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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

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

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
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

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

House of Lords

Monday 28 January 2019

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Home Care Workers

Question

2.37 pm

Asked by ***Lord Wills***

To ask Her Majesty's Government what new steps they will take to ensure that home care workers are paid the national living wage for travelling between appointments.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the law is clear: workers are entitled to the minimum wage for time spent travelling from one client to another. The Government are committed to enforcing minimum wage legislation. Workers who think they might be underpaid should first speak to their employer. Alternatively, they can call the ACAS helpline for advice and referral to HMRC for possible enforcement action.

Lord Wills (Lab): I am grateful to the Minister for that reply. I am glad he recognises that there is a problem, and I hope he agrees with me that more needs to be done to address it. It is a disgrace that UNISON has estimated that over 50% of home care workers do not receive any payment for travelling between appointments. The National Audit Office has estimated that up to 220,000 such workers do not receive the national minimum wage. Clearly, something is going wrong and more needs to be done. The Government might be able to look at the way the Care Quality Commission regulates home care firms and to insist that it scrutinises all standard contracts to ensure that workers receive the payment they are due for travelling between appointments. Will the Minister agree to explore this option—I hope he will write to me with the results of his exploration—and if not, why not?

Lord Henley: My Lords, I will look at the figures the noble Lord cited. I am not sure I fully accept them. The role of the Care Quality Commission is to make sure that health and social care services provide people with safe, effective, compassionate and high-quality care. It is not within the remit of its inspectors to check the contractual arrangements of each home care worker. I will certainly ask officials to look at that and to ask colleagues in the Department of Health. I also make it clear that local authorities, when commissioning services and when guidance has been issued by the Government, should assure themselves and have evidence that their service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration should be at least sufficient to comply with the national minimum wage legislation via hourly pay or equivalent salary. That will include appropriate remuneration for any time spent travelling between appointments.

Baroness Burt of Solihull (LD): My Lords, the Minister says that the law is clear, but the problem lies with its enforcement, as the noble Lord, Lord Wills, has said. Too many home care workers get confusing pay packets which can obscure the fact that they are not being paid for travel time. Could it not be made a legal requirement that employers separate out travel time and make pay packets clearer on the different elements of pay?

Lord Henley: The noble Baroness is right to draw attention to transparency in pay packets, and I can give an assurance that legislation will take effect in April of this year for the first time entitling all workers to receive a pay slip. Where a worker is paid with a reference to time worked, the pay slip will now also detail the number of hours worked.

Baroness Gardner of Parkes (Con): My Lords, I have personal experience of this through someone we helped eventually to get citizenship here—it took 10 years and was supported by other Members of this House—and she now works as a carer. I asked her about this issue following the court ruling that they should be paid for travel between appointments, and she said that the issue had never been brought up. I wrote her a letter pointing out that this was position, and she handed it into the agency that she works for. The agency immediately tore it up and said, "You have no right to discuss our affairs with anyone else". To this day, she has still not had a penny for travel, even though most of her work is one hour at this place and then half-an-hour's walk to the next. She is playing a valuable role, but the ruling of the court is absolutely ignored.

Lord Henley: My Lords, I did not want to comment on any individual case, but what my noble friend has said sounds completely and utterly wrong. As I have said, the law is clear. I recommend that my noble friend tells her friend to take advice from ACAS, which I hope would then recommend enforcement by HMRC.

Lord Watts (Lab): My Lords, is it not the case that the minimum wage was introduced to give an hourly wage? If that person is travelling and not being paid, does that not undermine the principle of an hourly minimum wage?

Lord Henley: My Lords, the point is that the travelling time between the two jobs should be taken into account: it should be part of what is called the pay reference period. One should look at the whole pay reference period and make sure that it is compliant with the minimum wage legislation. If there is any doubt, take advice from ACAS.

Baroness Watkins of Tavistock (CB): My Lords, it would be helpful if the Minister could comment on the challenges to local authorities of trying to place contracts for people who need at least three visits a day in rural communities, where the time spent between visits is significant and they are unable to fully factor in those costs. Is he aware that in some places they are

[Baroness Watkins of Tavistock]
choosing to use different carers for the same individual across the 24-hour period so that they avoid paying some of the travel costs?

Lord Henley: My Lords, we are dealing with the pay of individuals and the travel costs between the two visits. I have tried to set out what the law is, and I think that it is perfectly clear. On funding for local authorities, it is for them to decide how to deal with it. The Government have given councils access to £3.6 billion extra funding for adult social care in 2018-19 and £3.9 billion in 2019-20.

Baroness Wheeler (Lab): My Lords, this is predominantly a female workforce, often employed under precarious employment conditions—on zero-hours contracts without any guarantee of the number of hours worked or available each week. The Resolution Foundation estimates that care workers are collectively cheated out of £130 million each year. Age UK says that we will need 650,000 extra care workers for the future. We know that we need 130,000 care workers just to meet today's demand. Does the Minister agree that giving care workers a decent living wage for all the time spent on the job is not only fair but vital to recruiting new staff and addressing current and future chronic staff shortages? If he does, what is he going to do about it?

Lord Henley: My Lords, we believe it is vital that they are paid properly and that is why we gave advice to local authorities on how they should perform their duties. I repeated that advice on what local authorities should do to the noble Lord, Lord Wills. We have also made funding available to local authorities, so it should be for them to ensure that they have the right people to do the job.

Ofcom: RT News Channel

Question

2.45 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government what assessment they have made of the findings of Ofcom's investigations into the RT news channel.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, investigations into RT are a matter for Ofcom as the independent communications regulator. On 20 December 2018, Ofcom announced that the RT news channel broke broadcasting rules in seven programmes. Ofcom is minded to consider a statutory sanction, and it is right that it makes decisions without government interference. On 17 January, RT announced that it will be seeking a judicial review of Ofcom's findings. It is vital that as a society we remain vigilant regarding the spread of harmful disinformation, and Ofcom has strong powers to tackle it where it occurs in broadcast news.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I am really grateful to the Minister for a very helpful Answer. Does he agree that it is ironic that RT takes advantage of the freedoms in this country that are not available in Russia? Will he nevertheless take some government action to stop RT, the Russian television agency, the Sputnik news agency, based in Edinburgh and London, and indeed all the social networks spreading the Kremlin's fake news throughout this United Kingdom?

Lord Ashton of Hyde: I thank the noble Lord. I agree, although I would not want to comment specifically on RT, for the reasons I have mentioned. However, in 2017 the Prime Minister said that the Russian state has been launching,

"a sustained campaign of cyber espionage and disruption",

which has included,

"meddling in elections and hacking the Danish Ministry of Defence and the Bundestag".

Therefore, I agree with the noble Lord's view.

Regarding disinformation generally, we are working with the DfE to include information for schoolchildren on how to make judgments about what they read on social media, and a consultation will be coming out this year. We are also launching a programme of adult internet literacy, which will be very important in enabling older members of society to understand how this new technology works. In addition, we are engaged with international partners, such as the G7, the UN and the Council of Europe, but, above all, we are introducing the online harms White Paper, part of which will deal with tackling disinformation. Generally speaking, we will look at illegal harms and the much more difficult area of harms that are legal.

Viscount Ridley (Con): My Lords, will my noble friend take into account the fact that RT and other Russian actors have produced strong propaganda against the shale gas industry and that this is having a real effect on the debate in this country?

Lord Ashton of Hyde: As I have said, RT is regulated by Ofcom, which is independent of government, and I know that it will do its job.

Viscount Colville of Culross (CB): I declare an interest as a series producer for the Smithsonian Channel and CNN. A week after the ruling on RT, the personal details and photographs of journalists working in Russia for the BBC were leaked online. This action was publicly condoned by President Putin's press office and was seen as an act—indeed, part of a pattern—of intimidation. At a time when the BBC's Russian service had seen an annual increase of 20% in its audience, what are the Government doing to protect the BBC World Service and the Russian service within the Russian Federation?

Lord Ashton of Hyde: The BBC's charter was renewed for 10 years. Its job is to provide impartial news, and Ofcom regulates those services. It has been given the financial backing to do that—£3.8 million of licence-payers' money. I believe that an extra £219 million has

been provided over the next four years to increase the number of Russian language programmes that the BBC World Service can produce.

Lord Stevenson of Balmacara (Lab): It is clear that Ofcom is doing a thorough and effective job on this very difficult case. We hope it will move forward in an appropriate way. Does this case not raise the wider question of whether the holder of the broadcast licence here is a fit and proper person to carry out the duties for which it is responsible? The issue came up recently during the Sky takeover; there was common ground in the House that the existing rules, both through statute and through the precedents set in previous cases, mean that this is not an effective test. Are the Government going to do anything about that?

Lord Ashton of Hyde: I do not want to talk specifically about RT for the reasons I mentioned. Ofcom has sanctions which can include fines, suspension or revocation of a licence if Ofcom deems that suitable.

Lord McNally (LD): My Lords, is the Minister aware that Ofcom licenses many hundreds of broadcasters in London? This is a good example of what the noble Lord, Lord Howell, often refers to as Britain's soft power. Is it not very important that we leave Ofcom to the job it was given with the powers it was given? The idea that some kind of political or government pressure was involved does not set a good precedent with regard to closing radio or television stations. We should let RT make its case to Ofcom, let Ofcom use its powers and then see what happens.

Lord Ashton of Hyde: I completely agree with the noble Lord. That is why I said in my initial Answer that it is right for Ofcom to make decisions without government interference.

The Earl of Erroll (CB): My Lords, the Minister is right that Ofcom is not responsible to the Government. but am I right in saying that it is responsible to Parliament?

Lord Ashton of Hyde: I am not sure; I do not know whether it is responsible in a statutory sense but of course ultimately Parliament can decide what it wants. The main point is that, in a democratic society such as ours, the regulator of the news and of broadcasters should not be linked to government, especially the Executive. That is the situation we have now and I believe that it is working well.

Sexual Offences Legislation

Question

2.53 pm

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government what plans they have to reform sexual offences legislation.

Baroness Vere of Norbiton (Con): My Lords, the Government are committed to ensuring that the law on sexual offences is fit for purpose and responsive to changes in attitudes and behaviours. The Sexual Offences Act 2003, amended in 2015 and 2017, has a clear and comprehensive framework of offences to deal with the scourge of sexual abuse and exploitation.

Lord Campbell-Savours (Lab): My Lords, I have a simple question: is the law credible in helping genuine accusers when a man now on remand, charged with making false allegations of multiple homicides, fantasy assaults by paedophile rings and fraud, is able to accuse Sir Edward Heath and Lord Janner of rape, and is believed by the police so that the press publishes their names, destroying their reputations? The innocent are treated as guilty and the guilty, false accusers are treated as innocent until found to be lying, by which time the damage is done. Their real motive is compensation under the criminal injuries compensation scheme. The law is a shambles.

Baroness Vere of Norbiton: I respect the tenacity of the noble Lord, Lord Campbell-Savours, and his simple questions in this area. The case that he has raised has been the subject of extensive debate in your Lordships' House in recent months. To wrongly and deliberately accuse someone of a sexual offence is a very serious matter and is treated as such by the police. The noble Lord will be aware that Carl Beech, aka "Nick", has been charged with 12 counts of perverting the course of justice and one of fraud. All people charged with, or indeed accused of, an offence, sexual or otherwise, remain innocent until proven guilty.

Lord Lexden (Con): Is it not imperative to restore full respect for the cardinal principle that my noble friend has just mentioned, a principle so flagrantly violated by Mr Mike Veale in respect of Sir Edward Heath and, sadly, by the Church of England in respect of the great bishop George Bell, although the latter's reputation has now been largely restored as a result of a welcome report from the Church last week? It is tremendous news that George Bell is to get a statue in Canterbury Cathedral.

Baroness Vere of Norbiton: I acknowledge the strong feelings on all sides of the House on this matter. It is extremely important that we get the balance right. Since the events to which noble Lords have referred, a number of steps have been taken. For example, the College of Policing guidelines on media relations, which dictate when a person's identity should be released, have been subject to consultation. They were updated in 2017, and further updated in 2018 to include deceased persons. A lot has gone on in this area and I believe there has been much improvement.

Baroness Burt of Solihull (LD): My Lords, the coming Domestic Abuse Bill is very welcome but there is a gap, in that it does not seem specifically to cover people whose immigration status is uncertain. They risk being taken as immigration offenders if they report sexual violence, which makes them reticent to report incidents. Does the Minister agree that anyone subject to sexual violence should have equal recourse

[Baroness Burt of Solihull]
to the law, regardless of their immigration status? Could that not be made clear in the Domestic Abuse Bill?

Baroness Vere of Norbiton: I thank the noble Baroness, Lady Burt, for raising that issue. The Domestic Abuse Bill was published in draft form on 21 January, following a long consultation that received 3,200 responses. Its goal is to deter offenders and protect victims. The noble Baroness is quite right that people whose immigration status is unsure need protection too, and I hope she will put forward the points that she has raised as the draft Bill comes to your Lordships' House.

Lord Beecham (Lab): In addition to the need for legislation, there is clearly a need to identify and support vulnerable adults and children before, as well as after, abuse takes place. What action is being taken in this respect by the Department for Education and the Department of Health and Social Care?

Baroness Vere of Norbiton: The noble Lord raises an important issue. One of the ways in which the law has been progressing over recent years is that many of the more recent changes have focused on early intervention, which is critical, particularly when it comes to communication of a sexual nature with a child. With regard to specific action being taken by the Department for Education and the Department of Health and Social Care, I will write to the noble Lord.

Baroness Newlove (Con): My Lords, as Victims' Commissioner I have to put my pennyworth in. The noble Lord, Lord Campbell-Savours, mentioned the criminal injuries compensation scheme and suggested that victims are in it for money. I suggest that he reads my recent report, which came out on Wednesday. I have met many victims who are not in it for the money; actually, they are in it for justice for what happened to them. Do the Government have any plans to review and amend the Criminal Procedure and Investigations Act 1996 to include a requirement to seek complainants' consent in relation to their digital evidence and personal records, with a clear and defined limit and effective judicial oversight? Many victims listening to this already do not come forward, and I do not want many more not to come forward because of what goes on in procedure.

Baroness Vere of Norbiton: I commend the work done by my noble friend the Victims' Commissioner. It is a very weighty tome that she has worked on, looking at the criminal injuries compensation scheme. There are many things we can do in this area. We will take on board the recommendations of the Victims' Commissioner, and those of IICSA, and we are consulting on future changes to the scheme. The report will come out later this year.

We will bring forward legislation as soon as possible, for example to remove the pre-1979 "same roof" rule, which will mean that certain victims can reapply. I will write to my noble friend on her specific point about the legislation.

Lord Cormack (Con): My Lords, the dead cannot answer. There is still a question mark that has not been removed from the reputation of the great George Bell. Should it not be the absolute rule, and should not the Government give this immediate attention, that for any dead person accused there should be no publication of their name until there is really substantial evidence of guilt?

Baroness Vere of Norbiton: I refer my noble friend to my answer to a previous question. Following the events of recent years, there has been a substantial and significant change to the College of Policing guidance. This now covers deceased persons too, and is published on the Authorised Professional Practice website, available for all practitioners to see. The previous Home Secretary asked the HMICFRS to do a short and targeted review of this issue in particular, to make sure that the release of people's names prior to charge is done in only the right circumstances.

Florence Nightingale: Bicentenary

Question

3.00 pm

Asked by ***Lord Crisp***

To ask Her Majesty's Government what plans they have to commemorate the bicentenary of the birth of Florence Nightingale in 2020.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the Department of Health and Social Care is working with the Chief Nursing Officer for England on plans for the occasion, and will focus on rightly celebrating those in the nursing professions. Plans include supporting the Nursing Now campaign across the NHS in England. In addition, the Florence Nightingale Museum—located across the river within St Thomas' Hospital—is in early discussion with partners, including the Heritage Lottery Fund, regarding a number of events to mark the bicentenary.

Lord Crisp (CB): I thank the Minister for his encouraging response, and I had better declare my interest as chairman of Nursing Now, which he just referred to. Florence Nightingale is a truly global figure —the foundational and inspirational figure for nursing and health systems worldwide. This is an enormous opportunity for the UK. We should be using this bicentenary not just to celebrate nursing and other great nurses such as Mary Seacole, but as an opportunity to promote the contribution the UK makes to health globally. This is a great post-Brexit—I assume it will be post-Brexit—opportunity to promote UK expertise in everything in health, from academia to commerce. The World Health Organization is debating her bicentenary today, and will be making a major announcement about what it intends to do. The UK needs to do the same.

Does the Minister agree that this is a tremendous opportunity for the UK that we must grasp? Will the Government join the WHO, Nursing Now and others to promote nursing and support plans to develop young nurses worldwide?

Lord Ashton of Hyde: My Lords, I agree with the noble Lord that this is a very good opportunity to support nursing both in this country and abroad. I pay tribute to those in the nursing profession; those of us who have had care from nurses will understand what I mean.

As I said, the NHS is celebrating the year of the nurse in 2020 and will be organising a number of activities, culminating in an international conference organised by the Florence Nightingale Foundation in October 2020. As far as Nursing Now abroad is concerned, I know the noble Lord is meeting the DfID Minister on 5 February to ask for more practical support. I can confirm that we support the aims of the Nursing Now campaign and its promoting the importance of health workers to achieve the goal of universal health coverage.

Baroness Chisholm of Owlpen (Con): My Lords, Florence Nightingale was ahead of her time in realising the importance of data and statistics—in her day I think it was called information and relevant points. Does the Minister realise that today is Data Privacy Day, and that my Private Member's Bill, the Health and Social Care (National Data Guardian) Bill, has received Royal Assent? Does he agree that this is a very good sign for the health service going forward?

Lord Ashton of Hyde: My Lords, as the DCMS Minister, I am aware of course that it is Data Privacy Day. Council of Europe Convention 108 is the only binding international instrument which is signed by 54 states, including Russia. Data Privacy Day celebrates the anniversary of its signing in 1981 and I agree with my noble friend that it is an important day. She is right that Florence Nightingale was an important statistician, and she was the first female member of the Royal Statistical Society in 1858. The national data guardian legislation that my noble friend took through the House as a Private Member's Bill is excellent because it promotes trust in health data so that we can gain the maximum benefit from it.

Lord Griffiths of Burry Port (Lab): My Lords—

The Lord Bishop of London: My Lords, as the noble Baroness rightly said, Florence Nightingale not only cared for the sick and wounded but was a statistician, thus providing the foundation of our infection control today. Does the Minister agree that the best tribute to Florence Nightingale is to ensure that nurses today have enough time and resources to continue their own professional development, which contributes not just to the National Health Service but to the health and economic status of this country?

Lord Ashton of Hyde: I completely agree with the right reverend Prelate: we want more nurses and we want to encourage nurses to join the profession and, importantly, to stay in it. My right honourable friend the Secretary of State has recently launched his long-term plan, which addresses in part the problem of the lack of nurses.

Lord Griffiths of Burry Port: My Lords, I would not have wanted to give way to any Bishop other than the right reverend Prelate the Bishop of London, who has extensive experience of her own in this very field. We have noted the body of people who will be organising the celebration—quite properly—and we look forward to those celebrations, but they have insisted that if we are to honour nursing properly, we should be looking forward rather than back. Some 40,000 health service nursing vacancies need to be filled. Might something as simple as reinstating bursaries for nurses become government policy? Others have thought about it; I am sure that the Minister will want to say something positive about it, too.

Lord Ashton of Hyde: Of course, that is not directly relevant to the DCMS, but I am aware that it is an issue. That is why the Secretary of State for Health and Social Care, who was previously Secretary of State at the DCMS, established a DHSC-led nurse supply board to drive progress with health bodies on a range of measures, including a national recruitment campaign, action to encourage nurses who have left the NHS to return to practice, and a programme to encourage nurse retention and to look at situations where suitable nurses might be turned away by disproportionate language controls. We are addressing the issue. The one thing on which I think we all agree is the tremendous benefit that the nursing profession brings to us and countries abroad.

Brexit: Parliamentary Approval of the Outcome of Negotiations with the European Union

Motion to Take Note

3.08 pm

Moved by ***Baroness Evans of Bowes Park***

That this House, in accordance with the provisions of section 13(6)(b) of the European Union (Withdrawal) Act 2018, takes note of the Written Statement titled "Statement under Section 13(4) of the European Union (Withdrawal) Act 2018", made on 21 January, and of the Written Statement titled "Statement under Section 13(11)(a) of the European Union (Withdrawal) Act 2018", made on 24 January.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, the EU withdrawal Act set out a process for the Government to follow in the event that at this point we had not secured a deal to leave the European Union which had been approved by the House of Commons. In accordance with Section 13 of the Act, last week the Government made two Written Statements. The first was to set out next steps following the result of the vote on Tuesday 15 January. The second was to confirm how the parliamentary process would work going forward. So today's debate—the latest but, I suspect, not the last—is in one sense simply a formal step that we have to take to satisfy the requirements of the legislation, but it also offers an opportunity to take stock.

The Motion before the House asks us to take note of both Statements in the same terms as the government Motion that the House of Commons will debate tomorrow. The Commons Motion is amendable, so there are likely to be votes on a variety of options at the conclusion of the debate. Noble Lords will be aware that a number of amendments have been tabled in the other place. They range from time-limiting the

[Baroness Evans of Bowes Park]
backstop, or replacing it with alternative arrangements, to seeking an extension to Article 50 or membership of a customs union. It will be for Mr Speaker to select the amendments to be voted on, and for MPs to decide what to support.

It is not my role to speculate on the outcome of the proceedings in the other place, and I will not do so. However, the Government and this House will need to reflect on any decisions that are made tomorrow. In this House, the noble Baroness, Lady Smith of Basildon, has tabled her own Motion. I will leave it to my noble friend Lord Callanan to respond to it; I have no doubt that he is eagerly looking forward to his third opportunity in recent weeks to respond to a debate of this sort.

This will not be the last time that the House of Commons is on the cusp of significant decisions which this House will want to have an opportunity to inform. I will do all I can, working with the other parties in this House, to ensure that that happens. We in this House have helped shape the process of leaving the EU and will continue to do so in the months ahead. In opening the debate on 6 December, I outlined the contribution that this House has made to the legislative programme needed to leave the European Union. It has considered legislation line by line. It has asked questions of government, proposed amendments and improved Bills through its work, but it has ultimately recognised the primacy of the House of Commons when the two Houses have disagreed. As Leader of this House, I have defended its right to do this and will continue to do so.

All of us—Government and Opposition, Front Benches and Back Benches—are working in a political environment charged with uncertainty, and in view of this noble Lords have reasonably raised questions about the legislative programme ahead. I heard the words of the noble Baroness, Lady Taylor of Bolton, when she asked us last week to give the greatest possible notice of our plans so that the House as a whole, and its Select Committees in particular, can plan their work. All of us recognise the unusual constraints the Government are currently facing in planning their legislative agenda due to the fact that significant decisions are being taken on the Floor of the House of Commons which fundamentally shape what happens next. We are a bicameral Parliament. This House does not operate in a vacuum, and very often the business in each House is dependent on the progress of the same business in the other.

The uncertainty we face today relates to future decisions of the House of Commons over a deal, to future negotiations which may follow such decisions, and to the timing of subsequent legislation which would be needed to give effect to a deal. Finding satisfactory outcomes could scarcely be more critical. But we should not be distracted from the task at hand. The uncertainty surrounding elements of the process does not mean that this House has been sitting idly by while others attempt to find answers to these questions. So far this Session, we have played a key role in passing five Acts which help ensure that the UK will have a functioning statute book whatever the outcome of the negotiations. In the remainder of this week alone we will be considering exit-related bills such as the Financial Services (Implementation of Legislation) Bill and the Trade Bill. Next week we begin our consideration of the Healthcare (International Arrangements) Bill. We are also pressing ahead with key domestic legislation: over the next fortnight we are considering the Offensive Weapons Bill and the Finance (No. 3) Bill.

A number of noble Lords have expressed concern over our ability to scrutinise EU exit-related secondary legislation effectively. The Government have worked hard to ensure that this legislation is brought forward in a timely way, and we have engaged proactively with committees and opposition parties in both Houses on the way it should be scrutinised, including through the introduction of new sifting mechanisms.

Our Secondary Legislation Scrutiny Committee, chaired by my noble friend Lord Trefgarne, and its two sub-committees, chaired by my noble friend and the noble Lord, Lord Cunningham of Felling, are doing an excellent job—as of course are the Members of this House who sit on the Joint Committee on Statutory Instruments. I know that we are all extremely grateful to them for their hard work. This legislation is essential to provide legal continuity in a no-deal scenario. But of course much of it will also be needed if we leave the EU with a deal.

Since Christmas we have spent well over 20 hours debating this legislation in Grand Committee and on the Floor of the House, although some contributions were perhaps not quite as focused on the policy issues at hand as they could have been. In organising the forward programme of work, my noble friend the Government Chief Whip and I will continue to work in a constructive way with our counterparts in the usual channels and to give as much notice of our timetable as is practical. We are all aware of the challenges ahead. By working together, we have already shown flexibility in timetabling. For instance, during the course of the withdrawal Bill, we sat earlier to ensure that the House had more time to scrutinise the legislation. Of course, as is normal at this point of the year, from the end of this month sitting Thursdays will revert to government business.

The decisions that Parliament takes in the next few weeks will have profound consequences for the future of this country. Recognising this, since I last addressed this House the Prime Minister and other Cabinet Ministers have continued to meet parliamentarians and others across the political spectrum—including Members across the political parties in both Houses and representatives of business groups and trade unions—in order to find the broadest possible consensus on a way forward. I am sure that tomorrow the Prime Minister will provide an update on these discussions when she addresses the other place.

The Government recognise the responsibility they have to deliver the result of the referendum and to maintain the trust of the public in the political system which serves them. Parliament must recognise that it too has a responsibility in this regard. We all have to act in the interests of the people of the United Kingdom. Although I strongly disagree with them, some noble Lords will no doubt argue today that those interests would be best served by sending the question back to

the people or even by Parliament coming to the opposite conclusion of the referendum result and deciding to remain in the European Union.

This Front Bench recognises the right of noble Lords to strongly challenge the Government, but we can work effectively only if the House acts responsibly and constructively. I know that my noble friend the Government Chief Whip is pleased that the usual channels in this House work so well together. As my right honourable friend the Prime Minister said last week, we intend for Parliament to have a still greater role in the next phase of our negotiations should a withdrawal agreement and future framework be agreed. This will include confidential committee sessions that can ensure that Parliament has the most up-to-date information, while not undermining the negotiations.

As I said in response to questions last week, this commitment applies to Select Committees of this House as well as to those of the House of Commons. That was reiterated by my right honourable friend the Secretary of State for Exiting the European Union when he gave evidence to the European Union Committee last week.

I think it is fair to say that we are in uncharted waters. However, my right honourable friend the Prime Minister remains focused on finding solutions to deliver Brexit that are negotiable and that command support across the political spectrum. Only by doing that can we provide the country with the certainty that it urgently needs. I beg to move.

3.17 pm

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the noble Baroness for her contribution on her Motion, although I am not sure that she said much about what we were expecting on the deal that we thought was in the Motion. She said that we were taking stock, but if we take stock of where we have got to so far it does not take very long because we have not got very far.

There are huge amounts of legislation still required prior to exit day, and at times the noble Baroness's comments sounded like a lecture or a ticking-off. We should all be grateful to noble Lords across this House who give up their time and expertise to scrutinise primary and secondary legislation.

We are debating both Motions together for the convenience of the House. I will speak to my Motion and move it at the end of the debate. I will test the opinion of the House, although there are some things in what the noble Baroness said that implied that she might be able to accept my Motion. I hope that that will be the case. If the Government could indicate that, it would be very welcome. She seems a bit flustered, but I live in hope—I am one of life's optimists. If that is not the case, I will test the opinion of your Lordships' House.

Following the result of the referendum, few could have imagined that, more than 30 months later, there would still be so much division and so little agreement. I made the point last week, on our amendment about information required to complete consideration of the Trade Bill, about how often we were told how easy it was going to be. We were told, for example, that our existing trade agreements could be rolled over in an afternoon and new deals would be in place, apparently, one second after Brexit. Yet here we are, 60 days to exit day, with our country more divided and frustrated about the political process than ever before. Despite stark warnings, including from business, the NHS, and food producers and suppliers, the Prime Minister continues to refuse to take even one step towards ruling out the most damaging and catastrophic of outcomes: crashing out of the EU. Instead, Mrs May is seeking to use it as a bargaining chip with her MPs to try to force through a deal that has already been resoundingly rejected. As I remarked previously, the plan B that she has offered seems remarkably similar to plan A.

Despite offers of talks and political engagement, there has been no real attempt to seek wider support or build a consensus. Since the referendum, your Lordships' House has had many contributions on the detail of how the Government should reflect the outcome of the referendum, which the noble Baroness referred to. We have had debates on legislation, Motions such as this one—I welcome the Minister back to the Dispatch Box to respond—many questions on different aspects, debates on the detailed reports of our excellent EU sub-committees, and regular Statements from the Prime Minister have been repeated, most Mondays, in your Lordships' House. At every point, this House has sought to be useful. Many of our suggestions and amendments, including on issues such as Northern Ireland and our future relationship with the EU agencies, have ultimately been accepted or slightly amended by MPs.

I often reflect on the amendment to the withdrawal Bill tabled by my noble friends Lord Monks and Lord Lea, who sought to persuade the Government that the Prime Minister should engage with Parliament and seek a mandate for her negotiations. That way, she would have had a better idea of what Parliament would accept, which would have strengthened her hand. Instead, she chose to go it alone, with a predictable rejection, although the scale of that rejection was astounding.

Time is now running out. With the clock ticking down, and MPs voting tomorrow to seek a way forward, how can we in your Lordships' House be most helpful? The legislation relating to a meaningful vote was initiated in this House—that is clear. It is the responsibility of the elected House to hold that meaningful vote on whether to accept the outcome of the Prime Minister's negotiations, and it remains for the elected Members of Parliament to decide. As we draw closer to exit day, it is clear that Mrs May has failed to find acceptance for the withdrawal agreement and the political declaration that she negotiated, losing the vote in the other place with the largest parliamentary defeat in living memory. However, despite the urging of colleagues from across the political spectrum, the Prime Minister continues to raise the spectre of leaving without any deal or agreements. It is true that it is not entirely within her gift to guarantee a deal. However, Mrs May could—and should—send a clear signal to the EU 27 that all possible steps should be taken to rule out a chaotic and reckless no-deal exit. There will be different views

[Baroness Smith of Basildon]
on who must take responsibility for getting to this stage with so little clarity and agreement, and so much division across our country. But that is for another time. At this stage, a way forward has to be found.

The Motion in my name is in two parts. First, it is a factual recognition of where we are. Your Lordships' House was clear about our position on a crash-out exit when we voted, by a majority of 169, to reject that as an option, and MPs have resoundingly rejected Mrs May's proposals. It is probably worth noting that the House of Commons also agreed an amendment to the Finance Bill to limit the Government's powers in the event of no deal. Secondly, my Motion proposes how we should respond to the next steps taken by the House of Commons. In some ways, that should just be taken as read, but it is worth restating. It may be that, following their debates and votes tomorrow in the other place, MPs will be no clearer as to how to proceed. But it is also possible—I said that I am an optimist—that MPs may agree on a way forward: either a conclusion or a process to reach a conclusion. Time is running out. If, in the few days that remain, the elected MPs find a course of action that has majority agreement through the Motions and amendments for debate tomorrow, we must respond positively.

Once we accept the premise that crashing out is too damaging for the UK to seriously accept, few options remain. It is for our elected colleagues to decide at this stage which option to pursue from the amendments tabled. These include: support for the Prime Minister's Motion; some kind of indicative vote on the options that MPs may agree to; to seek more time, if no agreement can be reached at this stage, through a limited extension of Article 50; or—if there is simply no majority for any option—to return to the electorate with a further public vote.

The Labour amendment restates our policy of rejecting a no-deal outcome, seeking a permanent customs union and negotiating a strong relationship with the single market that recognises the importance of EU-derived social protections. It also acknowledges that Parliament may have to seek further approval from the public. Other proposals are on the table. Some make requests of the EU 27, particularly in relation to the backstop, while others ask the Government to pause for further reflection, instead of deliberately running down the clock and crashing out.

Tomorrow evening we may know what our elected colleagues want the Prime Minister to do next. That is, quite rightly, a decision for them and them alone. My Motion reiterates the stated position of your Lordships' House on rejecting a no-deal Brexit, and, if the House of Commons agrees a course of action that requires new legislation, makes it clear that both the Government and this House should facilitate its passage. It is nothing more than that, but they expect nothing less of us.

I hope, therefore, that the Leader of the House and the Minister will respond positively to my proposals today. If not, I will move my Motion to test the opinion of the House.

3.26 pm

Lord Newby (LD): My Lords, today's debate is the seventh opportunity for the House to discuss the Government's deal since the first debate on the withdrawal agreement and political declaration on 5 December—some eight weeks ago. We have had two full debates, three Statements and one Urgent Question. It is now just over eight weeks to the anticipated exit date. Yet over the past eight weeks we have moved no closer to a Brexit outcome that can command a majority in the Commons.

The only substantive change that the Government are seeking to the deal that suffered such a catastrophic defeat two weeks ago is that the Prime Minister is looking to find a way of keeping a frictionless border in Northern Ireland that does not involve the current backstop proposals. To date, there is simply no credible suggestion as to how that might be achieved.

With every passing day, however, confusion continues to reign, and businesses and individuals are voting with their feet. Within the past few days the high-profile headquarters moves of Sony, Dyson and the European Medicines Agency have been announced, but behind the big headlines myriad smaller companies are opening warehouses and offices in continental Europe to ensure that their companies survive Brexit. They are being wooed ever more openly by political and business leaders across the EU, with, for example, high-profile political interventions from Belgium and France last week. Furthermore, when it comes to EU migrants, the Polish Prime Minister has issued a "please come home" appeal—and there is every sign that it is working. When I asked why a popular local restaurant closed over Christmas, I was told that it was still making money but that, "The Poles went home".

The Motion before the House in the name of the noble Baroness, Lady Smith, is in two parts. The first part reiterates our opposition to a no-deal outcome. Many noble Lords have spoken in previous debates about the costs of such an outcome. To show its utter folly, I simply refer your Lordships to the article in yesterday's *Sunday Times*, in which it is reported that officials are having to consider the introduction of a state of emergency, or even martial law, to deal with the possible impacts of no deal. This is madness indeed.

The other part of the Motion reflects the fact that, over the past eight weeks, despite our debates in the Lords—and indeed our vote a fortnight ago—we have counted for little. But this may be about to change. The proposals which will be debated in the Commons tomorrow include one led by Yvette Cooper and Nick Boles which would have the effect of deferring the withdrawal date by several months, and would enshrine this in a Bill. As with every other Bill, it would come to your Lordships' House. It is therefore particularly important today for your Lordships to assert that, if that is the case, we will deal with it in a timely manner and not seek to thwart it.

It should not be necessary for us to do this. Your Lordships' House has always acted quickly in response to urgent legislation that has gone through the Commons. For example, some of us remember the passage of the

Bill to rescue Northern Rock. But in this case there is clear evidence that some Ministers are actively seeking to encourage Members of your Lordships' House to filibuster on the Cooper Bill if it passes the Commons. According to last Friday's *Daily Mail*—so it must be true—Liam Fox has had meetings with pro-Brexit Peers to discuss such filibustering: a tactic that other government sources have also predicted, hence the many articles to this effect over the weekend.

I cannot believe that the Leader, the Chief Whip or the noble Lord, Lord Callanan, would countenance such behaviour, but it would be extremely reassuring if the noble Lord, Lord Callanan, could confirm in his winding-up speech that they will positively discourage it.

Lord Dobbs (Con): I am grateful to the noble Lord for giving way. I am fascinated by his allegation—but, as he says, it is a matter of scaremongering in the newspapers. He has spent some time asking people to rebut this allegation. Can he name a single Peer who has been approached by Mr Fox to engage in this filibustering? I have to say that I am aware of none.

Lord Newby: It may come to the noble Lord as a bit of a shock, but Liam Fox is not in the habit of consulting me about secret meetings and who attends them—so, unsurprisingly, I cannot answer his question. Amazingly, Peers who might be thinking of filibustering in your Lordships' House have not written a letter to the papers saying, "I have had this good idea of filibustering in the House of Lords. I am looking for volunteers to join me. If you are interested, here's my email address ".

Lord Hamilton of Epsom (Con): I thank the noble Lord for giving way. I have not been approached by Liam Fox, either—but if it came to filibustering, I certainly learned a lot of lessons on the EU withdrawal Bill from the Liberal Democrats.

Lord Newby: I am sure that the noble Lord has learned many lessons from the Liberal Democrats: principally about the cost of every aspect of our leaving the EU, which my colleagues, 30 of whom spoke during debates on the withdrawal Bill, enunciated so clearly.

As I was saying, I hope that we will pass this Motion tonight to signal to the Commons the clear view of your Lordships' House that, were MPs to decide to pass the Cooper Bill or any other legislation relating to the Brexit timetable or process, your Lordships' House would deal with it in a timely manner.

The Cooper Bill is a recognition of what everybody knows: namely, that there is no way that the UK will be in a position to leave the EU in a mere eight weeks' time with the full panoply of post-Brexit legislation in place. The inability or unwillingness of the Government to say how many Brexit-related SIs have been passed into law is testament to this. So is the withdrawal, because of its flaws and errors, of the mammoth SI which the noble Lord, Lord Cunningham, recently drew to the attention of the House. So is the fact that, with the exception of the Trade Bill, the various other major Bills which we will need to pass—on agriculture, fisheries and immigration—have not yet had even their Second Readings in your Lordships' House.

In a BBC interview on Friday, the Leader of the Commons implicitly recognised this when she said, in respect of the need to get all the legislation through, that,

"if we needed a couple of extra weeks or something then that would be feasible".

So an extension is on its way, one way or another. The only thing that is unclear is the basis on which such an extension will be sought. I suspect that if the Prime Minister simply asked for more time to try to come up with something which would unify the Conservative Party, she would be met with a firm rebuff by the EU. Even in the unlikely event that she was able to discover an alternative to the Irish backstop that satisfied the EU and her own party, the Government would need more time simply to get the necessary legislation through.

The other justification for more time would be to allow the people to express their view, with an option to remain in the EU. Your Lordships know that that is what we on these Benches support. I can only reiterate that there is now widespread support for a people's vote across the country and a growing majority who say that, in such a vote, they would vote to stay in the EU. In arguing against such a vote and in answer to a Question last Thursday from the noble Lord, Lord Pearson of Rannoch, the noble Lord, Lord Callanan, said that in the 2016 referendum a majority of the electorate voted to leave the EU. That is of course not the case: 37% of the electorate voted to leave. I hope that in his winding-up speech the noble Lord will take the opportunity to correct that error.

There is no doubt that the country is now heartily fed up with endless Brexit arguments. There is a growing, and accurate, sense that while we wrangle over this issue, virtually every other area of public policy is being unaddressed. This week Parliament has the chance to narrow down the options and make some progress. Our role in your Lordships' House is secondary, but we still have an obligation to ourselves and the country to play it to the full. I therefore urge noble Lords to support the Motion in the name of the noble Baroness, Lady Smith.

Lord Butler of Brockwell (CB): My Lords, the noble Lord advanced a number of hypotheses that may or may not happen. As general principles, though, would it not be astonishing if the Government could not accept these two parts of the Opposition's Motion? We know that it is the Government's policy to try to avoid no deal: surely they must feel an obligation to give adequate time to this House to pass any consequent legislation.

3.37 pm

Lord Howell of Guildford (Con): My Lords, as the Brexit process nears its high noon, I suggest to your Lordships that it might be a useful time for us as a House, as the noble Baroness has suggested, to think a little not just about the withdrawal process but about safeguarding the health of our parliamentary democracy.

[Lord Howell of Guildford]
With all this wild talk about citizens' assemblies, the national fury and frustration at the deadlock in Parliament, and Parliament being widely despised and, indeed, ridiculed, I am afraid that the parliamentary institution itself is clearly now in danger.

Parliament is being depicted outside this place as a ship of fools, drifting fast towards a no-deal cataract, with all the Members of Parliament on board desperately calling for the Government to somehow shift, abolish, postpone or rule out the cataract and the chaos ahead—with a shower of amendments, as we have heard, and with a proposed Bill which, incidentally, I understand cannot be passed anyway, regardless of filibustering, without a money Bill from the Government; so it cannot be passed at all, if the Government oppose it. It might be worth the noble Lord, Lord Newby, checking on that, because he is looking puzzled. The suggestion that you can somehow wish the cataract away is a brilliant idea—if you shut your eyes tight and wish hard, the nasty waterfall or cliff-edge will disappear and something else will turn up. Of course, in real life the only course is to turn the ship round and head fast upstream to the safety of the withdrawal deal that we have on the table, with the backstop tweaked, clarified or perforated if possible—but, basically, that is the one anchorage available. Short of that, the rocks of the cataract are unavoidable, however many amendments MPs pass and however many tables it is taken off.

A number of people, especially our good friends the Lib Dems, keep saying, "Well, what about a second referendum?" The problem—and I really ask them to think about this, because I do not think they have—is that plebiscites do not solve anything. First, they certainly weaken parliamentary government and smash our national unity, as we saw with the previous referendum. The idea that a second referendum—in fact, it will be the third—will settle the issue is pure fantasy. Secondly, mass voting events are now more open to vicious manipulation than ever before. Of course, dictators twisted and corrupted mass opinion in the 20th century, but now that giant algorithms and incredible power can target millions of people individually and bombard them with a cascade of endless slogans, true or untrue, fake or real, the facts are 10 times worse. Indeed, not an hour ago, we heard a Question emphasising that point.

Now there is an even bigger danger of distortion which applies not only to plebiscites but to all big public votes and elections, and that is foreign meddling. Disinformation has become a worldwide currency, and a cheap one too, allowing not just weaker nations but sinister hacking groups of no known allegiance to undermine and confuse facts and truth so that discord, descending into street violence, can be sown and all forms of democracy discredited with terrifying ease. In effect, the true voice of the people has become harder and harder to discern and act on. That is the reality we now face.

As for the next stage of Brexit, anyone who thinks that it will all be put to bed via a referendum or any other means in the next two years is living in a fool's paradise. Like many others, I have struggled with this underlying conflict in one form or another for most of my political life. In or out of the European Union, and with all the tensions between existing members, which are growing all the time, I see a future Europe of constant bargaining: an endless, continuous set of disputes between the legitimate yearnings for national unity, identity, sovereignty and independence and the pull of ever-deeper interdependence and collaboration, as the noble Lord, Lord Wallace of Saltaire, reminded us the other day. These forces are working in both directions, they are driven by unstoppable technology and they are constantly clashing as new issues come along. My noble friend Lord Patten—I do not know whether he is in his place today—was worrying about having to debate customs unions for ever. Yes, he is right. They will indeed be debated in 50 different varieties long after he and I have gone.

As for Ireland, the puzzle for me is this: it has been obvious from the start that, contrary to what has been asserted, modern means are available and can work to keep the border invisible. At first, the EU high priests said that all these systems were "magical" and dismissed them, but now we have Mr Juncker admitting that they exist and could work. The reality is that long before we get anywhere near a backstop, well inside any transition phase, a workable open border can be up and running—probably rather similar to either the sort of minimalist borders that exist already in Northern Ireland or the sort of borders that exist elsewhere across Europe between EU member states, all of which are completely consistent with the subtle ambiguity at the heart of the Good Friday agreement.

There is the additional reality that a hard, sealed border is in practice impossible. In Ireland, under Mr Willie Whitelaw almost half a century ago, I and my colleagues tried to close the border with military and customs posts to stop the Provisionals and their weapons coming up from Dundalk. It made not the slightest difference. All that happened was that a number of young soldiers and brave customs officials got murdered. You would need a wall across Ireland, like in Mexico or Israel, to make a hard border, which no one wants anyway.

We are on a long journey, step by step. As my noble friend the Duke of Wellington said in a speech in the Chamber the other day, many things that cannot be fixed now will become soluble later. As the wise noble Lord, Lord Bew, says, "Things evolve". Relationships evolve. Trade patterns evolve. The EU evolves; it is doing so very rapidly before our eyes. People who keep calling for certainty and guarantees will have to go on calling, because there is no certainty in life or business and certainly not in our connections with our neighbours. Francis Bacon said, "If a person will begin with certainties, they shall end in doubts".

I am not closely acquainted with the Prime Minister, and I have hardly ever met her, but I know political courage when I see it. She is criticised for Brexit delay, but actually the delay is proving invaluable. I would make it a confidence vote. A touch more delay, and a good strong will, will work wonders. Every day that passes is clearly bringing a stronger realisation, to those with closed minds, that short of massive dislocation and self-harm, there is only one practical way of delivering Brexit—hopefully with a few adjustments wrung out of the EU, but we will have to see what

can be obtained. We know the realities. The Prime Minister's courage, denounced by all the jejune know-all commentators and political foes as stubbornness, is what will pull us through to the next stage in the evolution of our ties both with our regional European neighbours and with the utterly transformed world of Asia, Africa, the Commonwealth network and Latin America—where most of the growth is going to be. We need to associate more closely than ever before with these parties to ensure our future prosperity and security. It used to be a case of the east catching up with the west; now, it is becoming the other way around.

The longer we delay the Brexit journey with pretence alternatives, unicorn solutions and child-like yearnings for riskless certainty and a rose-tinted past, the slower will be our adjustment to the entirely new world conditions that have already come about, and that we now face. We should get on with it, and that, I believe, is now the wish of this nation.

3.47 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, it is imperative in my view, doubtless in common with the great majority of your Lordships, that we reach a deal. I believe that the Government themselves also feel this.

I do not believe that there is any greater chance of the Prime Minister allowing a no-deal Brexit, than there would be—obviously, in very different circumstances—of her authorising a nuclear strike. I am not suggesting that each would cause comparable devastation: plainly, that is not so. Indeed, it is a ridiculous thought. The critical point, however, is that it is vital to keep the risk of each—the possibility of each, however small—in play.

Obviously, no one, however passionately opposed to our maintaining a nuclear deterrent capability, could, while we continue to have it, seek to persuade Parliament to legislate against ever deploying it. Its value as a deterrent lies in the risk, however faint, that in retaliation we just might. So too, I suggest, with the possibility that we just might crash out of the EU. While that possibility exists, it must surely operate as an incentive for us to reach a deal. It is an incentive, let it be emphasised, on all—both on our own Members of Parliament and on the EU negotiators.

It is nothing short of absurd to argue that Parliament should now legislate to take a no-deal Brexit off the table. That would either force us to accept a less favourable deal than we might otherwise get or, alternatively, force us to stay in the EU.

I confess that at heart I remain a remainer, but I have finally come to accept that there should not, and now must not, be a further referendum, certainly not one that still caters to the possibility of remaining in the EU. The only conceivable further vote could be on a choice between accepting the deal on offer and exiting with no deal. But I would not legislate to take the possibility of remaining off the table either.

What of the proposed legislation to force the Prime Minister, if by 26 February she has still not achieved a parliamentary vote for a deal, to request of the EU an extension of the Article 50 process? This, I suggest, would again have the inevitable consequence of lessening the urgency of the need to agree a deal. Everyone acknowledges that EU deals are habitually reached at the 12th hour. Postpone the 12th hour, delay the date by which agreement is required and on would go this ever more depressing and debilitating process.

I do not know whether any of your Lordships have had the time or inclination over recent weeks to watch "Question Time", now chaired by the estimable Fiona Bruce. I have watched them, and to my mind they have made one thing clear beyond all others: the general public—not every individual, of course, but the great majority—ache for a final end to this saga and are ever more critical of the politicians at Westminster for failing to bring this question to a conclusion.

I recognise, as plainly does the Prime Minister and, for that matter, the EU, that the closer to the 12th hour that any deal is agreed, the more obvious will be the need for what would, we hope, be only a short extension of the Article 50 process for the necessary legislative steps to be completed to give effect to it. But that request for an extension can and, I suggest, properly should be left to be made when the deal is struck, not in anticipation of failure and according to a given timetable.

In the last debate I voted in favour of the Motion tabled by the noble Baroness, Lady Smith. I regret having done so for this reason: in my speech I made it explicit beyond question that I supported the Prime Minister's deal and was urging Members at the other end to accept it, notwithstanding that the opposition Motion still included some criticisms, although markedly fewer than in the previous, pre-Christmas debate, of the deal's likely adverse consequences. The noble Lord, Lord Butler, likewise voted for the Motion while also supporting the Prime Minister's deal. We were therefore dismayed to hear the Opposition Bench thereafter, and indeed again today, lumping together all those who had voted for the Motion as having voted to reject the deal and calculating the majority accordingly.

Baroness Smith of Basildon: My Lords, I am sorry to interrupt the noble and learned Lord but perhaps I may just correct him. If he checks my comments of today in *Hansard*, I think he will see that I have made it clear that this House rejected no deal. My other comment was that we soundly rejected how the other place expressed its views on the Prime Minister's deal. I made no reference in my speech today to our comments on the Prime Minister's deal.

Lord Brown of Eaton-under-Heywood: I am grateful for that; clearly, one would always accept a clarification. I confess that I understood that what came from the Front Bench was to regard the votes of all who supported the Motion as votes against accepting the deal on offer. If I am wrong, of course I withdraw that point.

In any event, I shall not be supporting the opposition Motion this time. Despite the earlier intervention by the noble Lord, Lord Butler, I suggest that it is expressed in such abstract terms—it uses the hallowed word "appropriate"—begs so many questions and seems so elliptical in what it is inviting that it is mischievous

[Lord Brown of Eaton-under-Heywood]
rather than self-evidently helpful. I fear that it, too, could be misrepresented, at least to this extent. It could be misrepresented as support for legislating against a no-deal Brexit or compelling the Government to request an extension of the process, both of which—for the reasons I have already sought to give—I would regard as weakening the Government's negotiating position and thus prejudicing the prospect of an acceptable early resolution of this most ghastly saga.

3.56 pm

Lord Dobbs: My Lords, I thought this would be a debate reserved for headbangers, but it is a privilege to have followed two such fine and thoughtful speeches from the Back Benches. Of course, all the Front-Bench speeches were scintillating as well.

One of the most powerful memories of my life is that of a young man in a white shirt on his own in Tiananmen Square, who walked out in front of a column of tanks and stopped them dead. Why? Because he wanted a voice, a say in how he was governed. His was just one voice, but that voice rang out around the world. Another enormous memory was that of the Berlin Wall. I lived for a while in Berlin as a young man in the 1960s, shortly after the wall was built. The wall was one of the most evil things I had ever witnessed. One of the most joyous moments was the sight of it being destroyed, not by tanks and missiles but by the bare hands of those who also wanted a voice and a say in how they were governed. I have a chunk of that wall at home to remind me.

There are times when I think we in this country take our own freedoms too much for granted, particularly the tolerance that glues the bits together. Tolerance is the sticking plaster of a democratic society. Without it, our system does not work—and right now, it is not working. I wonder if noble Lords saw the alarming poll last week suggesting that 9% of all leave voters would mind if one of their close family married a remainer. It is a sign of awful intolerance—almost one in 10. Perhaps that is to be expected; we Brexiteers are so often derided as bigots and xenophobes. What of remainers? In that same poll, it was nearly four in 10: 37% would object if one of their close family members married a Brexiteer. I assure you, you can relax: I am not in the market. I am not sure Boris is, either. But that poll suggests an awful lack of tolerance.

Things are changing for the worse, and it is our fault. We politicians have totally overplayed our hand—taken a challenge and made it far worse. We throw accusations and exaggerations around like children hurl snowballs. How can we be surprised if others follow our example and do not trust us any longer? I doubt we deserve to be trusted; we are "a ship of fools", as my noble friend Lord Howell of Guildford so accurately and eloquently suggested in that very fine speech. And what do we do? We so often indulge in baseless scaremongering and insinuation. We fight for what we believe in, of course we do, but there will be a time beyond Brexit—soon I hope—when we will have to return to a system of trust and tolerance, if there is any left.

Most noble Lords know where I stand on Brexit and I am not going to talk about the specifics today—what is the point? At this time tomorrow it may all have changed. Will it be plan A, plan B, plan C, triple plus or the Labour Party policy of having no plan at all? Will we have withdrawn from the withdrawal agreement or customised the customs union? Will we have sent our troops to match the legions that Leo is apparently massing at the Irish border? It is so sad and so pointless—and we wonder why people think politicians have lost the plot.

We should reflect on the fact that we in this House, along with the House of Commons, voted to give the people a referendum in the first place. We promised that we would abide by the outcome. We voted through the withdrawal Act and we approved Article 50. Whether or not we approved of it is another matter, but that is what we have done. We have run out of excuses and almost run out of time. We have ripped off the sticking plaster of tolerance. The mess that we are in is not the fault of the people—it is our fault. Our system is not about doing what we think is best for the people but enabling them to do what they think is best for themselves.

What do I fear? I fear people coming to the conclusion that there is not much point in voting when their elected politicians keep turning a deaf ear: that they will stop voting and instead try to change things by other means, as they have on the streets of Athens, Rome, Berlin and Paris, and as they did with the poll tax in London. We can stretch their tolerance too far. I lose sleep over this, as I am sure many noble Lords do. I hope that my nightmares are nothing more than bad dreams and that we will somehow stumble upon a deal that delivers what the people voted for.

If we cannot in Parliament reach agreement, we need to do what our constitutional practice says we should do: let the people sort out the mess we have created. There is only one way to do that—as my noble friend Lord Howell of Guildford has elegantly set out in the past—and that is to hold a general election. Not a second referendum, which is nothing more than a loser's charter; not grabbing at opinion polls, which our Lib Dem colleagues dine on so selectively; not further delay; not even more divisions—but a new general election which will give people the opportunity to take back control.

I know that some of my Conservative colleagues say that that might let in Mr Corbyn but, cheer up, even the Labour Front Bench does not want Mr Corbyn in Downing Street.

Baroness Hayter of Kentish Town (Lab): I do.

Lord Dobbs: Then some have changed their tune. I hope that we in my party have not screwed up so badly that we have made Mr Corbyn electable. If we have, again, we have no one to blame but ourselves.

We have complained long enough about the democratic deficit. This is not the time to do what they do in Brussels and make up the voters' minds for them. If we do not honour the people, they will not bother honouring or even tolerating us. David Cameron made a good speech about it all at Bloomberg—noble Lords might remember it. He said that for too many people

the EU is something that is done to us, not for us. Wise words which outlasted Mr Cameron himself. Let us remember that the only thing that is certain in the midst of all this self-inflicted chaos is that the British people voted for Brexit: not to remain, not to delay, not for silly parliamentary games, but for Brexit. So unless we want to suffer Mr Cameron's fate, let us do this for them, not to them, and try to earn their respect once again.

4.04 pm

Lord Whitty (Lab): My Lords, it is a not unadulterated pleasure to follow the noble Lord, Lord Dobbs. I too have a piece of the Berlin Wall. I just wish that he and others, in celebrating the fall of that wall, would recognise the role that the EU has played in giving democracy, freedom and the right for people you disagree with to demonstrate to those who were previously suppressed both by the fascist Governments in Spain, Portugal and Greece and by the communist regimes in eastern and central Europe. That is one of the great legacies of the years that we have been in the EU and we should celebrate it, not deplore it.

As a conscientious member of your Lordships' EU Select Committee, I usually try to be constructive and pragmatic in these discussions on the Brexit process. However, today I am afraid that I am feeling just exasperation. We will hear later from the noble Lord, Lord Kerr, who, I am sure, when he helped draft the Article 50 process less than 10 years ago did not really envisage that we would be engaged in this long drawn-out process in the way that we have been.

It is two and a half years since the referendum. One can admire the Prime Minister's fortitude and resilience but the fact is that we have seen a period of totally misguided and incompetent negotiation. We have seen a fractured Government and, as others have remarked, a nadir in people's respect for this Parliament. It is not really a great time for politicians to take back control. Whichever way they voted, the people are bemused and impatient but they are also angry, and businesses, small and large, have moved from worry to desperation, as we see in the letter from food retailers today.

We here in Westminster can look forward to the deliberations in another place tomorrow and hope for an outcome, but let us register that the time for parliamentary and internal party games is over. It is time that Ministers confronted the Brexiteers and the media snapping at their heels who pretend that they can get a significantly better deal on the withdrawal treaty from the EU. To put it at its mildest, it is unlikely that the EU will make significant changes in the legal text of the treaty. Had the Government behaved more constructively, it would have been possible to get better wording in the political declaration. The EU has already indicated that it wishes, within a limited number of years, to reach a trade deal that would supplant and withdraw the need for a backstop. Meanwhile, the backstop guarantees what the Government say they want: near-frictionless trade within Ireland and between the UK and the EU.

Then we have our domestic situation. For months, I, along with others, have been asking the Government to set out how we are going to pass the legislation that we are required to pass by 29 March. The noble Lord, Lord Newby, and the Leader of the House herself referred to the onerous legislative task in front of us. We need a little more time to deal with that, let alone for the Government to go back and sensibly negotiate a marginally better deal.

Therefore, I support the Motion in the name of my noble friend Lady Smith, which calls for a time extension. I am not talking about years but months. In that period, you might get an agreement closer to one that the Prime Minister could get through the House of Commons, and you might also reach a deal that is acceptable to the European Union. You will not do that in 60 days. So let us say that we need a little more time, difficult though that is. If even then the Government fail to get a deal that the Commons would accept, or that the EU would accept, we will have to face the harsh truth that the politicians of this generation have comprehensively failed the public and this country. In those circumstances—the noble Lord, Lord Dobbs, comes half way towards me on this—there is no alternative but to return the verdict to the people. The people must judge their parliamentary representatives, their views on Brexit and their performance in this Parliament.

I would go further. In the eventuality of a failure to reach a deal after an extended period, we should have both a general election and a referendum on the same day. The people can then judge their politicians on the lines they are taking on the referendum and judge whether they wish to proceed with Brexit. We have failed the people over the last two and a half years. We will have to put it back to them and return a Parliament that can enact their wishes.

4.11 pm

Baroness Neville-Rolfe (Con): My Lords, it is always a pleasure to follow the noble Lord, Lord Whitty. We sit together on the EU Committee and often agree, especially on matters of history and technical reality, if perhaps not today on his latest idea.

I spoke on 9 January about the need to improve the withdrawal agreement. On the assumption that such an improvement would be negotiated, I also talked of the opportunities that we can garner post Brexit. Today I return to the former theme and will also say something about how we should conduct ourselves in the unlikely event that, for whatever reason, improvement proves impossible and we need to proceed with no deal.

The other place, as has been said, voted decisively against the present withdrawal agreement; tomorrow's further votes are likely to include one requiring the Government to re-enter negotiations and take out or severely limit the life of the backstop. I believe that this can and should be done. We have far more power now than we will have once the withdrawal agreement is accepted. This is partly because acceptance requires only a majority vote in the European Union, whereas the future relationship agreement requires unanimity and votes in Parliaments across Europe. Also, as the Attorney-General has confirmed, if the present withdrawal agreement were accepted, there would be no legal way that the UK could ever unilaterally exit the backstop. My noble friend Lord Bridges said in an earlier debate

[Baroness Neville-Rolfe]
that no Government should ever have agreed to that concept and I am afraid that I have to agree with him. Vassalage is a colourful term but, to my mind, it would accurately reflect our status if we accepted the current agreement as it is.

Furthermore, the backstop is illogical. We are told that it is designed to prevent a hard border between Northern Ireland and the Republic. Yet, as matters stand, it is the main factor preventing the withdrawal agreement being accepted. Recently, the EU has belatedly acknowledged what has been apparent all along; namely, that if there is no withdrawal agreement there will be a hard border in Ireland at the EU's insistence. The EU is apparently insisting on the backstop to prevent a hard border in Ireland, while the main factor threatening a hard border is the inclusion of the backstop in the withdrawal agreement. It is a mystery to me why the Government have not been more vociferous in pointing this out.

The major advocates of the backstop are the Commission, the French and the Irish.

Lord Hannay of Chiswick (CB): Perhaps the noble Baroness might think again before saying what she said about tariffs: that tariffs being charged on the border between the Republic of Ireland and Northern Ireland in the event of no deal would be because the EU orders it. That is not true: it would be because the World Trade Organization rules require it.

Baroness Neville-Rolfe: I will come on to talk about tariffs in the event of no deal. Obviously, I was referring to the point that has been made about the apparent change in the Irish position in recent days, which others have already referred to. My understanding is—

Lord Hain (Lab): I apologise for interrupting because I know that time is pressing, and I am grateful to the noble Baroness. Is it not the truth that the Irish Government are acting with integrity, as we should be, in supporting the backstop as an insurance policy to keep that border open and keep the Good Friday agreement alive and peace in progress? They are acting responsibly. I am very surprised, as someone who has a great deal of respect for the noble Baroness, that she is criticising the Irish Government for defending what everyone says they agree with.

Baroness Neville-Rolfe: I am saying that they have overplayed their hand. I believe, and I think the noble Lord will agree with me, that the EU is about compromise and consensus-building. I know from my own experience in the Council of Ministers that unfair outcomes, often promoted in silken terms by the French and their supporters, sometimes have to be moderated. Other member states to which I have spoken recently are concerned about the damage from no deal and are increasingly seeing the problem. So the climate is gradually improving, and if we returned to Brussels with unity and resolve, we could prevail.

There is also a question as to whether the backstop is really needed. I believe that the Good Friday agreement, which has widespread support everywhere, is a natural backstop, and that it will be taken into account in the future relationship, deal or no deal. An open border is no bar to the enforcement of different arrangements, as I know from operating right across Ireland in my time in retail. We had enforcement of different rates on alcohol and of VAT and other taxes and regulations. My noble friend Lord Howell of Guildford has already made this important point.

A major change to the deal is necessary, in my view, to secure support in the Commons.

Lord Wallace of Saltaire (LD): My Lords, I recall that the noble Baroness was a civil servant, I think in Defra. Non-tariff issues are not unimportant in this respect. Animal health regulations across the border will clearly mean inspections. If, for example, there were an outbreak of foot and mouth or BSE in one part of Ireland, the idea that the border would remain open for more than five minutes seems a little fanciful. Borders are not simply about tariffs. Regulations, including phytosanitary regulations, are extremely important.

Baroness Neville-Rolfe: I agree about the importance of the phytosanitary arrangements, but I would point out that my recollection is that when there was foot and mouth the Irish border closed, in spite of the fact that we were in the single market. These are things that you have to tackle together, and with good will—which is of course what I am seeking—we could do that. I am trying to explain the argument as I see it. Perhaps I can make some progress.

My feeling is that the backstop needs to be taken out of the withdrawal agreement, and a substitute, requiring best endeavours and so on, put into the political agreement or a side letter instead. This is the kind of flexibility that is shown in business negotiations—for example, in a major merger—where both sides want to agree, as I believe they do here. I was in Salisbury Cathedral on Friday for a service for the conversion of St Paul. Saul, as he was then called, was a brilliant, educated man pursuing the goal of destroying the Christians. After his conversion on the road to Damascus, he saw the light. That is what we need to happen in Brussels to move things forward.

Lastly, I have a warning about the work on no deal. The detail of what the Government do is critical and there are two things that we have to worry about: short-term chaos and longer-term interest and damage to this country. I am worried that too much attention is being given to the former and not enough to the latter. The focus is domestic, and not enough attention is being given to the implications for our negotiating position on the backstop and on future trade negotiations with both the EU and third countries. I have a particular concern about an assumption in some quarters that the UK will not impose tariffs in the event of no deal. This would be a disaster because exporting member states would not feel the pain that they need to feel. Our own domestic industries would be decimated—agriculture, for example—as third-country imports poured in at zero tariffs under the most favoured nation rules while we paid charges on our exports. We would have no negotiating leverage with anyone now or in future, as we would have given away our revenue

source from our ability to levy or tax at the border or to offer preferential markets in future, as well as our current powerful position in the EU institutions.

All the work on no deal is being conducted in secret, and business leaders have told me they have to sign NDAs for involvement in no-deal planning. I can understand this, but ask my noble friend the Minister to confirm that he accepts some of my concerns and is looking at variable tariffs, such as for imports from both the EU and elsewhere. Obviously they need to be lower on things such as bananas and oranges, which we do not produce, but higher for dairy products, meat and other things that we do produce. We do not want to be in a no-deal situation—I completely agree with that—but there must be contingency planning, which must embrace the wider interest.

I was glad to hear from my noble friend the Leader about the timetable for Brexit measures and the role she saw for our committees. The Government's approach to organising their scrutiny and challenge in this House is right. We have a duty to progress these measures in an orderly way. It is a vital part of our function in this House, and I will not be supporting the Opposition's Motion this evening.

4.21 pm

Lord Campbell of Pittenweem (LD): My Lords, it is a pleasure to follow the noble Baroness who, as ever, produces an innovative approach to problems that to others seem impossible to resolve. To the noble Lord, Lord Dobbs, let me just say: do not be concerned about attitudes towards marriage—MacDonalds have been refusing to marry Campbells for nearly 300 years.

It was clear from the noble Baroness the Leader of the House that we are to some extent hampered by the fact that we do not know which amendments will be selected, and which will be successful. In that of course we are in good company, because the Prime Minister finds herself in exactly the same position. In parentheses, I will say that, while it is for the House of Commons to resolve how it conducts its own business, it does seem that profound constitutional change is taking place on the hoof in the House of Commons. I hope that someone is giving at least some consideration to the principle of unintended consequences.

If I ever had any doubts about the proper way for us to deal with the issue of membership of the European Union, they have more than been removed by the conduct of the negotiations and the terms of their outcome—what I might describe as the Prime Minister's deal. After the rejection of that deal in the House of Commons, the Prime Minister set out to talk to other political parties. It does not appear that anything new was discussed on these occasions. She talked about the enshrining of employment rights—a promise that had previously been made, so it was simply being said for a second or even third time—and promised to go back to Brussels and try to negotiate. Being as generous as one can be, it does not seem that Brussels has much of a negotiating attitude, particularly on the backstop. To coin a phrase that Mrs May has often used, it rather looks as if nothing has changed.

There is something else that has not changed: the opinion of the Attorney-General, to which reference has been made on a number of occasions in the past couple of weeks. I will read from paragraph 2 of the additional letter he wrote, dated 14 January 2019, after the Government had received a joint response from the Presidents of the Council and the Commission:

> "I agree that in the light of this response, the Council's conclusions of 13 December 2018 would have legal force in international law"—

he does not stop there, but goes on to say—

> "and thus be relevant and cognisable in the interpretation of the Withdrawal Agreement, and in particular the Northern Ireland Protocol, albeit they do not alter the fundamental meanings of its provisions as I advised them to be on 13 November 2018".

In truth, the empress of Downing Street has no clothes. She can expect no shelter from her Cabinet, none from her Government, none from her party and none from Parliament—so we have to read her mind as best we can. I understand her to believe that this deal is the best that can be obtained and that, whatever the consequences of leaving the European Union, even if there is no deal, we must leave because the decision in the referendum is inviolate.

If the consequences of that decision in economic, social or political terms are as bad as some have predicted, or if the promises that were made at the outset are not kept, do not imagine for a moment that the British public will congratulate us on keeping faith with the referendum decision. They will blame those who took us out for the consequences and those who unsuccessfully resisted for not being effective enough. Gone now are the Panglossian predictions—although if you drive around in the south of England, you will find them repeated on billboards just to remind people of how different were the predictions from what has been produced in the Prime Minister's proposals.

The Prime Minister has an admirable strength of determination, but I respectfully suggest that it has become her weakness. That is particularly so in her refusal to rule out leaving with no deal. I do not entirely follow the reference to the doctrine of nuclear deterrence that the noble and learned Lord, Lord Brown, asked us to consider; I shall consider it at a little more length. I will, however, say that nuclear weapons are rarely used out of negligence or a failure to conduct oneself in an otherwise perfectly reasonable manner. The truth is that the Prime Minister's position is a gamble. It is a gamble born of stubbornness, and it is one which produces quite extraordinary precautions: stockpiling of food; stockpiling of medicines; off-the-shelf ferry companies; motorway car parks; and even, as my noble friend Lord Newby said at the outset, the possible imposition of martial law—no one discussed that during the referendum campaign.

Meanwhile, as has been said, others are taking precautions: the motor industry, even the vacuum cleaner industry and—would you believe it?—P&O. The flagship of the British Empire is now registering its ships to fly under the flag of Cyprus. Who would have believed that? The truth is that, if there is a disorderly withdrawal, be in no doubt that it will severely damage relations with the European Union; if there is a disorderly withdrawal, countries waiting in the wings will think themselves able to drive even harder bargains when it comes to trade deals.

[Lord Campbell of Pittenweem]

On my part, there is no ambiguity: I firmly believe that leaving the European Union is wholly against the interests of the citizens of the United Kingdom, just as I believe equally sincerely that for Scotland to leave the United Kingdom would be against the interests of the citizens of that part of the United Kingdom. Of course there are risks involved in another referendum—but if, as some have argued already, it is the only thing to do, are we are really going to bow to the threats from the mob? We enjoy a great privilege in this House and in the place further down the Corridor, but we also have a great responsibility. If we believe that the only way in which to resolve these difficulties is to test once again the opinion of the public, we should not shrink from doing so.

I again ask a question to which no one has yet tried to offer me an answer: if the Prime Minister's deal had been on the ballot paper, and voters had appreciated the disorder, delay and damage that withdrawal has caused until now, how many would have voted for it? If the majority vote to leave in a second referendum, then I accept that leave we must. I will not change my mind about the extent to which the interests of this country are best served by being in the European Union, but I will accept a decision that is based on informed consent.

4.30 pm

The Duke of Wellington (Con): My Lords, I declare my European and agricultural interests as detailed in the register. It is a great pleasure to follow the noble Lord, Lord Campbell of Pittenweem, who I have always greatly admired.

Since this House last debated the European Union withdrawal agreement, the other place has overwhelmingly rejected the Prime Minister's proposal and left the country in a state of political paralysis rarely seen before. Surely some sort of cross-party agreement should now be sought.

It would be irresponsible for this or any Government to allow the country to leave the European Union without an agreement. I fear that the warnings from business and from public authorities are not alarmist. For example, it is inconceivable that Calais can handle 10,000 lorries a day from the United Kingdom if they are required by the European Union or the WTO to impose some sort of check or, worse still, tariff. Another example has been provided by the noble Lord, Lord Wigley, who has often rightly mentioned exports of Welsh lamb to Europe; unless the UK has negotiated a quota with the EU such as New Zealand currently has, there will be a tariff and a fixed sum per tonne on lamb exported from this country to Europe. This will cause a large fall in the price Welsh farmers will get this summer for their lambs, to the point where I suspect sheep farming in Wales will not be sustainable. These are only two examples of the multitude of grave difficulties that British business will face with no-deal.

We must not allow the UK to leave the EU without a deal, and it is extraordinary to suggest that moves to prevent no deal are in fact trying to stop Brexit. The vast majority of those who find no deal unacceptable are, at the same time, in favour of an orderly withdrawal that does limited damage to the economy.

We are now seven weeks past the day when the Prime Minister's deal was meant to be voted on in the other place. I must repeat myself: if I were a Member of the other place, I would support the Prime Minister's deal however many times it was submitted to the vote. In fact, it is more likely that a way will be found for the deal to pass in the coming weeks. There are a number of amendments to be voted on in the House of Commons tomorrow, which may lead to a conditional acceptance of the deal, subject to further negotiations in Brussels.

Whatever the outcome of the votes tomorrow, I cannot see how we can avoid requesting a short extension to Article 50. I think it should be of three months. This would take us to the end of June. The new European Parliament will not sit until July, and therefore we could avoid holding elections to the European Parliament in late May.

We were told recently from the Dispatch Box that a number of Bills and still several hundred statutory instruments must pass through both Houses of Parliament by exit day. If these are all to receive scrutiny, as they should in this House, I see no alternative to an extension. There is an amendment in the other place to seek to extend until the end of the year. I think nine months is too long, and, what is important, it sends the wrong signal. Three months is more likely to be accepted by the EU 27 member states, particularly if that period is needed to complete the necessary parliamentary procedures.

This is not to thwart Brexit, and should not be considered a defeat by Brexiteers. Rather, it is a return to a standard of good government and legislative competence which currently is at risk. I urge all Members of Parliament, including the opposition parties and the Democratic Unionist Party, to work with the Government to find a majority in the House of Commons to pass a withdrawal agreement and a political declaration.

We cannot leave without a deal. We cannot leave without a transition period. I think we must now accept the necessity of a short extension until 30 June. I hope the House of Commons will be able tomorrow to find a majority for a sensible, pragmatic solution to what is, after all, only a temporary arrangement to enable us to start the negotiations for the long-term relationship and the new treaty between this country and the European Union.

4.36 pm

Lord Dykes (CB): My Lords, I will not necessarily follow others in their very interesting analyses of the possible vote outcomes tomorrow. For us, the humble House of Lords, there is a general feeling that the whole pattern and mixture of amendments—their flavour and content—is so complicated, even for parliamentarians, to absorb by way of accurate predictions that we have to await the outcome of those matters before drawing conclusions, which, I hope, will be positive about our position as members of the European Union. That would be a better way of doing it, rather than speculating too much—as of course parliamentarians are fully entitled to do.

I suppose that some colleagues here would generally agree with the proposition that Monday morning is always a bad time, as people have to return to work

and they can be in a bad mood. Although I have never normally suffered from that ailment, which is justifiable and understandable, I certainly felt in a bad mood this morning after hearing yet another hysterical broadcast on the BBC Radio 4 "Today" programme. Nick Robinson was trying to bully a very distinguished TD in the Irish Dáil to admit that the Irish Government would then soften their stance when all they are doing is agreeing with the other member states of the European Union on the generally agreed position, on which there can be no further movement. So hysterical had he become that, by the end, he was more or less screaming at the distinguished TD, and then made it even worse by suddenly saying, "Oh, we've run out of time, now it's the weather forecast, you can go". It was such a nauseatingly offensive broadcast that I shall pen a letter to the BBC tomorrow—I have not had time to do it yet—because Nick Robinson is joining John Humphrys in being an entirely reckless broadcaster.

Lord Hain: I very much endorse what the noble Lord says. I find deeply worrying the reckless way in which many leading figures in public life, including in Parliament, simply attack the Irish Government, destroying what has been a carefully and patiently built relationship after a tangled history. This must stop, and it must stop now.

Lord Dykes: That is not the first time I have agreed with the noble Lord in his assertions, which are usually very accurate, and I do so wholeheartedly in this case. It is the weight of that very adverse, condescending history of Britain and England's relationship with the Irish that smacks of being repeated when people behave like that nowadays. Think of what Ireland has achieved as a country and as a loyal, constructive and successful member of the European Union, not one that whinges and moans about everything, as unfortunately have far too many politicians over the years of our membership of the EU, which is still continuing, in case people have not noticed that.

The other reason for my bad mood this morning was the totally ludicrous and absurd article in the *Daily Telegraph* by that failed ex-Foreign Minister Boris Johnson about his advice to the Prime Minister. After all the chaos of recent weeks, his even presuming to give any advice was grotesque. However, my mood changed for the better as I came here for work—early, as usual, of course, in a virtuous sense—because of the flag-wavers outside, led by the immensely impressive but hugely modest Steve Bray and his team. They have now been there for nearly three years, day in, day out, from 10 am—not 11 am, as it was before—until 6 pm. There are even more flags, and the leave component at the end, trembling with fear, consisted of one or two flags. That sums up the reality of the public feeling about these matters. Many of those educated people who join in the flag-waving are British citizens living in EU countries, who come over whenever they can, while others have a deep knowledge of the functioning of the EU and the success of our membership of it. If only we had made more effort. So I felt better after that, but, none the less, the Brexit nightmare is getting worse.

I find it astonishing that colleagues such as the noble Lord, Lord Dobbs, are so complacent about Mrs May's alarming and indeed atrocious behaviour—I am sorry to have to use that strong adjective—especially after the 8 June election result. For her to go through the necessary and inevitable motions to follow up on the legislative requirements after the referendum result would be one thing, but to go on after that election result as if nothing had changed was quite preposterous. The mandate had been lost, but she did not accept that. In the old days in the House of Commons, when I was an MP, there was a natural self-restraint between members of all parties, and that would have been accepted by the Prime Minister, who would have said, "I no longer have this mandate to carry on this negotiation". Instead, however, she did a grotesque deal with the most unpopular party in the House of Commons, let alone probably in the country, apart from some people in Northern Ireland: the unsavoury DUP—Protestant extremists who resist and oppose all women's rights in Northern Ireland, in contrast to what happens now in England, with our more modern legislation. To go on as if nothing had changed was unacceptable. This now means, as the noble Lord, Lord Campbell, wisely said, that profound changes are in danger of being made on the hoof in the Commons. That can be an unfortunate consequence of what happens if mistakes are made. The Prime Minister pretended to hold substantive talks only after her massive defeat in the Commons last time—the biggest defeat in parliamentary history.

In the UK, we have always, tragically, failed to explain the EU's functions and its success story. The euro is a good example. It is feared here, because we were driven out of the exchange rate mechanism, but it is also regarded as a dangerous currency. In fact, the euro is the most successful currency in the world, getting closer and closer to the US dollar, and most member states are very happy with it. Some have found it harder to adjust than others, but that is natural in such a large grouping. I am glad to remind noble Lords that my own modest European Union (Information, etc.) Bill, is still awaiting a Committee of the Whole House—I believe it is number 11 on the list. If it comes through, it will provide that information that should have been available in public libraries and public buildings all over this country, explaining how the EU functions, in non-partisan terms, to give people the necessary information about it.

I come back to the present crisis, which is a grotesque nightmare for everyone, even the Brexiteers, more and more of whom are beginning to realise that this is the case. The SNP MP for Glenrothes, Peter Grant, the party's foreign affairs and Europe spokesman, recently intervened on the Secretary of State for Exiting the European Union:

"The Prime Minister has promised that her discussions with the devolved nations and the Opposition parties will be without preconditions, so clearly she will not refuse even to discuss the prospect of extending article 50, because that would be a precondition; she will not refuse even to discuss the prospect of taking no deal off the table, because that would be a precondition; and she will not refuse even to discuss the possibility of giving the people another say, because that would be a precondition. Can the Secretary of State therefore confirm on the record that all those

[LORD DYKES]

topics will be available for discussion, in honour of the Prime Minister's promise that there will be no preconditions?".—[*Official Report*, Commons, 24/1/19; col. 318.]

The most important absence of a precondition would be to give the people the chance of another vote.

Lord Dobbs: Before the noble Lord sits down—I promise not to keep bobbing up and down, which would be very aggravating, but he mentioned my name—I want to apologise to him for appearing in any way complacent. I had not thought I sounded complacent. He mentioned the demonstrations outside, which he said had been going on for three years. They are very impressive, with all the flags waving. Can the noble Lord enlighten me, and perhaps the House, on who is paying for these demonstrations? The question has never really been asked, and it is about time we investigated.

Lord Dykes: Would it not be better for the noble Lord, Lord Dobbs, to go and ask them himself? I do not know the answer but I am told that they all do it by paying themselves for their individual efforts. That is the only answer I have ever received.

4.46 pm

Lord Balfe (Con): My Lords, I begin by declaring my interests, as recorded in the register, from which it can be readily discovered that I am a Eurofanatic. I am, too, very pleased to follow the noble Lord, Lord Dykes, who I have known since we were both in different parties—although he has managed two moves to my one.

I have observed in the past that you can change your history but not your geography, and we will find out, in the years to come, that being 22 or 23 miles from Calais will not change because we leave the EU. We seem to be in danger of talking about the deal as if it settled everything. It settles nothing: all it does is begin the negotiations on getting where we want to get to. We are at a very preliminary stage, and, as I have said many times in this House and elsewhere, we are being totally unrealistic. There is no way in which we leave the European Union and get a better deal than when we are in it, for the simple reason that 27 countries do not want to be reduced to 26 and will make it jolly certain that we get as difficult a deal as they can get away with. That is where the history and geography come together.

I turn now to a couple of practical things. We talk about extending Article 50—let us remember, however, that the European Parliament has to agree to whatever deal is reached. The last sitting of the European Parliament is on Thursday 18 April; it does not return until 2 July. The whole of the week when it returns is a basically ceremonial time when it elects its president, its committee chairs and all the people needed for the negotiations. The European Parliament, therefore, will have to decide whether it wishes to maintain its EU committee and whether Mr Verhofstadt will continue in his role. The European Commission will have to decide whether Mr Barnier is to continue in his role, or perhaps to become the new president of the Commission—an outcome I see as highly likely.

There will also be a change of presidency: at the beginning of July the Finns take over the presidency of the European Union. The odds are that theirs will be a fairly active presidency. Perhaps the Minister can tell us how much discussion there has been between HMG and the incoming Finnish presidency on how they propose to handle the period from July to December.

We then proceed through the autumn, when the European Parliament has hearings for the nominated Commissioners. Every country will nominate a Commissioner. A presidency will be nominated in July and throughout the autumn there will be hearings of the new Commissioners on their new portfolios. The EU will not be in a great position to be doing any negotiation. So an extension of three months is pretty meaningless.

Let me consider the MEPs. The Prime Minister said in her Statement:

"It would require an extension of Article 50".

This is when she was against it; I am not sure what position she is in today. She continued:

"We would very likely have to return a new set of MEPs to the European Parliament in May".

We would not, actually. The MEPs could lapse and there is a long-established procedure that when a member state joins the EU, the parliament nominates the MEPs. There is no legal reason why an outgoing state could not nominate MEPs—or, for that matter, have no MEPs at all. As we enjoy shooting ourselves in the foot, that might be the choice. They can be appointed.

We are also told that a second referendum would set a difficult precedent. Of course it would. As Mr Speaker Bercow has shown, precedents are there to be broken. I seem to remember that we had two referendums on Scottish independence and two on Welsh independence—

Lord Liddle (Lab): On devolution.

Lord Balfe: On devolution—the noble Lord is absolutely right.

It is a case of how long you allow to lapse between them, not that you cannot do it. As the noble Lord, Lord Dobbs, rightly said, we could have an election. Let me warn my party what is likely to happen. I think it is highly likely that the Opposition would win an election. To people who think that elections are about Brexit, I say, think again. If you want an example, look at the Soke of Peterborough, as it is called. It had an MP who campaigned vigorously for a no vote. He lost his seat. I am not sure that the person who replaced him is in full communion with the party that she was elected for, but none the less, he lost his seat. Mr Stewart Jackson joined the unemployed as a reward for campaigning for Brexit.

You might well get that result in an election. People have reflected on seeing me on these Benches, but I will have a far bigger laugh when I see the noble Baroness, Lady Hayter, as a Minister in a Corbyn Government. As she will remember, we were together in Labour First, the right-wing pressure group within the Labour Party. I think she will make an excellent Corbyn Minister. Let us be aware where we are heading.

On Project Fear, all we get these days is, "The drugs won't come through" and "The ports will seize up". Of course there will be difficulty, but we will get over it. We are a resourceful nation. People in East Anglia, where I live, say to me—and, I am sure, to my noble friend Lord Lansley—"We heard all this before, Richard. It was rubbish. We had it in the run-up to the referendum: the world was going to collapse. It hasn't happened. It won't. We might have a bit of difficulty, but we'll get over it".

I counsel that the argument for Europe is a moral and philosophical one. It is not about a can of beans, even a delayed delivery can of beans. Please do not go on with Project Fear. The next step will be negotiations. After this deal, whatever it is, is agreed, there will be difficult negotiations.

Last Friday, I was in Madrid talking to Spanish politicians. It is clear that they are keeping their powder dry. Their demands will come through when it matters, which is when they start negotiating. That is when you will find the different countries of Europe asking for whatever they want for their particular interests, for what is known in Belgium as the Flemish Christmas tree. Virtually every country of Europe will want to hang a bauble on that tree. That is where the difficult negotiations are going to take place. We will look back on debates like this and think, "Wasn't it simple? We only had to talk to ourselves. Now we have got to talk to all these foreign people about how we survive".

So I say to noble Lords, by all means let us extend Article 50, but do not believe that another referendum would necessarily change the result; it probably would not. We have to move forward. This is a great country and whichever way we go, we will survive. I would prefer to survive within the EU, but I do not subscribe to the prophets of doom who say that we are going to collapse if we are not.

4.55 pm

Lord Hain: My Lords, it is a pleasure to follow the noble Lord, Lord Balfe, spelling out European realities, given that he knows them well—although I think he was rather uncharitable in pulling the leg of my noble friend Lady Hayter.

I speak in strong support of my noble friend Lady Smith's Motion. There are now just 60 days to go to Brexit, come what Theresa May. This is "make your mind up" time. As Michel Barnier has pointed out:

> "To stop no deal, a positive majority for another solution will need to emerge."

It is therefore imperative to extend Article 50 in order to prevent the calamity of no deal and allow time to see whether there is an agreed way forward—including whether a people's vote is the only way out of this nationally humiliating, utter mess.

The Government are currently held hostage by a group of right-wing extremists who are blocking any compromise on the Prime Minister's completely unrealistic and undesirable "red lines". Preoccupied with their fundamentalism and fantasies about so-called free trade and sovereignty, they are quite willing to sacrifice the well-being and security of our country—as well as, perhaps most disgracefully, peace and continued progress on the island of Ireland. In contemplating or even positively advocating no deal, as many do, they are willing to risk every trade agreement the UK currently has. But the wheels are finally coming off the European Research Group free trade bandwagon, as their illusions are exposed. For the truth is that they never had a practical Brexit plan of their own.

Two weeks ago we learned that, contrary to airy promises made in 2017, International Trade Secretary Liam Fox has failed to deliver a single "roll-over" trade agreement to replace the 70 or so with the rest of the world that we currently have through the European Union. As for claims that trading on WTO rules only after 29 March would be no problem, as the EU Commission made clear just last week, those very rules would require the European Union to treat the United Kingdom as it treats other non-EU WTO members. International law would then inevitably require a hard border on the island of Ireland. It is simply dishonest to blame the Irish Government for that. The chosen WTO rules of the Brexiteers would require a hard border. The United Kingdom's businesses and, importantly, services would face the loss of their European Union and other markets, with no prospect of finding replacements in protectionist economies such as the US, India and China.

The Labour leadership also appears fundamentally to misunderstand the impact of European Union state aid and competition rules. As the IPPR has made clear, those rules would not in fact prevent an active industrial policy or, indeed, renationalisation of rail or water, or public ownership stakes and interventions elsewhere.

There are frightening real-world economic, security and social consequences if Parliament is unable to get a grip and offer people the opportunity to decide whether this sort of Brexit is the future they really want. The Brexiteers never explained that people would be poorer and less secure. They dishonestly claimed that we could leave and keep all the benefits of remaining. Why should a narrow victory in a referendum two and a half years ago give Brexiteer fanatics the right to drive the country over a cliff? It is inherent in a democracy that voters should have the chance to change their minds. Labour leaders, please note: more than 75% of Labour Party members and two-thirds of Labour voters currently support a people's vote. Meanwhile, Parliament must stop at all costs the catastrophe of a no-deal Brexit.

4.59 pm

Lord Cormack (Con): My Lords, such a brief and effective speech is not unusual of the noble Lord, Lord Hain, with whom I have worked on a number of important issues over the years.

I want to make one or two new points if I can, although that is extremely difficult. Indeed, I am reminded of a great friend of mine who was getting married for the fourth time. As his son, who proposed the toast, rose to his feet, he said, "Here we are again". The Brexit debate in your Lordships' House is a bit like that. One can guarantee that whenever two or three noble Lords are gathered, whether in this House or outside, one short phrase will be uttered within a matter of moments: "What a mess". It is our duty, so far as it can be, to help to steer the country out of this mess.

[Lord Cormack]

We are constantly reminded of the 17 million people who voted leave. Of course, they were in the majority: 52% of voters voted to leave the European Union. We must respect that. However, 48% voted in the opposite direction. Two statistics are even more stark and telling: 37% of the electorate voted to leave and 34% voted to stay. Those figures put things into perspective and ought to induce a little humility in us all. I have always studied the English Civil War with great interest, with its fascinating people, great issues and extraordinary events, but I have come to understand it only over the past three years. We all have a duty to try to heal some of the rifts and breaches. My noble friend Lord Dobbs, who is not in his place at the moment, referred to last weekend's polls saying that a large number of remainers would not wish to marry a leaver, and vice versa. We all know from our circles of friends that this is all too true. I speak as one whose sons married remainers a long time ago and are both happily married, one after 20 years and the other after 25 years. That was absolutely a good thing.

We need to bring our nation together. How can we do that? I suggest two things: first, we will all be looking to the other end of the Corridor tomorrow night. There will be a series of votes. We do not know exactly how many; that depends on Speaker Bercow. I believe that even at this late stage, the Prime Minister should make the decision that the votes are free ones. I was in the other place when we voted to enter the European Community, or the European common market, as it then was. It was the courageous but realistic decision of one of the most accomplished Chief Whips in post-war history, translated by then to Prime Minister, that led to a free vote. I can see the noble Lord, Lord Taverne, smiling and nodding because he remembers that every bit as well as I do. That decision had a profound influence on the result because although only the Government side was officially given a free vote, it had a real effect on the Official Opposition of the day, as I knew from talking to many of them at the time.

The Prime Minister would be performing a great parliamentary and national service if she were to sanction a free vote tomorrow. I also think she would do rather better as a result of that magnanimity than by imposing Whips, which did not work terribly well two weeks ago. Assuming for the moment—I hope correctly—that there is a consensus following tomorrow night and the other place is able to concentrate on one or two not mutually exclusive but complementary avenues towards a settlement of this issue, I hope something else can be done. When my noble friend the Leader of the House was introducing this debate, she referred to cross-party talks and to confidential briefings, so that Members of both Houses could have a clearer insight into the precise details of the negotiations. That is good so far as it goes, but I want to resurrect an idea that I first voiced on the Floor of your Lordships' House in June 2016, when I said it would be a very good thing if we could have a joint committee—based on the Scottish and Welsh committees—of both Houses, not just one House, on the European issue.

If we are to come together—if those of us who accept that there is to be Brexit, but are proud that we are one of 48% of the electorate and 34% of the nation, are to bring people together—it would be good to have a joint committee of both Houses and all parties meeting to discuss the details. It does not need to prolong the issue indefinitely. I was taken with what my noble friend the Duke of Wellington said about a three-month extension; because of the burden of legislation, that may be necessary. Nevertheless, I was brought up sharp, as I am sure many of your Lordships were, by the speech of my noble friend Lord Balfe. He pointed out some of the practicalities involved, and that the European Parliament that meets on 18 July will be different—perhaps very different—from the Parliament that meets on 18 April. It may have a very different angle on some of the great issues.

Lord Wigley (PC): I am following the noble Lord with a lot of interest. A free vote could, no doubt, stimulate the possibility of a different consensus—or of getting a consensus at all. Given that there are 14 amendments and four amendments to the amendments, and no certainty as to how they will be selected, there is no guarantee that a consensus that may exist in the other place will translate through to here. In those circumstances, might we not need more time in this Chamber to handle legislation that could come from the Commons? A No. 3 Bill is already mentioned in an amendment. Even if we are constrained to 13 June, we certainly do need more time.

Lord Cormack: As I said, I am attracted by some of the propositions put forward by my noble friend the Duke of Wellington. The fact of the matter is that, as my noble friend Lord Balfe has pointed out, there are practical difficulties. What we want is a united Parliament—so far as we can—and a united nation. Whatever motivated those who voted to remain and those who voted to leave, one thing underpinned whatever that individual motive was: at the end of the day, each man and woman who cast a vote surely wanted a prosperous, peaceful Britain in a prosperous, peaceful Europe. We should focus on that sentiment, because it ought to unite us all. If that needs more time so that we can properly fulfil our parliamentary duties, so be it, but let us get on with it.

I hope that we will see some clarity from the other end of the Corridor tomorrow. I hope also that when we next have a debate, it will not be in the rather sterile and unhelpful atmosphere we are forced to debate in today.

5.10 pm

Lord Wallace of Saltaire: My Lords, a number of noble Lords, including in particular the noble and learned Lord, Lord Brown of Eaton-under-Heywood, have remarked that much of Britain's broader public are longing for an end to these endless debates about Brexit. Some within your Lordships' House probably share that view. However, leaving at the end of March will not bring an end to domestic debate. The Government have hardly begun to negotiate on the future relationship and there are still deep divisions within the Government and in the Conservative Party about what that future relationship should be. The seven speeches from the Conservative Party that we have already heard in this

debate show that it has many different opinions. So we are facing a further two years or more in which domestic issues take second place to European ones while Ministers struggle to decide what their party will accept.

If Theresa May had taken a different position when she became Prime Minister, we might now be in a different place. She could have noted the thinness of the majority and the divisions in public opinion and could have stood up to the hardliners in her party and gone directly for a Norwegian option, membership of the European Economic Area and the closest association possible. If she had, we might well now be leaving with the negotiations almost completed—but she did not. She set out red lines to satisfy her right wing, appointed ideological hardliners to key positions in the Brexit negotiations and divided the country and the party more deeply. Here we are, up against the lines she set, and unprepared either to leave or to stay.

Last week the Prime Minister declared that to question the outcome of the referendum and ask the public to think again,

"could damage social cohesion by undermining faith in our democracy".—[*Official Report*, Commons, 21/1/19; col. 26.]

That is a pretty strong statement. However, the country is already divided. The last referendum damaged social cohesion. The campaign itself brought out underlying divisions—not just about the European Union. A right-wing extremist murdered an MP before the vote. Hate crime shot up immediately after the referendum and has stayed up since then—against eastern Europeans, against people of Asian and Afro-Caribbean descent although born in Britain, and against outsiders of all sorts.

When Theresa May was appointed Prime Minister, she made an idealistic speech about healing the nation's divisions, but she then pandered to the nativist elements in her own party, labelling those who opposed leaving the European Union "citizens of nowhere"—this from the leader of a party which receives large donations from financiers with offshore businesses and which has accepted contributions from Russians resident in Britain, but who nevertheless stoops to labelling those British citizens who believe in European and international co-operation as having divided loyalties. That is how English Protestants labelled Catholics 350 years ago and nationalists labelled Jews.

Of course, the right-wing media went further with headlines about "traitors" and "enemies of the people", attacking judges, the liberal elite and the establishment. I love to hear Jacob Rees-Mogg attacking the establishment because it is the ultimate absurdity. Neither the Prime Minister nor other responsible senior Ministers have deplored such attacks or warned that they are feeding social division. A recent survey shows, not surprisingly, that Britain has become a much angrier society over the past two years. That is partly because of the deteriorating quality of our political debate and partly because of the Government's failure to address the many other causes of social division, in their preoccupation with internal party rivalries and disputes.

For more than a century Britain has been a liberal democracy built upon reasoned debate, respect for evidence in policy-making and continued dialogue among politicians of opposing views. We now face, within Britain as well as elsewhere, a surge of "illiberal democracy", as Prime Minister Orbán of Hungary has labelled it, founded on the exploitation of popular fears, antagonism to foreigners and international institutions, the denigration of domestic opponents and a sweeping disregard for consistency or evidence. President Trump is one of the most skilled exponents of illiberal democracy. After all, one of his campaign promises was that Mexico would pay to build a wall along the United States' southern border. Two years later, without any sense of shame, he shut down the federal Government to try to force Congress to pay for the wall instead.

We have had similarly illiberal and irrational promises here. We were told repeatedly by Liam Fox and others that the German car industry would force the EU to give Britain whatever we demanded if we left, and that the exit negotiations would be the easiest negotiations ever. We were also assured that leaving the European Union would resolve the problem of immigration, even though in no year did the majority of immigrants arriving come from inside the EU. The leave campaign promised groups within the Asian community that closing off European immigration would leave more space for others to arrive.

Now we are warned that the will of the people—a phrase that authoritarian and anti-democratic Governments have long been fond of—requires a much harder, nastier and domestically damaging Brexit, because there can be no reconsideration or turning back. We should not be surprised that the most committed Brexiters overlap with those who deny the reality of climate change and those who promise that the best way to increase government revenue is to cut tax, nor that the same people who warn of the threat of violence on the streets of English cities if Brexit is not delivered in full dismiss the prospect of any return to violence in Northern Ireland as exaggerated. They choose what they want to believe.

Boris Johnson has shown the same happy disregard for consistency and evidence in denying that he played a major role in the Brexit campaign or even raised the spectre of millions of Turks swarming across our frontiers; so has Jacob Rees-Mogg, in switching from a passionate commitment to establishing parliamentary sovereignty again to now calling on the Prime Minister to prorogue Parliament to prevent a democratically elected Parliament delaying an unprepared and un-negotiated Brexit. I am sure that, as a good historian and a Roman Catholic, he knows that King James II prorogued Parliament repeatedly to prevent MPs blocking his pro-Catholic legislation, and ended up in exile as a result. Perhaps the same fate may reach the Conservative Party. I do not know whether he and others would go to Switzerland or Singapore.

Meanwhile, the regional divide between Britain's richest and poorest regions remains the widest in Europe, and the overall divide between rich and poor is shameful for an open democracy. London has a structural surplus of housing for non-resident rich—built precisely for citizens of nowhere under London's Conservative mayor, Mr Johnson—and a structural shortage of affordable housing for British citizens. We

[Lord Wallace of Saltaire]
are a divided country—economically and socially, as well as politically—and going through with Brexit is likely only to make those divisions worse.

This country desperately needs constructive political leadership to bring us back together. It is now clear, sadly, that we will not get constructive leadership from this Prime Minister, more concerned with her doomed effort to hold together her own party than with the rest of the country. The task for all of us, in both Houses, is to find a way out of the present political, social, economic and constitutional crisis that can begin to re-establish our damaged social cohesion. That will require cross-party co-operation and a quality of political leadership that has been lacking since 2016. It may also need to include another referendum.

5.19 pm

Lord Saatchi (Con): My Lords, I thank noble Lords who have sent me kind thoughts in the past few weeks. I am very grateful to them—they know who they are—and in particular to the noble Lord, Lord Kakkar, who, aside from being the chairman of our Appointments Commission and Judicial Appointments Commission, is also, as we know, one of our most distinguished physicians. He is not in his place but his combination of ice-cool medical professionalism and loving care is a symbol of one of the many wonderful things about your Lordships' House.

What I am about to say is supported by the noble Baroness, Lady Kennedy, one of our leading legal figures; she is unable to be in her place today because she is with the United Nations team in Turkey examining the murder of the journalist Jamal Khashoggi. Also, outside of this House, it is supported by Gina Miller, who, with the assistance of the noble Lord, Lord Pannick, defeated Her Majesty's Government in the Supreme Court on the question of the trigger of Article 50.

With the help of your Lordships today there will be a big redistribution of power in Europe. Why? After the Second World War, Germany was in ashes. At the Yalta peace conference we were one of the big three—Russia, America and Britain. We spoke for the whole of Europe but, in three brilliant moves, German diplomacy ended all that. First, there was reunification so that Germany had the biggest population in Europe. Secondly, there was the treaty of Nice so that voting strength in Europe reflected population weight—one man, one vote instead of one country, one vote. Germany outvoted Britain for the first time. Thirdly, there was the treaty of Lisbon—your Lordships are familiar with the articles—so that the majority required to change EU law was reduced. Three simple steps to effective control of Europe.

Our Government were asleep at the wheel. Throughout, the British Foreign Office practised the withdrawal method in sex—stay out of the danger zone. That was the government strategy throughout—variable geometry and two-speed Europe—until they finally achieved a climax with the aptly named EU (Withdrawal) Act 2018. Britain stood on the touchlines at Nice and Lisbon and watched the game as a spectator. The result? You will hear it on the TV news any night: in the end Germany will decide; Mrs Merkel signs the cheques.

This brings us to today, with Britain as a subordinate reporting to the EU. Are we supposed to look forward to serving the EU Scottish smoked salmon for starters, Irish beef for the main course and Welsh rarebit for dessert? As someone once said, "No, no, no".

After all this, what are we to do? To now remain in the EU, I say to the noble Lord, Lord Newby, would be a national humiliation that would last for 100 years. What would be the point anyway? We would still have the same problems as before: first, we do not want to be bossed around; and, secondly, we do not want uncontrolled immigration. Those two problems have to be fixed and the only way now on offer is to leave.

However, there is a much better way, which is what the noble Baroness, Lady Kennedy, Gina Miller and I are suggesting today—to lead, not leave. For the sake of phraseology, let us call it remain-plus. We want a redistribution of power in Europe and that is why I introduced the EU Membership Bill in your Lordships' House on 10 December 2018. It would give us equal votes to Germany and reasonable control of immigration. It would mean that Britain would take its rightful place as, at the very least, one of the natural leaders of Europe. A happy ending to two years of what has been popularly known and described as a complete mess.

The withdrawal agreement has been withdrawn. I consider myself to be of average intelligence but it was so complex that it was beyond the judgment and understanding of the human mind to comprehend all its variables. Shall we see whether your Lordships' House can do any better? Instead of a 585-page EU document, the Bill I am referring to, which is now in the Printed Paper Office, is a one-page House of Lords Bill. Here is the rationale behind it.

For over 100 years since the Parliament Act 1911, we in your Lordships' House have obviously all looked up to the other place. It has legitimacy, the authority of the ballot box and the mandate of the general election, et cetera. We are a humble House and we know it. However, I hope that we will make up our own minds about whether we think that our continuing silence on the subject of the EU is still appropriate. The EU chief spokesman said last week that the EU wants to hear what Britain wants—what it "really, really wants". Apparently, the House of Commons is having difficulty telling it, so why do we not have a go?

The same deference that we have always displayed to the House of Commons applied also to the EU referendum, and that ace of trumps is played on a daily basis: "We voted to leave. Nobody must obstruct or frustrate the clear sovereign will of the people in the biggest democratic vote in British history", and so on. However, I say that the time is up for that argument because the result of the referendum was clear: we cannot decide; we are not sure. That was the result.

There is no comparison between a general election and that referendum. In a general election, if we do not like what we voted for, we can change our mind. This is democracy—first past the post and the greatest advance in human civilisation—and one vote is enough. Nobody challenges that. But this EU referendum is completely different. If we do not like what we voted for, we cannot change it—it is permanent. Therefore,

the beautiful concept that "one vote is enough" does not apply. As we have seen, the result is that nobody is happy. Leave people hate half in; remain people hate half out.

We keep hearing that this is a "failure of statesmanship" on a level with Suez. Apparently, Colonel Nasser wrote a page a day for each of the country leaders involved in the Suez crisis—Britain, France, America and Israel—to try to understand how that day had gone from their point of view. It worked very well, did it not? Shall we try that with Chancellor Merkel and President Macron? They had only one interest and one strategy—no detail required. The view was, "We don't really care whether Britain comes or goes. All we care about is that they don't set a precedent for anyone else. Therefore, our strategy is tough terms. The tough-terms strategy will have one of two good results. Either Britain accepts the tough terms—that will teach the rest of them—or it says, 'These terms are tough. We'd better stay'". Either way, for France and Germany tough terms was a no-lose bet, which they have executed to perfection.

Meanwhile, Britain has now spent many angry years, and 585 pages, debating our terms for leaving. Let us see what we can do with our terms for remaining. How about one page? That is the length of the Bill—two clauses on one page. The first clause sets out that Britain is to have the same voting powers as Germany; the second deals with Britain having reasonable control over immigration. This Bill is remain-plus, and it means that we will have won a lot for our years of political anguish: equal power to Germany and reasonable control over immigration. That would make it all worth while, would it not? Perhaps the EU leaders would prefer that too. They keep saying that they are "so sad" at our leaving. Let us find out whether theirs are crocodile tears.

In case any noble Lord thinks that the EU will never accept that, here is Manfred Weber, the leader of the biggest parliamentary group in the EU and the front-runner to replace Mr Juncker as President of the EU Commission. Last week he said:

> "Brexit is absolutely an example that people can see in reality ... why our main message for the EPP campaign is that it's better to reform the European Union where we need a reform, than to leave or even destroy it".

This Bill has big reforms for the EU leaders to swallow but, like the British people, they might prefer them to the unpalatable dishes now on offer.

If your Lordships' House moves this Bill forward, we will feel more responsible for our own lives. Everyone will agree that it makes everything in Europe much fairer and the British people will gain more dignity and self-respect. Therefore, in the name of common sense and in the interest of the country, I ask all noble Lords, on whatever Bench they may be, to now fight for this EU reform, and this Bill, as best they may. The three of us whom I mentioned at the beginning are undertaking this national task here today. I call upon all Members of your Lordships' House who agree with us to listen to my voice and follow me. Long live Britain in honour and independence.

5.29 pm

Lord Hannay of Chiswick: My Lords, I had been going to start my remarks by saying, "Here we go again"—but unfortunately the noble Lord, Lord Cormack, got there before me. There is indeed quite a lot that is both tedious and repetitive about the string of debates that this House and the other place have been holding on Brexit. I hope that I will not be thought too disobliging if I say that today's debate seems to show some traces of metal fatigue. However, the debates and the votes we register are necessary because only Parliament can ensure that the Government do not, perhaps inadvertently, take this country on a course that could inflict considerable loss and suffering on its citizens.

Two weeks ago, by a majority of 169, this House categorically registered that leaving without a deal needed to be rejected. I would like the Government to say—since the noble Baroness the Leader of the House did not say a word about it when she opened the debate —what account they took of that vote when they started to shape up what is described with some irony as plan B but is in reality plan A, rejected by large majorities, in flimsy disguise. I listened carefully to the Leader's speech and she did not manage to mention plan B at all. Like TS Eliot's Macavity the Mystery Cat, it has just disappeared. Where has it gone? I do not know—but we perhaps need to know. I fear that the answer to the question of how much account the Government have taken of your Lordships' majority of 169 is, "Not a lot".

It is important that the Government face up to reality and admit what the consequences of leaving without a deal would be. The noble Baroness, Lady Neville-Rolfe, referred to this and I will refer to it, too. If we leave without a deal, on 30 March we will be required, not by a diktat from Brussels or Dublin but by WTO rules, to apply tariffs on all our imports from the European Union—and EU countries will be required to apply tariffs on all their imports from us. That would apply on the border between the Republic of Ireland and Northern Ireland as elsewhere. Alternatively, there is one way out, which is that we apply zero tariffs to all our imports worldwide—which would remove all protection from our businesses and our farmers.

It would be helpful if the Government would say which of those choices they would make. It is rather important for businessmen who are already fulfilling contracts that involve trade in these goods. They might like to know whether the tariff will be 10%, 20%, 0% or what. That quandary was admitted by the noble Baroness, Lady Fairhead, at Second Reading of the Trade Bill on 11 September. It was also implicit in what the noble Baroness the Leader of the House said in reply to a question of mine on 21 January. Is that the Government's view—I would very much like to hear the answer in the winding-up speech by the noble Lord, Lord Callanan—or are we planning to start our life as an independent member of the WTO by flouting its most fundamental rule: the most favoured nation rule? If that is the case, there are even more compelling reasons to rule out leaving without a deal.

It really is no good the Government repeating, as they do frequently, that they cannot single-handedly rule out leaving without a deal. That is entirely correct,

[LORD HANNAY OF CHISWICK]
of course, but entirely insufficient. The reason is that they could quite easily say, today at the Dispatch Box, that they would do everything within their power to avoid leaving without a deal, and we would all be very happy if they said that. We would recognise that it would require the co-operation of the other member states, but it would be a good start. Frankly, if they still believe that it gives us leverage to go on playing with the trigger, they are in for another bad surprise.

Then there is that date of 29 March, which the Government insist must remain as if it were written on one of the tablets brought down by Moses from Mount Sinai. Do they not understand by now that there is not the slightest chance of being able to meet that deadline? Whatever course of action is taken, even in the eventual case of the Prime Minister's deal being approved, there still is not time to do it and to pass all the necessary legislation under the withdrawal treaty and the political declaration. Would it not be more sensible to recognise that now and initiate discussion with the European Union about prolongation? Several views have been expressed on its duration and its motivation, and surely that would be a much more sensible course to take. No doubt the Government will be forced to get there eventually, but how much better to do it now and not to inflict more uncertainty and damage on our economy in the weeks ahead.

I hope that a clear message on these two points will go out from this House today. That is why I will support the Motion in the name of the noble Baroness, Lady Smith of Basildon. I looked at it again just now and really find it hard to believe that anybody could be opposed to the second part of the Motion—although I then listened to my noble and learned friend Lord Brown, who managed to find some reason to do so, which I am afraid I did not follow very carefully—while the first is just simple common sense.

5.37 pm

Baroness Wheatcroft (Con): My Lords, it is my pleasure to follow the noble Lord, Lord Hannay. He certainly shows no sign of metal fatigue.

I have always been proud to be British, but that is becoming harder. This country is looking increasingly ludicrous. As my noble friend Lord Cormack said, we are in a mess. It is fair to say that, thanks to David Cameron, Boris Johnson and Jacob Rees-Mogg, we are in a veritable Eton mess. The public deserve the opportunity to save the country from that mess. A referendum is their right. It is in the public's interest that they should have a say.

The opposition to a referendum is highly vocal, and I find it puzzling. We are told that it would be undemocratic, that the people have spoken. I do not see that that is the case at all. It seems to me that those who are opposed to a second referendum, as they call it, are worried that actually it might not produce the result that they want. That is because the people have had the sense to look at where we are going and to be worried. There are reasons to be afraid—very afraid. The Brexit that was on offer at the time of the referendum is very different from the Brexit on offer now, and it seems only right that the public should have the right to give their informed consent.

The Prime Minister says that a second referendum would threaten social cohesion. That is somewhat ironic, given that the Government are discussing the prospect of declaring a national emergency when we leave without a deal. We already are in a national emergency because we are horribly close to 29 March. When David Cameron became Prime Minister, it was on a promise to heal "broken Britain"—but if it was broken then, it is in a really bad state now. Every day brings more news of companies taking jobs out of the UK. Sony's headquarters is one of the latest moves to be announced, along with Dyson; and Jaguar Land Rover is moving jobs. Ireland is seeing an influx of new business to the extent that there is now a real skills shortage there. It is interesting to see that the headhunter Odgers has just decided that it really needs a new office in Ireland.

A no-deal Brexit is only days away, yet Britain simply is not ready. The Federation of Small Businesses says that only one in seven of its members has made any preparation for a no-deal Brexit. The Government are doing their best to help. There is a website geared towards helping businesses prepare for such an eventuality, which tells you that you have to answer only seven simple questions and all will be made clear. Posing as a small retailer importing a little bit from Europe, I answered the seven questions. I was promptly delivered 25 documents I needed to read to prepare for what lay ahead. There was even one that told me how to work out the trade tariff code I would need—really useful, particularly as the example that had been chosen was that of a grand piano. The retailer I was posing as had little cause for grand pianos, but then I do not think many in this country do. The point is that if you are running a small business you do not have time to read 25 documents—the surprise is that one in seven businesses has got that far.

What this does make clear is that, should we leave with no deal on 29 March, there will be chaos, and not just at ports. Trade will simply not be done. We will be an impoverished country. As others have already said, even if we get a version of a deal—potentially Mrs May will find one or two fig leaves; they will be words, really, not much of substance, but the Commons may eventually be persuaded to back her deal as the clock ticks further and further—that does not give business the certainty it needs. It does not give any of us any certainty. It is only then that the negotiations over our future will begin, and we will have no negotiating chips at all.

I have listened to those who say that the Prime Minister merely has to go back to Brussels and demand more and she will get it. I have also listened to what Michel Barnier and Jean-Claude Juncker say. I just cannot see how anyone can come to the conclusion that those two—or any of the other 27—are going to bend. The withdrawal agreement is, they say, the final agreement. A customs union or Norway-style solution would be less damaging than no deal, but would still involve years of negotiation and uncertainty. In her Statement, the Prime Minister promised that the Commons would have more of a consultative role; that she would seek to secure a mandate from the Commons. As pointed out by the Leader of the Opposition, the noble Baroness, Lady Smith, we attempted

to give her that helping hand and to have a mandate for the negotiations in the first place. I put my name to the amendment with the noble Lords, Lord Monks and Lord Lea, and I am afraid we did not make any progress with her. I suspect that Mrs May's definition of consultation is not the same as the ACAS definition of it.

I have listened this afternoon to many interesting speeches, including from my noble friend Lord Dobbs, who is not in his place, sadly. He spoke with his usual eloquence about two memories very heavily imprinted on his mind. He spoke of a young man in Tiananmen Square, and of the Berlin Wall coming down. I drew two very different conclusions from the noble Lord. That young man in Tiananmen Square reminded me that a very large majority of our young people do not want to leave the EU. The magic moment when the Berlin Wall came down was a sign of how powerful a united Europe is.

I do not want us to leave Europe. I do not want us to put up a metaphorical wall between the UK and Europe. I heard the President of the United States, Donald Trump, say last autumn that, in the right place, there was nothing more beautiful than barbed wire. I do not subscribe to that view.

5.45 pm

Lord Desai (Lab): My Lords, I have not spoken on Brexit more than about three times in the past two years—I think that I deserve a prize for that. I spoke last on 5 December and more or less what I said then I will say again, but with a few more caveats.

My principal view is that people voted for Brexit. I voted remain; people voted for Brexit. It does not help to say, as did the noble Lord, Lord Newby, "Only 37% voted, so it does not count". No victor in a general election has ever been chosen by the majority of voters. If we were to use a 51% rule, it would mean that all our Governments were not legitimate. That will not do. A referendum was called. People chose to vote. A lot of the young people who we now hear are very pro Europe chose not to vote. If you choose not to vote, you take the consequences. Some 34 million people voted; there was a majority of 2 million. It is up to us to deliver on that as best we can.

The deal negotiated by the Prime Minister is not the best deal, not the second best nor even the third best, but it is the best that we can get. It is not possible within the time that remains, or even if we elongate the time, to get a better deal as we like it. Both Houses of Parliament have proposed better alternatives, as if we were in a shopping mall and could pick up anything we liked, saying, "I will have this Brexit", "I will not have that Brexit" or "I will not have a Brexit at all". That choice is no longer open. We have started a process. We are only 60 days away from the end of it. Sooner or later, the House of Commons will have to come to its senses. Plan A equals plan B, equals plan C equals plan D: ultimately, it will have to vote for the deal; nothing else is available. There is no going back to Brussels. The sooner the penny—or maybe the euro—drops, the sooner we will realise that the deal is the deal and there is nothing more.

To those worried about the backstop, I say let us think about it this way. All the backstop threatens is that it will not be reversed in an anticipatable time—it may not take two years; it may take four or five. In the long run, that is not a serious objection to having a backstop. We know that whatever trade relationship we negotiate with the EU after Brexit will take five or six years—that is the norm. Liam Fox did not know about free trade treaties, but that is neither here nor there. Those with a public school education cannot be expected to have any knowledge of anything real, but that is their problem.

I have a question for the noble Lord, Lord Kerr, who is going to follow me. If it takes five years to negotiate a free trade treaty, how come it takes only two years to get out of it? The Lisbon treaty should have said, "Having invoked Article 50, you are allowed five years to sort out the mess", because we have realised that any kind of Brexit that we negotiate is extremely complicated and will take a lot of time. The backstop and the transition period are giving us extra time creatively to get out of the free trade treaty that we signed, so we should take every advantage of it. We do not even have to negotiate a postponement, because after 29 March all is not over. There is a transition period; all sorts of opportunities are available.

Eventually, sense will prevail and we will see the realism of the deal. On the possibility of no deal, I agree with the noble Lord, Lord Balfe, that the problem with Brexit and business right now is uncertainty. We do not know what the final shape of the beast is going to be. But once we know what the beast is, we will adjust. We will be able to adapt under whatever circumstances, deal or no deal. I am confident that the British economy has tremendous flexibility, and its people have great character—they can innovate, adapt and win in the end. Of that I have no doubt.

If we are in a no-deal scenario, I would adopt a suggestion made by the noble Lord, Lord Hannay: we should declare ourselves a zero-tariff country. That will considerably simplify the problems of the no-deal arrangement, because, apart from problems of health and other requirements, at least we will not have the trouble of stopping people to collect tariffs from them. If we go to a no deal, attention should be paid to how much we can unilaterally ease our lives, and we should get the imports to come in as quickly as possible. They may or may not need our exports, but we need their imports. Therefore, we should concentrate on our needs.

The much-maligned Prime Minister has shown remarkable stamina; I am astonished. She is shrewd enough to know that if she plays this game long enough, ultimately everybody will get bored and agree with her.

5.51 pm

Lord Kerr of Kinlochard (CB): It is a pleasure to follow the noble Lord, Lord Desai. I cannot answer his question on how long negotiations for a free trade agreement will take from outside, but, like him, I would not have started from there. I would have started during the process, agreeing a framework for the future relationship, which is what the treaty says we should

[Lord Kerr of Kinlochard]
have been doing, and thus got some way down the road during the two years of negotiations on the first agreement.

I thought I would try very hard to say something new today. It is time we talked about time. It is running out, and we are going to need more. There are 60 days left, and plan B is exactly like plan A: sticking with the November agreement, which the Government would not let Parliament vote on in December; sticking with the agreement that Parliament rejected by a record majority in January; and sticking with this hopeless and humiliating request that the 27 acquiesce in some sort of legally binding formula contradicting the feature of the agreement which the Attorney-General highlighted in his letter of 13 November, as mentioned by the noble Lord, Lord Campbell of Pittenweem—namely, that the backstop will last as long as the EU 27 want it to last.

The Prime Minister told us she would change that in December—it did not work. She told us that again in January—it did not work. Mr Johnson, the former Foreign Secretary, tells her in today's *Daily Telegraph* to,

"stiffen the sinews and summon up the blood and get on that trusty BAE-146 and go back to Brussels",

to kill off the backstop and to replace it with a "freedom clause". The content of the freedom clause is as yet unspecified. Reading this, I was reminded of "Beyond the Fringe", and its splendid wartime RAF sketch, in which squadron leader Peter Cook declaims that, since the war is going rather badly:

"We need a futile gesture … Get up in a crate … pop over to Bremen … don't come back".

What, conceivably, could Mr Johnson's motive be in saying "Don't come back"? Presidents Tusk and Juncker could not have been clearer when they said in their letter of 14 January about the backstop:

"We are not in a position to agree anything that changes or is inconsistent with the withdrawal agreement".

As the noble Baroness, Lady Wheatcroft, said:

"These people mean what they say".

There is no more time to waste challenging them.

As for "no deal", I do not believe that our Prime Minister, whom I believe is a serious, responsible, honourable person, would drive the country over the cliff in 60 days' time. I do not believe it, and I do not believe that anyone believes she would. Her Cabinet may be divided, but they are not deranged. The consequences of no deal for the country have been spelled out every day ever more clearly, as the noble Lord, Lord Newby, said. The logically and physiologically rather odd argument that it would weaken our hand in Brussels if we were to stop threatening to shoot ourselves in the foot now looks even odder, given that there is no serious negotiation going on, because we have tabled no serious proposition.

I will reflect on the interesting analogy with nuclear deterrence that my noble and learned friend Lord Brown of Eaton-under-Heywood regaled us with. The flaw may be that Trident deters the Russians and does not damage us, whereas a no-deal Brexit would delight the Kremlin, and the risk of it is ravaging the British economy right now, as the noble Lord, Lord Newby, pointed out. The choice cannot be between the November deal and no deal. That makes no sense, and the Spelman-Morgan amendment in the other place tomorrow deserves support.

Talleyrand defined statesmanship as foreseeing the inevitable and accelerating its occurrence. The Government must already know that we are going to need an extension under Article 50(3). They must know that the Reeves-Benn-Grieve amendment tomorrow is sensible. They would do well to embrace it.

What are the arguments against seeking an extension under Article 50? I have heard three. It is said that it would betray the referendum result if we were still in the EU on 30 March. I cannot see that. The date was not on the ballot paper, and I do not think anyone knows why the Prime Minister subsequently picked it and started the two-year clock with no proposals tabled in Brussels, no strategy agreed in Cabinet, no attempt made to find consensus in Parliament, no consultation with the devolved Governments, and no consultation with the Dublin Government.

Mr Johnson, the former Foreign Secretary, says that 29 March is an "iconic" date, which it would be humiliating to miss. Why "iconic"? I do not know. Maybe he was thinking of the Battle of Towton, fought on 29 March 1461, which did, after all, produce a change in leadership. However, I doubt it. Towton was the bloodiest battle ever fought on English soil, and Mr Gove is still around.

Maybe he had in mind the Treaty of St Germain, signed on 29 March 1632, when we gave control of Quebec back to the French. Could he be planning to reverse that, in a maximalist version of Canada-plus? I rather hope not, but enough of Mr Johnson. Let us be serious.

Lord Forsyth of Drumlean (Con): Could it be that he considers the date iconic because such a huge majority of the House of Commons voted for the legislation that set it in stone?

Lord Kerr of Kinlochard: That is perfectly true; the date is in the legislation. The date was taken out of the legislation in this House by quite a large majority— I think it was 78—on the recommendation of the amendment of the noble Duke, the Duke of Wellington. I think that the House of Commons was extremely rash to put the date back in again, but the Letwin compromise ensures that there is no particular problem here. It can be taken out again without primary legislation.

The second objection I heard is that the House of Commons has decided on that date. If it wishes to, the House of Commons can change the date, on the Government's recommendation, by the stroke of a pen. That is not a serious objection.

The third objection I have heard is that the 27 might not agree to an extension. However, they do not want no deal either. Nobody wants no deal. While it is much worse for us, it is bad for everyone, and the 27 have always been clear that a better deal—better than the November deal—could be envisaged if the Prime Minister were ready to move on her four red lines, which were

so rashly laid down for party management reasons at the 2016 party conference. A move might involve considering a real customs union, unlike the partial, unequal, temporary, bare bones version in the backstop. It might even, two years late, involve working out a real, legally binding framework for the future relationship, as envisaged in Article 50(2), which would be directive and determined, unlike the present loose aspirational declaration. That would require time for real negotiation, but we know that the 27 would allow it, and we have always known that they would allow time for an election or a referendum in this country. It is clear that Brussels, shocked by the disarray in this country, now knows that more time may be needed and is waiting for us to signal that. Provided that we have a real proposition to discuss—not just the plan A, plan B, "Beyond the Fringe" nonsense of seeking contradictory assurances—it is clear that the 27 would give us more time, if we ask for it. Therefore, the Cooper amendment tomorrow in the other place makes sense and should be supported.

Our debate is only the overture to tomorrow's drama over there, but it is right that we should show that we are just as concerned as they are and ready to do our bit to stop the country sleepwalking into disaster. I now believe that that will require stopping the clock.

6.01 pm

Baroness Altmann (Con): My Lords, as always, it is a pleasure to follow the noble Lord, Lord Kerr, who speaks with such wisdom on these matters, and to follow the excellent contributions made by noble Lords from across the House. I concur with the noble Lord, Lord Kerr, that we are indeed the warm-up act for tomorrow. Nevertheless, I hope that the debate this afternoon will produce some interesting insights for the other place.

The Prime Minister's withdrawal agreement and political declaration were roundly rejected last week by both Houses, but no plan B has been put forward. The current position is a serious threat to the unity of our United Kingdom. The noble Lord, Lord Howell of Guildford, insists that an invisible solution exists for the Irish border, and the ERG has insisted that technological solutions are available and that this is a manufactured excuse from those who want to stop Brexit. If that is the case, why the fuss over the backstop? Either they do not believe that such a solution exists, or this is merely a delaying tactic to edge the country closer to a no-deal cliff edge.

As the noble Lord, Lord Hain, said, how is it that the EU is drawing a stark red line to protect the border and the Good Friday agreement, while the Conservative and Unionist Party seems willing to sacrifice it? To leave the customs union and single market is, in almost everyone's opinion, simply incompatible with the Good Friday agreement in practice. Border controls are required. Leaving with no deal likewise abandons the Good Friday agreement. It is essential to rule out no deal; it should have happened long ago. I will therefore be voting, in sadness but in absolute good conscience, in favour of the Motion in the name of the noble Baroness, Lady Smith. I join her in encouraging my noble friends on the Front Bench to support it, too.

No deal is an option that no reasonable Government could support. Walking wide-eyed into a course of action while knowing that it will be damaging—and contrary to an international treaty—is against all the principles of representative democracy. As George Orwell said, political language is designed to make lies sound truthful and to give an appearance of solidity to pure wind.

My noble friend the Leader of the House said in her opening remarks that the Government have a responsibility to deliver the result of the referendum. Will the Minister, when he winds up, tell us how many of the 17.4 million leave voters actually voted for this withdrawal agreement and political declaration—or indeed how many voted for no deal?

There is a loud, extreme group of Brexiters who believe that the referendum gave carte blanche for any action that delivers the cherished Brexit. This is not democracy. A quarter of the population voted to leave, but we have no idea what each of them expected. The only deal on offer is the Prime Minister's deal, but that does not command parliamentary support. Equally, it does not provide certainty, and it puts at risk our economy and national security.

The promises of the leave campaign in the EU referendum have not materialised. The "easiest trade deal in history" is nowhere to be seen. Brilliant new trade deals, and even rolling over the existing deals that we have via the EU, are just pipe dreams. Assurances given so confidently by my right honourable friend David Davis in 2017 that the European Medicines Agency would not leave the UK have proved wrong, as we sadly saw yesterday when the agency left the UK. The Brexiters have been wrong about the EU all along, and are still wrong—catastrophically so—when they claim that leaving on WTO terms can be managed reasonably.

We need to know how many people still want to leave the EU, and the only way is to ask them. That is respecting the will of the people. My noble friend Lord Dobbs called this a "loser's charter". That misunderstands its purpose. If people confirm that they still want to leave, they have the option and we will honour it—I will accept it. Not even to ask, however, when what is being delivered is so different from what they may well have voted for, is irresponsible.

My noble friend the Leader also suggested that we must command support across the political spectrum. No deal, however, certainly does not do that. Why, therefore, is this kamikaze course still on the table? As the noble Lord, Lord Hain, said, the leave enthusiasts are holding our party hostage and refusing to give up the no-deal threats. Why are they doing so? Is it because this was their one and only plan right from day one? Having watched the actions of the honourable and right honourable colleagues in the other place, I say that this is a wholly consistent explanation. Was their plan, all along, to just keep threatening no deal until 28 March and wait for the EU to surrender to the cake-and-eat-it promises made to voters in the 2016 referendum and the 2017 election? They still refuse to accept that it is simply not possible to leave the EU single market and customs union and protect the Northern Ireland border within the UK.

[Baroness Altmann]

If this giant game of poker is all that they can offer, it is going to fail. The EU will not cave in to what we want—it has made that clear. The House of Commons Library has produced an excellent report on the full impact of no deal. It was released today, and I strongly commend it to all noble Lords. Indeed, I ask my noble friends on the Front Bench to suggest that both this House and the other place dedicate time to a proper debate about it.

I will quote selectively from the report. The Permanent Secretary of HM Revenue and Customs, Jon Thompson, said:

"We cannot give you or Ministers any assurances whatsoever of what will actually happen in the event that there is no deal ... I cannot say it will all be fine. I absolutely cannot tell you".

Those who say that many other countries trade on WTO terms and we trade on WTO terms with other countries seem to ignore the fact that the US, Brazil, China and India all have trade agreements with their closest neighbours. Even with the US, the UK already has trade regulated by more than 100 sectoral agreements derived from EU membership that go well beyond WTO provisions.

On medicines, we are told that there is not enough cold-chain warehousing available to build the stockpile that the industry has been asked to hold. Air freight is not an option for medicines that cannot be X-rayed. On Northern Ireland, the WTO rules are clear: there needs to be between two separate customs territories the possibility of checks, and contemporaneous forms need to be filed to ensure that, when goods are passing across the border, the right tariff has been applied.

On security, Cressida Dick, the Metropolitan Police Commissioner, has said that no deal would have to replace the mechanisms we currently have with others that are "costly, slower" and potentially put the public at risk.

"There is no doubt about that",

she said.

On pensions—I declare an interest—there is a promise that overseas residents who are UK citizens will have their pension uprated in the country in which they live as long as there is reciprocity. There are 70,000 British pensioners living in Spain and 62 Spanish pensioners living in the UK. The cost to Spain would be significant. The temptation for it not to offer reciprocity would leave 70,000 British pensioners—and other pensioners in other countries—at risk of no uprating: more frozen pensioners.

As to the managed no deal that we have heard about, we are told that any side deals if we leave with no deal would require the maintenance of goodwill between both sides, which inevitably would require settlement of our financial obligations and the rights of EU citizens, as well as protection of the Northern Ireland border.

The House of Commons has roundly rejected this deal. At the moment we have no agreed way forward. We are approaching the cliff edge. I know that many noble Lords share the concern that the no-deal outcome is unconscionable. I echo the call of the Commons Brexit Select Committee for Article 50 to be extended, as so many other noble Lords have said, because we are simply running out of time.

The British people have been misled about the impact of leaving the EU. Whether we leave with the current agreed deal or with no deal, there will be casualties. In all good conscience, I hope that we can support the words of Benjamin Disraeli:

"Power has only one duty—to secure the social welfare of the people".

6.13 pm

Lord Owen (Ind SD): My Lords, the French have a saying that for all the ifs in the world, you could put Paris in a bottle. We have spent a lot of time on ifs in this debate. The issues will now be settled not here but in the House of Commons, and the House of Commons is pretty close to doing something which we need to be very careful about, which is to reject an international treaty that has been agreed by 27 other countries and our Government.

There was no question in the referendum that the House of Commons was to negotiate with the EU 27. There was no question but that this was to be left to Mr Cameron's Government, because he had promised that he, his Chancellor of the Exchequer and others would stay to carry this thing through. Many mistakes have been made, and many differences that could perhaps have been addressed have not been, but we face the situation now. How do we help the House of Commons to come in the next few weeks to a better solution than it has at the moment? If there is anybody here who has come out of this with some honour and distinction, it is the Attorney-General. I think his letter to the Cabinet was noble. He was a Brexiteer, but he made it quite clear that he was extremely worried. His words were,

"the current drafting of the Protocol, including Article 19, does not provide for a mechanism that is likely to enable the UK lawfully to exit the UK wide customs union without a subsequent agreement".

He has not changed his mind as a result of the clarification letter that came from the two Presidents, the President of the Council and the President of the Commission.

He also wrote, near the conclusion of his letter to the Cabinet, three lines that are worth repeating:

"Finally, in considering any international agreement, it is important also to take into account the changing political context in which it is to operate and that the solution to any essentially political question is rarely wholly or even predominantly legal".

He voted, therefore, for the Government's negotiation, warts and all. I believe and hope that the House of Commons will think very carefully before not doing the same.

The question is: how can we help? One piece of guidance to have come out of this debate—though I doubt the Members of the Commons even read our *Hansard*, frankly— which would be a wise decision, would be not to emphasise being able to change the withdrawal agreement too much. That is very difficult to do. The noble Lord who spoke earlier on this point is not in his place, but has experience of the European Parliament. We have to remember that that withdrawal agreement has to go back and be accepted by the

European Parliament. Because the European Parliament is changing and because there are to be elections, the room for postponement—though it is undoubtedly there; let nobody be under any illusion about that, and the European Union will be helpful on this—is nowhere near as large as most people think. I think it is a matter of weeks. We want this European Parliament to make a decision over what changes may or may not be made.

Another piece of wisdom that has come out of our debate, which may help Members of Parliament, is that the political declaration is much easier to amend, so we should look at that. First, we should record the fact that all aspects of the transitional agreement are extremely helpful to this country. Not just trading questions, but City of London questions and issues that are of real importance but rarely discussed, are left open during this transitional period. The problem is that most of us are worried that we will not get a free trade area agreement by 31 December 2020, when the transitional period comes to an end. It can be extended, but remember that this transitional period is very odd. We are not actually involved in any of the issues. We are given the appearance of still being a member of the EU, but without any powers. We are paying what we would broadly be paying if we were staying in the EU—which we are, during that period—and that which we owe to the community. That is what I would call a good agreement. During that transitional period the EU gets money, which is very helpful to it with its budgetary constraints and difficulties at the moment; and we get an open agenda. It is a proper status quo—although as far as we are concerned it is also political limbo, and we will have very little impact. To extend that would be difficult. Here, I come to the one suggestion that I hope the Government will think carefully about. I have given it to them and do not know what they might do with it, but Members of Parliament might consider it.

There is a good deal of interest in the European Economic Area. It is no secret to anybody that I always thought that we would come out through the European Economic Area and use the Norway model. I was never tempted by a customs union; indeed, neither was Norway. I believe that we need the single market, which, if it continues after 31 December—if we have not reached an agreement—is a huge help to Ireland. I agree with a lot of what has been said. However tempting it may be, let us not take it out on the Irish. The 26 other nations have put them in this position, particularly—and very unwisely, in my view—the President of the Council, Donald Tusk. At one stage, he said, "What Ireland wants, Ireland gets". You cannot have a proper negotiation on that basis. The EU has put itself on to the most sensitive border in the world with a dangerous declamatory process. It is difficult for this country to accept that we cannot at some stage pull out of this endless customs union.

Like many others, I know that we are already in the EEA and have never given notice to come out of it. There is a respectable case for that but, again, that is an "if" of history. We are here now. I suggest that in the political declaration, we ask that if on 31 December 2020, the UK wishes, as a non-EU contracting party, to be a member of the European Economic Area, it would not stand in our way but would allow it to go through. Of course, we would also have to convince the three EFTA countries. This would lead to a number of different things. We would start to have some influence on trading matters; like Norway, Iceland and Lichtenstein, we would have a voice.

Secondly, we would be able to stand by our pledge to the fishing community to introduce UK management of fishing in our waters, although we would still have to consider environmental issues, for example, and negotiate. This would not necessarily have to be done, as is obviously the wish of some countries, through a free trade area agreement, which would not be appropriate. It would also give some sustenance to those people in the peripheral parts of this country who are, by and large, overwhelmingly in favour of Britain leaving. We must not do what Ted Heath did in the most disgraceful manner and completely sell out the fishing industry. I for one am not prepared to see that happen through a free trade area agreement.

That is one advantage. This idea would also put us into an organisation where, if we wanted, we could apply to continue being in the customs union. Non-EU members are not excluded from being in it; the three EFTA countries have just decided not to. It would be for the Government of the day, in the days approaching December 2020, to make a judgment on whether they wanted to enter the EEA and whether they then wanted to negotiate with the EU on being part of a customs union. That is difficult, but it can be done. This would change the atmosphere and show that the Government were listening to the people, not least in the Labour Party, who believe that the European Economic Area has merit and would be perfectly prepared to see that as our way of coming out. The Labour Party's position is honourable: the party leader has made it clear that he would come out under the EEA and the single market, then try to negotiate a preferential deal on a customs union—the party is very optimistic about what it could get out of it—although that is not obligatory.

Those are my few suggestions. I speak as one who has had to be responsible for international treaties. At the end of the day, you must go into this with the belief that you will carry your country with you. I say to the people who advocate thrusting this aside as if it is a matter of no consequence: it is a matter of huge consequence if we do not live up to our commitments, not just to our electorate and the people who voted in the referendum and the 2017 election, but to those people from 27 countries with whom we went into negotiations. We cannot just shred the agreement and throw it away; it would be very hard to replace. We must face up to that withdrawal agreement over the next few weeks—and the sooner, the better.

6.24 pm

Lord Shinkwin (Con): My Lords, I feel almost guilty for disturbing the mood of despondency, but I confess I am actually looking forward to 29 March. I am looking forward to bringing home accountability, from Brussels to Westminster and the devolved nations, for major policy decisions affecting the minutiae of people's lives here in Britain. I am looking forward to seeing people, Parliament and, indeed, your Lordships' House

[Lord Shinkwin]
being given more power, not less, and British democracy being strengthened as a result. But, most of all, I am looking forward to the people's vote of 2016 being honoured. For what greater privilege could there be, as a parliamentarian, than to have helped put into effect the majority will of the British people to leave the EU?

After so many hours spent in debate, one could argue that all that remains to be done is for the UK to leave. We are so close and yet, with only 60 days to go, we are still so far away from respecting the result of that once-in-a-generation referendum. In fact, the closer we get, the more intense the battle to stop us leaving becomes. So much is being done to delay, derail and even deny what 17.4 million people voted for by a clear majority. Some 80% of voters may have voted for MPs who stood on manifestos to respect that referendum result, but if some of the amendments in the other place are anything to go by, who could blame those same voters for regretting trusting MPs to keep their word? As my noble friend Lord Dobbs said earlier, we can stretch their tolerance only so far. I agree. Their trust is not elastic.

So why are we doing this to ourselves, to the British people and to their faith in democracy? Is it because we are petrified of leaving on WTO terms—the so called no-deal option? It may be the least favoured option, but are we really suggesting that we would strengthen our negotiating hand by throwing our strongest card away? Do we really think the EU would give us a better deal after we had voluntarily sacrificed what the noble and learned Lord, Lord Brown of Eaton-under-Heywood, rightly described as an "incentive", and what I would say is the biggest incentive there currently is to reflect on the consequences for individual member states of the Commission's continuing intransigence? Are some advocating removing the no-deal option precisely because they know that without our strongest card, we are far less likely to leave the EU in anything other than name only?

Of course, if someone opposes Brexit, it makes sense for them to want to take no deal off the table. If they are intent on thwarting the people's vote of 2016, naturally they are going to oppose using the one thing which could bring the EU back to the negotiating table. After all, leaving on WTO terms would not be the end but the means to an end—that of securing a better Brexit. I understand the logic of the approach even if I disagree with it, but what I do not understand is this institutionalised timidity—this chronic aversion to risk, which invites defeat rather than success, poverty rather than prosperity, and corrosive mistrust in politicians rather than a restoration of faith in British democracy.

Although I have worked in the private sector, I cannot claim to have run a business. But as someone who lives with brittle bones and has had more than 50 fractures in my time, I can confidently claim that I have managed risk since the day I was born and I will do so until the day I die. That is just life. I damn well get on with it because I am British, because that is what we do. It is what millions of people the length of these islands do, day in, day out, and they are entitled to expect their parliamentarians to follow their example, hold their nerve and deserve their trust. Waging a concerted campaign of attrition against the people's vote of 2016 does the opposite; it destroys trust. The EU Commission does not really do democracy. For it, referenda are exams people sit and resit until they get the answer right, so it is hardly rocket science that Brussels supports a campaign which seeks to subvert the people's vote of 2016. What does surprise me is the extent of some parliamentarians' collusion with Brussels, because the more they choreograph talking up the dangers of leaving the EU, the more they talk down our country.

That brings me to the question of certainty. Is it not a touch ironic and revealing that those who clamour most for certainty are those who most want to remove the one thing that is certain? It is in black and white and it is in law. It is this country's leaving date of 29 March. Why? Because among them are those who never wanted us to leave, who still do not want us to leave and who are determined to do everything to thwart the result of the people's vote of 2016.

The well-respected journalist Charles Moore is surely correct when he writes:

> "Despite three and a half years of argument, this process has only just, at five minutes to midnight, begun".

That is why it is so important, as the Prime Minister told the other place, that,

> "we need to be honest with the British people ... when people say, 'Rule out no deal', what they are actually saying is that, if we in Parliament cannot approve a deal, we should revoke article 50. Those would be the consequences of what they are saying. I believe that that would go against the referendum result".—[*Official Report*, Commons, 21/1/19; col. 25.]

In conclusion, if there was one lesson above all else that my years in charity campaigning before entering your Lordships' House taught me, it was that you do not deserve to win a campaign unless you are prepared to take it to the wire. That is why we must keep the option of no deal and leaving on WTO terms on the table. Let us never forget that we are British so we will not be bullied. For the sake of democracy, we must honour the people's vote of 2016 and leave the EU on 29 March, with or without a deal.

6.35 pm

Lord Liddle (Lab): My Lords, it is a great pleasure to follow the noble Lord, Lord Shinkwin. I greatly admire his personal courage and integrity, but I say to him that I think nothing is more likely to strengthen the anti-democratic forces in this country or to see the emergence of a strong populist, nationalist party with tendencies to fascism than the economic disaster that would follow from having no deal on our exit from the European Union. It would set off social forces that I really am concerned about.

As we again debate Brexit, I fear I am again part of the "here we go again" consensus in the debate today. I support my noble friend Lady Smith's Motion. It seems to me that an Article 50 extension is inevitable if no deal is to be avoided. That would be the case even if by some miracle Mrs May were to get her deal through the House of Commons in the next couple of weeks.

So what is it worth talking about today? Something very significant has happened in the last fortnight, and it is about what the Prime Minister gives her top

priority to. After the deal was defeated by 230 votes, there was a lot of talk of a plan B, of seeking cross-party agreement for a compromise that could have carried both Labour and Conservative MPs and other parties. I know this was not helped by the leader of the Opposition's decision not to join those talks, but the true analysis of what went wrong was well summed up by Hilary Benn, the chair of the Brexit Select Committee in the Commons. He said that he had been to see the Prime Minister and that, yes, there was an open door, but he was faced with a closed mind. That is the only conclusion we can come to on what we are told is now the Government's plan B: to go back to revising the backstop. So I am afraid the Prime Minister has not taken the good advice that I remember the noble Viscount, Lord Hailsham, offering her: that she should seek to be Sir Robert Peel in these circumstances. Rather, she continues the pathetic performance of the indecisive Arthur Balfour in the Administration of 1902-1905, faced with Conservative divisions on tariffs.

So what does going back to the backstop mean? Will the Minister give some specific answers to questions about that? This seems to be the substantive point of content in today's debate. Are the Government, as I hope and assume they are, sticking fully to the commitments they made in the December 2017 agreement with the European Commission and to the amendment that was passed by this House to the EU (Withdrawal) Act—that the Good Friday agreement would be adhered to and that as a consequence of Brexit there would in no circumstances whatever be a reinstatement of a hard border in the island of Ireland? Is that still the Government's position?

Secondly, do the Government accept—I have heard Ministers say at times that they do—what the noble Lords, Lord Hannay and Lord Kerr, have said about what would happen in the event of no deal: in other words, that the problem of the border arises from our adherence to the very WTO rules which the Brexiteers go on about incessantly? If we do not stick to those rules, in the absence of a comprehensive free trade agreement, the most favoured nation principle comes into play, and that means that every other country in the world would have the right to trade with us and the EU on the principle of no tariffs, no quotas and no rules of origin. Do the Government accept that analysis?

Thirdly, do the Government accept that for the foreseeable future—and no one knows how long that future might be—while advanced technology and behind-the-border checks may minimise the policing, bureaucracy and delays involved in border checks, they cannot substitute for them? That was the authoritative evidence given to our Select Committee by the customs experts who came from Norway and Switzerland to talk to us.

Fourthly, do the Government therefore logically agree that the only way of avoiding the re-imposition of border checks in Ireland is an agreement whereby the island of Ireland remains within the EU customs territory and regulations on both sides of the border are closely aligned? If not, will the Minister tell us what might be possible?

Fifthly, if the Minister does agree and the Government want to avoid a customs border in the Irish Sea because they want, reasonably, to maintain the integrity of the United Kingdom, is not the logic of that position that it requires Great Britain as a whole to abide by the rules of a customs union and maintain general regulatory alignment with the EU?

The Government have to come clean on these questions. What are their answers? I look forward to the summing up of the noble Lord, Lord Callanan, and seeing whether he has anything to say.

If the Government accept these propositions, how can they honestly go back to Brussels and argue that the backstop can be time limited, have a unilateral exit clause or even be eliminated altogether, when as recently as last autumn they agreed to all these things? What credibility would such a request have in Brussels without some clearly specified alternative, of which at the moment there is precisely none? Can the Minister give us an inkling of what the alternative to the backstop might be?

Finally, is it not sad and deplorable that a desperate attempt to restore the unity of the Conservative Party is once again being put ahead of the national interest and continued peace in Ireland?

6.44 pm

Lord Ricketts (CB): My Lords, we are at the stage of the debate where everything has been said but not yet by everyone, and therefore I think it is best to be short.

To vary just a little what has been said this evening, I thought that I would do an exercise in imagination. I am not a very imaginative person but I have tried to imagine what the conversation would be like between the Prime Minister and Mr Juncker if Sir Graham Brady's amendment passed in another place tomorrow.

I suppose that it would start with the Prime Minister going back to Brussels and saying, "Jean-Claude, I've got great news. I've got a parliamentary majority—for something", to which the reply is, "Yes? Well, what's the plan?" The Prime Minister says, "The plan is that we delete the backstop in its entirety and put in its place alternative arrangements". I suppose that the EU reply would be, "So now you're proposing to strip out the central and most hard-fought part of the negotiation that took 21 of the 24 months of the Article 50 period and which you agreed in outline in December 2017 and in detail in November of this year? What alternative arrangements are you proposing to put in its place?", to which the Prime Minister might say, "Well, I don't have any instructions from the House of Commons on that. What do you suggest, Jean-Claude?" He might say, "What about a customs union for the whole of the UK? That would resolve the problem of the Northern Ireland backstop and give the certainty to business that you say is so necessary". The Prime Minister's reply would be, "Ah, no. That crosses my red line".

This is no way for a major country of the United Kingdom's standing or any country negotiating with the EU to proceed. It would mean the Prime Minister once again ricocheting between the Commons and the Commission like a pinball with no proposals of her own and constantly waiting for the EU to supply the answers. In practice, a majority for Sir Graham Brady's amendment would be a vote for no deal, because there

[Lord Ricketts]
would be no time to work out any alternative to the central feature of the backstop. It might be an attempt to shift the blame to the EU, but that is a manoeuvre that will convince no one.

The more the implications of no deal are studied, the clearer it becomes that it would be disastrous across whole sectors of our national life. The letter from the major supermarket chains today about the devastating impact on the availability of fresh fruit and vegetables in British supermarkets is one vivid illustration. I saw precisely that when I was ambassador in Paris and we had the short-term delay in 2015 caused by both migrants and a French seamen's strike. Within days, the supermarket shelves were beginning to empty. In the case of no deal, that would become a permanent position.

I have been convinced for a long time that a no-deal Brexit would do serious damage to our security—the area that I know best. Noble Lords do not need to take just my advice on that; my noble friend Lady Manningham-Buller made that clear in the House recently and again in authoritative terms on the BBC's "World at One" programme today. The police force consulted the Schengen Information System 539 million times in 2017, but access to that would be shut down from one day to the next if we left with no deal.

The EU might put in place temporary emergency contingency arrangements to keep the traffic flowing for a short time but we will be entirely dependent on the good will of the EU to make that work, even for a short time, and that good will will be in very short supply. Try selling that to potential future investors in this country as a worthwhile proposition. When we hear that the Cabinet Office Civil Contingencies Secretariat, which used to report to me as National Security Adviser, has been dusting down martial law arrangements for dealing with disorder in the event of a no-deal Brexit, what are we to think of the pass that this country has come to? Incidentally, it might be interesting if the Minister could update the House on how that work in the Cabinet Office is progressing.

I, for my part, hope that Members in the other place will not be seduced by siren songs that stripping the heart out of the Prime Minister's plan can in some way advance towards a deal with Brussels. I believe that that is a direct route to no deal. The thrust of Yvette Cooper's amendment makes much more sense: ruling out no deal and looking forward to more time should there be no solution after four more weeks. That is the thrust of the Motion tabled by the noble Baroness, Lady Smith, this evening, and I will be supporting it.

We need to bear in mind the damage already done to the standing of this country internationally by the spectacle that we have presented over the last two years of so-called negotiation. We have suffered a serious loss of reputation. We are still miles away from any consensus on how to take things forward. Yes, I detect a growing momentum towards accepting that no deal should be taken off the table. Like the noble Lord, Lord Kerr, my studies of deterrence suggest that it is not very credible when exercising the deterrent would involve a massive act of self-harm.

The emerging conclusion that more time will be needed is interesting and makes sense, but more time for what? We are a long way from any clarity on that. This Government's negotiating approach in the last year, frankly, does not give me much confidence that they will be open to genuine fresh thinking. That is why I believe that, while more time is needed, it must be coupled with further democratic consultation of the people, in the light of facts that have come out in the last two years and for the sake of our children and grandchildren.

6.51 pm

Lord Mackay of Clashfern (Con): My Lords, like a number of others, I supported the idea of having a referendum with no particular terms in it as to what might be decided. The Government made it plain in literature put out to every house that the referendum result would be implemented. That was a sad situation as far as I am concerned, because I happened to vote remain, but I believe that we are under an obligation if at all possible to give effect to the view that was expressed in the referendum. It is absolutely essential that the Government and the House of Commons make a real effort to do this.

It is true that people have different ideas. But, in order to get this done, you have to get an idea that seems generally to prevail. That is what I assume the House of Commons will try to do tomorrow. I suggested some time ago in a correspondence in the *Times* that a series of alternatives should be put against the Prime Minister's deal to see where the major change was wanted. That has not happened so far—although exactly what will happen tomorrow in the House of Commons I am not sufficient of a prophet to be able to say. Members seem to be embarking on a very difficult procedure, but I wish them every success in coming out with a clear result.

As far as this House is concerned, we have had some very interesting speeches. I am not attempting to make one. The noble Lords, Lord Desai and Lord Owen, have presented interesting views which I am sure should commend themselves to the House of Commons. In my view, the peace and security of Northern Ireland as part of the United Kingdom are fundamental. Getting a border of the right kind between Northern Ireland and the Republic of Ireland, in the event of our coming out of the European Union, requires that the rules on both sides are the same. There is scope for changing the rules on both sides in the future, but having the same rules is required.

There is a lot of talk about the customs union and the single market. We have to remember that, by the time the referendum vote was taken, Mr Cameron had secured a binding agreement with the European Union that we were no longer part of the movement towards a closer political union. Therefore, at that time the only elements that were really important in our relationship with Europe were the customs union and the single market. So, if we are properly to give effect to the result of the referendum, we cannot remain in the customs union and the single market—but of course we may be able to have customs arrangements that enable us, for example, to have bargains outside. That was certainly one of the prominent points of view of the leavers in the argument that went forward.

It therefore seems essential that, while it is for the House of Commons to make the decision, we as a political unit should come forward with a proper arrangement that meets the House of Commons' wishes, in the hope that it will also meet the wishes of the European Union, to give effect to the referendum in a way that preserves the rules between Northern Ireland and the Irish Republic. In a sense, that is the backstop. Of course, the situation is that the negotiations about exactly what these rules should be are matters that can be open—but it would be necessary to preserve the continuity when you change the rules.

I entirely agree with those who believe that no deal would be a disaster for the UK and for the European Union. Most of the arguments that I have heard about this concern the economic aspects of the matter, but there are far more important relationships than that: security arrangements have been mentioned, and I must say that I am very conscious of the medical arrangements that are required to be made. We very much need to have proper uniformity in clinical trials, for example, and that is not easy to achieve. There are delicate arrangements in the process of being carried out, but unfortunately Brexit will come before they are completed, so it is very difficult to be sure.

When I came here this afternoon I was very happy to vote for the Motion of the noble Baroness, Lady Smith. However, I am very sorry to say that I understand it somewhat differently from the way that she put it forward. The first part requires,

"Her Majesty's Government to take all appropriate steps to ensure that … the United Kingdom does not leave the European Union without an agreement with the European Union".

Well, the best way to secure that is to secure an agreement; it is nothing to do with no deal. You do it by securing an agreement. I would be happy with that and would like to see it happen—very much so. Therefore, so far as I am concerned, the terms of the Motion are perfectly in accordance with what the Prime Minister wants: namely, to get an agreement that is effective and supported by the House of Commons—and then, we hope, supported by the European Union.

6.59 pm

Lord Sterling of Plaistow (Con): My Lords, I thank noble Lords for allowing me to participate: I am afraid that I could not get my name down early enough.

Following on from what my noble friend Lord Dobbs said about the Berlin Wall, in 1961 I went to the Staatsoper in East Berlin to see the ballet and then came out. I did not realise until 1979, when I went through with a brigadier-general controlling our brigades over there, that where I came out in 1961 was Checkpoint Charlie.

I have been involved in the delivery of trade and tourism in all its forms throughout most of my working life worldwide via shipping, aviation and road and ground transport—and I still am. Nearly two years ago I was asked if I could advise the Government on what withdrawing from the European Union would likely be. The Government have the updated report, plus views on a no deal. At the very beginning of last August I was asked to meet with John Manzoni, the head of the Civil Service and responsible for the plans to handle the no-deal scenario. Some of the news appearing in the media was conveying the impression that no deal would be close to the beginning of World War III, particularly regarding the Straits of Dover. Even today, words like "dire" have been used.

The report was put together by former senior P&O colleagues of mine who are now working for companies which acquired parts of the P&O SN Co., DP World and Hutchison Ports. They live these subjects and have a unique knowledge of customs clearance. As I am sure noble Lords are aware, world trade is increasingly handled electronically and the speed of development is quite astonishing. I suggest that this will play a key role in helping deal with the uncertainty in Ireland.

I must make it very clear that these colleagues and I have carried out this work on a totally non-political basis. My deep concern today is not with regard to these subjects, but that over the past couple of years we have steadily been undermining our great country's reputation worldwide. In Europe, the Commonwealth, the United States, the Far East, Africa and most of the rest of the world, this country has always been regarded as by far the best example of democracy at its finest, backed up by the rule of law and, most importantly, the lack of corruption.

If withdrawal does not proceed in the way in which the people of this country voted, we will lose for all time the moral respect and influence and—perhaps most importantly—the unique fabric of our Parliament, which can ride and override the shock absorbers of change. This is what our children and grandchildren, and the future generations of this country, are entitled to be proud of. That respect will also play a most significant part when negotiating future trade deals.

Of Peers in this House and Members of the other place who always wished to remain—and these views I totally respect—and those tomorrow who will be pushing for amendments, I ask: if the result of the referendum had been 52% to remain against 48% to leave, would the result be questioned? I suggest that the answer would surely be that democracy had spoken.

My noble friend Lord Howell of Guildford today said it much more eloquently than I ever could. I am sure that my noble friend the Minister will wish that this great country should continue to make a difference in world affairs, as it has done through history.

7.03 pm

Baroness Ludford (LD): My Lords, the sunlit uplands of Brexit have disappeared into the fog. The land of milk and honey has morphed into the country of damaged prosperity, with jobs in peril. Brexit-supporting businessman James Dyson is upping sticks and moving his business to Singapore, while Jacob Rees-Mogg is moving his money to Dublin to continue to enjoy the benefits of the single market. It sounds like a case of rats leaving a sinking ship.

Instead of £350 million a week for the NHS, we have a health service haemorrhaging EU nurses it cannot afford to lose. Liam Fox, a man who invoked the slogan "Let's give our NHS the £350 million the EU takes every week", claims that delaying Brexit would open up a gulf in trust with the electorate. That is beyond parody.

[Baroness Ludford]

The possibility of a crash-out no deal, hopefully ruled out by MPs tomorrow, apparently raises for the Government a prospect of civil disorder requiring troops and martial law. I say to the noble Lord, Lord Shinkwin, that ruling out no deal is not institutionalised timidity but about ensuring that the British people get their food and vital medicines.

No longer promising Utopia, the pro-leave case now boils down, at best, to how we must grit our teeth and summon up our blitz spirit to endure and survive the misery of the coming storm as it is "the will of the people". There is no willingness, of course, to update our knowledge of what that "will" is in the light of Brexit reality rather than Brexit fantasy.

This gloomy prospect is now accompanied by abuse. It is not only abuse from the thugs who jostled and harassed Anna Soubry just yards from here, with the police apparently having forgotten what happened to Jo Cox, or the abuse affecting EU citizens and minority British citizens who are the target of hate speech and hate crime, as mentioned by my noble friend Lord Wallace of Saltaire. Unacceptable language is also coming from senior members of the Tory party. We heard former Minister and ERG leading light, Suella Braverman, directing against a former Prime Minister of her own party, Sir John Major, the populist insult of "remainer elite", leaving aside that he was brought up in Brixton with no silver spoon and no Eton mess, as the noble Baroness, Lady Wheatcroft, put it, unlike some Brexiters we could think of. Miss Braverman, I believe, attended Oxford and the Sorbonne. Her sense of irony seems deficient.

Just this weekend, ERG member and former Tory Whip Mark Francois accused Airbus boss Tom Enders of 'Teutonic arrogance" adding, "My father was a D-day veteran; he never submitted to bullying by any German and neither will his son". He was talking about the boss of a company which provides 14,000 jobs in this country directly and another 120,000 in the supply chain. I wonder whether these remarks came up in any conversations that our Prime Minister is having with Angela Merkel. I cannot see the German Chancellor being much impressed by Mr Francois' idea of winning friends and influencing people. Quite how this type of pseudo-Churchillian rhetoric, as one journalist aptly described it, is supposed to be helpful in the contemporary promotion of "global Britain" is beyond my comprehension.

I agree with the noble Lord, Lord Hain, about the disgraceful attitude from too many in public life towards the Irish Government, whom we need as friends. It would be good if the Prime Minister brought these people in her party to heel. The trouble is that she set the tone of unpleasantness with her "Go Home" vans and "hostile environment" at the Home Office, culminating in the scandal of Windrush. It was she who called her internationalist countrymen citizens of nowhere and called EU free-movers queue-jumpers. She even once made up a totally false story about how a migrant was invoking in his claim to stay his human right to have a relationship with his cat. You would never think from all these gratuitous insults that this is the group who won. Surely they should be full of joie de vivre, confident in their own assurance that Brexit is a fabulous idea that will make everyone better off. Or do they know it will not?

The noble Lord, Lord Cormack, quite correctly wants these divisions to be healed, but when the Prime Minister claimed, as she did last week, that,

"a second referendum could damage social cohesion",—[*Official Report*, Commons, 21/1/19; col. 26.]

I think we are entitled to retort in the light of Tory Brexiter utterances: "Physician, heal thyself and thy party". Brexiter politicians, who are allowing themselves plenty of opportunities to review and change their mind, insist on denying even one such opportunity to the voters. I say to the noble Lord, Lord Sterling, that it was in fact Nigel Farage who said that, if remain won, he would want a further referendum.

Like the noble Lord, Lord Liddle, I would be interested in hearing from the Minister the latest on the manoeuvring to get the backstop removed. Is it true that the Government are putting a three-line Whip on the Murrison-Brady amendment tomorrow which they know the EU will reject because it is incompatible with the withdrawal agreement? Apparently, the ERG is rejecting it, too, so what is the point? The noble Lord, Lord Ricketts, explained that there is none.

The noble Lord, Lord Dobbs, said that the British people voted for Brexit. Is he able to tell us which of the 57 varieties the 37% voted for? I gently remind the noble Lord, Lord Desai, that my noble friend Lord Newby did not say that the 37% does not count. That is not the attitude of any remainer I know. My noble friend simply corrected the Minister, who said last week that leave voters represented a majority of the population.

The country needs an end to hypocrisy and double standards, and the same chance to think again that MPs are being allowed. We must have a people's vote with an option to stay in the EU. As my noble friend Lord Campbell of Pittenweem said, we will accept the result of a further referendum based on informed consent. Then we would make a start on achieving real social cohesion in this country. In the meantime, these Benches will support the opposition Motion.

7.10 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I sometimes feel that Sir George Rostrevor Hamilton had Boris Johnson in mind when he wrote of political columnists:

"I am the daily mentor who
Tells the Premier what to do
And when she's done it, I go on
To tell her what she should have done".

Of course, Boris Johnson was no mere mentor. He was a player, tasked with taking the UK out of the EU such as to preserve the exact same benefits as membership. He, David Davis and Dominic Raab failed to negotiate a deal acceptable to Northern Ireland or to Parliament. Having got the Premier to adopt unhelpful red lines, they then jumped ship and, as foreseen by Sir George, now shout from the sidelines what she should have done. Worse, the ERG now lays down new demands that we should contemplate a no-deal exit. These siren

voices—despite rocks, storms and tides—lure the PM towards, if not a shipwreck, at least holding the country below the water.

That is not my prediction. Despite what we have just heard, P&O—which knows a thing or two about rocks, tides and undertows—will re-register its fleet under the Cypriot flag, as the noble Lord, Lord Campbell, has revealed. Bentley, Dixons and drugs companies are stock-piling and, as we have heard, a number of supermarkets have pleaded against no deal not only because prices will go up but because shelves might be empty. The CBI demands that no deal be ruled out, and the British Chambers of Commerce reports thousands of companies triggering emergency plans to cope with no deal, many even moving outside the UK should we crash out.

Tom Enders, CEO of Airbus—which has 14,000 skilled workers, plus 110,000 in the supply chain—says that the company could pull out of the UK if there is no deal, and begs us not to,

"listen to the Brexiteers' madness which asserts that, because we have huge plants here, we will not move and we will always be here. They are wrong".

Business Minister Richard Harrington described the example of Airbus as a "disaster", and warned that no deal would also threaten car manufacturing. It seems that the ERG is deaf to such realities. Ex-Minister David Jones claims that Airbus does not understand the aerospace industry—rather like Boris Johnson claiming that Jaguar Land Rover does not understand the motor industry.

Luckily, there are some grown-ups in the Government who are rather more realistic. Philip Hammond described no deal as a "betrayal" of the referendum, and he reassured business that it would be defeated in Parliament. The Justice Secretary David Gauke calls it "disastrous" and, along with Richard Harrington and Health Minister Steve Brine, suggested he could not remain in a Government where this was the preferred option. Tobias Ellwood says the option must be ruled out, it being,

"wrong for government and business to invest any more time and money in a no-deal outcome".

Of course, travel is threatened by a crash out—partly because 3.5 million passports might not be valid in some EU countries, and up to 5 million airline tickets could be cancelled if the EU freezes a number of flights, as proposed. The Manchester Airports Group forecasts,

"lasting consequences of a disorderly exit … on economic growth, consumer confidence and business investment".

Freight is similarly at risk, with cross-channel ferry trade possibly dropping by 87%; it is the Border Force—perhaps on the noble Lord's advice—which used that figure.

The poultry industry, producing half the meat we eat, says that the consequences of no deal would be catastrophic for its 38,000 workforce and for consumers. Britain could risk £1 billion in tax. Crucially, it fears,

"a two-tier food system where only the affluent can afford to eat British poultry that meets British standards".

As the noble Duke, the Duke of Wellington, said, almost all Welsh meat exports go to the EU, so no deal would be horrific. Little wonder that the National Assembly for Wales called for the emergency reconvening of the UK Joint Ministerial Committee to seek agreement on ruling out a no-deal exit.

The Met Police head of counterterrorism spoke of his deep concern about a no-deal Brexit loss of intelligence and data sharing with Europe, which would leave Britain less safe. We heard a similar concern from the noble Lord, Lord Ricketts, and the noble Baroness, Lady Manningham-Buller, warned that no deal would leave us less safe. We know of the dangers for the good people of Gibraltar.

No deal means no transition period, so it means the immediate imposition of tariffs, rules of origin declarations, border checks and British citizens in Europe plunged into uncertainty, with possible loss of residence and employment rights. If this were not so serious, it would be a great James Graham play, but this is for real.

Parliament itself has challenges ahead. Originally the Government planned for the Commons approval to take place on 11 December and the withdrawal agreement being introduced on 12 December. It was envisaged that the five-week Christmas delay would be followed by acceptance by the House of Commons on 15 January, and of the Bill on 16 January. The 230 defeat ended that, but even if the deal were struck tomorrow, we would be facing a daunting task of handling seven or more Bills and a few hundred SIs in 60 days—37 sitting days. It is beginning to sound like sitting nights rather than sitting days.

Now we hear that the Government are going to take it back to the House of Commons on 13 February, so that would mean even fewer sitting days to deal with the legislation. Should the Chief Whip be dreaming of fast-tracking Bills, he had perhaps better reread our Constitution Committee's 2009 report on which "exceptional circumstances" might justify fast-tracking, and its calls for proper scrutiny to include time for consultation and for full transparency. It also notes that fast-tracking should not be used for predictable issues and should involve cross-party agreement and that any relevant legal action should be published. The Constitution Committee stressed that your Lordships' House's constitutional responsibilities would be heightened for fast-tracking.

Given that we know that the withdrawal agreement Bill exists, because it was planned to be introduced some time ago, perhaps the Minister could release relevant clauses to our Constitution Committee now so that proper scrutiny of the novel, complicated legal issues can begin. Will he also guarantee that there will be sufficient parliamentary time to scrutinise all relevant legislation, if necessary by extending Article 50? All this suggests that for business, for Parliament, for the Civil Service and for transport planning, in order to build consensus we need more time on this major constitutional and economic issue. We must denounce no deal in the way described by the noble Lord, Lord Hannay, and find a way forward in the interests of the whole of the UK, our citizens here and those in the EU. I urge support for the Motion shortly to be moved by my noble friend, which rules out no deal and calls for time for us to facilitate any legislation agreed by the Commons.

7.19 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, as my noble friend Lord Cormack and the noble Lord, Lord Hannay, helpfully reminded us, here we are again. As my noble friend the Leader noted in her opening remarks, this is not the first such debate that I have had the pleasure of responding to in recent weeks. However, as always, I am grateful for the insightful contributions of noble Lords, who have examined the breadth and depth of the withdrawal agreement and political declaration. It was a particular pleasure to see my noble friend Lord Saatchi fully recovered and back in his place.

I have heard, and of course recognise, the differing and strongly held views from all sides of the House on the next steps in this process. I am grateful to noble Lords for voicing these views and pay tribute in particular to the work of the Select Committees, which have taken a constructive approach and are ensuring that the statute book is ready for exit day. I echo the words of my noble friend the Leader in extending my gratitude also to the Secondary Legislation Scrutiny Committee and its two sub-committees, chaired by my noble friend Lord Trefgarne and my geographical neighbour, the noble Lord, Lord Cunningham of Felling, for all their work in the scrutiny of that legislation.

That work includes the scrutiny of statutory instruments. I can tell the House that, as of today, we have laid more than 350 of them. These SIs help provide certainty for businesses and the public by ensuring that we have a functioning statute book when we leave the European Union. The majority are needed in either a deal or a no-deal scenario as they will be deferred to the end of an implementation period if they are no longer needed on 29 March. All instruments and the procedure they follow can be found online via GOV.UK or legislation.gov.uk, and Parliament's own SI tracker also has all this information. I say that because many noble Lords are writing to me daily, asking me for updates on where we are with that programme.

Let me be clear: the Government are committed to honouring the mandate of the British people and leaving the European Union in a way that benefits every part of our United Kingdom and every citizen of our country. Before I respond to the points raised in the debate, including the Motion tabled by the noble Baroness, Lady Smith of Basildon, I will take a moment to respond to the points made by the noble Lord, Lord Newby, and the noble Baroness, Lady Ludford, regarding the referendum vote and my response to the Question asked by the noble Lord, Lord Pearson, last week. As I have made clear, the referendum result demonstrated that a majority of those who voted voted for the United Kingdom to leave the European Union. I am sure all those present will have understood the correct position but, none the less, I am happy to make it clear to the noble Lord and the noble Baroness.

The best way for us to leave in an orderly manner is with a good deal. I note the arguments made by many noble Lords, including the noble Lords, Lord Hannay of Chiswick, Lord Kerr, Lord Hain and Lord Liddle, and the noble Baroness, Lady Smith of Basildon, all of whom are asking me to rule out no deal. There is a way to rule out no deal, which is for the other place to approve a deal negotiated with the European Union.

The Labour Party is fond of quoting the former Foreign Secretary, with his "cakeism" policy, but the Labour Party itself is adopting a negative "cakeism" policy. It is saying that we cannot accept the best and only cake available, but also that we cannot accept having no cake at all. Labour cannot carry on saying no to everything. I noticed that the noble Baroness, Lady Hayter, spent an awful lot of her speech telling us what she was against but very little of it telling us what she was in favour of.

Of course, the only other guaranteed way to avoid a no-deal Brexit is to revoke Article 50, which would mean staying in the EU. That is certainly not acceptable to this Government and, as far as I am aware, it is not advocated by any other party in this House. Noble Lords, including the noble Duke, the Duke of Wellington, and the noble Lord, Lord Kerr, who would like to extend Article 50, will of course be all too well aware that that this is not a unilateral option. An extension would require the consent of all 27 member states. As the Prime Minister correctly highlighted in the other place last week,

"the EU is very unlikely simply to agree to extend Article 50 without a plan for how we are going to approve a deal".—[*Official Report*, Commons, 21/1/19; col. 25.]

Deferral is not a decision. I refer noble Lords who doubt that to the statement of the President of Lithuania last week. My noble friend Lord Balfe also made a particularly important point when he observed that the last session of the current European Parliament is on 18 April. I remind noble Lords that the European Parliament also needs to approve the withdrawal agreement.

We want a smooth and orderly Brexit, with a deal that protects our union, gives us control of our borders, laws and money, and means that we have an independent trade policy. Following the clear message from the other place earlier this month, the Government are working hard to speak to MPs from all parties to find a way forward together that delivers on the referendum and commands parliamentary support. I agree with my noble friend Lord Shinkwin that the British people expect the Government to honour the referendum mandate and deliver Brexit in a way that benefits every citizen of our country—and that is what we are committed to doing.

Many noble Lords, including the noble Lords, Lord Newby, Lord Campbell of Pittenweem, Lord Dykes, Lord Hain and Lord Wallace of Saltaire, the noble Baroness, Lady Ludford, and my noble friend Lady Wheatcroft have also, once again, expressed their preference for a second referendum, although I have noticed that their campaign has not had the courage to propose an amendment to this end in the House of Commons, so perhaps this option would have less support than they pretend.

It will come as no surprise to noble Lords when I tell the House that it is still not the Government's intention to hold a second referendum. I think the noble Lord, Lord Whitty, wins the prize for the masochist Peer of the year with his call for both a second

referendum and a general election. I was particularly struck by that, and I think that the noble Baroness should send him to Bristol to convey personally the good news to Brenda of her forthcoming travails.

This Government remain committed to respecting the clear result of the 2016 referendum, and on this I agree with the noble Lord, Lord Desai. I also very much agreed with the excellent speech by my noble friend Lord Dobbs, in which he said that a second referendum would not be a people's vote, it would be a politicians' vote, or, as he described it, a losers' charter—politicians telling the people that they got it wrong the first time. We have been very clear about the dangers of calling a second referendum for democracy and the faith of the British people in our political system. We believe that it would divide the country. On that point, I agree with my noble friend Lord Sterling.

A fortnight ago I responded to a Question for Short Debate from the noble Lord, Lord Tyler, setting out the many steps that would be required to set up a referendum. In the first instance it would require primary legislation, which, taken alone, would require time and a consensus on key questions such as the franchise or the date on which the poll would take place. I highlighted to noble Lords, as I closed that debate, the fact that it took seven months for the previous referendum Act to pass through Parliament, and that was with a Government who had a majority in the House of Commons acting on a manifesto commitment.

This timescale does not include the time needed to adequately take the other steps required. For example, the Electoral Commission recommend that referendum legislation should be clear at least six months before it is required to be implemented or complied with. Noble Lords may have seen the comments of the incoming interim chief executive of the Electoral Commission reported in Saturday's *Guardian*. He said that,

"it's difficult to think that it would be sensible for parliament simply to take the rules from the last referendum and paste them across".

He was arguing that the whole of the referendum legislation needs to be looked at first. This Government remain committed to the clear result of the referendum and the democratic process that delivered that result. Noble Lords should not underestimate the division and dangerous precedent that would be created if we were to second-guess the result of that referendum.

Many noble Lords, including my noble friends Lady Neville-Rolfe and Lady Altmann, and the noble Lord, Lord Owen, have spoken with great insight about the Northern Ireland backstop, and expressed concerns about it, although I also notice that there were speeches supportive of the backstop from the noble Lords, Lord Desai and Lord Ricketts, and my noble and learned friend Lord Mackay of Clashfern. As the Prime Minister has said, we recognise the concerns that many have expressed regarding the backstop. The backstop is our ultimate safeguard: in the event that there is a gap between the end of the implementation period and the start of our new ambitious relationship, we will still uphold the commitments of the Belfast agreement and ensure that there is no return to a hard border. This is, in our view, essential to safeguarding the lives and livelihoods of the people of Northern Ireland.

Let us be clear: both the UK and the EU agree that the backstop should not need to come into effect and have committed to using our best endeavours to take the necessary steps to conclude a final deal that supersedes it in full by the end of the implementation period.

I reassure the noble Lord, Lord Liddle, that that is why the Government are engaging with Members of both Houses to find a way in which we can meet our obligations to the people of Northern Ireland and Ireland in a way that Parliament can support. If he can have a little patience, the Prime Minister will set out her conclusions in her closing speech tomorrow.

Let me repeat: let us be in no doubt that this Government are wholly committed to the Belfast agreement and will work to ensure that there is no hard border between Northern Ireland and Ireland.

Before I conclude, I must address the Motion tabled by the noble Baroness, Lady Smith of Basildon. I appreciate the sentiments in it—not least the call to take all appropriate steps to ensure that the UK does not leave without a deal—but, as it is the legal default, we cannot completely rule out no deal.

I remind noble Lords that this is exactly what the Prime Minister and her team of negotiators have been doing for the past two years: trying to agree a deal which will, of course, rule out no deal. It was the result of that work that was put to the other place for approval. Although the outcome of that vote was—to put it mildly—not the one that the Government wanted, it was clear that there was much that was supported in the withdrawal agreement. We are now keen to work with politicians from all sides, as the Prime Minister has been doing, to see how we can address those concerns. That dialogue will be essential to securing a successful exit with a deal—on that point, I agree with my noble friend the Duke of Wellington.

I therefore assume that that section of the Motion of the noble Baroness, Lady Smith, was taken from a letter that she has also sent to the leader of her own party. It is pleasing to hear her speak of the importance that she and her party place on the timely passage of legislation, and her remarks on the subject of filibustering in the media last week. To be clear, we remain committed to ensuring that all the necessary legislation required is in place for exit day on 29 March 2019. As my noble friend the Leader of the House said, in organising the forward programme of work, both she and the Chief Whip will work with the usual channels and seek to give as much notice of our timetable as is practical, and will also work flexibly with timetabling.

In response to the question posed to me by the noble Lord, Lord Newby, about the Cooper Bill, although I cannot speak for any individual Back-Bencher, I can confirm that I am not aware of any such discussion and would be very surprised if that were the case. It is not for me to speculate on how MPs will vote, but I am sure that this House will consider all legislation passed by the Commons in the usual way.

Lord Butler of Brockwell: My Lords, in the light of what the Minister has said, can he tell us which part of the opposition amendment he opposes? We know, as he said, that it is the Prime Minister's determination to "take all appropriate steps" to get an agreement—so that is the first part of the amendment. The second part is to provide,

"for this House to ensure the timely passage of legislation necessary to implement any deal or proposition".

He just said that that is what the Government also want. On what grounds could he oppose the Opposition's amendment?

Lord Callanan: Because the noble Baroness is asking us to take no deal off the table, and we do not think that that is possible because it is the legal default—as I have said many times in this House—because of the notification of withdrawal Act, because of the Article 50 process and because of the withdrawal Act passed in the summer.

My noble friend Lord Balfe asked me how much discussion there has been between Her Majesty's Government and the incoming Finnish presidency. We are engaging with the Finns through our embassy in Helsinki. This engagement will increase, including potential secondees, as their preparation for the presidency develops.

As I conclude, I think it would be helpful to recap the way forward for this House and the other place. The rejection of the deal two weeks ago was obviously a disappointing moment for this Government. We are mindful that we cannot legally ratify the withdrawal agreement until a deal has been approved, and therefore the defeat precipitated some serious reflection on the concerns expressed by both MPs and Members of this House.

The best way forward, I repeat, is to leave in an orderly way with a good deal. It is not our strategy to run down the clock to 29 March. As the Leader of the House set out in her opening speech, the Prime Minister has highlighted a number of areas in which we intend to address concerns going forward. I have expanded on some of those this evening, including responding to concerns on the backstop, engaging with Parliament as we head to the second phase of negotiations, and demonstrating our commitment to social and environmental protections. It is these proposals, along with amendments to the Government's Motion, that the other place will consider tomorrow. As the Prime Minister has said, we should all be prepared to work together to find a way forward, given the importance of this issue.

I know that many noble Lords will be following the debate there as keenly as we in government are listening to what is said in this place—and noble Lords' words will be heard in the other place. We believe that the way forward that we have set out is the only way to seek to address the concerns of Members in both Houses at the same time as respecting the 17.4 million people across the UK who voted in favour of leaving the European Union.

Lord Cormack: As one who genuinely wants this to work out—as the Government wish it to work out—I ask: why are we going to the trouble of dividing on an unexceptional, entirely sensible, logical Motion that almost all of us in our hearts believe to be right?

Lord Callanan: I refer the noble Lord to the question that I answered earlier. We cannot completely rule out no deal because, as I have repeatedly said, that is the legal default—and that is what the Motion is asking us to do.

Baroness Hayter of Kentish Town: My Lords, it is true that in my winding-up speech I did say that we should denounce no deal, but the Motion that will be moved does not say that. It asks us to seek an agreement.

Lord Callanan: We are going round in circles here. I refer to the point that I made. Has somebody got a copy of the Motion?

Baroness Smith of Basildon: While the noble Lord is searching for a copy, I refer him to the part of my Motion that he complained about, which calls on,

"Her Majesty's Government to take all appropriate steps to ensure that … the United Kingdom does not leave the European Union without an agreement".

That includes getting a deal that is acceptable to the other place. What is it that he objects to?

Lord Callanan: I think that you can read that as taking no deal off the table. Of course, we are doing our best. No deal is not our preferred option. We want to avoid no deal if at all possible, but we continue to believe that the best way to avoid no deal is to vote for a deal. For the Labour Party to come along here and say that it is against everything, without putting forward any positive proposals, is not acceptable.

I have set out our position. If the noble Baroness wishes to move her Motion, she is entitled to do so. That is the end of my remarks.

Lord Mackay of Clashfern: My Lords, it is absolutely plain that the Motion put down does not exclude expressly the no-deal situation. If we compare this with the Motion that was put down last time, it is different. What is required here—and it is an effort that I thoroughly support—is that everything should be done to get a satisfactory agreement and that we do not go out without an agreement. Surely, the right way to do that is to try to get an agreement. I look to the House of Commons to say tomorrow what its preferred alternative is to what the Prime Minister has done so far.

Motion agreed.

Motion

7.39 pm

Moved by ***Baroness Smith of Basildon***

That this House, noting both its resolution of 14 January and the resolution of the House of Commons of 15 January, calls on Her Majesty's Government to take all appropriate steps to ensure that (1) the United Kingdom does not leave the European Union without an agreement with the European Union, and (2) sufficient time is provided for this House to

ensure the timely passage of legislation necessary to implement any deal or proposition that has commanded the support of the majority of the House of Commons.

Baroness Smith of Basildon: My Lords, we have had the debate. I listened very carefully to what the Minister said; he did not make his case. I beg to move.

7.40 pm

Division on Baroness Smith of Basildon's Motion.

Contents 283; Not-Contents 131.

Baroness Smith of Basildon's Motion agreed.

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Verma, B.
Wasserman, L.
Wei, L.
Wilcox, B.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

House adjourned at 7.55 pm.

Grand Committee

Monday 28 January 2019

Offensive Weapons Bill

Committee (1st Day)

3.30 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I remind the Committee that, if there is a Division in the Chamber, we will adjourn for 10 minutes from the sound of the Division Bells. I also draw the Committee's attention to the fact that, on the Marshalled List, there are explanatory statements to some of the amendments. These are included as part of a trial of their use and they have no procedural impact, lest anybody should be in any doubt.

Clause 1: Sale of corrosive products to persons under 18

Amendment 1

Moved by ***Lord Paddick***

1: Clause 1, page 1, line 4, at end insert "without, in the case of a person charged in England and Wales or Northern Ireland (subject to section 2), having taken all reasonable precautions and exercised all due diligence to avoid the commission of the offence"

Member's explanatory statement

This amendment, alongside the amendment to page 1, line 5, would make a failure to take precautions or exercise diligence criteria for the offence, as distinct from defences which would come into play only after the person had been charged.

Lord Paddick (LD): My Lords, in moving Amendment 1, I will speak to the other amendments in the group in my name and that of my noble friend Lady Hamwee. These amendments seek to change the offences in the Bill from those where there is a reasonable excuse defence only when charged to ones where, if someone has a reasonable excuse, they do not commit an offence. They seek consistency in approach between legislation where no offence is committed if someone has an offensive weapon in a public place because they have a reasonable excuse and legislation where, in exactly the same circumstances, a person does commit an offence and has to rely on a defence only once they have been charged. The amendments also seek consistency between offences where the burden lies on the prosecution to disprove a reasonable excuse defence and offences where the burden lies on the accused to prove beyond reasonable doubt that they have a reasonable excuse.

We return to an issue that I raised in discussion of the Counter-Terrorism and Border Security Bill and which is applicable here; namely, creating offences where a completely innocent person commits an offence and has to rely on a defence once charged, rather than someone with a reasonable excuse for his actions not being guilty of an offence in the first place. In the context of the Counter-Terrorism and Border Security Bill, the Government acknowledged this problem in relation to the designated areas offence. In that Bill, the Government accepted that, rather than a person entering a designated area and having a defence once charged if they had good reason to be there, if they entered or remained in a designated area involuntarily or for a range of other reasons stipulated in the Bill, they did not commit an offence. The Government accepted that there could be legitimate reasons for visiting or remaining in a designated area and that it was more sensible to say that no offence was committed if they had good reason, rather than that they committed an offence but had a defence once charged.

In one part of the Counter-Terrorism and Border Security Bill, the person does not commit an offence if they had good reason yet, in another part, a person has a defence once charged—a different approach in different parts of the same Bill. It is still a Bill, I think, and has not yet received Royal Assent—I am getting nods from the back, so that is good.

In Clause 1 of this Bill, a person commits an offence if they sell a corrosive product to a person who is under the age of 18. They have a defence, if charged, by proving that they took all reasonable precautions and exercised all due diligence to avoid the commission of an offence, rather than it saying, "They do not commit an offence if they act reasonably". In Clause 3, a person commits an offence if he delivers the corrosive product or arranges its delivery to residential premises. They too have a defence, if charged, if they prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of an offence, rather than it saying that if they act reasonably, they do not commit an offence. There is also an issue with Clause 4, but it slipped through the net and therefore there is no amendment in this group to address it.

In Clause 6, however, a person commits an offence if they have a corrosive substance with them in a public place. It is a defensive charge if they prove that they had good reason or lawful authority for having the corrosive substance with them in a public place, rather than the provision being that if they had good reason or lawful authority, they do not commit an offence. It will perhaps be clearer if I concentrate on the latter of these three offences.

If a 19-year-old young man has a corrosive substance with them in a public place with the intention of using it to attack someone else, they commit an offence under the Prevention of Crime Act 1953 of having an offensive weapon with them in a public place with the intention of causing injury to someone. It is an intended offensive weapon. However, if they have been sent out by their mother to buy drain cleaner in a squeezable bottle to unblock the kitchen sink—I speak with some experience having recently cleared one of my drains; drain cleaner does come in squeezable bottles—they do not commit an offence under the 1953 Act. They have a corrosive liquid with them in a public place, in a squeezable bottle that could be used to cause injury to someone, but have a reasonable excuse for possessing it. Were the police to stop and search the youngster, a quick phone call to the mother could establish the reasonable excuse.

Under the Bill, the 19 year-old running the errand for his mother commits a criminal offence because, under Clause 6(1):

"A person commits an offence if they have a corrosive substance with them in a public place".

[Lord Paddick]

Under Clause 6(2), it is a defence for the youngster charged with an offence under subsection (1) to,

"prove that they had good reason or lawful authority for having the corrosive substance with them in a public place",

but a police officer would be justified in arresting the youngster, because he is clearly committing a criminal offence.

When discussing the Counter-Terrorism and Border Security Bill, we also debated the principle of necessity in relation to arrests. One of the circumstances included in the reasons why an arrest might be necessary under Section 110 of the Serious Organised Crime and Police Act 2005 is to allow,

"the prompt and effective investigation of the offence or of the conduct of the person in question".

It would be quite easy for a police officer to reason that the quickest and easiest way to determine whether the young man has a blocked drain is to arrest him and take him to his home address, to see whether the kitchen sink is blocked.

I am sure that the Minister will say that of course the police will act reasonably, but the police do not always act reasonably. Believe me, from 30 years' experience in the police service, including four years as a bobby on the beat, I can say that sometimes police officers look for any reason to arrest someone. For those who might argue that my experience is not current, I point out that if you own a drone, live within a short distance of Gatwick Airport and have suspicious neighbours, apparently you can end up being arrested even when you can easily prove that you were miles away at work at the time the offence was committed.

There is another anomaly. In the Counter-Terrorism and Border Security Bill, in offences that remain of the "defence when charged" type, the burden is on the prosecution to disprove the reasonable excuse defence put forward by the accused, and to do so beyond reasonable doubt. Section 118 of the Terrorism Act 2000 states:

"If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not".

Indeed, in Clause 3(10) of this Bill we find a similar provision, except that it applies only in Scotland. South of the border, not only is it only a defence once charged—as in subsection (8)—but the person charged has to,

"prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence",

presumably beyond reasonable doubt. Noble Lords will recall that Section 118 of the Terrorism Act saved the Government from the accusation of reversing the burden of proof but, in these offences, the burden of proof is on the accused, presumably to the criminal standard of beyond reasonable doubt, that they have a reasonable excuse. Why is the burden of proof reversed in this Bill, except in Scotland, but not in the Counter-Terrorism and Border Security Bill, which passed through this House only recently?

Sending a message to the police that an offence is not committed if someone has lawful authority or reasonable excuse is preferable to saying that an offence is committed and that there is a defence once charged. Sending a message that you have nothing to fear by buying corrosive substances for illegitimate purposes and carrying the substance home through the streets or to a place of work is preferable to saying: "You are committing an offence and have to prove to a jury beyond reasonable doubt that you did so innocently". The principle adopted in Section 1 of the Prevention of Crime Act 1953, which deals with offensive weapons, is that you are innocent if you have a reasonable excuse. That legislation has not been repealed, nor have the Government sought to amend it. That is the principle adopted by the Government in recent weeks in relation to an offence under the Counter-Terrorism and Border Security Bill, and it is the principle that the Government should adopt in this Bill. I beg to move—

Lord Tunnicliffe (Lab): Not being familiar with police procedures, to me the essence of the argument seems to be about when the defence is deployed. Can the noble Lord explain what that means in practical terms?

Lord Paddick: My Lords, when the police are told that the offence is not committed if somebody has a reasonable excuse, the clear message sent to them is that they need to investigate the matter there and then to establish whether that reasonable excuse exists. If a Bill, as in this case, says that somebody who carries a corrosive substance in a public place commits an offence, it sends a message to the police that investigation of any reasonable excuse that the person may have can wait until later because, according to the legislation, the defence is available only once the person has been charged.

Lord Judge (CB): My Lords, I support the Bill. The issue of the misuse of corrosive substances and all other kinds of offensive weapons is too obviously something that has to be addressed. However, I want to raise an issue which is troublesome in the context of the amendment.

Unless an offence is absolute—and we take a strong stand against absolute offences—it is a long-standing principle of criminal justice that you are liable to conviction and sentence, or to go back earlier, to be arrested and charged if you have done something or acted in a way prohibited by the law. Fine—but the proviso to that is, "Provided that simultaneously your state of mind was itself similarly criminal". You may have done it intentionally or recklessly. There are all sorts of ways in which your state of mind can be identified as criminal but it is of the essence that these two concepts stand or fall together.

This statute asserts that, where certain facts are proved, you have committed an offence—full stop. Without reference to your state of mind or any other circumstance, the offence is established and you are therefore liable to be arrested. It then says, "We shall graciously allow that, in certain circumstances, you may have a defence", and if you prove them you would have a defence. Perhaps the most gracious of all the circumstances is to be found in Clause 2(6) to (9),

where a whole series of them have to be established. You then have a defence, but you have been arrested and may have been charged. Nobody has to examine these two concepts together and say, "The evidence shows that he had a guilty mind", or "He was reckless", or whatever it might be.

What I really want to raise in Committee is that we should stick to the normal principles that have worked well for us: you are not guilty of anything and have not committed an offence unless your mental state was simultaneously as criminal as the actions you committed. That is what we believe. I do not want to be overportentous; I cannot see the Minister making any concessions about this. However, I would like to put down a marker. This way of legislating for criminal justice is inappropriate and we should avoid it. We should certainly be very careful not to allow it to happen without us spotting it and stopping it.

3.45 pm

The Earl of Listowel (CB): My Lords, listening to the debate and the presentation of the amendment, I wonder how the amendments might protect the important relationships between young people and the police—maybe particularly between young people from ethnic minorities and the police. I can see that if the authorities have to do more work before they can detain a young person or take them to a police station, it might prevent trouble between the police and young people. My sense—and I am sure we will discuss this further on—is that one of the reasons young people carry knives is because they distrust the police and do not feel that authorities are there to protect them. The amendment may be helpful in engendering more confidence in the police—and indeed the authorities—among young people, particularly those from minority-ethnic communities, and help to make it less likely that young people will carry knives. I would be interested to hear the view of the noble Lord, Lord Paddick, on that, from his experience on the beat, if he has time towards the end of this discussion.

Lord Tunnicliffe: My Lords, the Opposition are generally in favour of this Bill, but I find the arguments of the noble Lord, Lord Paddick, somewhat persuasive. I particularly like the way the noble and learned Lord, Lord Judge, put things in the general perspective of law. Even little deviations from sound general principles are a bad thing, so I hope the Minister will not reject this out of hand but will ponder this set of amendments. The only area I am slightly unsure about—the noble Lord, Lord Paddick, or the Minister may want to address this—is the argument that the defence has to be proved beyond reasonable doubt. My understanding was that there was a general piece of law that said that defences have to be proved only on balance of probability. It is important to know which of those tests the defence has to meet.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank noble Lords for their points and the noble Lord, Lord Paddick, for tabling these amendments. As he explained, they address the construction of the new offences relating to the sale of corrosive products to under-18s, the prohibition on sending corrosive products to residential premises when bought online and the possession of a corrosive substance in a public place. The noble Lord's basic premise is that it is unjust that a person who took all reasonable precautions and exercised all due diligence to avoid committing the sale or delivery should be guilty of the offence, rather than having to rely on the permitted defence to establish his or her innocence. The same principled objection applies to the possession offence and the person who has a reasonable excuse for having a corrosive substance with them in a public place.

As the noble Lord, Lord Paddick, said, this has echoes of the recent debates we had on the Counter-Terrorism and Border Security Bill. However, as my noble friend Lord Howe indicated in that context, we are not persuaded that whichever way these offences are constructed will make much material difference to a suspect or how the police go about an investigation.

In relation to the sale offence and the offence of sending corrosive products to a residential premises, I think it is quite right that it should be for the seller to prove that they took reasonable precautions to avoid the commission of these offences. The seller will clearly know what checks they carried out to stop a sale to a person under the age of 18. In the shop context, they will know whether they asked the buyer in appropriate cases to verify their age, which will normally consist of asking them to produce a passport, a driving licence or an age proof card. In the online case, it is important that the seller has put in place some arrangement for checking the buyer's age. Clearly where a seller has shown that they have verified age, no prosecution will take place.

In answer to the question asked by the noble and learned Lord, Lord Judge, about the normal principles of criminal law, the Bill reflects knife crime legalisation going back at least to the Criminal Justice Act 1988. His point about consistency is important, but I can point to other examples in other areas of law.

Going back to sellers, it is important that they take responsibility in this area and it is right that they have to prove what checks they have made rather than placing the burden on the prosecution. That is what happens in relation to other age-related sales, such as knives, alcohol and tobacco, and the approach is well understood by retailers, trading standards and the police.

Similarly, with the offence on arranging delivery to a residential premises or locker when a corrosive product is bought online, it should be for the seller to ensure that they are not sending the product to a residential address and to make sure they have the appropriate checks in place to stop this happening. The seller should be able to do this easily, and I can see no benefit in placing the burden on the prosecution to prove that the seller made the appropriate checks.

In the possession offence, as I have said before—for example, on the Counter-Terrorism and Border Security Bill—the police on the ground will use intelligence to decide whether someone may be in possession of a corrosive substance without good reason. They will not stop people coming out of B&Q with their cleaning products and question them, just as they do not stop people coming out of B&Q with garden shears and

[Baroness Williams of Trafford]
scissors. The police will use this power only where they have reasonable grounds for suspecting the person has a corrosive substance on them in a public place without good reason—for example, where a group of young people may be carrying a corrosive that has been decanted into another container. Establishing good reason on the street should be relatively easy. If a person can show they have just bought the cleaner and are taking it home to unblock their drains or that they are a plumber and need the substance as part of their work, good reason will have been established and no further action would be taken. It is only where a person cannot provide a good reason—for example, for why they have decanted the substance into another container that will make it more easily squirtable, or where they cannot say where they bought the substance or what they intend to use it for—that further action may be taken, and in this case it is quite right that the person should have to set out any good reason why they had the substance in a public place.

That aside, and returning to the point made by the noble and learned Lord, Lord Judge, it is important that we have consistency across similar offences. I have just explained the sale and possession of knives. We think that corrosives have the potential to be used as a weapon just as much as knives and that wherever possible the legislation dealing with the two should be consistent. Both corrosives and knives are widely available and have legitimate uses—they are not in and of themselves weapons—and to have a different approach for corrosives would suggest that they are somehow less of a threat as a weapon.

Retailers are familiar with the existing law relating to the sale of other age-related products and know what measures they need to put in place to ensure they comply with the law. It could be confusing to retailers if we now constructed these offences differently. The police are also familiar with the approach relating to possession and we are not aware that the good reason defence has caused any issues regarding possession of a bladed article in a public place.

On the question from the noble Lord, Lord Tunnicliffe, on the standard of proof, I can confirm that if a defence is raised, the defendant has only to prove that the defence is made out on the balance of probabilities. There was a question on Scotland: obviously it has a separate legal jurisdiction with its own sentencing framework. The Bill's provisions work with the grain of the existing sentencing provisions. For example, the maximum penalty on summary conviction is 12 months in Scotland, but only six months in England and Wales. The same is true for the burden of proof, where the Bill reflects existing Scots law.

I appreciate noble Lords' concerns but, as I said, the approach we have taken is to follow a well-precedented form for offences relating to other age-restricted goods. If we reconstructed the sales and delivery offences for corrosive products we would be creating a different legislative regime from other age-restricted products, such as for knives. I am therefore not persuaded that we need to change the construction of the new offences. With those words, I hope that the noble Lord, Lord Paddick, will be content to withdraw his amendment.

The Earl of Erroll (CB): This might have been dealt with before and I apologise if it has, but is a farmhouse a residential address? Farmers would certainly receive all sorts of corrosive products.

Baroness Williams of Trafford: It could of course technically be both.

The Earl of Erroll: So which is it for the purposes of the Bill?

Lord Paddick: Could I assist the Committee? We will return to the problems of not allowing corrosive substances to be delivered to any residential address in an upcoming group. It might be more appropriate to discuss that matter then, if that assists the noble Earl.

The Earl of Erroll: Thank you. Sorry, I had not noticed that.

Lord Paddick: Not at all.

I am very grateful to all noble Lords who have contributed to this short debate, particularly the noble and learned Lord, Lord Judge. It is interesting that the Minister seems to have ignored the inconsistency in approach between the Prevention of Crime Act 1953, the Criminal Justice Act 1988 and the Bill. In the Prevention of Crime Act, which is a piece of legislation specifically dealing with offensive weapons, you do not commit an offence if you have a reasonable excuse, which is inconsistent with the Criminal Justice Act and the Bill. The Minister says, "We worded it this way for things to be consistent". It is not consistent.

On the point from the noble Earl, Lord Listowel, I do not want to get into the disproportionality of stop and search. What I would say is that I envisage certain circumstances where a 19-year-old young man who has a corrosive substance in their pocket, because that is the only thing they were sent out to the shop for, is stopped by the police very easily leading to arrest if the offence is worded in the way it is, whereas a police officer might be given cause to think twice if it were worded in the way I suggested it should be changed. The Minister and her officials are on slightly dodgy ground in suggesting to me what makes a practical difference to a police officer on the street or not about the way they implement the law.

That will give an indication that we are likely to return to this matter at the next stage. However, at this juncture, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendment 3

Moved by ***Lord Lucas***

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

"( ) The defence in subsection (2) is satisfied if a person has complied with a process that has been certified as adequate by the police."

Member's explanatory statement

This amendment would mean that complying with police certified processes would be a sufficient defence under subsection (2).

4 pm

Lord Lucas (Con): My Lords, I shall also speak to Amendments 13, 14 and 15 in this group. I do not put any particular weight on the drafting of these amendments. What concerns me is that we are putting a lot of weight in this Bill on the shoulders of people whose occupations we consider so lowly that we will not let them be the subject of apprenticeships. You cannot get an apprenticeship as a shop worker or as a delivery driver. There is no established pattern of training for these people, but we are putting them in a situation where something that they sold is used very quickly in a horrific crime and all the weight of the media and public opinion comes down on their shoulders as to whether they erred in their action or not. The whole machinery of justice is impelled towards convicting them because it wants some victim to compensate for the crime that has been committed. This is all too regular and humiliating, and we owe it to these people to put them in a situation where they can have a set of rules and know that if they follow this set of rules they will be safe.

It is not satisfactory to have that set of rules be just invented by the small shopkeeper who happens to employ them. There has to be some way in which their employers can establish that what they are doing is proof against whatever accusations might come their way. As the noble Lord, Lord Paddick, said, the burden of proof rests on their shoulders: they have to show that they did what was necessary to avoid the liability in this Bill. The other side of that coin is that we have to do what is necessary to enable them to do that and to enable them to be sure that they have done that. There are plenty of available recording devices around: you can take a picture of the document that you saw or the person himself, but then you are running straight into GDPR. We cannot start doing that without there being a clear set of permissions and expectations at the back of it. We want this to happen: we want a delivery driver, turning up on a wet Sunday and poking something through a gate that somebody might not see too well in the early morning light or in the evening, knowing that what they are doing is right and sufficient. I do not mind what it is, but we must do something. I beg to move.

Lord Paddick: My Lords, I support the amendments in this group in principle, but I will make one or two comments about them. First, there is an apparent contradiction between the pair of Amendments 3 and 13 on the one hand and the pair of Amendments 14 and 15 on the other. The first pair suggests that the police should design a scheme to ensure that corrosive substances are not delivered into the hands of those under 18. The second pair dictate to the police, at least in part, what that scheme should be. However, I understand the principle behind what the noble Lord is saying.

It is currently possible to order age-restricted products online and there are schemes in place designed to prevent age-restricted products being delivered to those under 18. Amazon's instructions to the buyer say:

"By placing an order for one of these items you are declaring that you are 18 years of age or over. These items must be used responsibly and appropriately.

Delivery of age restricted items can only be delivered to the address on the shipping label, but this can include the reception of a commercial building. A signature of the recipient will be required upon delivery. Amazon adopts a 'Challenge 25' approach to delivery of age restricted products. Photo identification will be required if a person appears under 25, to prove that they are over 18 years old. An age restricted item can be delivered to another adult over the age of 18 at the same address. Delivery to a neighbour or nominated safe place location is not available for these items. If an adult over the age of 18 is not available at the address, or if an adult has not been able to show valid photo identification under the Challenge 25 approach, the item will be returned to Amazon".

The acceptable photo identification is a passport or driving licence.

Would this scheme or something like it be sufficient to restrict the sale and delivery of corrosive substances—and knives for that matter—to those under 18, obviating the need for banning the delivery of such items to residential addresses?

The Earl of Erroll: My Lords, the noble Lord, Lord Lucas, is absolutely on the right lines. One of the troubles is knowing what is permissible and what is not. In speaking to the amendments in his name, I will suggest something which takes it a bit further. I declare an interest as chair of the Digital Policy Alliance, which, among other things, worked for several years on age verification for the Digital Economy Act. This Bill has exactly the same problem as Section 3 of that Act: what systems are adequate for proving the age of someone in an online sale? We worked on such systems and if noble Lords want to see that it can be done properly and securely I recommend they go to the web portal dpatechgateway.co.uk, where there are several to play with. The challenge is that there is no official certification scheme in place, but those systems are compliant with BSI publicly available specification 1296. I chaired the steering group that produced that standard and it had a lot of different people on it—people from the industry, academics, legislators, lawyers, et cetera. It shows that it can be done securely.

This goes one stage further than the suggestion from the noble Lord, Lord Lucas, that the police can certify. Here is a system that you could trust. The technology also enables it to be on a mobile, so you can do point-of-delivery verification. You have got the person there: you can compare them with the device. Amendment 13 goes some way to solving the quandary for a seller, but what is "adequate"? Someone in the industry has suggested to me that it might be better to insert a new paragraph (c) after line 22 saying that: "The Secretary of State may lay regulations as to which bodies are recognised to provide standards against which age-verification schemes can be assessed". In that way, a certification system could be set up. The BBFC and DCMS have been struggling with this for some time. They are getting there, but there is a lot to be learned from the fallout from that which could be imported into this Bill. Giving the Secretary of State the power to say what schemes can be certified against would go a long way to making life far simpler. We are moving into an online age. We cannot do all this offline and we should not pretend we can.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I will speak briefly in support of the amendments. The noble Lord, Lord Lucas, is right that we are in the

[Lord Kennedy of Southwark]
hands of sellers and delivery drivers, who have quite a lot of responsibility. If they get this wrong, they could be convicted, go to prison and have a criminal record. I am not against the Bill—in general I support it—but it is reasonable for it to set out what people need to do to protect themselves. One way of going forward may be a police guidance scheme. Another would be requiring the delivery driver to take photographic evidence. This would be a very good thing to do, because it is important to protect the people who are doing this work. People do make unintentional mistakes. They need to know that the person at the door is the right age and can hand over documents as evidence, or that they have abided by a police-approved scheme to which their company has signed up. These amendments go a long way to ensure protection for the seller, as well as making sure that the items are handed to the right people who are entitled to buy them.

Baroness Williams of Trafford: I am grateful to my noble friend for explaining these amendments, which deal with the evidence required to satisfy the defence if a seller is charged with selling or delivering a corrosive product to someone who is under the age of 18. As regards Amendment 3 to Clause 1, I understand my noble friend's intention but I am doubtful that it is necessary or appropriate to require the police to certify a seller's processes as adequate. There are already well-established and widely recognised age-restricted policies in place for retailers and sellers through Challenge 21 and Challenge 25. These policies are used day in and day out by retailers to deal with situations where an individual may appear to be under 18, particularly in relation to the sale of alcohol or tobacco. I have concerns about the value of asking the police to certify a seller's processes and about the burden this would place on police forces. I am also concerned about whether this approach would undermine these established policies. Arguably this amendment would necessitate the police certifying the specific age-restriction policies of every individual seller of a corrosive product, whether a high-street store or an online marketplace. This not a valuable use of police time when we want them to be focused on preventing and tackling violence in our communities.

In any event, I am not persuaded that the police would be the appropriate agency to discharge this function. We must not forget the important role that trading standards plays and its expertise in this area. That said, I would have the same concerns about the resource implications for local authorities if they, rather than the police, were to be made responsible for certifying the systems put in place by all retailers of corrosive substances caught by the Bill.

The defence we have put in place for the Clause 1 offence is similar to that for the sale of knives to under-18s, and it seems right to have a seller prove that they took all reasonable precautions and exercised all due diligence to avoid committing the offence of selling to an under-18. Similar considerations apply to Amendment 13, which would again require the police to certify as adequate a seller's system in preventing, in this case, the remote sale of a corrosive product to someone under 18. We have not specified an age-verification system in the legislation as there are various types of systems available and, as the noble Earl, Lord Erroll, pointed out, the technology behind such systems is continuing to develop at a fast pace. As a result, we did not want to prescribe a specific method or set a minimum standard for what these systems need to do, first, because we need to ensure that we future-proof the legislation, and secondly, because it is for sellers to determine the most appropriate system for their businesses to be able to demonstrate that they took all reasonable precautions and exercised due diligence to prevent the sale of a corrosive product to an under-18.

Lord Kennedy of Southwark: I see the point the Minister is making. She referred to various age-verification systems. I do not know whether we are going to have any guidance from the Government when this Bill becomes law. I want to ensure that these products are not sold to young people, but equally I want a system whereby I am confident that the person selling these items has had to reach quite a high bar to get this wrong so I am more confident that they have sold them deliberately. Will there be some sort of guidance saying that the Government would expect a seller to be in a scheme for age verification, so that if you are a courier company delivering products we would expect you to be in a scheme that does this and your driver would have professional training to know that, when he knocks on the door, he has to have done such and such? We need to make sure that we give the maximum amount of direction to people so we avoid these things getting into the wrong hands.

Baroness Williams of Trafford: The noble Lord makes a perfectly practical point. We are aiming to produce guidance. We talked about shopkeepers the other day and the abuse of shopkeepers who are trying to abide by the law. I think some of the conversation we had with USDAW will prove very fruitful in developing our thinking on that.

4.15 pm

Lord Kennedy of Southwark: Will you produce guidance along the lines of what I have suggested? Or are you not sure yet? Will you get to it later on?

Baroness Williams of Trafford: We will produce guidance and I will of course take the noble Lord's points into account. I cannot say whether supermarkets are currently part of the Challenge 21 or Challenge 25 scheme; I do not know the answer to that. However, in the production of guidance, you consult the various interested stakeholders to make sure that the guidance is as clear as it possibly can be.

Lord Kennedy of Southwark: With the greatest respect, you would expect some of the bigger companies to have systems in place. I am more concerned about smaller couriers and shops—one-man-band operations—which may not have anything in place. Being directed to sign up to a scheme would be good for everybody concerned.

Baroness Williams of Trafford: In fact, I was thinking precisely of the small shop owner, who may not have the resource. If they could sign up or reference some sort of guidance that would be ideal. I was thinking along the same lines as the noble Lord.

The Earl of Erroll: Can I add something on that subject? I was not suggesting that the Secretary of State should specify specific company schemes, or whatever. However, I agree entirely that there should be a certification process so that people know whether they are okay or not. If there is not, there will be a massive test case in the courts, which will be very expensive for someone, to test what is adequate. The Secretary of State could avoid this by giving some direction on the regulations which reflects where you can change them, with changing technology, and which would satisfactorily protect the seller from vexatious things and awkward situations. The Government should look at this again.

Baroness Hamwee: I mentioned that, not long before coming into this debate, I—and no doubt other noble Lords—had a note from the British Retail Consortium. It also makes the point about how helpful it would be to have guidance—"possibly through guidance", it says. Different situations may be different, but we are all concerned about not just protecting the seller but making sure that purchasers are able to purchase when it is reasonable to do so. I think it was my noble friend who mentioned John Lewis's current policy on sending cutlery through the post.

Baroness Williams of Trafford: The noble Earl, Lord Erroll, and the noble Baroness, Lady Hamwee, essentially come back to the point that the noble Lord, Lord Kennedy, made. Sellers want to make sure they are abiding by the law but, as the noble Baroness said, buyers want to make sure they are abiding by the law as well. On the systems that the noble Earl raised, I hope I did not suggest that he was trying to imply a specific system. I made the point that it would be wrong to specify a system in the legislation, given that systems are developing all the time.

To answer the point from the noble Earl, Lord Erroll, about age-restricted products, I have already mentioned knives, alcohol and tobacco, but lottery tickets are age-restricted as well, of course. Retailers are very used to operating in these systems, without a specific approved system in place.

Lord Kennedy of Southwark: This is a different type of retailer—hardware shops. You usually buy your lottery ticket from a different sort of place. I think we need to deal with these like for like.

Baroness Williams of Trafford: The noble Lord is both right and wrong. A shop might sell a range of products that includes all these things—I am thinking of Tesco, for example—whereas a corner shop might be entirely different.

The amendments would place additional burdens on sellers and delivery firms or couriers beyond the conditions proposed in Clause 2 that would need to be met by any remote seller who is charged with an offence of selling a corrosive product to someone under 18 and wants to rely on the defence for remote sales. We have already prescribed a tight set of conditions on remote sellers if they want to rely on the defence in Clause 2. There is clearly a balance to be struck, but I am not sure that we want to go further and be more prescriptive by imposing a requirement for photographic evidence, albeit that some firms may well want to adopt such an approach.

As for obtaining and retaining photographic evidence that the corrosive product was only delivered into the hands of someone aged over 18, I would have concerns about the storage for an appropriate period of such photographs under the general data protection regulation. The person who received the package would of course need to give their consent to any photograph being taken. We also need to bear in mind that it might not necessarily be the seller making the delivery; it could be a third-party delivery firm or a courier. That would raise the question of how the photographic evidence was transferred to the seller for retention. There is also a concern that the seller would not be able to fulfil the conditions set out for condition C in Clause 2 if the delivery firm or courier delivering the package failed to take and send the photographic evidence to the seller. The seller would not be able to demonstrate that they had taken all reasonable precautions and exercised all due diligence to ensure that, when finally delivered, the package was handed over to someone over 18. I accept that these difficulties are not insurmountable, but they demonstrate the drawback of imposing a level of regulation beyond what is arguably necessary.

I reassure noble Lords that we will work with retailers, the police and trading standards on implementation of the measures relating to the sale and delivery of corrosive products to ensure that those measures are adequate. As I said, we will want to produce guidance to ensure that retailers and sellers know what steps they can take to ensure that they comply with the law. I hope that, with those explanations, the noble Lord will be happy to withdraw his amendment.

Lord Kennedy of Southwark: Could I just come back to the issue of getting people to provide information? I understand the point that the noble Baroness makes about the GDPR, but we want the person who is knocking on the door to take all reasonable steps to know who the person answering the door is. Age can be quite deceptive. I had to go to the Co-op last night to get a package. I had my passport and my driving licence and I had to put in a PIN, just to pick up a jacket. These days, people often buy things that come in the post or have to be picked up from the post office or elsewhere, so giving identification is not a big issue now. If you are not doing anything wrong, why would you not provide that information anyway?

Baroness Williams of Trafford: I think that the noble Lord was referring to the taking and retention of photographs, which is slightly different, and we need to acknowledge the distinction.

Lord Lucas: My Lords, I am grateful to the Minister for saying that there will be guidance. Perhaps we might drop that into the Bill on Report, just to make sure. I think that guidance would be enough, but we should recognise that we have chosen to put into the Bill the words "all due diligence" and "all reasonable precautions". That is a very high test. If we had meant the current systems to apply, we should have left out

[Lord Lucas]
the word "all". Nobody gets killed by being sold a lottery ticket—or at least not just one—but we are looking here at things that might quite quickly turn into serious criminal incidents. If in court someone says, "I looked at his passport", but the police prove that the person in question has no passport, the poor delivery driver or shop worker is sunk. Noble Lords might remember a rather amusing TV ad from when we watched such things, "We're with the Woolwich", where somebody showed their Woolwich passbook to get out of East Germany. This passport or driving licence can presumably be of any nationality. How is a relatively untrained shop worker or delivery driver supposed to know that this is a Polish passport, not a Polish bankbook? We are asking people for whom there is no structured training to act as if they are trained. Under such circumstances we have to—

Baroness Hamwee: The noble Lord has made a very interesting point about the phrase "all reasonable precautions" and "all due diligence". I do not know whether the noble and learned Lord can help the Committee, but that looks like a normal phrase. I did not read it in quite the same way as having to take every possible step that might be a reasonable precaution. I wonder whether the officials might help us as to the provenance of the phrase before Report.

Lord Judge: If I might say so, "all" means "every". Without "all", you have just to take reasonable precautions and show due diligence. Once you put "all" in, you fall foul of any particular point you could have but did not look at and did not do.

Lord Kennedy of Southwark: This is something we talked about earlier. If we are to put "all" in, it is not unreasonable to have some sort of guidance in the Bill to protect people, otherwise people are just left hanging.

Lord Paddick: Would it help the Committee to suggest that the Government have put in Clause 4 exactly the sort of things the delivery courier should be looking at to take reasonable precautions?

Baroness Williams of Trafford: My Lords, that is where the guidance comes in. All roads are leading back to the guidance. I hope I can leave it there.

Lord Lucas: My Lords, it was those sorts of concerns that led to me think of taking photographs, because taking a photograph of a document is a reasonable precaution. If you have not done it, you have not taken all reasonable precautions. Yet if you take a photograph you get into all sorts of complications because it is not required, so you are into GDPR in all sorts of interesting ways. Guidance therefore becomes very important and we ought to drop the requirement for guidance into the Bill. I am very grateful to my noble friend for her help on this and I beg leave to withdraw my amendment.

Amendment 3 withdrawn.

Amendment 4

Moved by ***Baroness Hamwee***

4: Clause 1, page 2, line 9, leave out "imprisonment for a term not exceeding 51 weeks" and insert "a community sentence"

Member's explanatory statement

This amendment would replace the custodial sentences for the new offence in Clause 1 (sale of corrosive products to persons under 18) with community sentences.

Baroness Hamwee: My Lords, in moving Amendment 4 I will speak to Amendments 5, 6, 7, 20 and 21. This is not the first time that the Liberal Democrats has made clear our opposition to short custodial sentences, which, in our view, tend not to do good and too often cause harm. We are grateful to the Standing Committee for Youth Justice and the Prison Reform Trust in particular, as well as other organisations for helping me to articulate this. These amendments and some later ones repeat amendments that my right honourable friend Sir Ed Davey tabled in the House of Commons. We have thrown in some additional references because this is the scrutinising House. I heard a noise of agreement from behind me and it is clear that the noble Lord, Lord Ramsbotham, is on the same page on this.

A good deal was said at Second Reading on the complexity of what lies behind the carrying and use of weapons, and the context of that. Many noble Lords took what we regard as a necessarily broad view of the issues, expressly or implicitly criticising the use of legislation to send a rather broader message than the message to the police, to which my noble friend Lord Paddick referred. The Government recognise this, but not consistently. At Second Reading, I mentioned the Justice Secretary's apparent opposition to short custodial sentences and his support for community sentences, which the Ministry of Justice's own research shows are more effective at reducing offending. Surely that view counts. It is not so very long ago that home affairs and justice were in a single department, which was very unwieldly, but I hope that attitudes and values have not diverged to any extent.

4.30 pm

This Bill has been described as punitive, along with the comment that it is contradictory to much of the *Serious Violence Strategy* and the need for resources for intervention and prevention measures. Community sentences are not an easy option: they require a lot of engagement on the part of the offender and an active response to the sanctions, not the passive response that one might find in custody.

Amendment 4 would amend Clause 1, which makes it an offence to sell a corrosive product to under-18s. Much of the Bill is about children but this amendment is about all who make the sale, as with Amendments 5, 6 and 7. The amendments would substitute community sentences for the short sentences provided by Clause 1. In our view, it is not an answer that the alternatives available are fines because of the effects of custody, to which I have referred. I do not want to make a Second Reading speech all over again. What will have positive effects is not an introduction to criminality created

by custody, but we should look to fines—perhaps quite hefty fines—and the very fact that the individual who is convicted will have a criminal record, which will not help his employment prospects.

Amendment 6 would provide one specific condition which we suggest might be imposed: prohibiting the offender from selling corrosive products in the future. It is not, as I understand it, that it is necessary to spell that out but we want to make it clear that we would regard this as an appropriate way for the punishment to fit the crime and be a deterrent. As I said, community orders can be very tough and, in this case, that prohibition might be extremely tough.

Amendments 20 and 21 would similarly substitute community sentences for the short terms of imprisonment provided by Clause 3, which is about the delivery to residential premises. We will come to the substance of Clause 3 and what residential premises are and so on—I am looking at the noble Earl—but our view on sanctions applies, and this is the place to make it. I beg to move.

Lord Ramsbotham (CB): My Lords, I have added my name to Amendments 4 and 5, and I will also speak to the other amendments in this group. I looked in vain for Amendment 19 on the Marshalled List and the order of groupings today but I noticed that it is not there. As 19 comes before 20 and 21, I would like to speak to that as well because it also mentions custodial sentences—

Baroness Williams of Trafford: It was in group 1.

Lord Ramsbotham: I am sorry. I mentioned at Second Reading that I was astonished that the Bill should bring forward the Home Secretary's apparent desire to increase the number of mandatory short sentences while the Ministry of Justice and its Secretary of State, followed by the Prisons Minister last Saturday in the *Daily Telegraph,* oppose the mandatory short sentences because they were so ineffective. I would have thought that that ought to have been sorted out between the two Cabinet Ministers before the Bill was brought to the House.

When I was Chief Inspector of Prisons, I learned of the Scandinavian system, which gave to the sentencer prospectuses of what could be done with and for a prisoner. The sentencer took that into account in awarding the length of sentence and ordered that certain courses or programmes were to be completed by the prisoner so as they could rehabilitate him or herself. If the prisoner completed the mandatory parts of the sentence laid down by the sentencer, the governor of the prison could take the prisoner back to the sentencer and, because the prisoner has jumped through all the hoops that were set, ask that they please be released. That was a factor in reducing overcrowding in Scandinavian prisons.

What worries me is that our overcrowded and understaffed prisons are finding difficulty enough in producing programmes for longer-term prisoners. But they can do nothing whatever for short-sentence prisoners and therefore there is no purpose in people going to those prisons, because they will get absolutely nothing. If you expect that the purpose of the sentence is to rehabilitate, that will not happen in our present prison system. Staff shortages, for example, mean that there are not enough staff to escort people to programmes that they are meant to be attend. So even if a programme was laid down, it is unlikely that it would be completed.

I admit that community sentences need to be improved. In preparation for this debate, last week I visited the Wandsworth probation programme and asked staff what they could do with and for people accused of violent offences. They said that, at the moment, they could do absolutely nothing because they did not have the wherewithal. However, there is no doubt that, if they were given the wherewithal, they could devise a meaningful sentence that would gather credibility in the community.

I also spoke to the Justice Secretary last Thursday and mentioned that there was apparent disagreement between him and the Home Secretary. Personally, I am on his side, because I saw the effect of short sentencing in prisons and saw people coming out having got nothing. That does little to increase the reputation of the justice system in the community, and it can ill afford to lose any more of its reputation in the country.

I notice that, in her foreword to the *Serious Violence Strategy*, the then Home Secretary said two things. The first is this:

> "The … Strategy represents a very significant programme of work involving a range of Government Departments and partners, in the public, voluntary and private sectors".

That may be, but we have not as yet seen any evidence of this partnership working. At Second Reading, we talked a lot about a public health approach. I do not think that that approach has had time to bed in. The second thing she said was that:

> "The strategy supports a new balance between prevention and effective law enforcement".

Prevention has not yet been tried, and to lay down mandatory short sentences is imposing law enforcement on prevention and damaging the hopes that prevention may bed in and achieve something.

Baroness Newlove (Con): My Lords, listening to the debate on this amendment makes me feel very nervous. As someone who has been a victim of crime by a gang of youths, and as the community champion when I came to this place, my worry is that there is an argument about short-term sentences, because of the process a prisoner goes through. I have gone into prisons and youth offender schemes, so I have done my homework and have worked with them a lot. My nervousness is because, while this is about short imprisonment, imprisonment is effective for people for whom a community sentence does not carry that weight.

Going around the country and speaking to communities, I find they do not feel that their voice is being listened to when someone is given a community sentence. The noble Lord, Lord Ramsbotham, quite rightly said that we need to have quality community sentences. At the moment, we have painting fences and gardening while wearing visors. I am conscious about how we shift this pattern of our community sentences and what they are worth.

In addition, there is kudos in this in the gangs that we deal with. When there were ASBOs, it was cool to have an ASBO. I am conscious that we need to look at

[Baroness Newlove]
short sentences and at the messages we are sending to the community and to the gangs, who can hold one sentence against the other. If the Government are going to go that way, I would like quality community services.

I have been out with youth offender trainers. They are short-staffed and underresourced. The intelligence I had from young people who were going into gangs was that they were not bothered whether they were going to prison or doing community service. They had no idea of what they were in trouble for. That is where the serious violence strategy needs to be better—it is about the two together. I am very nervous about community sentences. Can we have further discussions about them? They are part of the essential message we are sending to youngsters and to communities that are suffering and are scared to come forward because their lives are being threatened.

The Earl of Listowel: My Lords, I support these amendments. I recognise how important it is for the Government to make a robust response to public concerns about knife crime and the use of corrosive substances—the Victims' Commissioner has just reiterated that. One must bear in mind the huge cost of sending people to prison. I would be very grateful if, in her reply, the Minister could give some idea of how much a short prison sentence costs compared to community provision. We have just heard that there is insufficient investment in high-quality community provision. The difficulty is that, when one starts ramping up the prison population, one has to spend more and more on an expensive provision which is ineffective. It is perhaps a difficult communications job for the Government, but the best way of protecting the public from these kinds of crimes is to invest in high-quality community provision, community support officers and police on the ground so that people can see them in their communities.

We are facing an uncertain future as a country. We recognise the limitations on our resources. If we start increasing the number of people being placed in prison, as we have done in the past, we perhaps do not have the money to do both, and we will not be able to make the most effective provision. For instance, we are not talking about children in this amendment, but I think I am right in saying that 68% of children who serve a short prison sentence will commit a crime within a year of being in prison, whereas 58% of those placed in community intervention will do so. That statistic takes into account the gravity of the crime.

There is scientific evidence that community interventions are more effective than prison sentences, at least for children. In seeking to reassure the public, we risk spending a lot more money on something which is relatively ineffective and not putting resources in an area where they are demonstrated to be effective. It is a difficult job, because the Government also have a role to reassure the public. If the public really believe that prison sentences are the only way to respond to this, we are in a difficult position. I think the public can be persuaded that we should not put money into expensive things which are not effective.

4.45 pm

I would also like to talk about prison officers. Last year, I visited a prison for young men: a prison officer had been attacked the previous night. Prison officers' morale is at a great low; it has been challenging for them for many years. The more burden we put on them through increased numbers, the more difficult it is for them to recover. When I visited, the governor and the prison officers saw a chink of light. They saw increased investment in the prison service and, particularly, the possibility of officers returning to the key person role. If you want to manage behaviour in prisons and turn young adults' lives around, prison officers need to make a relationship with them.

Baroness Newlove: I have an issue with the cost of putting extra money into prisons. The communities that I am involved in, and see on a daily basis, are not nice rural villages. On a daily basis, they are being told the absolute opposite of what the noble Earl is saying. Investing more in communities—to get their trust in services—will give them confidence and will nurture our society.

I have been in prisons and I am not saying they are not horrendous. One young offender who had been in a riot said to me: "It's minging in here", but he still could not grasp what he had done. He was a first-time offender and his solicitor had said: "Don't worry, son, it's your first offence". I have an issue with giving this line to young people. I also have an issue with governors. I have seen good services, such as training young prisoners in the skills to get involved in optician work for children abroad. But when another governor comes in, he completely whitewashes everything and wants his own blueprint. That happens everywhere.

If it is about money, we need to look further at what we can do. We also need to look at what we are trying to achieve by not sending people to prison. I have an issue with money because our prisons would not be full if you invested it well. Communities need to feel safe and, at the moment, they do not. They feel that what they hear and say are worthless.

The Earl of Listowel: I thank the noble Baroness for her intervention. I think we are saying the same thing: we need to put the money where it can be effective. We can put money into the community in many different ways, including increasing the number of community support officers or police officers on the beat. In particular, young men—so many of whom are growing up without fathers in the home—need to find mentors they can identify with and so begin to turn their lives around, as I have seen so often myself. Those services are effective, but they are easily cut. I am concerned that, in progressing with short prison sentences, we are actually throwing money down the drain. However, I see that the Government are in a difficult position. They need to be seen to be making a robust response to something that so many people are afraid of.

Baroness Eaton (Con): I support the words of my noble friend Lady Newlove. Much of what the Committee has heard this afternoon about corrosive substances has referred to the appalling use of them by young people. Statistics on this are more difficult to find than

on some of the other offences that we will be discussing later. I have serious concerns about the connection with drugs. The threat of acid attack is regularly used on young people involved in county lines.

One thing we have not mentioned this afternoon is the terrible situation of violence against individuals in domestic abuse situations, which is less frequent and not often reported. Surely short-term sentences will not deal with that. This is not the same as the pressures on young people to conform to gangs and so on. This is something quite different and I would like to think that there are very serious responses to that in our system.

Lord Paddick: If I could assist the Committee at this stage, these amendments relate to the offences of selling and delivering to young people, not to the possession of corrosive substances by young people. We are talking about sending the owner of the corner shop or the Amazon delivery man to prison for delivering these substances into the hands of people who are under 18. I want to ensure that noble Lords are aware that that is what we are talking about in this group of amendments.

Lord Judge: My Lords, I am grateful to the noble Lord, Lord Paddick. Views have been expressed here which I respect but do not share. The seller will be, or is likely to be, an adult, and certainly will not be a vulnerable child. The purchaser, or the person to whom the product is sold, may be a very young child. It may be a 17 year-old who lives in an area where there is an awful lot of violence and who has a bad record which is known to the seller. We have to be careful. I am implacably opposed to minimum terms—we may come to that at some stage—because minimum terms do not do justice. However, a person who sells to a vulnerable child, or to somebody who leads a gang or who has been given a community sentence first time round, with a condition that he is prohibited from selling corrosive products but continues to do so, merits a prison sentence as punishment. Prison is not just about rehabilitation. Short sentences do not do much good; indeed, the evidence suggests that some of them do a lot of harm. However, some short sentences do some good because they punish the offender. Therefore, I cannot support these amendments.

Lord Kennedy of Southwark: My Lords, as you heard, Amendments 4, 5, 20 and 21 in the names of the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee, seek to replace the punishment that a person is liable to get on conviction, as set out in the Bill, with a community sentence. Amendments 6 and 7 allow conditions to be added to prohibit offenders from selling corrosive substances.

I am very sympathetic to these amendments. We have heard about the debate that is going on in Government at the moment between the justice department and the Home Office on sentencing policy. Generally, as we have heard, short-term sentences are not the right thing to do; they can be expensive and counterproductive, and they are not long enough to deal with a person's issues. They can actually do more harm than good: the person can lose their job, home and family and then of course they have to go back out into the community. These amendments concern the delivery driver and the owner of the corner shop—the person who sold the products—not the young person who may want to commit other offences.

I agree with the noble and learned Lord, Lord Judge. Magistrates have the ability to look at the case in detail and decide on the best punishment. It could be that, for a second or third offence, prison might be the right place to put this person, because they will not listen. Equally, I want to make sure that the magistrates deciding these cases have that ability because they will know whether the offence merits a community sentence. I want to hear that a suite of punishments is available to the court and not have it driven down that they must impose a mandatory sentence. On that basis, although I have some sympathy with the amendments as they are, I want a much broader suite that enables the court to look at the evidence before it and make a sentence that it believes is appropriate.

Baroness Williams of Trafford: I thank the noble Lord, Lord Paddick, for tabling these amendments and the noble Baroness, Lady Hamwee, for speaking to them, as it provides us with the opportunity to debate the appropriateness of the penalties we are proposing for anyone found guilty of selling a corrosive product to someone aged under 18 or for arranging the delivery of a corrosive product to residential premises or a locker. I am not persuaded of the case for replacing custodial sentences of up to six months for the sale and delivery offences with community sentences. The noble and learned Lord, Lord Judge, very articulately outlined why they might be necessary for some, but not all, offences. Let me explain my reasons for this.

We need to consider the significant harm corrosive products can cause if they are misused as a weapon to attack someone. My noble friend Lady Eaton pointed out one such circumstance in which this might happen: domestic abuse settings. The effects can be significant and life-changing for a victim, leaving them with permanent injuries, not to mention causing serious psychological harm. But it is important to be clear that in providing this maximum custodial penalty we are providing the courts with a range of penalties, from custody through to a fine or both. That gives the courts the option to impose a community sentence if that is most suitable, taking into account all the circumstances of the offence and, of course, of the offender.

There is also the requirement under the Criminal Justice Act 2003 that the court has to be satisfied that the offence is so serious that only a custodial sentence can be justified, so we can have every confidence that our courts will be sentencing offenders appropriately. Where a custodial sentence is justified they will impose it, but where a community order would be better for punishment and rehabilitation while protecting the public nothing in our provisions prevents it. There is also the broader legal framework to consider and the novel problems of a maximum penalty being a community order.

I must point out to noble Lords that, under Section 150A of the Criminal Justice Act 2003, a community sentence can be imposed only where the

[Baroness Williams of Trafford]
offence is punishable by a prison sentence. That is an important point to note. Even if it were possible to change the maximum penalties we are proposing, it would raise the problem that if someone wilfully breached their community order, then, as the law stands, it would not be possible to sentence them to custody. The courts would be able only to re-impose another community sentence. As a result, it is important that custodial sentences are available to the courts as one of the penalties available for anyone convicted of the sales offence. Such an approach is also consistent with the range of penalties available to the courts for anyone who has been convicted of selling a knife or bladed article to a person under the age of 18.

It was very clear from the debates in the House of Commons that we should treat the threat of violence from corrosives as seriously as that from knives. We have therefore tried to ensure that the offences relating to corrosives mirror those for knives wherever possible, as we discussed. I note that this approach was strongly supported by the Opposition during the detailed consideration of the Bill in Commons Committee. These amendments would undermine that approach, and would in effect be saying that selling a corrosive product to someone under the age of 18 was less serious than selling a bladed article to a person under the age 18.

I add that, as with other age-restricted products, in many cases it is the company selling the product or arranging for its delivery that would be prosecuted. Although the person at the checkout desk is sometimes prosecuted, it is more likely the case that it will be the company operating the store, because it will be responsible for ensuring that procedures and training are in place to avoid commission of the offence. This goes back to the guidance point made by the noble Lord, Lord Kennedy. Where it is a company that is being prosecuted, the sentence is likely to be a fine rather than a custodial or community sentence, but if an individual is prosecuted, the full range of penalties should be available.

5 pm

The noble Lord, Lord Paddick, together with other noble Lords, have argued that short sentences of up to six months are ineffectual at rehabilitation and have prayed in aid recent comments by the Prisons Minister. Noble Lords have, of course, mentioned that the Justice Secretary and the Prisons Minister are looking at the question of short sentences and the use of prisons in the round. This will build on the existing evidence about the effectiveness of community sentences in reducing reoffending. A number of noble Lords talked about the various suggestions for community support in reducing reoffending. It is a very interesting discussion, although probably not for today. I want to emphasise that custodial sentences should be seen as a last resort and if noble Lords will refer to Clause 8(1), it very much articulates that. However, they are appropriate in some cases, and offenders with complex needs, such as female offenders, should be dealt with in the community wherever possible.

The noble Lord, Lord Ramsbotham, asked what the MoJ was doing to regain the confidence of the judiciary on community sentencing. We are finalising a series of changes to the structure and the content of probation services to make the system simpler, resilient and able to focus on getting the basics right. We particularly want to improve the quality of rehabilitative support offered by probation in the community. Noble Lords contributed on that today. We hope that our changes will ensure that a wider range of programmes are available so that courts can better tailor community sentences to the individual needs of offenders. We want to improve the information that judges and magistrates get from probation services on the community sentences that they deliver. We have re-established the National Sentencer and Probation Forum to facilitate the engagement and discussion of issues between sentencers, probation providers and other stakeholders.

The noble Earl, Lord Listowel, talked about the cost of short prison sentences. It is roughly £25,000 a year, but, of course, community sentences come with a cost to the probation service too. I think that follows. We should not set an arbitrary target for prison population reduction, and certainly not one that is driven purely by cost, although I do not think that the noble Earl was trying to suggest that. There is no doubt that sentencing must match the severity of a crime, and prison must always be available for the most serious offending. It is always so good to hear from my noble friend Lady Newlove because she speaks, sadly, from first-hand experience. I would be happy not just to meet her but to discuss some of her experiences. I know that she will be a very valuable voice on this Bill. We must be very careful—she made this point—not to send a signal in this Bill that the use of corrosives as an offensive weapon is somehow seen as less serious than the use of knives.

I understand the concerns about the use of short custodial sentences, and I hope that the debate has been helpful in contributing to the ongoing conversation on the use of custody. However, it is important that we do all we can to prevent the sale of harmful corrosive products to under-18s, given the significant harm and injury that such products can cause if misused.

Amendment 6 seeks to add to the sentencing options available to the courts a community sentence that bars the offender from selling corrosive substances. That is an interesting suggestion, but we do not think that it is necessary or appropriate to amend the community sentence framework in that way. The purpose of such an order would not presumably be for punishment or rehabilitation; it would be purely a preventive measure and it would be more appropriate to use a preventive power if the court thought that such a ban was necessary. That said, given the point I made earlier, it is difficult to see how this would work where a major retailer is prosecuted. It would arguably not be proportionate to say that a B&Q store, for example—or indeed the whole company—could not sell any corrosive products for a period of time. The aim of Clause 1 is not to stop the sale of corrosive products, which of course have many legitimate uses, but to stop their sale to children. The best outcome in cases where corrosive products have been sold to someone under 18, for whatever reason, is to ensure that it does not happen again.

I hope that, on the substantive point on short-term sentences, the noble Baroness, Lady Hamwee, will feel happy to withdraw the amendment.

Lord Kennedy of Southwark: I am more comfortable with the Minister's explanation than I am with what is written in the Bill. Perhaps we can look at this again between now and Report. The Bill seems harsh—it says that there will be a prison sentence—whereas the Minister has said that a whole suite of options will be available to the courts, including community sentences. It seems a shame that what is written in the Bill is not the whole case. As the noble and learned Lord, Lord Judge, said, prison might be the right option in some cases, but in other cases a community sentence would be appropriate. I not a lawyer—I am a lay person—but perhaps we can look at how the Bill is written. As I said, I am happier with what I have heard than with what is in the Bill.

The Earl of Listowel: My Lords, I thank the Minister for her helpful, informative and careful reply. I particularly welcome what she said about the need to think about placing women in prison, given the stubbornly high level of female imprisonment over many years now. I was thinking about the fact that one in 10 lone-parent families is headed by the man. Is there any advice to the courts on whether, when deciding on sentencing, they should take into account whether a man is looking after the children in the family? The Minister will not have it to hand, but I imagine that there is some guidance on that. Perhaps we can look at it at some point.

Baroness Williams of Trafford: I am happy to look at that point. Of course, every case is different, so I cannot give a pronouncement here in Committee this afternoon. I have visited Styal prison, an all-female prison near to where I live. I would imagine that Styal is an example of best in class, as it tries to support the family as opposed to just dealing with the woman in custody. I recommend any noble Lords who get the chance to visit that prison, which is an example of a very supportive environment.

Baroness Hamwee: My Lords, we have ranged widely and it is tempting to respond to some of the points that have been made, continuing that wider debate, as opposed to focusing on Clauses 1 and 3, but I will try to resist that.

I think that we all agree with the noble Baroness, Lady Newlove, that this is about the quality of sentences. I would regard it as rather despairing to accept that there should be imprisonment because community sentences are inadequate—not fit for purpose, in the jargon. I referred to comments made in April last year, I think, by the Secretary of State for Justice, David Gauke, in response to evidence published by the MoJ showing that, for people with matched offending backgrounds, community orders were more effective than a short prison sentence at reducing offending.

I should make it clear that we are not in favour of selling corrosives that may be misused—I do not want that to come out of this debate. Clause 6 includes the offence of possession, and it is this clause that prompts me to ask whether the Minister can confirm that the offences under Clauses 1 and 3 are summary only offences. Clause 6 refers to conviction on indictment, which would allow imprisonment for up to four years. One always learns something, and I did not expect to learn about the 2003 Act. There are two ways of looking at that: either our amendments are fatally flawed or we have material to come back to at Report. That is neither a threat nor a promise, but perhaps the Minister can answer my question about summary only offences.

Baroness Williams of Trafford: I can confirm that to the noble Baroness.

Baroness Hamwee: We have all shared a lot more of our views on this Bill than I thought likely to be the case when I tabled these two amendments. I beg leave to withdraw.

Amendment 4 withdrawn.

Amendments 5 to 7 not moved.

Amendment 8

Moved by ***Viscount Craigavon***

8: Clause 1, page 2, line 23, leave out "to" and insert "and"

Member's explanatory statement

This is a paving amendment for the amendment tabled at page 4, line 23. Together both amendments seek to exclude objects such as car and motorcycle batteries from the definition of a corrosive product in section 3 to allow for their continued delivery to residential premises.

Viscount Craigavon (CB): My Lords, of the two amendments in this group, both in my name, the first is a paving amendment to Amendment 18, in Clause 3, which has the heading, "Delivery of corrosive products to residential premises etc". Clause 3 would carry on the same definition of corrosive products, but my Amendment 18 would allow for an excepted class of product, of which an example is motorcycle and car batteries. The amendment is solely to deal with their delivery to residential premises.

While fully and obviously agreeing with this Bill providing sweeping protection from the misuse of corrosive products, I hope the Government will recognise that unintended consequences—on quite a scale—could occur in the particular case that I am setting out. I hope that the Minister will not want this Bill to disadvantage or even punish an important section of the population, when, by accepting this amendment, a perfectly safe resolution can be achieved.

The wording of my main amendment might appear to be rather obscure, but it is, with reason, copied from what is successfully used in the Poisons Act, as amended. The clue is in the wording: I have narrowed its scope and restricted it to just one of the nine substances listed in Schedule 1, sulfuric acid. It applies to objects containing sulfuric acid, which will usually, but not exclusively, be batteries.

In making my case here I will concentrate on car and motorcycle batteries, in particular the latter category, which would be most affected by an unamended Bill. We are talking mainly about the delivery to residential premises of such batteries. I declare my interest in this

[Viscount Craigavon]
matter as a frequent motorcyclist and a member of the All-Party Parliamentary Group on Motorcycling. The Motorcycle Industry Association has picked up the potential problem: the present extensive online sale of motorcycle batteries to individual customers at their residential address would simply be unable to continue were this Bill to pass unamended.

I use the example of motorcycle batteries but this would apply to car batteries and other such sulfuric acid battery users. However, motorcycle batteries are produced and designed in small sizes, to fit particular specialisations and models, unlike car batteries, which are fairly standard and interchangeable and some of which can be bought sealed with a lifetime guarantee. I know to my cost that motorcycle batteries, which are normally sealed, have to be frequently replaced in the normal course of things, and then by the exact shape and power of battery that each machine requires. They are much more prone to failure and the effects of the cold and normally have to be replaced every two or three years. I say all that to emphasise the need of motorcycle owners to obtain ordinary and specialist batteries on a regular and speedy basis, specified for their machines.

5.15 pm

As most people, especially the young, use online ordering, and with maybe only one type out of thousands of batteries to choose from being suitable for their machine, such purchases will end up being most conveniently ordered online and delivered to a residential address. Only online dealers could afford to hold the comprehensive stock needed to satisfy that demand. It is more than most convenient, as it would anyway be practically impossible for a single shop or dealer to supply more than a selection of the most popular types of battery. Even that latter might be possible only in a metropolitan area. If one lived in a rural area, it might be virtually impossible—if one were hundreds of miles away—to obtain the right battery in person at a shop or dealer. We do not want to discourage enterprising individuals from changing their own batteries, which is usually much more possible on a motorcycle, rather than having to trouble a garage. I say all this in the potential context of such deliveries to residential addresses becoming illegal under Clause 3.

Perhaps I may now deal with the matter of sulphuric acid, which is contained in these batteries at a greater strength than is permitted in Schedule 1 to the Bill. It might be nearer to 30% than the 15% permitted there. Under the Poisons Act, earlier mentioned, such distant sales at present are able to be made only if such batteries are sealed. It would continue to be the case that the acid would be sold only in sealed batteries. The point of the wording in my amendment, which is taken from the Poisons Act, is that the so-called object—the battery serving the function—is greater than simply the sulphuric acid. In practice if it is sealed as required, its danger as a poison or corrosive product would be minimal. I believe there is no evidence that such batteries have been used as a source of acid for offensive purposes. That point is reinforced by the fact that such purchases are perfectly legal by someone in person, over the counter.

As we know, deliveries are generally being carried out more frequently by different firms and organisations, rather than just the Post Office. Heavier items such as car batteries can likewise be delivered to residential addresses. These vehicle items, and others, still use heavier lead-acid batteries. I realise that more modern batteries might use lithium or other lighter sealed sources but, for the moment, vehicles continue to use lead-acid sources. Other new inventions might come along needing to best use a lead-acid source of power. This amendment would allow such sealed batteries to be so designed and new inventions not to be so restricted, because customers might not be able to replace the required batteries readily.

I have been talking about motorcycle batteries as a case in point but it is worth remembering that many other objects still rely on lead-acid batteries, such as caravans, boats, stairlifts, electric wheelchairs and many more. Such batteries are an unavoidable part of daily life. There could also be all sorts of robotic inventions coming down the line, which might still need to best use sealed lead-acid batteries, and we do not want to inhibit them just because replacement lead-acid batteries would not by then be readily available.

I believe that we have to allow such online ordering to occur, with delivery to residential addresses, and to increase, provided it is safe to do so. I hope I have shown that it is possible in these cases. Were we not to allow it, I have to remind the Minister that there are about 1.2 million motorcycle users, taking up far less space on the roads than others, who might need to change their batteries every two or three years. This is as well as those other categories I have just mentioned, not least electric wheelchair users. For very many of them, especially in rural areas, not to be able to replace their batteries by online means and have them delivered to residential addresses would be more than an inconvenience or disadvantage. The Government would not want to shoulder the blame, especially among what are probably mainly youngish voters, for blighting their lives and effectively discouraging motorcycling. I believe that these amendments can sit safely alongside the laudable purposes of the Bill. I beg to move.

Lord Paddick: My Lords, I rise briefly to support the noble Viscount. This is an example of how complex this ban on delivering corrosive substances to residential premises is. That is an issue that I will return to in group 7; I shall keep my powder dry until then.

The Earl of Erroll: My Lords, I also rise briefly to support this amendment from my noble friend. He is absolutely right. It is not just cars and motorcycles; things such as uninterruptable power supplies for computers, in which I have a particular interest, have them and I do not know whether the fact that the battery is inside another bit of kit which can be unscrewed matters or not. If you have a heavy-duty burglar alarm panel, that will probably have a lead-acid battery behind it. There are lots of reasons why you might want to get replacement batteries. I personally find it very inconvenient, except for the fact that I am married to a farmer. If I was living in a normal place—like my son for instance, who lives in London—I would not be able to buy batteries like that. They are a damned sight cheaper online, I can tell you that.

Lord Kennedy of Southwark: I think the noble Viscount makes a fair point. He has listed some examples of when this could be a problem. I look forward to the Minister's response to these valid concerns.

Viscount Goschen (Con): My Lords, before my noble friend responds—the noble Viscount, Lord Craigavon, raised some very pertinent points—she might consider that if a miscreant wanted to obtain a corrosive substance, buying a brand-new motorcycle battery would be an extremely expensive way of doing it. When we look at banning things, we have to be very clear about what we think the benefit will be. This is a substance that is still very easy to obtain. It feels as if we are doing a great thing by banning things—we all want to see a reduction in the availability of these dangerous substances—but the reality is that any backstreet garage or facility will have stacks of used car batteries, from which these substances can be taken. We have to consider whether the delivery of an expensive motorcycle battery that may cost £50 is really a likely route for a miscreant who is trying to get hold of these substances. I am a motorcyclist too, although my battery appears to be very reliable.

Baroness Barran (Con): I am grateful to the noble Viscount, Lord Craigavon, for raising this important issue. Before joining your Lordships' House, I was warned that I would be surrounded by world experts on almost every topic and this short debate has reinforced that view.

The noble Viscount's amendment seeks to address the potential that the provisions in Clauses 1 to 4 will have unintended consequences for suppliers of car and motorcycle batteries and, as the noble Viscount pointed out, other batteries which contain acid, for example those used in mobility scooters. I agree that this is an important point. Noble Lords may be assured that, in the light of discussions we have had with the representatives of the industry, the Government are carefully considering the impact that the Bill may have on the sale and delivery of such batteries. We remain committed to preventing young people from getting hold of acid in a form that they can use in the sort of horrific attacks that we have seen. But I agree with my noble friend Lord Goschen that it is quite a different matter to prevent the sale or delivery of car batteries and the like to those who have a legitimate need for them.

I ask the noble Viscount to bear with us a little longer. The Government need a little more time to consider how best to meet the point without impacting on the purpose of the Bill. I fully expect that we will have completed this work ahead of Report when I hope we will be able to reach a satisfactory conclusion. Given this assurance, I ask the noble Viscount to withdraw his amendment to give the Government further time to consider this issue.

Viscount Craigavon: My Lords, I am extremely grateful for the spirit of that reply and to all noble Lords who have spoken in support. There is a genuine problem, which I outlined. It is useful to know that the Government are discussing this and coming up with some sort of answer because it has to be dealt with. I think it can be dealt with. I deal with it also under Clause 3. The Minister mentioned Clauses 2 to 4. I hope this can be dealt with. I am grateful for her answer. I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9

Moved by ***Lord Paddick***

9: Clause 1, page 2, line 28, after "may" insert ", following consultation with representatives of persons likely to be affected,"

Member's explanatory statement

This amendment would require consultation before any amendment of Schedule 1 (corrosive products).

Lord Paddick: My Lords, Amendment 9 is tabled in my name and that of my noble friend Lady Hamwee. I shall speak also to my Amendments 10A and 10B, which are also in this group. I apologise to the Committee for the late arrival of those amendments.

Amendment 9 simply suggests that if the appropriate national authority amends Schedule 1—the list of corrosive products—for the purposes of Clause 1 by regulation, it should consult representatives of those likely to be affected. Amendments 10A and 10B probe the necessity for including 3% or more nitric acid and 15% or more sulphuric acid in Schedule 1 when they are already regulated explosives precursors listed in Schedule 1A to the Poisons Act 1972 as amended by the Deregulation Act 2015. These substances are already restricted for sale to the general public. If a member of the public wants to buy these substances, they need to apply to the Home Office for a licence to acquire, possess and use these substances. Will the Minister explain why these substances therefore need to be included in Schedule 1 to the Bill and why the existing restrictions are not sufficient? For those who are amazed at the depth of my knowledge of these issues, I am very grateful to the House of Lords Library for its excellent briefing on the Bill. I beg to move.

Lord Lucas: My Lords, Amendment 10 simply asks why not just list all these substances, since we know what they are and the list will not change. Substances have been left off, such as slaked lime, which are seriously corrosive to skin, might be used and are very easy to obtain, and there are others on the list that would be very difficult to obtain. None the less, if we are going to have a list, since the list is not going to grow over time but is a small collection of basic inorganic chemicals, why not have the lot? It really does not add a lot of weight to the Bill to complete the list.

Baroness Barran: I am grateful to the noble Lord, Lord Paddick, on behalf of the noble Baroness, Lady Hamwee, and my noble friend, Lord Lucas, for explaining their amendments, which relate to the list of corrosive substances in Schedule 1. I can deal quickly with Amendment 9. I assure the noble Baroness, Lady Hamwee, that we would consult with affected persons before making regulations amending Schedule 1. Whether we need to specify this in the Bill is a moot point, but I am happy to consider her amendment further ahead of Report.

Turning to Amendment 10, I know that my noble friend expressed concerns at Second Reading about the list of corrosive substances set out in Schedule 1

[Baroness Barran]
and felt that it did not go far enough and that we needed to have a more comprehensive list. It might be helpful if I set out how we arrived at the corrosive substances and concentration limits in Schedule 1. We based it on the advice from our scientific advisers at the Defence Science and Technology Laboratory as well as from the police.

The substances that we want to prohibit sales and delivery to under-18s and to residential premises are those which we know have been used in attacks to harm and cause permanent injury and those that are the most harmful. Furthermore, the concentration limits are at those thresholds where, if the product was misused, it would cause permanent injury and damage. This seems a proportionate approach when talking about prohibiting the sale and delivery of corrosive products. It is important to remember that we are talking about products that have legitimate uses in our homes or for businesses. Consequently, we should not be criminalising the sale or delivery of particular corrosive substances without good cause.

5.30 pm

Indeed, some of the corrosives covered by my noble friend Lord Lucas's amendment have a very wide range of uses in everyday products. Potassium hydroxide and calcium hydroxide are widely used as additives in food and drinks. Hydrogen peroxide also has a wide range of uses, including in hairdressing, and calcium hydroxide and lime are extensively used in the building trade. We need to be really careful about prohibiting the sale of things to under-18s and banning the delivery of products bought online to a person's home when those products are widely used or in a form where it is highly unlikely that they can be used in crimes. That would risk making the offences unenforceable and would undermine what we are trying to achieve, which is to stop young people getting hold of things they can use in acid attacks.

We are not aware from the police that any of the additional substances set out in my noble friend's amendment have been used in a corrosive attack, nor have manufacturer or retail trade associations suggested in our discussions with them that we are missing any particular substances in Schedule 1. Of course, if evidence came to light that other corrosive substances were being misused in this way, we have also taken a power in Clause 1(12) to add a substance to Schedule 1. This power may also be used to remove or modify any substance or concentration limit, should it be necessary on the basis of further evidence from the police or our scientific advisers at the Defence Science and Technology Laboratory. I can assure my noble friend that we will keep the list of substances and concentrations under review and continue to work with the National Police Chiefs' Council, the Defence Science and Technology Laboratory, retail trade associations and manufacturers.

Finally, Amendments 10A and 10B, tabled by the noble Lord, Lord Paddick, aim to explore the relationship between the substances we have listed in Schedule 1 and those substances that are subject to the provisions of the Poisons Act 1972. There are similarities in how we have defined corrosive products, using the name of the substance, chemical abstracts registry number and concentration limit, which is along the lines of how reportable and regulated substances are set out within the Poisons Act. We took this approach as it seemed right to define corrosive products in a way that retailers and manufacturers are already familiar with through the operation of the Poisons Act. We thought that setting them out in this way would help them identify what products will be captured by the provisions in Clauses 1 to 4.

As I have already said, we set out in Schedule 1 those substances that have been used in corrosive attacks and those that are the most harmful. Both nitric acid and sulfuric acid were identified by our scientific advisers at the Defence Science and Technology Laboratory and the police as appropriate for inclusion in Schedule 1. The noble Lord, Lord Paddick, may also be concerned about why we need to specify both nitric acid and sulfuric acid in the Bill when, as the noble Lord pointed out, they are regulated substances under the Poisons Act. We need to bear in mind that Schedule 1 defines those corrosive products that should be prohibited for sale and delivery to under-18s and for delivery to residential premises, while the Poisons Act seeks to prevent the use of a number of substances in causing harm through the manufacture of explosions or as a poison.

The Bill's provisions on the sale and delivery of corrosive products specifically seek to restrict access to those substances which are used as corrosive weapons to cause severe pain and injury. We are clear that the two pieces of legislation seek to prevent harm to the public in different ways and we need to ensure that we do not lose sight of this important goal, given the horrendous nature of corrosive attacks. Furthermore, I reassure the noble Lord that we have also engaged retailers and manufacturers on the proposed list of substances and concentration limits. They did not raise any concerns or issues about these substances being included in the Bill when they were already caught by the Poisons Act. In fact, they welcomed the consistency between the provisions in Schedule 1 and those in the Poisons Act. They also felt that we had got the list of corrosive substances of concern right.

I hope that, with these assurances and the commitment to consider Amendment 9 further, I have been able to satisfy my noble friend Lord Lucas, the noble Baroness, Lady Hamwee, and the noble Lord, Lord Paddick, and that he will be content to withdraw his amendment.

Lord Paddick: My Lords, I am grateful to the Minister and commend her on her mind-reading ability. Although Amendment 9 is in my name, she correctly identified its author. My noble friend and I are both grateful that the Government are considering their response to the amendment. I am still not quite clear why we need to ban the sale to under-18s and delivery to residential premises of nitric acid and sulphuric acid in the concentrations specified in Schedule 1. The point of the question was that people cannot acquire these substances unless they have a Home Office licence under the Poisons Act, so they are very unlikely to be sold to somebody aged under 18 or delivered to a residential address. The Government are normally keen not to have unnecessary legislation, and including

those two substances in Schedule 1 to this Bill appears to be unnecessary, bearing in mind that they are listed in Schedule 1A to the Poisons Act 1972. We may come back to that at a later date, but at this point I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10 not moved.

Clause 1 agreed.

Schedule 1: Corrosive products

Amendments 10A and 10B not moved.

Schedule 1 agreed.

Clause 2: Defence to remote sale of corrosive products to persons under 18

Amendment 11 not moved.

Amendment 12

Moved by ***Baroness Hamwee***

12: Clause 2, page 3, line 19, leave out from "products" to "were" in line 20

Member's explanatory statement

This amendment is to probe and clarify why the seller needs to show the method of purchase employed.

Baroness Hamwee: My Lords, in moving this amendment on behalf of my noble friend I will speak also to Amendment 16. These are nothing like as technical as the matters raised in the previous group. Indeed they are probing, as all amendments are at this stage in Grand Committee.

The first probe concerns condition A, one of the defences in Clause 2, to which the noble and learned Lord, Lord Judge, has already referred. The Explanatory Notes very straightforwardly state of condition A that,

"at the time of any alleged offence being committed, a seller had a system in place for checking the age of anyone purchasing corrosive products that was likely to prevent anyone under the age of 18 from purchasing that product".

That seems quite straightforward. What is important, as I read it, is that there is a system in place to check that purchasers are not under the age of 18. The amendment would delete the words,

"by the same or a similar method of purchase to that used by the buyer".

I am not entirely clear to what those words refer. I do not understand them and I apologise to the Committee if they are perfectly obvious to other Members. The purpose of my amendment is to obtain an explanation of what the words add to those in the Explanatory Notes.

Amendment 16 relates to Clause 2(10) and queries the term "supply". We have a buyer and a seller, a reference to sale and a reference to delivery, which is to be read as its "supply" to the buyer or someone acting on the behalf of the buyer. The offence in Clause 1 is that of sale. That is not the same as delivery. I would be grateful if the Minister could explain the choice of terminology here. I beg to move.

Lord Tunnicliffe: My Lords, if I can give some comfort to the noble Baroness, Lady Hamwee, I did not understand it either.

Baroness Williams of Trafford: I am sure that the noble Baroness is very much comforted. I hope I can clarify the meaning.

Amendment 12 seeks to test why it is necessary to include in Clause 2(6)(a) the words,

"by the same or a similar method of purchase to that used by the buyer".

There are many different ways to make purchases online or in response to an advertisement by post or telephone. The simple purpose of the condition set out in Clause 2(6)(a) is to ensure that, at the time of making the sale, the seller had the required arrangements in place to verify the age of the buyer. This would assist in proving that an offence had been committed.

Amendment 16 seeks to clarify why Clause 2(10) uses the term "supply" instead of "delivery", given the terms of the Clause 1 offence. The use of "supply" is correct in this context because it is about the actual handing over of the product to a person or their representative at the collection point, rather than its delivery to the address from where the buyer ordered the product. I hope that provides clarification, although the noble Baroness, Lady Hamwee, is looking even more puzzled than she initially was.

Baroness Hamwee: My Lords, I am afraid I remain a bit puzzled. I do not find all of this Bill entirely easy. My prejudice was confirmed this morning when, ironically, I got a rather painful paper cut from the Offensive Weapons Bill. On the second point, "supply" has all sorts of other connotations, particularly with the drug trade. That perhaps diverted me, but "delivery to a person" is not the same as delivery to premises. I remain puzzled by that. I will have to read what the Minister said about Amendment 12, but I thought she more or less said what I said I thought it should mean without the rather difficult words. I will go back and read that.

5.45 pm

Lord Kennedy of Southwark: I am confused as well, so I am in good company. Maybe an example would help the Committee. I am certainly confused about what the words mean.

Baroness Williams of Trafford: Would it be helpful if I wrote to noble Lords giving examples?

Baroness Hamwee: I think that would be an excellent idea. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendments 13 to 16 not moved.

Clause 2 agreed.

Clause 3: Delivery of corrosive products to residential properties etc

Amendments 17 to 21 not moved.

[Baroness Hamwee]

Debate on whether Clause 3 should stand part of the Bill.

Member's explanatory statement

This notice is to probe the relationship between Clause 3 and Clause 4.

Lord Paddick: My Lords, the purpose of opposing the Question that Clause 3 stand part of the Bill is to raise issues around the practicality of the operation of the clause and to ask the Minister why the scheme suggested in Clause 4—Delivery of corrosive products to persons under 18—cannot be extended to sellers inside the United Kingdom as well as outside, thus obviating the need to ban delivery to residential premises. The practicality of Clause 3 arises out of subsection (6) where premises are not considered residential premises when a person carries on a business from the premises. How does a courier know that the house he is delivering to is also used to conduct a business from? For example, I could be registered as a sole trader with Revenue & Customs, as I used to be before my introduction to your Lordships' House. I was registered as a writer and public speaker and carried on my business from my home. Unless the courier was able to access—presumably confidential—information held by Revenue & Customs, how would he know? In any event, why should being a writer and public speaker carrying on a business from my home allow me to have corrosive substances delivered there, whereas now I cannot? The noble Viscount, Lord Craigavon, gave another practical example about the delivery of acid batteries.

Clause 4 applies to the sale of corrosive substances where the seller is outside the United Kingdom. It applies where the seller enters into an arrangement with a courier to deliver the substance. The courier commits an offence if they do not deliver the substance into the hands of a person aged 18 or over. The courier is deemed to have taken all reasonable precautions and exercised all due diligence to avoid the commission of an offence if he is shown a passport, a photocard driving licence or other document specified by Scottish Ministers or something that looked like one of those documents and would have convinced a reasonable person that it was genuine. This seems to me to be the proof-of-age system that the noble Lord, Lord Lucas, was looking for in Amendment 3. Why can this system not be modified or added to so that UK sellers can not only age verify as far as possible at the point of sale but, if they are delivering the substance, age verify at the point of hand-over? If there is age verification at hand-over, as set out in Clause 4, why does there need to be a total ban on the delivery of corrosive substances to residential addresses, assuming that that ban is designed to prevent under-18s getting their hands on corrosive substances?

The Earl of Erroll: I apologise for my earlier intervention that should have come under this clause. I can see that it is dealt with in Clause 3(6) about farmhouses, and so my earlier intervention was irrelevant. However, the noble Lord has a very good point about why we are banning delivery to residential premises if there is someone there who can prove that they are over 18. The ban is actually not about whether the substance goes to residential premises. There are many reasons why you might want something delivered. For instance, if you are cooking and things like that—I know that is a later section. There are cleaning products and stuff like that. I cannot see the purpose of the ban if the delivery is being accepted by someone who is over 18. As I said in my earlier intervention, it is easy to do now with modern technology; we can now age-verify people extremely accurately.

Baroness Williams of Trafford: My Lords, as we have discussed, Clause 3 makes it an offence, where a sale is carried out remotely, for a seller to deliver, or arrange for the delivery of, a corrosive product to residential premises or to a locker. Given the concerns over the use of corrosive substances in violent attacks and other criminal acts, to restrict access effectively we believe that it is necessary to stop delivery to private residential addresses. This does not mean that corrosive products cannot be purchased online in the future, merely that individuals will be expected to collect the product from a collection point where their age can be verified before the product is handed over to them. This provision is important as it will ensure that checks are made and that the purchaser will need to prove that they are 18 or over in order to be able to purchase and collect a corrosive product. If the purchaser cannot collect the corrosive product in person, they would have to be able to send a representative who is also over the age of 18.

We have also included an exemption within the provision to ensure that deliveries to businesses that are run from home—such as a farm—would not be affected by the prohibition on delivery to a residential address, for example, where corrosive products are ordered by small family-run businesses, such as metal working, soap making or even farms, in the case of the noble Earl, Lord Erroll. We have also provided defences that are available in cases where the individual has taken all reasonable precautions and exercised all due diligence to avoid committing the offence.

The noble Lord, Lord Paddick, questioned why both Clause 3 and Clause 4 are needed. Clause 3 relates to the dispatch of corrosive products bought online in the UK to a residential premises or locker in the UK. We cannot apply the same restrictions on sellers who are based overseas without taking extraterritorial jurisdiction for this offence. Such a step would be inappropriate for a sales offence such as this and, in any event, there would be practical difficulties mounting a prosecution given that an overseas seller would not be within the jurisdiction of the UK courts. Clause 3 is therefore supported by Clause 4, which makes it a criminal offence for a delivery company in the UK to deliver a corrosive product to a person under the age of 18 where that corrosive product has been bought from a seller overseas and where the delivery company knows what it is delivering. The purpose of Clause 4 is to try to stop overseas sellers selling corrosives to under-18s in the UK and having them delivered to a person under the age of 18. There is no overlap between Clauses 3 and 4; we think that both are needed. Clause 3 deals with UK online sales and Clause 4 deals with online sales from overseas sellers.

The noble Lord, Lord Paddick, again brought up the use of home as a business, which he has mentioned to me before. It will be a matter for the seller under Clause 3 to satisfy themselves that the delivery address is being used for a purpose other than residential purposes. If they cannot satisfy themselves, they should not deliver to that address. Again, it is something that we can deal with in the planned guidance. He also mentioned to me previously his concerns about Amazon's terms of trade in relation to the sale of alcohol. We are clear from evidence of test purchases of knives that we cannot rely on such terms of business to ensure that the law on age-related restrictions is properly adhered to in the case of online sales.

Lord Paddick: My Lords, I have to confess to being even more confused than I was before. Is the Minister saying that you can purchase corrosive substances from a seller overseas and have them delivered to your residential premises, but you cannot get corrosive substances delivered to your residential address if you order them from a UK seller? That appears to be the effect of Clauses 3 and 4.

Baroness Williams of Trafford: Yes, I am.

Lord Lucas: That seems a bit odd. If you can get the corrosive stuff only from overseas sellers, you will get the rest of your stuff from an overseas seller too because it is that much more convenient. If there is no positive effect—because people can still get the corrosive substances from an overseas seller—why ban getting them from a UK seller? It is really very easy. A lot of sellers that you think are in the UK are overseas.

Lord Kennedy of Southwark: Can I be absolutely clear? Are we saying that you cannot buy it from a UK seller but you can buy it from an overseas seller?

Baroness Williams of Trafford: You can buy it from either, but the mechanisms for age verification are slightly different.

Baroness Hamwee: We have referred quite a lot to Amazon. I do not use it very much, but the few times I have, I have ordered from Amazon but got my items from the producer or seller, which was often in the UK. Is the seller overseas or in the UK in that situation?

Baroness Williams of Trafford: If the seller is in the UK, the seller is in the UK. If the seller is overseas there is a slightly different mechanism. As I said, that is because of our ability to enforce sales in the UK as opposed to online sales abroad. The two are very different, but we are banning the delivery of corrosive substances to under-18s when ordered from an overseas seller, just as we are banning that here.

Baroness Hamwee: But if I order from Amazon, am I buying from Amazon or from the manufacturer in the UK?

Baroness Williams of Trafford: That depends entirely on whether the seller is a UK seller or an overseas seller.

The Earl of Erroll: I think the contract is with Amazon, because you pay Amazon for the product. I therefore think Amazon is technically the seller. The website could well be hosted abroad and Amazon has its headquarters abroad. Therefore, your contract is with someone in a foreign country, but the delivery agent may be someone in the UK who happens to have the product and is remunerated by Amazon for it. I am not at all clear. Because this is so obscure, it seems that aligning the two clauses would be sensible—remove the residential bit from Clause 3 and insist on proper age verification of the person receiving the goods, whether the address is residential or business.

Baroness Williams of Trafford: My Lords, if you buy from Amazon, you are buying from Amazon UK.

The Earl of Erroll: I will put in an order now.

Lord Paddick: My Lords, I think the point still stands. If you order online from an overseas supplier, you can have your corrosive substance delivered to your residential address and the courier, under Clause 4, is obliged to check the age of the person who it is handed over to, to ensure it is not delivered to somebody under the age of 18. Why on earth—

Lord Lucas: How can the courier know that there is a corrosive substance in the package? It will just say Amazon on the outside.

Lord Paddick: It says so in the clause, to be fair.

Lord Lucas: But this is an overseas seller. It is not subject to this law. It just sends a plain package.

Lord Paddick: Clause 4 says that if the courier knows it is a corrosive substance, they have to take these precautions. That is what Clause 4 says. It makes no sense to me at all. If age verification at the point of handover is effective in preventing under-18 year-olds getting hold of substances in the case of overseas sellers, why cannot age verification at the point of handover be effective in preventing them getting hold of corrosive substances delivered to residential premises from a UK supplier? It seems to make absolutely no sense whatever.

6 pm

Baroness Williams of Trafford: I think it is because there is an unwillingness to do that with UK sales. We have made provision for this arrangement to apply where the product is picked up, but we cannot impose extraterritorial jurisdiction on overseas sellers and therefore we are putting the onus on the courier to ensure that the product is labelled as a corrosive substance. That is why the two schemes are slightly different.

Lord Paddick: I am very grateful to the noble Baroness for reminding me of that but I am even more confused. She seems to be saying that, in the case of a UK online sale, somebody can pick up the substance from a pick-up point, where their age will be verified. What is the difference between that and a person at the front door of a residential premises having to prove to the courier that they are over the age of 18? I do not understand how picking up the substance at a collection point or picking it up at your front door makes a difference to the ability of the person handing it over to ensure that the person is over the age of 18.

The Earl of Erroll: I can see that this will also get more complicated because you can order a product from a supermarket located just across the channel and have it delivered to your residential premises, which presumably means that it is an international transaction. A particular supermarket was mentioned earlier. I do not think that any supermarkets want to lose their trade to people located just across the channel, but a ban is suddenly going to be put on a lot of local supermarket deliveries.

Lord Kennedy of Southwark: It seems that in this debate we have highlighted a massive hole in this legislation. Obviously when legislating on matters such as this, you are legislating not for the law-abiding people but for those—villains, crooks and suchlike—who want to do harm to others. It now seems that if you are a person who wants to use these products to attack somebody, you can go to a bad company abroad that will very happily sell them to you. You can make the transaction and the product will come in the post. You think, "Thanks very much", and off you go to commit your crime with no problem at all. That is a very bad place for us to be in. It might be useful if the noble Baroness could write to those taking part in the Committee to explain where we are, because a big coach and horses could be driven through the Bill in this area. Unfortunately, we will find companies abroad that will sell to bad people in this country, making a mockery of the law that we are trying to pass here.

Baroness Williams of Trafford: My Lords, obviously in a perfect world the overseas arrangements would mirror the home arrangements, but the rigour of the age-verification procedures applied to the arrangements for pick-up points cannot be relied on or effectively enforced for home deliveries. It would be great if we could do the same for both situations but we cannot, although I shall be very happy to talk about these issues further before Report.

Lord Tunnicliffe: Given the lack of clarity, if a letter could be sent to us before any discussion takes place, that would be good.

Baroness Williams of Trafford: I am very happy to do that.

Clause 3 agreed.

Clause 4: Delivery of corrosive products to persons under 18

Amendment 22

Moved by ***Baroness Hamwee***

22: Clause 4, page 5, line 12, leave out "before the sale, the seller" and insert "the seller has"

Member's explanatory statement

This amendment is to clarify why delivery arranged after the sale is concluded (as a matter of contract) does not fall within the Clause.

Baroness Hamwee: My Lords, I beg to move Amendment 22 but I wonder whether, with the indulgence of the Committee, I can go back to Amendment 12. As it has puzzled at least three noble Lords—three of us have confessed to it—I urge the Minister, as well as writing, to consider whether the wording might be clearer. We would be happy to look at a government amendment on Report because, if it confuses people who are used to reading legislation, there is a good argument for making it clearer to others who will also read it.

Amendment 22 again concerns some detailed wording. Clause 4(1)(c) provides that the clause applies if before the sale the seller has entered into an arrangement for delivery. Why before the sale? Does this apply only if the seller already has delivery arrangements in place? Often that will be the case but I am puzzled as to whether those words might, in a few situations, limit the application of the clause. I beg to move.

Lord Tunnicliffe: May I join the noble Baroness and say that I too am confused?

Baroness Williams of Trafford: My Lords, I fear that I am about to confuse people further—I hope not—because the noble Baroness is effectively asking why Clause 4 is drafted on the basis that the delivery arrangements for an online sale made to a vendor based overseas will have been made at the point of contract and not subsequently. It therefore might be helpful if I explain how we have drafted the clause in this way.

The purpose of Clause 4(1)(c) is to avoid criminalising a delivery company in instances where an overseas seller has simply placed a package containing a corrosive product in the international mail. By doing this, it then places an obligation on the delivery company, and potentially the Royal Mail, to deliver the item without having entered into a contract or necessarily knowing that the package contains a corrosive product. If we did not have the provision in place and in combination with the provisions of Clause 4(1)(d), which makes it clear that the company was aware that the delivery arrangements with the overseas seller covered the delivery of the corrosive product, then delivery companies such as the Royal Mail would be committing an offence.

We want to mitigate this, which is why we have constructed the offence in this way so that it requires the delivery company to have entered into specific arrangements to deliver corrosive products on behalf of an overseas seller.

The noble Baroness looks far less confused than she did in my previous explanation and I hope I have provided the explanation she seeks.

Baroness Hamwee: My Lords, that is perfectly clear and I am grateful. I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Clause 4 agreed.

Clause 5 agreed.

Amendment 23

Moved by ***Lord Kennedy of Southwark***

23: After Clause 5, insert the following new Clause—

"Offence of obstructing a seller in the exercise of their duties under section 1

(1) A person ("the purchaser") commits an offence if they intentionally obstruct a person ("the seller") in the exercise of their duties under section 1 of this Act.

(2) In this section, "intentionally obstruct" includes, but is not limited to, a person acting in a threatening manner.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale."

Member's explanatory statement

This new Clause would create an offence for those who obstruct retail staff in performing their responsibilities under this Act.

Lord Kennedy of Southwark: My Lords, I am grateful to the noble Lord, Lord Paddick, for adding his name to this amendment and I am happy to support his Amendments 24 and 25.

We discussed shop workers on Second Reading and, as Members of the Committee will know, the issue was also discussed in the other place on Second Reading during its progress there. I am glad to be here today. As we have heard before, we are placing shop workers at the forefront of the delivery issues. They will be at risk of committing criminal offences, being sent to prison, or incurring a community penalty or possibly getting a fine. If they have sold this product incorrectly, I have no problem with that; if things are wrong, they should be dealt with. What is missing in the Bill is anything about protection for shop workers. In a Question to the Minister last week my noble friend Lady Kennedy of Cradley talked about some of the discussions that have gone on between Victoria Atkins and Members in the other place. A number of initiatives are going on; that is all very welcome, and I support them, but what is missing from the Bill is anything about a specific offence. USDAW, which is promoting this, and organisations such as the Co-op and other companies, the British Retail Consortium and the Association of Convenience Stores have said that this is missing from the Bill.

USDAW has run its Freedom from Fear campaign for many years. I used to work in a shop on a Saturday when I was at school. It was hard work, but it was great fun and I enjoyed it—you got to talk to people. But equally, I remember getting knocked over once when someone ran out with a credit card. In those days you had to phone up to check that the credit card was legitimate; it was not, and the person legged it down the road, leaving me lying on the floor. People get assaulted in shops and can be treated very badly. Here we are putting on shop workers some big obligations that they have to comply with and deal with, but we are doing nothing to support them. People can get assaulted and abused, so we need to see what we can do to improve that. As I said, we have had the discussion around helping the Government, and what they said there is fine, but there is nothing in the Bill. We are asking shop workers to report knowledge and enforce the legislation, as it were, so we should require the Government to do something to support them. There is evidence: plenty of facts and figures. A survey from the Health and Safety Executive found 642,000 reported incidents of violence at work—assaults and threats—and there are other aspects about how people are dealt with.

One of the problems we have is that people are assaulted, abused and threatened. I know that the Minister will say to me in a moment, "There's no problem here, Lord Kennedy, because you've got all these things we're going to do as a Government, and on top of that, of course, you've got the legislation in place already, so people who commit offences will be dealt with". But, of course, far too often these offences are not prosecuted; people are assaulted in shops and the perpetrators are not prosecuted. That is why we are asking for a specific offence to deal with this. No one goes to work to be punched, pushed over, or abused. If you are assaulted at work and it is particularly traumatic, it can cost people their job or their livelihood; people may not want to go back to work after having been knocked over or assaulted. Why would you put yourself in that position? People can get very scared about going back to work, so again, we need to look at that. To have a specific offence would give shop workers the comfort to know that people recognise that they have been asked to do an important job and support them. Equally, as regards the prosecuting authorities, it should be clear that if people are assaulted in a shop, the prosecutors know that this offence has happened, and the perpetrators can then be prosecuted to the full extent of the law for that offence.

I will leave it there, but this certainly simplifies sentencing, would encourage prosecutions, and would have a deterrent effect, as people would know that if they go into a shop and abuse or threaten a shop worker, they will have committed X offence and, potentially, things can happen to them. I beg to move.

Amendment 24 (to Amendment 23)

Moved by ***Lord Paddick***

24: After Clause 5, in the title, leave out "under section 1"

Member's explanatory statement

This amendment is consequential on the amendment to insert reference to section 141A of the Criminal Justice Act 1988 in subsection (1) of this amendment.

Lord Paddick: My Lords, my noble friend Lady Hamwee and I have Amendments 24 and 25 in this group. These amendments are designed to have the effect of extending the scope of the amendment in the name of the noble Lord, Lord Kennedy of Southwark, to cover the sale of knives as well as sale of corrosive substances—or, should I say, to prevent the sale of these items to those under 18.

[Lord Paddick]

We had an Oral Question last week on this issue, and I suggested that shop workers were acting as law enforcers in the circumstances. The noble Baroness, Lady Williams of Trafford, suggested that shopkeepers were simply obeying the law in not selling age-restricted items and that we all have a duty to obey the law. I disagree. The circumstances in which this offence would take place are those where someone underage tries to buy an age-restricted item and is prevented from doing so by a shop worker, who in these circumstances is enforcing the law. They are compelling observance of or compliance with the law, which is the definition of "enforce". As such, they deserve the protection of the law in carrying out this duty. I support Amendment 23.

6.15 pm

Baroness Newlove: My Lords, I support both amendments. I totally agree with the noble Lord, Lord Kennedy, not just on the question of having a specific offence but on support within the community. In my previous role and going around the country, I saw women workers on their own selling alcohol and other quite serious items—corrosives and knives—where the employer put their staff in a predicament by not supporting them fully. When they go out of the shops, they are under further threat in their local communities from these groups of gangs, both girls and boys. So I support a specific offence to put that message right through, because workers do not feel that they are getting the right support. Even from the bigger businesses, I am concerned for workers who are scared to lose their jobs as well.

I also really agree with the noble Lord, Lord Paddick, about knives. It sends a message within the communities and the bigger employers who do not know every individual who works for them. It shows loyalty, as well. I am concerned about people who work in local shops, in their local communities, especially where they have security guards to protect the staff but they do not get the support through the law to protect the jobs they so need to feed their families.

Lord Deben (Con): I hope my noble friend will listen carefully to what has been said, because there is an increase in the anger constantly found around the country. I do not want to get down to some of the reasons for that, but there is certainly an increase in anger. The sort of people who will be prevented from buying those products are, of course, those who are most likely to give way to anger. I have recently come from a meeting today in which a senior representative of one of our largest supermarkets said how much more there is now a problem with people who will not take the advice of the shop worker that this is not possible.

I really think the Government have to come to terms with the fact that we are a much less willing society. We are not a society that is prepared to go along with these things, as once was true. So although USDAW has had this campaign for a long time, it is more necessary now than it might have been 10, five or even two years ago. The circumstances we are facing at the moment are likely to make more people more angry, and therefore it will become more acceptable. Anger, and showing anger, on the roads or in shops is more accepted by society than it ever has been before—certainly in modern times.

I say to my noble friend that it may well be sensible to make the point specifically that we are asking, indeed insisting, that shop workers—I will not argue whether they are acting as law enforcement people or not—take a stand against people who, by their nature, are likely to be angry, to demand that the shop worker give way to them and to use intimidation for that purpose. I cannot think of a reason why you should not repeat it. I know what the Government often says—all Governments do—because I was a Minister for a very long time and I know I used to say it. I would say: "There is no need for this. We've got this and we've got that and we've got the other". If it is not actually harmful, perhaps it is a good thing to put it in. I am not sure it is enough that other things cover it. If this reminds people that there is a specific protection for shop workers in this situation, where we asking them to take a stand, that is a valuable thing. I hope my noble friend will take it seriously.

Lord Judge: We are devising a system which will impose considerable burdens on sellers. The arguments in favour of this amendment are absolutely obvious. May I make a completely separate point, though? The amendment is brilliant legislation too, unlike the rest of the Bill. Here we have a clear statement of what act you have committed—obstructing the seller—and simultaneously the state of mind you are in: you are acting intentionally. Intention to obstruct is a perfectly clear, simple piece of legislation that anybody could understand. There is an argument that there are various ways those who work in shops can be protected, against violence and so on, but this is very limited in what it is seeking to address: obstructing somebody. In these circumstances, when the burden is so heavy on the seller, they ought to be protected.

Lord Paddick: My Lord, if I may have a second go, until very recently I did not support particular protections for shop workers. Being from a policing background, I know we have taken the steps in the law to protect law enforcers, and recently there has been a Bill to protect all emergency workers in this way. But here we are talking about people who are intent on violence; they are looking to get their hands on knives or corrosive substances to commit violence. That is the sort of person that these shop workers are likely to confront, and that is why I am now convinced that this is the right thing to do.

Baroness Williams of Trafford: The noble Lord, Lord Kennedy, said I would say that there is no problem. I am not going to say that, but I am very grateful to him for explaining his amendment. He attaches particular importance to affording greater protection for retail staff, and his noble kinsman, the noble Baroness, Lady Kennedy of Cradley, raised this question last week. It was a very good opportunity to discuss the issue, which is of great concern. I understand the concerns of retailers and their staff about being

threatened or attacked in the course of their duties, including as part of verifying a person's age when selling a corrosive product. As my noble friend Lord Deben said, it may be those very people who want to buy these things who will be those who mete out the abuse on retail workers. Nobody should have to experience this sort of behaviour at their place of work, especially when providing a service to members of the public.

As I said at Second Reading, the Minister for Crime, Safeguarding and Vulnerability held a roundtable on 11 December with David Hanson MP, Richard Graham MP and representatives from the retail sector, including USDAW and the British Retail Consortium, to discuss what more we can do ensure greater protection for shop workers. Last week, I met USDAW to see what more we can do to ensure these greater protections. Following the discussion at the roundtable I am very happy to update the Committee. We will be taking forward the following actions: first, the call for evidence, which I spoke about last week and is intended to help us ensure that we fully understand this issue and look at all the options for addressing it; secondly, that we provide funding to the sector to run targeted communications activity to raise awareness of the existing legislation that is in place to protect shop workers; and thirdly, we are refreshing the work of the National Retail Crime Steering Group, co-chaired by the Minister for Crime, Safeguarding and Vulnerability and the British Retail Consortium. An extraordinary meeting of the group, focused exclusively on violence and abuse towards shop workers, will take place on 7 February. That discussion will help to shape the call for evidence.

In addition, the Sentencing Council is reviewing its guidelines on assault. A consultation on a revised guideline is anticipated to commence this summer. These measures are intended to complement existing work under way to tackle this issue. For example, the Home Office is providing funding of £1 million for the National Business Crime Centre over three years between 2016 and 2019. The centre was launched by the National Police Chiefs' Council in October 2017 to improve communication between police forces on business crime, promote training and advice, and help to identify national and local trends.

In addition, through the national retail crime steering group, which includes representatives from across the retail sector, the police and others, we are taking forward a range of work to strengthen the collective response to these crimes, including: the creation of a "crib sheet" for retailers to use when reporting violent incidents to the police so that they get the information they need to support a timely and appropriate response; exploring options for improving consistency in the recording of business crime by the police, which will include a short pilot analysis of forces applying business crime flags; and the development of guidance on impact statements for businesses to increase their use. These statements give businesses the opportunity to set out the impact a crime has had and are taken into account by courts when determining sentences.

I know that there are concerns about the adequacy of the existing legislation for protecting those selling age-restricted products. The call for evidence is intended to help us understand better how the existing law is being applied and whether there is a case for reform, including in the context of the sale of age-restricted products. However, I want to provide some reassurance about the legislation we have in place, without dismissing noble Lords' points. A wide range of offences may be used to address unacceptable behaviour towards shop staff—including those who sell age-restricted items—covering the full spectrum of unacceptable behaviour, from using abusive language to the most serious and violent crimes.

Some of the existing offences available include behaviour that causes another to fear the immediate infliction of unlawful violence, which is already an offence of common assault under Section 39 of the Criminal Justice Act 1988. Where shop workers are threatened or experience abusive language, this may be captured by the offences under the Public Order Act 1986. There is also the Offences against the Person Act 1861, which means that assaults against shop workers could be considered as assault occasioning actual bodily harm under Section 47 of that Act. In addition, courts have a statutory duty to follow sentencing guidelines when considering any penalty to be imposed further to criminal conviction, unless it is not in the interests of justice to do so. In all cases, the fact that an offence has been committed against a person serving the public may be considered an aggravating factor for the purpose of passing sentence.

In answer to my noble friend Lord Deben and the noble Lord, Lord Paddick, the specific offence in Amendment 3 could be counterproductive and encourage prosecutions for the new obstruction offence with a maximum penalty of a fine—I think that the noble and learned Lord, Lord Judge, made that point as well—rather than a more serious offence, such as assault, which carries a higher penalty. That said, and going through the list of offences that this may capture, we understand retailers' concerns about the risk of their staff being threatened or attacked—particularly, as the noble Lord, Lord Kennedy, said, for smaller retailers, such as corner shops. The call for evidence is intended to improve our understanding of the issue and identify potential solutions. We will seek to issue the call for evidence as soon as is practically possible.

The noble Lord, Lord Paddick, asked whether shop workers were law enforcers. It is a moot point on which I think we will agree to differ. I was trying to make the point that they are not policemen but they have to uphold the law. With that, I hope that I have given the noble Lord, Lord Kennedy, enough to help him to withdraw his amendment.

Amendment 24 (to Amendment 23) agreed.

6.30 pm

Amendment 25 (to Amendment 23)

Moved by ***Lord Paddick***

25: After Clause 5, in subsection (1), at end insert "and under section 141A of the Criminal Justice Act 1988 (sale of bladed articles to persons under 18)."

[Lord Paddick]

Member's explanatory statement

This would extend Lord Kennedy of Southwark's amendment so it would also be an offence to obstruct retail staff in their responsibilities in preventing the sale of knives to persons under 18.

Amendment 25 (to Amendment 23) agreed.

Lord Kennedy of Southwark: I thank all noble Lords who have spoken for their support. I agree very much with the comments of the noble Baroness, Lady Newlove. We have to remember that we are talking about usually very low-paid people, often working in difficult situations. I can often see these things happening late at night or early in the morning. It does not really matter whether you work in a big organisation or in the corner shop. As we know, in many big stores there is no one around late at night. That is part of the problem. If ever you leave this House and go to the supermarket on the way home—I do sometimes—there is no one in them. It is the same if you go to a big hardware store. Whatever the people's job is, it is not to sell the young person the knife or the acid, and they are put in a difficult situation.

I agree with most of the comments of the noble Lord, Lord Deben, about anger. There is a lot of anger around in this country at the moment for all sorts of reasons. That is another debate for another time, but angry young men going into stores late at night wanting a knife or acid are not the sort of people I would want to meet. I would not want to be behind the counter saying, "You can't have that", and we are leaving people to do that. As the noble Lord said, if the amendment is not harmful, what is the problem? I recall debates on other Bills. On the counterterrorism Bill, we passed a few amendments and accepted that what we were agreeing was wrong—but it was all fine to carry on as though that were not a problem.

If you go into a store and commit this offence, the amendment would make things easier for prosecutors and give some comfort to shop workers. I certainly intend to come back to it at a later stage. I look forward to meeting USDAW. I know that my friend Paddy Lillis will put forward a strong case for holding those discussions before Report and I hope that we can persuade the Government to act on these matters. I beg leave to withdraw the amendment.

Amendment 23, as amended, withdrawn.

Clause 6: Offence of having a corrosive substance in a public place

Amendment 26 not moved.

Amendment 27

Moved by ***Lord Paddick***

27: Clause 6, page 7, line 4, at end insert "with intent to cause injury"

Member's explanatory statement

This amendment would make it an offence to have a corrosive substance in a public place only with the intent to cause injury to someone.

Lord Paddick: My Lords, the amendment is in my name and in those of my noble friend Lady Hamwee and the noble Lord, Lord Ramsbotham. We are back to group 1 and the issue of completely innocent people having to prove their innocence beyond reasonable doubt.

We discussed this at considerable length on group 1 and I do not intend to rehearse those arguments again, save to say that people acting completely innocently commit an offence as the legislation is drafted, hence the need for the amendment. That having been said, if someone has a corrosive substance with them in a public place with the intention of causing injury to someone, they commit an offence under Section 1 of the Prevention of Crime Act 1953, which defines an offensive weapon as:

"any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him".

If they have a corrosive substance in a water pistol or a washing-up liquid bottle capable of squirting the corrosive liquid at someone, it is an article adapted for causing injury. If they have a corrosive liquid in the bottle it was sold in, intending to pour it over someone, it is intended by the person to cause injury, and an offence under the Prevention of Crime Act.

To quote from the briefing on the Bill from the Standing Committee for Youth Justice and the Prison Reform Trust, the clause,

"creates a very loose and ill-defined offence, that fails to satisfy the requirements of legal clarity and will lead to unjust prosecutions and custodial sentences".

It continues:

"New legislation is unnecessary. Currently, someone found in possession of corrosive substances, where there is intent to cause injury, could clearly be prosecuted under existing offensive weapons legislation … Prosecutors should be required to prove intent to cause harm …The new offence puts the onus on the child"—

or adult—

"to show they have good reason for carrying the corrosive substance … Proving such a defence may be difficult".

I beg to move.

Lord Ramsbotham: My Lords, I put my name to this amendment purely to be consistent with what I said at Second Reading. As the noble Lord, Lord Paddick, has pointed out, it could be that children are sent to collect corrosive substances from shops. They do not know that the substance is corrosive, as defined by the Act, and could be caught in possession by stop and search techniques, resulting in thoroughly unfortunate imprisonment.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I am grateful to the noble Lord, Lord Paddick, for explaining the rationale behind this amendment which would, as he has acknowledged, fundamentally change the nature of the offence provided for in Clause 6. As the noble Lord pointed out, we return in part to the arguments that he put forward in the first group of amendments. I appreciate the noble Lord's concerns, but I will set out the reasons why we are seeking to introduce this new possession offence.

The noble Lord, Lord Paddick, made reference at Second Reading to the existing legislation in this area, and I will explain why it is not sufficient to tackle the problem of individuals carrying corrosive substances in public. Under Section 1 of the Prevention of Crime Act 1953, it is already the case that anyone who is in possession of a corrosive substance can be prosecuted for the offence of possession of an offensive weapon. However, for the accused to be guilty of the Section 1 offence, it is necessary to prove that they are carrying the corrosive substance with the intention of causing injury. Such intent can be proved, for example, in cases where an individual has decanted the corrosive substance into a different container for the purposes of making it easier to squirt or throw at another person and also to conceal it from the police. However, the intention of Clause 6 is to strengthen the powers available to the police and the Crown Prosecution Service. We want to remove the burden on the police and the prosecution to prove that the person was carrying the corrosive substance with the intention to cause injury.

This approach is not novel; it is consistent with the possession offence for knives and bladed articles. We have modelled the new offence on existing legislation in place for the possession of knives under Section 139 of the Criminal Justice Act 1988. There is also a similar offence in place in Scotland. We have put in place suitable defences for members of the public to prove that they had good reason or lawful authority to be carrying the corrosive substance in a public place. These defences are also modelled on existing legislation for the possession of knives.

I know that noble Lords may be concerned about law-abiding members of the public being stopped by the police as they leave their local supermarket or tradespeople being stopped. However, I reiterate the points that my noble friend made at Second Reading about how we envisage the new offence being used by the police. This is not about the police criminalising tradespeople, children sent on an errand or law-abiding members of the public. We would fully expect the police to use this new offence in response to information or intelligence from the local community that someone was carrying a corrosive substance in public.

Furthermore, as my noble friend also indicated at Second Reading, with the National Police Chiefs' Council, we have jointly commissioned the Defence Science and Technology Laboratory to develop a testing kit for the police to use to be able to identify corrosive substances in suspect containers. This work is well under way, and we want to have a testing kit in place before commencing the new possession offence.

We need to strengthen the law to tackle the abhorrent use of corrosive substances as weapons. This amendment would effectively leave the criminal law as it currently is. I hope that, in these circumstances, the noble Lord is persuaded of the case for the new offence as currently formulated and would be content on reflection to withdraw his amendment.

Lord Paddick: My Lords, I am grateful to the Minister for his explanation. I seek clarification, however, on Section 1 of the Prevention of Crime Act 1953, about which the noble Earl said that in order for somebody to be guilty of an offence under that Act, intent had to be proved. However, if the person is in possession of a made offensive weapon—an offensive weapon that has no other purpose than to cause injury: a dagger, for example—then my understanding is that no intent is required. Indeed, if the article that the person has with them is adapted to cause injury—for example, a water pistol filled with a corrosive liquid—again, there is no need to prove intent. That would make the existing offence even stronger than this offence as amended by this amendment.

The noble Earl talks about consistency with Section 139 of the Criminal Justice Act 1988 regarding bladed and pointed instruments. I accept that the offence as drafted is consistent with that Act, but, in my view, two wrongs do not make a right. The noble Earl and the noble Baroness earlier talked about how the Government envisage that the police will use this legislation. They fully expect the police to use it in response to intelligence. I go back to what I said on the first group: having been an operational police officer for more than 30 years, I do not share the confidence that the Government have about how, in every case, the police are going to use this legislation. This is the source not only of my concern but, as I have said, of the concern of the organisations I mentioned in proposing the amendment.

As far as the testing kit is concerned, that is something that we will return to in a successive group later on. However, having made those points, I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Amendment 28 not moved.

6.45 pm

Amendment 29

Moved by ***Baroness Hamwee***

29: Clause 6, page 7, line 6, leave out "or lawful authority"

Member's explanatory statement

This amendment, along with the amendment to page 7, line 14, is to probe what "lawful authority" is and how it is obtained.

Baroness Hamwee: My Lords, I shall speak also to Amendments 30 and 31. These amendments are in my name and that of my noble friend. Amendments 29 and 30 seek to understand what is meant by "lawful authority". In Clause 6(2)—I am not making any concessions about the points made on the first group of amendments this afternoon—it is a defence to prove that a person had "good reason" or "lawful authority" for having the corrosive substance with them in a public place. Obviously, lawful authority is not the same as good reason, otherwise it would not have to be provided for—although one would have thought that lawful authority would be good reason. But what is lawful authority? Where does the authority come from? Who gives it? How does one apply for it? Is it a consequence of some other arrangement that is in place? Amendment 29 applies to England, Wales and Northern Ireland and Amendment 30 to Scotland, but they make the same point.

[Baroness Hamwee]

Amendment 31 makes a very small point, but I have discovered over the years that sometimes small points are worth making. Under Clause 6(3) one can show that one had the corrosive substance for "use at work". My amendment would substitute for those words "the purposes of work", thereby distinguishing in my mind the purpose and the place. These days "work" is very often used to designate the place. Technically, that might be a bit lax, but it is what people say: "I'm going to work". They do not mean, "I'm going to put in a good day's effort"; they mean, "I'm going to my place of work". The Minister may say that "for use at work" implies "purpose", but one might take something to use at a place where there is no legitimate reason for using it. I beg to move—and I wish *Hansard* could record the look on the Minister's face.

Earl Howe: My Lords, as the noble Baroness explained, these amendments address the defences available if someone is charged with an offence of possessing a corrosive substance in a public place. As I understand her, these amendments are intended to probe what would constitute lawful authority to be in possession of a corrosive substance in a public place. She then went on to comment on the phrase "for use at work".

On the lawful authority issue, let me give your Lordships one example. Under the Poisons Act 1972 there is a licensing regime for regulated substances such that a Home Office licence is required to import, acquire, possess or use a regulated substance. Both nitric acid at above 3% concentration and sulfuric acid at above 15% concentration are regulated substances. Therefore, there may be circumstances where a Home Office licence holder has purchased a corrosive product containing one of these substances and is transporting it from A to B. This would be a scenario where the defence of lawful authority might come into play.

However, for the majority of cases, a person would need to rely on the defence of having good reason—unless, of course, they were a tradesperson and had purchased the corrosive for use at work. This brings me to Amendment 31, about how we have framed the defence for tradespeople and businesses. The reference to "for use at work" replicates the terminology used in existing knife legislation. The existing defences in relation to the possession of an offensive weapon in a public place are well understood by the police and various trades and businesses, and we are not aware of any issues in the operation of them in relation to the possession of knives.

While I can see the intention behind the amendment, I will need to think about what the noble Baroness has said—but I am not convinced that it is necessary or in practice achieves any significantly different result. I am also concerned that having a different defence in place for possession of corrosives, compared with that for knives, would or could cause confusion and unnecessarily complicate the law. So I hope that, at least for now, I have been able to provide sufficient clarification to persuade the noble Baroness to withdraw these amendments—although, as I have said, I promise that I will read carefully in *Hansard* what she said.

Baroness Hamwee: My Lords, I am grateful for that. The approach to the wording of legislation has been updated quite a lot recently. That was partly in my mind when I raised the point about "at work"—that one wants legislation to be read as easily as possible, using words as they are normally understood. I understand, of course, a resistance to distinctions between offences relating to corrosives and offences relating to knives. That is not how it was dealt with in the amendment in the name of the noble Lord, Lord Kennedy, and in our amendment to it on shop workers. That does not mean that you cannot amend the earlier legislation.

Regarding licensing under the Poisons Act, it seems that one would have a good reason and would not have to rely on the lawful authority defence. I believe that we are going to look at the Poisons Act again—it has been brought up several times. Certainly for the moment I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

Amendments 30 and 31 not moved.

Amendment 32

Moved by ***Lord Lucas***

32: Clause 6, page 7, line 40, leave out from "means" to end of line 41 and insert "a substance which, when applied at room temperature to the back of an average human hand for a period of ten seconds, would be expected to substantially corrode the skin;"

Member's explanatory statement

This amendment would replace the definition of corrosive substances provided in the Bill. The amended definition would include reference to the conditions under which a substance may corrode human skin, such as temperature.

Lord Lucas: My Lords, as has been pointed out already, these are absolute offences in this Bill. Therefore, people ought to know what it takes to be guilty of that offence. The clause here states that,

"'corrosive substance'" means a substance which is capable of burning human skin by corrosion".

That is, of itself, a very loose definition. There are obvious substances that would fall under this, such as cement. Lots of builders get burned by cement every year; if it gets trapped against the skin for any length of time it can cause nasty burns that take a long time to heal, Wart cures, by and large, are designed to burn human skin. There is also a large collection of substances that will burn skin under relatively unusual circumstances, such as household bleach. Generally you would not be exposed to household bleach for a long time, but it would fall within the definition here because it will corrode human skin if you use it for long enough. We talked earlier about hydrogen peroxide, which will corrode human skin if it is hot enough.

We need something here that gives the people who are subject to this clause a clear idea of what is forbidden. My noble friend hinted earlier that there may be some testing kit. Great—but if there is a testing kit, there must be with it a very clear statement of what gets caught. When people are committing or are in danger of committing an absolute offence, they

must know what conduct will put them in danger of that. If the Government want a looser definition, it should not be an absolute offence. I beg to move.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): I advise the Committee that if this amendment is agreed to, I cannot call Amendment 33.

Baroness Hamwee: My Lords, the noble Lord, Lord Lucas, is in the same territory as my noble friend and I. Like him, we seek to know how one objectively defines "corrosive substance". His amendment asks what happens if the skin is particularly sensitive. I am not sure that there is such a thing as the "average human hand", which he refers to in his amendment. I suspect that sensitivity may depend on age—whether one is young or old could affect vulnerability—as well as all sorts of other matters.

Our amendment proposes two points. The first refers to the testing method. That would not help the point, with which I have a great deal of sympathy, about knowing whether a substance falls within the definition but it enables us to ask about the status of the testing kits. The noble Earl has said that work on them is well under way. Can he tell us any more about them? Are they intended to work—as I understand it—like a breathalyser? It is enough to get you taken off for a second and different test, but does it start with a roadside test? As with a breathalyser, it may look as if you have failed it. Again, this is as I understand it; I do not have personal experience of going down to a police station and giving a blood test or a mouth-breath test. The point is about the process.

My second question is about the definition of the substance as one capable of burning human skin. Our amendment refers to eyes, since a lot of awful acid attacks have involved throwing acid into someone's eyes. Are eyes "skin" for this purpose? We simply want to be sure that we have covered the ground here.

Lord Tunnicliffe: My Lords, perhaps I may speak briefly on this rather macabre amendment. First, I am not sure who the testing is to be done on. I cannot see many volunteers being willing to be corroded. My second and more substantive point is that I cannot see why the definition is required because, as I read the Bill—not an easy Bill to read, as we have discovered today—a corrosive substance is de facto defined by Schedule 1. I would have thought it much more satisfactory to retain the concept of a schedule, which can be altered by order, than to have this rather frightening test.

Earl Howe: My Lords, I am grateful to my noble friend for explaining his amendment, which seeks to modify the definition of a corrosive substance for the purposes of the new possession offence. This provides me with the opportunity to clarify why we have taken the approach that we have, and to reassure him about how the new possession offence would be used.

We know that perpetrators of these horrendous attacks often decant the corrosive into other containers, for example soft drinks bottles. This is done to make the substance easier to use but also to conceal.

Police officers who come across an individual carrying a bottle containing a suspect liquid will not know exactly what chemicals it contains or at what levels. As a result, the approach we have taken for the sales and delivery offences of defining a corrosive product by substance and concentration limit will not work on our streets. The police require a simpler definition for use operationally, so we have defined a corrosive substance by its effect rather than by its specific chemical composition—that is, as a substance capable of burning human skin by corrosion.

7 pm

My noble friend is concerned that that is too wide. While I understand his concerns, I submit that what he is proposing as an alternative definition would not be workable for the police in the situations where they would use this power. The new possession offence will be used in our public places, so suspect chemical substances will not be at room temperature. You cannot guarantee where the police will apprehend the person concerned. Nor will police officers know whether the substance would substantially corrode the skin within 10 seconds of contact or exposure if they are dealing with a suspect substance in a drinks bottle. Of course, I accept that it will equally be the case that a police officer will not know whether a substance,

"is capable of burning human skin by corrosion",

to quote the existing test in Clause 6. However, we consider this the appropriate objective test that is capable of being evidenced to the criminal standard.

As I mentioned, and indeed as was mentioned at Second Reading, with the National Police Chiefs' Council we have commissioned the Defence Science and Technology Laboratory to develop an effective and robust testing regime to allow the police to safely test the contents of suspect containers for corrosive substances. As I also said earlier, we intend to have a viable testing kit available before the provisions on the new possession offence are commenced. I have also noted the important point made at Second Reading that these testing kits need to be cost-effective.

I put it to my noble friend that his alternative definition would not, as he clearly intends, provide greater clarity to members of the public on what products might be caught by the new offence. The kinds of products that we are concerned about include drain cleaners, brick and patio cleaners and industrial-strength cleaners. However, as I have mentioned, the substances in such products are often decanted for an attack, not carried by perpetrators in their original containers.

It has been suggested that the police may target law-abiding members of the public as they leave supermarkets with their shopping. At the risk of repeating unnecessarily a point I made earlier, it should go without saying that that is not how the police operate. As my noble friend said at Second Reading, we would expect the police to take an intelligence-led approach where they have information from the local community that an individual is carrying a corrosive substance on their person in public, and that the police have reasonable grounds to conduct a stop and search.

[Earl Howe]

Amendment 33, in the name of the noble Lord, Lord Paddick, touches in part on similar issues. I shall deal first with the extension of a corrosive substance to cover substances capable of burning external human organs, such as the eyes, as well as the skin. I reassure the noble Lord that this addition is not needed. In drafting this provision, we considered that very point, and we concluded that by defining a corrosive substance as one capable of burning human skin by corrosion, we would also effectively capture the corrosive effects on any other part of the human body.

I turn to the issue of testing kits. The Home Office, together with the National Police Chiefs' Council, is on the case, as I have described. We are in the process of establishing an appropriate approvals process for these testing kits. Naturally, we want assurance that the kits are capable of detecting and identifying corrosive substances, but I am not persuaded that we need to build into the Bill a statutory approvals process. Various options for these testing kits are currently being looked at by the Defence Science and Technology Laboratory. I am afraid it is too soon for me to say what form the kits will take; there is still further work to do on that. Given where we are—I understand we are at a reasonably advanced stage with these testing kits—I hope my arguments have persuaded my noble friend and the noble Lord, Lord Paddick, to withdraw, or not to move, their amendments, at least for the time being.

Baroness Hamwee: Before the noble Lord responds, first, will there be an opportunity for Parliament to consider the arrangements for testing when they are pretty much complete? I am sure it will be of interest. Secondly, are skin and eyes similarly sensitive? Or do we risk not outlawing a substance that might damage the eyes but would not damage the skin?

Earl Howe: In answer to the second question, my understanding—on advice—is no. A substance capable of burning the skin by corrosion would also be capable of doing severe damage to the eye, and the other way round. We do not think we are excluding any substance by accident in defining corrosive substances in this way. On the noble Baroness's first question, as I understand it, the approval of the testing kit will not be subject to any formal parliamentary procedure, but I am sure the noble Baroness is capable of finding ways to tease out relevant information from the Home Office at the appropriate time.

The Earl of Listowel: My Lords, in thinking about how criminals might think about getting around the law that the Government are proposing, I add this as a footnote to take away. Would it be possible to take two separate substances, which on their own might be quite innocuous, but when mixed together could be powerfully corrosive and thereby say you were not carrying corrosive substances? That is something to take away as a possible concern.

Earl Howe: I am grateful to the noble Earl. Not being a chemist, I do not know whether this applies to corrosive substances as it does to, say, explosive substances. I will certainly take advice on the matter.

Lord Lucas: My Lords, I am very grateful to my noble friend for that response. Could he write to us on this question of eyes? I am aware of quite a large number of substances which have hazard signs about getting them in your eyes, but nothing about getting them on your skin. Hydrogen peroxide would be an obvious example, but there are others. I wondered if you might question that. Are we covering stuff thrown in people's eyes effectively, so that there is no risk of permanent damage from substances that can be washed off the skin easily, causing a bit of redness but not much else? I am not an expert, but this is not what I have read. I would be grateful if my noble friend could drop us a line on that.

As for the general principle, this is something we will have to chew over and come back to on Report. I am concerned that people should know when they are committing an offence. If you look up acetic acid, otherwise known as vinegar, you will find that it is highly corrosive to the skin and eyes. This is being drawn very widely; I can understand why, but when the testing kit is published, it has to be clear what it applies to and what it will pick up, or we have to have a defence in here that the substance was not actually a weapon—that it contravened this, but was not capable of being used as a weapon. If we do not, we shall give the police opportunities which they should not have to bounce people off the wall when they feel like it. Occasionally it happens—there is a nice little story doing the rounds about the Humberside Police, who grilled a man for 35 minutes because he retweeted a limerick. The police can sometimes be quite interesting in the use of their powers, and one should not assume that they will be perfect on every occasion.

Something like this, which gets down to the relationships between communities, and gives police officers an opportunity to pick up people where perhaps they ought to be doing other things, requires giving some thought to how to make it as fair as we can while not removing from police officers the opportunity to nab someone they suspect has something on them intended to do people harm. I beg leave to withdraw the amendment.

Amendment 32 withdrawn.

Amendment 33 not moved.

Clause 6 agreed.

Clause 7 agreed.

Amendment 34

Moved by ***Lord Ramsbotham***

34: Clause 8, page 8, line 39, leave out "16" and insert "18"

Lord Ramsbotham: My Lords, in moving Amendment 34 in my name and those of others, I will speak to my opposition to the clause. My comments about Amendment 34 apply to the clause as a whole.

The noble Baroness, Lady Hamwee, has already mentioned the very good briefing which many Members have received from the Standing Committee for Youth

Justice and the Prison Reform Trust. Speaking about the new possession offences, it forecasts that the measures will be ineffective because they increase the use of ineffective short mandatory minimum sentences. They create legal uncertainty, may lead to disproportionate sentences and are likely to increase black and ethnic minority disproportionality, further damaging trust in the justice system. I apologise for saying some of this earlier in the debate on another amendment.

Amendment 34 seeks to move the application of this clause from the age of 16 to 18, and is entirely in balance with the Children Act 1989, which lays down that every person in this country under the age of 18 is a child. My contention is that, if mandatory short sentences are ineffective for adults, they are even more so for children. The appropriate sentence advised in Clause 8 is,

"a detention and training order of at least 4 months".

That means that they will have only two months in prison and two months supervision. Bearing in mind the conditions in our prisons at the moment, and remembering that last year the Inspectorate of Prisons reported that there was not a single young offender institution in the country in which young offenders were safe, that means that—with the overcrowding and shortage of staff—two months will not be enough even to complete an assessment of what a young offender needs.

I therefore think that, in all cases of children involved in possession, custody should be eliminated from the equation—and eliminated from this Bill. As I mentioned, community sentences are in some disarray at the moment, but that does not apply to the youth offending teams, which have the benefit of being under local government control and are therefore able to reflect the wishes of the community in the community sentences that they impose.

7.15 pm

In general terms, we must have clear evidence that everything has been tried, and has failed, before any child is sent to custody. That would, not least, honour the UN Convention on the Rights of the Child, which says that custody should be used only as a last resort. In tabling this amendment, I add that no child should be ordered into custody for a mandatory short sentence.

Baroness Hamwee: My Lords, my noble friend and I support the noble Lord, Lord Ramsbotham, particularly on the question of the clause standing part. I am conscious of progress in the Chamber, so I will not say as much as I might otherwise have done. It looks like some negotiations are going on. We have a number of other amendments to these clauses as well. In addition to supporting what the noble Lord has said, I want to make clear our implacable opposition to mandatory sentences—in this case custodial ones. Judicial discretion is very important and precious in our system.

Clause 8(4) is a get-out clause, referring to having regard to the duty under the 1933 Act to have regard for the welfare of the child. I do not think this works. It was obviously a response to representations, but it applies only to children, not young adults, and seems to be a nod to that well-established provision without changing anything that surrounds it. I also have a question about the particular circumstances in Clause 8(2). I had a look at the sentencing guidelines yesterday. If that phrase originates from those guidelines then subsection (2) is actually an inversion of them. They require the court to look at the particular circumstances, but Clause 8(2) is the reverse: it is an "unless" provision. Finally, Amendment 37 deals with the appeals subsection. We have added a reference to the criteria in Clause 8(2). I am not sure whether this is appropriate technically, but perhaps we could have an explanation as to how the appeal takes into account the points made in that subsection.

Baroness Meacher (CB): My Lords, I support these amendments tabled by the noble Lords, Lord Ramsbotham and Lord Paddick, and the noble Baroness, Lady Hamwee, and the clause stand part Motion spoken to so ably by the noble Lord, Lord Paddick. The noble Lords made the case very strongly against short-term prison sentences. I want to add my voice to emphasise very strongly just how unhelpful these short-term sentences are, particularly to the very vulnerable young people who are most likely to be caught up in these offensive weapons allegations or crimes. Apart from doing nothing for those individuals, short-term sentences do absolutely nothing for society as a whole. If we do not prevent these young people committing crimes in the future, our society will be all the worse off.

Scotland has shown the way. The removal of judgment in Scotland has been proven to be more cost effective and positive when responding to people with drug and alcohol addiction and other problems often associated with the carrying of knives or corrosive substances. I believe huge proportions of these young people have drug problems. As others have mentioned, the Ministry of Justice has already produced its own evidence of the ineffectiveness of short-term imprisonment. Perhaps the Minister can explain why we are adding to these short-term sentences in this Bill.

I want to draw the Minister's attention to the radical Checkpoint deferred prosecution scheme in Durham, run by Chief Constable Mike Barton, and very much supported by his police and crime commissioner, Ron Hogg. Checkpoint is a multi-agency initiative which aims to reduce the number of victims of crime by reducing reoffending. This is what this should all be about. The scheme targets low and medium-level offenders—it is not just for people right at the bottom—at the earliest stage of the criminal justice process and offers them a suspended prosecution. It encourages them to engage in services designed to address their problems instead of receiving a caution or going to court, which does not seem to have anything to do with where these kids or young people are coming from. Checkpoint is evaluated by Cambridge University. This is very important because the evidence on this is really very thorough and reliable.

If this amendment were to be accepted by the Government, the objective would be for the Checkpoint policy, or something like it, to be applied to children and young people who are found in possession of an offensive weapon. I know very well how utterly appalling

[Baroness Meacher]
these corrosive substances are. I happen to know a young, beautiful girl whose face has been utterly destroyed by an acid attack. The poor girl has had endless operations and she will not be the beautiful person that she was, although she will be a beautiful person inside and that is what really matters. Nevertheless, I want people to know that I really understand that these are shocking and horrible crimes. The most important thing that we can do is to cut them down, reduce them and, ideally, eliminate them. Anything that somehow does not achieve that is an utter failure, so I feel very strongly about it because we have to do something that is effective.

Checkpoint shows that it is the threat of punishment, rather than the severity of a punishment, that is cost-effective and, most importantly, effective. It argues in favour of taking a whole-person-centred approach to understand the causes of their offending and ensure that those people receive appropriate interventions to address the problems of drug dependence, debt issues or homelessness—a whole range of problems that these young, very vulnerable people face. Indeed, its figures from a random control trial—and I emphasise that it is a random control trial, not just any old tin-pot kind of study—show that reoffending is reduced by 13% if we do not send these people to custody but instead try to get them involved in help for their problems.

Its study of young offenders who have committed crimes on more than five occasions within a year is very important. You might think that these are hopeless cases and that there is no point in doing anything. This study looks at the traumatic experiences during childhood that so many of those repeat offenders have experienced. Almost all have been exposed to violence, physical harm or danger, parental offending or admissions to A&E due to physical harm or trauma. They have frequently exhibited violent behaviour or problems in school and have been excluded.

We have to ask ourselves about the effect of putting those young, very vulnerable, damaged children into custody for just another dose of punishment. They obviously need a great deal of therapeutic help and support to begin to recover from their childhood experiences. Durham Constabulary, West Midlands Police and other police services are, in my view, leading the way in exploring policies which will benefit not only the vulnerable but society as a whole by reducing reoffending and will also save vast police and prison resources, but that is not the point. This is about reducing these terrible crimes and helping the vulnerable.

I hope this legislation can be amended to ensure that it works with the grain of new, evidence-based criminal justice policy. It is interesting that police services are taking the lead in this crucial field. Of course, the police have their street-level experience; I always have great regard for the noble Lord, Lord Paddick, for this reason—he knows what goes on on the street. They are saying we should not send these people to prison because they see them coming round again and again. I take this very seriously; I think we all should. I hope the Minister will discuss with us how best to amend this Bill. I very much look forward to the Minister's reply.

Lord Deben: My Lords, I will hold the Committee for only one moment, but I very much agree with the arguments put forward by those who tabled this amendment. It seems that this is another example of saying, "We've got to do something, so let's do this". But "this" has failed. It does not work and is a disaster. There is no more stupid thing to do than to give young people short prison sentences. Countries throughout Europe have shown that it does not work and that other things do. I really am tired of people coming forward with the same answer to a problem, which does not work. Therefore, I very much hope that my noble friend will say that this Government will not go on with this kind of answer. It will take time, money and resources to make sure that we have something which works, and we should learn from other countries which have found a way through, instead of repeating a failed policy.

The Earl of Listowel: My Lords, I would like to follow what the noble Lord has said. We have seen what works in this country. Indeed, a Conservative Government set up the intermediate treatment centres. I think the noble Lord, Lord Elton, very much led this work 30 years ago. I worked in one of those centres at that time. There was a male social worker and a female teacher, so the children and young people saw a model of a man and a woman in co-operation together, being courteous and respectful towards one another. There were six boys, ranging from eight to 15. The eldest was mad about motorbikes and was just about to get on a mechanics course. I saw these boys sitting down together sewing, with the teacher's help. If you make the right kind of intervention, you can really turn these young people's lives around. To put this in historical context, perhaps I may take my hat off to the coalition Government, as we have reduced the number of children and young people in prison in this country by 71% over the last seven or so years.

We have been through this process before. I remember that about 10 or 15 years ago, there was an outcry about mobile phone theft and various pushes to be tough on crime and tough on the causes of crime, but really being tough on crime was putting more and more young people in custody. What did we see there? A boy who had just entered care, on his first or second day in a children's home, was with a group of children and one of them stole a mobile phone. He ended up in court and there were no suitable places for him in custody, so he was placed in an insecure prison and ended up hanging himself within two days. His mother has been grieving for him ever since. As a trustee of a mental health service for adolescents, I know that adolescents become more and more interested in their peer group. So when you send a child off to one of our young offender institutions or secure training centres, you send them into a peer group where they will get the best information about how to join a gang or be destructive.

On some occasions it may be necessary to do that, if they are too dangerous. But leave it to the judges and magistrates to decide that; do not tie their hands. I know there will be exceptions, but I suggest to your Lordships that we do not want to tie the judiciary's hands in this case, and having mandatory sentencing is not helpful.

I have been a trustee of the Michael Sieff Foundation, which was set up around the time of the Children Act 1989. I had the privilege of working for several years with Dr Eileen Vizard, a forensic child psychiatrist who worked with the NSPCC. She made the point that, once the criminal justice system gets children into the secure estate, they are likely to keep on coming back, and so we should try not to get them in there.

I share the conviction of all the noble Lords who have spoken in Committee today. I hope that the Minister can give us some comfort in his response.

7.30 pm

Earl Howe: My Lords, Clause 8 provides an appropriate custodial sentence where a person is 16 years old or older and is convicted of the offence of possession of a corrosive substance in a public place in England and Wales and has at least one relevant previous conviction, as defined in Clause 9. We have made it a requirement that the court must impose an appropriate custodial sentence unless it decides that there are particular circumstances relating to the offence, the previous offence or the offender which would make it unjust to do so. We have defined an "appropriate custodial sentence" as a custodial sentence of at least six months' imprisonment for an offender aged 18 or over. For an offender aged 16 or 17, we have defined an "appropriate custodial sentence" as being a detention and training order of at least four months' duration.

The noble Baroness, Lady Meacher, referred specifically to Clause 8(2). It is not designed, as she suggested, to reflect the sentencing guidelines. The clause mirrors existing knife legislation and ensures that anyone aged 16 or over who is convicted of a second possession or similar offence, such as an offence relating to a knife, will receive a custodial sentence unless the court determines that there are appropriate circumstances not to do so. The use of appropriate custodial sentences will make it clear to individuals that we will not tolerate people carrying corrosives on our streets and other public places in circumstances which would enable them to cause injury or commit another offence, such as robbery.

Amendments 34 to 36 in the names of the noble Lords, Lord Ramsbotham and Lord Paddick, seek to confine these provisions to adult offenders. I understand why the noble Lords are proposing this but I really think—as do the Government, very firmly—that, given the nature of this particular form of offending and the appalling injuries it can cause, the minimum sentence should apply to 16 and 17 year-olds as well as to adults, as for the existing offence of possession of an offensive weapon in a public place. We fully recognise, however, that this cohort of young offenders should be treated differently from adult offenders. I have already indicated that for 16 and 17 year-olds the minimum sentence is a four-month detention and training order as opposed to six months' imprisonment in the case of adult offenders.

In addition, for this age group, we have ensured that when considering whether there are particular circumstances which would make imposing an appropriate custodial sentence unjust, the court must have regard to its duty under Section 44 of the Children and Young Persons Act 1933. This relates in particular to the issues raised by the noble Baroness, Lady Meacher. Under that section, the court must have regard to the welfare of the child or young person, take steps to remove them from undesirable surroundings and ensure that proper provision is made for their education and training. We have also ensured that there are procedures for appeals in those circumstances where a relevant conviction, which was relied upon by the court to impose an appropriate custodial sentence, has been set aside on appeal.

I recognise that there are some Members of the Committee such as the noble Lord, Lord Ramsbotham, and the noble Baroness, Lady Hamwee, who object as a matter of principle to minimum sentences as provided for in Clause 8. I fully accept that the normal practice is for Parliament to set maximum sentences and leave it to the discretion of the court to determine the appropriate sentence, having regard to the facts of an individual case. However, there are already a number of exceptions to this rule, including, as I have said, in relation to second convictions for possession of an offensive weapon in a public place. We regard the possession of corrosive substances in a public place as equally serious and therefore deserving of the same sentencing framework.

As I have indicated, the requirement to impose the minimum sentence is not absolute and the provisions still allow for some judicial discretion. The court must still consider the particular circumstances of the case and, if there are relevant factors relating to the offence or the offender such that it would be unjust to impose the minimum sentence, the court has the latitude in such a case not to do so. That could be: where the seriousness of the offending falls far below a level deserving custody; strong personal mitigation of the defendant; or the undue impact that going into custody may have on others. In addition, the courts would have to consider the effect of a guilty plea. In the youth justice system, four months is the minimum detention and training order available, so any reduction would mean that a community order is imposed. It is important to emphasise that.

It remains a matter for the court to weigh up all the relevant aggravating and mitigating factors before deciding the appropriate sentence to impose, at or above that required by this clause, and subject to the question of it being unjust in all the circumstances which I have mentioned. In short, the Government are firmly of the view that in exceptional cases such as this, there is a place for minimum sentences in our sentencing framework. We are dealing here with repeat offenders who pose a particular risk to others and our communities, and the law and the courts should recognise this.

Finally, Amendment 37 deals with the test to be applied by an appellate court on any appeal against sentencing where the provisions of Clause 8 apply and a previous relevant conviction has been overturned. In any case where there was only one previous relevant conviction and that conviction was subsequently overturned on appeal, the criteria provided for in Clause 8(2) would not be relevant in the case of an appeal against sentence to which Clause 8(6) applies. Where the conditions requiring a court to impose a mandatory minimum sentence no longer apply after

[Earl Howe]
the fact, a court hearing an appeal against a sentence would be bound to quash it and pass a new sentence without regard to the provisions in Clause 8. Given this explanation, I hope that the noble Lord, Lord Ramsbotham, will withdraw his amendment and that the noble Baroness and the noble Lord, Lord Paddick, will support Clause 8 standing part of the Bill.

The Earl of Listowel: My Lords, I thank the Minister for his response. With regard to children and young people in local authority care, and young people leaving such care, might the courts not be given some guidance as to a more lenient treatment of them? I think we recognise the statistics on the high levels of children from care and care leavers in custody. We have a corporate parenting responsibility towards these young people. We know that over 60% of them enter care because of physical abuse or neglect on the part of their families, and that very few of them enter because of criminal or anti-social behaviour. Will the Minister consider giving guidance to the courts on our corporate parenting responsibility to these young people and, regarding their histories, should we consider giving them a more lenient approach in the courts?

Earl Howe: My Lords, the noble Earl has often and rightly emphasised the vulnerability of children in care and young people leaving care. I fully accept that point. However, as he has heard, the provisions under the 1933 Act constitute a very considerable duty on the court to look at the pertaining circumstances of a case. He will also know that the Sentencing Council provides exactly the kind of guidance to which he alluded. If there is any more I can say on that, I will be happy to write to him. I am sure that the Sentencing Council will not be slow to follow up on any proposal emerging from the provision in the Bill.

Lord Ramsbotham: My Lords—

The Deputy Chairman of Committees: Can you be very quick?

Lord Ramsbotham: My Lords, I thank all noble Lords who have taken part in the debate on this amendment. I assure the Minister that this is not a matter of principle against short sentences. I have seen how ineffective they are. I know how ineffective they are, and I have been saying so for more than 20 years. It is not a question of principle; it is knowledge that they are ineffective. I fail to see why the Justice Secretary, who is against mandatory minimum sentences, is on one side saying one thing and then the Home Secretary is imposing yet more mandatory sentences on the other. I beg leave to withdraw the amendment, but I am sure we will return to it at a later stage.

Amendment 34 withdrawn.

Amendments 35 to 37 not moved.

Clause 8 agreed.

Clause 9 agreed.

7.40 pm

Sitting suspended for a Division in the House.

7.55 pm

Amendment 38

Moved by ***Lord Bethell***

38: After Clause 12, insert the following new Clause—

"Review of sections 1 to 12 and 31

The Secretary of State must each year, for the period of three years beginning with the year in which the last of the provisions in sections 1 to 12 and 31 of this Act come into force, lay before both Houses of Parliament a report reviewing the effectiveness of the measures contained in those sections."

Member's explanatory statement

This amendment would require the Secretary of State to publish a report each year for three years after the Bill comes into force reviewing the effectiveness of the provisions relating to corrosive substances.

Lord Bethell (Con): My Lords, I will also speak to Amendment 39. I thank noble Lords for returning and doing me the courtesy of hearing this out. I really appreciate it and I will be very quick. The noble Baroness, Lady Meacher, put it very well—I wish she were still in her place—but I also feel very passionate about the victims of acid attacks and corrosive substance crime. I am a trustee of the Scar Free Foundation and I have met a lot of the victims, and I have been blown away by how these crimes have seemingly come out of nowhere and become a very big deal: there were nearly 1,000 attacks last year. I am very much aware of how innovative criminals have quickly become, to get around the law and invent new crimes. I am aware that our responses have got to be very quick as well. I applaud the speed with which the Home Office has reacted to this crime wave. I will not go through the list, but it is an impressive list and I completely endorse the approach.

We owe it to ourselves to recognise that this is an experimental approach: international data suggests that legislation on acid attacks is very difficult. It does not always work, so we should keep track of how this legislation proceeds and whether it is worth analysing its effectiveness and what is happening with the arrests that come out of it. That is why I suggested these two amendments: so that in two or three years' time, we are not left worrying whether we have been on the right track and so that we have the right data to be able to fine-tune and make any changes to our approach.

Lord Ramsbotham: My Lords, I support the noble Lord, Lord Bethell, in this, because so many things that were alleged about the inefficiency of various measures are unproven. For example, short sentences are said to be no deterrent. We do not know for certain, and therefore I support entirely a continuous review. We must have more data to be able to be more precise in the measures that we take.

Earl Howe: My Lords, I am grateful to my noble friend Lord Bethell for setting out the rationale for these amendments. I understand his intention, but I hope to persuade him that there will be adequate reporting of the use of the new powers in the Bill relating to corrosive substances without the need for statutory provisions such as this. Once the offences in this Bill are brought into force, the collection of data regarding corrosives offences will be much more accessible

for police forces and will allow for a much clearer picture to be presented on the extent of corrosive attacks and the corresponding law enforcement response.

My noble friend may be aware that we are already working with the police to improve how offences involving corrosives can be better captured in police data to help understand the scale of attacks. We have submitted a joint application, with the National Police Chiefs' Council, to the police data requirements group to establish a new data collection requirement with respect to corrosive attacks as part of the annual data requirement on all forces in England and Wales. Subject to agreement, these would allow for regular publication as part of the Office for National Statistics quarterly crime statistics.

In relation to Amendment 38, I simply point out to my noble friend that all government legislation such as this is subject to post-legislative review five years after Royal Assent. In the intervening period, there are the usual arrangements for scrutinising government policies and the operating of new powers such as contained in this Bill. For example, it will be open to my noble friend to table periodic Written Questions or initiate a debate.

Given these established methods, I am not persuaded that we need a bespoke duty to report annually on aspects of this Bill. I fully accept that this is a serious issue, but I hope I have provided my noble friend with sufficient reassurance on the action that we are taking to address it and that, accordingly, he will be content to withdraw his amendment.

Lord Bethell: My Lords, the Minister puts it very persuasively and I am happy to withdraw the amendment.

Amendment 38 withdrawn.

Amendment 39 not moved.

Clause 13 agreed.

Committee adjourned at 8 pm.

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