Regulatory Reform Committee before Report, I invite noble Lords not to press this amendment.

Lord Rowlands (Lab): As a member of the Delegated Powers Committee, I specifically draw the Minister's attention and the attention of the Committee to our paragraph 16, which states that:

"The power to make adjustments is a very broad one with no restrictions".

We have very deep concerns about the powers proposed in the Bill. I hope, listening to the Minister, that he will address this issue and recognise that it is fundamentally important.

Lord Bates: I am happy to give that undertaking. I thank the noble Lord for his work on the committee and thank it for its report, which raises specific concerns. I will address those initially through a meeting with interested colleagues ahead of Report and then, more formally on the record as a result of that, on Report.

4.30 pm

Lord Judge (CB): I am not proposing an amendment to an amendment, but I wonder whether it would help clarity of thinking for all of us and for the Minister, when he is reflecting on the various arguments that have been put forward in the debate, if we took out "(i)" and "(ii)", put "(b)" before "any provision", and took out "but" and that "(b)", so that the provision read:

"corresponding, or similar, to the provisions, or any of the provisions, of any specified EU financial services legislation, or
(b) any provision that might".

We could then limit the adjustments point to the second part.

Lord Bates: Her Majesty's Government are, of course, very frugal and are always willing to take free legal advice, particularly when it comes from such a distinguished source. I shall add that suggestion to the others that I will take away. We appreciate it. Oh, something has miraculously appeared. It cannot be in response to the last suggestion—that would be far too quick—but is in response to the point made by the noble Baroness, Lady Kramer. "Adjustments" applies to both provisions, but the limitations come from "corresponding, or similar" and the limitation implied by the word "adjustments" itself in the glossary. Just for clarification at this stage, let me add the definition that we are working to so that people can see it. "Adjustments" means that it will be possible to exercise the power to achieve the aim of the original EU legislation only with an option to make adjustments to account for the specificities of UK markets, rightly reflecting the fact that we will no longer be a member of the EU. It will not therefore allow for wholesale changes to the character and intent of the original legislation. "Adjustments" is an inherently limiting word. With that, and with the commitments that I have given to reflect on the comments made by noble Lords and the legal advice that has been given, I invite the noble Baroness to withdraw the amendment—

Lord Adonis: What the Minister has said was clearly written for him by the Box: "'Adjustments' is an inherently limiting word". Will he explain to the House how it inherently limits?

Lord Bates: The noble Lord is familiar with the way this works. I used to sit on that side of the House while he was having similar words prepared for him. Adjustment leads to an altered version of the original. Changes that produce something completely different go beyond

adjustments. Dictionaries make it clear that adjusting is about making small changes to achieve a desired fit or to adapt to a new situation. I hope that helps.

Lord Adonis: Therefore only small changes can be made, not large changes. My reading of the provisions in the Schedule is that they involve large, not small, changes.

Lord Bates: I am getting a certain sense of déjà vu having sat through the early morning debates on the EU withdrawal Bill, as it was at that stage, on words such as "appropriate". I do not particularly want to rehearse them here. It is very important that, when we use terms, the Government are required to define what they mean by them. I have presented what we believe is meant by "adjustments", which is that it is inherently limiting in capacity. Should we wish to clarify that further, we will do so on Report. Similarly, if noble Lords have further suggestions, they are at liberty to table amendments suggesting additional wording at future stages.

Lord Adonis: Let us be grown up about this. The Minister knows that people disagree about the meaning of "limited" in these contexts. I do not think that we think that the Minister's assurance that the provision will be limited amounts to much, because then we will of course have a big argument about what "limited" means. The only way we could have a meeting of minds on this would be if there were some satisfactory procedure for deciding what "limited" means. The procedure which comes to mind is an independent committee, such as the Delegated Powers and Regulatory Reform Committee. The Minister is extremely open-minded about suggestions from the Committee. Would he suggest introducing an amendment on Report giving the committee responsible for deciding on these regulatory powers the power to decide whether in fact a regulation meets the word "limited" in respect of adjustments?

Lord Bates: I am not going to direct what committees of this House opine on—it is certainly not within my powers to do so—and of course they are at liberty to express their views. From a constitutional point of view, having placed on the record, as a Minister of the Crown, our belief of the interpretation and meaning of the word "adjustment" in this context, I think that, when assessing an affirmative statutory instrument against the measures in this Bill, bodies such as the Secondary Legislation Scrutiny Committee will seek to link the two to test whether that is in fact the case. I am sure that the very fact that I have made that remark will be picked up in years to come as the various statutory instruments make their journey through your Lordships' House. However, we will of course reflect on all these elements between now and Report.

Lord Eatwell (Non-Afl): My Lords, as the chairman of a regulatory organisation, I find the discussion about the word "adjustment" very disturbing. I shall give the Minister an example. If a door is open and then you close it, you adjust the door, but it is still in essence the same piece of wood moving within a frame. Taking that over to financial regulation, if a particular regulatory structure permits a given activity and you then close the door and that activity is no longer permitted, that is an adjustment within a given framework. I suggest that when the noble Lord takes this back, the word "adjustment" should be considered very carefully, because in a regulatory context it does not work in the way that he has described.

Lord Bates: I certainly defer to the noble Lord's great experience in this area of regulation. One purpose of this Bill is to give assurances and certainty to precisely the people whom he has spoken of—the regulators—so that they are clear about the Government's intent. When we spoke to the regulators and the industry, they pointed out that we do not know what will be contained in these files once they land in a legislative context post Brexit in the unlikely event of no deal. Therefore, there has necessarily been a widening of the powers to cope with potentially changing circumstances of which we are not aware at this stage. However, I will certainly take back the points made by the noble Lord and others, and I thank Members of the Committee for raising their concerns.

Lord Bilimoria (CB): I want to make one point. When we were dealing with the withdrawal Bill, one of our greatest fears concerned these Henry VIII powers. This is the first time that we are having to apply them in a specific Bill, and we are already scared about the consequences. Noble and learned Lords are already asking, "Have you thought about wording such as 'adjustments' and the interpretation of words?" From my experience, every time there is a grey area in a contract, it can be interpreted in different ways. It leaves the door open, and that is very dangerous. I ask the Minister, whom the whole House respects, to take all that into account; otherwise, on Report this will be badly defeated because a precedent is being laid here with a fear that the Henry VIII powers will demolish our whole democracy and the reason for our Parliament. That is really frightening.

Lord Bates: I hear what the noble Lord and the Committee have said. That is what a Committee stage is for: it is for the Government to listen to what noble Lords have to say. I am grateful for what they have said, and I undertake to take it back, reflect on it and discuss it with colleagues ahead of Report. In the meantime, if the noble Baroness is happy to withdraw her amendment, I shall be grateful.

Baroness Bowles of Berkhamsted: My Lords, I thank the Minister for his replies. Part of his early response sounded quite encouraging when he said that things would not move outside the bounds of the original EU legislation, but it got a bit worse later on when he said this meant that things could still be domesticated or removed to match the peculiarities of the UK financial markets, which basically means not doing it if we do not feel like doing it. That is certainly how it was presented, interpreted and ended up in the EU when I was in charge of putting through a lot of this legislation.

[Baroness Bowles of Berkhamsted]

With regard to my own amendment, I think he has said that "corresponding" is tight, in that the provision has to be identical in all respects. But he went on to say that this is one of two definitions that give wider latitude; "similar" was somehow a looser term but did not have that same latitude. He made the point that trying to satisfy two different legal criteria can be confusing, and I would side with that view. He also said, I think, that one of the terms was meant to apply to one category of the legislation and the other, looser term—whichever that turns out to be—applied to the other.

If I understood correctly, he said that the list that appears in subsection (2)—which is the finished though not yet active legislation: there are no changes, it is all done and we know what it says—would be subject to the tighter of the definitions, which is possibly "corresponding". Those in the annex, which have not been finished and possibly might not be finished until after we have left—so we will not be involved in the last tweaks—may need to be tweaked more and will be subject to the term "similar". This starts an interesting discussion, which we can continue when we talk on other groups, of whether we should completely separate out how we deal with the legislation that we already know about and can already analyse regarding whether it works for the UK markets, as opposed to where things are not definite and one needs more reservations. I push that out as a point.

Other amendments, particularly Amendment 3 in the name of the noble Lord, Lord Sharkey, would also solve some points, as they go back to the question of the "primary purposes". The key anxiety is that this Bill enables legislation to be made through a secondary method which is incapable of having scrutiny and will not necessarily have had scrutiny even at the European level by way of the adjustments, and there is no way to amend it. It could depart from the purpose, no matter what is said, because the Bill does not actually say there is to be no departure from the purpose. If you put in Amendment 3, or some other amendments that we will come to later, then you can tie it down and make clear where you will depart and where you cannot do so.

Let us be clear that one of the elephants in the room is whether we will implement the legislation at all. There is nothing compelling this. One can cherry pick it—we will come on to that in the next group of amendments—but there is nothing that says it will be onshored, so one could simply not have it at all. It is absolutely clear if you look at the first articles in subsection (2)(a),

"Articles 6 and 7 of the Central Securities Depositories Regulation"—

we know what the issue is there. I am sure there are people in this Chamber right now who could debate the benefits and otherwise of those particular articles. It was thought that the EU might not be able to make the technical standards, or that they would somehow be withdrawn. But no, the technical standards have been made; we know what they are and the likelihood that they will become active in 2020. The question could be put now: are we going to have it, or are we not? If we are not going to have it, should that be at the whim of the Treasury? This has significant repercussions on all kinds of other parts of the market where we may or not be deemed to have equivalence. We might as well discuss this now. It should not be someone sitting in an office and saying, "Well that can go and damn the consequences".

We have a lot more to discuss around this as we go into the next groups but for the time being I beg leave—

4.45 pm

Lord Adonis: Before the noble Baroness sits down, I just want to say that all the points she has made, and made extremely well, seem to me to be met by my noble friend Lord Davies of Oldham's excellent Amendment 7. Most of the problems the Minister has encountered could be solved by him simply accepting it, because what Amendment 7 says is that:

"Regulations made under subsection (1) shall be limited to preventing, remedying or mitigating deficiencies in retained EU law".

I have not yet heard a good argument put before the Committee, least of all by the Minister, for why we should not accept that amendment. The Minister says he wishes to discuss it further; I am not exactly sure what there is further to discuss, because unless my noble friend Lord Davies or the noble Baroness resile from this amendment, it is a very clear-cut position of principle, which seems to me to be fundamental to the maintenance of our proper parliamentary procedures.

So would the noble Baroness agree that the right position is for the Liberal Democrats and my noble friends to stick resolutely by Amendment 7, and unless the Minister is prepared to meet us on that, we should simply vote on that and seek to carry it, I hope with support across the House, because it is fundamental to the operation of parliamentary sovereignty? On Report, we should not get involved in a long technical discussion about how much additional power we might grant the Minister simply because he has put a proposal on the table in the first instance which is straightforwardly outrageous.

Baroness Bowles of Berkhamsted: I thank the noble Lord for his question. He will recall that I reserved my position on that amendment but said that I thought it is the default if we cannot find something workable that gives more flexibility to the Government. I will come on to why there may be a case for flexibility in the next group, where I have a set of amendments related to it, but I can give noble Lords a preview in that I think it is quite difficult to define what that flexibility should be, and so it is going to take a lot of work to better Amendment 7. What the noble Lord suggests as the common position might well come, but we have a duty to explore further. There is more to mine away at within this Bill, and so I will not give an absolute yes to that question. Furthermore, there may be others within the group who want to consider the points. With that, in order that we can move on, I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Bowles of Berkhamsted***

2: Clause 1, page 1, line 4, leave out ", or any of the provisions,"

Baroness Bowles of Berkhamsted: My Lords, as I explained, I have three amendments in this group. They fit together as a set, but Amendment 2 can also be a useful standalone provision.

Amendment 2 would delete the words "or any of the provisions" from line 4. On its own, that amendment is intended to prevent the cherry picking of favourite bits of the legislation. Taken to its extreme, such cherry picking would even enable the cherry picking of revocations of prior legislation—such revocations might appear in the schedule because they are amendments to other pieces of legislation. So you might be able to enact them without any kind of replacement.

More generally, EU legislation is interwoven with checks and balances, and if some are left out, the nature of the legislation can be changed or rendered ineffective, for example if penalties are taken out or time limits changed. The DPRRC makes a similar point in its paragraph 17, which says that,

"the overall effect of the legislation might vary quite substantially depending on which provisions are implemented and which … are not".

Whether on its own or in combination with other amendments, it would be a useful amendment to rule out the prospect of simply cherry picking.

Amendment 4 is a linguistic amendment that links to Amendment 6. It might not actually be necessary, but I tabled it to deal with the kind of omissions that might be necessary—for example, taking out things that are not relevant to the UK. An obvious one would be something to do with monetary union, which is not relevant to us. The amendment's purpose is to clarify that "adjustments"—that nebulous word; maybe we need something else—includes omissions. Then, whether it is an adjustment, change, omission or whatever we want to call it, all become subject to the same controls I would put in with Amendment 6 and elsewhere. This does not work if you try to do it using the wording appearing earlier in the clause. It looks a bit bizarre to take out the possibility of omissions in one place and put it in somewhere else, but this is just to ensure that one could establish that the conditions imposed apply to all of it. At the time of drafting I thought it clearer to reference "omissions" than "provisions not provided for" or something of that nature.

The more substantive Amendment 6 states that any omission or adjustment made under subsection (1) that is not subject to similar conditions as those in the withdrawal Act—that could be tightened up to refer to a particular provision of that Act—and does not fall under that kind of provision is,

"only to be considered appropriate if the Treasury has at least three months previously laid before Parliament a report on the policy and reasons for omission or potential omission".

Here I am, as I said I would try to do, crafting something using the ideas of the reports in subsections (8) and (9) so that, if the Treasury comes forward with some proposal, Parliament is not surprised by it because it has been laid out and possibly even debated and understood.

That would be very helpful, but, having put forward this suggestion as to making flexibility, I came to the conclusion that I do not think that that on its own is sufficient. It still gives far too wide a leeway for change because the kind of reporting we get when statutory instruments to do with EU exit are brought before us—the Minister will know that we spend hours on them in this Chamber and in Grand Committee—is a bit perfunctory. Anyway, even if they are reported, it does not mean that they can be stopped. Maybe I have not got this right. My point is that one still needs to have some other overarching provision that stops things going too far, which might come back to Amendment 7, in which case all these other ones would not be necessary, to my noble friend Lord Sharkey's Amendment 3 or, when we get to the next group, to my Amendment 8.

I am trying to find a way to give the Government the possibility for flexibility, because I know as well as anybody else what EU legislation could look like in the absence of a strong input from the UK. I have said before that I know what it would look like if I had not been there. I concede that we have to have some defences. If the defence is not to be primary legislation, to go through it all again—and I am very conscious of the volume of that—then there need to be some guidelines. It cannot be just a simple free-for-all. We need to know what is going on, and the reporting has a huge input there, but we have to be able to say no if the departures are substantive. I beg to move.

Lord Adonis: My Lords, I understand what the noble Baroness is seeking to do: to tease out from the Government whether they are prepared to agree to new reporting requirements, which would be helpful. There is nothing in the new reporting requirements which I think is objectionable. On the contrary, the more the Government are prepared to explain their policy to Parliament, the better. I know the noble Baroness said she and her colleagues are considering what their stance will be when it comes to Report. Can I recommend Amendment 7 in the name of my noble friend Lord Davies of Oldham? It is significantly superior in this respect. It makes a clear distinction of principle between Orders in Council which are,

"limited to preventing, remedying or mitigating deficiencies in retained EU law",

and, because they are so limited, an Order in Council procedure is justifiable; and changes to the law that go beyond that, and which, as a matter of principle, should be subjected to the primary legislation procedure. The Liberal Democrats do not want to give decree-making powers to the Government, so I cannot see an argument for not subjecting substantive changes in the law that go beyond,

"preventing, remedying or mitigating deficiencies in retained EU law",

to primary legislation, as my noble friend Lord Davies of Oldham sets out in his Amendment 7. I encourage the noble Baroness and the Liberal Democrats to be true to their liberal principles and not to give dictatorial powers to the Government, and to support my noble friend's Amendment 7.

Baroness Kramer: I say to the noble Lord—and perhaps to clarify for others—that I think there is a real difference regarding the in-flight legislation, which has gone through an extensive European process that we have been engaged in. That is a highly democratic process involving scrutiny and consultation on a scale that we rarely experience here in the UK. It has gone through the Council and Parliament, and the technical language is nearly all in place. That is in a different category from other provisions, which are typically dealt with in the schedule; everything is at a much earlier stage and—if we leave—we will not be engaged in the on-going process that shapes that outcome.

We can look for some flexibility on the first category. I say that in part because we are all incredibly conscious that just getting through the essentials of the legislation on our plate is overwhelming. The last thing I would wish to see is for us to fall out of equivalence by accident, because the Government put elements on which we have been engaged and on which we agree at the back end of their legislative priority list, and we find ourselves by default stepping out of an equivalent situation. That is a concern, and it is one of the reasons why we would like to explore some of the options my colleagues have been outlining.

Lord Tunnicliffe (Lab): My Lords, I think the two groups of amendments in many ways cover the same issue. They are essentially about how much flexibility the Executive should have in using this new law. Taking noble Lords back to the creation of the withdrawal Act, it was an extremely painful process because we were naturally reluctant to give the extensive powers in the withdrawal Act to government. But we were in a sense battered into the very realistic understanding that, given the volume of work that had to be done, the only way to do it was through statutory instruments enabled by the withdrawal Act.

5 pm

In achieving that, we put together some quite some quite tight constraints on what government could do. I have to commend the Treasury on obeying them. Although we have long debates, I have to say that my speeches are getting shorter. The key test in those debates is whether the Government have obeyed the constraint of not introducing new policy in the instruments and have made only those changes that are necessary for the laws to work or to smooth their transfer. We are very reluctant to move beyond that position.

We have a couple of amendments in this group, but the key one is Amendment 6—the noble Baroness has admitted that she is not quite sure that it would do what she wants. There has been some discussion about the possible need for more flexibility, especially in respect of files which are barely open, never mind those which are closed. We will listen to that debate, but can I get across to the Government Front Bench the simple facts of life? On Report, there will be change to constrain the freedom of the Executive. I encourage the Government to think about that and open discussions, because, no matter how hard we work ourselves or in concert with the Liberal Democrats and other interested parties to provide the perfect amendments to achieve that—I am pleased to hear so much praise for Amendment 7 because I drafted it—we all know that the Government will do a better technical job at the end of the day. They will get the right cross-referencing, the right language and so on. I encourage the Government to think long and hard before they try to batter through the Bill as it is. Otherwise, amendments will undoubtedly come forward and there is a high probability that they will be passed. It would be much better to have a negotiated solution.

Frankly, we have managed this painful transition pretty well, especially given what a hopeless task it is, as was brought out by my noble friend Lord Adonis. Every speech starts by citing the relevant paragraphs of the Explanatory Memorandum. Precisely the same thing is reproduced in every one; namely, "This is only for no deal and there is going to be a deal". Fearing as we do a no-deal situation, we will tighten these things up and government should meet us and provide an appropriate forum for getting the right balance. That may involve a little flexibility, as is suggested in Amendment 6.

Lord Judge: I apologise for not leaping to my feet before the noble Lord, Lord Tunnicliffe; I was looking at something else—I am very sorry. Perhaps I may be allowed to say just a few words in support of the general idea behind Amendment 6.

We are going to embark on a huge body of secondary legislation. I have spoken in this House on a number of occasions about secondary legislation and I think that my views on its dangers are quite well known to a number of Members. One problem with secondary legislation, if we are honest, is that we have no idea what we are looking at. When secondary legislation comes through, I doubt whether more than 1% of the Members of this House actually look at it; I doubt whether more than 5% of the Members of the other place look at it, and it goes through.

We are here dealing with very complex legislation and doing it as best we can in a hurry, in the demanding situation that we are in. Would it not be helpful for an explanation to be given about any individual piece of secondary legislation, identifying, for example, the legislation in the EU with which it corresponds or to which it is similar? We could then look at it and say, "Yes, that's fine. No need to argue about it". Otherwise, we tend to leave it so that we examine it blind. There is something to be said for us knowing what is going on.

Lord Bates: My Lords, I thank noble Lords on all sides for their constructive suggestions during this short debate. I am grateful for these contributions. The noble Lord, Lord Tunnicliffe, made a fair point about the approach we have taken on considering secondary legislation in Committee. We have brought through 16 statutory instruments so far—we have the joy of another four awaiting us in Grand Committee tomorrow afternoon—out of a total package of some 60, 47 of which will use the affirmative procedure. So there is an element of scrutiny. The noble Lord rightly focused on the provisions of the EU withdrawal Act, which is the substance of Amendment 7, but then we were dealing with known entities and rules.

In introducing this amendment, the noble Baroness, Lady Bowles, made a very fair point and the noble Baroness, Lady Kramer, added to it. If I am paraphrasing her correctly, she recognises that, had she not been there, the legislation coming across to us might not have been dealt with in the interests of the United Kingdom financial services industry. I agree with that, from what I know of her role on that committee in that Parliament. Her input—and that of other members—at that stage was vital in shaping the legislation which subsequently came across. We thank her for that service. She is no longer there and, in the scenario for the future files that we are dealing with, neither will her successors be. Therefore, there needs to be a difference in the way these are treated—between the narrow definition in the EU withdrawal Act, when we knew what we were dealing with, and directives and regulations into which we may have had no input and no responsibility for shaping. These could, potentially, be damaging to the UK financial services industry. There is a long way to go with this debate, but that is the crux of it.

I turn to Amendments 2, 4 and 6, the aim of which is to require the publication of a report three months prior to the exercise of the powers under the Bill. This report would need to explain any policy adjustment or decision to omit aspects of the originating file. The noble and learned Lord, Lord Judge, also referred to this. I reassure noble Lords that the Government's clear intention would be to set out this information in the reports currently required by the Bill.

Further to that, as is standard practice, the Government would of course seek to engage with interested parliamentarians and the industry on the legislation before taking any statutory instruments forward. Where the secondary legislation omits aspects of any EU files, it would certainly be in the public interest to be open about the choices the Government have made in not implementing them.

Regarding the requirement to publish the reports three months ahead of each exercise of the power, the Bill currently sets the requirement that any implementing legislation be subject to the affirmative procedure. This would require laying the relevant statutory instrument before Parliament, and an accompanying Explanatory Memorandum setting out the policy intent, before the debate on the SI itself and well ahead of implementation. This is the established process for scrutinising such statutory instruments and for this reason it is the model we have chosen to follow.

I am also mindful of the fast-moving nature of financial services. In particular, there may be a need to respond quickly to market developments, and it may be important to avoid imbalances with the EU for even a short period—for example, where the files may be of a deregulatory nature. With respect, I suggest that a three-month gap between a report and laying is too long to respond to market developments. Such a three-month requirement would place at risk the basic aim of the legislation, which is to safeguard the reputation, competitiveness and efficiency of UK financial markets. However, having listened to the points that the noble Baroness, Lady Bowles, made in moving her amendment and to the subsequent points of the noble Baroness, Lady Kramer, the noble Lord, Lord Tunnicliffe, and the noble and learned Lord, Lord Judge, I am willing to consider, ahead of Report, exactly how a process might run in the future to keep noble Lords better informed. Just to manage expectations, we will probably regard three months as too long for what might need to be very fast changes to ensure that UK financial services are not disadvantaged, but I signal my willingness to discuss the issue with the noble Baroness and see whether we can find an acceptable way forward.

Lord Tunnicliffe: Does the Minister accept that the problem he faces is bigger than that? It is not just about this group but about the fundamental fact that we parliamentarians dislike secondary legislation that changes the law. He faces a significant defeat in this House if we cannot come to some compromise agreement that seriously limits the ability of the Executive to impose law upon this Parliament. It is important that he recognises that—otherwise, we will end up deciding what the Bill says, and that is usually not good in terms of using the law in the future.

Lord Bates: I am always willing to engage and it is helpful, if I may say so, to engage in that debate, because the point the noble Lord is making is more on general principles than on detail. I subscribe to that, provided that we can agree to recognise that what the Government are seeking to do here is to deal with, effectively, processes that I am not aware have ever been dealt with before. We may be giving an undertaking to implement certain directives and regulations over which we have not had control and of which we do not yet know the precise nature. That is a different challenge from the normal routine of the types of onshoring that we are doing with the other statutory instruments. I am prepared to accept the noble Lord's point if he will recognise the difference that we are dealing with between those two different types: that would be helpful.

Lord Tunnicliffe: I recognise that there is a difference, but at the end of the day my noble friend Lord Adonis's point is valid: in day-to-day life the world changes, we have to react quickly to it and, where needed, we have to enact primary legislation. We are not creating a new environment where the Government enjoy executive power to change the laws in this area; surely we are seeking only to manage the transition. I do not see that it is the end of the world if the Government see something develop in Europe, say it is wrong, and say that that will not be covered by this Act and that we will have to bring forward primary legislation. We have done it in the past and we will have to do it after two years; that is the way new ideas should be introduced to this Parliament.

Lord Bates: I hear what the noble Lord is saying. Without wanting to rehearse Second Reading again or to undermine any of the progress that I feel we have already made on this in Committee, I will conclude by saying that from my perspective, the noble Baroness has made a proposal to deal with the length of time and the reporting—to address the noble and learned Lord's point—about where there are changes, what changes have been made and why, and whether that

[LORD BATES]
report could be received in advance of the statutory instrument being laid and then debated in the House. In the spirit of recognising the points referred to, I have said that I am prepared to look at that. Three months may be too long but I am prepared to have a discussion ahead of Report on whether another time period may be more acceptable. With that, I hope that the noble Baroness will feel able to withdraw her amendment.

5.15 pm

Baroness Bowles of Berkhamsted: I thank the Minister for his response. As the noble Lord, Lord Tunnicliffe, pointed out, the meat, if you like, in this group of amendments is in Amendment 6 and some mechanism of having reports to Parliament so that we are not surprised by what is going on. I think that that means more than just laying a finished instrument. When I was drafting it, I was looking more at the reports that are required by subsections (8) and (9). The noble Lord, Lord Hodgson, has tabled some amendments and I signed some of them because I think that good work can be done on the issue of reports. Perhaps my Amendment 6 ideas will go into that pot.

I think we are getting to a situation where some statutory instruments will be able to go through because there will not be significant changes or the sorts of changes that would lead to a loss of equivalence or a change of purpose or however we define it. But there will be some others, if there has been an unsatisfactory conclusion to some of this in-flight legislation, where the changes will be larger, and for which therefore the process that uses secondary legislation may not be appropriate, so one will have to fall back on primary legislation. That does not mean that that will be the destination for all of them, because they will not necessarily all be unsatisfactory. There will be an incentive, perhaps, to stay aligned and do some, but the fact that one or two might require primary legislation is not something that can be run away from.

I will just put in a plug for Amendment 2, the anti-cherry-picking point that you cannot pick and choose between the provisions; it should be on a whole basis. If we were to pursue Amendment 7 as the mainstream amendment, I would suggest to the noble Lord, Lord Adonis, and the Labour Front Bench that something like Amendment 2 would perhaps slot in quite well, if it is not inherently covered by the wording, which I would have to analyse further.

I think we are slowly making progress, but my conclusion is that everything is still too wide, so we need to move on to the other groups. With that, I beg leave to withdraw my amendment.

Amendment 2 withdrawn.

Amendments 3 to 7 not moved.

Amendment 8

Moved by ***Baroness Bowles of Berkhamsted***

8: Clause 1, page 1, line 11, at end insert—

"( ) But no adjustment may be made under subsection (1)(b) that jeopardises potential equivalence with the EU."

Baroness Bowles of Berkhamsted: My Lords, this amendment is a simple, overarching provision that says that no adjustment may be made,

"that jeopardises potential equivalence with the EU".

This goes to the heart of what is allowable under a statutory instrument and what is not. It seems to me that it is one thing to seek short-cut arrangements—if I might call them that—to land in-flight legislation without needing primary legislation but quite a different matter to then land that legislation at a destination that is very different from the one that was expected. This is especially the case for legislation under subsection (2), which is no longer under negotiation but which has in fact landed, even if it is not yet operational.

It is worth pointing out that everything the Government have said about Brexit, under whatever type of Brexit, is to try to obtain or retain equivalence—that is the expectation. It may be that equivalence does not work out; it might be due to things that the EU does which become problems for UK markets—and, as I said, I know pretty well how that might happen. Or it might just be that the EU Commission delays or decides not to make an equivalence finding because it does not see it as in its interest. After all, it is EU Commission policy to make equivalence decisions only when the EU needs them—although it tends to find out in the end that it does need them. I know full well what an infuriating process equivalence can be, as I have played my part both in making sure that it gets into the legislation in the first place and then pressing EU officials to get on with it.

However, despite all those difficulties around equivalence and whether we will have it or not, that will not be decided overnight—even, if I may say so, in the event of a no-deal Brexit. Thus to abandon notions of equivalence, even at any time within two years of Brexit, would be a big step and a decision that should come before Parliament in primary legislation. I do not say that it should not happen, but it is a big departure. I do not remember that anybody's manifesto said that they would abandon equivalence willy-nilly. Everything that has been said on every occasion, on everything to do with the Brexit negotiations, has been to try to get something better than equivalence, so it would be a big departure to set it aside. This is where the dividing line comes, and this would be the gatekeeper of those things that you do: "It's okay—you're keeping equivalence. No; you can't do it this way if you want to break away from equivalence".

The truth is that we have already given regulators sufficient leeway that they could make rules that led to an abandonment of equivalence by them not matching EU delegated Acts legislation. The way we have set it up, that has been given to the regulators. However, I do not think that our regulators would tend to go down that track—and if they did, I suspect that it would feature prominently in their consultations. I regret that the noble Lord, Lord Adonis, is not in his place, because I commend his amendment that we will come to later on, in which he suggests that some reporting from the Bank of England should be included. Possibly, if we are to have these reports that tell us what is going on across the piece, it would be a good

idea to include in that what the FCA is doing, whether that is done through the FCA having a section of the report or through the Treasury dealing on its behalf with that aspect of the report that it told us about.

As I have already indicated, we know that there are concerns about certain bits or pieces of legislation, but we have to bear in mind that abandonment or significant alteration of any policy element of what is essentially EU primary legislation may well remove the hope of equivalence for part of the market, or indeed for other parts or entities that are not necessarily the direct beneficiaries of those adjustments. I could construct an argument around the changing of the buy-in regime. If that was dropped, it could have ramifications for equivalences in many other places, and that matter is already weighing on the consciences of those who are having to think about which way they would want to push that debate.

As I said, the business about what we do with equivalence needs a great deal more thought. As my noble friend Lady Kramer said, we cannot let it go by default of not doing something or by rushing something through in a statutory instrument that we cannot amend, knowing that it might lead to a loss of equivalence. I beg to move.

Lord Flight: My Lords, the hope is that if everything were sensible, the amendment would be appropriate and powerful. As the noble Baroness, Lady Bowles, pointed out, it is possible that the EU may go down paths of regulation that are not very sensible. In that situation, given that the market for the UK's financial services industry is not just Europe, it may not be practical for the UK to use and follow equivalence. Indeed, there may need to be changes to the benefit of the industry other than vis-à-vis a Europe that has gone off the rails with its regulations.

Baroness Kramer: My Lords, I added my name to the amendment because I consider it one of the most important in the range we are addressing today. Two fundamental issues seem to underlie our concerns about the legislation. One issue comes from a constitutional perspective, concerning Henry VIII powers. It matters; we discussed it in other contexts but it is important in this context too. It has an impact on the relationship between Parliament and the Executive, including applying the ability to exercise policy power and Parliament's role in scrutinising policy.

One aspect of that is particularly substantial in the Bill. In the two-year period when the regime discussed in the Bill holds sway, we will be in a critical time, determining our future relationship with the European Union and whether our financial services industry continues to have access to European markets for financial services. That is a huge discussion and decision; it should not be handed over to the Treasury to enact simply through statutory instruments. I am exceedingly concerned that using this legislation, we will find ourselves in a position where because of Treasury decisions, our negotiators will find that no matter what they wish at the end of their negotiating period, we will have diverged significantly in financial services, making it almost impossible to reconnect parts of the market. If the industry sees that we will go through a period in which that may happen, it will make decisions about where it puts operations, activities and jobs that would not be in the long-term interest of the UK. That two-year period—exactly the period when this legislation applies—is critical. We will basically delegate decisions on whether equivalence continues to be UK policy that come into effect in this House only through the weak medium of statutory instruments.

I see this measure as a safeguard. I recognise what was said by the noble Lord, Lord Flight: that some things about future European regulation in the financial services industry may be unsatisfactory and that we may decide to diverge from them. But it really should not be the Treasury's decision to do that and it should not be the Treasury's decision to shut off the possibility of creating a long-term equivalence regime. That is why I support this clause. If we accept that within this Bill and the Government decide that there are indeed instances where they want to diverge, they can bring forward primary legislation. It is simply that they could not do that through secondary legislation in the way that this Bill would currently allow them to do so. That is too major and fundamental a decision.

I remind the Committee that the financial services industry is probably the most important sector in our economy. It delivers something like £76 billion a year in taxes which support our public services. To make a decision that will fundamentally impact on key aspects of the industry and with all the consequences that that entails must surely need to be done only through primary legislation and with the full and total engagement of this House. That is why I am particularly concerned about this clause.

5.30 pm

Lord Tunnicliffe: My Lords, we are superficially attracted to this amendment and we await the Minister's comments with interest.

Lord Bates: I thank noble Lords for their contributions to this debate. I shall begin by looking at what I think is an area of common ground: we all recognise the importance of the financial services industry to the UK. Perhaps I may pick up on a point made by my noble friend Lord Flight, that one of the main purposes of this Bill is to ensure that the UK remains an attractive and competitive place to do business, retaining our place as a world leader in financial services. To do this in a no-deal context, it is essential that the UK retains sovereignty over our rules. From the perspective of financial stability and protecting the UK taxpayer, it is essential that the Government, the Bank of England and the FCA have the tools available to ensure that the UK markets are appropriately and effectively regulated.

It would be wrong to set a condition over the UK's regulatory framework that means decisions which are made about the UK's future regime are determined through the lens of maintaining equivalence to the EU, irrespective of the quality of those rules and how future legislation and the market itself may evolve.

Baroness Kramer: I think that there may be a misunderstanding. This would mean that statutory instruments could not be used to create divergence—it does not mean that primary legislation could not be used to do so. That is the underlying point.

Lord Bates: The legislation we are dealing with is in its very composition a temporary measure; it is a temporary piece of primary legislation with a sunset clause.

Baroness Kramer: I know that we will discuss the sunset clause later. It does not mean that the statutory instruments created under this legislation die after two years, it means only that the powers in the overarching legislation will die. However, those two years are the critical period, so the sunset clause does not have the consequence that I think the Minister might suspect it does.

Lord Bates: To go back to first principles, I am saying that the power in this Bill is not in effect to make policy—rather, it is the ability to produce secondary legislation that has a policy content to it and which would then be subject to scrutiny in this House. That power is being put in place for an extraordinary set of circumstances—I think we all agree that these are extraordinary circumstances and in fact I should underscore that we hope that these powers will not be required to be acted upon, because there will be a deal and we will continue to have access to the market in financial services across the EU. That is our aim, but we are preparing for all eventualities.

The noble Baroness will be aware that equivalence determinations are autonomous decisions with the EU and, in turn, the UK retaining autonomy for determining if a foreign jurisdiction has equivalent standards and supervision. The EU takes a varied approach to assessments of equivalence, tailoring its approach to individual regimes with regard to how the assessment is conducted. The Commission itself has stated:

"It is the equivalence of regulatory and supervisory results that is being assessed, not a word-for-word sameness of legal texts".

Indeed, for a recent example, one need only to look at the EU's statements on equivalence in a no-deal scenario. Within these, the EU has been clear that equivalence decisions of the UK will be made where justified in the interest of the Union and its member states, with time limits and conditions to their decisions where appropriate. As such, it is very difficult to judge what the EU will take into account in its future assessments and how its autonomous third country regime will evolve. Such an approach, plus the breadth and variety of considerations that form part of equivalence determinations, from the rules themselves to supervisory approaches, means that it would be very difficult to determine what effect, if any, a change or adjustment that the UK makes to our laws might have on a future equivalence determination in a given area, given that these are autonomous decisions taken by the EU. It is therefore difficult to see how the test set out in this amendment could be met.

Let me reiterate the importance of, in the case of a no-deal situation, retaining the ability to adjust our legislation so that it best serves the aims and objectives of the UK once we have left the EU, as my noble friend Lord Flight has identified. It is crucial to ensure that we can bring into force pieces of legislation in a way that works best for the interests of UK markets. The Government are also committed to doing this as transparently as possible, which is why we have set out the strict reporting requirements to which I know we will return on Report. In the light of that, I invite the noble Baroness to withdraw her amendment.

Baroness Bowles of Berkhamsted: I thank the Minister for his response. I shall deal first with the point that this might be legislation that will never need to be implemented. But the fact is that something like this will probably be needed when we get to the next cliff-edge, and in any event by passing this Bill, we will also set a precedent for what might then follow in subsequent legislation. You cannot get some dodgy things through on the basis of reasoning, "Oh, we might never need it". We know only too well the effect of having let something slip through once. I can assure the Committee that that is not something I had a reputation for in Europe and I would not allow it here if I had anything to do with it.

Like my noble friend Lady Kramer, I fully accept the point made by the noble Lord, Lord Flight, that the legislation might not be "sensible" when looked at from the UK perspective. This is what is meant by not being able to fit in with the specificities of the UK. However, the trouble is that that is a very vague description. We would need far more of an indication of what is meant by that to allow it to be any kind of gatekeeper. I think that the point about equivalence is fundamental and it can be a gatekeeper. It is probably completely wrong not to contemplate having an equivalence Bill which actually lays out in more detail the sort of tests that would be applied. Looking further into the distance of how we deal with financial services legislation, we are not going to bring to the Floor of this House all the detail set out in the regulations and directives that I had to negotiate. The majority of that will no doubt be passed off to the Treasury and the regulators in some way that will not concern us. I am not sure that I agree with that, but I can see the writing on the wall. However, something big like whether we want to stay aligned or whether we think that it has progressed too far—it is too uncertain, we cannot deal with this kind of uncertainty, and what are the tests—could well be put into legislation.

I reject the notion that we cannot have a limitation such as this in some form or other as a guardian within this legislation because of the attitude of the EU and how it makes decisions. You know for sure that doing certain things would remove any chance of equivalence—such as leaving out a couple of articles of the main legislation. Boom! Not equivalent. There is no question. Because certain things are done in a slightly different way, maybe tweaking a little bit in a delegated Act would not be a bar, so that could possibly pass the test and go through.

I come back to subsection (2). The very first item there is a yes/no decision: are we having this, or will we neuter it to the extent that we do not have the buy-in regime of the CSDR? That is what it is all about. If we did not have the buy-in regime of the CSDR, we would not be equivalent in quite a lot of things to do with securities transactions, and maybe in things to do with our clearing houses or our exchanges. I remind the House of my interest as a director of the London Stock Exchange. These things are under active

consideration, so doing something like that would, in my personal judgment, put equivalence at risk. I think you can make a dividing line through this.

Especially if there is some tentative encouragement from the Labour Front Benches, I think this is one of those amendments that usefully goes into the pot that we should be working on. The alternative is that you get even less, probably a very tight and improved version of Amendment 7, because an amendment such as this might offer not a great deal but a tad more flexibility—a tiny bit more. With that, I beg leave to withdraw my amendment.

Amendment 8 withdrawn.

Amendment 9

Moved by ***Lord Leigh of Hurley***

9: Clause 1, page 1, line 11, at end insert—

"( ) It is an objective of the Treasury, in exercising its powers under this Act, to ensure—

(a) that financial markets in the United Kingdom and their participants are in no worse competitive position than if the United Kingdom had not withdrawn from the EU, and

(b) that financial services regulations do not impose a disproportionate burden on small listed companies."

Lord Leigh of Hurley (Con): My Lords, at Second Reading this Bill was slated as a technical, tidy-up, hypothetical Bill. It has proven much more interesting than that. I remind your Lordships of the declaration of interests I made at Second Reading, predicting it would happen the following day. With my noble friend Lord Bates's best wishes it did, so I am now a deputy chairman of an AIM-listed financial services company. Although I have made the declaration, it is not yet on the website, so I repeat it in Committee.

At Second Reading my noble friend Lord Bates said:

"In the event of leaving the EU without a withdrawal agreement and without a future economic partnership the UK will not countenance accepting EU laws wholesale. It will therefore be vital to ensure that any legislation implemented in the UK can be adjusted to work best for the UK markets outside the EU in a no-deal scenario".—[*Official Report*, 4/12/18; col. 935.]

I agree. It is important, both for the continued success of UK financial services and for the maintenance of equivalence with the EU post-withdrawal, that the competitive position of the sector is not adversely affected by the implementation of EU legislation.

The thrust of my remarks on the first part of the amendment is that transcribing EU legislation directly into UK law does not necessarily have the same result as if the UK were still part of the EU. It can in fact produce perverse and unintended outcomes. The best way of explaining this is by the example of the aforementioned central securities depositories regulation, CSDR. Leaving the EU will make the UK a third country under that regulation, so CSDR settlement discipline will not apply to EU dealers trading UK shares. But if we merely duplicate the CSDR in UK legislation, settlement discipline and the associated fines may be imposed on UK dealers trading UK shares in their own domestic market. That would leave the UK financial services participants at a competitive disadvantage to their EU peers while they are trading in the domestic UK market—clearly a nonsense. It illustrates why each piece of in-flight EU legislation should be considered separately, and why the Treasury should have the objective and power to amend each one appropriately, to ensure that the playing field remains at least level and that financial markets in the UK and their participants are not in a worse competitive position than if the UK had not withdrawn from the EU.

5.45 pm

The second part of the amendment deals with small companies. On this, the EU has recognised that the administrative overheads and costs of compliance can weigh disproportionately on smaller listed companies. There was some consultation in February 2018, as a result of which, in May 2018, the European Commission proposed to adopt more proportionate rules to support SME listing while safeguarding investor protection and market integrity. The EU Commission recognises the peculiar and specific place the AIM market has as the leading SME growth market in the EU by a very long way. So the Commission proposed new rules aiming to reduce the administrative burden for these small companies and to foster the liquidity of publicly listed SME shares. Two examples of reliefs granted under this initiative are as follows. First, under market abuse regulation, smaller listed companies are exempted from the requirement to maintain a live insiders list at all times, on the grounds—correctly—that it is disproportionately burdensome and difficult for small companies to know minute by minute every single person who might be an insider. Secondly, under MiFID II, smaller company research funded by the company itself is deemed of such minor benefit to recipients that it would be disproportionate—to the risk that it might act as an inducement, which research perhaps is for larger companies—to require investors to pay for it or to refuse to receive it.

Within the EU, bodies representing UK smaller listed companies have been able to achieve these amendments—the disapplication of various rules—by speaking directly to the relevant directorate of the Commission. In addition, the Commission has reacted positively to direct approaches by representative bodies, such as the Quoted Companies Alliance, or QCA, seeking proportionate application of MiFID II rules to smaller companies. The exemption I have just mentioned on smaller company research is an example.

Smaller quoted companies are currently petitioning the Commission on the CSDR settlement discipline regime. This places a disproportionate burden on liquidity providers that specialise in making markets in the shares of smaller listed companies, which I mentioned at Second Reading. Penalising formal liquidity providers for not settling trades on time, in an environment where there is a paucity of trades and a lack of stock to deliver, will lead to those very liquidity providers reducing their activity in supporting smaller company securities. This is because we are pretty much unique in the UK in allowing short naked sales. If that happens, there will be a reduction in liquidity in growth company share-trading, which will severely curtail

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their ability to raise money, grow, create jobs and create value for long-term shareholders. The particular problem in the UK is that we are quote-driven, as opposed to electronic trading.

My point is that once we are outside the EU, these communication routes will be closed. Instead, organisations such as the QCA and other relevant bodies have to go to the Treasury. Therefore, the Treasury must have the objectives and the power to similarly amend or disapply certain rules to achieve appropriately proportionate regulation of the UK's market for quoted SMEs and, in particular, smaller quoted SMEs.

Finally, I recognise that the maintenance of equivalence with the EU financial services regulatory framework is critical to the UK's financial services sector. Concern has been raised that any exercise of the powers proposed in this Bill, other than to correct deficiencies or address inoperabilities, might jeopardise the perceived equivalence of the UK's regulatory regime. However, as I hope I have explained with the example of the CSDR, it will be necessary for the Treasury to have the power to make more extensive amendments to legislation to ensure that the UK financial sector is not unintentionally placed at a competitive disadvantage to the EU, and so a genuinely level playing field will remain in place, which is, after all, the essence of equivalence.

Further, the fact that small listed companies' representations have been invited to propose proportionate amendments to EU legislation, and that the Commission has made such amendments following these direct approaches, demonstrate that the Commission is open to amendments to the rules to ensure that they are more proportionate in order to support SME listings. Allowing the Treasury the objective and power to ensure that financial services regulations do not impose a disproportionate burden on small companies would merely be a continuation of current Commission policy and practice. It should not be objectionable and, therefore, should not in any way be seen as a threat to equivalence. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, I have put my name to this amendment. My noble friend has raised an important point about Brexit itself and its implications for the regulatory regime. I do not propose to follow up on his technical discussion, but there is a wider point to be made. Here, I will draw on the remarks of the noble Baroness, Lady Kramer, who said that, in the two-year period during which the Bill provides powers, things will happen. We can set out our regulatory stall, but our strategy for regulation needs to become clearer during the two years in which the Act will be in effect.

It is important that the Government do some serious thinking about how this country will present itself to the world via its financial services as part and parcel of the new regime. Noble Lords will know that, for a number of years, I was a director of one of the self-regulatory organisations which governed the City before the passage of the Financial Services and Markets Act. A wise old bird once told us that we should think about it like a high jump. If you set the bar too low, everybody can clear it and you will attract to your market all sorts of undesirable characters and firms, and there will inevitably be failures and problems, which will damage your overall reputation and therefore you will lose your world standing. By contrast, if you set the bar so high that nobody can get over it without enormous cost, bureaucracy, time and difficulty, you may have a market relatively free of failure but it will have very many fewer participants. I encourage the Government to think about how we set that high-jump bar for regulations, given the comments my noble friend made in his opening remarks.

The only other point I want to make is this: regulation tends to be on an upward lockstep. For the most part, regulators do not have a reverse gear. Few regulators come along and say that, given that the world has changed, they no longer need the powers they have because they can do a perfectly satisfactory job without them. Rather, they are left with those powers, which then have to be enforced and have a cost. The commercial vessel then gets more and more barnacles and slows through the water, and it is never able to go in for a hull clean.

My remarks are not an argument against regulation per se. They urge the Government to have regular reviews of regulation to ensure that it is properly focused and achieves a worthwhile result.

Lord Adonis: My Lords, the longer the noble Lords, Lord Leigh and Lord Hodgson, spoke, the more concerned I became about their intentions in relation to the powers proposed in the Bill.

I fully accept the noble Lords' perfectly reasonable intentions. We can have a debate on the right hygiene bar for the regulation of financial institutions—if Britain leaves the European Union, it will be a debate. The Foreign Secretary, Jeremy Hunt, opened it last week in his speech in Singapore, when he set out a vision of Britain being Singapore-on-sea, with a light-touch regulatory regime, offshore from Europe, ready to start competing—as I took it—on a lower bar. It perhaps will not be as low as the hygiene level mentioned by the noble Lord, Lord Hodgson, that starts to discredit us as a reputable financial centre, but he clearly wants it to be lower—he is a Tory, and generally speaking this is what Tories want. There is no great secret around what it is that the noble Lords, Lord Leigh and Lord Hodgson, want.

The crucial issue, however, is how the noble Lords' intentions relate to the capacity of the Government, under this Bill, to effectively legislate by decree. If the Government want to make big changes in our regulatory regime, they should be debated openly and fully in this House and in the House of Commons. Indeed, if they are substantial departures from existing practice, the more difficult it will be to deliver paragraph (b) in the amendment, which states that,

"financial services regulations do not impose a disproportionate burden on small listed companies".

That is all the more reason why they should go through the full and proper legislative procedures of this House: Second Reading, Committee, Report and Third Reading. That way, we can debate whether the hygiene level of the noble Lord, Lord Hodgson, is satisfactory. They make no argument whatever for giving the Government the power to rule by decree.

Lord Hodgson of Astley Abbotts: For the Hansard writer, I did not say "hygiene", I said "high jump".

Lord Adonis: I did not hear the noble Lord across the Chamber, but it does not affect the point. He wants to vary the level of the bar—that is the issue. I do not object in principle: he has a right as a parliamentarian to put forward proposals for changing the level of the bar. However, I object strongly that the Government should be allowed to make those changes by decree, the power that is given to them by this Bill, but we will return to that on Report.

At the moment, the intentions of the European withdrawal Act are elaborately debated in this House, precisely to meet the objective rightly set out by my noble friend Lord Tunnicliffe: that there should be a transposing of European legislation to British law and any further changes to the law should be sufficient only to prevent, remedy or mitigate deficiencies in retained EU law. That is a limited objective which justifies the power of the Government to do this by Orders in Council. As soon as we get to much wider political objectives—the kind that the noble Lord has just set out and as set out by this amendment—it completely undercuts the justification for this Bill. The justification for this Bill should surely not be for major departures of this kind in the law and the regulatory regime to be made by Orders in Council rather than by the full, open and proper debate which is necessitated by introducing primary legislation.

Lord Flight: My Lords, first, I declare my interest in the register. I want to make a small point, to which no one has referred so far. There is quite an importance in the various trade and regulatory bodies to discuss with the Treasury, and potentially with the regulator in the EU, what makes sense and what does not. That is a check on the Government having too much power where they will potentially have to do things in a way that is not approved by the noble Lord, Lord Adonis.

6 pm

Lord Deben (Con): My Lords, I remind the House of my declaration in the register of interests, particularly my chairmanship of PIMFA, the organisation that represents independent financial advisers and wealth managers.

I have to disagree with the noble Lord, Lord Adonis, about the meaning and purpose of this amendment. But I have to say to my noble friend that one of the reasons for this amendment is that many of us are very concerned that the Treasury in particular should take very seriously the issues of the financial services sector and the contribution that it makes to the British economy. That seriousness has not always been evident.

Secondly, the European Commission has been very helpful in listening to the British applications and those of our colleagues in the rest of the European Union and, should we leave the European Union, which I trust will not happen, we would certainly expect to have at least as much access as we have on the present stage and certainly as much influence.

I am concerned because in the past we have sought to pass amendments that asked the Treasury to bear in mind important matters. For example, an amendment some years ago stated that the Treasury should insist that regulators bear in mind the need for savings in our society. That was pooh-poohed by the Government who said that it was entirely unnecessary and of course everybody knew that. The result has been that regulators have not taken that issue into account and indeed pointed out that the Government did not accept when it was suggested to them that saving as part of our society was important. So it is important to bring home to the Government the issues raised with this amendment.

I want to make two further points. First, this is a very competitive world. We need to have legislation if we are not a member of the European Union that enables us to continue to be as competitive as possible. This may not be exactly the right wording, but it carries that meaning. Secondly, small companies find much of the legislation not only burdensome but unnecessary—points that my noble friend Lord Leigh properly made. That is not because one wants lower levels of legislation.

At this point, I want to take serious objection to what the noble Lord, Lord Adonis, said. I happen to be a Conservative. I sit on the Conservative Benches and I have been a Conservative Minister for longer than almost anyone else. But I am very much in favour of this regulation. The industry that I am happy to work in is also very much in favour of sensible legislation because we do not like cowboys either. They produce extremely bad reputations. Nobody can be tougher about the fact that we need proper regulation. There is no question in these amendments that somehow or other we would lower the bar. That is not the issue.

I would agree about some of the remarks made about Singapore. I am deeply upset to have a Foreign Secretary who thinks that Britain should be compared to Singapore. Fundamentally, that is as about as helpful as suggesting that we should be like Liechtenstein. I am sorry, but it is not a sensible comparison for so many reasons, not least because of the autocratic Government of Singapore. I do not want to be associated with them as a comparison.

However, our financial services need proper regulation. We want regulation, but it has to be proper regulation within the context of our competition. Therefore, it is proper to say that we do not want regulation that either makes it more difficult for us to compete or lays a disproportionate burden on the shoulders of small companies. Those seem two such simple and reasonable things to suggest that, on this occasion, my noble friends here and I are helping the Government.

Ministers are always suspicious, particularly when I say that I am trying to help the Government, but I am, on this occasion, trying to help them. I am doing it in great difficulty because I do not like this Bill at all. I do not want to leave the European Union. It is more and more clear that leaving the European Union is barmy, and we are having to spend time talking about barmy things that will take two years and then go away. It is a pretty insulting thing for this House, but that is what we are having to do. So I ask Ministers please to take this seriously and not to take the view of the noble Lord, Lord Adonis, in the way that he put it, but merely to agree that the amendment is sensible. If the

[LORD DEBEN]
Government cannot give us that undertaking, I have to say that the financial services industry will be very suspicious. If the Government are not prepared to do at least as well as the European Union has done in negotiation and discussion, I will be very sad.

I hope that people notice just how good the Commission has been when they attack the European Union for bureaucracy and suchlike. It has been more open and more able to discuss, and more concerned about the issues than any of our governmental structures. We have to remind people that the European Union is more open, more willing to listen and more concerned to be there for industry than the Treasury has been in history, which is why this amendment has been tabled.

Baroness Kramer: My Lords, I have to say to the noble Lord, Lord Deben, that every alarm bell went off in my head when I heard the noble Lord, Lord Leigh, basically argue that this would be a route to get naked short selling on AIM. This is essentially a mechanism that will allow people to enter into contracts which they know if they had to fulfil they would be very unlikely to fulfil—talk about risk. That general underlying principle worries many of us who think that a less speculative financial services industry is, in the long run, much more sustainable than a far more speculative financial services industry. That is exactly the point. It is people selling short shares that they will not be able to buy if they are ever forced to close on the contract.

Lord Leigh of Hurley: With great respect, I must say that that is not the situation in respect of the AIM market. This is where market-makers who are bound to make a market respond to requests for specified sums or amounts of shares with quoted prices. I think that the noble Baroness is talking about a different type of short selling.

Baroness Kramer: I thought that the noble Lord described naked short selling, which I thought I just defined. Anyway, I am nervous about the idea of policies such as this. There will be enormous pressure to use this opportunity, where the Treasury alone is the decision-maker, basically to loosen the regulatory structure that we have in the UK. That issue is a fundamental one for Parliament.

I would say to the noble Lord, Lord Hodgson, who talked about the need to find the appropriate place and that it is good that we can have those discussions with the Treasury, to have them with Parliament because there is another side to the argument. One reason why the UK been spectacularly successful as a financial centre is because the regulatory environment in which it functions is considered by many to be a global gold standard. If the noble Lord goes to countries such as China, India or other places, the level of trust and respect in financial institutions that are framed within those EU parameters—he could say it is foolish or sensible—is very high. It annoys the United States to heaven and beyond because so often it has loosened its regulatory standards but has not seen the business shift out of the EU into the US.

If you talk to companies, part of that reason is the reputational issue. For many companies, to be able to turn to clients and say, "I operate in the gold standard regulatory environment which means that you can trust me and what I do", is so key to the future of their business that clients will reply, "If there is a significant loosening of standards, it might in the short term increase my profits but in the long term it will damage my regular relationship with my client base and I will need to move to the place that carries that gold standard kitemark". Losing the kitemark is significant. That is something that this House and the other House should consider and should not be simply left to a conversation between the industry and the Treasury. It backs up our whole argument that this Bill, by transferring all those decisions simply to statutory instruments, is running into very dangerous territory.

Baroness Bowles of Berkhamsted: My Lords, a couple of interesting points have been made in the context of this amendment. As it reads, it looks reasonably acceptable as we do not want gold-plating, which could potentially happen. I echo that the Commission has been particularly good at dealing with smaller companies and businesses. My experience is that that has not always been reflected in the UK when the dispensations have been a matter for the member state. On more than one occasion, I have written to regulators and others about that.

One of the points was about asymmetric effects and the fact that when we are no longer a member state the law will bear down on us when we replicate it, or nearly replicate it, in a different way from when we were a member state. It is not only in financial services legislation that this could potentially happen. It happens with contractual obligations. When we replicate Rome I and Rome II, if the other party is in, say, New York, the penalty for breach of contract will be different in the UK from what it would be in France because we no longer tick the member state box. It essentially means that the higher New York penalty will apply rather than it being limited.

I sit on one of the secondary legislation scrutiny committees, and there have been various occasions when asymmetries have come up. There have sometimes been attempts to balance them, but sometimes not. It depends. These judgments about asymmetries already appear to be going on under the withdrawal Act. From the ones that I have seen, by and large it has not looked as though we could have dealt with them differently, but the issue is worth investigating. To say that the Treasury should do what it can for small businesses is a good thing, whether or not we say that we should not be put in a worse competitive position. Our markets are bigger and, because we have bigger global markets, we may have to regulate in a way that looks stronger rather than weaker. There may be other ways that it does not suit the specificities. I would be a little worried about "no worse competitive position" taken to its extreme, but in the general sense it is possibly more acceptable.

Lord Tunnicliffe: My Lords, listening to this debate, one cannot but feel that this is about a policy decision. The last thing I want in this Bill is policy decisions which will introduce different levels of regulation and proportionality. That may not have been the intention. I did not find the words very attractive because they led me to all sorts of different scenarios. I think I

heard it advocated as quite a narrow concept to provide against unintended consequences as a result of slavishly transcribing a piece of legislation. If that is the intention, it may have some attraction, but as drafted, the narrowness of that is in no way clear and the breadth of it would involve serious policy changes. It is not the purpose of this Bill to introduce serious policy changes.

6.15 pm

Lord Bates: My Lords, I again thank all noble Lords who have taken part in this debate, particularly my noble friend Lord Leigh. His amendment touches on the critical point with regard to the Bill, which is the importance of safeguarding the competitiveness of the UK's world-leading financial services industry as well as maintaining proportionality in the regulations that govern these markets. These are two of the key reasons this Bill has been introduced. It will ensure that our regulatory system remains up to date in the period following a no-deal exit and that UK firms are not left at a competitive disadvantage as regulations are updated in the EU. I can of course assure my noble friend that the Treasury will exercise its powers under this Bill with competitiveness and proportionality firmly in mind, which my noble friends Lord Flight and Lord Hodgson encouraged, and which my noble friend Lord Deben urged it to do.

When people are talking about the market in the City, people instinctively think of very large institutions, but having worked in the financial services industry, I recognise that it is made up of many small firms delivering outstanding benefits and value to their clients. There are some 58,000 small and medium-sized businesses operating in financial services.

In answer to the points raised by the noble Lord, Lord Adonis, the reason why the UK is so successful and the City of London so respected around the world is the strength of the regulatory basis. Reputation and trust are all when it comes to conducting financial services. If people are investing their life savings or pensions with organisations, they need to have confidence that the organisations they are investing in will look after them well and that they will get the return or benefit that they anticipate.

I therefore appreciate my noble friend's helpful and well-intentioned amendment. However, I am mindful of the difficulties of placing these assurances on a statutory footing, given the difficulties of defining these terms clearly in legislation. In particular, judging the exercise of powers against a hypothetical case—for example, the state of the UK financial market had the UK not left the EU—would be highly challenging. It is also worth noting that many of the files are themselves being designed, with the UK's input, at the moment, to aid competitiveness and proportionality issues. It is right that we put that on record at this point. My noble friend Lord Leigh set out clearly at the beginning that we pay tribute to the work of the Commission in listening to the voice of small business, a point to which my noble friend Lord Deben returned. Examples are the prospectus regulation listed in Clause 1, which creates a more proportionate regime for all firms, including SMEs, and key measures such as the introduction of a new growth prospectus—a lighter, less burdensome document—to be used by SMEs within the regulation. I hope my noble friend will recognise that the Government are alert to his concerns in this area and support the need to maintain the competitiveness of the UK financial services industry and to ensure that any regulatory burdens are applied to small and medium-sized enterprises in a proportionate way. In the light of these reassurances, I hope my noble friend feels able to withdraw his amendment.

Lord Leigh of Hurley: I thank my noble friends Lord Flight and Lord Hodgson for supporting this amendment. They have become the wise old birds. I was very pleased to have two people supporting this amendment who have started financial services businesses in London and grown them to be global financial services businesses. It goes to show the power and expertise that resides in this House.

I thank the noble Lord, Lord Adonis, for his comments. I am sure he was not seeking to stereotype Tories. Curiously enough, although many people would regard captains of industry as natural Tories, one finds that the large multinationals are the companies that want more, not less, regulation because it consolidates their position. From the perspective of small businesses, as the noble Lord, Lord Adonis, said, we look for more appropriate regulation, rather than less regulation.

I am very grateful to him and to my noble friend Lord Bates for picking up my complimentary remarks about the EU Commission. I a bit worried that I will be drummed out of the ERG after this. Nevertheless, it is true that the Commission has listened. My worry is that it has listened to us because we have had a voice. However, if we leave under a hard Brexit, we will not have a voice through bodies such as the QCA and therefore, because it does not really understand AIM and other aspects of the financial services industry in London, it will produce inappropriate regulation. We will need a very effective and immediate reaction to that, which I believe the Treasury is capable of doing.

I say to the noble Baroness, Lady Kramer, that the naked short selling by market-makers in the AIM market is essential to liquidity. It is not to be confused with naked short selling by hedge funds, which is a very risky and different proposition. It just goes to show that it is a complicated area. I will be honest: I am not wholly sure that I understand it or how it works but I understand that much—that it is essential to liquidity.

The noble Lord, Lord Tunnicliffe, is right. Essentially this is about unintended consequences; none the less, it is always nice to get into legislation protection for the financial services sector and small businesses.

With the very welcome reassurances from my noble friend Lord Bates, I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10

Moved by ***Lord Davies of Oldham***

10: Clause 1, page 2, line 1, leave out "8(5) and (7)" and insert "8(7)"

Lord Davies of Oldham: My Lords, I can be brief because we have already had at least four debates this afternoon on the exact issues that this amendment and Amendment 11 in my name and that of my noble friend Lord Tunnicliffe deal with. It all revolves around the fact that we are not prepared to give the Government and the Treasury primary powers over issues that would normally require primary legislation just because this Bill has some exceptional qualities to it. It does indeed have exceptional qualities, as has been pointed out on all sides. It is meant to have a lifetime of a bare two years. The vast majority—I will withdraw that remark; I cannot qualify it. Some people who have spoken today have sought to make some improvements to the Bill but I do not have the slightest doubt that they hope that the Bill will never be necessary and that we will not crash out of the European Union without an agreed position.

Two debates ago, the noble Baronesses, Lady Bowles and Lady Kramer, did exactly what we seek to do with this amendment—that is, to identify just where our limits are with regard to the intention in the Bill and to point out that it is misconceived because it attributes to the Treasury powers that we ought not to allow it to have. We thought that we had spotted the area where the debate would flare up most significantly in Henry VIII powers terms, but in fact these issues have already been discussed without the need to mention that moniker too often.

I therefore move this amendment on the basis that the Committee and the Minister know only too well the strength of feeling on all sides that this Bill cannot be a Trojan horse to allow the Treasury and the Government to introduce measures that they would ordinarily introduce through primary legislation but which they are trying, through the enabling quality of this Bill, to introduce through statutory instruments and Treasury adjustments. We have debated this matter long and hard. We all know where we stand and I therefore beg to move, although I do not expect too much in the way of contributions in support.

Baroness Kramer: I will just say from these Benches that we agree.

Lord Bates: My Lords, first, I am sure that I speak for the whole Committee in thanking the noble Lord for his succinctness in presenting his amendment. I recognise the old adage that everything needs to be said but not everyone needs to say it. That is a good principle. In following him in that spirit, I will put on the record a few comments that I believe will be helpful for our wider debates.

We appreciate the concerns across the Committee regarding the Henry VIII powers and, where they are proposed, it is clear that their necessity must be well evidenced. In the case of the financial services legislation, to which the power in this Bill will apply, I hope that noble Lords will accept the need for such a power.

An inability to amend existing primary legislation such as the Financial Services and Markets Act 2000 will render it impossible to implement this necessary body of legislation. Further, as noble Lords will be aware, the exercise of many functions under financial services legislation is carried out by the independent regulators—the Financial Conduct Authority and the Bank of England. The capacity and expertise of the financial regulators will be absolutely crucial to the effective implementation of these pieces of legislation and, consequently, to the resilience and prosperity of the financial services sector here in the UK.

The amendment would remove the ability to delegate to the regulators because, as a general rule, a power to make secondary legislation does not include a power to sub-delegate. An inability to effectively delegate powers to the regulators in implementing the legislation contained in this Bill would severely undermine the value of transposing the original legislation into UK law. In many cases, it would effectively render legislation unenforceable, and the Bill would simply not be able to achieve its central goal of ensuring that the UK continues to be an attractive and competitive place to do business in the immediate two-year period post exit, in the unwelcome and unlikely event of a no-deal scenario. Given this context and the context of the previous debate, I invite the noble Lord to consider withdrawing his amendment.

Lord Davies of Oldham: My Lords, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11 not moved.

Amendment 11A

Moved by ***Lord Adonis***

11A: Clause 1, page 2, line 15, at end insert "and has been reported on by the House of Commons Treasury Select Committee and the House of Lords Secondary Legislation Scrutiny Committee, or any other committee charged by the relevant House with fulfilling a similar function"

Lord Adonis: My Lords, my Amendments 11A, 11B, 12A and 15A seek to establish fuller procedures for the consideration of any changes to the law that the Government might wish to make that go beyond simply transposing European law in the shape of seeking advice from the House of Commons Treasury Select Committee, the House of Lords Secondary Legislation Scrutiny Committee or any other committee charged by the House of Commons or the House of Lords with fulfilling similar functions, as well as advice from the Bank of England.

Given the gravity of the issues that are potentially at stake in these changes in the law over and above simply transposing existing European law, advice from these committees is essential because we have to make significant decisions where the only power that we have is to say yes or no to statutory instruments. We will not tease out the issues, as we do in the normal course of Committee debates such as this. As one long experienced both as a Minister and as an opposition Member going through that process, I know that it is hugely valuable for the House at large in coming to understand and get to grips with the issues at stake. However, by definition those processes will not be available under this Bill because its whole purpose is to give the Government the power to legislate by means of statutory instruments, which are either subject to no debate whatever in this House or subject to only a short debate with the power to say yes or no.

In those circumstances, imposing on the Government a requirement to seek advice first from the Treasury Select Committee, our own delegated legislation Select Committee and the Bank of England, and to make that advice available to Parliament, would be both an important means of informing your Lordships and Members of the House of Commons about the issues at stake and, to be blunt, a check on the Government's acting without seeking proper advice, while exposing their proposed changes in the law to proper scrutiny.

6.30 pm

The issues set out in the Schedule are very substantial. I do not think the Minister will deny that. I will read out a selection of the proposals set out in the Schedule,

"for the purposes of Section 1".

The list of European Commission proposals includes those:

"on the prudential supervision of investment firms",

on facilitating,

"cross-border distribution of collective investment funds … on the issue of covered bonds and covered bond public supervision",

and,

"on low carbon benchmarks and positive carbon impact benchmarks".

I read these out to make the point to the House that these are substantial issues which will impose substantial legal changes on an important industry in this country. It is therefore important to seek full advice from those charged with that task on the Treasury Select Committee and our delegated secondary legislation Committee, before changes are made in the law. I take the same view with the Bank of England: imposing a duty on it to give advice which will then be published would have the same effect. I look forward to hearing the Minister's view. He has been open-minded on these issues, and generous in taking them away to consider further. I hope he will be prepared to consider this between Committee and Report.

Having said all this, I am so persuaded by the excellence of Amendment 7 in the names of my noble friends Lord Tunnicliffe and Lord Davies of Oldham that I believe it might supersede my amendment entirely. If we were to carry Amendment 7 and narrow the power in this Bill to regulations,

"limited to preventing, remedying or mitigating deficiencies in retained EU law",

this issue would not arise in the first place; we would not need to seek advice from Select Committees or the Bank of England on regulations that have such a limited scope. Although I look forward to the Minister's reply, in the process of mutual learning provided by Committee stages—but which will not be provided in respect of Orders in Council under this Bill—I have been persuaded that my amendments might be entirely redundant. My noble friends have produced such brilliant alternative amendments that, if they were to be carried, they would supersede the need for us to go down the routes that I was proposing. I urge my noble friends to stick to their guns with Amendment 7 and not to engage in a dialogue with the Minister that might in any way water down its excellence. There will then be no need for me to proceed with any of my four amendments. I beg to move.

Lord Deben (Con): I hope that my noble friend the Minister has listened carefully to the noble Lord, Lord Adonis, on this matter. We are faced with a real difficulty here. We have agreed to many kinds of legislation, of which this is only one, to protect ourselves against the extraordinarily damaging situation whereby we leave the European Union without a deal. One of the dangers, to which the noble Baroness, Lady Kramer, pointed, was that, if we are not careful, we will be so sure that something is not necessary that we will not look at it as carefully as we ought.

The reason I suggest that my noble friend take Amendment 7 and the amendments that we are now discussing very seriously is this: the whole purpose of Parliament is to make sure that we expose the full extent of decisions of the Executive; it is to curb the Executive in the sense that it ensures that things do not slip through with unintended results.

I am sure that the Government have every intention of using this legislation properly; I am in no way criticising them about that. However, it is true that decisions made primarily by civil servants, which are not open to public scrutiny, can be disastrous. Any of us who have been Ministers know that; we know that one of the most important, perhaps the most important, protection the public have—and the most important discipline that one has as a Minister—is that decisions have to be debated and discussed. My noble friend knows that in this House, where we have limited powers, it is still true that very often during Committee and Report terrible gaps have been shown in legislative proposals. These are gaps which, once they have been revealed, the Government are rapidly determined to fill: to change what they are proposing because they had not meant to have that result.

In those circumstances, it is difficult, is it not, to give these powers so totally to the bureaucratic system? That is so even if one imagines that Ministers themselves have no intention of delivering other than what is perfectly in line with these legislative requirements. Therefore, it is not unreasonable to suggest that there should in all circumstances be a public discussion. The Government's usual response is, "We can't possibly do this as there isn't time". I am prepared to accept that as a generality, but this is not to impose a long-winded system; it is merely to say that what is proposed shall have sufficient public exposure and discussion to enable people to see whether it is within the proper confines of the Bill or reaches beyond it.

Although I had to disagree with the noble Lord, Lord Adonis, on an earlier amendment and his view of it, this one seems to draw attention to a very real issue. My noble friend and I share a considerable desire that these circumstances shall never arise. He is in no position to share my further desire, which is that we shall not leave the European Union anyway—I have no idea what his personal views are but I know what his views have to be at the Dispatch Box. The public will become less and less enamoured with this whole unprofitable and unacceptable process. If the Government want to protect themselves, at least to some extent, it is extremely important to make sure that these matters are processed in public. If they were ever to come about, the Government would find that protecting

[LORD DEBEN]
and defending what they have done was extremely hard, but why not accept that some further process beyond that allowed for in this Bill would be a democratic help in circumstances which will, we hope, not occur?

Baroness Bowles of Berkhamsted: My Lords, I agreed with the amendments of Lord Adonis; I do not agree that they are not needed, even with Amendment 7. There is still the issue of sequencing in terms of what is and is not being done; Amendment 7 does not solve the cherry-picking point or various other things. I attach quite a lot of importance to the reports provided by subsections (8) and (9). In that context, I read the amendments that added in the Bank of England. The noble Lord has explained that in the sense of taking advice from the Bank of England. But when doing these transpositions, there are inevitably delegated acts and other associated things that will be done at the level of the regulators and will not even be contained in a statutory instrument. Therefore I thought it was right that the regulators reported how things are dealt with as well as the Treasury. I support the amendment but would add the PRA and the FCA. In that way, we get the full Treasury report through to the regulators, so that we see that we are all on the same page and where the tweaks, even within the available limits, are made. So I agree with the noble Lord.

As to whether Amendment 11A is needed, there is no harm in putting it there. The Secondary Legislation Scrutiny Committee and other committees will still be doing their part when the things come to them, so I see no reason not to give some work to the Treasury Select Committee.

Lord Tunnicliffe: My Lords, we have an open mind on the amendments. The noble Lord, Lord Deben, hit the nail on the head in saying that the gap between primary legislation and the SI process is too wide. Since we are shovelling a lot of stuff into the statutory instrument process, this is a good time to consider some intermediate action. I do not move from my commitment to tighten up what is available for secondary legislation under this Act, and we will be pursuing that, but I shall listen to the Minister's response with care to see whether this would be the occasion to make some progress in this important area and give two views of a piece of secondary legislation, instead of the usual process. No matter how hard the Minister and I, and colleagues on the Liberal Democrat Benches, try to give some life to the affirmative SI process, we know in our hearts that we are not going to vote against it because we are not going to provoke a constitutional crisis. Some process in between the two—this may be the right one—deserves careful consideration.

Lord Bates: I thank the noble Lord, Lord Adonis, for introducing his amendment, and all noble Lords who have spoken. I will touch on some of the points made, but before I do, perhaps I may say that, as we are moving rapidly through the different groups, it is important that we keep updating where we are. In earlier groups, I was responding positively to my noble friend Lord Deben's point that the legislature needed to be better informed about the effects where changes are made and where we are derogating from existing directives that are in flight. I dealt with the concerns that had been raised by the Delegated Powers and Regulatory Reform Committee, and agreed to meet and talk further about them—so as we move along I do not want to lose sight of the fact that this is an unfolding story. Already, three hours into Committee, we have agreed to undertake and look carefully at some of the points raised.

I recognise the immense wealth of expertise which is here, not least in ministerial office from the noble Lord, Lord Adonis. I would not dare try to calculate the years of ministerial office represented by my noble friend Lord Deben, especially when I have my noble friend Lord Young of Cookham to my left; between them they could put up a cricket score of years.

There needs to be proper scrutiny; I accept that. The Secondary Legislation Scrutiny Committee already scrutinises all instruments laid before each House that are subject to parliamentary proceedings, and it is required to draw to the special attention of the House those instruments which are politically or legally important, or which give rise to issues of public policy likely to be of interest to the House. In addition, Standing Orders set out that the Joint Committee on Statutory Instruments must report on affirmative statutory instruments before debates can be scheduled. This is the established process for scrutinising statutory instruments, and it is a model we have sought to follow.

6.45 pm

Any House of Commons committee—including the Treasury Select Committee—can scrutinise draft statutory instruments once they have been laid, if they choose. I can reassure noble Lords that when taking forward any statutory instruments under this power, the Government will engage extensively with Members of both Houses, including members of the Treasury Select Committee, as well as stakeholders among the regulators and in industry.

Amendments 11B, 12A and 15A seek to place a duty on the Bank of England, alongside the Treasury, to produce a separate report on the exercise of powers under this Bill. The noble Lord clearly recognises that the capacity and expertise of the regulators, including the Bank of England's Prudential Regulation Authority, will be crucial in the effective implementation of the legislation contained in this Bill.

However, in our view it would not be appropriate for the Bank of England to report on the exercise of a function that falls entirely within the remit of the Treasury. While it is certainly the case that the regulators will be consulted on the design and implementation of the legislation introduced under this Bill, the question of what legislation is brought forward and how it is amended is ultimately one for government. It is difficult to see how a body that does not have the ability to exercise this power can meaningfully report on its use. When I was listening to the debate—and perhaps we can clarify this in the discussions that will take place ahead of Report—it was not clear to me whether the noble Lord and the noble Baroness were referring to reporting on the powers which are sub-delegated to the Bank of England as a result of the SIs, or to offering a

view on the package or simply on areas within its remit. Perhaps in the gap between Committee and Report we could explore that a little further.

Baroness Bowles of Berkhamsted: I certainly was talking in terms of what was delegated and how it was dealing with the things that it then had to deal with. I am not sure that that was the same as the mover's view, but mine was in the category of doing what was within its power.

Lord Bates: I agree, in that spirit, to take back that point and look at it in the wider context of my opening remarks in responding to the noble Lord, Lord Adonis. I hope that he will feel able to withdraw his amendment at this stage, because we will return to these issues in some detail at Report, hopefully with some more to say.

Lord Adonis: My Lords, I am grateful to the Minister for that characteristically open-minded and engaging response. I would welcome the opportunity for further discussions. The interaction between my amendments and Amendment 7 is crucial. If Amendment 7 is carried, the scope of the changes we are talking about reduces so markedly that the need for advice also reduces. In particular, if Amendment 7 is carried, it is not clear to me that the generality of the issues in the Schedule would come before the House in the form of statutory instruments anyway; they would come before the House in the form of primary legislation.

Primary legislation is of course subject to all those processes of parliamentary scrutiny and decision-making that deal with the underlying concern that there will not be enough exposure of the issues at stake to debate and consultation. The interaction between Amendment 7 and my amendments is crucial. A good deal of the case for my amendments depends on what the Government and the House decide to do in respect of the issues raised in Amendment 7.

However, the wider issue that has come out in this debate and comes up time and again in this House is well worth us considering further on Report: namely, how Parliament deals with secondary legislation and statutory instruments. The point made by the noble Lord, Lord Deben, my noble friend Lord Tunnicliffe and the noble Baroness, Lady Bowles, is completely right. I thought it was neatly put by my noble friend: there is far too big a gulf between the way we consider statutory instruments and the way we consider primary legislation.

The noble Lord, Lord Hodgson, mentioned bars. We have a very high bar for changing the law by primary legislation, with hour after hour of debate—in discussing this two-clause Bill we are now in our fourth hour of Committee. We have had a Second Reading, and we will have Report and Third Reading. Those procedures are tried and tested.

When it comes to secondary legislation, much of which introduces changes to the law—particularly under this Bill, potentially—that are equivalent to changes brought about by primary legislation, our consideration of these changes is cursory. It is a brief debate if you are lucky when a statutory instrument is debated by the House, and there is no power to amend it. As my noble friend Lord Tunnicliffe said, if we try to reject it we will get immediately into a constitutional crisis because there cannot then be the process of reconciliation between the two Houses that takes place in the case of ordinary legislation.

Time and again we come up against this issue. To be blunt, time and again we duck it, because there is no great desire on the part of the Government to give us powers to amend statutory instruments or to have more elaborate procedures for discussing them, precisely because that would, in fact, make your Lordships more powerful on statutory instruments because we could then amend them and ask the House of Commons to think again. The issues raised by the Bill and all the requirements to do with leaving the European Union put this in stark relief, because a very substantial part of the legislative business of Parliament over the next two to three years if we leave the European Union will be conducted by means of statutory instruments, including all the fundamental changes to the financial regulatory system set out in the Schedule.

The conclusion I draw from all this is precisely the same as that of the noble Lord, Lord Deben: we are at one on the fundamental issue that we should not be leaving the European Union in the first place. One of the reasons why we should not be doing so is that we are not taking back control but giving the Government unprecedented powers to rule by decree—which is, of course, farcical. We have far more control at the moment, from the combination of our established procedures for primary legislation when it comes to our changes in the law, plus all the democratic processes we have within the European Union in respect of changes to the law made at the European Union's behest, than we will ever have by leaving it and having no role to play in the changes recommended or brought about by the EU, and then having to go through this truncated rule by decree process in this Bill and the EU withdrawal Act.

So the right response to all the debate we have had today is not to leave the European Union and to have a people's vote to give us the opportunity to express the ever more pronounced view of the public that this whole thing is deeply antipathetic not just to the best interests of the country but to our proper parliamentary procedures. But it is probably going a bit too far to press the Minister to accept that whole case just in responding to my one amendment, so just for now I will beg leave to withdraw.

Amendment 11A withdrawn.

Amendment 11B not moved.

Amendment 12

Moved by ***Lord Hodgson of Astley Abbotts***

12: Clause 1, page 2, line 16, leave out "April 2020" and insert "October 2019, and at six monthly intervals thereafter until the end of the period specified in subsection (5),"

Lord Hodgson of Astley Abbotts: My Lords, in moving Amendment 12 I will speak to Amendments 13, 14 and 15, all of which are consequential. In this we will touch on some of the points raised in Amendment 6 by the noble Baroness, Lady Bowles. I am extremely

[Lord Hodgson of Astley Abbotts]
grateful to her for having put her name to these amendments, as I am to my noble friend, Lord Leigh of Hurley.

The debate at Second Reading on 4 December and the debates on the amendments we have had this afternoon showed the very wide executive powers the Government are taking under the Bill's provisions, notwithstanding the existence of a two-year sunset clause. The Government argue, in my view with some justification, that in the event of a no-deal Brexit these wide powers will be needed to cover the wide range of eventualities that might result from such an outcome. Further, given the great importance to the UK of the financial services sector, these powers are doubly needed. But if the Government accept, as I believe they do, that these powers are unusually wide, they surely cannot object to the legislature having a higher degree of transparency regarding when and why these powers will be used, so that it might undertake its proper constitutional role—referred to by the noble Lord, Lord Adonis, and others—while scrutinising the activities of the Executive and holding them to account.

I respectfully suggest that the Bill as drafted fails in this purpose. Under Clause 1(8) the only evidence or check of the Government's use of the power is the report by the Treasury, which it must provide at the end of 12 months—that is, April 2020. Noble Lords will be aware that this is already half way through the two-year period. The phrase about shutting stable doors and bolting horses comes to mind. No less importantly, while Clause 1(8) requires the Treasury to report when it has used the powers, it does not require any explanation as to why they have been used. The Treasury report in April 2020 under this subsection could be just a series of one-line entries.

My amendments have two very simple purposes: to shorten the reporting period and to require the report to include some qualitative explanation as to why it was felt necessary to use the powers in the first place. Amendment 12 would shorten the reporting period so that instead of there being just one report during the Bill's life, there would be three: in October 2019, and in April and October 2020. Amendment 14 would require each of these reports to give a forward look on any expected use of the powers in the next six-month reporting period. Finally, Amendment 15 would require an explanation of the reasons why the powers are being used in the period under review and why their use is planned in the following six-month period.

Under the Bill, the Government are taking exceptional powers that, as has been pointed out repeatedly this afternoon, could in certain circumstances be used quite arbitrarily. I do not have the purity of approach of the noble Lord, Lord Adonis—perish the thought. I am not sure that his purity of thought is entirely aimed at preserving the UK constitution; I think that he might have a wider objective, but never mind. However, I accept the broad argument of the unique challenge of a no-deal Brexit justifying the Government's approach and the powers they propose to take. But I cannot and do not accept that the Bill as drafted gives sufficient opportunity for the legislature to scrutinise, let alone obtain justification of, their use. These modest amendments would redress this imbalance, achieve the degree of transparency commensurate with the seriousness of the intended powers and so help to maintain public trust and confidence. I beg to move.

7 pm

Baroness Bowles of Berkhamsted: My Lords, I have Amendment 16 in this group. As the noble Lord, Lord Hodgson, said, I added my name to his amendments and I thank him for trying to bring some better order to the reports and to increase the frequency with which they are produced. Amendment 16 says that the reports must include a table setting out which provisions of the financial services legislation have been transposed into domestic legislation, and under which statutory instruments. I ask for that because it is awfully difficult to know where things have been put. The Minister will recall that on several occasions when we have been discussing statutory instruments under the withdrawal Bill, I have had to go hunting for the articles of the legislation that has been transposed, and they have popped up in a different instrument and sometimes been dealt with at rather different times.

If that kind of thing is going to happen again, we need the safeguard of knowing where things have been put. In European parlance, this was called a "coronation table", which showed where the European legislation ended up. One does not necessarily need to do that going forward, once we are amending under our own rules, but something like it would be a first step to obtaining equivalence, because we will also have to demonstrate to the EU where everything has been put. Therefore, this seems a useful addition to these reports, thereby keeping Parliament informed about how things are progressing.

Lord Tunnicliffe: My Lords, we have constantly been debating the same issue, which this amendment addresses from another direction. I am afraid that my experience of government producing annual reports is that, on average, they tend to appear every 18 months, rather than 12 months. I am not quite sure what the last report of the two does anyway, and the idea of one meaningful report every six months has a lot to commend it. Being prescriptive about its contents would also be quite useful, and I look forward to the Minister's response.

Lord Bates: I thank my noble friend Lord Hodgson for ably introducing this amendment. A substantial part of my speaking notes is remarkably similar to those for Amendment 2, when I responded to the comments made by the noble Baroness, Lady Bowles, on early reporting. Again, we have made some progress, so let us perhaps just leave that on the record.

I will make a couple of specific points about my noble friend's amendments, and those which the noble Baroness, Lady Bowles, has put her name to as well. These amendments would require the Government to lay reports on the use of the power every six months, rather than every year; to set out why the power would need to be used; and to include a table setting out the provisions of the EU legislation that have or have not been transposed into domestic legislation, as the noble and learned Lord, Lord Judge, mentioned in an earlier debate. Again, I can assure noble Lords that the

Government's intention has always been to set out such reasoning and detail as part of the reports referenced in subsections (8) and (9).

As to the frequency of the reports, the current drafting has been designed so that the reports will provide an overview of how the powers have been used in the first year, and how the Government propose to use them in the second year. The intention behind this is to allow enough time to pass for a meaningful report to be drawn together. I hope this helps to clarify the Government's intention to be as transparent as possible in the exercise of these powers.

As with the amendments tabled earlier by the noble Baroness, Lady Bowles, I have listened carefully to the arguments being presented on all sides, and particularly in this instance by my noble friend Lord Hodgson. It may be that we need to consider further exactly how such a process can run, so that we can provide the House and Parliament with the necessary assurances that it seeks. In that regard, I ask my noble friend to withdraw his amendment, given my commitment that we will look again at this issue and seek to make some constructive suggestions on a new way forward at Report.

Lord Hodgson of Astley Abbotts: I thank all those who have taken part. I thank the noble Lord, Lord Tunnicliffe, for his two-thirds of a loaf, and the noble Baroness, Lady Bowles, whose amendment I should have referred to in my opening remarks; it was rude of me not to have done so. A table of derivations and destinations is what I think such a table would be called in UK law; it would be a very helpful addition to the schedule to the reports that we have in mind. My noble friend was smooth—to the point that I thought he was going to turn me down on, but at the end the horse swerved in and jumped the fence. I am glad that he has agreed to put this into the mix. I am grateful to him and happy to withdraw the amendment for the time being.

Amendment 12 withdrawn.

Amendments 12A to 16 not moved.

Clause 1 agreed.

Amendment 17

Moved by ***Lord Sharkey***

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

"Expiration of regulations

Any regulations made under section 1 expire after the period of four years beginning with exit day."

Lord Sharkey: My Lords, given the debate so far I can be very brief. If the Bill proceeds as currently drafted, it will enable the Treasury to create a new set of laws and policies for our financial services industry, all via secondary legislation. These new laws and policies will not have been exposed to proper parliamentary scrutiny and will not have been amendable. This stands in extreme contrast to the careful, detailed and very lengthy scrutiny given to all previous changes in the laws and policies for our financial services industry—scrutiny which has frequently resulted in very significant amendments. This is an entirely unsatisfactory state of affairs, and I know we will come back to this on Report.

But if we are to have legal and policy changes introduced by SI, then we should at the very least have the opportunity to review them after the fact. That is what my amendment proposes. The Bill as it stands contains a sunset provision for the powers in Clause 1. My amendment proposes a sunset provision for the regulations created by the powers in Clause 1. The sunset provision for the powers extends for two years after we leave the EU. My amendment proposes that the new regulations expire two years after that.

This would have two effects. It would give time to assess how the new regulations were working in practice. It would also mean introducing primary legislation to reinstate and/or modify or add to new regulations. This would guarantee what we do not have in this Bill: a means of proper, full parliamentary scrutiny of new laws governing a critical part of our national and economic life. My amendment would restore to Parliament the ability to debate and amend these new laws in the proper context of primary legislation. I beg to move.

Baroness Kramer: I want to make one very quick comment to add to those of the noble Lord, Lord Sharkey. There is a real danger that the pattern within this Bill becomes a precedent, and that for future financial legislation we in effect see this process of Treasury decision enacted through statutory instrument. This sunset clause would make that impossible. It would make sure that this was, in effect, a one-off, and that there was a return to normal practice following the end of four years.

Lord Davies of Oldham: My Lords, it is time to be kind to Ministers when one gets to this end of the Bill. My advice to the Minister is to indicate what a logjam of SIs there would be four years on from the consequences of this strategy. I understand entirely, and sympathise very much with the intent behind the amendment, but if I were the Minister I think I would point out a few of the practical difficulties.

Lord Bates: There speaks the voice of experience. From his time speaking from this side of the Chamber, the noble Lord has perhaps pre-empted some of the concerns that we would have about this proposal, but let me put them on the record.

I am grateful to the noble Lord for giving us an opportunity to debate this important area. In implementing files under the Bill, it will be necessary to amend existing legislation to reflect updates to the regime. Should all powers under the Bill lapse at a stroke, without replacement, the legal effect on amended legislation would be unclear.

At a time when we should be seeking to provide industry with clarity and certainty, I am afraid that the amendment would have the unfortunate and unintended effect of providing just the opposite. Rather than minimising the cliff-edge risks, it would create a new series of cliff-edge challenges to be faced in the coming

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years. The potential for this legislation to lapse without replacement does not provide certainty to firms. Compliance with new regulatory regimes can be costly, and it would have a negative effect on firms' confidence in the Government's ability to set effective and proportionate regulation should we implement vital legislative reform only for it to drop away after a given period.

I appreciate the noble Lord's concern that regulations made using this power will have a lasting effect on the structure of the UK's financial services regulatory framework. This is why the power can apply only to a limited set of important files, which have been set out on the face of the Bill. In a no-deal scenario, implementing those files could be crucial to avoid conceding a competitive advantage to businesses operating in EU-based markets or to remain compliant with the Basel rules and meet our G20 commitment to international standards.

The noble Lord is clearly right, however, in pointing out that this cannot be a long-term model for a regulatory framework. Beyond this temporary solution, once we have left the EU in a no-deal scenario, the Government recognise the clear need for an approach that balances parliamentary oversight of financial services legislation with maintaining the flexibility and competitiveness of our regime. To that end, we will take forward proposals for a sustainable, long-term model in due course.

It is perhaps worth pointing out also that the Small Business, Enterprise and Employment Act 2015 requires the inclusion of a statutory review clause in secondary legislation that regulates business if the legislation continues to have effect five years after its entry into force. When taking forward SIs under the Bill, the Government will therefore be under a duty to make provision to undertake a post-implementation review after five years or to publish a statement that it is not appropriate in the circumstances to do so. In this light, I hope that the noble Lord will feel able to withdraw this amendment.

Lord Sharkey: In the light of the Minister's very informative response, for which I am very grateful, I am delighted to be able to withdraw the amendment.

Amendment 17 withdrawn.

Clause 2 agreed.

Schedule

Amendment 18

Moved by ***Lord Sharkey***

18: The Schedule, page 5, line 27, at end insert—

"14A The European Commission's proposal of 24 May 2018 for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment.

14B The European Commission's proposal of 24 May 2018 for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341."

Lord Sharkey: My Lords, at Second Reading, I asked the Minister how the specified in-flight files contained in the Schedule were chosen. He replied:

"Those are the files that we believe will be the most important for market functioning and UK competitiveness in a no-deal scenario. Those in-flight files not listed on the face of the Bill include those that apply only to eurozone members, which we would never have implemented as a member state, those that the UK has opted out of, and those where there is not a critical need to implement the legislation in the narrow window of time covered in the Bill".

I asked the question because I was curious about the Government's thinking and because of the exclusion from the Schedule of two particular in-flight files.

Those files, which the amendment would add to the Schedule, were drawn to my attention by the UK Sustainable Investment and Finance Association. Both of them have their origin in the work of the European Commission's high-level working group on sustainable finance and its January 2018 report on the matter. The UK was heavily involved in that. We had seven of the 20 members of the expert group; France had four and Germany had two. The files are the Commission's proposal of 24 May 2018 for a regulation of the European Parliament and the Council on the establishment of a framework to facilitate sustainable investment and the Commission's proposal of the same date for a regulation on disclosures relating to sustainable investments and sustainability risks.

7.15 pm

Neither of these in-flight files is eurozone only. Neither contains an opt-out for the UK. The UK has not said that it will not implement the files. It follows from this and the Minister's answer to my question that those two in-flight files have been excluded from the Schedule because the Minister believes that,

"there is not a critical need to implement the legislation in the narrow window of time covered by the Bill".—[*Official Report*, 4/12/18; col. 948.]

This raises two further questions. Does the Minister believe that the files will not have completed their passage into law within the two years during which the powers in Clause 1 can be exercised? The UK Sustainable Investment and Finance Association has been in contact since Second Reading with the offices of MEPs in Brussels who are working on the files and who say that they believe that the files should have completed their passage within two years.

The second question is to do with the Minister's phrase "critical need". It is not immediately obvious what it might mean in this context. Does it mean that the Government are happy for the UK not to implement the files even if they had come into force in the EU? If so, this would of course create regulatory divergence between the EU and the UK. It would also create more red tape and more costs for the members of UKSIF, who would have to work to two different regulatory standards. I would be grateful if the Minister could address the point when he replies.

A broader issue is also involved here, to do with whether and how the Government intend to align post Brexit with EU measures to promote sustainable finance. I know that the Government are drawing up for publication in the spring a Green Paper on financial

strategy, with BEIS and HMT in the lead. This strategy could use some other, as yet unknown, legislative vehicle to replicate EU work in this area, since the Government's general position on financial services as set out in the political declaration is that there will be "equivalence". But this could mean equivalence of outcome or identical rulebooks. The absence of the two in-flight files from the Schedule rather suggests that the Government are planning for equivalence of outcomes. It would be good to know where their thinking lies on this, especially for members of UKSIF.

Either way, there really is no reason to exclude these in-flight files from the Schedule. The Bill provides in Clause 1 that the Treasury "may" make necessary provisions about the files in the Schedule. It does not say that the Treasury must do this. It seems a sensible, cost-free and precautionary measure to add these two files to the Schedule. This would give flexibility to use the provisions of the Bill if the occasion arose and would acknowledge the importance of the regulatory regime around sustainable finance and investment. This is surely important for continued market competitiveness, which the Minister said was one of the criteria for inclusion in the Schedule.

I realise that these matters are rather complex and may have become more so as the debate has gone on. I wonder whether the Minister would be prepared to meet me and others before Report to discuss the issues further. In the meantime, I beg to move.

Lord Davies of Oldham: My Lords, I, too, raised this issue at the conclusion of my speech at Second Reading. I quite understood, with the vast range of issues that the Minister had to respond to on that day, his feeling unable to go into great detail on this one. That is why I was delighted to sign up to the amendment put forward by the noble Lord, Lord Sharkey. The Minister has a real case to answer here, and I hope that we will have a constructive response.

Lord Bates: My Lords, I hope I can oblige the noble Lord, Lord Davies, with a constructive response to end Committee. I thank all noble Lords who have taken part. I understand that several Members have received representations from the sustainable finance industry. This amendment seeks to add to the Bill's Schedule two EU files that complete the European Union sustainable finance package.

As I have mentioned already, the Government acknowledge that the power being sought in this Bill is broad. That is why it has been designed with a number of safeguards and limitations in place. One of these is for the power to be limited to a specified set of EU legislative proposals, named on the face of the Bill. In order to focus the power as narrowly as possible, the list of files in the Schedule to the Bill was determined through an assessment of the importance of files to the stability and competitiveness of the UK's financial services sector. The noble Lord, Lord Sharkey, highlighted this as one of his concerns when moving his amendment. In short, these are the files that we believe will be the most important for market functioning and UK competitiveness in a no-deal scenario.

I will, of course, be very happy to meet the noble Lord, and the noble Lord, Lord Davies, on this issue. I think we are already going to be meeting quite a bit between now and next week. I have listened carefully to the arguments in favour of the merits of adding these files to the Schedule, and I undertake to reflect on the matter ahead of returning to it on Report. In the light of this, and of the discussions that will take place, I invite the noble Lord to consider withdrawing his amendment at this stage.

Lord Sharkey: My Lords, I am very grateful for the Minister's answer and look forward to what may be several meetings between now and Report. As the last speaker tonight, I hope that the Committee will allow me to make a very quick, general observation. As I listened to the debates today, it seemed to me that there was a real, structural problem with the Bill. It sets out to do two things: first, to onshore approved, but not applied, EU legislation; and, secondly, to make possible the onshoring of specified in-flight legislation. The problems we are discussing tonight are largely because we are trying to do both of those things using the same mechanism. That is going to be very difficult.

It might be better to consider simply applying the strict rules of Section 8 of the European Union (Withdrawal) Act—or Amendment 7—to all those approved, but not applied, pieces of legislation listed in Clause 1(2)(a) and (b); and, separately, to require primary legislation to deal with the in-flight legislation coming our way, as suggested by the noble Lord, Lord Adonis.

I thank the Minister again for his observations on Amendment 18 and beg leave to withdraw.

Amendment 18 withdrawn.

Schedule agreed.

House resumed.

Bill reported without amendment.

7.23 pm

Sitting suspended.

Conflict-affected Countries: Adolescent Girls

Question for Short Debate

7.30 pm

Asked by ***Baroness Hodgson of Abinger***

To ask Her Majesty's Government what steps they are taking to support adolescent girls in fragile and conflict-affected countries.

Baroness Goldie (Con): My Lords, as this debate now constitutes the last business, the time allocated to Back-Benchers can be extended to six minutes, if any Back-Bencher so desires.

Baroness Hodgson of Abinger (Con): My Lords, adolescence is a critical stage of life, but for girls in fragile and conflict-affected countries the combination of adolescence and conflict exposes them to maximum danger, and what happens to them in adolescence will have a profound effect on them for the rest of their lives. The lack of recognition of the critical significance

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of this period of their lives means that the needs of adolescent girls are falling through the gaps of the global humanitarian response. Before I progress, I declare an interest as co-chair of the APPG on Women, Peace and Security, as a member of the steering board of the Initiative to Prevent Sexual Violence in Conflict and I have an association with a number of organisations specialising in women's issues, as set out in the register of interests.

Across the world more than 200 million people need humanitarian assistance and protection and there are currently more people displaced because of conflict and persecution than at any other time in history. It is recognised that conflict disproportionately affects women and girls, and as Major General Patrick Cammaert, Deputy Force Commander of the UN Mission to the DRC in 2008, said:

"It is now more dangerous to be a woman than a soldier in modern wars".

While we talk about putting the needs of women and girls at the heart of development, they are not a homogenous group. Certain times of life, certain groups of women, may be in particular need. INGOs acknowledge that it is rare for the humanitarian sector, or indeed the girls' own communities, to pay much attention to adolescent girls. Over the last year, Plan International commissioned research to further understand the unique impact that conflict has had on them, focusing on two age brackets—those aged 10 to 14 and 15 to 19. I thank Plan for this research, because it has made clear that adolescent girls are affected in very different ways from their male counterparts or adult women. Plan gives the example of a 10 year-old IDP girl in South Sudan called Ruba who, although she has to make the porridge for the one meal per day that her family eats, is given the smallest amount. Ruba says that she eats least and last. Yet adolescent girls are often not specifically identified, but rather counted among children, youth or women, which results in their complex and interrelated challenges being neglected.

It is hard to take part in today's world without education, yet an estimated 131 million girls worldwide remain out of school, and 90% of these in conflict countries are adolescent. Education in fragile and conflict situations is often the first service suspended and the last service to resume. UNESCO statistics tell us that girls are 2.5 times more likely to be out of school if they live in conflict-affected countries: access to education is often curtailed during conflict; girls are often targeted in and around schools. Sometimes, families have so little that they are unable to provide uniforms or books, which will also prevent them attending. Refugee children are five times less likely to be in school than those in stable environments. Many teachers in refugee contexts lack the minimum 10 days training required by UNHCR. In Ethiopia, for example, only 21% of teachers of refugees had any professional teaching qualification. Yet evidence shows that education mitigates the risks girls face in conflict-affected areas. It helps deliver health services, provides psychosocial support, challenges gender norms, provides protection from violence and exploitation and builds an awareness of human rights.

Quality education in conflict can also help break the cycle of violence, redefine gender norms and promote tolerance and reconciliation, as well as helping bridge the gap during conflict and conflict recovery. In short, keeping adolescent girls in school not only benefits the girls themselves, it benefits their families, their communities and their nation. UNICEF research shows that equal access to education for male and female students decreases the likelihood of violent conflict by as much as 37%.

Heightened risk of sexual violence and destruction of livelihoods often forces parents to view marriage as the most secure and viable future for their daughters, and therefore girls are often taken out of school when they reach puberty. Each year of secondary education reduces the likelihood of a girl marrying before the age of 18. Ensuring that girls stay in school gives them a better chance of safety and security and of making their own life choices and decisions. According to the OECD, nine out of the 10 countries with the highest child marriage rates are considered either fragile or extremely fragile states. For example, in Yemen and Syria child marriage has increased at an alarming rate. UNICEF states that 65% of Yemeni girls are now married before 18, compared to 50% before the conflict.

This House has discussed the horrors of modern slavery and trafficking before, and adolescent girls are particularly vulnerable, yet current efforts to prevent modern slavery globally are largely gender blind and do not address root causes such as gender-based violence, discrimination, denial of education and poverty. What consideration do our aid programmes specifically give to addressing the high danger for adolescents?

Violence against women remains an epidemic across the world, with one in three women experiencing it in their lifetime. During conflict, this spirals out of control. For example, in Afghanistan, it is estimated that 87% of women suffer domestic violence, and here again adolescent girls are particularly vulnerable. Many in this House attended the PSVI film festival a few weeks ago. I commend the Prime Minister's special representative for preventing sexual violence in conflict, my noble friend Lord Ahmad of Wimbledon, on his work and on ensuring an additional £500,000 of UK aid support for victims of PSVI. I am also delighted that the previous holder of this office, my noble friend Lady Anelay, is taking part in this debate, but I want to ask the Minister what more we can do to ensure that the UK does not lose momentum on this important issue.

Because adolescent girls in conflict and crisis-affected settings are at increased risk of rape, there is an increased need for sexual and reproductive health services, due to unwanted pregnancy, STIs and unsafe abortion. The World Health Organization states that the risk of pregnancy-related death in adolescent girls is twice as high for those aged 15 to 19 and five times as high for those age 10 to 14 compared to a woman in her 20s. It is chilling to consider that 507 girls and women die every day in humanitarian contexts due to childbirth or pregnancy-related complications. Access to services and information is too often inadequate and access is dependent on adults accompanying them to any safe space or health clinic where services may be provided. Girls with physical, psychological or

developmental disabilities have even greater difficulty in accessing services. All this has enormous ramifications for their future lives, and 26% of adolescent girls interviewed for Plan's research reported having considered suicide at least once in the last 12 months.

Women have a large role to play in a country's future, but will not be able to do so if they are not well supported in adolescence. Having women involved in the policy conversation and in decision-making positions makes a difference as to whether issues which have a disproportionate impact on 50% of the population—the women—are even discussed. I know from my experience of international women's issues how vital it is to have women around the peace table and to have gender-focused humanitarian relief to ensure peace and stability for all, going forward. The UK holds the pen on women, peace and security at the UN Security Council and I congratulate the Government on their latest national action plan, but of course there is still more work to do. Female entrepreneurs and businesswomen can also support growth and stability through diversity. Female-led microfinance and SMEs can form a path out of poverty for individuals, families and communities across the globe.

Despite all the difficulties for adolescent girls that Plan's research bears witness to, generally young women demonstrate an impressive resilience, and key factors to their happiness in a crisis were identified as family, friends, faith, education and security. I will illustrate why adolescence is such an important time to get it right for girls. A few years ago I visited Liberia with ActionAid. In one village we talked to women about sexual violence. "Oh yes, women and girls get raped", we were told. I asked whether there was justice when that happened. They said, "Well, there is some justice if it is a child", so I asked what age a girl was considered to be a child. "Under 10", was the response. So an adolescent was considered fair game. One can clearly see that if things go wrong at this point in a girl's life, it results in early marriage, teenage pregnancy, lack of education, an inability to be economically self-sufficient and a lifetime of underachievement and, probably, near-slavery.

I know that the Conservative Government have made a number of commitments that touch on this area, as set out in the *Strategic Vision for Gender Equality* earlier this year. But I ask my noble friend the Minister whether we can go one step further and work with appropriate stakeholders to develop a comprehensive implementation plan to ensure that adolescent girls do not continue to fall through the gap, thus ensuring better lives for them as women.

7.41 pm

Lord McConnell of Glenscorrodale (Lab): I thank the noble Baroness, Lady Hodgson—my friend, I hope I can say, even if it is not appropriate to call her my noble friend—for securing this debate and congratulate her on leading us off so brilliantly. She shines a light on this subject relentlessly. She did so for many years before she was a Member of your Lordships' House, and she has used this platform in a formidable way over recent years to raise these vital issues. I am delighted to contribute to the debate that she has managed to secure.

Like the noble Baroness, I should declare my registered interests, which include references to advising in peacebuilding situations, as well as my positions at UNICEF and in other charitable organisations that work in this area. It is partly because of that experience that I am motivated to speak tonight. I remember 10 years ago meeting a young woman in Liberia who had been sold off to one side in the civil war. She was 17 and had a child who was maybe three years old by that point. She was asked by my colleague, in an attempt to turn the conversation to something more positive, what was good about having a child, and she looked us in the eye and said there was nothing good about having this child and there never would be. At 17, that young woman was technically still a child in most countries, yet she was facing a life with a memory and all the other implications that were going to affect her deeply for years to come. I have told your Lordships before about meeting young Saffa in a refugee camp in Iraq. She was strong about her situation and determined to build herself a future, but her life was affected most by the fact that her grades in school had gone down. That was the moment that she burst into tears, showing that education is absolutely vital to these girls.

This is partly about protection and partly about hope and education. In that context, we need to see our work in this area as part of our overall work for the global goals. The global goals include in goal 16 a firm commitment to peace and justice and creating the environment in which development can happen. They also include at their very core a commitment not just to gender equality but to women's empowerment and defending the interests of women and girls everywhere. If the global goals are driven by the objective of leaving no one behind, surely, as we look around the world, one of the groups most likely to be left behind are adolescent girls in fragile and conflict-affected states. They are more likely to be raped. They are more likely to be forced into child marriage. They are more likely to suffer from FGM—still. They are more likely to miss out on education; for example, in Muslim Mindanao in the southern Philippines, girls are three times more likely to leave school before the end of primary school than in the rest of the Philippines. They are more likely to have significant health issues. Of course, as the noble Baroness, Lady Hodgson, has already said, they are more likely to be trafficked. They face multiple issues of violence and abuse but we also know that the evidence and statistics back up the fact that these girls face these issues more often and more severely than adolescent girls elsewhere.

In our overseas development assistance and our policy towards our international work, we should be driven not only by Agenda 2030 but by the aim of leaving no one behind. I am keen to hear from the Minister: what will we see in the UK's voluntary national review to the UN this summer of our work on the global goals? What will we say about this vital area of supporting adolescent girls in fragile and conflict-affected states? How will we use our influence at the United Nations to ensure that UN work and policy on refugees and internally displaced persons protect and empower girls inside refugee camps? Will we also be willing to continue to take a stand internationally? When people refer to these practices

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as cultural, religious or driven by armed conflict, will we be willing to take a stand—no matter whether the country in which these incidents take place is a friend or foe—on behalf of these adolescent girls and speak up against those who are turning a blind eye or, in many cases, are the perpetrators?

There is real evidence of the impact that can be made when we get the policies right and the right action is taken, but we need to ensure that there is not just prevention in terms of protection—with the right systems and conditions in place, not just health protection for girls affected by violence in these situations—but that there is justice. Whether it is for the Rohingya in Myanmar, the Yazidis in Iraq or women and adolescent girls elsewhere, we need to ensure that there is justice because justice provides hope that in the future others might not find themselves in the same situation. We need to ensure that we are listening to adolescent girls in all these situations, that we are taking on board what they are saying, but also that we are prioritising the action that is required to ensure that at the end of the day this particular group is not left behind.

7.47 pm

Baroness Anelay of St Johns (Con): My Lords, I too congratulate my noble friend on securing this debate and her extensive work on women, peace and security. I shall focus my remarks on the support needed in South Sudan, where 60% of all sexual assaults are on girls aged 18 and under. I would be grateful if my noble friend the Minister could update the House on the work of DfID, the Foreign Office and the Ministry of Defence to deliver that support.

It is five years since the outbreak of a conflict that has had a devastating impact on the peoples of South Sudan. It is a country where 72% of children are out of school and a girl is more likely to die in childbirth than to complete her education. My honourable friend Minister Baldwin recently announced an additional £70 million for the next round of the Girls' Education South Sudan programme. It aims to keep girls in school and to tackle the negative attitudes to women and girls that lead to early and forced marriage. How will the Government measure the success of that project?

During the conflict there was widespread perpetration of rape. Instances of that continue today in some parts of the country. The stigma and rejection faced by survivors of rape create obstacles for them to report crimes and seek medical and psychosocial help. My noble friend has already referred to the Plan International research, which showed just how affected—how mentally scarred—people were by their experience and how difficult it is for them to get any support. Indeed, Plan International points out that there is little or no evidence that there is any professional support for mental health issues across South Sudan for girls who have suffered such horrific assaults.

When I visited South Sudan, I co-hosted with UNFPA a workshop on stigma faced by survivors of widespread rapes committed during the conflict and continuing today. It was encouraging to listen to the discussions of girls and boys who were not accustomed to being asked for their views about what should be done to improve their own lives and prevent future violence. Last month, our ambassador to South Sudan and her staff travelled to Wau because they wanted to hear directly from women and girls—not just the chiefs—about what more the UK can do to support them. That was admirable and, in perilous circumstances, risky. It is vital to include adolescent girls in the design, implementation and evaluation of the humanitarian programmes that will affect them.

My right honourable friend the Secretary of State for Defence recently visited South Sudan himself. Just a couple of weeks ago he went to Bentiu and Malakal in the north of the country, as well as to Juba. He learned about the impact of the extensive use of sexual violence in conflict, and he wants the Ministry of Defence, instead of the Foreign Office, to lead on the Preventing Sexual Violence in Conflict Initiative, saying:

> "I see defence as the department leading on this across government and internationally".

What is the Government's view on where the departmental lead should be?

When I visited the Protection of Civilians camp in Malakal, which my right honourable friend the Secretary of State for Defence also visited recently, I learned how international support can have unintended consequences if it focuses only on the delivery of one level of support and does not look at the whole problem. I met an orphaned teenage survivor of rape, who was bringing up her child. She told me that she now felt able to risk leaving the camp to go in search of enough food to feed both her child and her younger siblings, because, she said, "Now that we have a clinic here, I know that when I'm raped, I can get medical treatment when I get back to the camp". What an indictment of the way people have to make choices.

The Government of South Sudan, the international community, civil society and leaders of faith all need to do more to work together to ensure that such girls can face a better future.

7.52 pm

Baroness Goudie (Lab): I thank my good friend, the noble Baroness, Lady Hodgson, for enabling us to have this debate this evening. I declare my interests as in the register: I am a member of the Advisory Board of the Centre for Women, Peace and Security at the LSE, and I am on the board of the Institute for Women, Peace and Security at Georgetown.

I welcome this debate this evening. The Government have been a leader on this issue and I hope very much that they will continue to do so but will also put pressure on other countries, foundations and global institutes to increase their budgets and follow Britain's lead.

Why should we be concerned about supporting adolescent girls in fragile and conflict-affected countries? Today, 62 million girls around the world are not in school, and at least 20 million of them live in conflict-affected and fragile settings as refugees or displaced people, or are otherwise vulnerable to human trafficking, rape and other things that we have never even thought about. So many lives are being wasted. These girls sometimes become pregnant at eight or nine and have

babies. Their babies cannot become full adults because they are not fully formed. This is the battle we have to continually fight to have all girls in education.

Educating girls is the smart and the right thing to do and is the world's best development investment. We have to persuade the British Government, and other Governments who have cut their budgets, in particular Australia and America, and persuade Japan and other countries to do more. But it is not just about the funding and commitments; we should be ensuring access to quality. We should not have teachers who we know have had just a few days' training—we want the best and must pay the best to work in these difficult areas, to have consistent education for girls in these settings.

Why does this matter? If girls are educated, in the long term we prevent forced marriage, lower maternal and neonatal mortality; spur on women's financial independence; reduce fertility rates; create smaller, more sustainable families; improve health and nutrition outcomes for families; shrink the rates of HIV/AIDS and malaria; and open opportunities for women's political leadership. If more women are not educated, we will never get more women in political leadership at every level, and as we know, Britain has agreed not to go to peace talks without local women and other women at the peace table. How can we get local women if they are not being educated? Educating girls also increases children's educational attainment levels, builds familial resilience to natural disasters and climate change, and boosts national economic growth.

To access education, displaced adolescent girls must overcome several challenges, such as transition and disruption, and problems with host countries and camps. We must have better support for them, not just using regular military people but trained military people, working with NGOs on the ground and trying to persuade people from those countries.

Four of the five countries that currently have the largest gender gaps in education also experience high levels of conflict. This is where we must start to put pressure at the highest level. We cannot just come in low down—we have to ensure that commitments materialise on the ground. However, the challenges to providing quality educational opportunities remain significant. Within this context, educating displaced adolescent girls is particularly challenging, but it is imperative for the long-term stability and prosperity of not only their countries—their GDP—but the world.

Since the adoption of the millennium development goals in 2000, significant progress has been made in increasing girls' primary school enrolment, but secondary school enrolment remains limited. We know why that is: girls are either sold off or their parents get them married off because they think, "I've got rid of another problem in my life". Fewer than one in three girls in sub-Saharan Africa and less than half of girls in south Asia are currently enrolled in secondary education. Of at least 14 million refugee and internally displaced children between three and 15, only one in two attends any form of school at all, and for how many hours? When crises strike, adolescent girls are acutely vulnerable. In these settings, girls are two and a half times more likely to be out of school as compared to their male peers. What a world we are living in. That is why I hope that we can have more joined-up approach from the FCO, DfID and the Ministry of Defence. I know that they work together, but we need to look towards a future in which we all work together, pool the money, and get more support from organisations that have funding.

7.58 pm

Baroness Featherstone (LD): My Lords, I congratulate the noble Baroness on securing this important debate, and I acknowledge the work that she has been doing on this over many years. I first met her when I was DfID Minister for two years; I was also the ministerial champion for tackling violence against women and girls overseas for all five years of the coalition Government.

I was also the Minister responsible for Africa. During that time, I do not think there was a country I went to in Africa where girls, particularly adolescent girls, were not oppressed, suppressed and violated. I will give just a few examples. In Kinshasa, in the DRC, I visited a refuge for young girls which DfID was supporting. Most of them had been thrown out of their homes and villages, often because they had been believed to be witches. With nowhere to go and no one to go to, they end up on the streets of Kinshasa, where they are often beaten or raped and end up pregnant.

I acknowledge what was said by the noble Baroness, Lady Anelay, about South Sudan; it was the first country I ever visited as a Minister. For the most part, girls there are considered property to be sold. Virtually no ante or post-natal healthcare is available. As the noble Baroness said, the result is that a 15 year-old South Sudanese girl is far more likely to die in childbirth than complete any stage of secondary education.

A couple of noble Lords mentioned justice. A lot of the young girls I met in these countries said that if they went to the police to report a rape or violence, they were just as likely to be raped by the police as they were to be listened to by them.

Perhaps the most striking memory for me was going to the refugee camps on the borders of the states of South Kordofan and Blue Nile, where there was no protection at all. At the time I left DfID, one of our mission was to ensure that the protection of women and girls in refugee camps was made a first-order priority, alongside food, shelter and water; an adolescent girl may never recover from the damage done to her by the violence she may encounter in such a situation. The need is desperate. Many girls are traumatised by what has happened to them. They have no stability. They are taken from their communities, families and homes. They are alone and vulnerable to violence, rape, HIV and pregnancy when they are children themselves. Is violence against women and girls now a first-order priority in refugee camps? What is DfID doing about that? Are aid agencies being encouraged to move forward on that front?

I am often angry with the *Daily Mail* but I was particularly angry about its attack under its previous editor on Yegna, an Ethiopian acting and five-piece girl group. The group was belittled, trashed and ridiculed but in Ethiopia, Rwanda and other places, it was a brilliant way of reaching young girls via videos and

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radio performances in a weekly drama and talk show because radio is one of the great forms of communication in Africa— people listen to it. The show addressed all sorts of issues and gave girls information on forced marriage, isolation and teen pregnancies. However, scared by the headlines, the then Secretary of State for International Development announced in January 2017 that DfID would no longer fund this work.

How do you reach girls? How do you show them a different world in places where being a girl means that you have no rights, no back-up and no power. Justine Greening—my Secretary of State when I was at DfID—had the right idea. She coined the phrase "giving girls voice, choice and control over their lives" and fully supported my work on FGM. When I arrived in DfID, the first thing I said was that we were going to address FGM; it takes a long time for a Lib Dem to get into power so I was not going to lose the opportunity. There is no clearer example than FGM of violence against girls and child abuse. I was able to announce the biggest-ever funding commitment to tackling FGM in the world: £35 million. I am delighted to say that Penny Mordaunt has now topped that with a new announcement of £50 million, which is fantastically welcome.

As many noble Lords have said, at the heart of all this is education for girls because no education means not only lesser salaries and other such problems, but a generation or more in conflict-affected and fragile states lacking the skills for rebuilding their country for the future. The education of girls is fundamental to change and progress. How many girls are we now educating in fragile and conflict-affected states? We should be proud of what we have done so far but there is a hell of a lot more to do.

8.04 pm

Baroness D'Souza (CB): My Lords, I add my thanks to the noble Baroness, Lady Hodgson, for tabling the debate and for her persistent pursuit of improvement and reform in this extremely important area.

I want to tell a story this evening. It is a very short story with some uplifting elements. Early in 2002, when I was a governor of the Westminster Foundation for Democracy, I went as part of a small delegation to Afghanistan to see what we might be able to do. During my time there, I met an extraordinary young man called Aziz Royesh. One comes across extraordinary people in one's life and he was one of them. He had an absolute passion for education, and in particular for girls' education.

To that end he had set up a school—although it could hardly be called that: it was made up of a couple of tiny rooms in a bombed-out building in the extreme west of Kabul, which was the front line during the civil war and which had been utterly terrorised in previous years under the Taliban regime. He managed to set up a school with 30 pupils in three shifts, because there was not room for more than 10 pupils at a time. The pupils ranged in age from a little girl of seven, who did carpet weaving on the side to make money for her family—it was their only source of income—to a woman of 30-plus who wanted to learn geometry to know how to divide up her land for her sons.

I was so impressed by this venture that I began to raise very small amounts of money and send them across in brown paper bags—that was how it was done then. The money was used intelligently. For example, through the money we raised, one of the larger buildings in the village was repaired: a roof was put on it and windows and heating were put in, all through local builders. That was a masterstroke because it meant that the entire community crowded into the building in winter because no other heating was available. Aziz, who has become a very dear and close friend, used this opportunity to persuade families to be brave enough to send their children, especially their daughters, to school and also started adult literacy classes in the village.

The school has grown as time has gone on. In the last 13 years, almost 500 girls have graduated from the Marefat school, almost 98% of whom have gone on to higher education, including universities in south and central Asia, the Far East and Europe. A total of 271 full scholarships have been won by the school. One amazing statistic is that in 2012, the Asian University for Women in Bangladesh offered 16 scholarships to girls from the region, including Bhutan, Nepal, Pakistan, India and Bangladesh as well as Afghanistan, and the Marefat school won 11 of them. That simply illustrates the level of education provided by the school.

A total of 60 students went to the USA for high school and undergraduate and postgraduate degrees, of whom 42 were girls. On their return, these Marefat graduates worked in the President's palace, the First Lady's office, various ministries, the Parliament, the Independent Election Commission, the media and the academic world. Some 28% of the teaching staff at Marefat are themselves graduates of the school.

The UK contribution to education is already very great. Almost every person who has spoken in the debate has mentioned the importance of education, which we acknowledge. Indeed, DfID has done itself proud in supporting education—but this must continue and it must expand. I have told this story simply to illustrate that it is possible, even in the most difficult conflict situations, which Afghanistan represents, to build education that is of the highest quality and to expand it beyond the community where it begins.

I think we have all acknowledged that education is the magic bullet of development. If you educate a girl, you also educate a family; you educate a neighbourhood, you educate a region and eventually you educate a country. This is the only pathway to peace.

8.09 pm

The Lord Bishop of Gloucester: My Lords, I too thank the noble Baroness, Lady Hodgson, for securing this debate. It is a great honour to be taking part and to listen to the contributions of so many amazing supporters of women and girls. I should also like to draw attention to my interests as set out in the register.

Following previous speakers, I too should like to reinforce what has been said about violence and access to education. As has been said, before, during and after conflict girls face both physical and sexual violence. It is important to note that trauma follows adolescent girls when they flee from conflict, whether they become refugees or are internally displaced. There is a high

risk of sexual abuse in overcrowded, unsanitary and unsafe refugee areas. Girls face not only prostitution and the risk of early marriage; they also face isolation and a lack of access to healthcare and psychological support. I would like to ask the Minister: what specific action are the Government currently taking to support girls in these vulnerable places, and how will rebuilding peace after conflict specifically involve support for these girls?

This year, when the Government will host an international meeting on preventing sexual violence, will there be a focus on support for girls in particular? Where a country experiences violence, women and girls also face increased domestic violence in the home. Can the Minister let us know when the Government plan to introduce domestic legislation that will allow the UK to ratify the Istanbul convention? In particular, UK nationals must be able to be tried in UK courts for domestic violence committed against women abroad.

I turn secondly to education. As has been said, access to education is a particular challenge both during and after conflict. Two years ago I met Muzoon Almellehan, then an 18 year-old Syrian refugee and now at university in the UK. She has used her voice to call on the Government to increase support for girls' education. She said that while she was in a refugee camp in Jordan, she went from tent to tent to tell parents that their daughters needed teachers, not husbands. During conflict, girls are two and a half times more likely to be out of school than boys. While the Government have committed to supporting programmes which help girls to stay in education, in 2017 funding for education represented only 8.9% of bilateral aid.

When girls receive education and are included in political and economic systems, communities are empowered and they are better off. Programmes that listen to and serve the specific needs of adolescent girls are crucial, as has already been underlined. Last week, Muzoon emailed me to say, "Frankly, what I have been through was not easy, but this journey has taught me that I should never give up and I must do the best to help myself and to help other people, and to be strong for giving hope". That illustrates the resilience which has already been mentioned.

In responding to the challenges of both violence and education, we may need to adapt traditional methods of providing aid and assistance. Non-state actors can be effective local partners. I think in particular of the work being done in partnership with churches throughout the Anglican Communion and in particular with the Mothers' Union. I would be interested to hear the Minister's thoughts on how these sorts of relationships might be better developed.

Finally, we need to be careful about how we measure impact. Traditional value-for-money calculations may not be good at accounting for long-term work in fragile or post-conflict states. Making sex and age data disaggregation standard would help us to identify what works for adolescent girls specifically. The current *UK National Action Plan on Women, Peace & Security* will measure only a small number of indicators in this way, yet better interventions can be made when we know what works for girls.

I am very grateful for the opportunity to contribute today, and I look forward to listening to the rest of this debate.

8.14 pm

Baroness Massey of Darwen (Lab): My Lords, this is a very important debate and I thank the noble Baroness, Lady Hodgson, for introducing it so ably and with such energy. I only wish we had time to explore this issue further and in greater depth, but I know that she will continue to bring it back to us.

I should declare an interest as the chair of the Sub-Committee on Children in the Parliamentary Assembly of the Council of Europe. I will shortly be preparing a report on how violence against children is addressed by the sustainable development goals. I shall be looking around for help and ideas, so noble Lords will hear from me.

A Lancet commission in 2016 described adolescence as,

"a critical phase in life for achieving human potential".

For some adolescents this will be so, but for the adolescent girls we are discussing today, that potential will be blighted by abuse, sexual violence, poverty, poor health and lack of education, as pointed out by Plan International in its excellent briefing.

The lives of young, valuable future citizens are being destroyed, and this will have both national and international repercussions. One in six children are now living in a conflict zone and is more at risk from armed conflict than at any other time in the past 20 years, according to a recent report from Save the Children. Syria, Somalia and Afghanistan are ranked among the most dangerous.

International conventions and instruments have been flouted—in particular, Article 19 of the UN Convention on the Rights of the Child, which calls on states to protect children up to the age of 18 against,

"all forms of physical or mental violence, injury or abuse, neglect … maltreatment or exploitation, including sexual abuse".

Very few countries are not signed up to the UN Convention on the Rights of the Child.

We are four years on from the Global Summit to End Sexual Violence in Conflict attended by 120 Governments, over 100 NGOs and experts in health, legal matters and military fields. An action plan on abuse was drawn up. I ask myself: is it time for another global summit to follow up the recommended actions and to see what has happened since?

We know from reports and anecdotes from UNICEF, Save the Children, Plan International and other organisations that the situation is dire. We know the terrible, possibly irreversible impacts on children and young people, especially girls, who are also at risk of pregnancy and sexually transmitted infection. We know that civil society organisations work with Governments and communities to translate concerns into national policies, laws and actions. It is a terribly difficult task, with rogue kidnappings and random abuse at local levels.

What else is to be done? In 2018, a report on children and armed conflict from the UN Secretary-General called for the strengthening of partnerships to prevent violations. Partnerships exist at both government and community levels. International agreements and policies

[Baroness Massey of Darwen]
are not enough, however, unless there is a change of attitude in individual countries and communities. NGOs working on the ground engage in partnerships with communities, women's groups, faith groups and empowerment groups for young people—all very important organisations to work with.

Specifically, more efforts and funding are needed to focus on the needs of adolescent girls in conflict situations. Gender equality, education, health and empowerment of women and girls are all vital and must be included in any protocols for intervention and measured. Targets must be set and monitored. National policies, laws and actions must be reinforced, and we can play a part in this.

This is a complex and very difficult situation, and I ask the Minister specifically how the UK plans to contribute to providing creative ideas and practical support on positive action. Generations of children, including girls, are having their lives ruined by abuse in fragile and conflict-affected countries, thus disadvantaging those countries even more. We cannot stand by and watch this happen.

8.19 pm

Baroness Tonge (Non-Afl): My Lords, I too congratulate the noble Baroness, Lady Hodgson, on obtaining the debate this evening. I also thank her for all the work she does for women and girls in this field and the support she gives my group, the All-Party Parliamentary Group on Population, Development and Reproductive Health. I chair that group, and in the Commons I was my party's spokesperson for international development. I can endorse almost everything said in the debate tonight—certainly about South Sudan, which I have visited on several occasions.

There is no question that women and adolescent girls worldwide suffer terribly. I will talk about only one aspect of their suffering: abortion. I know it is a contentious issue but, as some of you probably know, I go in for contentious issues sometimes. I feel very passionately about this one. As the noble Baroness, Lady Hodgson, said, in conflict situations women suffer disproportionately far more than men, and adolescent girls are frequently targeted for rape—this being part of modern warfare. Is it to dilute the genetic line? I do not know, but it has certainly become part of warfare.

Rape is a very short, small word, but in this situation it is not just a quick act of sexual intercourse. It can involve the most horrific physical and mental injuries to these girls, which lasts all their lives. It is not just a quick thing, over in two minutes. The trauma and disgrace of rape is worsened for many girls if they become pregnant as a result and a child is born. The girls are frequently ostracised by their families and live alone and in disgrace, with nowhere to go. Personally, I cannot think of a more terrible fate.

In the last few years, though, helped tremendously by Lord Lester when he was a Member of this House, we have managed to clarify the Government's position on much-needed abortion after rape in conflict situations. The Government have acted nobly and very effectively on this, and I will talk a little more about it. The Government have declared that the UK development budget can now be used without exception to provide safe abortion where necessary and, if national laws of the country in conflict oppose abortion, international humanitarian law kicks in and allows abortion in that situation, rather than extending what amounts to inhumane treatment for the individual concerned. It is a noble position that our Government have taken and I congratulate them on it. We are one of very few countries to have taken a stand on this issue. What concerns me, however, is how often abortion is carried out under these guidelines when girls request it, and I would like clarification from the Minister. Are any statistics available?

I appreciate the difficulty and confidentiality that may be involved, but will the Minister tell us what effect President Trump's reintroduction of the global gag rule has had on this procedure? I understand that contributions from different countries are often pooled by NGOs working in humanitarian situations. As many Members will know, the United States Administration have banned any funds going to NGOs that may collaborate with NGOs from other countries that provide abortion services.

I have some more questions for the Minister and, if he cannot answer them now, perhaps he will write to me and put the answers in the Library. Can he tell us whether and how our development budget can be separated from that of other countries in this situation so that abortion can be carried out when necessary? Will the UK commit to sustainable funding specifically for abortion in DfID's budget and ensure that it goes to non-gagged organisations? Lastly, will our Government make clear internationally our support for access to abortion in conflict situations and ensure that those obligations are met, so that many adolescent girls will be relieved at least of one part of the suffering they have to endure?

8.25 pm

Baroness Sheehan (LD): My Lords, I start by thanking the noble Baroness, Lady Hodgson, for the very knowledgeable way in which she introduced this important debate. I want to acknowledge the impressive contributions from noble Lords from across the Chamber, which have reminded us of the great challenges that adolescent girls face.

Man-made conflict is the source of so much of the gratuitous violence that we see in the world today, much of it directed towards women and children. It is therefore welcome that the cross-Whitehall working group on women, peace and security is supported by the Stabilisation Unit, a cross-government unit providing expertise to build stability, prevent conflict and meet security challenges internationally. The Government's national action plan of December 2018 tells us that women are essential participants in conflict prevention and peacebuilding and that their participation leads to peace agreements that are measurably more durable. Given all that, why is it that the Stabilisation Unit's page on the Government's website shows no evidence of work that supports women as peacebuilders or of any projects shaped by that evidence? I hope it is an oversight, but I wonder whether the Minister could look into it.

In the same national action plan, Conflict, Stability and Security Fund projects are mentioned liberally, yet the CSSF has repeatedly come in for criticism, not least from the Independent Commission for Aid Impact, which awarded it an overall amber/red score in its report last year. Can the Minister assure me that aid spending through the CSSF now takes a more relevant and evidence-based approach to addressing conflict, instability and insecurity, as recommended by ICAI? I am interested too in hearing his response to the suggestion of the Secretary of State for Defence that the MoD is a suitable vehicle for becoming involved in preventing sexual violence in conflict zones.

Muriel Spark's great quote from *The Prime of Miss Jean Brodie*:

"Give me a girl at an impressionable age and she is mine for life",

tells us of the importance of girls attending school, particularly secondary school. But, as we have heard today, much conspires to keep them away: the burden of family responsibility, household chores, issues of period hygiene, FGM complications and problems relating to early marriage, forced marriage, pregnancies and resultant issues such as fistula and faecal incontinence, to mention but some. Following the remarks of the noble Baroness, Lady Tonge, I should add abortion to that list.

We have already heard the UN statistic from South Sudan, where an adolescent girl is more likely to die in childbirth than complete her education. That is chilling, and it is likely to apply to other conflict-affected countries. Yet we know that for every year a girl spends in school, the family's income will go up by 10%. That is a huge return. Investment in education must be led by an evidence base recognisable to communities in developing countries. But the ODI said in its report of 13 June last year, *How to Deliver the G7's Ambitious Commitments to Gender Equality and Girls' Education,* that that does not always happen. Will the Minister assure me that programmes are being designed from the outset to accommodate evidence that speaks to what works to support adolescent girls to reach their potential? I add my voice to that of the right reverend Prelate the Bishop of Gloucester when she asked for that information earlier.

I end with what I call the curse of short-termism. We have heard much about the challenges faced by adolescent girls and entrenched social practices. However, I have found—I am sure that many noble Lords will agree—that all too often we hear of successful projects that end with no plan for a follow-up. That short-termism is short-sighted. I share the concerns of my noble friend Lady Featherstone when she talked about funding for the Ethiopian Spice Girls group that was pulled in the face of vociferous attacks from the *Daily Mail*. Programmes such as the Yegna project could bring prolonged benefits.

I also want to bring to noble Lords' attention another example of a DfID-funded project in Kenya, which used football as a hook to recruit 4,500 young people—crucially, men and boys—into a programme to reduce violence against women and girls. Itad's evaluation found that the programme would have benefited from further DfID investment, which, however, was not forthcoming. I hope that the Minister will challenge assertions that such programmes are a waste of money because they highlight the sustained, long-term engagement necessary to shift social norms and reduce violence against women and girls.

8.32 pm

Lord Collins of Highbury (Lab): My Lords, I too thank the noble Baroness, Lady Hodgson, for initiating this debate. It is vital that we keep this issue high on the political agenda. As she said, violence against women is a global epidemic. The WHO estimates that approximately one-third of women globally experience some kind of violence, physical or sexual, from a partner or non-partner in their lifetimes. As my noble friend Lord McConnell highlighted, adolescent women are especially vulnerable to sexual violence, which further increases the risks of unwanted pregnancies, as we heard, unsafe abortions and STIs, including HIV/AIDS. During conflict, weakened institutions, poverty and financial hardship leave adolescent girls vulnerable to abuse, exploitation and violence.

Over the Recess, I listened to the UNHCR special envoy, Angelina Jolie, when she was guest editor of the "Today" programme. Her programme focused on discussing solutions to violence against women in conflict zones. Her themes were justice, accountability and international leadership. We have heard much about those themes in this debate. Like Angelina Jolie, I acknowledge the UK's leadership role globally in maintaining this subject's public profile. The critical issue that she identified, which of course your Lordships' Sexual Violence in Conflict Committee also highlighted two and a half years ago, is that we need to maintain the momentum. We need to ensure that we have the tools, sufficient resource and the political will.

There is no doubt that since the PSVI launch in 2012, the UK has led the world in efforts to end the horror of sexual violence in conflict. I welcome the announcement of an international conference to be hosted by the UK in November, five years on from the global summit referred to by my noble friend Lady Massey. We are told it will focus on conflicts past and present and evaluate the progress which has been made by putting survivors at the heart of the event. Will the Minster explain a little more about how this will be achieved? Will there be greater civil society engagement and what support will be given to participants who are survivors of such violence?

Last year the Government allocated nearly £3.4 million to tackle sexual violence in conflict in countries such as the Democratic Republic of the Congo, Burma, Colombia and Iraq, and they have responded to the horrific circumstances of the Rohingya in Myanmar. Will the Minister say how the specific needs of adolescent girls were recognised and addressed in our humanitarian support and humanitarian programmes? What specific action is DfID taking to promote gender equality in these areas?

As we have heard in this debate, justice and accountability are vital parts of any strategy for tackling sexual violence. As the noble Baroness, Lady Hodgson, said, in November film-makers came to Lancaster House from conflict-affected countries and Commonwealth countries to discuss how they

[Lord Collins of Highbury]
could use their work making films to stamp out stigma, which is an important element of fighting sexual violence and of holding people to account so that they cannot act with impunity. At that time the noble Lord, Lord Ahmad, whom I congratulate on his work, called on countries to sign up to the new Murad code on sexual violence, which sets out the expected standards of behaviour from government bodies, NGOs and aid workers when gathering evidence of sexual violence in conflict situations for courts. Can the Minster tell us how many countries are expected to sign up to the code and how many have already done so?

As we have also heard, a comprehensive approach is essential, including tackling and targeting the underlying gendered norms and behaviour that cause and perpetuate sexual violence. Women endure discrimination, violence and the denial of their rights simply because they are women. We must tackle the underlying problem of a lack of empowerment, education and inclusion. Like other noble Lords, I would like to hear from the Minister about what action the Government are taking to ensure that they and others meet the commitments made at last year's G7 conference and in the declaration on quality education for girls, adolescent girls and women in developing countries, particularly those in emergencies and in conflict-affected and fragile states. As the noble Baroness, Lady D'Souza, said, education is the key to change.

8.39 pm

The Earl of Courtown (Con): My Lords, I thank all noble Lords for contributing to this fascinating and important debate. In particular, I am hugely grateful to my noble friend Lady Hodgson for bringing it to the House. As all noble Lords have said, she is a well-known and impactful campaigner for gender equality, particularly for the rights of girls and women in conflict-affected states.

As all noble Lords said, adolescence is a critical time for girls when their experiences will profoundly affect the rest of their lives. Many face an increased risk of violence, pregnancy and early marriage, and the burden of family and community aspirations as well as new opportunities and decisions preparing for the type of life and work they wish to pursue.

The noble Baroness, Lady Tonge, asked a number of questions relating to abortion in these conflict areas. Where abortion is permitted, we can support programmes promoting safe abortion. In conflict situations, international humanitarian law principles might justify offering abortion rather than perpetuating what amounts to inhuman or degrading treatment. She asked a number of other questions which I have not answered. If possible, I will write to her with more details and place a copy in the Library.

As the noble Baroness, Lady Massey, and the noble Lord, Lord Collins, mentioned, women and girls bear a disproportionate burden of harm during conflict and war. In countries affected by conflict, girls are two and a half times more likely than boys to be out of school. In conflict situations, violence begins early in the lives of adolescent girls, with 60% of sexual assaults happening to girls aged 18 or under. On top of direct threats to their lives and safety, conflict harms adolescent girls in ways that are often overlooked. Violence and destruction interrupt access to education—a point mentioned by my noble friend Lady Hodgson, the noble Lord, Lord McConnell, and the noble Baroness, Lady Goudie. Girls in conflict zones are 90% more likely to be out of school than girls living in peace.

My noble friend Lady Hodgson and the noble Lord, Lord McConnell, wanted to know how we are ensuring that adolescents do not continue to fall through gaps in the system. The Government work with a wide range of international partners to ensure the best results for girls. We support partner nations to develop and implement national action plans on women, peace and security, and on child, early and forced marriage. DfID has made landmark funding commitments to address the needs of adolescent girls, and we have made the largest commitment ever to ending female genital mutilation. Through the Girls' Education Challenge, we have committed a further £400 million to promote quality girls' education, which all noble Lords agree is one of the most important things that should continue.

Conflict also leads to a breakdown in the customary and formal laws that protect girls. This allows harmful traditional practices, such as FGM and child, early and forced marriages, to rise in times of war. The scale of the problem is enormous, today affecting 1.2 billion of the adolescent population—the largest number the world has ever known. States have a moral and legal obligation to ensure girls' protection and safety.

In supporting and protecting adolescent girls, we are empowering the decision-makers, peacebuilders and business leaders of the future. When girls have an education and are not forced to marry early, they and their children are healthier and better educated, improving the economic and physical well-being of generations to come. The Government are committed to promoting gender equality and supporting adolescent girls in fragile and conflict-affected states. Without faster progress on gender equality, the sustainable development goals will not be achieved.

Our national action plan on women, peace and security sets out our approach to promoting gender equality through our work to build security and stability overseas, as well as our commitment to protect the human rights of girls and women. DfID's *Strategic Vision for Gender Equality* is a call to all stakeholders to step up on gender equality. It highlights adolescence as a critical time and promotes support for women and girls in conflict and crisis. DfID is committed to leading the way in this area. Today, as acknowledged by most noble Lords this evening, the United Kingdom is an international leader on gender equality. The Government are committed, across departments, to putting women and girls at the heart of our work to prevent and resolve conflict in some of the world's most challenging contexts.

At the London family planning summit in July 2017, the UK ensured that the needs of women and adolescent girls in humanitarian crises were centre stage. We committed to spending an average of £225 million every year for the next five years to expand access to sexual and reproductive health services around the world, including in areas at risk of, or affected by, crises, as raised by the noble Lord, Lord Collins.

The noble Lord also mentioned Burma. The UK has led the way on the Rohingya crisis with a package of support focused on the needs of women and girls. We will reach about 250,000 people affected by sexual and gender-based violence with targeted training, psychosocial support and sexual and reproductive health services.

The UK's support empowers girls to become leaders and decision-makers of the future. In Burma, where only 10% of national MPs are women, the UK has started new programmes with Girl Determined to support the Girls' National Conference, creating safe networks for girls and growing their voices in politics. In north-east Nigeria, more than 2,300 girls and women, survivors of Boko Haram's violence, have been supported to help restart their lives through intercommunal dialogue, the training of community leaders in peacebuilding, and psychosocial and medical assistance.

My noble friend Lady Anelay and the noble Baroness, Lady Sheehan, also raised issues relating to the work of DfID, the Ministry of Defence and the Foreign and Commonwealth Office, particularly in relation to South Sudan, as mentioned by the noble Baroness, Lady Featherstone. In South Sudan, we will help about 250,000 girls to stay in school. Also in South Sudan, the UK is funding the International Medical Corps to support survivors of gender-based violence and provide long-term prevention strategies. This work includes psychosocial and medical support to survivors, training for police on handling gender-based violence cases and working with men and community groups on addressing negative social attitudes towards women.

My noble friend Lady Hodgson talked about how specific programmes address the high danger for adolescents. The UK is leading the fight against modern slavery internationally. We also know that gender inequality is a key driver of modern slavery and have committed in excess of £200 million in UK aid to help address such exploitation and abuse, placing particular emphasis on ensuring that the needs of the most vulnerable are taken into account.

DfID's flagship Girls' Education Challenge programme, as mentioned by the noble Baroness, Lady Featherstone, is helping up to 1.5 million marginalised girls to receive a quality education, including girls in refugee camps in Kenya and Afghanistan, and girls displaced within Somalia among other countries. In Syria, the United Kingdom helped to launch the No Lost Generation initiative, which provides education and safe spaces where children can receive counselling to help cope with the effects of violence that they have experienced or witnessed. In 2017-18, the UK reached 11.3 million children with education.

The UK will continue to be a champion for girls and women in conflict on a global stage. At this year's UN Commission on the Status of Women, we will host an event to share evidence and secure commitments on social protection programmes to target adolescent girls. Through our work in the G7, G20 and other multinational platforms, promoting gender equality in conflict will be a strong theme.

The Government are also investing in research to understand what works to help adolescents overcome challenges and reach their potential. The Gender and Adolescence: Global Evidence programme is a nine-year longitudinal research programme including 18,000 adolescents, a substantial sample of them refugees or displaced. It is important that we invest in programmes that tackle not only the basic needs of adolescent girls, including education and health, but their psychosocial well-being, voice, agency and their vulnerability to violence, child marriage and exploitation.

The right reverend Prelate the Bishop of Gloucester asked whether there will be support for girls at the PSVI international conference later this year. The conference will take a survivor-centred approach, ensuring that the needs, concerns and priorities of all survivors—women, men, boys and girls—are discussed and addressed.

My noble friends Lady Hodgson and Lady Anelay and the noble Baroness, Lady Tonge, also wanted to ensure that the United Kingdom does not lose momentum on this important issue. I am pleased that a number of noble Lords were able to attend the PSVI film festival, which shone a spotlight on the stigma often faced by survivors of sexual violence. The Government remain committed to ending the horror of sexual violence in conflict, and we will host a PSVI international conference in November 2019. I praise my noble friends Lady Anelay and Lord Ahmad for the work they have done in this area.

There are a number of points I have not covered, but I will write to all noble Lords on their issues and place copies in the Library. Throughout our work, the Government will continue to lead by example in demonstrating how gender equality and a focus on the rights of adolescent girls is an investment in peace, security and prosperity.

House adjourned at 8.51 pm.