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PARLIAMENTARY DEBATES  
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# HOUSE OF LORDS

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<b>Abbreviation</b>	<b>Party/Group</b>
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.

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# House of Lords

Thursday 4 April 2019

11 am

Prayers—read by the Lord Bishop of Peterborough.

## Upland Farming Question

11.06 am

Tabled by *Baroness Jones of Whitchurch*

To ask Her Majesty's Government what steps they are taking to ensure the long-term viability of upland farming.

**Lord Grantchester (Lab):** My Lords, on behalf of my noble friend Lady Jones of Whitchurch, and with her permission, I beg leave to ask the Question standing in her name on the Order Paper. I declare my interests as set out in the register.

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con):** My Lords, I declare my own farming interests as set out in the register. Upland farmers have been looking after exceptional landscapes, including national parks, for generations. They are responsible for a distinct farming and cultural heritage and the production of high-quality food. We will work with farmers to improve animal health, agricultural productivity and the environment, and support enhanced rural connectivity, to ensure an economically viable future for this and future generations of upland farmers.

**Lord Grantchester:** With their vulnerability of terrain, sparsity and remoteness, the upland areas need a range of measures underpinned by good delivery systems that keep farmers farming in a wider rural economy including forestry and environmental landscape management. Has the Minister's department considered establishing a specialist high-value unit as a successor to SDA to champion strategic development, with a clear vision for the uplands?

**Lord Gardiner of Kimble:** My Lords, as a Government, we entirely accept that the uplands have an important connection to us all. After all, they provide 70% of our water. They have an enormous environmental benefit. Through the environmental land management system, which will replace the CAP, we are looking for ways to support and encourage the next generations to do this vital work on our behalf.

**Baroness Byford (Con):** My Lords, will my noble friend confirm the need for the 6,500 upland farmers to continue to receive public financial support? Without that, they will not succeed. Some 70 million people visit the uplands each year and that sort of payment is essential. In addition, I note the important role that small and medium-sized enterprises play in those local communities. Without that interaction, those communities will die.

**Lord Gardiner of Kimble:** My Lords, my noble friend speaks of the whole uplands economy. Tourism—such an important part of it—is based on the agrarian systems which make us all want to visit those areas. We have said that we will continue direct payments for 2019 and 2020. There will be a transition, but we will also introduce the environmental land management system. I believe that upland farmers will have a very interesting and productive use of that scheme.

**Lord Cunningham of Felling (Lab):** My Lords—

**Lord Beith (LD):** My Lords—

**The Minister of State, Ministry of Defence (Earl Howe) (Con):** My Lords, I am sure we can hear from the noble Lord, Lord Cunningham, but it is the turn of the Liberal Democrats.

**Lord Beith:** My Lords, as several Peers have acknowledged, upland farmers make a massive contribution to the care of our hill areas. However, the character and community of those areas will depend on upland farmers being more than merely park-keepers. Does the Minister recognise that if Brexit leads to very high tariffs for lamb exports to Europe, and massive imports from new trade deals with New Zealand, it could spell the end of hill livestock farming? That is really dangerous for the hill areas.

**Lord Gardiner of Kimble:** My Lords, that is precisely why I mentioned food in my Answer. Upland farmers provide excellent food for the nation and for abroad. We clearly want that to continue. We want a trade deal. I am sure that all your Lordships wish us to secure a deal for the nation, but the situation is particularly acute for the upland farmers. I referred to animal health and productivity in my reply. We want to work with the farmers to ensure we conquer many of the diseases that are a travail for them, such as sheep scab. There are all sorts of areas of work that industry, the Government and farmers can work together on.

**Lord Cunningham of Felling:** My Lords, it has long been established that hill farmers regularly have incomes in the lowest decile of all farm incomes. That has not changed over many years. If we want our uplands—whether the Scottish borders, Northumberland, the Lake District, the Peak District or elsewhere—to continue to look the way they do, it is absolutely essential that people there are given more and better support if we are to ensure that we can go on enjoying the upland countryside, as the Minister has recognised we all do.

**Lord Gardiner of Kimble:** My Lords, 53% of England's SSSIs are in uplands. These are hugely important areas for our country. I agree with the noble Lord, who comes from an area of great upland rural and cultural tradition. Our objective is to secure that future, because it is important to us all that upland farmers still produce food and look after that wonderful landscape.

**Lord Wigley (PC):** My Lords, since the Minister accepts that the upland farmers are the best guardians of the uplands and that there needs to be a reasonable income level, will he therefore accept that there has to

[LORD WIGLEY]

be a market equivalent to what they have at the moment in exporting largely to the European market, and a guarantee of income beyond 2020, which is only next year?

**Lord Gardiner of Kimble:** My Lords, we have said as a Government that we will commit the same sum of money until the end of this Parliament. No Parliament can bind its successors, but 2022 is the likely end of this Parliament given the cycle we have. If we are to keep people on the land, they need a viable income. They also need to live a contemporary life, which is why I specifically mentioned the work we are undertaking to improve connectivity in the uplands, where we are not as strong as in other rural areas, and where we need to commit money, which we are doing.

**Lord Hannay of Chiswick (CB):** My Lords, will the Minister confirm as a matter of fact that remaining in a customs union with the European Union would achieve the objectives that all noble Lords who have asked questions—and the Minister—have agreed must be our objective?

**Lord Gardiner of Kimble:** Our objective is to trade freely with the European Union, the EU 27, our partners in what I hope will be a very productive and long-term economic arrangement. That is what we should aim for.

## Fuel Poverty Question

11.14 am

Asked by *Baroness Donaghy*

To ask Her Majesty's Government what is their estimate of the number of households in fuel poverty; and what action they intend to take to reduce that number.

**The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con):** My Lords, in 2016, 2.55 million households in England were in fuel poverty. We can measure progress using the total fuel poverty gap—that is, the reduction in bills required for all fuel-poor households to heat their home at a reasonable cost, which has decreased by £25 million since 2010. The best long-term solution to tackle fuel poverty is to improve energy efficiency, which we have made the primary focus of our energy company obligation.

**Baroness Donaghy (Lab):** I thank the Minister for his Answer. I hope he agrees that we have not cracked this problem yet. The official figures are the tip of the iceberg. Since I last asked this Question, things have become worse, with fuel price hikes and a massive rise in the private rented sector, where fuel poverty is at its worst. The Government's plan for insulating and upgrading homes is 60 to 80 years behind target. What practical steps will the Government take to solve this Victorian problem before we get to the 22nd century?

**Lord Henley:** My Lords, we should treat the figures with some caution. They are based on income below the poverty line, and thus are relative figures. That being the case, there is always the danger that the more one does the worse they get, because you can never actually meet that target.

However, the noble Baroness is right to look at practical measures. I referred to the energy company obligation, which has delivered 2.4 million energy saving measures since 2013. I also refer to the warm home discount scheme and the various measures we announced recently to deal with the private rented sector, providing extra insulation for houses and increasing the obligation on landlords to spend more on bringing their houses up to an appropriate level of insulation. I refer to the Domestic Gas and Electricity (Tariff Cap) Act 2018, which made various changes, and the work that Ofgem has done on the safeguard tariff. I could go on.

**Lord Marlesford (Con):** Does my noble friend agree that one simple, practical measure would be to make the winter fuel payment taxable? It is paid out by the department for social services anyway, so that would be very easy. The tax collected could then be used to increase the payment, so that those who do not pay tax would get a higher sum. That would mean it was self-adjusting. There would be no further expenditure, but it would at least mean that more of the expenditure went to those who need it.

**Lord Henley:** I suspect it is a benefit of which a large number of Members of this House are in receipt—I see one or two indicating that they are not. I note what my noble friend said. It is a very good suggestion, and I will ensure that my right honourable friend the Chancellor is made aware of it.

**Lord Teverson (LD):** My Lords, the Minister is absolutely right to mention the private rented sector. One year ago, the minimum energy efficiency standards regulations came into force, which meant that properties could not be rented unless their EPC was E or above. However, properties are still being advertised that do not meet that criterion. What are the Government doing to ensure that local authorities apply those regulations and fuel poverty is reduced in that sector?

**Lord Henley:** The noble Lord is right: it is for local authorities to do that, but he will also remember that we brought forward further regulations this year, which he and I debated in this House, whereby we increased the obligation on landlords in how much they should be expected to spend to raise houses in the private rented sector to, I think, at least band E. I forget the precise level that they have to be at.

**Baroness Meacher (CB):** My Lords, how many households dependent on universal credit have to choose between sufficient food for their children and sufficient heating to keep the children warm during the winter months? If figures are not available, will he commit the Government to commissioning a study to find out that information?

**Lord Henley:** My Lords, I will see whether those figures are available and if they are, I will make them available to the noble Baroness. In my original Answer,

I was trying to address the importance of the aggregate fuel poverty gap. We are seeing that come down over the years; the aggregate fuel poverty gap was of the order of £857 million in 2010 and it has now dropped by £25 million to £832 million.

**Lord Howell of Guildford (Con):** My Lords, as renewable energy prices become more and more competitive with new technology, would one fairly simple way to ease fuel poverty not be to reduce the subsidy charge on electricity bills that has to be imposed to pay for green subsidies? Does my noble friend not agree that the energy gap Her Majesty's Government imposed has not been a great success, since fuel bills are rising all round?

**Lord Henley:** On that last point, I assure my noble friend that we estimate that the price cap will save consumers something of the order of £1 billion annually on their bills. On his first point about setting the levels of subsidy for renewables, it is important to provide the appropriate subsidy to see that we get the appropriate developments in renewable energy. As my noble friend will be aware, we have seen a dramatic drop in the cost of producing offshore wind, for example; the same is true of solar and we hope those trends will continue.

**Lord Grantchester (Lab):** One of the key aspects in reducing fuel poverty is giving people the tools to manage themselves, through the infrastructure development of smart meters. On this development curve, can the Minister give the House a measure of success regarding how many households have been drawn out of fuel poverty by their introduction?

**Lord Henley:** My Lords, the noble Lord is right to talk to the importance of smart meters. We hope that by 2020, every household will have been offered a smart meter. Most people are satisfied with them and, if used properly, we expect smart meters to enable consumers to take something of the order of £300 million off their fuel bills.

## China: Religious Freedom Question

11.22 am

Asked by *The Lord Bishop of St Albans*

To ask Her Majesty's Government what is their current assessment of freedom of religion in China.

**The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con):** My Lords, there are several recognised religions in China, with tens of millions of practising Christians, Muslims and Buddhists, among others. However, we are deeply concerned about developing restrictions on freedom of religion or belief in China, including reports that authorities are tightening control over how certain religions are practised. At the United Nations Human Rights Council last month, I raised directly our concerns about restrictions on freedom of religion or belief in China, including on Muslims and Christians in Xinjiang.

**The Lord Bishop of St Albans:** I thank the Minister for his reply. There are deeply worrying reports coming out of China, not least about persecuting the Christian churches there—an ancient Christian church there was founded in the 7th century. Will he comment particularly on the developing situation concerning Uighur Muslims and the development of the network of re-education camps in Xinjiang province? What representations have Her Majesty's Government made and what are they planning to do?

**Lord Ahmad of Wimbledon:** My Lords, the right reverend Prelate is right to raise the desperate situation facing Uighur Muslims in Xinjiang province. I assure him that we have raised this directly, on a bilateral basis, with the Chinese Government. As I indicated in my earlier Answer, I raised the issue directly during the Human Rights Council, with specific reference to the Uighur Muslims, during our statement there. Working with like-minded partners, including the United States, we also hosted a side event during that council to draw further attention to and increase international collaboration on this priority issue.

**Lord Alton of Liverpool (CB):** Has the Minister had a chance to read yesterday's *Spectator* and last week's Westminster Hall debate about forced organ harvesting from China's religious minorities, including Falun Gong, Uyghur Muslims, Tibetan Buddhists and, possibly, Christian dissidents along with prisoners of conscience? Fiona Bruce, Member of Parliament and chair of the Conservative Party Human Rights Commission, described it as,

"potentially nothing less than a 21st century genocide", and "almost a perfect crime" because "no one survives".

Will the Government attend this week's China Tribunal hearings, chaired by Sir Geoffrey Nice QC—who prosecuted Slobodan Milošević—and modelled on the people's tribunal into the Vietnam War, pioneered by Bertrand Russell and Jean-Paul Sartre? Their interim findings say that tribunal members are,

"certain—unanimously, and sure beyond reasonable doubt—that in China forced organ harvesting from prisoners of conscience has been practised for a substantial period of time involving a very substantial number of victims".

Will the Government ask China for its response to these deeply disturbing findings?

**Lord Ahmad of Wimbledon:** I read the debate that took place, not the article, but I will do so. On a number of occasions, the noble Lord and I have talked about the specific issue of organ harvesting. I assure him that we are watching and working closely on the outcomes of Sir Geoffrey Nice's review. The detailed report will also be out later this year. Our officials have attended every evidence session and will continue to do so and update accordingly. In raising this issue directly, I am deeply concerned, like the noble Lord, particularly because there is an issue of organ harvesting not just from people elsewhere: I have heard it suggested and was briefed on prisoners in the system being used for this purpose. The situation is deeply concerning and we are raising it at all levels.

**Lord Hunt of Kings Heath (Lab):** Is the noble Lord prepared to raise this issue with the World Health Organization? Its responses to concerns raised about

[LORD HUNT OF KINGS HEATH]

the use of organs in the appalling way suggested by the noble Lord, Lord Alton, were very weak. I hope that the Government will be as vigorous in dealing with the WHO as they appear to be with the Chinese Government.

**Lord Ahmad of Wimbledon:** The noble Lord makes a valid point. I assure him that, as the UK's Human Rights Minister, I will raise this issue with all appropriate organisations.

**Baroness Berridge (Con):** My Lords, I am grateful to hear from the Minister that we have made bilateral representations and used our seat at the Human Rights Council, but there are other, often more subtle, ways we can exert influence. The UK Government are an employer of many local staff in our embassies; our soft-power institutions, such as the British Council and perhaps the BBC, also employ a lot of local staff. Can the Minister outline whether the Government have a policy in situations like this to ensure that these persecuted minorities are represented within the local staff we employ?

**Lord Ahmad of Wimbledon:** My noble friend makes an important point. I assure her that, in recruiting for any post throughout the world, the United Kingdom adopts a policy of equality and justice. Her point is to ensure that all communities of a particular country are represented and that there is no discrimination in our recruitment. She makes an important point about soft power in other organisations working in China, which I will take back. I do not have the numbers in front of me on the different communities employed but I will certainly take that back and write to her, as is appropriate.

**Lord Dholakia (LD):** My Lords, I declare an interest as a member of the All-Party Parliamentary Group on the abolition of capital punishment. There is evidence that a significant proportion of human organs were removed from executed prisoners. China's use of the penalty is subject to great concern because there is no transparency on the number of executions it carries out. We now have an American roving ambassador dealing with this matter. What liaison exists between our Minister and the American roving ambassador to make sure that we make the strongest protest possible to China about its lack of transparency in carrying out such executions?

**Lord Ahmad of Wimbledon:** My Lords, I assure the noble Lord that I work very closely with Ambassador Sam Brownback on both this issue and freedom of religion across the world; we are co-ordinated. Another recent example was a visit to Pakistan. As I left Islamabad, Ambassador Brownback was arriving. We have ensured a co-ordinated approach on what the United Kingdom and United States are doing.

**Lord Collins of Highbury (Lab):** To follow up on my noble friend's question about the WHO, I understand—and completely agree with—the Minister's commitment to raising these issues with China, but organ harvesting has other implications, not only for universities, which could be co-operating. Can the Minister assure the House that he will raise this issue across Westminster

and Whitehall to ensure that all departments take it seriously and that we do not start using organs harvested from prisoners?

**Lord Ahmad of Wimbledon:** The noble Lord is quite right. I am aware, from the question raised by the noble Lord, Lord Dholakia, of World Health Organization's current, persisting view. I assure the noble Lord once again that this is important to the World Health Organization and Whitehall. For example, some countries are also adopting systems to restrict this. We are working with them to see how those restrictions are applied and we seek to review our own position in that respect.

## Schools: Staffing

### Question

11.31 am

Asked by **Lord Watson of Invergowrie**

To ask Her Majesty's Government what assessment they have made of the decision by some teachers to take a 20 per cent pay cut in order to prevent staff redundancies in their schools.

**The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con):** My Lords, it is for schools to make their own decisions about investing their funding and their staffing. The department publishes pay ranges and all maintained schools must follow these in setting pay. Although there is more money going into our schools than ever before, we recognise that there are some budgeting challenges. That is why we have introduced a wide range of practical support to help schools and local authorities economise on non-staff costs.

**Lord Watson of Invergowrie (Lab):** My Lords, I thank the Minister for that reply, but it is the usual mantra about more funding going into schools. That is, frankly, sophistry, because 91% of schools have suffered real-terms cuts in per-pupil funding since 2015. My question highlights just one example of school budgets being stretched beyond breaking point, leading to situations where parents are asked to buy essential items such as books and stationery. Some schools now close on Friday lunchtimes to save money. Is it not a disgrace that, in one of the richest economies in the world, head teachers are forced to beg for funding in some situations? The very principle of free education is being undermined by Conservative cuts to our schools. The Government's latest school workforce statistics show that, in 2017, there were 137,000 more pupils in England's schools, yet there were 5,400 fewer teachers and 2,800 fewer teaching assistants. How can the Minister possibly justify that?

**Lord Agnew of Oulton:** My Lords, I think that the school which has come to the noble Lord's attention is Furzedown School in Wandsworth. The challenge which that school faces is declining pupil numbers. They have declined every year for five years, which is why it needs to keep an eye on its staffing levels. That is its problem. It is a well-funded school, receiving £4,900 per pupil, which is well above the national average of £4,166. On the bigger point of overall funding, the IFS has said, independently, that per-pupil funding for five to 16 year-olds by 2020 will be 50% higher than it was in 2000.

**Lord Storey (LD):** My Lords, the noble Lord, Lord Watson, said “91%”; it is 91% of schools that have had their per-pupil funding cut across England. To have staff taking cuts in their salaries; to close schools on a Friday; to have so-called cost cutters going into schools and suggesting that school lunch portions are reduced in size; that is no way to run an education service. Does the Minister deny that there has been a reduction in funding in 91% of our schools? Since 2015, my home city of Liverpool has lost £48 million to our schools.

**Lord Agnew of Oulton:** My Lords, as I said in answer to the Question, funding is going up. It does not help the debate to follow scurrilous articles about food portions. That school was throwing away a large quantity of food. No parent wants to see that happen. It is a huge environmental waste. It was highlighted simply as an area of inefficiency. As a Schools Minister, no one wants more funding into the system than me, but I want that system to be well run so that the money goes to the front line. Noble Lords will have seen the story in the press the other day about the Tolworth Girls’ School, where the head teacher claimed that she was so badly funded that she had to clean the lavatories herself. What she did not tell you was that she took an 8% pay rise, taking her to between £125,000 and £130,000, and increased the cleaning budget by nearly 90%.

**Baroness Massey of Darwen (Lab):** My Lords, the Government speak a lot about the importance of social mobility for pupils. Does the Minister not think that this is an appalling situation for dedicated professionals to be in, taking salary cuts and doing all they have to do to keep schools running? Are the Government speaking to teachers’ and head teachers’ unions about this situation? If so, what is the response?

**Lord Agnew of Oulton:** My Lords, last year we increased the main scale pay rate for teachers by the largest amount in nearly 10 years. Teachers are well paid, and deservedly so. This year, we are increasing the contribution to their pensions by some 43%, one of the largest increases in any pension contribution in the country.

**Baroness Hayman (CB):** My Lords, it is very difficult for those of us who are not experts in the subject to gather from the interchanges that have taken place the actual position of per-pupil funding in schools. I would therefore be very grateful if the Minister would tell me whether the assertions that have been made about per-pupil funding in schools are correct or not.

**Lord Agnew of Oulton:** My Lords, the noble Baroness is right: it is complicated, and that is why we introduced the national funding formula, which put another £1.3 billion into the system. Since 2017, we have given every local authority more money for every pupil in every school, while allocating the biggest increases to schools that have historically been the most underfunded. There are 43 local authorities that between 2017-18 and 2019-20 have seen a 4% or greater increase per pupil.

**Lord Harris of Haringey (Lab):** So what exactly is the change in per-pupil funding?

**Lord Agnew of Oulton:** Because we inherited a very great—

**Noble Lords:** Oh!

**Lord Agnew of Oulton:** The average per-pupil funding is as I gave in an earlier answer: around £4,100 per pupil. On top of that we add pupil premium, which is some £12 billion we have put into the system for the most disadvantaged children, as mentioned by the noble Baroness earlier. The funding is good; I would like to see more but I want to see it go to the front line where children will benefit.

## Business of the House

### *Motion on Standing Orders*

11.37 am

*Moved by Baroness Hayter of Kentish Town*

Further to the resolution of the House of 28 January that Her Majesty’s Government should provide sufficient time 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, that:

(1) Standing Order 46 (*No two stages of a Bill to be taken on one day*) be dispensed with to allow the European Union (Withdrawal) (No. 5) Bill to be taken through all its stages this day; and

(2) Standing Order 39 (*Order of Business*) be dispensed with to enable that Bill to be considered after the motions on Economic Affairs Committee reports in the name of Lord Forsyth of Drumlean.

**Baroness Hayter of Kentish Town (Lab):** My Lords, unconventional times call for unconventional measures. What are these times? The country faces the possibility of an exit from the EU without a deal; a disorderly exit that nobody wants. The Prime Minister does not want it, business and the CBI do not want it, the TUC does not want it, the House of Commons does not want it, and your Lordships’ House voted against a no-deal exit by a majority of 169. But the eventuality remains a risk, as we are constantly reminded, because that is the default legal outcome unless something else happens. That legal default—a crash-out no deal—would mean no transition period, the immediate introduction of tariffs, complete uncertainty for British citizens living in the EU 27, no European arrest warrants, security concerns and dire consequences for industry, to say nothing of the implications for Gibraltar or the island of Ireland.

We have received a Bill from the House of Commons that makes something else happen, and we are about to give it a First Reading. It would ensure that there is a legal requirement on the Prime Minister to seek an extension to the Article 50 period to prevent that default legal outcome coming to pass. However, the Bill, passed by the elected House, can have effect only if we deal with it today, so that it can receive Royal Assent in time for the EU Council to consider the application for an extension. To fulfil our duty to deal with a Bill sent by the Commons, we have to handle it today.

[BARONESS HAYTER OF KENTISH TOWN]

This is in compliance with the view of your Lordships' House on 28 January, when we called on Her Majesty's Government to take all appropriate steps to ensure that sufficient time be provided for this House to ensure the timely passage of legislation necessary to implement any proposition that had commanded the support of the majority of the House of Commons. That Motion was passed with a majority of 152.

The Commons has passed this Bill. It has expressed a clear view that no deal is unacceptable and that the situation is urgent. Regrettably, the Government failed to honour that Motion published by your Lordships. They should have tabled the Motion I am about to move, to facilitate and expedite the will of the elected House. Today, the Government still will not listen to the Commons—or to this House, which has voted to facilitate any Bill from the Commons. That is not leadership. The Government have lost the support of the Commons, and now refuse to follow your Lordships' Motion.

**Lord Strathclyde (Con):** My Lords—

**Noble Lords:** Sit down!

**Baroness Hayter of Kentish Town:** I believe the conventions of the House, to which the noble Lord used to adhere, mean that it is my decision whether to give way. I have decided not to.

We, rather than the Government, had to table this Motion, which would allow us to take all stages of the Bill today and add it to today's agenda. However, it is not just the Government who are failing to respond to the decision of the elected House. We see on the Order Paper seven amendments to my Motion—all, it must be said, from Peers who have been very open and honest about their desire for, or at least their acceptance of, a no-deal departure. However, rather than just voting against my Motion, which is the correct way to halt proceedings if they have support across the House, they have chosen to try to delay the Bill so long that it can have no effect, and so thwart the decision of the elected House.

Some of those Peers have even, at the very last moment, found themselves in absolute need to speak on a really interesting Motion in the name of the noble Lord, Lord Forsyth, on the report *Making Tax Digital for VAT: Treating Small Businesses Fairly*—the very small businesses, presumably, that wrote to me saying, "Whatever we want, it is not no deal". But just before 6 pm last night, once they knew this Motion would be here today, they found themselves suddenly seized of the need to add their names to the speakers' list. I have a list of those who added their names at the very last moment.

What we are seeing today, in addition to those seven amendments and to more people wanting to speak later to put off the Bill, is a small group of unelected Peers in an unelected House trying first to stop us considering the Bill today, and then trying to talk it out. No doubt they are seeking to go through the night to halt the Commons' desire to prevent no deal. They cannot win this by the strength of their arguments or through support, but only by those tactics.

I and my friends will be here all night. I have discovered that breakfast starts at 7.30 am, and am taking orders now. If that is what it takes to do what the elected House of Commons has asked us, that is what we will do. For the moment, I urge the House to respond to the cross-party Bill which has arrived here, having been passed with urgency in another place, and, in this time of national uncertainty, do what we are appointed here to do—to consider in a timely fashion any legislation sent to us. We should agree to pass it in time for it to have an effect. I beg to move.

11.44 am

*Motion*

*Moved by Lord Forsyth of Drumlean*

That the House do now resolve itself into Committee.

**Lord Forsyth of Drumlean (Con):** My Lords, I beg to move that this House resolves itself into a Committee on the Motion in the name of the noble Baroness, Lady Hayter of Kentish Town, pursuant to Standing Order 62.

This has nothing to do with Brexit. It has to do with the procedures of this House and of our constitution. I am very disappointed. The noble Baroness, Lady Hayter, is held in very high regard in this House, and we have—I will not say "enjoyed" but we have had good-humoured discussion over and over again on issues arising from Brexit. But this is about how the House operates and how our constitution is carried out.

As I listened to the noble Baroness, I had a look at her CV. I see that she contributed to a book entitled *Prime Minister Portillo and Other Things That Never Happened*. Obviously she is doing one on Brexit at the moment, judging by the contribution she has just made. I am very surprised indeed that she of all people, and the Opposition, should be joining the insurgents in the House of Commons who have sought to undermine the process and procedures of the House of Commons.

If that sounds an exaggerated point, I will quote from what the putative Prime Minister in the House of Commons, my friend and former colleague Oliver Letwin, had to say—I do not know whether he had a word with the noble Baroness, Lady Hayter. He said in response to a colleague in the other place:

"My hon. Friend can rest assured—although this may not be of any comfort to him—that those of us who are promoting this course of action have taken the trouble to identify Members of the House of Lords who are well able to carry the Bill forward in the House of Lords.

My hon. Friend may also wish to know, although I fear that it will also be of no comfort to him, that there is overwhelming support in the House of Lords for this measure, and that we therefore anticipate that it will, in all probability ... pass through the House of Lords very rapidly. To that end, the House of Lords has in fact already passed a motion that provides for the expeditious consideration of exactly this form of Bill ... My sense, for what it is worth, is that although the House of Lords procedures are arcane and it is impossible to determine from the outside the time that will be taken, there is very substantial support for the Bill there, and it is therefore very unlikely that anything other than technical amendments, which might be wholly welcome, would come back, and they would therefore be accepted. I do not think that is an issue we ... face".—[*Official Report*, Commons, 3/4/19; cols. 1067-71.]

To describe our role as a House in protecting the constitution and reforming our legislation as “arcane procedures” shows an extraordinary arrogance, which is matched only by the way in which he and others have sought to turn the House of Commons into the Executive and to prevent the House of Commons and indeed the Government carrying out their proper duties.

**Lord Strathclyde:** My Lords, I am sorry for intervening on my noble friend, but I find it utterly extraordinary that we have just listened to a Motion being moved by a leading Member on the Opposition Front Bench who simply would not take an intervention. This debate can be solved so easily. Over the last two or three decades, the House has developed an extremely successful practice for dealing with urgent Bills. We do Second Reading on one day and we take Committee and the remaining stages either the next day or the day after that. I understand that the Bill is urgent, but there is absolutely no reason to have all stages taken on one day.

**The Countess of Mar (CB):** My Lords, the noble Lord is not making an intervention, which means a short question—he is making a speech. I wonder whether he would look at the *Companion* and see what it has to say.

**Lord Forsyth of Drumlean:** I am happy to give way to my noble friend if he wishes to finish his point, but I think he made it pretty clearly. The noble Baroness suggests that this has all got to be done today. Why? We could sit tomorrow or we could continue on Monday. There is no reason at all why it should all be done today.

**Lord Hunt of Kings Heath (Lab):** I am very grateful to the noble Lord for giving way. I really want to respond to the noble Lord, Lord Strathclyde.

**Lord True (Con):** Will the noble Lord give way?

**Lord Hunt of Kings Heath:** No, I am making an intervention. It is not for me to give way to the noble Lord, much though I am sure we will be happy to hear from him in due course. The point I want to make to the noble Lord is that this House has dealt with emergency legislation in one day. I refer him to the Human Reproductive Cloning Bill, which I took through this House on 26 November 2001, with a Second Reading and Committee in one day. It was to stop a scientist from another country who was coming to the UK to carry out human cloning, and legislation was needed urgently. We took it in one day. This legislation is needed urgently because we do not have a functioning Executive, we have the most critical situation this country has faced in decades and the Commons has had to do what it did. That is why it is urgent. Surely the noble Lord can see that.

**Lord Forsyth of Drumlean:** I am surprised that the noble Countess did not intervene, given the length of that intervention from the noble Lord. He will recall that the Bill that he referred to was agreed by the usual channels, which is the normal way in which we proceed. I realise that because I was in the House of Commons I may have got used to its procedures, but I have been

used to Bills being presented with the name of the sponsor. There is no sponsor on this Bill. The noble Baroness said that it was being presented for its First Reading, but the Bill appears to be an orphan. Who is the sponsor for this Bill?

**Lord Rooker (Lab):** I am.

**Lord Forsyth of Drumlean:** That is very alarming, because I thought that the noble Lord was a very good House of Commons man. When the noble Lord, Lord Hunt, said that in the House of Commons there was no functioning Executive, that is because, according to Sir Oliver Letwin and some of his friends in the other place, they are now the Executive. His remarks in the Commons were extraordinary. He said that,

“when this House comes to legislate, as I hope it will and fear it must, it will be, so to speak, a Cabinet. We will be making real-life decisions about what happens to our fellow countrymen—not just legislating in the hope that many years later, subject to further jots and tittles, the law, as administered by the system of justice, will work better. We will be making a decision about the future of this country. How can we possibly make those decisions unless we are properly informed? The process of which we are now at the start will require the fundamental realignment of the relationship between the civil service, Government and Parliament. There is no way we can continue to act as though we were merely a body to which the Government were accountable; for a period, for this purpose, we will have to take on the government of our country”.—*[Official Report, Commons, 14/2/19; col. 1110.]*

This is what is being said at the other end of this building.

**Viscount Ridley (Con):** I am very grateful to my noble friend for giving way. The point I wanted to make, which addresses the intervention of the noble Lord, Lord Hunt of Kings Heath, addresses the point that my noble friend has just made. It is that, admirable as the Bill that the noble Lord, Lord Hunt, brought forward in one day was, it was not on a major constitutional issue.

**Lord Forsyth of Drumlean:** My noble friend is quite right. The point that I am making is that at the other end of this building we have, in Sir Oliver Letwin’s own words, a revolutionary action taking place.

**Lord Blunkett (Lab):** I am very grateful; I thank the noble Lord very much indeed for giving way. Was not part of the campaign during the referendum about the sovereignty of Parliament, not the sovereignty of the Government? Is not the delay in passing a Bill already through the Commons bringing this House into disrepute?

**Lord Forsyth of Drumlean:** It was indeed about the sovereignty of Parliament. The sovereignty of Parliament means that Parliament has a role to hold the Executive to account, not to become the Executive, as the noble Lord well understands and knows.

**Lord Howard of Lympne (Con):** In answer to the noble Lord, Lord Blunkett, is it not the case that Parliament delegated its decision on the issue underlying these proceedings to the people of this country? The problem is that far too many people in Parliament do not like the answer they got.

**Lord Forsyth of Drumlean:** My noble friend is absolutely right, and I thought I might deal with some of these arguments on the next amendment. I am trying to make a case here and am getting lots of interventions. The noble Baroness said we were trying to delay the passage of the Bill, but I am being delayed by interventions from her colleagues; I am anxious to make rapid progress.

**Lord Lamont of Lerwick (Con):** On the interventions from the noble Lord, Lord Hunt, and the noble Viscount, Lord Ridley, while it is true that there have been expedited proceedings in times of emergency or for security measures or measures relating to Northern Ireland, those expedited proceedings have normally taken place when both sides of the House have agreed that it was necessary. This measure is being introduced despite being opposed by the Government.

**Lord Forsyth of Drumlean:** I absolutely agree, and it is questionable whether it is necessary. My understanding is that the Prime Minister has already indicated that she plans to ask for an extension of our Article 50 period, so we do not need this Bill. I am told that when this point was put to our putative Prime Minister, Sir Oliver Letwin, he said he needed it as an insurance policy. I am sorry, but subverting our constitution for an insurance policy seems a pretty high premium to me.

**Lord Robathan (Con):** Is my noble friend aware of the opinion of the excellent and rather consensual chairman of the House of Commons Procedure Committee? He said the following yesterday:

“The House of Commons is about to pass a major piece of legislation without a Report stage or a substantive Third Reading. If the Government did this, the House would rightly be deeply irritated with them, so the House should find no virtue in its actions this evening”.—[*Official Report*, Commons, 3/4/19; col. 1211.]

**Lord Forsyth of Drumlean:** Indeed, and perhaps even at this late stage the noble Baroness might be prepared to reconsider her Motion. I would be perfectly happy if we had Second Reading today and took the Committee stage another day; there is no great issue here.

The noble Baroness suggested that the amendments had been tabled by people in favour of no deal; that is what she said. As I said at the beginning, this is not actually about the merits; we will get on to those later. As she sought to imply that one was coming from a biased position, I wonder if she would like to look at the pamphlet produced by Sir Stephen Laws and Professor Richard Ekins, entitled *Endangering Constitutional Government: The Risks of the House of Commons Taking Control*. They also picked up those words I quoted from Oliver Letwin, and this is what they say:

“By those words, Sir Oliver announced his intention to create a constitutional crisis, and invited MPs to join him in a flagrant and destructive attack on our current constitutional settlement. However, even if many MPs resile from the conclusion that the Commons must become the Cabinet, the course of action MPs have now set in motion, with help from the Speaker, is one which undercuts the Government’s capacity to govern and its freedom to set the agenda—to propose policy which Parliament might then choose to resist, adopt or adapt.

If the Commons continues down this path unopposed, the Government will end up in office but unable to govern. The Commons would nominally have confidence in the Government but would in practice not extend to the Government the freedom that such confidence would otherwise entail to carry out any policy initiative. Again, the constitution does not require that Parliament should accept the Government’s proposals. But unless the Government enjoys the initiative in formulating and proposing policy, the country cannot be effectively governed; and the relationship between the political authorities and the people will break down if MPs act in mutually inconsistent ways in performing their dual role both as an electoral college for government and in exercising oversight over the conduct of public affairs”.

What a mess we are in. Members opposite, in this House, of all places, where we have conducted the debate in a civilised manner—

**Lord Warner (CB):** My Lords, does the noble Lord accept that the Prime Minister has accepted that her Government cannot get her legislation on Brexit through the House of Commons and needs to consult the rest of that House on alternative approaches?

Noon

**Lord Forsyth of Drumlean:** Yes, indeed, and that is why we do not need this Bill, which is a point that I have already made. The Prime Minister has said that she wants an extension. She has asked—I think somewhat courageously—the leader of the Opposition to talk to see if they can find a common purpose, but we know that that has been received with a certain amount of cynicism on the Benches opposite. Most of them are not great fans of the leader of the Opposition, although today they appear to be united in conspiring with those people in the House of Commons to undermine our constitutional system.

In the House of Commons Standing Order 14 has always given the Government’s business priority. It has existed since the early 19th century. The Government have always had a veto on legislation which involves taxation or expenditure. I am afraid that the combination of some militant people who wish to prevent the will of the 17.4 million people who voted to leave the European Union and a rogue Speaker—

**Noble Lords:** Oh!

**Lord Forsyth of Drumlean:** —yes, a rogue Speaker who allowed Dominic Grieve to amend an Act passed by both this House and the other place by a mere Motion, is what has created these difficulties.

**Lord Singh of Wimbledon (CB):** My Lords, the noble Lord has said twice that the Prime Minister wants to get an extension of time. The passage of this Bill would give her additional strength in getting that time.

**Lord Forsyth of Drumlean:** I will say very gently to the noble Lord that he ought to read the excellent speech made in the other place by the Secretary of State, Stephen Barclay, in which he explained in great detail how this Bill actually makes it more difficult for the Prime Minister to achieve her objectives. At the end of the day, with the support of the noble Baroness, we are not in control here; it is the European Union that will decide the length of an extension. This Bill is making the Prime Minister’s task very much more difficult.

Anyway, there will be plenty of time to go into the ins and outs and the merits of the legislation, but I am moving a Motion that we should take consideration of this in Committee. I appreciate that it is an unusual procedure but, as the noble Baroness made clear in her opening remarks, these are unusual times and these are important issues. We need to be in Committee—

**Lord Naseby (Con):** Will my noble friend give way?

**Lord Forsyth of Drumlean:** In a second. As I say, we need to be in Committee because we need to be able to cross-examine the basis for the Motion tabled by the noble Baroness. We need to be able to speak more than once, which we cannot do unless we are in Committee. We need to consider the implications of this for the future conduct of business in this House. I will not read them out because I do not want to waste time—

**Noble Lords:** Oh!

**Lord Forsyth of Drumlean:** Okay, I will.

**Lord Foulkes of Cumnock (Lab Co-op):** My Lords—

**Lord Forsyth of Drumlean:** I am not giving way.

**Noble Lords:** Order!

**Lord Foulkes of Cumnock:** My Lords, the noble Lord has been speaking for 20 minutes.

**Lord Forsyth of Drumlean:** I have to say that if the noble Lord had been speaking for 20 minutes, it would have been much less interesting.

I will not read them out, but in the *Companion* are two pages of very important information about Private Members' Bills waiting to be discussed. Are we to have it that the Opposition can seize control of this House and accelerate Private Members' Bills by arguing that they are urgent? There is an opportunity here for the noble Lord, Lord Grocott.

**Lord Grocott (Lab):** My Lords, the attraction of accelerating Private Members' Bills to be considered in a day has great merit. For the record, my Private Member's Bill had its Second Reading in September 2017 and has just reached Report. I hope that anyone considering acceleration of Private Members' Bills in this way will agree to offer the same facility when I reintroduce my Bill.

**Lord Forsyth of Drumlean:** The noble Lord knows that I have sympathy for his Bill—although there are others here who do not wish to see his Bill proceed—but he needs to have a word with Sir Oliver Letwin, who is able to arrange these things, and get his colleagues lined up.

**Lord Naseby:** Is not my noble friend right? I speak as a former Deputy Speaker—I was elected to carry out that role—as well as a former Member of Parliament in the other place. There was no Report stage in the Commons, which in itself is extraordinary—and incredibly extraordinary on a major constitutional Bill—and a truncated Third Reading. It is no good the noble

Baroness on the Front Bench opposite saying there had been an exhaustive examination in the other place—there has not been. Why did Members of the other place pack up at half-past 11? Because they got tired. On the Maastricht Bill we went through the night for three nights running. That is how you look at a Bill in depth. My noble friend is right to ask that we should look at this Bill in depth during a Committee stage today.

**Lord Forsyth of Drumlean:** I am sure there will be time to discuss the way in which the Bill was handled. It was passed by only one vote—and that came from someone who was wearing a tag on release from prison. The noble Lord says, “For goodness' sake”, but this is a major constitutional matter. It was passed by one vote after speeches were limited to two minutes in the other place because of the guillotine. Does he think that is the way to proceed? He had a go at me the other day because I said that this practice of suspending our Standing Orders will lead to tyranny. He mocked me. He said, “Tyranny? How ridiculous”. All that lies between us and tyranny is that we respect the conventions of both Houses. Why do we do that? Because it is our constitution. I hope the noble Baroness will accept the amendment because she is in danger of tearing up our constitution in order to make a narrow party-political point. I beg to move.

**Lord Owen (Ind SD):** My Lords, I speak at a very difficult time for our whole country. However we see this debate in this Chamber, we have to consider how it will be seen outside of it. For what it is worth, if I had still been a Member of another place, I would have voted in principle against this Bill. It raises serious constitutional implications for another place, and I hope that very soon it will look at its rules of order and conventions and change them, so that this type of legislation can never again be presented either to this House or to the country.

It is true, in strict terms, that this Bill is not related to the real question before us: the withdrawal agreement and a treaty between 27 other EU countries and the United Kingdom. However, we cannot have this debate without recognising that it has wide implications for that consideration. It seems to me, on the balance of argument which has been presented, that if I were going to vote—but I am not—I would agree with the noble Lord, Lord Forsyth. This is a reasonable way of proceeding, although I know it may seem to some to be a blocking measure.

I understand the anger and frustration, and the belief that the procedures of the House of Commons have been changed in a way that was almost impossible to foresee for those of us who spent years there—I was there for 26 years. Nevertheless, it has done it; nevertheless, the Speaker has ruled; and, nevertheless, even by one vote, the Bill has been passed. We in this House have to be very careful about stopping this Bill. We may take a long time on it, and we may raise very serious constitutional questions about the way the House of Commons has behaved and urge it to change its procedures for the future, but if the word were to go out that the House of Lords had blocked the Bill, it would raise a very serious question. I have never made any secret of my view that this House needs very

[LORD OWEN]

substantial reform, and if noble Lords want to bring on the day that this House is changed in a very substantial way, it will happen. Noble Lords need to be extremely careful.

One thing I urge the House to remember is that, at long last, the Prime Minister of this country and the leader of the Opposition are meeting in what appears to be a climate of compromise with a readiness to try to put the country's interest first. It may or may not succeed, but it is profoundly to be hoped that it does.

How will this whole thing look, against that atmosphere and that priority, to the 27 countries that will have to consider this Bill, if it were to become an Act? The Prime Minister has already indicated what she wishes to do, but they are in control of the procedure. Many times in this whole debate about Europe, I warned this House about Article 50, which we should never have used. It is deliberately designed to stop the sort of normal compromise and agreement which has proceeded in both Houses over many years. We are not in a so-called negotiation, and people are now seeing it. In front of us, we have a proposal from 27 countries. It may be that the Prime Minister is ready to go along with it, and perhaps the House will eventually, but it is not a negotiated procedure in the normal sense of the word, and those countries have the right to make the decision about whether to allow a postponement.

Furthermore, something we should consider is that it has to be unanimous, so just one country can refuse. We know they are thinking very carefully about whether they will allow this. Even if we get around it procedurally, they are worried about its implications for the whole tone and debate in their countries when electing the new European Parliament. The way we debate here and in the other place will go a long way to deciding whether they will wish to accept a postponement, which I profoundly hope they do. Do not think that we are in a little bubble here which has no implications for anything else.

This country has a long record of accepting international treaties. This country has a long record of sending its Ministers, particularly its Foreign Secretary, out to negotiate under the royal prerogative. It was a great mistake when we changed the royal prerogative and the right of a Minister to go into an international treaty to trade across the table and to come back to Parliament and ask for a yes or no. That is how we have dealt with international treaties. The obligation has been on Ministers—the Foreign Secretary and everyone else—to talk with their opposite numbers throughout a treaty-making process so that there was built-in consideration of the bipartisanship of foreign policy. Do we deny that virtue that we have had over centuries in this House and in another place, whereby international politics was, if possible, conducted under bipartisanship? Are we throwing all that out too?

Time after time during this process we have failed to understand that our own constitution is a check. Parliament—we here and those in the House of Commons—voted for a referendum, yet what does the country see? It sees an elite in both Houses, and in London, blocking the decision democratically made by the electorate in the referendum. Shame on you if you do anything to let that happen.

12.15 pm

**Lord Mackay of Clashfern (Con):** My Lords, I understand that the European Union has made it clear that, for an extension to be granted, it must know the reason for it. I would have been much happier with a decision in the House of Commons—not necessarily through this sort of procedure—that told the Prime Minister, by agreement, what it wanted to give as the reason. This is a fundamental part of the Bill. It is asking the Prime Minister to go and ask for an extension without specifying the reason to be put forward. Surely if the House of Commons requires the Prime Minister to do that, the minimum it should do is give an instruction as to the basis on which it wants that. However, for reasons I do not completely understand, we are in this position.

It is worth remembering that the European Union said at the beginning of these negotiations, described so eloquently by the noble Lord, Lord Owen, that it was determined to agree the withdrawal agreement before any substantial discussion about the future. Therefore, it is now urgent to agree the withdrawal agreement. The Prime Minister's agreement with the European Union has come before the House of Commons a number of times, yet, as far as I know, no amendment to it has been proposed. Surely if we are dealing with the withdrawal agreement, it is important that what is wrong with the Prime Minister's one, in the eyes of the House of Commons, is made clear in an amendment to it. Of course, the European Union says that it will not agree to such an amendment, but if the option is a no-deal departure instead of an agreed departure, the European Union might well prefer a revised agreement. I do not know whether that is the case—needless to say, I am not party to these negotiations. I do not intend to be here all night either.

I am trying to understand what is going on. I believe that we need to concentrate on the withdrawal agreement. Nearly all the discussions in the House of Commons, so far as I have been able to follow them—they are quite detailed—have been about the future relationship. One problem is the provision in the present agreement about the future arrangement in the shape of the Irish backstop. It seems to me that that should not strictly be part of the withdrawal agreement, but part of the arrangements for the future. That is a possible amendment to the Prime Minister's deal that might be of some interest.

**Lord Forsyth of Drumlean:** I am most grateful to my noble and learned friend. The House of Commons passed a Motion saying that the agreement should be amended to replace the backstop. That is what the House of Commons decided but, unfortunately, the Government do not appear to have asked the European Union to do that.

**Lord Mackay of Clashfern:** I understand that. To ask to amend the agreement is one thing, but to tell them the specific alteration is another. I am very familiar with that particular Motion, which passed. The point that I am trying to make is that if you want to change a document, you should propose the amendment you have in mind. The amendment tabled—very wisely, if we wanted to get some agreement—did

not do that. All it said was that we must get alternative arrangements. What alternative arrangements are likely to be suitable? This point seems very important.

**Lord Hamilton of Epsom (Con):** Has the EU not made it absolutely clear that it is impossible to reopen the agreement?

**Lord Mackay of Clashfern:** That is what it says, but why should we accept that? It is supposed to be a negotiation. If we wanted an alternative arrangement, I should have thought that the position should be us saying what that alternative is. I have heard, “We don’t know what the UK wants”, again and again. A specific amendment to the agreement might well be subject to further consideration.

**Lord Pannick (CB):** My Lords, the House of Commons sent us a Bill that its Members consider urgent. We should get on and consider its merits and demerits. Forty-nine noble Lords have put their names down for Second Reading, including the noble Lord, Lord Forsyth. There will be ample time during Second Reading for all these points to be explored. I suggest that we get on and do it.

**Lord True:** My Lords, when the great US Constitution was written, there is a story of, I believe, Thomas Jefferson—

**Noble Lords:** Order!

**Lord Harris of Haringey (Lab):** My Lords, I understood that the noble Lord, Lord Pannick, moved that the Question be now put. If he did not, I would like to do so.

#### *Motion*

*Moved by Lord Pannick*

That the Question be now put.

**The Deputy Speaker (The Countess of Mar) (CB):** My Lords, I am instructed by the House to say that the Motion “That the Question be now put” is considered a most exceptional procedure, and that the House must not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of the business of the House. Further, if the Member who seeks to move it persists in his intention, the practice of the House is that the Motion be put without debate.

**Lord Pannick:** I wish to move the Motion.

**The Deputy Speaker:** The Question now is that the Question be now put.

**Noble Lords:** Which Question?

**Lord True:** My Lords, we must vote on the closure Motion that the noble Lord has moved, stopping a number of people who wish to address an important point in so far as the procedure of this House is concerned. If I can be helpful to the noble Lord, the procedure is that we now vote on that, if he would like to move for closure.

**The Deputy Speaker:** My Lords, there is no debate on this. The Question is that the Question be now put.

12.24 pm

*Division on Lord Pannick’s Motion*

*Contents 244; Not-Contents 119. [The Tellers for the Contents reported 244 votes, the Clerks recorded 239 names. The Tellers for the Not-contents reported 119 votes, the Clerks recorded 118 names.]*

*Lord Pannick’s Motion agreed.*

### Division No. 1

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12.39 pm

*Division on Lord Forsyth's Motion to resolve into a Committee of the Whole House*

*Contents 94; Not-Contents 254.*

*Lord Forsyth's Motion disagreed.*

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12.55 pm

*Amendment to the Motion*

*Moved by Lord Forsyth of Drumlean*

Leave out from “move” to the end and insert “that the Standing Orders of the House relating to public business shall apply to all proceedings on the European Union (Withdrawal) (No.5) Bill.”

**The Deputy Speaker:** My Lords, it may be for the convenience of the House if I say that, if any of the amendments in the names of the noble Lord, Lord Forsyth of Drumlean, the noble Lord, Lord True, the noble Baroness, Lady Noakes, or the noble Viscount, Lord Ridley, are agreed to, I will not be able to call the amendments in the names of the noble Lord, Lord Robathan, the noble Lord, Lord Hamilton of Epsom, and the noble Lord, Lord Blencathra, by reason of pre-emption. In addition, if any of the amendments in the names of the noble Lord, Lord Forsyth of Drumlean, the noble Lord, Lord True, or the noble Baroness, Lady Noakes, are agreed to, I will not be able to call the amendment in the name of the noble Viscount, Lord Ridley.

**Lord Empey (UUP):** My Lords, before we move to the next speech, I make a plea. Those of us who sit at this end of the Room cannot hear what is being explained from the Woolsack. I ask the authorities of the House, if the human race can send people to the moon and do wonderful things, how is it that we cannot get a sound system by which we can hear very important notifications about what we are supposed to be doing?

**Lord Forsyth of Drumlean:** My Lords, nor, it seems, can we actually implement what 17.4 million people have voted for.

My amendment is very simple and requires that we reject the proposal from the noble Baroness, Lady Hayter, to suspend our Standing Orders, and that we treat this Bill in the same way as we would treat any other Bill. I appreciate the points that have been made about the urgency of the consideration of this matter, but I have already indicated that it would have been perfectly possible for us to consider the Second Reading of this Bill today and have its Committee stage on Monday. That would have given people a chance to absorb the arguments, to treat them properly and to put down amendments. As it is, it will be extremely difficult for people to put down amendments for the Committee and Report stages of what is a vital Bill.

The noble Baroness suggested that this is some kind of partisan exercise by leavers. I have to say that those who are jeering have probably not read the Bill. If they read it, they will find that it makes it much more difficult for the Prime Minister to reach an agreement

on her extension, because she has no authority. She has to come back to the House of Commons if something is proposed that is not as she has proposed, and it actually makes the process more difficult for those who wish to avoid no deal and see this carried through speedily and effectively. It passed the House of Commons by one vote without amending that very basic point.

What this House is very good at is reading legislation, putting down amendments and agreeing sensible conclusions. It was impossible for the other place to do this, given the timetable that was set. When the Secretary of State, Stephen Barclay—who I think has done a magnificent job in very difficult circumstances—complains that he has only a few minutes to address these matters, something has gone very awry. I was struck, and indeed moved, by what he had to say at 7 pm last night in the House of Commons:

“We are passing the Bill in haste and do not have adequate time to debate it in the manner that I would like us to—there is only one minute left on the clock. There are problems with the speed of its passage, the constitutional principle of it and the way it will interact with any decision reached by the Council that differs from the earlier decision taken by the House. I hope that the constitutional experts in the other place will address some of the Bill’s flaws. It is because of those defects that the Government will oppose the Bill, and I urge Members to oppose this defective Bill”.—[*Official Report, Commons, 3/4/19; col. 1146.*]

If ever there were an invitation from a Secretary of State to ask this House to do its constitutional duty, that is it.

In the most appalling circumstances, when time for debate was very limited, the thing was rammed through the House of Commons in nine hours. All my amendment does is say, “Please can we actually do our duty and carry out the proper scrutiny of this Bill, and reject the suggestion by the noble Baroness, Lady Hayter, that it all has to be done in haste?”

1 pm

It is not just the Secretary of State who has expressed concern about this: concerns have been raised about the speed, and the precedent that would be created, undermining our ability to govern this country—that is pretty serious. Concern has been expressed by the chairs of the European Scrutiny Committee, the Procedure Committee and the Public Administration and Constitutional Affairs Select Committee. This House cannot ignore that and just say, “We are not going to have proper debate; it is all a filibuster”. This is what we are here for. If we are not capable of doing that, what is the point of us? What is the point of having 100 people on the Liberal Benches if they are not actually carrying out their constitutional duty, which is to be guardians of the constitution, to scrutinise legislation and to hold the Government—in this case Sir Oliver Letwin and his chums—to account?

I almost made the point earlier that the noble Baroness, Lady Hayter, is sitting in the wrong place today. She should be sitting on the Government Front Bench, because she is acting as if she is the Government. That is an extraordinary thing to happen in this House. It shows complete contempt for our constitution and the ways in which we operate.

There are other issues we need time to consider. The Speaker of the House of Commons, who has made some interesting rulings, has taken the view that

this Bill does not require a money resolution. If the Prime Minister asks for an extension to a particular date and the European Union says, “You can have your extension but you will have to pay us another £30 billion”, would that not involve expenditure? Does this Bill not commit the Prime Minister, as a matter of law, to accept that? And yet, apparently it does not require a money resolution. Why not? Because if it did, the other place would not have been able to send it here. There is chicanery going on here, and it is up to this House to scrutinise that.

People are watching. Time and again they have been promised that we will leave on 29 March—I will not go through the whole litany of things. The pantomime which they have seen in the other place has done huge damage to the standing of Parliament, whatever side of this argument you are on. Please let this House carry out its duty in a way that will be respected by the public. That involves us not setting aside our important Standing Orders, which are the guardians of ensuring this matter be dealt with properly. I beg to move.

**The Lord Speaker (Lord Fowler):** The original Question—I hope the noble Lord, Lord Empey, can hear me—was that this Motion be agreed to, since when an amendment has been moved to leave out from “move” to the end and insert the words as set out on the Order Paper. The Question I now therefore have to put is that this amendment be agreed to.

**The Lord Privy Seal (Baroness Evans of Bowes Park) (Con):** My noble friend Lord Forsyth’s amendment gives me the opportunity to speak both to the amendments tabled to the Business of the House Motion and to the Motion itself.

I regret that we find ourselves in this position today, and I believe that there are concerns around all corners of this House regarding the precedent that the European Union (Withdrawal) (No. 5) Bill has set in the House of Commons. I am extremely disappointed that we are now facing a similar attempt to force that approach on this House. This House gets its legitimacy not from its composition but from the performance of its role. As Leader of the House, I have the responsibility within government to ensure that this House’s role is respected in the way that the Government ask it to consider legislation. In these unusual circumstances, where the Commons has passed legislation which is not supported by the Government, today this is the responsibility of those promoting the Bill.

When the Government seek the expedition of a Bill, we include the Explanatory Notes, including notes on the case for it to be expedited. Unfortunately, there appear to be no such Explanatory Notes today, which does not aid our consideration of the Bill. The amendment in the name of my noble friend Lord Robathan notes the irregularity of the position we find ourselves in. The amendments in the names of my noble friends Lord Hamilton of Epsom and Lord Blencathra raise the roles of the Constitution Committee and the Delegated Powers and Regulatory Reform Committee, and I have sympathy for all three of these amendments.

However, to avoid any accusations of hypocrisy from these Benches, I must acknowledge that there are situations where this House has to take decisions on

legislation without the guarantee that our Select Committees will be able to produce reports. I know that the Government, and past Governments, have not always covered themselves in glory on those points, as noble Lords have regularly pointed out. Therefore, Ministers will not be taking part in Divisions on the amendments in the names of my noble friends Lord Hamilton or Lord Blencathra. The amendments in the names of my noble friends Lord Forsyth, Lord Ridley and Lord True argue that the Standing Orders should apply to the Bill in the normal way. This is the view of the Government, and we will therefore support these amendments.

On Tuesday evening, the Prime Minister set out the Government’s next steps, including her intention to seek a further extension under Article 50. A European Council meeting is scheduled for Wednesday 10 April, at which this request will be discussed. I am therefore in full agreement with the amendment in the name of my noble friend Lady Noakes. The Government see this legislation as unnecessary to achieve such an extension with the European Council.

Because of the speed at which this legislation is being considered, we have genuine concerns that this Bill could tie the hands of government and, in fact, be contrary to its stated objectives, as my noble friend Lord Forsyth rightly pointed out. The Bill creates a process whereby, if the European Council proposes an alternative date on 10 April, we would need to come back to Parliament the following day—Thursday 11 April—to get its agreement to that alternative date. By this point the Council would be over. The leaders of the other member states would have gone home and it would put us in the position of potentially having to try to agree a further extension with the EU through correspondence in the 24 hours leading up to our departure on 12 April. I simply do not believe this is a sensible or desirable process. On that basis, the Government’s position is the same as that stated yesterday by the Secretary of State for Exiting the European Union. We will be opposing this Bill again today.

Many noble Lords have commented today, and on other occasions, on the lack of scrutiny legislation often receives in the House of Commons. I ask noble Lords to think carefully before they vote in favour of the Motion of the noble Baroness, Lady Hayter, which would indicate that, although small, this significant piece of legislation should require only two days of parliamentary debate across both Houses. If, after amendments have been disposed of, the noble Baroness presses her original Motion to a vote, the Government will oppose it, as we did in the House of Commons.

### *Motion*

*Moved by Lord Warner*

That the Question be now put.

**Lord Warner:** My Lords, I think the mood of the House is that we should move as expeditiously as possible through these amendments to the Motion, so that we can consider the substance of the European Union (Withdrawal) (No. 5) Bill as quickly as possible. I therefore urge the House that the Question be now put on this particular Motion.

**The Lord Speaker:** I am instructed by order of the House to say that the Motion “That the Question be now put” is considered a most exceptional procedure and the House will not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of the business of the House. Further, if a Member who seeks to move it persists in his intention, the practice of the House is that the Question on the Motion be put without debate. Does the noble Lord still wish to move this closure?

**Lord Warner:** He does.

**Lord Lilley (Con):** My Lords, on a point of order—

**The Lord Speaker:** With great respect, I must remind the noble Lord that he is not in the House of Commons. We do not have points of order in this House.

1.09 pm

*Division on Lord Warner’s Motion*

*Contents 227; Not-Contents 111.*

*Motion that the Question now be put agreed.*

### Division No. 3

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1.21 pm

*Division on Lord Forsyth’s amendment to the Motion*

*Contents 123; Not-Contents 251.*

*Lord Forsyth’s amendment to the Motion disagreed.*

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1.36 pm

#### *Amendment to the Motion*

#### *Moved by Lord True*

Leave out from “move” to the end and insert “notwithstanding the non-binding resolution of the House of 28 January that Her Majesty’s Government should provide sufficient time 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, that this House does not consider it is in keeping with the traditions and procedures of the House of Lords, its proper scrutinising role or its function as a safeguard of the constitution to apply unprecedented procedures to this Bill, and therefore declines to dispense with normal Standing Orders.”

**Lord True:** My Lords, it is probably worth placing on the record what has happened so far today, because it is germane to the argument I wish to put to your Lordships. It is the same argument that I put to my Front Bench last week: your Lordships would make a grave error if they adopted the habit of not adhering to their Standing Orders. Last week I was rather disobliging to my Front Bench, and I apologise if I was a little sharp to my noble friend the Leader of the House. I submitted to the House—and found some support across the House, although notably it was whipped against by the Front Bench opposite—that it would be wise for your Lordships to wait for a report from the appropriate committee before taking a grave and important decision. The Government declined to do so. What transpired afterwards was that no doubt the Government took advice from wiser people than me, and wiser people outside the House. The Government actually adjourned the House the next day to do precisely what I had asked them to do the previous day and waited to hear the report from the Joint Committee on Statutory Instruments. I condemn the Government’s attempt to set aside Standing Orders, but I congratulate them on listening.

Today we have a similar but even graver attempt to set aside our Standing Orders, which comes not from the Front Bench of the Government but from Her Majesty's Official Opposition. Let us be under no illusion here: that side is whipped and is acting not at the behest of the slightly risible figure of Sir Oliver Letwin. It is the Labour Party that provides all the votes for Sir Oliver Letwin—the bulk of the votes—that is moving this procedure today and that is seeking to abuse the procedures of the House, with the support of the Liberal Democrats. I believe that when the Official Opposition seek to usurp the role of the Government and to set aside the proper procedures in this place, they should submit themselves to the same scrutiny as the Government are required to do, which we glory in every day. Why do we come here every day?

**Lord Foulkes of Cumnock:** I am beginning to wonder—

**Lord True:** What did the noble Lord say? Would the noble Lord like to stand up and repeat what he said?

**Lord Foulkes of Cumnock:** No.

**Noble Lords:** Go on!

**Lord Foulkes of Cumnock:** I said I am beginning to wonder why the noble Lord comes here every day.

**Lord True:** The noble Lord is a great wag, is he not? I have often thought the same about him, but I find him too engaging to have said such a thing.

I return to my argument. One thing I regret about the amendment I have tabled—but it was necessary because of the nature of the Bill before us—is that it mentions the House applying,

“unprecedented procedures to this Bill”.

I believe my amendment would be better if it said “any non-emergency Bill”. I think your Lordships are teetering slightly on the edge of a different dangerous place from that which was put to us earlier in the debate. In this part of our proceedings, the argument is ultimately about procedure. That may be arcane, but later in my remarks I will develop why I think that that is extremely important.

Our first discussion today was when my noble friend asked us to go into Committee. I would like to have spoken on that and I will now develop the points that I would have made then because they are absolutely germane to the point. My noble friend was responding to a situation where the Official Opposition, at the behest of the Labour Party, has come to the House and for the first time is asking your Lordships to accept this unusual procedure: the combination of the Bill before us and what happened in the Commons yesterday. That deserves to be examined. Why did my noble friend suggest that we should go into Committee? The reason was shown to us. When the former Leader of the House, my noble friend Lord Strathclyde, tried to intervene on the noble Baroness, Lady Hayter, based on all of his experience—my noble friend Lord Strathclyde enjoys great respect on both sides of the House because he is a great servant to this place—he wanted to ask

for an explanation from the noble Baroness, acting for the Official Opposition, about usurping the role of the Government and demanding that this House pass legislation which is not approved by the Government in one day, she declined to take his intervention.

That showed me why my noble friend was right to ask that we should go into Committee. Why should not the Official Opposition or anyone else who might want to use this procedure in the future not be required to make the same response to the House on the whys and wherefores as a Minister of the Crown who comes before noble Lords has to do? What is it about the Official Opposition with this bogus cry—

**Lord Robathan:** I am very interested in what my noble friend is saying. For clarification, do the people who are backing this not understand that this will be used against them if it is allowed to continue?

**Lord True:** Well, my Lords, it is for each noble Lord to draw whatever conclusion he or she wishes. I simply draw attention to the fact that this is a device that is being used by the Official Opposition, with the approval of the leader of the Labour Party, against the House of Lords.

**Lord Elton (Con):** My Lords, to support my noble friend Lord Robathan, the point he has not made clearly is that members of the Opposition wish to be sitting on this side of the House, and one day they will. They will then find the dragon's teeth they sowed cutting away at their feet.

**Lord True:** I am sure that my noble friend is right but really I am not so interested in the politics of the matter. Of course that is the case, but it is the case of life and of democracy. The cry of democracy is that the people choose and the Government change. That is the glory of freedom. What is going on in the House of Commons, with your Lordships being suborned to assist in it, is that those who the people of this country did not choose are trying to use the procedures of both Houses to deny the people of this country what they actually did choose, which was to leave the European Union.

**Lord Spicer (Con):** One of the reasons why the Opposition are using the strange technique that my noble friend has exposed is in search of the word “compromise”. Surely that is something that we are going to have to look at later in the proceedings. That is because in a binary situation, you cannot have a compromise: you are either in the European Union or you are out of it. You particularly cannot reach a compromise with someone who is an extreme socialist and is using that as his red line.

1.45 pm

**Lord True:** Again, my noble friend makes a strong point that takes us to the substance of the Bill, which we will discuss later. After many years in the usual channels trying to do the best for this House, and 13 years of opposition when we never attempted a procedure of this kind, I am trying to say to noble Lords, particularly

[LORD TRUE]

our reasonable colleagues on the Cross Benches, that we should be cautious about waving this through so easily.

Perhaps the noble Lord, Lord Pannick, had a bad day in court because he jumped up and tried to cut off argument. Are lawyers not supposed to listen? I apologise because the noble Lord is not in his place, but he did not allow anyone else to make the case for going into Committee. I turn to the last Motion we had. Let me remind noble Lords of what was before the House.

**Noble Lords:** We know what it was.

**Lord True:** Noble Lords may know but they need to be reminded and the world outside needs to understand. The last proposition was that in relation to this Bill, shoved through the House of Commons late at night, which a former Leader of the House has just risen to tell us has flaws which need to be examined and addressed in Committee, we should be prepared not to set aside the Standing Orders but to look at its different stages on different days. Perhaps we could take the Second Reading today and take the remaining stages on another day. Is that such an unexceptionable proposition? Is that not what your Lordships are here for? I repeat the question I put earlier: why do your Lordships come here, if not to scrutinise? What is the purpose of the House if not to scrutinise properly?

**Baroness Altmann (Con):** I thank my noble friend for giving way. I just make the point that this House has been asked by the other place to consider a Bill that it would like to pass. We are debating issues here that could have been debated on so many other occasions. We have been passing statutory instruments for no deal without impact assessments and without proper consultation. We have overridden, when it has been convenient for those who perhaps want to leave with no deal, but this is about stopping us crashing out with no deal and giving the Prime Minister the support she may need to stand firm and go back to the European Union to ask for a longer extension so that we do not crash out with no deal.

**Lord True:** My noble friend is entirely wrong. That is not the point before the House in this Motion. Indeed, the procedure I have suggested would still allow the Bill to be passed. However, since when has it been the function of this House to say “Yes, sir” to any piece of legislation suddenly rushed down the Corridor? That is the proposition being put to us by my noble friend Lady Altmann: “The House of Commons has asked us to pass this, so we must pass it. Get on with it”. Every time someone comes to this House bearing papers with a green ribbon on them, they are asking us to agree. Of course they want us to agree and they would probably prefer us to do so quickly, but we do not have to. That is called freedom and it is called scrutiny. It is also called consideration, but none of that is allowed for in the procedures that have been put before us today. The Bill comes with no Explanatory Notes and not even a name on it, as the noble Lord, Lord Rooker, admitted, yet we are being asked to pass it in a hurry or we are behaving badly. The day when the House of Lords is behaving badly because it is

giving proper due consideration to a proposed Act of Parliament in the time that is sufficient and necessary for it to do so, as the noble Baroness asks in her amendment, is the beginning of the end for the House of Lords. That will be when the House of Lords says, “Yes, sir, we all want to go home”. I am sorry, but we need to be mindful of the importance of proper procedures.

I do not care for tweeting but I know that the noble Baroness, Lady Hayter, is a great tweeter. I was sleepless last night, thinking about what I might say today, so I had a look at what she had been tweeting. Your Lordships will be interested to know that on 24 February—you can look it up—she sent out a tweet complaining that the Government might want to get the withdrawal Act through in 10 days. She tweeted that the House of Lords does not have programme Motions; the House of Lords needs time to consider things. That was on 24 February.

It ought to be 1 April today—it is 4 April—because the noble Baroness has come forward with a programme Motion in which she says that the House of Lords cannot have more than one day to consider this matter. I do not eat Devonshire clotted cream, but I find the noble Baroness’s position as rich as that.

While I am talking about the noble Baroness, I feel I must say how discourteous it was to the House to table this Motion so late. We heard from the putative Prime Minister, Sir Oliver Letwin, yesterday morning that he had been discussing matters with his friends down the Corridor—who are here in person—so why could she not have tabled this Motion before that? She tabled it before the Bill had arrived from the House of Commons and knew what was there. She could have given better notice to the House but failed to do so. She tried to bounce the House at the very last minute and then came up with this trumpery that something has to be passed quickly when the Prime Minister has already said that she will do what the Bill asks her to do.

What nonsense is this? Why are noble Lords going along with this nonsense and being prepared to set aside their Standing Orders?

**Lord Foulkes of Cumnock:** Talking about Standing Orders—

**Lord True:** I have taken one intervention from the noble Lord and that was enough. All right, I will be different from his Front Bench.

**Lord Foulkes of Cumnock:** Talking about Standing Orders, the noble Lord, Lord True, will recall from when he was bag carrier for the noble Lord, Lord Strathclyde, that the *Companion to the Standing Orders* recommends that speeches should not exceed 15 minutes. He has now been speaking for 17 minutes. Would it not be appropriate for him to draw his remarks to a close?

**Lord True:** My Lords, I am introducing an amendment to a Motion, which is a different matter. I ask the noble Lord and others to consider that this is a matter of extreme importance to the House. In this little book—I do not know if the noble Lord has ever read it or knows what it is—are the Standing Orders of your Lordships’ House, which have been established

over centuries to protect our procedures and to help secure the liberties of the British people. They should not be lightly set aside. We set them aside frequently when there is an emergency, but on no basis of credible argument can what is going on today be considered an emergency. It is a charade—“chicanery” was the word used earlier—to enlist this great House in the political activities of the Labour Party, with which certain useful people in other parties, such as the Liberal Democrats, may go along.

The Liberal Democrat Leader should have been heard. Why did the noble Lord, Lord Warner, tell the House to choke off debate when the leading member of the Liberal Democrats wanted to follow the important remarks of the Leader of the House? It was wrong. That procedure of closure is also in our Standing Orders but it is not without reason that there is a note saying that it should not be lightly entered into. The noble Lord, Lord Warner, entered into it rather lightly.

What we have here is a pre-cooked plot—the gaff was blown by Sir Oliver Letwin in the other place yesterday—but it is the tip of the iceberg. One of my colleagues said earlier that if your Lordships consent to this kind of procedure being standard, what will happen when another Government are formed and a different person on the Front Bench says, “We set aside these Standing Orders. Your Lordships may consider this to be a scrutinising House but, no, it all has to be done in a day”? That is where we are heading.

That is not my surmise or what I am suggesting; it is what we see from the Official Opposition. As to the person who may be sitting here in a few months’ time if there were an election, what demur or doubt would she have in bringing forward such a Motion to frustrate your Lordships’ ability to consider and scrutinise legislation? Once you begin with a little sin and a little lie, big ones readily follow. We should be extremely cautious in assenting to this setting aside of Standing Orders.

**Lord Lilley:** Has my noble friend noticed the internal inconsistency of the Motion of the noble Baroness, Lady Hayter? It begins by referring back to the resolution of the House on 28 January that Her Majesty’s Government “should provide sufficient time”. It then goes on to curtail the time available to the House to consider this. How can both halves of the Motion be passed in one breath?

**Lord True:** My noble friend is right. He has anticipated the fast-approaching conclusion of what I will say.

It cannot be right not to allow sufficient time to consider a Bill which, as we have heard from my Front Bench, is still flawed; on which committees that have reported raised doubts; and which was being amended on the hoof by its own proponents in the House of Commons last night. There is no argument in logic because the Prime Minister has said that she will ask for a delay. There is no argument in procedure to say that we have to pass the Bill today. It is a political position taken up by the Official Opposition—I repeat, the Official Opposition—and we should not support it.

Everything I have sought to do in politics—and, by the way, I was proud to be the bag carrier, as the noble Lord, Lord Foulkes, so kindly put it, to my noble

friend Lord Strathclyde—both in administration and local government, and the privilege I have in being a Member of your Lordships’ House, is to speak for freedom. One of things that defines the freedom of this House is its free procedures: the right of us all to put down an amendment and to have it heard, not closed; and the right of us all to put down a Motion and have it closed, not waved away. These things may seem small and arcane to those on the outside but, to me, they are a small part of freedom—and I have always wished to live and conclude my life in that. I beg to move.

**Lord Baker of Dorking (Con):** Could my noble friend reflect on the fact that it would be a great disappointment if, after he sat down, someone were to move that the following person who wants to speak should not be heard? That would amount to a bigger abuse of procedure altogether. Curtailment of debate in this House is a serious matter. There should not be curtailment and I find it extraordinary that the Liberal Democrats and the Cross Benches go along with it. I remind them what JS Mill wrote in *On Liberty*. He warned democracy about the tyranny of the majority. He thought that that was the greatest threat to democracy. There is a clear majority on the Benches opposite that this Bill should pass. There is a minority on this side of the House. To silence the minority is very much against the principles of JS Mill, the founder of the Liberal Party. He would not have approved at all. I beg Members not to move the closure Motion too quickly because it is abuse of a basic democratic principle. This is an abuse of majority power. This House should not be sanctioning it.

2 pm

**Lord Hope of Craighead (CB):** On the point that the noble Lord made, two Cross-Benchers have moved closure Motions, but he should not assume that the other Cross-Benchers agree with them. We do not operate like that.

**Lord Forsyth of Drumlean:** They voted for them.

**Lord Hope of Craighead:** Some of them may have done, but the noble Lord should not assume that the group as such supported them.

**Lord True:** I would like to move to a conclusion, although I of course respect and acknowledge the noble and learned Lord’s intervention. Indeed, I suspect that the House, because it is pre-cooked, will not want to listen to what I am saying today, but I say to the House that this is the tip of a very deep and dark iceberg if we go on this way. Part of the protection of freedom in this House has been the existence of the Cross Benches. The Cross Benches are sometimes, often and always used to be prepared to listen and be the balance in the argument. Who will be a guardian, that balancing element in this House that guards against the tyranny of either of the great parties, if they survive this crisis, which wish to tip aside our procedures, suppress what we normally do and allow proper scrutiny? Who will be the protectors of that if not the Cross Benches?

**Lord Forsyth of Drumlean:** Following the point made by the noble and learned Lord, Lord Hope, I say that it is perfectly true that the Cross Benches do not take a collective view. It is also true that the two previous closure Motions were moved by Cross-Benchers and quite a large number of them voted for them.

**Lord True:** On these things, people have to stand up and be counted. I reflect that having made my speech last week against a strong Whip from my party saying that we should obey Standing Orders, I did not regret it and I asked myself whether I should intervene in this debate—I have intervened only on the Standing Order and the procedural point—and do it again. I felt that I must because not only is the pace so extraordinary but it is so odd that 227 Members of the House of Lords—your Lordships' House, the revising Chamber—voted to close off, after a few minutes, discussion of whether your Lordships should allow yourselves more than one day to discuss a Bill of such importance and such significance. I think that was a sad reflection on our love of our procedures which I confess are part of our freedom. Our freedoms were won by Parliament. They are held by Parliament and we in this place have a part in that, irrespective of where we stand on the debates on Europe. One thing I agree with my noble friend Lady Evans on is that we have heard a lot, but surely on this business of how we conduct ourselves we can rise above the debates that we are having later and consider whether this House wishes to embark down this road. I submit that when I suggested to my noble friend on the Front Bench last week that the Government should listen and adhere to Standing Orders, they did listen. They adjourned the House and we had the debate the next day. I now submit to the noble Baroness that she should show the same grace and that she should accept the proposition that we hear one stage today and have time to reflect on the later stages of the Bill on another day. That is not an unreasonable provision. I put that submission in conclusion to the noble Baroness.

**Lord Campbell-Savours (Lab):** This is an abuse of our procedures. Can it stop?

**Lord True:** I would have stopped 30 seconds later if the noble Lord had not risen. He calls it an abuse of Parliament. I call it the right of any Member of Parliament to put the case for proper procedures, freedom and accountability, and accountability lies there just as it must lie here.

**Lord Newby (LD):** My Lords, I shall begin by responding to the noble Lord, Lord Baker, who very helpfully quoted Mill at me. I absolutely agree that democracy requires the exercise of free speech. It also requires the following of rules and the exercise of its powers with responsibility. We have just heard a 30-minute speech. It may have been an excellent speech, and I am sure that if I now speak for 30 minutes it will be an excellent speech as well, but if I speak for 30 minutes, and all my colleagues speak for 30 minutes, we will never get to the substance of today's debate. Therefore, your Lordships will be pleased to know that I do not intend to speak for 30 minutes—25 should be enough.

The burden of all these amendments is that the House is being expected to follow unprecedented procedures. Is this surprising? We are in extraordinary, unprecedented times. We are in a national crisis the like of which has not occurred in my lifetime. It is a national crisis which consists in no small part of the fact that there has been a collapse of government. The Prime Minister, after seven hours in Cabinet, addressed the nation to say that she would like the leader of the Opposition to tell her what to do and that, if she did not like that, she would go to the House of Commons and ask it to tell her what to do within hours of having to put something to the European Council next week in order to prevent no-deal Brexit. This collapse of government is unprecedented, and it would be slightly surprising if Parliament did not respond to it by taking unprecedented measures to fill the vacuum where normally one finds government. The third unprecedented point, which is unprecedented in human history, is that unless we prevent a no-deal Brexit at the end of next week, this country will be the first democracy ever to have agreed to make itself poorer, less secure and less influential. Therefore, it is unprecedented and needs dealing with in unprecedented ways.

The key element which means that it is necessary to deal with this Bill today is just how little time there is. We are talking about a very few days before the Prime Minister has to write to the European Council, hopefully with some view about why we should have a further extension. As of this minute, the only thing that can be written in that letter about why we are doing it is because we cannot think of what we want. I hope that by close of business on Monday we will be a bit further forward on that, but, if this House blocks this Bill, as the noble Lord, Lord Owen, whom I do not always agree with, said earlier, how would that be perceived? How would it be perceived if we were to agree with the noble Lord, Lord True, that we could not possibly deal with this until a Select Committee had dealt with it? At a time of national crisis, I think that the world would think that your Lordships had lost a sense of proportion.

The other argument that has been made against the Bill, including by the noble Baroness the Leader of the House, is that it is unnecessary because of a commitment made by the Prime Minister. However, it is a sign of the confidence that the Commons has in the Prime Minister that it does not think that that is enough. It thinks—and I agree—that, unless we have something like this Bill, there is absolutely no assurance that the Prime Minister will come forward with the necessary guarantee.

Finally, I have two points to make about the amount of time that we have to debate the Bill. First, we will have longer to debate the Bill, the less time we waste on these procedural Motions. Secondly, I look forward to the debates that we shall have later. I look forward to the Second Reading and to debating amendments in Committee and on Report. I have brought my toothbrush. It will not be the first time that I have spent all night in your Lordships' House, and many of my colleagues have done the same. We are here at the service—says he very pompously—of the country to debate this issue for as long as the noble Lord, Lord Forsyth, and his colleagues want to debate it.

No doubt we will hear the same arguments time and time again but, if that is what the noble Lord wants, I shall, as always, look forward to hearing them and will be in my place to listen to them, however long it takes.

**Lord Lawson of Blaby (Con):** My Lords, the noble Lord the leader of the Liberal Democrats will be glad to know that I shall be brief. I will address myself to the main point embedded in what he said. To begin with, this is a most appalling day. I have served in Parliament for 45 years and there has never been an instance of constitutional vandalism of the scale that we are witnessing today and at the present time more generally.

I am on the record as having long been concerned that in this country we do not have a written constitution. The reason that we do not have a written constitution is not that there is anything bad about written constitutions interpreted by the appropriate courts and safeguarded by the courts; it is our history. If one looks across the world, one sees that written constitutions come into being only when there is a historical discontinuity. For example, when a colony of the United Kingdom is given self-government, it equips itself with a written constitution—although ironically, or worse than ironically, it seems that the majority of the Members of this House do not believe that we are capable of self-government. A written constitution also comes into being following a bloody revolution and frequently after defeat in wartime. We have been blessed uniquely in this country in not suffering these historical discontinuities, and that is why, uniquely, we do not have a written constitution and have to rely on respect for the procedures of Parliament. However, we pay a price for not having a written constitution. We pay a price for having had a reasonably trouble-free history, unlike the rest of the world, and that price has become evident today and in recent days.

The main point made by the noble Lord the leader of the Liberal Democrats is that the issues surrounding Brexit are so important that it is necessary and right to tear up the constitution. However, the reverse is the case: the more important the issue, the more important it is that the constitution and the conventions are respected. As there is a really important substantive issue of a constitutional nature lying behind this, the more important it is that we respect the constitution and do not engage in this vandalism. I respect the fact that views differ on the length of this debate but I think that everybody agrees that this is a very important issue, including the noble Lord, who said so himself.

2.15 pm

**Viscount Ridley:** Can my noble friend address this point? The problem that the Bill is trying to address is a disagreement between the Government and Parliament and between Parliament and the country. The idea that you resolve such a thing by ramming something through an unelected House in one day is surely a constitutional monstrosity of an even greater kind.

**Lord Lawson of Blaby:** My noble friend makes a very strong point. I am deeply concerned at the growing rift between Parliament and the people, with the refusal to accept the people's judgment, whether you agree with it or not. A very clear judgment was made in

the referendum. There is a real danger that undesirable but very often understandable insurrectionary forces will feel that they cannot trust the British Parliament or the British constitution, and a very ugly situation could well arise. Therefore, my noble friend is absolutely right.

**Baroness Deech (CB):** My Lords, I had not planned to speak, but I am literally moved to tell your Lordships what my feelings are. I have spent 55 years teaching and studying law, including constitutional law. If you want to know how effective I am, I have had in my lectures the noble Baroness, Lady Chakrabarti, the former Prime Minister Tony Blair and the noble Lord, Lord Pannick. The point about studying law—and probably many people in this House practise or have practised as lawyers—is that you internalise respect for the rule of law.

The noble Lord, Lord Lawson, explained about us not having a written constitution. Our constitution works only because of trust. Why do we accept the authority of the Lord Speaker, whoever he or she may be? Why do we accept the rulings of the clerks, disguised as they are in their wigs? It is because we trust them and because this has gone on for centuries. It is not a question of personalities; it is a question of the role that people fill. Each Session we take an oath, standing by the Dispatch Box, to be loyal to the Queen and, implicitly, to uphold the law. Why do judges not interfere with the proceedings of Parliament? There is no question of anyone challenging this law if it goes through today because the judges accept that Parliament deserves their trust. We trust the judges and they trust Parliament, and if that breaks down, the whole system breaks down. Not only is the constitution being damaged and trashed today but we have been subjected to gagging orders. I am speaking now because I think that, if I wait another five minutes, there will be another Motion to stop us talking.

**Lord Hannay of Chiswick (CB):** I am grateful to my noble friend for giving way. Can she categorise in terms of respect for constitutional convention and order a Government who are defeated in the House of Commons by 230 votes and just carry on, then have another vote on the same thing and are defeated by 180 votes and then carry on? Is that not a little odd in terms of practice?

**Baroness Deech:** It is unusual but it is not unconstitutional, because it lies in the power of the House of Commons to put an end to that situation, if it wishes to, by getting rid of the Prime Minister or passing the withdrawal agreement. We are suffering from a lack of trust that is about to come upon us, as I said. The constitutional damage may be irreversible.

I will add that there has been a lot of loose talk about sovereignty and Parliament taking control. We do not have our sovereignty; we gave it up in part when we joined the EU, and we will not recover it until we leave. At the moment we are like prisoners rattling the cage while outside the warders have the keys. We can debate all we like here, but we can see from this Bill that the EU 27 will tell us what to do. What is the point of delay, and of advising this and that, when they have said that they will not alter the withdrawal agreement, and the power lies with them?

[BARONESS DEECH]

I am sorry to say that I blame this breakdown in respect of the constitution in part on the EU. The effect of the EU has been to preside over judicial corruption across Europe; to preside over financial mismanagement and a lack of accountability in Brussels; to allow creeping right-wing extremism across Europe; to allow the appointment of Juncker when we did not want it; and to accept the appointment of Selmayr, apparently breaking all the rules that there are. This disregard for the constitution and for the rules that the EU itself lays down, which are flagrantly disobeyed by Poland, Hungary and others, is now lapping around our ankles.

Unless we uphold the constitution by following every little bit of our rules today—albeit that this might require people to be brief in their remarks, as I will be—the damage will be incredible. People out there who respect us, who respect the law, who do not need to be whipped into submission or coerced and who obey the police and the rule of law will wonder why they too have internalised the legal system if we cannot do so. We have to believe in our own legal system and our own procedure.

**Baroness Smith of Newnham (LD):** My Lords, I have considerable sympathy with the amendments, but the reason why I will not be supporting any of them is precisely that we are in a position where the Government have failed to deal with the Brexit referendum. The constitutional problem started there, and to suggest that we should not deal with procedures today is misguided. We have to deal with the crisis that is developing in this country. We need to get this legislation through and work with the House of Commons in order to try to resolve the constitutional mess that was caused by the referendum in the first place.

**Lord Howard of Lympne:** My Lords, I will say a few words following on from the speeches of my noble friend Lord Lawson and the noble Baroness, Lady Deech. Both of them referred to the fact that we have—and we have always regarded it as one of our glories—an unwritten constitution. That has its risks. In a set of circumstances where a country has an unwritten constitution, the safeguards of our liberties lie with our conventions, precedents and procedures. An unwritten constitution works only if the institutions of government respect those conventions, procedures and precedents. Under an unwritten constitution, the House of Commons has very great power—but the House of Commons should exercise that power with constraint, circumspection and respect for those conventions, procedures and precedents.

The noble Lord, Lord Newby, the Leader in this House of the Liberal Democrats, says that a breach of those conventions, practices and procedures is justified because we are in a state of national crisis. He will know that that is the pretence that tyrants have used down the ages for abrogating the safeguards that have existed in those countries to safeguard the liberties of their citizens.

That brings me to the role and responsibility in these circumstances of your Lordships' House. Surely if your Lordships' House has any role and responsibility,

it is to put a brake on the breach of those conventions, precedents and procedures that has undoubtedly taken place in the House of Commons. Be under no illusion: what has happened in the House of Commons will set a precedent that may be followed in circumstances that would have a much more dire effect on our liberties than the issues that we are debating and discussing today. If that precedent is to be tempered, the only body that can do it is your Lordships' House. That is why your Lordships' House should today put a brake on the breach of those conventions, precedents and procedures and vote for my noble friend's amendment.

**Lord Empey:** My Lords, I have form in speaking on emergency procedures whereby our legislation is put through in one day. It is frequently the case that legislation pertaining to Northern Ireland is shoved through Parliament in a day. The Government Front Bench will know that I objected strongly—I raised the matter in this House—to several Bills coming into the House to be dealt with in one day when it was perfectly clear that they could have been dealt with in a different way. However, the one big difference was that both the Government and the Opposition supported those pieces of legislation.

If I were the promoter of the Bill today, I would have to say to myself: "We are now at 2.26 pm, our proceedings started after Questions at around 11.30 am, we are still on procedure and we are going to be on procedure for quite some time". I would take the option that the noble Lord, Lord Strathclyde, put forward: get on to Second Reading and finish the business on Monday, when we will have had time over the weekend to consider it. I cannot see any reason why a rational person would not do that.

There is a more important issue. I have not been in this House that long; many noble Lords have been here far longer than me. However, I detect a complete change in the atmosphere in this place. Today has shown me that we are becoming the nasty House, and I do not like it. We have continuous interruptions of speakers from a sedentary position; we have heckling; and we have some nasty comments coming from wherever they happen to come when a certain individual is expressing his or her views.

The irony of it all is this: I represent a party that recommended remain, but the people spoke in a referendum that this House and most of the Members in it put their hands up for, and we accept the result without question. It is over. Leavers and remainers are gone—at least, that is the way it should be. But, if we go on in this way, we are going to leave behind us the bitterness that we found in Northern Ireland after the Belfast Good Friday agreement or the bitterness that was left behind after the miners' strike. In such circumstances personal relationships get damaged, and that is a great shame.

Technically the usual channels are not functioning, because it is not entirely clear today who is the Government and who is not. However, if I were promoting this Bill I would be working now to get us on to Second Reading and finish the thing off on Monday. There will be no loss of impetus in so far as the EU is concerned because, ironically, I think that the proposal coming forward in the Bill actually does more harm

than good. The fact is, sadly, that the European Union will see a Prime Minister going in to meet them on Wednesday virtually on her hands and knees—and that is not something I want to see.

From where I come from, I want to see a deal. That is by far the best outcome for my part of the world—but I know that that view is not expressed everywhere. However, I appeal to the House to prevent this nastiness, and the heckling and the gagging. The procedures could have been dealt with differently if we had been operating across the Chamber through the usual channels as we should. I urge Members to focus on dealing with this matter in a proper way, before we do irreparable damage to our House. I take the point made by the noble Lord, Lord Newby, that there is an emergency of a sort and that we have to try to get our act together by Wednesday. I accept all of that. Leaving the finishing stages of this legislation to Monday will not make an iota of difference to that, but I appeal to noble Lords not to proceed with this nastiness. It will not be repaired quickly if we continue in the way we are going.

2.30 pm

**Lord Strathclyde:** My Lords, the noble Lord, Lord Empey, has spoken with a good deal of sense. My understanding is that the usual channels had formally agreed to finish this Bill on Monday, and that that arrangement was withdrawn yesterday. The noble Baroness is shaking her head. I have 19 years' experience of dealing with process and procedure in this House. One abiding rule is that once you do not involve the usual channels, it all goes wrong. That is exactly what has happened today.

I know the noble Baroness is about to speak. Can she explain why it is so urgent that we sit virtually all night to pass this Bill? We could do what all the precedents set have done, and have the Second Reading today and finish the remaining stages at the beginning of next week, asking the usual channels—the noble Lord, Lord McAvoy, and my noble friend the Government Chief Whip—to organise it. That would get rid of the nastiness that the noble Lord, Lord Empey, referred to. It would make for a far more rational debate, and the Bill would be completed—I recognise there is a majority for the Bill in this House—in plenty of time for whatever else happens next week.

**Baroness Hayter of Kentish Town:** My Lords, we are actually dealing with the amendment on whether we should have a committee report. I draw the attention of the House to the speech Mr Steve Baker gave late last night in the Commons. I do not know why I should pick on him at this particular moment—

**Lord Newby:** He is here.

**Baroness Hayter of Kentish Town:** Oh! I had not noticed. Mr Baker was looking forward to the Bill coming to your Lordships' House, in the, "fervent hope that their Lordships will examine this Bill line by line",—[*Official Report*, Commons, 3/4/19; col. 1217.] and give it good attention. The hope was that we would get on and deal with the Bill, and that is what this Motion is about.

However, I speak now to only the amendment in the name of the noble Lord, Lord True. He asked me why I did not take an intervention from the noble Lord, Lord Strathclyde. I was moving a Motion: normally, you move a Motion, then people stand up and ask questions and points of order, and at the end one comes back with the clarification. That seems to be the correct way to do it.

On the particular issue of whether we should have a committee, we have a committee report on this Bill. Even if we did not, the point of committees is to assist this House, not to stand in the way when something needs doing. Their members are also Members of this House, and can therefore give their very wise—and often learned, in the case of the Constitution Committee—advice directly to the House. We can do it then.

The important thing I want to raise, because I was not able to on the last amendment, is the idea of how awful it was that we were moving this, rather than the Government. As I said at the beginning, it should have been the Government who brought the Bill to the House, because that was what the House had passed before. We are doing it because that was not done. The noble Baroness the Leader of the House said that it is normally the Government who table Private Members' Bills. Yes, but they failed to do so. We will do it when they do not. The Leader of the House is obviously in a difficult position—

**Lord Robathan:** My Lords—

**Baroness Hayter of Kentish Town:** I think I will continue, if the noble Lord does not mind.

**Lord Robathan:** Again?

**Baroness Hayter of Kentish Town:** Yes, again.

**Lord Robathan:** I have a point of clarification.

**Baroness Hayter of Kentish Town:** I am sure the noble Lord does, but I would like to answer the point that the noble Baroness the Leader of the House made some time ago, which I have not been able to answer. She is in a difficult position; I understand that. She is a member of the Cabinet and of the governing party, but she is also the Leader of the House. In the absence of a Speaker with authority—although we do have a very authoritative Speaker—she also has to consider the whole House's interests. It would have been her responsibility in that role to have brought forward this Bill as it was voted for before.

We have talked about a "constitutional monstrosity", "tearing up the constitution" and "constitutional vandalism". We are asking that this House considers a Bill sent to us by the other House. Is that "constitutional vandalism"? As the noble Lord, Lord Newby, said, this country faces a national crisis. The people in the Gallery—I am sorry that there are some there, because I am quite embarrassed that they are watching us—must wonder what on earth is happening when, at a time of national crisis, we are debating not the content of the Bill or the issues that have been raised by some speakers, but whether we should even consider the Bill today.

[BARONESS HAYTER OF KENTISH TOWN]

This is out of order. In fact, I think it is shameful that this is being done. I find it shameful that the Government are helping on this.

**Lord Forsyth of Drumlean:** My Lords—

**Baroness Hayter of Kentish Town:** I think the noble Lord has spoken quite enough. We have heard from him; I think we know his views. We should not still be debating the content of the Bill, because we have not got on to it. We want a Second Reading. We can vote against the Bill if we do not like it; that is the democratic way of dealing with a Bill that you do not like. But to try to talk out the ability of us even to take the Bill is an abuse of process. I will not support the amendment to my Motion in the name of the noble Lord, Lord True.

**Lord Robathan:** Since the noble Baroness does not like taking interventions, I will have to make a speech. It will be a very brief one.

**Lord Tomlinson (Lab):** No!

**Lord Robathan:** I always thought that this House was about courtesy, but I have noticed that the noble Lord, Lord Tomlinson, does not really agree. Never mind. Indeed, if I might digress slightly, the noble Lord rudely accused my predecessor in the seat of Blaby in the House of Commons of being in Parliament too long. I note that the noble Lord first wanted to come into the House of Commons in 1966—that would make it 53 years—so he has not done badly himself, although the electorate kept throwing him out.

The point I would like to make is this. The noble Baroness, Lady Hayter, asked why the Government had not put down a Motion. It is quite straightforward: the Bill was not passed until 11.30 pm last night. How could the Government possibly have put down a Motion then? The Bill was passed by one vote—I regret to say that it was passed at all. There was never any certainty of it being passed, and it would have been extraordinary if my noble friends on the Government Bench had said, “Oh, we’ll put it down just in case”. That is not the way Parliament works. It has procedures. That is the whole point of the amendment.

#### *Motion*

*Moved by Lord Foulkes of Cumnock*

That the Question be now put.

**The Lord Speaker:** I am instructed by order of the House to say that the Motion “That the Question be now put” is considered to be a most exceptional procedure and the House will not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of the business of the House. Further, if a Member who seeks to move it persists in his intention, the practice of the House is that the Question on the Motion is put without debate. Does the noble Lord still wish to move the Motion?

**Lord Foulkes of Cumnock:** I do persist.

2.39 pm

*Division on Lord Foulkes of Cumnock’s Motion*

*Contents 249; Not-Contents 97.*

*Lord Foulkes of Cumnock’s Motion agreed.*

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2.49 pm

*Division on Lord True's amendment to the Motion*

*Contents 122; Not-Contents 248.*

*Lord True's amendment to the Motion disagreed.*

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3.05 pm

*Amendment to the Motion*

Moved by **Baroness Noakes**

Leave out from “move” to the end and insert “notes that the Prime Minister has already indicated her intention to ask for a delay in the date for the United Kingdom to leave the European Union and considers it unnecessary, as well as undesirable and unprecedented, to apply exceptional procedures to the European Union (Withdrawal) (No.5 Bill) and therefore regrets the proposal by Her Majesty’s Opposition to do so.”

**Baroness Noakes (Con):** My Lords—

**Lord Foulkes of Cumnock:** Oh no.

**Baroness Noakes:** I thought that the noble Lord, Lord Foulkes, would be looking forward to hearing from me. The amendment standing in my name on the Order Paper gives reasons for not supporting the Motion of the noble Baroness, Lady Hayter, which are as follows:

“that the Prime Minister has already indicated her intention to ask for a delay”;

and that this House “considers it unnecessary”—as well as “undesirable and unprecedented”—“to apply exceptional procedures”. I shall speak to those elements in a moment.

I wish that the House had committed this Motion to be debated in Committee because we could have had a more natural, free-flowing discussion about some of the issues raised so far—all of which have been brought to an end by the closure Motion, which I believe is undesirable. However, the House chose not to go that way; that leaves a number of unanswered questions, which we still need to explore, about exactly how the procedures will work today. I am quite unclear about how we proceed between Second Reading and Committee, given that there has to be an interval to allow for amendments to be processed and made available to noble Lords, and for noble Lords to consider them.

**Lord Hunt of Kings Heath:** My Lords, going back to the Bill that I took through in a day, clearly, gaps were put in. There was a gap of an hour or so between Second Reading and Committee to allow people to draft amendments and have them printed. The same could happen between that stage and Report. It is perfectly proper and easy to make this work in one day.

**Baroness Noakes:** The noble Lord, Lord Hunt, makes a very good point but the Bill he refers to was undertaken with the full co-operation of the usual channels; because they co-operate, they set out how

those things will work. That has not happened in this case, as I understand it, and therefore this House is quite unaware of what will happen when we get to the end of Second Reading.

**Lord Hunt of Kings Heath:** My Lords, the temptation to live past glories is ever-present in your Lordships’ House but the point is that the Bill I am talking about had its contentious points: I remember that the noble Lord, Lord Alton, who is not here in his place, and Baroness Blatch, who I think noble Lords opposite will recall with a great deal of respect, were very much opposed to it. Perhaps the noble Baroness was there when we did it; the point I am making is that we were not unanimous on that Bill.

**Baroness Noakes:** The point remains that the Bill was processed with the full agreement of the usual channels. The fact that it was not supported by all Members of the House is irrelevant. The usual channels arrange for the orderly business in this place.

**Lord Cormack (Con):** Is it not also the case that we are not having a day? It will be around 8 pm or 9 pm before we get on to Second Reading because we will have my noble friend Lord Forsyth’s Motion, as well as a Statement. This is crazy.

**Baroness Noakes:** I completely agree with my noble friend, which is why it is important to understand the implications of this. If, as I suspect, a number of amendments to the Bill will be tabled after Second Reading—of course, they cannot be tabled until then—the Public Bill Office will require considerable time in which to manage them. It will arrange for them to be printed, then noble Lords will obviously need to have sight of and consider them, as well as consider whether there are any appropriate groupings of them. This is not a rapid process, so we then come up against the issue of what time this will all happen. I have absolutely no idea.

**Lord Foulkes of Cumnock:** Can I answer the question of the noble Lord, Lord Cormack? If noble Lords who have tabled wrecking amendments decided not to move them and if the noble Lord, Lord Forsyth, decided that the important reports from his committee should not be debated half way through the night, we could go straight to considering the Bill now. That would show this House in a good light, considering the Bill properly.

**Baroness Noakes:** I hear the noble Lord, but to put the onus on my noble friend Lord Forsyth to delay the debate on his very important reports issued last year is unfair. We are in this position because of the action taken by the Opposition in tabling the Motion to deal with this in one day.

**Lord Robathan:** The truth is that the objection of most of us to this business Motion is to it being rushed through. Why, for instance, could the noble Baroness, Lady Hayter, not move for Committee on Monday and have only Second Reading today? How about that? It would seem to be a reasonable compromise.

**Lord Dubs (Lab):** I have a small suggestion. I am not sure whether I am being fair to the noble Baroness, but logically her amendment and the following four should be debated and moved en bloc. We do that for other things; why can we not do it today?

**Baroness Noakes:** The noble Lord may well find some commonality in some of the things that each of us says about our Motion, but they are distinct Motions that deserve to be considered in their own right. That is why we have tabled them in that way. Before I leave this point, there is a serious issue that I hope the Front Bench opposite will consider, which is what will happen to the time of this House. We should consider in particular the impact on the staff of this House, who have to serve the way that this Bill is being processed.

**Lord Forsyth of Drumlean:** I very much agree with the point my noble friend made, particularly about the staff. There are two Motions from the Economic Affairs Committee that are being taken together. One relates to 50,000 people who are affected by the loan charge. Another relates to small businesses that have to submit their VAT returns digitally by tomorrow. These are big issues, and it is not my Motion but the committee's. I say to the noble Baroness on the Front Bench that it seems that there is a consensus in the House that it is more sensible to take Committee on Monday.

**Noble Lords:** No!

**Lord Forsyth of Drumlean:** If there is not, it would be interesting to know what the arguments are. Then we could proceed in a sensible way that reflects people's plans and also those of the staff of the House.

**Baroness Noakes:** I thank my noble friend for that intervention. He reminds me of the importance of his debate, and indeed I am speaking in that debate. It is not just about the 50,000 people who are affected by the loan charge—although it is very serious for all those individuals—but there are issues with suicides that have flowed from that loan legislation. That is why it is really important that we continue with that debate.

**Lord Foulkes of Cumnock:** The noble Baroness is right that these are two important reports. It would be much better for them to be dealt with properly, at a sensible hour on Monday afternoon—which they could be if the noble Lord, Lord Forsyth, wanted them to be properly debated instead of used as an obstruction to today's business.

**Baroness Noakes:** I am sorry that the noble Lord thinks they are an obstruction to today's business, but today's business has been forced on us by the Benches opposite—it seems without any consideration of the sequencing of the Bill as it comes through this House, as I raised in my opening remarks. These are important issues and I hope that the noble Baroness, Lady Hayter, will reflect on them.

The first reason for my amendment to the Motion of the noble Baroness, Lady Hayter, is that the Prime Minister has already indicated her intention to ask for

a delay. I remind the House of what my right honourable friend the Prime Minister said earlier this week, when she addressed the nation. She said:

“I know there are some who are so fed up with delay and endless arguments that they would like to leave with no deal next week”.

I count myself in that group—but that is not the point of today. She said:

“I've always been clear that we could make a success of no deal in the long term. But leaving with a deal is the best solution. So we will need a further extension of Article 50, one that is as short as possible and which ends when we pass a deal. And we need to be clear what such an extension is for, to ensure we leave in a timely and orderly way”.

My right honourable friend the Prime Minister said that to the nation on television. She said it in the other place and in a letter that has been written to all Conservative parliamentarians—so she means it and we should take her at her word.

3.15 pm

**Lord Lansley (Con):** My noble friend argues that the Bill is therefore unnecessary, but I am afraid that it would be necessary if, for example, the European Council made a counterproposal for a significantly longer extension of Article 50. In the absence of this legislation, the Prime Minister would have to use the prerogative power to refuse that, and we might then leave on 12 April without a deal. The House of Commons, with this legislation, seeks to exclude that possibility. I am sorry; the argument that this is unnecessary does not wash.

**Baroness Noakes:** I have to disagree with my noble friend on that. We have to trust that the Prime Minister means what she says.

**Noble Lords:** Oh!

**Baroness Noakes:** Benches opposite may laugh, but that is highly disrespectful to a Prime Minister who has worked extremely hard on this. The Prime Minister can be criticised for many things—

**Lord Strasburger (LD):** I remind the House that this is the Prime Minister who told the nation seven times that she was not going to call a snap election—and the eighth time, she said she was.

**Baroness Noakes:** I am not entirely uncritical of the Prime Minister, and in particular of her handling of Brexit. Anybody who has heard me speak before will know that.

**Lord Myners (CB):** I do not wish to quote the Prime Minister to embarrass her, but to remind colleagues in the House that the Prime Minister has, perhaps belatedly, recognised that there is a need to reach across and hear the views of others to facilitate a consensus in what most of us would agree is a moment of crisis. That is not a word I use frequently, but we are in the eye of the storm and I would like this House to be seen to be playing its role in taking things forward and facilitating agreement on a strategy.

The debate of the noble Lord, Lord Forsyth, is on a matter of considerable importance. Nobody who suggests that it might properly be delayed until early next week should be accused of, in some way, belittling the issues involved. The nation is now genuinely looking to this House to have a mature and proper debate on a matter of great importance. It reflects badly on the House and the institution if we are seen to become besotted with procedure, thereby denying the vital need to address the issue. We will not address the issue until we move on from matters of process to matters of substance.

**Baroness Noakes:** Indeed, but there are important issues of process that we do need to address. I was saying that the Prime Minister had not always made a success of Brexit to date, but she has been persistent throughout in trying to achieve the will of the majority, the 17.4 million people who voted to leave in the referendum, and we have to give her credit for that. She has also acted throughout with integrity, and I hope that no noble Lord would suggest otherwise. In some ways, the Bill suggests that we cannot trust the Prime Minister, and I resent that.

As the noble Lord, Lord Myners, pointed out, the Prime Minister has now engaged in discussions with the Opposition. We understand that they are constructive; whether anything comes of them remains to be seen. To date, the Leader of the Opposition has shown no interest in doing anything other than pursuing a political line on Brexit. He even refused to go into cross-party discussions which my right honourable friend set up last month because he could not walk into the same room as Chuka Umunna, one of the MPs who had left his party and was a founder member of the independent group—the TIGers. It is of great credit to the Prime Minister that she is now reaching out to try and reach some consensus on a deal that the Commons can align around when it goes back to them. This Bill is saying that we do not trust the Prime Minister to do that. That is an unfortunate thing, and why the Bill is unnecessary.

The next reason for not agreeing with the Motion in the name of the noble Baroness, Lady Hayter, is that it is unnecessary to apply exceptional procedures. Your Lordships' House has good procedures to allow it to do its job as a revising Chamber. The House normally prides itself on its ability to scrutinise legislation carefully. The reason we do this—

**Lord Foulkes of Cumnock:** Let us get on with it then.

**Baroness Noakes:** The reason we do this is that the other place does not do a very good job of scrutinising legislation. There are a lot of reasons for that. Compared with the normal proceedings of your Lordships' House, the proceedings in the other place are much more party political. Anybody who reads *Hansard* can see that. In particular, since 1997, when Mr Blair introduced programme Motions, the amount of time dedicated to legislation has been severely truncated at all stages of Bills going through the other place. They often arrive in your Lordships' House with very little scrutiny, and with some clauses and parts of Bills not scrutinised at all.

We have an important job to do. When my right honourable friend Sir Oliver Letwin was moving one of his Motions yesterday in the other place, he freely admitted that the Bill—which we will move on to at some stage—needed to be “tightened” and that that would be done by the House of Lords. So the other place now expects this House to do the job of perfecting legislation. That has been the case for some considerable time, but we have to have procedures to do it.

Standing Order 46 sets out the bare bones of how we approach legislation. It states:

“No Bill shall be read twice the same day; no Committee of the Whole House shall proceed on any Bill the same day as the Bill has been read the Second time; no report shall be received from any Committee of the Whole House the same day such Committee goes through the Bill, when any amendments are made to such Bill; and no Bill shall be read the Third time the same day that the Bill is reported from the Committee, or the order of commitment is discharged”.

Those arrangements—

**Lord Pannick:** Does the noble Baroness accept that, forceful though her points no doubt are, we have now been discussing the same points for three hours and 46 minutes, in the context of a Bill that has been sent to us by the House of Commons on an urgent basis? Does she not accept that it really is time to move on? She has put her name down for Second Reading. All these points could be made in her Second Reading speech.

**Baroness Noakes:** I fully hear what the noble Lord, Lord Pannick, says, but I have a right to be heard on the Motion that I have put on the Order Paper. A considerable amount of the time has been taken up by noble Lords moving closure Motions, which involves two Divisions every time.

**Lord Butler of Brockwell (CB):** My Lords, is it not the case that the procedural issues which the noble Baroness is now speaking about have already been decided twice by the House in earlier votes?

**Baroness Noakes:** No: they are on different amendments to the Motion so they are different issues.

**Viscount Ridley:** This seems extraordinary. We have not heard from my noble friend Lady Noakes before this. I think we should hear her respectfully.

**Baroness Noakes:** I thank my noble friend for that. I had reached the end of reading through Standing Order 46, which is an important foundational part of our procedures. I remind noble Lords that it has been in existence since 1715. It has served us well for more than 200 years, so we should be very careful about tinkering with it. It is the case, in many instances, that those rules can be modified if noble Lords agree. It is usually done through the usual channels, in a way that achieves consensus. That has not been the case on this occasion. It is nearly always done so that there is a minimum of two days. I have been involved in a number of bits of legislation that have been done on an accelerated basis, but I have never seen one rammed through in one day like this.

[BARONESS NOAKES]

I have never seen a Bill not leave the other place until just before midnight but be on the Order Paper here for all stages the following day. The noble Baroness, Lady Hayter, tabled her Motion—in effect, to take over the procedures of the House to do it in one day—only yesterday. Many noble Lords will not even have seen that until they got today's papers. This is all highly irregular and is working against the ability of this House to scrutinise this legislation properly.

**Lord True:** I was not allowed to respond to the debate in which I spoke about this subject. The noble Lords, Lord Empey and Lord Strathclyde, made a sensible and constructive point: instead of trying to push this through it should be remitted to the usual channels. As many noble Lords on all sides have said, we could do this in the normal way for accelerated Bills: a Second Reading now and Committee another day. Why will the Opposition Front Bench not agree to that?

**Baroness Noakes:** My noble friend makes very good points. I hope that the Front Bench opposite is reflecting on them.

The House is being asked to handle this Bill on a one-day basis and, in effect, tear up the rules under which we normally consider legislation. This has led to a speakers' list being closed before this business Motion is even finished. This Motion was not available to noble Lords until they came in this morning, so some will not have had the opportunity to put their names down to speak at Second Reading.

**Lord Warner:** Is the noble Baroness not aware that we have had extensive conversations about this? Yesterday, the House of Commons managed to amend its procedures so that it could complete consideration of the Bill within four hours. They expect us to deal with the Bill with due expedition. The majority of the House of Commons voted for this Bill. We are now getting to the point where this House is being exposed to a filibustering set of manoeuvres by the Conservative Benches.

**Baroness Noakes:** I remind the noble Lord that it was a majority of one in the other place. I do not think that the other place can be proud of the length of time it devoted to this legislation yesterday. Second Reading was 55 minutes; towards the end speakers were given two minutes; the Secretary of State had a very short time to wind up. That is not a proper way for any chamber to handle legislation. I would not hold it up as an example to this House, which should be doing things properly. We accept that we can have an accelerated procedure.

**Baroness Watkins of Tavistock (CB):** My Lords—

**Baroness Noakes:** I am not giving way at the moment. I am going to make some progress if the noble Baroness does not mind.

**Baroness Watkins of Tavistock:** My Lords—

**Baroness Noakes:** I have given way many times, so I am not giving way any further. I need to make some progress. I think we can agree that some acceleration

is necessary; we have done that in the past and it can be agreed in the usual channels. As a number of noble Lords have said, separating Second Reading from Committee and the remaining stages does at least give us an opportunity to reflect on the points made at Second Reading and to determine sensibly which points should be taken forward to Committee and Report. We are not being given that opportunity: at best we might get a couple of hours between Second Reading and Committee under the proposals of the noble Baroness. So I believe it is unnecessary to apply these exceptional procedures. Indeed, I might even say that it is downright dangerous to do so. That is also why it is undesirable for this House to apply these exceptional procedures.

3.30 pm

If we do not follow our procedures in a case such as this, which is not a time of national emergency, we will create precedents that we live to regret. We should approach all legislation in a considered way, but we are depriving the House of that opportunity. It is highly undesirable. I have already explained why it is undesirable in relation to the speakers' list and to how amendments are handled. It is undesirable because it does not give noble Lords the chance to reflect on points made in discussion. I am not suggesting taking this over a number of days, with intervals of two weeks, as we do with most legislation, but some time is required to achieve this.

Lastly, it is unprecedented to use these exceptional procedures for a Bill such as this. There have been urgent reasons in other cases, as we know. We are not at war. There are no national security issues.

**Noble Lords:** There are.

**Baroness Noakes:** There are no national security issues. All the examples that have been given of expedited procedures have involved agreement between all parties. The fact that a lot of people in Westminster are very excited about a no-deal Brexit should not be confused with a national crisis. Recent poll evidence shows that the most popular way forward is actually a no-deal exit, and of course it is by no means clear that the Bill actually prevents an exit on WTO terms by tying the Government's hands in a series of parliamentary procedures on how much time to ask for. It does not do that. The Bill is worthless in that regard and to that extent it does not deserve a place on the—

**Noble Lords:** Order.

**Baroness Noakes:** I am drawing to a close. Anybody can make a comment once I have moved my amendment. I remind the House that my amendment is there because the Prime Minister has already indicated her intention to ask for a delay. It is unnecessary, undesirable and unprecedented to apply exceptional procedures. I beg to move.

**Lord Cormack:** My Lords, I shall speak very briefly. I really feel that we are not doing this House any great favours today. We have had an orchestrated series of speeches from the ERG and its friends. That does not represent the view of the entire Conservative Party on

these Benches, although I am bound to say that, as I listened to some of the speeches, I felt enormous sympathy for my honourable friend Nick Boles. We are at a critical juncture in our nation's history. It is deeply regrettable that we have this Bill before us. It is not a perfect Bill, but at the time when it was thought up and brought forward the Prime Minister had not made her recent welcome move. I sincerely hope that she will be successful. I know many honourable and noble friends in my party take a counter view, but I think it is desperately important that we hold the interests of our country first, second, third and last.

It is terribly important that we do not carry on with this procedural nonsense, because that is what it is. We have a Bill and at this rate we are not going to get to Second Reading.

**Viscount Ridley:** My Lords—

**Lord Cormack:** No, I will not give way—I will in a minute. My noble friend has the next amendment and doubtless he too will speak at some length: I hope it will not be the half-hour or 20 minutes we have just had, because that is far too long. It is really important that we get on to the Bill. We have four more amendments, I think, after this one; then we have a Statement; and then we have my noble friend Lord Forsyth's important debate—although it is not as urgent as the business that will then be before your Lordships' House. I wish we could approach this in a consensual, adult manner and do two things. First, I hope my noble friend Lord Forsyth will be willing to have his reports debated next week. There will be plenty of time. The first week of our Recess has been cancelled—I make no complaints about it. Therefore, he has plenty of time and it would be a very good idea.

Secondly, I think that we should have Second Reading today—here, I agree with my noble friend Lady Noakes—and move on, not on Monday but tomorrow. The House has met on Fridays before. The other place is not meeting tomorrow, so there would be no delay whatever in the parliamentary process if we took Report tomorrow. I really think we have to be sensible and I ask noble friends in all parts of the House who were there to remember that April day almost exactly 37 years ago when the House met on a Saturday. That was the most dire of emergencies and both Houses met on the Saturday after the Falklands invasion. So there is nothing sacrosanct about any day other than Sunday as far as your Lordships' House is concerned. In the war I believe there was one Sitting on a Sunday, but that is beside the point. I urge both Front Benches to talk seriously about this. It does nobody's cause any service, whether they are a supporter or an opponent of the Bill, to be going bleary-eyed through the Lobbies at 2 am, 3 am, 4 am, 5 am or 6 am. It does no service to anyone.

I have two hopes, and I shall not say any more during the debate today. That may please my noble friends but at least I do not blather on as long as some of them do. I hope that we can heal the bitterness to which my noble friend Lord Empey referred a few hours ago. I hope also that we can make genuine progress on this Bill. I beg my noble friends who have amendments to come to withdraw them, to hold their

fire and to make their speeches in the main debate, which I hope we will get on to very soon, and I hope that we can finish the Bill tomorrow. That would make abundant sense, both here and outside.

**Lord Warner:** My Lords, I wish I thought that the Members sitting around the noble Lord who has just spoken would take any notice of his message but, having listened for more than four hours to a set of procedural issues that have nothing to do with the Bill we are supposed to be discussing today, I suggest to the House that we put the question.

**Lord Lilley:** If that was just a suggestion, may I respond to it?

**Noble Lords:** No!

### *Motion*

*Moved by Lord Warner*

That the Question be now put.

**The Deputy Speaker (Baroness Pitkeathley) (Lab):** My Lords, I am instructed by order of the House to say that the Motion "That the Question be now put" is considered a most exceptional procedure, and the House should not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of business in the House. Further, if the Member who seeks to move it persists in his intention, the practice of the House is that the Question on the Motion is put without debate. Does the noble Lord still wish to move the closure?

**Lord Warner:** I do.

3.40 pm

*Division on Lord Warner's Motion*

*Contents 229; Not-Contents 77.*

*Lord Warner's Motion agreed.*

### **Division No. 7**

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3.52 pm

*Division on Baroness Noakes's amendment to the Motion.*

*Contents 106; Not-Contents 234.*

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4.03 pm

**Lord Young of Cookham (Con):** My Lords, before we move on to the next amendment, I gently remind your Lordships of the guidance in the *Companion* that speakers are expected to keep to within 15 minutes.

*Amendment to the Motion*

*Moved by Viscount Ridley*

Leave out from first “that” to the end and insert “the attempt to accelerate procedures on the European Union (Withdrawal) (No.5) Bill is not in accordance with normal practice in either House of Parliament and the provisions of Standing Order 46 (No two stages of a Bill to be taken on one day) should be dispensed with only to the extent necessary to allow the First and Second Readings of the Bill to be taken on one day, the Committee stage on a subsequent day, and the Report and Third Reading to be taken on the same day subsequently.”

**Viscount Ridley:** My Lords, I am getting quite used to losing votes today—but then, as a supporter of Newcastle United, losing never discourages me.

Right at the end of the last debate, my noble friend Lord Cormack refused to take an intervention from me; he has explained that he has to leave his place now. I was merely going to ask him, as an acknowledged constitutional expert, if he did not think that the ramming of a Bill through the House in one day would do more damage to the reputation of this House than these procedural debates we are having, which he said would damage the reputation of the House.

My amendment says that instead of trying to rush this constitutional enormity through in one go, in one day, as the noble Baroness, Lady Hayter, would like to do—and I do not think a cogent answer has been given to the question of why that should be necessary—and to do so based on a flimsy, one-vote majority in the House of Commons of 313 to 312, which is 50.08%, we should take two stages today, two on another day and the final two on a third day. That seems a reasonable way for this House to go about discussing important matters.

**Lord Foulkes of Cumnock:** I wonder if the noble Viscount has thought about the kind of image he is projecting as the fifth Viscount, a hereditary Peer, trying to subvert the elected Chamber of this Parliament.

**Viscount Ridley:** I was coming to that. If I recall rightly, earlier today the noble Lord referred to me, from a sedentary position, as a “constitutional

monstrosity”. I am in this place because my great-great-grandfather was put here by Queen Victoria on the advice of Lord Salisbury. The noble Lord is here because Queen Elizabeth II put him here on the advice of Tony Blair. There is not all that much difference.

As I say, I believe it vital that we should debate this hugely important measure as freely as possible with as many attempts to get it right as we need. I express my astonishment that so many Members opposite, who normally take the view that the purpose of this House is to scrutinise legislation properly, suddenly want to abandon their principles and shove through a measure that would create a dangerous precedent for the future. This is precisely the sort of case where we need to tread with care.

We have taken three years trying to reach agreement on how to leave the European Union. We have been told again and again, both in this House and elsewhere, that we must get this right, yet now we are being asked to take a whole Bill through in a few hours—a Bill that defies everything the people asked us to do. As my noble friend Lord Forsyth said, this could lead to a slippery slope to tyranny.

**Noble Lords:** Oh!

**Viscount Ridley:** Noble Lords opposite may laugh but that is exactly the point my noble friend made. Bit by bit, we are disentangling a very delicate constitution. If ever there was a time to ask the Commons to think again about shoving legislation through in this unprecedented and dangerous fashion, it is now. The people of this country are watching us and, as the polling evidence makes clear, they are not in favour of this kind of manoeuvre. Given the choice between a bad Brexit and a Brexit with no withdrawal deal, they have clearly expressed a view for the latter, yet this Bill would deny them that.

Moreover, I am astonished that so many Members opposite, who normally do all they can to prolong and encourage debate, and to revise and amend Bills, have suddenly discovered a love of closure Motions—of shutting down debate before it has hardly even started. What an extraordinary volte face. How many times have I come into this Chamber over the past few years to hear the noble Lord, Lord Adonis, and others arguing that the Government have not given them enough time to debate an issue? Now, suddenly, they want to shut down debate.

**Lord Adonis (Lab):** My Lords, I have not once taken four hours and 31 minutes of the time of the House. If the noble Viscount would compromise between the time I normally take, which is 10 or 15 minutes, and the four hours and 31 minutes taken today, we would have finished about two and a half hours ago.

**Viscount Ridley:** I have taken five minutes so I do not quite understand his point, but there we are.

I am always conscious that the House of Lords should not exceed its powers. It is not an elected Chamber and it does not have the democratic legitimacy of the Commons. That applies to life Peers as well as to hereditary Peers. Our job is not to force through

legislation but to tidy up, revise, gently question, and sometimes to ask the Commons to think again. This is surely a case where we should be doing that. We should ask the Commons to think again about shoving legislation through in this unprecedented fashion. I am equally clear that if there is ever a time when the House of Lords suddenly needs to discover its constitutional teeth, it is when the Commons is doing something unconstitutional, egregious, hurried and potentially worrying. This is not an argument about Brexit but about doing things properly.

If there ever was a justification for the constitutional monstrosities of hereditary Peers being still here, it is that we can occasionally cry foul when a despotic majority tries to ride roughshod over the carefully balanced but fragile device that is the British constitution and—if noble Lords will excuse the mixed metaphor—to stand against the sudden and dangerous enthusiasm of a temporary, 50.08%, majority that does not want to do things in the proper way. What is more temporary than the majority exercised by Sir Oliver Letwin? In this case, the despotic majority is the Motion passed by a single vote in the other place at something like the third attempt. A majority is no less despotic for being small if it is allowed to be unconstitutional.

The purpose of the Commons passing that measure was to take control of the House of Commons and force a Bill on to the Order Paper to defy the clear wishes of a huge popular vote of 17.4 million people and deny them what they have voted for—namely, Brexit, if necessary without a deal, on the date they had been repeatedly promised. You can be in favour of that or against it—

**Baroness McIntosh of Hudnall (Lab):** Respectfully, can the noble Viscount supply the evidence to show that the 17.4 million British people who voted to leave voted to leave without a deal? They were given many options, and many promises were made to the effect that that would not happen. What evidence does he have that they would prefer no deal to any other outcome?

**Viscount Ridley:** Those 17.4 million people voted for Brexit, and it is abundantly clear from what both Houses of Parliament have done since—passing Article 50, setting a date, and the Prime Minister saying hundreds of times that no deal is better than a bad deal—

**Baroness McIntosh of Hudnall:** Can the noble Viscount explain why—when we have been telling ourselves for a long time that Parliament and the people no longer speak with the same voice—Parliament having made that decision and said those things is the same as the people having done so?

**Viscount Ridley:** We are here because there is a difference between a remainder Parliament and a leaver majority in the country. That is why we are here; that is the problem we are trying to resolve. My argument is that this Bill does not resolve it because it denies them the clearest form of Brexit, which all the polls suggest an awful lot of people want.

**Lord Tugendhat (Con):** Does my noble friend agree that a large number of people who voted remain in the referendum, including myself, have frequently said

that they accept the result of the referendum and support the Prime Minister's deal, and have sought to facilitate our departure? The reason the Prime Minister's deal has failed is that his friends—the extreme Brexiteers—have put a block on it.

**Viscount Ridley:** I do not agree. What has happened is that we were presented with a deal last summer that the British public, much of the House of Commons and even many remainers did not like. There has been a huge amount of opposition to that deal, and it should have been abundantly clear to the Government that it would not fly.

I said that I wanted to talk about—

4.15 pm

**Baroness Andrews (Lab):** My Lords—

**Viscount Ridley:** In a minute—I have not even finished a sentence at this point. I said that I wanted to talk about the procedural points, and I have, but I have been diverted by these interventions on Brexit. I would be quite happy to save these points for the Second Reading later today, if noble Lords would prefer.

**Baroness Andrews:** It is not the interventions which are distracting the House; it is the fact that the noble Viscount himself introduced the Brexit argument. He has made yet another unsubstantiated assertion; this time that the British public rejected Mrs May's deal. Where does he get that information?

**Viscount Ridley:** From opinion polls, and that is the best evidence we have.

As I said, one can be in favour or against the proposition that we should leave the European Union, or that we should leave it with or without a deal. I am acutely aware that, as we have seen in the past five minutes, most in this echo chamber of remain are wholly against it and are absolutely out of touch with people all over the country. However, we cannot deny that it is a matter of solemn importance, and, if the Bill goes through in the fashion proposed today, without proper debate and scrutiny, a lot of people out there may be very angry. They will be angry with us not because we spent a lot of time talking about procedure; they will be angry because we rammed through something without proper scrutiny and debate. I say again that the integrity of the constitution is the key point.

I am no historian, but I know that, for good reasons, we have arrived over the centuries at the delicate balance of powers we have in this complicated democracy. One of the key points is that all government Ministers are answerable in Parliament. Who is accountable in Parliament for the Bill that we will be asked to pass today? Will it be Sir Oliver Letwin, Yvette Cooper, Hilary Benn or Mr Bercow himself? They cannot be dragged to the Dispatch Box in the same way that a Minister can be, and they are not represented in this House by a junior Minister—unless the noble Baroness, Lady Hayter, is now Sir Oliver Letwin's junior Minister; I am sure she would be very good at it.

[VISCOUNT RIDLEY]

As my noble friend Lord Forsyth said, from the way Sir Oliver was talking in the Commons last night, in a shockingly disrespectful way towards this House, it certainly sounds as though this is the way he sees it. I remind noble Lords that he said:

“My hon. Friend may also wish to know, although I fear that it will also be of no comfort to him, that there is overwhelming support in the House of Lords for this measure”.

How dare he say that in advance of us even seeing the Bill? He went on to say that,

“we therefore anticipate that it will, in all probability ... pass through the House of Lords very rapidly”.

He took the House for granted, and I hope that irritates noble Lords as much as it irritates me. He went on:

“To that end, the House of Lords has in fact already passed a motion that provides for the expeditious consideration of exactly this form of Bill”.—[*Official Report*, Commons, 3/4/19; col. 1067.]

Noble Lords will see how precedent works: suddenly, something we did in January comes back to haunt us. He went on:

“My sense, for what it is worth, is that although the House of Lords procedures are arcane and it is impossible to determine from the outside the time that will be taken, there is very substantial support for the Bill there”.—[*Official Report*, Commons, 3/4/19; col. 1071.]

Thus we are dismissed with a wave of President Letwin’s hand.

My time is nearly up. Let me end by saying that I find it peculiar that so many in this House urgently wish to rule out leaving the European Union without a withdrawal agreement, but show none of the same urgency and determination to rule out not leaving the European Union at all.

**Earl Attlee (Con):** My Lords, my anxiety about going into Committee on the Bill today is that we will be doing so without the benefit of political commentators writing in broadsheet newspapers, without watching important television programmes and, most importantly, without taking account of academic constitutional experts. We will be sailing blind.

**Viscount Trenchard (Con):** My Lords, I should like to speak in favour of the amendment in the name of my noble friend Lord Ridley. I had wanted to speak in favour of the two previous amendments but, because of the closure Motions, I was unable to do so.

I strongly agree with my noble friend that this House will not bring itself into disrepute in the country at large by using all the manoeuvres and powers available to it to prevent this Bill being passed by your Lordships today. The Bill has been passed improperly in another place, which has usurped powers reserved to the Executive in a way that is quite unforgivable when this country faces a difficult situation involving negotiations with the European Union and time is running out.

The Bill is designed to remove from the Prime Minister the ability to exercise the royal prerogative powers remaining to her to resist instructions by the European Union with regard to her request for an extension. She should be entitled to refuse a very bad deal. The European Union is likely to agree to her request for an extension—even for a long extension, God forbid. There is a huge majority in the country

for bringing this matter to a conclusion as soon as possible. Any agreement with the European Union that resulted in a delay of another year or two years would be unwelcome, with ensuing costs to business, continuing uncertainty and the inability to make investment decisions that provide jobs for people. That is already happening—this situation is already costing companies more than might have been the case. Companies have got ready for no deal. I did not want no deal; I wanted a sensible, agreed deal—a Canada-plus-type deal.

I shall not, however, speak about Brexit now, as this is a procedural debate. It is quite proper for your Lordships’ House to have a procedural debate in circumstances where the House of Commons has broken its conventions, even on a matter of huge constitutional importance.

Furthermore, I am not sure that the Motion in the name of the noble Baroness, Lady Hayter, is right. It says,

“further to the resolution of the House of 28 January that Her Majesty’s Government should provide sufficient time for this House”, but it then goes on to contradict that. As I understand it, Her Majesty’s Government did not provide the time; the time was stolen by the noble Baroness and her associates, just as the time was stolen in the House of Commons.

We are seeing a complete breakdown in the rules by which our parliamentary democracy operates. In those circumstances, it is not correct for noble Lords opposite to suggest that this House will bring itself into disrepute or be regarded as overstepping the mark. This House is defending the majority of the people who want what they voted for to be delivered, and the Bill is designed to prevent that. It is quite improper for proper debate on the Bill to be truncated in the way proposed by the noble Baroness, Lady Hayter, and I strongly support the amendment of my noble friend Lord Ridley. It is a reasonable amendment: it suggests that we debate the Bill over three days, taking one or two stages on each day. That is quite a reasonable compromise, and I very much hope that your Lordships will support it.

**Lord Scriven (LD):** My Lords, we are going round in circles. The irony of me saying this is that we are tying ourselves up in knots. I therefore ask that the Question be now put.

*Motion*

*Moved by Lord Scriven*

That the Question be now put.

**The Deputy Speaker (Viscount Simon) (Lab):** I am instructed by order of the House to say that the Motion “That the Question be now put” is considered a most exceptional procedure, and the House should not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of business in the House. Further, if the Member who seeks to move it persists in his intention, the practice of the House is that the Question on the Motion is put without debate. Does the noble Lord still wish to move the closure Motion?

**Lord Scriven:** I do.

4.25 pm

*Division on Lord Scriven's Motion*

*Contents 223; Not-Contents 79. [The name of a noble Lord who voted in both Lobbies has been removed from the voting lists.]*

*Lord Scriven's Motion agreed.*

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4.38 pm

*Division on Viscount Ridley’s amendment to the Motion.*

*Contents 104; Not-Contents 223.*

*Viscount Ridley’s amendment to the Motion disagreed.*

### Division No. 10

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Corston, B.  
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Crisp, L.  
Davies of Oldham, L. [Teller]  
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4.48 pm

#### *Amendment to the Motion*

#### *Moved by Lord Robathan*

Leave out from “Commons,” to the end and insert “notes that more than one day is required for this House to have sufficient time to scrutinise the European Union (Withdrawal) (No.5) Bill received from the House of Commons that has had less than one day of consideration in that House, and had not been received by this House by the end of business on 3 April.”

**Lord Robathan:** My Lords, I shall be brief.

**Noble Lords:** Oh!

**Lord Robathan:** Okay, I shall be quite brief; not least because my noble friend Lord Young on the Front Bench has implored me—begged me on bended knee—not to go over 15 minutes. I doubt I shall.

The first point to make is that this is not about Brexit. It will not have escaped many of your Lordships' attentions that I believe we should leave the European Union, and I voted so to do. However, I do not wish to mention Brexit again, because this is a procedural

Motion and we need to concentrate on the procedure, which is extraordinarily important. Other noble friends have made that point well.

We are legislating in unseemly haste, nearly three years since the referendum and two years since Article 50 was triggered. The noble Lord, Lord Myners, who I do not think is here, said it is a crisis. Of course it is a crisis, but we have had two years, arguably three, to sort it out. I find it worrying that we are now rushing through something that does not need to be rushed.

I quote from the chairman of the Procedure Committee, Mr Charles Walker, who said:

“The House of Commons is about to pass a major piece of legislation without a Report stage or a substantive Third Reading. If the Government did this, the House would rightly be deeply irritated with them, so the House should find no virtue in its actions this evening”.—[*Official Report, Commons, 3/4/19; col. 1211.*]

I implore Members opposite and on the Cross Benches: if we make this a precedent, the Government—it could conceivably be the Government I support, or a different Government—might push forward such a procedure. I say to all noble Lords that this is not sensible. Another MP said yesterday that:

“I know how their Lordships feel about ill-considered and briskly prepared legislation”.—[*Official Report, Commons, 3/4/19; col. 1217.*]

This is ill-considered and briskly prepared legislation, so we should not rush it through as people are trying to.

My final quote from yesterday's House of Commons *Hansard* is from the Secretary of State for Exiting the European Union. We are talking about really serious legislation. We have talked about crises, and people have said how important it is to get this through, yet the Secretary of State in charge of this says:

“It is being passed in haste, and the fact that we have a time limit of two minutes for a number of speeches this evening is an indication of the fact that the Bill is being passed in haste. It is constitutionally irregular and, frankly, it fails to understand the decision-making process by which any discussion of an extension or agreement of an extension at the European Council will be reached”.

He goes on:

“The Bill also calls into question the royal prerogative. It has been a long-standing practice that Heads of Government can enter into international agreements without preconditions set by the House that would constrain their ability to negotiate in the national interest”.—[*Official Report, Commons, 3/4/19; col. 1145.*]

That is powerful stuff, and the reason is that this is not about—I will not mention the B-word—a particular Government or political hue; it is about the way Parliament functions.

Yesterday, this particular Motion was passed by one vote. I regret that it was passed. Previously, a similar Motion was defeated in the House of Commons, so there is a certain lack of consensus there. Without mentioning the B-word, those who want a second referendum say it passed by only 1.25 million extra votes. This was one vote, so we need to consider it.

Is it contentious? It is extraordinarily contentious. Parliament and the people are divided. With this Bill, we are looking at constitutional change and precedent. If we accept this, it will come back and bite us all, not just the Conservative Government, which we can fairly say is in disarray, but any Government and, I fear, any relationship between Parliament and the country.

[LORD ROBATHAN]

My noble friend Lord Howard said that we act as a “constitutional check”. My noble friend Lord True asked: “Why are we here”? I heard a rather unseemly cry from the Benches opposite in answer to that, but I will tell noble Lords why we are here. I have been here for three years now. I talk a bit; too much perhaps.

**Noble Lords:** Hear, hear.

**Lord Robathan:** Thank you; I accept that. First, we are here to revise legislation. Although we do not get it perfectly right, we do it quite well—much better than the other place, in which I sat for 23 years. That is to the credit of the House of Lords. The second reason we are here is to act as a check—it can only be a minor one—on the tyranny of the elected House. We should be very concerned about this being pushed through the way it is. We legislate in haste; we will repent at leisure.

Other noble Lords—I am looking at two or three on the Benches opposite—were here for the Dangerous Dogs Act. After it was passed, in haste, everybody said that it was a terrible mistake because it was not properly thought through, or examined by Parliament, Select Committees or the clerks. It was not properly examined at all, and what we are doing here is the same. I am not even talking specifically about the Bill that will come up later. I am talking about the whole process by which we pass legislation. The way this procedure has been brought forward is an abuse of Parliament.

The debate has been closed down by one Liberal Democrat, one Labour Peer and at least two Cross-Benchers. Be careful what you wish for because, guess what, if this is to be accepted practice, it will be used against every party, every person on their feet, and every person who wants to raise an issue, by the Government, by the Opposition and by whomsoever. I appeal to noble Lords: of course we all have strong feelings about this but let us remember that the procedures of this House are here for a purpose. They are not perfect, and here I take issue with my noble friend Lord Ridley who said that he did not accept that they were arcane. Actually, some of them are, but, without a dictionary, I do not know if “arcane” is necessarily that appalling.

**Lord Hunt of Kings Heath:** My Lords, the noble Lord has talked a lot about the procedures of this House. However, going back over many years, the House does know when a filibuster is going on and takes action to stop it. The noble Lord talks about the tyranny of the other place. It is usually tyranny of Governments that we talk about. The reason the Commons has had to do this is that, as he said, we have a shambolic Government who have completely lost control of the most important issue that this nation has faced for many decades. The Commons has had to take control. We should surely at least respect that by giving the Bill an opportunity to have a Second Reading. The noble Lord talks about the role of this House. The role of this House is not to filibuster.

**Lord Robathan:** I am grateful to the noble Lord. I agree: it should not be about filibustering. However, I and a great many other people believe we are acting as a check on the wrong procedure down the other end.

The noble Lord was here in January 2011. I wonder whether he took part in the filibuster I looked up, which tried to stop the referendum on parliamentary voting. Did he not? Perhaps he was on the Government Benches at the time? No, he would not have been. The noble Lord, Lord Prescott, formerly Deputy Prime Minister, who is not in his place, was apparently very active in it. So I am afraid that filibusters—as the noble Lord suggests this might be—are not unique to any particular party. We should go by constitutional precedent, proper convention—

**Lord Bilimoria (CB):** I am sorry to interrupt the noble Lord. I remind him that I have been here for over 12 years. I cannot remember when this House has asked, time after time, to put something forward like this. We normally take the time that is required. The threat was, “Be careful what you wish for”, but this has not happened in 12 years because we have not needed it. Today, we have spent more than five years on five amendments. The whole country is watching us make a complete disgrace of ourselves. The noble Lord is bringing shame to this House: it is pure filibustering and should not be allowed.

**Lord Robathan:** I am grateful to the noble Lord for filling up a couple of minutes. It is not five years, as it happens.

**Lord True:** The point being lost here is that which I based my remarks on, which is simple. Noble Lords opposite should be asked when the last precedent was for this abuse of our procedures. That is the fundamental point. I have heard 30, 40 or 50 speeches from the noble Lord, Lord Bilimoria, on this subject. I have made about five in the period, so I think we are entitled to have our say in this House.

**Lord Robathan:** I think that is right, and I am still not going to talk about the B-word. Furthermore, I intended to be brief, so I shall sit down very shortly—unless I get any more helpful interventions from the noble Lord, Lord Bilimoria, or somebody else.

There is no precedent, as the noble Lord said, for five closure Motions, or whatever we have had today. But then there is no precedent for the Business of the House Motion that we have in front of us. I genuinely think, not just because I take a different view on leaving the European Union from many in this House, that if we start tinkering with our procedures, we will all rue the day. When closing down the debate on this Business of the House Motion, I say to noble Peers opposite and elsewhere in the House: be careful what you wish for.

5 pm

**Lord Brown of Eaton-under-Heywood (CB):** My Lords, pace the noble Lord, Lord Warner, not in his place, the noble Lord, Lord Scriven, and now my noble friend Lord Bilimoria, and recognising that I shall not be making myself popular by this, I start by strongly regretting today’s succession of guillotine Motions. I believe that this dramatic expedient for halting all further debate is a radical and exceptional device, as the speaker each time seeks to remind us, suitable for, but only for, obvious filibustering contributions

when no cogent position is being advanced or defended, not for an afternoon such as this, where truly serious questions underlie the debate. It is one thing to have deployed it, as recently by the noble Lord, Lord Cormack, on the Grocott Bill about by-elections for hereditaries. There, it was purely for killing amendments with, I certainly accepted, no substance. To do it here, I suggest, is really not, I hope, a precedent for the future.

I turn very briefly to the Motion, with one or two sentences only. Although the Bill passed late last night after a much abbreviated debate by a single vote, we, as an unelected House, obviously have to be wary of being thought to thwart the will of the elected Chamber. That said, surely we would have to be very certain indeed of the critical need for the Bill, which is essentially promoted as an insurance policy against the risk that the Prime Minister may somehow dramatically let us down and breach her promise to us. We would have to be sure too of the urgent need for the Bill to be passed today, rather than on Monday, to justify so dramatic a curtailment of this House's ordinary, vital scrutiny functions.

I cannot resist the beginning—alas, I can never remember more than two lines—of a spoof letter to the *Times* from some 70 or 80 years ago, perhaps by AP Herbert: “Sir, I crave a tiny portion of your valuable space, To record my stupefaction at the follies of our race”—if anybody could finish it, I would be enormously obliged and readily buy them a drink. I today feel stupefied that we have reached a point which begins to look ever less necessary, and would echo the suggestion made an hour or two ago by the noble Lord, Lord Cormack, for a double consensual approach to try to inject some time into this process. I simply repeat: postpone Committee and Report until Monday, and extend the time left today for the Second Reading speeches through the noble Lord, Lord Forsyth, graciously forgoing—as I understand he has already agreed to do—his two debates which otherwise were to be heard before this Bill proceeds. If that were arranged, we could bring this whole matter to an end and start the Second Reading debate. In 20 minutes, everybody could get tea, agree to that and then proceed to Second Reading.

**Lord Framlingham (Con):** My Lords, it is a great pleasure to follow the noble and learned Lord, Lord Brown, and I agree entirely with his remarks—particularly his final recommendation. The one thing of which he cannot be accused is being a member of the ERG, which is very refreshing. I shall be brief, because, as always in these debates, much has been said. However, I claim the right to say what I think on important occasions such as this.

The noble Baroness, Lady Hayter, started off by saying that unconventional times require unconventional measures. I could not disagree more. In unconventional times, you need conventional measures to keep your bearings and know where you are. Otherwise, if you are not careful, you descend into chaos. Not many days ago we had a debate in this Chamber revolving around statutory instruments, dealt with by my noble friend Lord True. I will repeat the point he made again and again: we must always draw huge difference between the great issues which we want to discuss—the things

that divide us and about which we get very worked up—and the framework within which we discuss them. Today we are destroying the framework. If we do that, there is a danger of descending into chaos. Some outside this Chamber may say—the people of this country are starting to say—that it is chaos that we between us have created.

This is a momentous decision, and it needs time. It seems to be generally accepted in the country that we will rubber-stamp it; that the Bill will take a little while today, but then go through. The media treat it that way. But we cannot be seen as a pushover, a rubber stamp or a mere formality. Otherwise, as has been said by many, we have no justification to continue to exist.

In days gone by—quite a while ago, I remember, when I was a Member of the House of Commons—time used to be the Opposition's main and legitimate weapon. Yes, it meant that things were sometimes strung out, but it also ensured scrutiny without time limit. That meant proper scrutiny in real depth; you did not make the same degree of mistakes. To cut the debate short in those days, which was rare, there was such a thing as a guillotine. Over the years, the guillotine became “programming”, which is the modern word for it. The House of Commons now guillotines things routinely, with the result that, like a sausage machine, we get half-thought-through legislation from down the Corridor, which we have to deal with by the bucketload. This is just part of the same thing. Surely we must maintain our right to correct if need be or to look carefully at what they do, and, if need be, to ask them to think again.

The Bill itself is an abuse of the parliamentary system. To ram it through in one day like this would be to compound that abuse. The truth is that it is all part of the plot to stop us leaving the European Union—I am not afraid to mention that. The noble Lord, Lord Bilimoria, just intervened on somebody in the debate; he now spends night and day working to stop us leaving the EU. I find it hard to take remarks from people in this Chamber when I know what their motives are. There has been a huge amount of dishonesty over the last two and a half years, not least from the gentleman who is burbling from the Opposition Back Benches.

**Lord Bilimoria:** Is the noble Lord accusing me of dishonesty?

**Lord Framlingham:** Not at all; on the contrary, I accuse him of honesty. He is honest all the time: he wants to stop us leaving the EU and is working night and day to stop it happening. That is what I said, and if he can deny that, I will give way to him again. I do not want to impugn; it is dangerous to get into this, as it gets very emotive, and I know that we do not want to—

**Lord Finkelstein (Con):** I listened to my noble friend and thought to myself, “But isn't your objective that we should have no-deal Brexit, and you are pretending that it is about the constitution?” That seems like an extraordinary accusation to make, when my noble friend knows that very well.

**Lord Framlingham:** I will be perfectly honest: if I had my way, we would have a no-deal Brexit and would be out in a few days' time. We would have the

[LORD FRAMLINGHAM]

certainty the country is crying out for, and businesses and companies would be able to get on with the job they have been told will need to be done. We would save ourselves £39 billion. It would be refreshing—we would be on our way. There is no doubt about that at all. But how we get there is a different matter, and today we are talking about the difference between what I want and how you achieve it through the structures of politics.

**A noble Lord:** No, we are not.

**Lord Framlingham:** Yes, we are. If the noble Lord does not understand that—he has been here longer than me—he understands nothing at all.

In truth, as I said, it is all part of the same thing. The House did not like it last time I warned it of the damage we will do to ourselves if we are not careful. Some people think that by taking time to look at this today, we are somehow damaging our reputation. People out there know what is going on. Most people either voted leave or now want to leave or want us to get on with it. They do not want any more protracted negotiations and discussions. They know today which side they are on in this House. I contend that there is a grave danger of too many Members in this House not understanding what the people really want, and in the long term that is a danger not just with regard to this issue but for the House itself.

**A noble Lord:** My Lords—

**Lord Framlingham:** I want to press on. I will be accused of filibustering again in a minute, and that is the last thing I want.

A relatively small number in this House—those of us who think like I do about how we deal with our constitutional affairs and such issues, and I link that to the whole EU debate—speak for the people outside this House. I believe that, and that is why many of us feel we have to do what we are doing.

We should remind ourselves that the Commons passed the Bill by a majority of one. Half the Commons did not want to do it. Surely we must look at it extremely carefully. It is our duty to do that. I echo the words of the noble Lord, Lord Owen, earlier today, when he said that if we use our structures and machinery to block what the people have voted for, shame on us. I believe that it will be a shame on us and will have serious repercussions for the future of your Lordships' House.

5.15 pm

**Lord Elton:** My Lords, for two minutes, I should like to offer the Opposition Front Bench the advice I have given to various Leaders of the Opposition when they were in my party: never take a power or create a precedent which you would not want to be used against you when you are in office yourself. Everything else that I would want to impress on the House was said by my noble friends Lord Lawson and Lord Howard. The wisest advice we have had was from the noble Lord, Lord Empey. I am not filibustering; I am giving your Lordships advice.

**Baroness Hayter of Kentish Town:** My Lords—

**Lord Lilley:** My Lords—

**Baroness Hayter of Kentish Town:** My Lords, we have had two speakers in favour of the amendment. I repeat two things I have said before. One is that the best advice is that we should all have a cup of tea. I second that one. The other is that, as I said at the beginning, if Members are against the Motion I tabled that we should hear the Bill today, the correct course is to vote against my Motion. Tabling a series of amendments where every speech has been against my Motion, rather than in favour of the different amendments, just shows that if this is not a filibuster, it is a technique to spin this out. I have great respect for the noble and learned Lord, Lord Brown, who said that it was incorrect of certain people to move the closure Motion. That is partly because the device of having umpteen different amendments was a way of arguing against my Motion rather than the amendments being correct and useful for the sake of the House.

Various people may have moved the closure Motions, but I remind the House—the House does not need reminding because Members were all here—that every one passed by the will of your Lordships' House, not by that of those who moved the amendments. If noble Lords did not want the closure, they would have voted against it. In fact, the Motions were all passed by 2:1.

On the previous amendment, we heard about the tyranny of the elected House and that we have a despotic majority, all because we want the Bill heard in this House in a timely manner. It is surely best for this House that we do not continue with lots of speeches about all the amendments that are actually only about my Motion. It would be very nice if we could get to my Motion, so that those who really object to what we are trying to do, which is to get the Bill heard in this House, can vote against it. Let us see what is the will of your Lordships. For the moment, I suggest, without moving it formally, that we move to the vote on this amendment, and I urge the House to decline to agree it.

**Lord Lilley:** My Lords, I respectfully follow the noble Baroness, Lady Hayter. The simple truth is that almost everyone who has spoken, with the exception of her, has said that this is purely about constitutional aspects and not about Brexit. I agree with her that it is about both. I am a new boy, so I shall deal briefly with the constitutional aspects of this procedure. As a new boy, I knew one thing about this House: it has the power to make the other House think again. I have enormous respect for that power, and it is a power exercised only after due consideration.

As Secretary of State for Social Security for five years, I used to introduce a lot of legislation. Almost invariably, it would get through the lower House with very little amendment or change. It would come to this House and the next day, my officials would come to me to say, "Very sorry, Secretary of State, the Lords have gone and amended your legislation". Initially, I tended to be shocked, horrified and angry, until I looked at the changes which this House had made. I cannot recall a single occasion when I did not, on inspecting

those changes, accept them either in whole or in part, in spirit or in letter. This House does a good job in making that House think again, but it can do that only if it takes time to consider things and brings all the available expertise it can provide itself and acquire from outside.

It seems that the one reason we should not take this all in one day—the reason we have not taken Bills all in one day in the past—is that, by taking it over two or three days, we give time for outside experts to make representations to us. I know this House brings to bear enormous expertise, but it also has enormous contacts outside, which it draws on in that interlude between Second Reading and Committee and between Committee and Report. If we deny ourselves those interludes, we deny ourselves access to that expertise and the ability to make the high-quality changes, reforms and suggestions to the other House to make it think again, which I certainly found enormously valuable when I was down there. That is the central issue that I hope the noble Baroness, Lady Hayter, as acting Prime Minister for the day, will respond to in due course.

By way of exculpation, I will also explain why I endeavoured to raise a point of order with our Lord Speaker. I was referring to paragraph 29 of the Standing Orders of this House, which says:

“No speaking after Question put ... When at the end of a debate the Question has been put, no Lord is to speak save on a point of order”.

I have since discussed it with the clerks and the Lord Speaker, and they are inclined to think that that needs rectifying, since elsewhere it says that no points of order are allowed. Perhaps in ancient times, when this was first written, “point of order” had a different meaning. I have not been here long enough—I was certainly not here in 1674, when this rule was first adumbrated—to know why. Of course, the whole rule that there should be no debate after a Question has been put was adumbrated back in 1674, so it may be that in rectifying this we will find that there can be a little debate, discussion or explanation as to why a noble Lord should want to truncate and prevent debate in this House, the whole purpose of which is debate. I put that forward to explain that I was not endeavouring to be out of order but to follow the rules of the House, as they had been drawn to my attention.

But this is not about just constitutional issues; it is about Brexit itself, as the noble Baroness, Lady Hayter, pointed out. She said that the only justification for doing what we are doing—for not abiding by our normal procedures, allowing proper discussion or allowing expertise from outside to be drawn into it—was that prolonging it increases the risk that we leave in what she calls a no-deal Brexit: on WTO terms, with all the mini-deals that have been agreed between us and the EU. She considers that a disaster. I consider that a far greater disaster would be to set aside the will of the people, as solemnly requested in a referendum, with a promise repeated by all the leaders of all the parties and all our former Prime Ministers that, whatever the decision, they would implement it.

**Lord Hughes of Woodside (Lab):** How many people who voted in that referendum are still alive? How many new people are on the register? What would the

noble Lord say is the relationship between those who voted and those now on the register? How long does he believe we should continue—five years, 10 years? Should a referendum taken 10 years ago be binding on us for ever? It is absolute nonsense.

**Lord Lilley:** I entirely agree. It is quite reasonable to have a referendum every 45 years, which is the time we had to wait before this second referendum. People’s opinions change over time. Back in 1975, I campaigned for us to remain in the EU. I was young and inexperienced. I was recruited for the campaign to keep Britain in Europe by a particularly beautiful girl, who is now my wife, so I plead that one’s opinions can change—as hers and mine have—with experience. We all have more experience now than we had three years ago of the sort of organisation we are dealing with in the European Union. As the noble Lord, Lord King of Lothbury, the former Governor of the Bank of England, has said, that is what we should be thinking about far more than the niceties of a withdrawal agreement.

One thing is certain. During the referendum campaign no one asked, “Would you like to vote to ask permission to leave?” That is like a primary school child putting up their hand in the classroom and saying, “Please, miss, may I leave the European Union?” That is a nonsense. We voted to leave. The Prime Minister of the day said that if we left, we would leave on WTO terms. I want to argue that that is not too frightening. On the contrary, although it is not the best thing—

**Baroness Hayter of Kentish Town:** Is the noble Lord addressing himself to the words of the amendment?

**Lord Lilley:** I am—just as she did. Initially she said that she was addressing all the amendments with the argument that if we did not leave now, there would be a problem. I am arguing that if we—

**Baroness Hayter of Kentish Town:** I said that we should deal with this Bill in time for it to have effect. That was the point I made—that if we did not deal with the Bill before we ran out of time, there was no point in having it. I did not go into the issue of Brexit.

**Lord Lilley:** On the contrary, the noble Baroness is rather forgetful, because I noted down the five points she made about what would happen if we did leave with no deal. They were about citizens’ rights, tariffs and industry; I have forgotten the other two.

**Lord Strasburger:** I wonder whether the noble Lord has completed his remarks on the amendment. If so, will he please sit down?

**Lord Lilley:** No, but when I have I certainly shall. I am trying to get on because I want to deal with the central argument that was put forward by the noble Baroness, Lady Hayter: namely, that it would be a disaster if we do not get this legislation through because of the amendments that we are now considering and if we leave with no deal on WTO terms. I maintain that it would not be a disaster. What would be a disaster would be denying democracy—

**Lord Warner:** My Lords—

**Lord Lilley:** I am sorry but I will not give way.

Let me get to the point. There are three advantages if we leave without a deal. No doubt it would be best to have a free trade agreement—

**Baroness Vere of Norbiton (Con):** My Lords, I have to agree with the noble Baroness, Lady Hayter. It is the convention that we address the words in the amendment and I am not entirely convinced that the noble Lord is doing that at the moment.

**Lord Lilley:** Let me therefore do so. The amendment, “notes that more than one day is required for this House to have sufficient time to scrutinise the European Union (Withdrawal) (No. 5) Bill”.

I submit that several days are required and that it is worth taking those days, even if it means leaving on WTO terms—because they are quite acceptable. First, we would keep £39 billion. That was the opinion of this House. I trust the committee which concluded that and I would be quite happy to submit to international arbitration, because I certainly would not want to not meet any legal obligations that we have. So £39 billion is a positive.

Secondly, we would end uncertainty.

**Lord Hannay of Chiswick:** My Lords—

**Lord Lilley:** I am sorry, I will not give way.

**Noble Lords:** Order! The noble Lord should give way.

**Lord Lilley:** As I say, the second advantage is that it would truncate uncertainty. That will unleash the investment that has been held up. We all agree that uncertainty is bad for business. That is the one negative thing that this long process has had, but ending it means that people will start investing either to take advantage of the opportunities or to cope with the difficulties.

The third advantage is that it will force Ireland, the European Union and the British Government to implement—

**Noble Lords:** Order!

**Lord Lilley:** I am sorry, if the House is reluctant to listen to the facts, as I have noticed that sometimes it is, that is a shame, because it is important that we take into account the advantages of what is before us. We should take note in particular of what the Irish Government have said. Leo Varadkar said that, in the event of no deal:

“I have made it very clear to my counterpart in the UK and also to all other EU prime ministers that under no circumstances will there be a border. Full stop”.

Mr Juncker gave an assurance to the Irish Parliament that if negotiations fail—

**Noble Lords:** Order!

**Lord Lilley:** I am sorry: people want me to finish so I am getting on as rapidly as I can. He said that if negotiations fail with the Tory Government on the exit agreement, he would give a clear commitment that the European Union would not need to impose border customs posts or any other kind of infrastructure on the frontier in order to protect European borders.

We have said that in no circumstances will the British Government do so. As we have seen recently, that will force the creation of an invisible border in Ireland which will resolve that problem. I think that those are big advantages.

I will happily go on if the House wishes me to do so.

### Motion

Moved by **Lord Strasburger**

That the Question be now put.

**Lord Strasburger:** I think we have heard enough, have we not? I move that the Question be now put.

**The Deputy Speaker (Lord Lexden) (Con):** My Lords, you are now familiar with these words but I must read them again in accordance with the procedures of the House. I am instructed by order of the House to say that the Motion that the Question be now put is considered to be a most exceptional procedure and the House will not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of the business of the House. Further, if a Member who seeks to move it persists in his intention, the practice of the House is that the Question on the Motion is put without debate. Does the noble Lord still wish to move the closure?

**Lord Strasburger:** Yes.

5.30 pm

*Division on Lord Strasburger's Motion.*

*Contents 239; Not-Contents 62.*

*Lord Strasburger's Motion agreed.*

### Division No. 11

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 Porter of Spalding, L.  
 Reay, L.  
 Redfern, B.  
 Ridley, V.  
 Robathan, L. [Teller]  
 Scott of Bybrook, B.  
 Shinkwin, L.  
 Stowell of Beeston, B.  
 Taylor of Warwick, L.  
 Trenchard, V. [Teller]  
 True, L.  
 Willoughby de Broke, L.

5.44 pm

*Division on Lord Robathan's amendment to the Motion*

*Contents 61; Not-Contents 238.*

*Lord Robathan's amendment to the Motion disagreed.*

#### Division No. 12

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Robathan, L. [Teller]  
Scott of Bybrook, B.  
Shinkwin, L.  
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Taylor of Warwick, L.  
Trenchard, V. [Teller]  
True, L.  
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Kidron, B.  
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Kakkar, L.  
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Kennedy of Southwark, L.  
[Teller]  
Kerslake, L.

5.55 pm

#### *Amendment to the Motion*

*Moved by Lord Hamilton of Epsom*

At the end to insert “but in view of the exceptional constitutional implications of the proposal put forward, regrettably without agreement in the Usual Channels, for its exceptional consideration in the House of Lords, the House shall not resolve itself into a

Committee on the bill until at least 24 hours after a report from the Constitution Committee on the bill has been laid before the House.”

**Lord Hamilton of Epsom:** Your Lordships will be glad to know that I will not detain the House for very long, but if your Lordships’ House is not the guardian of our constitution, I do not know who is. There has been much talk, and the case has been made, about how awful these procedures are in introducing this extremely bad Bill to this House as a private Bill. The real concern we should have about it is that it came from the Back Benches in the other place. If legislation of this importance can be initiated from the Back Benches, we are in very serious trouble. As my noble friend Lord Lawson pointed out, we have an unwritten constitution. Like all unwritten constitutions, it is amended by precedent. The idea put forward by the right honourable Lady Yvette Cooper and Sir Oliver Letwin that somehow this is just a one-off is completely misleading. That is not the way our constitution has developed over the years.

**Lord Foulkes of Cumnock:** The previous five amendments have been defeated heavily—more heavily each time. What purpose is being served by the noble Lord moving his amendment now?

**Lord Hamilton of Epsom:** The purpose being served is that we are able to debate these issues, which are extremely important, and that, with a bit of luck—I do not put an awful lot of money on it—this Bill will never reach the statute book. It is a very bad Bill that creates an appalling precedent. I will not take too many lessons from the noble Lord, Lord Foulkes, on talking at inordinate length, making the same points over and over again because, let us face it, we went through that experience with the EU withdrawal Bill, when a very large number of completely pointless speeches went on absolutely interminably. We on this side of the House had to sit here listening to them. We could not closure them because we did not have the majority to do so. I do not need any lessons from the noble Lord on this. If you introduce a Bill this vulnerable, you obviously run an enormous risk trying to get it on the statute book. That is what is being proved now.

Let us concern ourselves with what is happening to our constitution and our arrangements, which have worked for a very long time. I believe it might be that the usual channels are finally getting themselves back into some sort of order again and maybe discussing the future of the Bill. Was it not a tragedy that it was not possible for them to arrive at some solution for the Bill some time ago? We have to be very careful about allowing hard cases that produce bad law. In the same way, when we have a problem of this sort and we start to change our constitutional arrangements, everyone will refer back to what happened and say, “Well, it happened before, didn’t it? Why shouldn’t it happen again?” This indicates to me that the Opposition have given up any chance whatever of being the Government of this country. If they think that, were they in government and we were in opposition, we would not use machinery like this to make life very difficult for them, they have another think coming.

We have got to consider very carefully what is happening now. One reason why this is such a terrible Bill—we will get on to this at Second Reading—is that it inhibits my right honourable friend the Prime Minister from asking for an extension of Article 50, as she had undertaken to do. This makes it more difficult for her than it was before.

6pm

**Lord Warner:** I have a question to put to the noble Lord, not to the House. He seems to be developing an argument in which there are two classes of Bill that come from the House of Commons. He argues that this House should consider whether a Bill passed by the House of Commons is one which is appropriate for this House to consider or not. Can I be clear that this is the doctrine he is now trying to argue?

**Lord Hamilton of Epsom:** Quite clearly they are different sorts of Bills: either private Bills or public Bills. That is pretty obvious. This one seems to be a private Bill, which, as my noble friend Lord Forsyth pointed out, did not even have anybody’s name on it when it appeared here because it had not had its First Reading. We are breaking all our rules to try to introduce this Bill, in a vain attempt to try to change the price of fish over these negotiations. What the Bill actually does is make life more difficult for my right honourable friend the Prime Minister, rather than easier. Why we would want to meddle around in this way, and mess about with our constitutional arrangements, I cannot understand. However, if the one good thing to come out of this is that the usual channels are at last starting to work again in your Lordships’ House, then we have something to be thankful for.

**Lord Marlesford (Con):** My Lords, I will speak very briefly, following up the words of my noble friend Lord Lawson about the impact on public opinion of the procedures in Parliament in relation to this Bill, which could be very serious. The example I give to noble Lords is that of France, once our hereditary enemy, now our great friend. Why is it that France is so much harder to manage and govern than Britain? Let me give the obvious example. If public protests in Britain turn into violent riots, the public do not like it. Even if they agree with the original cause, they tend to tell Parliament to sort it out. When that happens in France, the French Government normally have two choices: send in the CRS to break their heads, or give in. They usually give in. It is extremely difficult for the French. This all dates back to 1789—

**Noble Lords:** Oh!

**Lord Marlesford:** It dates back to the French Revolution, and the failure of the then very inefficient monarchical Government, the Estates General. They met on 5 May and split, and the Third Estate—the people—went off to the tennis court and objected. The result was that, a few days later, the Bastille was stormed. The King was executed in February 1792, then came a year of terror between July 1793 and July 1794, which ended when Robespierre was guillotined. The French, therefore, are very conscious of the inadequacies of their form of government and of their Parliament.

[LORD MARLESFORD]

Recently, seeking an outsider to run the show, they elected President Macron. They did not know very much about him, but they have now woken up to the fact that, far from being an outsider, he is actually the archetypal insider. They have shown their annoyance and rage through the gilets jaunes. We should consider the impact of this legislation—or rather, of the way it is being handled—on public opinion, because we do not want gilets jaunes here.

**Lord Hunt of Wirral (Con):** My Lords, I declare my interest as a member of the Constitution Committee. I would like to make a brief intervention. Thanks to the sterling efforts of the committee, our learned clerk and our legal adviser, Professor Mark Elliott, overnight we were able to produce a brief report, which I want to refer to, because it is mentioned in this amendment.

The report was very much a rushed attempt. In the early hours of this morning I sought to rewrite parts of it, but the clerk explained to me that, sadly, my rewriting had been blocked by the spam filter on his machine. Therefore, I thought I better just add a couple of words to explain. The Constitution Committee has always sought to advise the House on fast-track legislation. Indeed, there are one or two Members of the House who served on the committee when it produced the 15th report in the 2008-09 session, *Fast-track Legislation: Constitutional Implications and Safeguards*. I would like to see a little more reference during the course of this debate to the fact that we warned people that fast-tracking should take place only in exceptional circumstances. It behoves everyone in this place to demonstrate that these are exceptional circumstances.

We also sought to emphasise the need for effective parliamentary scrutiny. We set this out in our report. However, as a member of the Select Committee, I would have preferred far more time to get into more detail. I therefore refer the House to a brilliant analysis of this Bill by Professor Mark Elliott, *Public Law for Everyone*. Before we proceed any further, we should be aware that this is, in a number of respects, a defective Bill, and we have to be very careful how we proceed.

It was acknowledged in the other place by Oliver Letwin—the previous acting Prime Minister, before the noble Baroness, Lady Hayter, took on the role—that there were drafting difficulties. He explained that it did not really matter very much because these would be dealt with and considered,

“in the Lords stages of the Bill”—[*Official Report*, Commons, 3/4/19; col. 1064]

Therefore, we must ensure that we have enough time to look into those defects. Trying to take all the stages of this Bill in one day, which is what the noble Baroness would have us do, may lead to us enacting defective legislation.

I am very grateful to the Printed Paper Office for making available our report, *Fast-track Legislation: Constitutional Implications and Safeguards*. I hope noble Lords will look at it before we proceed very much further with the Bill. It is necessary reading if we are to undertake this unusual attempt to fast-track a Private Member's Bill.

We identified a key constitutional principle, as set out on page 8:

“The need to ensure that effective parliamentary scrutiny is maintained in all situations. Can effective scrutiny still be undertaken when the progress of bills is fast-tracked, even to the extent of taking multiple stages in one day?”

We went on to say that another fundamental constitutional principle was:

“The need to maintain ‘good law’—i.e. to ensure that the technical quality of all legislation is maintained and improved”.

We then asked:

“Is there any evidence that the fast-tracking of legislation has led to ‘bad law’?”

We as a House have to ensure that we do not enact bad law as a result of fast-tracking. That is all I wanted to say.

As I explained in a previous debate, I object to the idea that there should be a second referendum when it was the second referendum that created this problem in the first place. I do not want to stray too much, but I was the chairman of the Conservative Group for Europe in 1975, and I fought hard in the first referendum and fought hard again in the second referendum. I say to every Member of the House, whatever their strong feelings on this issue, for heaven's sake, please do not let us have a third referendum. Let us get this sorted out. Let us respect the result of the second referendum but make sure that we do so by passing good legislation.

**Baroness Hayter of Kentish Town:** I think it was in about 1975 that the noble Lord, Lord Hunt, and I first met, which just shows how long we have both been around.

**Lord Kinnock (Lab):** And you haven't changed a bit.

**Baroness Hayter of Kentish Town:** It's the way he tells them.

Two interesting and different things have just been said by the noble Lord, Lord Hamilton, who very honestly confessed that he hoped the Bill would never reach the statute book—let us be clear; that is what all this is about—as opposed to the noble Lord, Lord Hunt, who says, “I want it done properly”. To some extent, the noble Lord, Lord Hamilton, may achieve his aim without having to put his amendment to the vote. His amendment says only that we should not go into Committee,

“until at least 24 hours after”,

the Select Committee on the Constitution has published its report. That was done at 11 am today. Given the way we are going, I think we are going to meet his target: it will be 11 am tomorrow before we go into Committee, so he may have achieved that without having to put it to the vote.

What we know is that no matter how much we want, ideally, to have time to do this legislation properly—in the “as normal” sense—we are not in normal times. It is simply no good putting this off so that by the time we get through it, and have had very clever people getting it right, it is too late. I hear what the noble Lord, Lord Hunt, says about there being things in the Bill that we may want to alter but spending time now on whether we consider the Bill, and how we deal with it and the need for corrections, makes it less likely that

the Bill will end up in a proper state. Without having to do so officially, I hope that we can move to vote now on the amendment from the noble Lord, Lord Hamilton. I think we can reject it because it actually will be 11 am before we get into Committee.

**Lord Foulkes of Cumnock:** My Lords, I beg to move that the Question be now put.

**Noble Lords:** Oh!

**The Lord Speaker:** My Lords, who is proposing that the Question be now put?

**Lord Hamilton of Epsom:** I think that the noble Lord, Lord Foulkes, put his Question first.

**The Lord Speaker:** I think we will go on to the amendment of the noble Lord, Lord Hamilton. The Question is that the amendment in the name of the noble Lord, Lord Hamilton, be agreed to.

6.14 pm

*Division on Lord Hamilton's amendment to the Motion*

*Contents 62; Not-Contents 235.*

*Lord Hamilton's amendment to the Motion disagreed.*

### Division No. 13

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Beith, L.	Harris of Haringey, L.
Bilimoria, L.	Haskel, L.
Billingham, B.	Hayter of Kentish Town, B.
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Blackstone, B.	Henig, B.
Bonham-Carter of Yarnbury, B.	Heseltine, L.
Bowles of Berkhamsted, B.	Horam, L.
Bowness, L.	Howe of Idlicote, B.
Boycott, B.	Hughes of Woodside, L.
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Brennan, L.	Hussain, L.
Brinton, B.	Hussein-Ece, B.
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Brookman, L.	Jolly, B.
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Browne of Ladyton, L.	Jones of Moulsecomb, B.
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Bull, B.	Judge, L.
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Carter of Coles, L.	Kinnock, L.
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Cork and Orrery, E.	Levy, L.
Cormack, L.	Liddle, L.
Corston, B.	Lipsey, L.
Coussins, B.	Livermore, L.
Crisp, L.	Loomba, L.
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Devon, E.	Malloch-Brown, L.
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 Ricketts, L.  
 Roberts of Llandudno, L.  
 Robertson of Port Ellen, L.  
 Rodgers of Quarry Bank, L.  
 Rooker, L.  
 Russell of Liverpool, L.  
 Sawyer, L.  
 Scott of Needham Market, B.  
 Scriven, L.  
 Shackleton of Belgravia, B.  
 Sharkey, L.  
 Sheehan, B.  
 Sherlock, B.  
 Shipley, L.  
 Shutt of Greetland, L.  
 Simon, V.  
 Smith of Basildon, B.  
 Smith of Newnham, B.  
 Snape, L.  
 Stephen, L.  
 Stern of Brentford, L.  
 Stevenson of Balmacara, L.  
 Stoneham of Droxford, L.  
 Storey, L.  
 Strasburger, L.  
 Stunell, L.  
 Suttie, B.  
 Symons of Vernham Dean, B.  
 Taverne, L.  
 Teverson, L.

Thomas of Gresford, L.  
 Thomas of Winchester, B.  
 Thornhill, B.  
 Thornton, B.  
 Tomlinson, L.  
 Tope, L.  
 Triesman, L.  
 Truscott, L.  
 Tugendhat, L.  
 Tunncliffe, L. [Teller]  
 Turnberg, L.  
 Tyler of Enfield, B.  
 Tyler, L.  
 Tyrie, L.  
 Uddin, B.  
 Wallace of Saltaire, L.  
 Walmsley, B.  
 Warner, L.  
 Warwick of Undercliffe, B.  
 Watkins of Tavistock, B.  
 Watson of Invergowrie, L.  
 Wellington, D.  
 Wheatcroft, B.  
 Wheeler, B.  
 Whitaker, B.  
 Whitty, L.  
 Wigley, L.  
 Willetts, L.  
 Willis of Knaresborough, L.  
 Wilson of Tillyorn, L.  
 Winston, L.  
 Woolf, L.  
 Woolmer of Leeds, L.  
 Worthington, B.  
 Young of Norwood Green, L.  
 Young of Old Scone, B.

comes before the Delegated Powers Committee, usually after Second Reading, and we then report to the House before Committee. Although I have not spoken for some time, my name has been mentioned favourably by many noble Lords over the last few months, as I bask in the reflected glory of the work done by the committee, its excellent clerk and our superb counsel. For the benefit of the House, the membership of the committee is: the noble Baroness, Lady Andrews, and the noble Lords, Lord Flight, Lord Jones, Lord Lisvane, Lord Moynihan, Lord Rowlands, Lord Thomas of Gresford, Lord Thurlow and Lord Tyler. That list includes some very experienced parliamentarians and lawyers and, of course, a former Clerk of the House of Commons. However, I think that all my colleagues on the committee would agree that the real work is done by our parliamentary counsel, who collectively have more than 100 years of experience as barristers.

More importantly, since the DPRRC was constituted in 1992 it has examined thousands of Bills to see whether or not the delegated powers contained therein are appropriate. Our official remit from this House is,

“to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny”.

In every case we examine Bills when they are introduced into the Lords and report before Committee. The Government, or sponsor of the Bill, provide an Explanatory Memorandum for each Bill, identifying each of the delegations, its purpose and the justification for leaving the matter to delegated legislation, and explaining why the proposed level of parliamentary scrutiny, such as negative or affirmative, is appropriate.

My committee examines whether the delegations in each Bill are appropriate. We are very careful to restrict our consideration to the delegation in question and we do not concern ourselves with the merits of the overall policy. To me, the crucial thing provided by the Delegated Powers and Regulatory Reform Committee is a consistency of approach in determining whether or not the powers are appropriate. For example, when we looked at the EU withdrawal Bill we decided that we would treat it exactly the same as all the others that the committee had considered over the previous 25 years. We did not say that it was exceptional and we should therefore change our criteria on the use of Henry VIII powers.

Similarly, noble Lords will recall that the Private Member's Bill on deemed consent in the name of the noble Lord, Lord Hunt of Kings Heath, sailed through Second Reading. Then my committee looked at it; we had a small concern about one aspect and we reported. The noble Lord was very concerned—though not in a panic—that our intervention would scupper his Bill, but of course it did not. The issue we reported on was addressed, the Bill proceeded and we were all satisfied that adhering to the procedures of this noble House had made for a better Bill at the end of the day. From the mega issues of government Bills to simple Private Members' Bills, the DPRRC has a vital role to play.

6.28 pm

*Amendment to the Motion*

*Tabled by Lord Blencathra*

At the end to insert “but the House shall not resolve itself into a Committee on the bill until at least 24 hours after a report from the Delegated Powers and Regulatory Reform Committee on the bill has been laid before the House.”

**Lord Blencathra (Con):** My Lords, first I assure the House that I have been present for every minute of the debate, although not in this place, in my wheelchair at the Bar of the House. Secondly, I inform your Lordships that the last time I spoke in this House on Brexit or Brexit-related matters was 26 February 2018. That was 14 months ago, and I have not said a cheep since. So I am not one of those who has been participating in what has seemed like weekly debates on Brexit in this House, and I will not speak on Brexit now, nor later this evening. If the House will bear with me and in light of the new information I have just received, I hope not to force my amendment to a vote.

However, I shall speak about the bypassing of the Delegated Powers and Regulatory Reform Committee, which I have the privilege of chairing. I am speaking in a personal capacity, because I have not had the time to consult my committee on this speech.

6.30 pm

That is my concern: the DPRRC has not been properly consulted, which it ought to be according to our rules and procedures. Every Bill before this House

Looking at the Bill before the House today, there will be noble and learned Lords who may say that the provisions in Clause 1(4) and (5) are not delegated powers. Others may say that they are, or are not, appropriate; some may think they are grossly inappropriate. Others, such as my committee and I, may be concerned about the powers in Clause 2. I simply do not know, but I am certain of this: if the counsel advising my committee get to look at it and then the members study it, we will have an authoritative report which will be accepted by all sides, as is always the case with every report that the Delegated Powers Committee produces. In my seven years in this House I have never heard any Peer criticise a Delegated Powers Committee report for coming to the wrong conclusions. Of course the Government often disagree—maybe that is why they will not whip to support my amendment today—and say that the negative is still preferred to the affirmative or that in their view the delegation is appropriate. That is the Government's prerogative but at least the House has had the chance to read our report and then press the Government or table amendments based on what we reported. If my committee is to be frozen out of considering this Bill, what is the point of us considering any other Bills? There is nothing exceptional about this Bill which means that the DPRRC should not see it before it goes into Committee.

There may be those who say that this is a straightforward little Bill and the powers being granted to the Prime Minister to seek an extension look reasonably straightforward. To them I say: a few months ago we looked at a simple little Bill called the Healthcare (International Arrangements) Bill. According to the Government and the Explanatory Memorandum, it was an innocuous little measure to ensure that when we left the EU the British Government could pay for the healthcare of Brits in the EU and, conversely, would pay for the healthcare of EU citizens in Europe when the green card system was scrapped. Everyone agreed that that was a sensible little measure. However when the counsel working for my committee looked at it, we discovered that it contained extraordinary powers going way beyond what the Bill purported to be about and what the Government said it did. As we pointed out in our report, the powers were such that it could permit the UK Government to pay for open-heart surgery for Australians in Sydney or hip replacements for Americans in Texas and, of course, everyone else anywhere in the world. Of course the government response was: "Don't be silly; of course we are not going to do that", but my committee has consistently made the point, and we repeated it recently, that we judge legislation not by what the Government say they will do with it but what the legislation permits a Government to do if they were so minded.

I will not ask for a show of hands but how many noble Lords quoted the Delegated Powers Committee in amending that Bill? One noble Baroness from the Lib Dem Benches said that my committee, which was regarded as a bit staid, had thrown a "chair through the window" with our comments on the Bill. I cannot imagine the noble Lord, Lord Lisvane, the noble Baroness, Lady Andrews, nor the noble Lord, Lord Thomas of Gresford, as the chair-throwing type.

While I might be, my chair is a bit heavy for that. If the reports of my committee are so good that noble Lords wax lyrical about them and use them as the basis for dozens of amendments, why were we shut out of the process on this Bill? We do not wreck Bills—we cannot block them and do not want to—but it is our duty, under our rules, to report on them before Committee. I therefore make this solemn commitment to the House and the sponsor of this Bill: you will have an authoritative report later this afternoon. I can in fact give more up-to-date information: we printed it about 20 minutes ago. That report will be in the hands of noble Lords to study, and they can table amendments in due course, which will be given due consideration in Committee.

I thank our distinguished counsel, clerk and committee colleagues who have pulled out all the stops today to write and agree that report. It has been circulated round our committee and has received majority support. No one has opposed it. About 20 minutes ago, I was handed a draft copy—

**Lord Shinkwin (Con):** Does my noble friend agree that the failure to consult his committee provides further evidence, if any were needed, that those who most protest their allegiance to parliamentary democracy are actually doing the most to undermine it by ramming this Bill through your Lordships' House in one day?

**Lord Blencathra:** My noble friend makes a fair point; I will leave him to make his own point in his own way later in today's proceedings.

I do not wish to read the whole report, although it is very short and I will cut out the introductory paragraphs. The House might be interested if I cut to the chase. If I can do that, then I propose to not press my amendment to a vote.

We say in our report:

"In the Government's original European Union (Withdrawal) Bill, which became the European Union (Withdrawal) Act 2018 ... exit day was wholly a matter for regulations without any named date on the face of the Bill. The regulations were subject to no parliamentary procedure at all, whether of the negative or affirmative type. The Bill allowed Ministers to decide on exit day and set it out in law without recourse to Parliament. We objected to this, arguing for the affirmative procedure, meaning that both Houses were required to debate the regulations before they could be made. The principal reasons were the political and legal significance of the date that the UK left the EU, and the allied public interest in the matter. The Government accepted our recommendation.

The principal justification for clause 2 of this Bill is that it might be necessary to legislate at speed next week to change exit day. The affirmative procedure might cause delays, with the risk that exit day in domestic law might not be aligned with exit day agreed under EU law.

There is some force in this argument, but we are not convinced by it on grounds either of principle or pragmatism. The date of the UK's exit from the EU remains a matter of the greatest political and legal significance. It is right that the matter be debated in Parliament before the current date of 12 April is changed in our domestic law. The Government have previously changed exit day from 29 March to 12 April, and they did so by a statutory instrument subject to the affirmative procedure. The Government have the time to do the same again, having afforded Parliament the scrutiny required by the 2018 Act. Negative resolution scrutiny is necessarily scrutiny after the event (that is, after exit day has already been changed in law). Scrutiny after the event is best avoided in a matter as significant as this, not least because the

[LORD BLENCATHRA]

consequences of a successful prayer against the instrument would lead to the new exit day being legally invalidated (albeit with prospective effect only) perhaps some weeks after it has taken effect.

Clause 1 of the Bill would, in certain circumstances, give the House of Commons a vote on a proposed exit day at EU level, making it perhaps less pressing for them to have one on the consequential change to UK domestic law made by the relevant statutory instrument. But clause 1 does not apply to the House of Lords, meaning that the House of Lords would be prevented from participating in the process of approving a new exit day at EU level. It is correspondingly more important, therefore, that the House of Lords can scrutinise the relevant statutory instrument before it is made, rather than after the event, again arguing for the affirmative procedure (which is the current position). For the reasons set out above, we recommend that clause 2 should be removed from the Bill, thereby restoring the affirmative procedure to statutory instruments amending exit day”.

There you have it. I therefore urge the House to have Second Reading today, let us all—those in favour of it and those who disagree—study my committee’s report and come back to Committee, or a later stage, no later than Monday. That will give us a chance to table amendments implementing, if the House wishes, what my committee recommends. There is nothing in the Bill that justifies us casting aside the procedures we have followed for 27 years and ignoring the Delegated Powers Committee, which every Member of this House says does an excellent job.

I inherited a committee with an outstanding reputation and, not through any skill of mine, it still has an outstanding reputation. We are on a slippery slope if we decide to cast aside our procedures when we do not have to. Whenever we use the excuse of national emergency or crisis, we inevitably get bad legislation. The Bill may be perfectly okay or it could have unexpected consequences. It gives considerable power to the Prime Minister—in view of her work and behaviour over the last few weeks and months, is the House willing to give her that unfettered power? That is a decision only the House can make. Again, it is not what the Prime Minister says she will do but what the law would permit her to do that worries me and my committee.

Last night in another place, the Secretary of State for Exiting the EU said of the Bill:

“There are problems with the speed of its passage, the constitutional principle of it and the way it will interact with any decision reached by the Council that differs from the earlier decision taken by the House. I hope that the constitutional experts in the other place will address some of the Bill’s flaws”.—*[Official Report, Commons, 3/4/19; col. 1146.]*

I leave it to others to address the Bill’s flaws, whatever they may or may not be. My concern today is that we follow our normal procedures and give due consideration to my committee’s report and meet tomorrow if necessary, as the noble Lord, Lord Cormack, says. Give us time to study the report; let us table amendments, if that is what we wish to do, to correct the serious flaws in the Bill. I urge the House: let us do our job; let us report in ample time so that the Bill can get Royal Assent next week in ample time for the Prime Minister to go to Brussels on Wednesday.

*Lord Blencathra’s amendment to the Motion not moved.*

6.45 pm

**Lord Taylor of Holbeach (Con):** My Lords, for the convenience of the House, I would like to make a short Statement that may be of benefit following an agreement within the usual channels regarding the stages of the European Union (Withdrawal) (No. 5) Bill. We have agreed that Second Reading will take place today after the Motions in the name of my noble friend Lord Forsyth of Drumlean. Committee, Report and Third Reading will take place on Monday 8 April. Proceedings on Monday should be concluded in a timely fashion to allow the House of Commons to consider any amendments made by this House. The Public Bill Office will therefore be accepting amendments between 10 am and 4 pm tomorrow, Friday 5 April. A Marshalled List will be produced tomorrow evening and the Government Whips’ Office will group amendments in the usual way ahead of Monday’s consideration of the Bill. After consideration of the Motion, it may be advisable to adjourn during pleasure for 20 minutes to allow noble Lords to receive a speakers’ list for Second Reading.

**Lord Forsyth of Drumlean:** My Lords, I appreciate that the hour is late and the House is anxious to get on with Second Reading. This is the first and, I suspect, the last time that I shall say, “God bless the usual channels”. I think that this is a sensible arrangement in the circumstances, since the debates on my committee reports would certainly run to two hours; with apologies to those who put their names down to speak in them, the Chief Whip, in a moment of weakness, promised me a decent slot as a replacement in the future. I therefore withdraw my Motions so that we will have time for Second Reading.

**Baroness Hayter of Kentish Town:** My Lords, I thank the noble Lord, Lord Blencathra, and my noble friend Lady Taylor for their reports. We may feel that we have worked hard in this Chamber today, but a lot of work went into those and into making them available to the House. I also thank the 250 Members of this House who have, again and again, turned up to support this Bill and give it what we should give it, which is a Second Reading. Also, for reasons that a lot of people behind me will know, I record particular thanks to my noble friend Lady Smith, who is here today and has just voted for us. We can explain that to others afterwards, but it is particularly good that she is here today. With that, I beg to move my Motion.

**Lord Foulkes of Cumnock:** My Lords, in the Statement that the Chief Whip just made, he said that he expects subsequent stages to be concluded on Monday. Given the proceedings we have seen all day today, is he giving a guarantee on behalf of the Government that they will be concluded on Monday?

**Lord True:** My Lords, if I intervene perhaps I might help the noble Lord, Lord Foulkes. My interventions in this debate, as they were last week, were simply on procedural grounds. I hope that the noble Baroness will withdraw her Motion so that we do not have a precedent for such a Motion on the Order Paper. We have an agreement in the usual channels. We have an

undertaking that we will complete Second Reading today and all other stages on Monday. I can speak only for myself, but I welcome the agreement in the usual channels. It is how we should have proceeded from the start. I will not table any amendments on the Order Paper for Committee or Report, in the spirit of co-operation that there is in the House. I ask the noble Baroness to consider, in these circumstances, whether she should not withdraw her Motion so as not to create the precedent of a Motion being forced, because I would feel obliged to divide the House on principle against it. I thank the usual channels and those wise heads on all sides of this House who have come to this agreement. Let us get on with Second Reading and, as we have just heard, consider the Bill properly on Monday. Everybody will want to get this Bill considered with dispatch. Looking around the House, I do not see any noble Lord dissenting from that. So I ask the noble Baroness to withdraw the Motion.

**Baroness Hayter of Kentish Town:** I think the noble Lord was trying to be helpful. Unfortunately, without my Motion we would remain unable to deal with more than one stage; we would have to use the normal intervals between them. Therefore I am afraid that we do need my amendment to the Standing Orders to do that. Therefore I wish this Motion to be put to the House.

**Lord Foulkes of Cumnock:** My Lords, Back-Benchers have a right to speak as well on this matter. I have sat through every minute of today's debate and have seen the filibustering tactics of some of the Members opposite. The Government Chief Whip said that he expects the subsequent stages of the Bill to be concluded on Monday. As he knows, they have to be concluded by a certain time. Is he giving a guarantee that they will be concluded by that time? Otherwise, we will be double-crossed again.

**Lord Taylor of Holbeach:** I have had the word of my companions in the usual channels on conduct. I have also had the word of a number of my colleagues behind me. I assure the noble Lord that business will be conducted in a proper manner that is fitting to this House, which is trying to do its best to deal with an important piece of legislation. I must also advise—as the noble Baroness probably recognises—that it is necessary for us to move the Business of the House Motion. It will not be opposed by us.

The House of Commons will remain open until it receives a message from this House on Monday. There is no time limit, but there is obviously a moment of convenience for the House. I suggest that we would look to finish around 8 pm, because I am fairly certain that amendments will be made to the Bill during Committee, after which we have Report and Third Reading. So this agreement has not been made out of the air; it has been made in consultation with all aspects of the usual channels here and in the House of Commons, and so I spoke with authority when I gave my statement. I confirm that it is necessary for us to proceed, to have the Business of the House Motion pressed by the noble Baroness in whose name it stands.

**Lord Foulkes of Cumnock:** I am grateful to the Government Chief Whip. He has again been very helpful, and we now have that on the record.

**The Lord Speaker (Lord Fowler):** Can we settle this, please? The Question is that the original Motion in the name of the noble Baroness, Lady Hayter, be agreed to.

*Motion agreed.*

### **European Union (Withdrawal) (No. 5) Bill** *First Reading*

6.55 pm

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

### **Making Tax Digital for VAT (EAC Report)** *Motion to Take Note*

6.55 pm

*Tabled by Lord Forsyth of Drumlean*

That this House takes note of the Report from the Economic Affairs Committee *Making Tax Digital for VAT: Treating Small Businesses Fairly* (3rd Report, HL Paper 229)

*Motion not moved.*

### **HMRC (EAC Report)** *Motion to Take Note*

6.55 pm

*Tabled by Lord Forsyth of Drumlean*

That this House takes note of the Report from the Economic Affairs Committee *The Powers of HMRC: Treating Taxpayers Fairly* (4th Report, HL Paper 242).

*Motion not moved.*

**Lord Taylor of Holbeach:** My Lords, I beg to move that the House do now adjourn during pleasure for the preparation of a speakers' list for Second Reading.

**Noble Lords:** How long?

**Lord Taylor of Holbeach:** I do apologise. The House will adjourn during pleasure for 20 minutes; the time will be shown on the annunciator.

6.56 pm

*Sitting suspended.*

## **European Union (Withdrawal) (No. 5) Bill** *Second Reading*

7.17 pm

*Moved by Lord Rooker*

That the Bill be now read a second time.

**Lord Rooker (Lab):** My Lords, I have been present for every speech today. I was sorely tempted to intervene on the odd one or two, but I kept reminding myself that I have to be diplomatic and brief during Second Reading and not upset anybody. I was always under pressure, thinking that, somewhere in this building—or on the estate—lots of meetings would be going on, trying to sort out or ease our clear difficulties with the Bill's timetable during the day. Of course, this culminated in the welcome Business Statement by the Government Chief Whip, which I was very pleased about, so I will not make some points and I will not take very long.

I am moving the Motion because this is a Private Member's Bill—it is a Public Bill and has the same status as any other Bill that happens to be led by a private Member—and I was asked if I would kick it off in this House. It is sponsored by Members of Parliament in the Commons from four political parties; it is not a Labour Party exercise, despite the constant refrain from a couple of noble Lords earlier. We are not in a normal situation; nobody is arguing that. The timetable of Brexit is an internal timetable in the UK but there is an external timetable, which we do not control, in the European Union.

Our role is not to rubber-stamp the elected Commons at any time; I make no apology for saying that. We need to consider what is sent to us. We do that—for example, that is why we do not vote on Second Reading—but we also have to consider the context in which it is sent to us. This is not normal. We are considering not Brexit—I am certainly not—but how now, today, the Commons is dealing with the Bill, because the case is not the same as it was one, two, three or four months ago. It has been forced into this situation. I was a Member there for only 27 years; others were there a lot longer. It is clearly now under extreme pressure, which is why this Bill was promoted. The Commons decided to take responsibility and control of the decision on a no-deal Brexit. We have gone past the stage where many members of the public thought no deal meant not leaving. That was the theme for months. When discussions relating to leaving without any arrangement took place, people assumed we would not leave. That is not the case.

For example, this morning we heard our police leaders in the UK warning about using language on Brexit that inflames a sensitive situation, possibly leading to violence. This is the UK today: police leaders warning us about our language on Brexit because it is potentially leading to violent acts. We heard the odd potential threat subliminally during the filibuster earlier today. This is a really serious situation. In my experience—45 years in Westminster—this has never happened before.

We also know that the Cabinet was last week warned by the National Security Adviser about a substantial rise in food prices as a result of leaving without a deal. Coincidentally, it just so happens that this House was due today to debate the evidence that the EU subcommittee reported as long ago as last May about food price rises due to Brexit. There is abundant evidence, which clearly the National Security Adviser has—he probably has better evidence than we have—that this is potentially a serious problem.

**Lord Hain (Lab):** Will my noble friend also remind the House that the Cabinet Secretary warned that there would be direct rule in Northern Ireland if there were no deal?

**Lord Rooker:** Yes, he did. I have kept away from the debate on Northern Ireland. I had one year there as a direct rule Minister dealing with very much domestic issues. I know the sensitivities of the language used when you are there, what you talk about and how you discuss things with the five political parties. It is pretty serious, but the present situation in Northern Ireland is unacceptable to the people of Northern Ireland, because they have no democratic structures other than local government, which is what they had during all the Troubles. The councillors in Northern Ireland have carried the democratic burden alone for all these years.

When I do the half a dozen sessions for the Peers in Schools programme for the year, I always preface them by saying that we have two Houses of Parliament but they are not equal. That is the central message I leave. The role of the Lords is to scrutinise and sometimes to ask the Commons to think again—that is what happens when we have a defeat of the Government; that is just a message to the Commons—but knowing that the Commons always has the last word. But of course, we are not in normal times. The timescale for what we have facing us next week amounts to a national emergency, which is why the Cabinet received the advice it did last week.

We need to treat the Commons with respect. I watched some of the debate yesterday, particularly towards the close of the evening because I was not certain whether I would be speaking on this subject, if the Bill carried, or, if it failed, on the food debate we were due to have. The Commons, like the country, is split and divided. We should therefore treat it with a degree of respect, not criticise just because it was one vote—a personal comment was made today about one of the individuals who took part in the voting. The nation is divided and the elected House of Parliament is divided; we should take that on board. That is why people welcomed the attempt last Tuesday by the Prime Minister to try to get some kind of consensus. The Commons alone has the legal responsibility on the meaningful vote. Some of them have woken up to the fact that, besides the meaningful vote, every other procedure has to come through this Chamber so that it can be scrutinised and checked. That is why we are doing this Bill today.

It is a simple Bill; I know there is criticism about that. Things that are simple are usually unfair—the poll tax is the example I use—but it is a simple, clear

Bill. If Ministers' words in *Hansard* could be fully trusted, this Bill would not be needed. I disagreed entirely with the thrust of most of the speech by the noble Baroness, Lady Noakes, but her amendment was the one that was actually true in the sense that the Bill is not needed—but it is needed because people do not trust the words of Ministers, even when they are in *Hansard*. Enough have said repeatedly, “We will not leave without a deal”, but that lack of trust forced the Commons to produce this Bill, which in effect—I am not a lawyer—gives a legal force to that promise. I realise that it is not easy. I was aware early this morning that there were problems with the Bill; there were lots of discussions going on. I was grateful to the Delegated Powers and Regulatory Reform Committee and its chair, because I had its report in my hands and read it 20 minutes before the chairman made his speech. It is very helpful but makes it quite clear that there are problems over Clause 2. Along with other matters, these have to be dealt with.

We should debate the Bill—we have a bit more time now—and send it back to the Commons, but it has to be done in line with the timescale it is forced to work to. The European Council is on Wednesday. The Bill requires the Prime Minister, a day after Royal Assent, to make the necessary decisions. It is a bit tight. That is why it must go to the Commons on Monday and get Royal Assent that day, so that on Tuesday the Prime Minister can fulfil the obligation placed on her. It says “must”. I was queried earlier today on what the sanction is if she does not. I spoke to someone who has worked with the Prime Minister for the best part of just over 20 years, day in and day out. He told me she is the most law-abiding person he has ever come across and that even when she is late for a meeting she makes sure the car goes at only 29 miles per hour. She will follow it to the letter. If the Act says she must, she will do it. There is every confidence in that, but it is the timescale that she and we are not fully in control of. We have to do our bit for the UK and the Government so that decisions can be made next Wednesday at the Council about the reason for and the length of an extension to Article 50.

I think the Bill actually helps the Prime Minister at this stage in the process, and we should support it at Second Reading—the House does not throw Bills out at Second Reading, otherwise we could never scrutinise them. I beg to move.

7.29 pm

**Lord Howard of Lympne (Con):** My Lords, it is a genuine pleasure to follow the noble Lord. He and I crossed swords many times in the other place, and I always emerged from those exchanges with a great deal of respect and a touch of affection for the noble Lord—but I regret to say that I disagree what he has said to the House this evening. The House of Commons and this House decided to delegate the decision on the future of our relationship with the European Union to the people of our country in a referendum. They did that without qualification. The question on the referendum paper was not, “Do you want to remain in the European Union if we can get satisfactory terms?” or, “Do you want to leave if we can get satisfactory terms?” Rather it was a clear question: leave or remain? The country

delivered its verdict without qualification. It said, by a relatively small but clear margin, that it wanted to leave.

Parliament then voted to trigger Article 50 and did so without qualification. Article 50 meant that we would leave the European Union two years after the article was triggered. There was no qualification. It was not a question of our leaving in two years' time if we could get a reasonable deal; it was that we should leave. That, I believe, is what we should have done last week, but we did not. That was because Members of both Houses of Parliament did not get the answer they wanted. There was a considerable majority in both Houses for us to remain in the European Union. After the result of the referendum, some Members of both Houses who had been in favour of the UK remaining accepted the verdict of the people in good faith. Some accepted it but tried to limit what they saw as the damage. They were reluctant accepters of the verdict of the people. Others—far too many, I fear—have sought to thwart, obstruct and reverse the decision of the people and have never really accepted the result of the referendum.

I believe we should leave the European Union without, if necessary, any overarching agreement. In the end, I was persuaded of the merits of the proposal put by the Prime Minister to Parliament for a third time and I would have reluctantly voted for it. However, the proposal did not achieve the support of Parliament. In those circumstances, I would leave without a deal, which is why in due course I shall vote against this legislation.

I do not want to repeat the points made very eloquently by my noble friend Lord Lilley in his speech today before he was cut off in his prime, but it is the case that we could leave. Preparations have been made on both sides of the channel for us to leave in relatively good order, and that is what I think we should do if the Prime Minister cannot achieve agreement to the terms she has negotiated. The former Governor of the Bank of England has suggested that we should do so with a six-month standstill. After we have left, we should agree with the European Union to trade with each other on the same terms. That is a sensible proposal and I would even go so far as to say that we should give each other 12 months in which to negotiate a satisfactory trading agreement. I have no doubt that if that step were taken, it would be perfectly possible to reach an agreement along those lines.

Given that, I speak against the Bill currently before your Lordships' House. When the moment comes, I shall vote against it because I think we have to honour the result of the referendum, and the time has come for us to do so.

**Lord Cormack (Con):** My Lords, is my noble friend saying that he will vote against Second Reading?

**Lord Howard of Lympne:** No, of course not. I accept the procedures of this House, but there will come an opportunity for us to vote on the merits of the Bill and at that stage I shall vote against it.

7.34 pm

**Baroness Ludford (LD):** My Lords, I support the Bill and I thank the noble Lord, Lord Rooker, for taking up the mantle of introducing it in this House. I

[BARONESS LUDFORD]

also thank Members of the other place, the right honourable Yvette Cooper and the right honourable Sir Oliver Letwin. I was distressed to hear the attacks being made by Members on the Benches opposite on Sir Oliver Letwin because, as far as I am concerned, these colleagues of ours in the other place are doing a great public service.

We need this Bill as an insurance policy against a no-deal Brexit. Even though the Prime Minister has said that she intends to seek a longer extension, it is essential to give the House of Commons a role in that process; namely, mandating the Government and ensuring the accountability of the Government to the House of Commons so that it can take proper control of the process, which is what has been wanted by all sides over the past three years. We should not be in a situation where this country slips off the cliff edge of no deal either through intent or by accident. I am afraid that the Prime Minister has blown hot and cold on no deal, so there is an issue as regards the confidence and indeed the trust that we can have that the policy will not flip-flop. We also need to ensure that the Prime Minister goes on pursuing a straight course.

The impact of no deal would be very severe. We have heard that from the CBI, the TUC and from the Cabinet Secretary, Sir Mark Sedwill. We have heard about a 10% increase in food prices, a possible recession, customs delays and bankruptcies among businesses.

**Lord Robathan (Con):** My Lords, are these not the same people who warned us, when we voted three years ago, that pandemonium would break out? Further, are not some of them, like the CBI, the same people who said that we must join the euro—and continue to say that as well?

**Baroness Ludford:** I think that the noble Lord is somewhat out of date. There has been a serious impact on the economy. As a result of the Brexit vote, we have lost around 2.5% of GDP, even though we are still in the EU. We are down by around £600 million a week.

As I was saying, there are already shortages of medicines, and that will get worse. The noble Lord, Lord Lilley, who is not with us now, suggested in a debate we had a couple of weeks ago that I was wrong to draw attention to the problem of people not getting essential medicines. These stories continue to appear, and they are very real. The NHS has not stockpiled everything because some medicines such as short-life isotopes cannot be stockpiled. It is therefore irresponsible to contemplate no deal. There would also be effects on our security and on Northern Ireland—the noble Lord, Lord Hain, has talked about the issues as regards the Northern Ireland border and possible direct rule.

Last night, Mr Mark Francois MP said in the other place that the Bill is a “constitutional outrage”, a phrase which was echoed by some speakers to the amendments to the Business Motion this afternoon. What in my opinion would be a constitutional, political, economic and social outrage would be for a Government, any Government, knowingly to inflict avoidable damage on their own citizens through a catastrophic and damaging crash-out from the European Union; hence the need to make sure we avoid a no-deal situation. This Bill assists in that process.

**Lord Flight (Con):** My Lords, is it not a question of weighing the short-term inconveniences against the long-term picture? The whole point about the long term, given the appalling economic record of the EU, is that our economy is likely to grow much less while we are part of the EU or closely related to it than if it is free.

**Baroness Ludford:** That is not the consensus of reputable economists, who all say that we will do worse outside the EU. Some of those who say that we will be fine under no deal are not the vulnerable people who will suffer in a crash-out situation. They do not have millions stashed away.

Clause 2 would enable exit day to be changed by the Government subject only to the negative procedure. We agree with the Delegated Powers and Regulatory Reform Committee that it would be better if the clause was removed from the Bill. We dealt expeditiously with the change from 29 March to 12 April in the statutory instrument, and there is no reason to think that we would not be able to do so again if required. It is a domestic law issue; if we get an extension, it is not a question of whether we are in the EU but a question of necessary housekeeping, and it can be done.

I do not want to go on about a people’s vote, but the noble Lord, Lord Howard, referred to the will of the people. It is time to update our knowledge of the will of the people. Three years on, it is not reasonable or reliable to rely on what a different electorate said in 2016. We hope and expect that the Prime Minister will seek an extension, but she should use that extension to get an update of the verdict of the people.

**Lord Wigley (PC):** Will the noble Baroness comment on whether she is satisfied that the drafting of the Bill is watertight and will guarantee that, if it is passed in this way, there will be no way for the Government to escape the implications of their responsibilities under the Bill?

**Baroness Ludford:** It would take a braver woman than I to say that it is watertight. I do not know whether there is anything behind the noble Lord’s question and that he knows something that I do not, so I will rely on the better legal minds which will follow to answer that question. However, I have no reason to think that the drafting has not been carefully looked at.

7.42 pm

**Lord Pannick (CB):** My Lords, I had planned to be at the National Theatre tonight, on date night with my wife. We had tickets to see “Follies”. The follies that we have all witnessed in this House today sadly lacked the lyrics and the music of Stephen Sondheim that I will be humming to myself throughout the debate.

I support the Bill, but I am concerned about aspects of its drafting. In particular, your Lordships will have seen that the Bill envisages that, if the Prime Minister is mandated to seek an extension to the Article 50 period and given a specified date, as Clause 1 provides, and if the European Council then says no, that it does not agree to that but makes a counter offer of a different date for the extension, under this Bill the Prime Minister would have no power to agree. She

would have to return to the House of Commons—presumably the next day, given the urgency of the matter—and meanwhile the European Council will not be sitting in Brussels waiting for the deliberations of the House of Commons; its members will all have gone home because the European Council meeting ends on Wednesday night.

This is all very unfortunate, because the laudable aim of the proposers of this Bill is to reduce the risk of a no-deal exit. However, there is a risk that, by reason of the drafting, that laudable objective may be damaged by the contents of the Bill, and I am concerned about that. Your Lordships will recollect that Aneurin Bevan told the Labour Party conference in 1957 that it should not send a British Foreign Secretary naked into the conference chamber. My concern is that this Bill will send the Prime Minister into the Brussels meeting overdressed with legal requirements.

For that reason, I shall be tabling, together with the noble and learned Lord, Lord Judge, an amendment to the Bill for consideration in Committee on Monday which will address this problem. It will seek to make clear that this legislation does not affect the Prime Minister's prerogative powers to seek or agree an extension to the Article 50 period to a date not earlier than 22 May of this year. A statutory instrument would still be required to extend exit day under the 2018 Act, as amended by Clause 2 of the Bill.

I very much hope that, over the weekend and when we debate this matter on Monday, the Government, Opposition and Liberal Democrat Front Benches will give careful consideration to the amendment.

7.46 pm

**Lord Howell of Guildford (Con):** My Lords, it is always a pleasure to follow the noble Lord, Lord Pannick, with his crystal clear legal mind. I shall study his amendment with great interest when it is tabled.

Most people will agree that we have had a miserable afternoon here—although it ended slightly less unhappily than I feared—but the reason for the muddle into which we all seemed to get earlier is quite clear and direct: in the Commons, Parliament has taken control of the business and the Government from the Ministers of the Crown. We know that Parliament is not a Government and that, as my noble friend Lord Strathclyde made clear earlier, when Parliament takes control, things always go badly wrong—they always have, every time in history. When we look in our history books, we find that every time Parliament has tried to take control from the Crown and the Executive, disasters usually follow.

Outside my office at the other end of the Royal Gallery there is a cabinet in which there is a document signed by 59 commissioners taking parliamentary control by virtue of deciding to cut off the head of the Crown Executive—namely, the King—in 1649. That was Parliament taking control. How did that end? Disastrously: it ended with the abolition of Parliament and a sticky end for all 59 commissioners who signed the executive order. It has always been so. It is natural that if we cannot sustain an Executive and the Crown prerogative is taken away by Parliament taking control, they cannot govern, negotiate or make treaties. This is the position we are in today.

Why are we in this position? Because of cascades of errors. All this is not recent. We could all spend hours blaming each other and events going back years and years into the middle of the previous century. These errors created the waves on which we are riding today, rather like corks on a wave. We are being blown along by events and the bad decisions taken by our predecessors years ago. When I was banging on about predecessors the other day, my younger son warned me, “Well, you are one of the predecessors, so you are to blame for where we are now”.

This morning, I was speaking to a French official visiting London. He said, “This is all familiar to us”. Alexis de Tocqueville described exactly what is happening now—admittedly more in relation to America—in saying that as the growth of individualism and the concern for individual liberty grew, so it would become more and more expressive and detached from the body politic, the professional politicians and the political institutions, and that huge gaps would arise. That is not very far from where we are now but, in a sense, the whole atmosphere—the whole situation—has been vastly amplified by the electronic revolution and communications technology which, in the words of Madeleine Albright, have given every individual their own echo chamber. The flood, power and volatility of opinion have changed the business of trying to prevent the gap between the government system and the individual from growing vastly wide—and vastly wide it has grown.

Where are we heading? If this Bill goes ahead, which it probably will, one possibility—the one favoured by Mr Corbyn and his wing of the Labour Party—is a permanent customs union. Another very strong possibility is a long delay. It may be short to start with, but it could be long. Another possibility, which would cheer up many people on the Lib Dem Benches, is no Brexit. That possibility is now there.

As far as a permanent customs union is concerned, ironically, if the much-reviled withdrawal agreement were supported, it would provide a temporary 21-month customs union and, after that, the means to get out of it. I know that that is denied by those who talk about permanent entrapment, the backstop never being resolved and being permanently entangled in a customs union, but the reality is that, funnily enough, the people who are arguing that are also arguing—and I believe they are right—that the hard border issue can be resolved in 21 months perfectly well, so it would never happen or, if it did, it would be only temporary. Anyway, that is another story we have debated endlessly. The point is that, on present trends, the prospect of a permanent customs union is looming over the scene, which would be a lot worse for many people, including me, than the temporary customs union in the withdrawal agreement.

There is another dubiety behind the present situation: democracy, a much-banded word, is not the same as majoritarianism. The idea that a majority vote determines all and the minority can be completely ignored is not democracy. It is a different trend that led to some disastrous outcomes in the 20th century. Compromise is always necessary in democracies. There are no exceptions. The irony of our present situation is that if this Bill goes forward, and if one of the outcomes I mentioned—no Brexit—were to occur, that would be an extraordinary situation: not on denial of minorities,

[LORD HOWELL OF GUILDFORD]

which some of my noble friends, and certainly my honourable friends in the other place, do not quite grasp when they speak about the will of the people and that sort of thing, but on the way the referendum decided absolutely that Brexit was the outcome when in fact a vast minority's view needed to be taken into account. If we go ahead with Brexit, it will be the other way round. We will be denying the interests of the majority instead of those of the minority, which would be hugely dangerous. There should be no illusions about that. If that is the outcome, it would be deeply unsettling and dangerous—certainly equivalent to anything the country experienced in the 17th and 18th centuries.

Quite simply, rather than having this Bill—it looks as though we are going to have it all the same—I would much prefer the way out that some of us have argued for all along: all of my party should support a version of the withdrawal agreement. It is called Mrs May's deal or the Prime Minister's deal, but it is in fact a worked-out agreement with the European Union that it does not want to reopen. If the EU can adjust it or add codicils to it, that is fine, but rather than the dangers of denying the majority in the future and saying goodbye to Brexit altogether, it would be far better for my party to support the withdrawal agreement. To my mind, it always was and will be the best way forward. That is difficult to face—compromise is always difficult to face—but unless we face it, there are grave dangers ahead for us.

7.55 pm

**Lord Hannay of Chiswick (CB):** My Lords, it is always a pleasure for me to follow the noble Lord, Lord Howell, who is the chair of the International Relations Committee on which I sit. Even when I do not always agree with him in every respect, I always learn a lot from what he says.

I shall pursue my noble friend Lord Pannick's theatrical image. Sitting here this afternoon, I had a vague presentiment that there was a similarity to the occasion when President Lincoln was assassinated at the theatre and somebody said to Mrs Lincoln afterwards, "And how did you enjoy the play, Mrs Lincoln?". I think this afternoon's events might have produced a pretty large raspberry to that, and I find it pretty shameful that not one of the people who kept us here all afternoon in an absolutely obvious filibuster has found the time to participate in the Second Reading of this Bill. Oh—I am sorry; I did not see the noble Baroness, Lady Noakes. I apologise. But one swallow does not a summer make.

**Baroness Noakes (Con):** There are two swallows.

**Lord Hannay of Chiswick:** My noble friend Lady Deech did not move an amendment; nor did the noble Lord, Lord Howell. I am talking about noble Lords who moved amendments. That is what I said, and I think it is rather shameful that none of them, apart from the noble Baroness, Lady Noakes, is here.

I will support the Bill. I think that it is both necessary and urgent. I think the reasons for it are the need to send, ahead of the meeting next Wednesday in Brussels,

a very clear message to our 27 European Union partners—and they are still our partners. When this Bill becomes an Act, it will send a useful message to them ahead of that meeting. It would have been much better if we could have passed it through all its stages today, but I do not believe that Monday is too late to pass a useful message, and I hope that we will do that in due course.

What is the message that we are passing? First, as other noble Lords who have spoken have said, it is that this House does not share, the other place does not share and the whole British Parliament does not share the view that no deal is better than a bad deal. That appalling mantra, which dominated the negotiations for so many months, even years, is, I think, being laid to rest by this indication—and about time too is all I would say.

The second message we are sending is that both Houses of this Parliament need more time and space to work on a new course for our relationship with the EU in future, whatever that might be. That is a useful message to send. I do not think that we ought to be too specific about how long it will take. It may be that some rather flexible formula can be found in Brussels next Wednesday to cover that, but the idea—

**Lord Framlingham (Con):** For the sake of the record, would the noble Lord confirm to the House that he is doing all he possibly can to keep our country in the European Union?

**Lord Hannay of Chiswick:** I am sorry to say that some of the noble Lord's friends this afternoon did not even have the courtesy to give way when I tried to speak, so I have no intention of answering his intervention, which is nothing whatever to do with what I have said. I said that we should set a new course in our relationship with the European Union.

The question of the European Parliament elections cannot be completely discounted at this stage, but I do not think that we should allow that complication to be an impediment to a longer extension of the Article 50 period. There is no harm at all to be found in our participating in those elections. Obviously, should we definitively leave after the elections, the result would not be followed through. I would be grateful if the Minister, when he replies to this debate, could confirm reports that I have seen that the Government are in fact making the necessary preparations to hold a vote on 23 May if we are still in the European Union on that date. It would be really helpful to have that point made clearly, because we could then stop fussing too much about it.

I do not think that the issue of a consultation with the electorate will go away. It is not part of this legislation and therefore I will not go into great detail about it. I will say merely that so much has changed and so much is different from what was put to the people in 2016 that it would be little short of shameful if we did not consult them again. Of course, they might give the same answer as they gave before. So be it, if that is their answer—but they ought to be given the opportunity, I hope that in the not too distant future, when there is a clear picture of what Brexit means—not just "Brexit" but what it means in detail—they will have a chance to have their say.

8.01 pm

**Lord Norton of Louth (Con):** My Lords, I shall be brief in making a point that I regard as fundamental. The length of my speech will be in inverse proportion to the importance of what I wish to convey. I am not concerned here with the principle of Brexit. Debate on whether the United Kingdom leaves or remains within the European Union is toxic and I associate myself with neither side in the debate. Proponents on both sides tend to lack not only balance but self-awareness.

My concern covers a matter touched upon earlier today in discussing the various amendments to the procedure Motion, and that is the constitutional implications of the Bill before us. The Bill is constitutionally novel, and some would argue objectionable, inasmuch as it impinges on the established relationship between Parliament and the Executive. I distinguish what the Bill seeks to achieve from the procedure adopted to achieve it.

The claim that the House of Commons is “taking back control” can be utilised only in respect of procedure. The current precedence of government in the business of the other place, as stipulated by Standing Order, derives from the Balfour reforms of 1902. However, wresting from the Government control of a particular policy, or determining how the Government will act in pursuing a policy, is not a case of taking back control. You cannot take back something that you never had.

Our current constitution is grounded in the Glorious Revolution of 1688. The Bill of Rights 1689 established that the Crown could no longer legislate, suspend laws or raise taxation without the assent of Parliament. However, the position of Parliament in relation to the Executive was and remained reactive. Parliamentarians made it clear that they still looked to the monarch to come forward with a policy. Parliament could and can say no to the Government; it could and can amend a Bill brought forward by the Government, but the onus for the measure continues to rest with the Government. They may come back with a fresh policy of their own, or they may choose to withdraw or not continue with a Bill that has been amended in a way of which they disapprove. As I say, the onus continues to rest with government. The status of each—government and Parliament—is clear and distinct and the relationship well understood. Since the emergence of Parliament in the 13th century, Parliament has been a reactive body, responding to demands of the Crown.

This Bill marks a departure from that clearly understood position. It confuses the relationship. That relationship has a clear, principled rationale. It means a clear line of accountability, with a Government accountable to Parliament and, through parliamentary elections, accountable to electors. We are in danger of engaging in an exercise that, like referendums, is strictly speaking irresponsible. With referendums, there is no means by which electors can hold themselves responsible for the outcomes. Similarly, with policy determined by a transient majority of parliamentarians, there is no single coherent body that stands before the electors to be held responsible for the policy.

If we proceed with this Bill—especially Clause 1(1)—we should not do so in a constitutional haze. I have

previously quoted in debate Sir Sidney Low, who in his book *The British Constitution*, published in 1928, wrote:

“In England we often do a thing first and then discover that we have done it”.

I fear that we may be in danger of doing something without fully grasping what we are doing. We in this House especially should act only when we have understood and fully reflected on the constitutional implications of what we are doing. We need to raise our gaze beyond the immediacy of a toxic and confused debate, and focus on the consequences for our constitutional arrangements.

The House of Commons enjoys primacy and is entitled to get its way, but that does not absolve this House of its responsibility to ensure that legislation is examined thoroughly and as far as possible improved, if necessary inviting the other place to think again about provisions that engage fundamental constitutional principles.

8.06 pm

**Baroness Deech (CB):** My Lords, not only is the procedure relating to this Bill unacceptable and unconventional, but the Bill too has its faults. It is unnecessary because the Prime Minister has said that she will seek a delay, and this ties her hands. It makes us subservient to European Union timing. Clause 1(6) and (7) give any European Union extension priority over what we might want. According to the Bill, if some hypothetical date that the EU puts forward is accepted, there will be a Motion in the Commons taking the form of subsection (2). That subsection has dots where a date would be; it does not refer to subsection (3).

The other thing that puzzles me is the wording in Clause 1(2). It says,

“for the purposes of section 1 of the European Union (Withdrawal) Act 2019”.

I looked it up, and there is no such Act. After much puzzling, I decided that this was a reference to the Bill, but the Bill is called the European Union (Withdrawal) (No. 5) Bill, and presumably, if it becomes an Act, it will be the European Union (Withdrawal) (No. 5) Act. Therefore, I hope that that can be corrected, or maybe there is already a European Union (Withdrawal) Act 2019 that I am unaware of. I found that reference puzzling and I hope that the Minister will be able to clarify it or make sure that it is corrected.

I also wonder why this House would not be involved if such a Motion for an extension were passed. Why would only the Commons be involved? I think that subsections (6) and (7) of Clause 1 should be deleted. I do not see why any priority should be given to European Union timings. It should be for our Prime Minister to say that she has received a suggestion from the European Union about certain dates and that is what she wants. I do not see why the European Union should make that decision. I also wonder what European Union procedures there are to make those dates firm. We have already had extension dates bounced on us, and we have been told that they are part of an international treaty. I do not know whether we are part of that, how it came about or whether we ever agreed to it.

[BARONESS DEECH]

The root of the trouble, in retrospect, is the Miller case, where a random member of the public who could afford it brought a case to ensure that Parliament was involved in triggering Article 50. I was glad to hear that the noble Lord, Lord Pannick, has now found a good use for the royal prerogative and suggests that Mrs May be allowed to use that in questions relating to the date. However, it may be that in years to come the diminution of the royal prerogative by the Miller case comes to be regretted.

It is also the case that there are problems with Article 50. As I said on Twitter, this is:

“A clue to the source of Brexit trouble”,

and these are not my words but the words of Professor Collier, who wrote in the *New Statesman* a week or two ago:

“Article 50 was designed (by a clever British civil servant of yesteryear) so as to strip any country wanting to leave of all negotiating power”.

I hope that in years to come the defects in Article 50 will be recognised.

The reason why we are in this trouble is that from day one those who voted remain, or many of them, have done what they can to block an orderly exit. Indeed, Brexiteers in the other House were misguided in refusing to pass the withdrawal agreement—not that I hold any candle for it but I do not think there was anything better, and we would not be in the situation if they had voted for it. I can therefore conclude only that the overriding motive of those who are pushing this Bill is to avoid Brexit or to have a softer Brexit. The noble Lord, Lord Finkelstein, helpfully spelled it out in the *Times* a couple of days ago in an article that he said was addressed to the European authorities. This is what to do, he said to them in his article, if you want to stop Brexit: give Britain a delay. Give it more, more and more delay. Do not impose conditions, just delay and delay, and the whole thing will eventually dribble away in the sand. That is what the noble Lord said.

On the other hand, there is the question of no deal. There might be chaos, although we do not know, but two particular advantages of no deal have emerged recently. First, suddenly Mr Varadkar is talking about sensible ways to get around the Irish hard border issue. Suddenly he has come forward with what he says might be acceptable technical ways to do this—a miracle. Secondly, I think no deal would force the European Union to negotiate. It would jump-start it into negotiating, which is its duty under Article 50 and which it has neglected. All the EU has said is, “No, we will not reopen the withdrawal agreement”, and, “No, we will not change anything”. So one wonders really what the delay is for. If Europe will not reopen the withdrawal agreement, why are we delaying? It will say to us, “What’s your new plan for the future?”. Even if we were to say, which I hope we will not, “A customs union”, what guarantee is there that Europe would agree to it? Probably it will just say no to anything that we ask for so that the delay goes on and on. An extension as mandated in the Bill would not end the possibility of no deal, because if no deal happens

because there is no deal then no deal is what we will get. So I do not see that there is any reason for the delay.

Lastly, on the notion of a second referendum and people changing their minds, I rather wonder whether remainers have changed their mind. What did they think they were voting for two or three years ago? Were they voting for what we see now across Europe? Were they voting for the collapse of French security? Were they voting for the high level of Belgian intelligence? Were they voting to see more fiscal indiscipline within Italy, higher unemployment in Greece and less philanthropy and sharing of burdens by Germany? Were they voting to see more authoritarianism in Hungary, less respect for the rule of law in Poland or increasing expenditure, sometimes unaccounted for, in Brussels? Were they voting to see a Europe that is unwilling to support NATO as it should? I hope that they will think again. Facts have indeed changed over the last two years, for the worse.

I hope the Minister will respond to my points about drafting and reply as to why we need the Bill at all.

8.14 pm

**Lord Anderson of Ipswich (CB):** My Lords, it is a great pleasure to follow the noble Baroness, Lady Deech. I have great respect for her, not least because she was until recently chair of the Bar Standards Board. If we do not always agree on matters of constitutional law or indeed attitudes to Europe, and I am afraid we certainly do not, perhaps we should put that down to my not having been a member of the illustrious constitutional law class that she was referring to earlier today.

I welcome the Bill but we must acknowledge that its aims are modest. It allows the House of Commons to ensure that an extension is requested but it does not offer a guarantee against no deal. If it gets to the stage of the Bill being used then I am afraid that that matter remains within the unilateral control of the European Council, or indeed each of the 27 European Governments, who will retain a veto on a matter of extension. It is less powerful in that respect than the indicative Motion placed by Joanna Cherry in the House of Commons last week, though I immediately acknowledge that that Motion did not gain the support of that House, whereas this Bill did.

There is at least one fixable defect in the Bill. I say “at least one” because I am afraid I have not studied the report of the Delegated Powers and Regulatory Reform Committee; it may well be that when I look at what it has to say about Clause 2 I will find myself in agreement with that. The fixable defect that I have in mind is that which was lucidly explained earlier on by the noble Lord, Lord Pannick, relating to the procedure following a counterproposal from the European Council. That is alluded to briefly in this morning’s report by the Constitution Committee and covered in more detail by the legal adviser to that committee, Mark Elliott, whose name has been mentioned already today, who sets it out in his blog, Public Law for Everyone. He has done a very thorough job and I think we in Parliament should all be very grateful to him for the work that he has done.

The amendment by the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, sounds promising to me. If it can be accommodated in time for this urgent Bill to be useful, I for one will be looking at it positively and with gratitude.

8.17 pm

**Lord Adonis (Lab):** My Lords, it is a privilege to follow the noble Lord, Lord Anderson. He is absolutely right to highlight the issue about the procedure following a counterproposal. My understanding is that discussions that include the Government are under way on this. Perhaps the Minister might be able to indicate to us at the end of the debate whether the Government themselves will be tabling an amendment on Monday. The Minister is shaking his head and saying they will not, so I think the House will take careful note of that in terms of where it might go next.

In his brilliant speech introducing the Bill, my noble friend Lord Rooker said that the Prime Minister had the reputation of being the most law-abiding person in the country who, even when she was late for an engagement, travelled at precisely 29 miles per hour in her official car. As a former Secretary of State for Transport, I am delighted that she observes the speed limit in that way. However, the big problem that we in this country face at the moment is that she is accelerating the country at about 100 miles per hour towards the cliff edge. We are seeking to decelerate the car very rapidly to see that we do not go off the edge of a cliff but stop, take stock as a country and do something far more sane and sensible than that.

If we had complete trust, there would not be a need for the Bill, but I am afraid a pattern of behaviour has grown up over the past year. There was the first meaningful vote, which became meaningless when the Prime Minister lost it, and then the second meaningful vote, which then became meaningless. There was the clock that was not supposed to be run down but is now practically at zero. That pattern of behaviour has led Parliament and responsible parliamentarians to believe quite rightly that without a legal backstop, which is effectively what we are legislating for, there is a real danger that things could go seriously wrong next week.

The noble Lord, Lord Anderson, is right to say that the procedure in the Bill does not make it absolutely impossible for no deal to take place but makes it much less likely because it imposes a process of parliamentary accountability and debate, both beforehand and afterwards, which makes it extremely unlikely that no deal would happen. The reason it makes it extremely unlikely is that the considered and firmly declared will of Parliament is that we should not have no deal. That has repeatedly been the vote of the House of Commons, by 400 to 200 votes when a view on that specific proposal was last expressed. The majority of one on this Bill is very misleading, because it is due to concerns about whether it is correct to limit the royal prerogative in the way that is being done at the moment. I take careful note of the remarks of the noble Lord, Lord Norton, on that.

It is very important to address the underlying issue, which is the crisis facing the country: does Parliament want no deal? The House of Commons could not have

been more emphatic on that. It does not want no deal. However, because it does not have sufficient trust in the Prime Minister to ensure that no deal is removed from the equation, we have this legislation.

The noble Lord, Lord Forsyth, in unjustly derogatory remarks about Sir Oliver Letwin earlier, missed the point that Sir Oliver has been performing a very valuable public service. He has effectively made himself the leader of a massive parliamentary majority encompassing all sides of the House of Commons and the overwhelming majority of Members of your Lordships' House, who do not want to see the country trashed next week by an inadvertent move towards no deal. Introducing his Bill yesterday, at the beginning of the debate in the House of Commons, Sir Oliver said,

“there should be a transparent and orderly statutory process or framework within which the House has an opportunity to consider the length of the extension that is asked for and to provide the Prime Minister with backing for her request to the EU in an unequivocal and transparent way”.—[*Official Report*, Commons, 3/4/19; col. 1060.]

That is a laudable and very necessary objective for Parliament to secure, which is why we are attending to these matters so late on a Thursday evening and will not rest until we have enacted the Bill.

The big question which then faces us as a country is: what do we do once we have this long extension? We are in the middle of a very deep political and constitutional crisis, because of our inability to light on a policy which is sustainable for the nation. The noble Lord, Lord Howard, who is no longer in his place, gave a very simplistic answer to the question. I am afraid that, to my mind, that simplicity is born of a fundamentalism I find extremely unattractive. He said the House of Commons voted three years ago to delegate the decision on what we will do as a country to the people. This goes to the fundamental issue facing Parliament and the country at the moment. Three years ago, all that the country was asked to vote on—the only option people were given—was four words: leave the European Union. That was the option on the ballot paper. There was no detail.

As has now become clear, the people behind the leave campaign all had inconsistent and often contradictory objectives about what they wanted. Some said we would stay in the customs union and keep freedom of movement; some said we would not. As the negotiations have proceeded—I give the Prime Minister credit for doing her best in the negotiations—it has become clear that we cannot achieve the objectives set out three years ago. Not only that, but the Prime Minister's own objectives, set out in her Lancaster House speech of January 2017, cannot be achieved either.

When faced with a situation in which promises made cannot be kept, the country faces a very deep crisis and circumstances have changed radically, what do you do? Do you continue to accelerate at 100 miles an hour towards the edge of a cliff? Or do you decelerate, stop, take stock, be reasonable and—this is highly appropriate—give the country the opportunity to make a judgment on whether it wants to proceed with Brexit on the terms negotiated by the Prime Minister or stay in the European Union?

[LORD ADONIS]

The situation we face reminds me very much of a Sherlock Holmes novel. I was reminded of it because I have been speaking up and down the country on Brexit recently. Two weeks ago, I was in Crowborough, where Sir Arthur Conan Doyle lived. Indeed, I had my photograph taken next to his statue. I had to get a special angle for the photo, because it is next to a Wetherspoon's. For reasons noble Lords may understand, I was very keen to have Sir Arthur Conan Doyle in the picture, but I was not so delighted to have a Wetherspoon's in it. I managed to get the right angle, however, and those who follow me on Twitter can see the picture.

In *The Sign of the Four*, Sherlock says:

"How often have I said to you that when you have eliminated the impossible, whatever remains, however improbable, must be the truth?"

That is the situation the country now faces. The impossible have been eliminated: no deal; the Prime Minister's deal; different variations of the Prime Minister's deal; and supposed alternatives to the backstop, which simply have to be called alternative arrangements because they do not exist and cannot be defined. In a wonderful Orwellian twist, not having any alternative arrangements, what have the Government done? They have set up an alternative arrangements working group. You could not make it up. But there are no alternative arrangements. We will not have a frictionless border in Northern Ireland in the cloud and so on—it does not exist.

In this situation, the only sensible policy for the state that now exists is to take the best deal that can be negotiated, which is the Prime Minister's existing one—at least that is technically possible to implement, because it has been negotiated—and put that to the people, with the alternative being to remain in the EU. In the conversations taking place between the Prime Minister and the leader of the Opposition, I believe it would be possible to forge a compromise on that basis.

**Lord Howell of Guildford:** The noble Lord is both wrong and right. He is right that the referendum was a simple choice. What did it show? It was not a decisive view either way; it showed that the country was deeply divided and confused. I think Sherlock Holmes or Dr Watson would say that the answer to all this must be a compromise, because the country is divided. Why does the noble Lord think that, in putting a further referendum to the country, things would be any different? We would still have a divided nation, maybe with a slight majority one way or the other, and there would still be a need for compromise. Is that not obvious?

**Lord Adonis:** I am precisely proposing a compromise, which is to take the Prime Minister's deal, which is the best deal that can be negotiated if we are to have Brexit, and put it to the nation, with the alternative option being to stay in the European Union. That is a compromise that would bring both sides together. The compromise I do not think it is possible to have, which I know the noble Lord, Lord Howell, hankers after, is some half-bastardised form of Brexit. We have spent month after month searching for that and I am afraid that, like the holy grail, it does not exist.

**Lord Bilimoria (CB):** I thank the noble Lord for giving way. I say to the noble Lord, Lord Howell, that people were confused three years ago. Does he agree?

Now they are much more informed, so they can make a much more informed decision. It is not fair to compare that with the people's decision three years ago.

**Lord Adonis:** The noble Lord makes a very powerful further argument for the second referendum. I support his argument; he will make his speech later and I hope he will develop that important point. I say to the noble Lord, Lord Howell, that, because we have not been able to produce a Brexit that lives up to the promises made three years ago, and because there is not—let us be frank—a parliamentary majority prepared to support it on principle, I think the only compromise that is now viable for the country at large is to put that deal to the people, because it is technically possible to implement it, but with an alternative option to stay in the European Union. It is my view that the majority will vote for the option to stay in the European Union because it is now so obviously preferable to the Prime Minister's deal, and the £39 billion that we would pay the EU for worse trade and economic terms than we have now—the arguments go on. The people could make that judgment.

I will make one final remark about the situation we now face. One former leader of the Conservative Party, the noble Lord, Lord Howard, has spoken and made a very hard-line speech, if I may say so, about how we need to leave with no deal. An equally significant intervention was made this week by another former leader of that party, a Member of this House who, alas, is not in his place and speaking this evening, the noble Lord, Lord Hague of Richmond. On Tuesday, he wrote an article in the *Daily Telegraph* and it is very important for those engaged in the Brexit debate to read it. I would particularly recommend it to noble Lords on the Conservative Benches and maybe even more so to Conservative MPs, many of whom, from my watching of debates in the House of Commons, have become extremely hard-line and militant on this issue of the need for a no-deal Brexit.

This is what the noble Lord, Lord Hague, wrote:

"Do not underestimate ... the immense danger of continuing to pull apart from each other while the public looks on with an irritation that is now turning to dismay, and at any moment could turn to anger ... the Conservatives are inevitably identified with the Brexit project, for good or ill, and slowly, steadily, the case for Brexit is being lost ... The Conservatives ... face the terrible double prospect of voters shifting away from supporting their central policy, while those who do support it become enraged by the failure to deliver it ... My advice to my old colleagues is therefore this: if you don't get Brexit over the line now, it will probably never happen".

Brexit has not been got over the line; it will probably never happen. The right thing for the nation, and maybe even for the Conservative Party, is for it to be buried, for the nightmare to end and for us then to carry on our national life in a much better prospect.

8.30 pm

**Lord Cormack:** My Lords, the noble Lord, Lord Adonis, always gives a compelling and fascinating speech, but there are not many shades of grey in it. I am sure that he, along with most of us, breathed a sigh of relief when the Chief Whip announced the agreement with the usual channels tonight, because this afternoon was one of the most unpleasant afternoons that I can

remember in your Lordships' House. My noble friend Lord Howell of Guildford referred to this. There was an almost palpable anger in the air for much of the time. Why? Because some of those in my own party who have been most militantly for Brexit, most of whom belong to the strangely named ERG, are not prepared—to use a word that has come up many times this evening—to compromise.

I cannot speak for everyone, but I can certainly quote my noble friend the Duke of Wellington, who is here. Most of us were fervent remainers who were disappointed at the decision that was taken in June 2016. We thought it was a mistake but, nevertheless, we accepted it. We saw it as our manifest duty to work together to produce a Brexit that did indeed preserve many of the advantages of the European Union—which, I may say, had been promised by the leave campaign—but would, at the same time, turn this country in a slightly different direction, while always preserving, cultivating and deeply valuing our friendships in Europe, because the 27 other nations remain our friends and neighbours, and sharers of a common civilisation.

I make those few remarks as a preface, because what I want to do is briefly to say how much I admire those whose names are on the face of this Bill. They are men and women of four parties in the other place, led by notable members of the Labour and Conservative parties, who, realising that compromise was absolutely essential, came together. For many months now, in spite of vilification, some of which was repeated this afternoon, Sir Oliver Letwin, Dominic Grieve and Dame Caroline Spelman—who I must admit is a cousin of mine—of my party have worked tirelessly along with people such as Hilary Benn and Jack Dromey from the Labour Party, trying to come together.

I always felt, from the word go, that it was necessary to try to come together. I proposed in June 2016 a Grand Committee of both Houses and all parties. That was turned down—I have made similar suggestions since—but this is the nearest to an enactment, as it were, of that suggestion. They were able to come together and stand firm, and we must remember that this Bill predates, in its conception and indeed in its drawing up, the recent welcome developments to reach across the parties that we have seen in the last few days.

I can well understand why my honourable friend Sir Oliver Letwin, and Yvette Cooper, a woman of great courage and stature, persisted with the Bill. It is now before your Lordships' House. It was created in a vacuum, and the vacuum was created by a lack of leadership. What we have to recognise is that this is, as has been said, a public Bill. It is not a private Bill. It is a public Bill that has commanded a majority—albeit the smallest of majorities—in the other place and, because it has commanded that majority, it comes before us. Our constitutional duty is to give the Bill an unopposed Second Reading and then to look at it with care and diligence on Monday. I am glad that we will be doing that after a little refreshment over the weekend, rather than when we are tired, exhausted and tetchy in the middle of the night. We would all have been all of those things, and we would have got progressively worse as the night had gone on. Now we can come to it fresh on Monday.

Of course there are amendments that we should look at. I was much taken by the suggestion of the noble Lord, Lord Pannick, and glad to hear of the amendment that he and the noble and learned Lord, Lord Judge, are intending to place before us on Monday. It may well be an amendment that will be accepted without Division. I hope that it will, because I hope we will be able on Monday to bring people together. I hope that we will be able to send this Bill back to the other place with constructive and improving amendments that it can accept. Then it does no harm because, although this is a constitutional innovation—my noble friend Lord Norton of Louth was right to indicate some of the problems and potential pitfalls—we must all nevertheless always remember that it is the Executive who are answerable to Parliament, and not Parliament that is answerable to the Executive. We live in a parliamentary democracy, where we have parliamentary sovereignty.

We also have to heed the wise words of my noble friend Lord Howell of Guildford—he has disappeared now—who talked about the difference between democracy and majorities. There is a definition of democracy that I always like: a proper democracy is one that has regard for all minorities. A proper democracy therefore has to have abundant regard for the largest recorded minority in British history. People are always talking about the 17.4 million, but the 16-plus million were the largest recorded minority in British history. We have to come out of the difficult slough of despond in which we have wallowed for far too long with something that recognises that, particularly as the majority of those who voted remain were not of our generation. There are exceptions in the Chamber tonight, I know, but for the most part they were of the younger generation. Those of the generation that is most represented in this House this evening were on the leave side.

If we are to create a new relationship with Europe—I look at it in that way: not as the severing of a relationship but the creation of a new one—it has to be one that fires the imagination of the young and gives them the opportunity to partake in many of the benefits that we have enjoyed. We debated one such benefit on Monday night of this week when we talked about the Erasmus and Horizon 2020 projects.

It is good that there is a quieter, more sober atmosphere in the House this evening. It is good that we are not going in for too many recriminations. We are not all of one mind and one view, but we have to respect each other's views. In parenthesis I will say how delighted I have been this week to see my noble friend Lord Spicer back in his place. He has suffered from grievous illness and shown enormous courage and bravery. I never agree with a word he says on Europe, but we have been firm friends since he first entered the other place a year or two after I did. We must remember that, only two or three years ago, although we very often had differences of opinion on Europe, most of us who were members of the same party—and indeed of the same Chamber—respected and liked each other. I have seen an erosion of respect and a diminishing of liking. It is our duty to reverse that unfortunate trend. I hope we can begin that tonight and continue it on Monday.

8.40 pm

**Baroness Noakes:** My Lords, I am not going to give the speech that I had planned to give at this late stage of the evening. I was nearly goaded into picking it up again by the typically hard-line speech of the noble Lord, Lord Adonis, but I will leave my speech with my other papers down there, and just say that I would have said a lot more about the B-word. Instead, I will just associate myself with the remarks of the noble Lord, Lord Howard of Lympne, because I agreed with what he said about it.

I have stayed in the House to speak in this debate because, while I cared passionately about the issues that we debated during the day, and the constitutional issues raised by the way in which the Bill has been put through the House, I believe that there are aspects of the Bill that are worth debating. We should be very wary of restricting the scope of the Government to negotiate international treaties, and that is what this Bill does. It further restricts the royal prerogative. Of course, the royal prerogative has been restricted in many ways over many years, but this is a further restriction in the area of the Government having the effective power to negotiate internationally, which I believe is important. The royal prerogative is part of how our constitution works. It is important in enabling the Government to govern effectively.

So I regret that this Bill has come to us. It passed by one vote in the other place—but we have to accept that and move on. I was particularly interested in the remarks of the noble Lord, Lord Pannick, who is no longer in his place, about the way in which the Bill is over-restrictive in this area. I hope that he will return on Monday, together with the noble and learned Lord, Lord Judge, to explain further what he means in an amendment there.

I accept that this Bill will come. We just need to concentrate on improving it—from my point of view because encroaching on the royal prerogative is so serious. The most important thing that we should do is ensure that the powers that have been created for Parliament are time-limited. In any event, it should only be needed for next week—or perhaps slightly longer—but we should look at putting some restrictions in the Bill on how the powers that have been created could be used. Whether we do that by time-binding the powers that are created in Clause 1 or by way of a sunset clause is something that I shall reflect on and return to in Committee. I do not believe that this is a statute that should be left for ever and a day on the statute book. I do not think that it is a good precedent, but I accept that we need to send it forward in a workable way.

I was also interested in the speeches earlier today of two of my noble friends, Lord Hunt, as a member of the Constitution Committee, and Lord Blencathra, chairman of the Delegated Powers and Regulatory Reform Committee. Both of them indicated that this Bill should be improved through the process of scrutiny in your Lordships' House, which we will now be able to do on Monday. I join my noble friend Lord Cormack in rejoicing in the agreement that was reached through the usual channels today. Now we can tackle this Bill in the civilised way in which we normally conduct our

work of scrutinising legislation. I thank the usual channels for coming to that arrangement, and, for my part, I look forward to resuming discussion on the Bill on Monday.

8.45 pm

**Lord Warner (CB):** My Lords, the Brexit debate has increasingly reminded me of the film that shot James Dean to fame, “Rebel Without a Cause”. Noble Lords who are old enough will remember that the high spot of the film is James Dean and his arch rival driving their cars towards a cliff edge. The idea is to be the one with the most nerve, and to jump out of the car as near to the cliff edge as possible. For some time, I have been wondering who from the ERG we could cast in the James Dean role. It seems to me that that is what they have been doing over the past few months.

I want to make one simple point. Whatever may have happened previously on this issue, it has now become a matter of trust and confidence. The Government's behaviour over a period of time means that it is extremely difficult to rely on their word or their assurances. We have been through many stages: “No deal is better than a bad deal”; “The Government's deal is the only deal that can prevent no deal”. The Government's deal and no deal have, however, been rejected pretty consistently by the House of Commons, and with substantial majorities. No clear picture has been presented to Parliament or the public about the sunny uplands that are supposed to appear after we have left the EU. No picture has been painted for the public or Parliament to understand. Very late in the day, a document was cobbled together, with no statutory responsibility attached to it.

The Prime Minister has been forced, very late in the day, to seek help from the leader of the Opposition—to many in her party the great Satan, to use the Iranian mullahs' phrase about the United States. Her decision belatedly to reach across the aisle has been extremely badly received by a substantial proportion of her party and her Cabinet, so there is now huge uncertainty as to what will happen in the next week. That is the actual position we are confronted with at this time. Whatever arguments there may have been in the past about the merits or demerits of the case for the remainers or the leavers, that is where we are today, and we have to face up to it.

The date with destiny is approaching on 12 April, whether we like it or not. In this situation, the British people can place little confidence in what an uncertain Prime Minister will do next week. We cannot be sure what will happen; we have no certainty whatever. I suggest that the House of Commons is right to try to get some grip on this situation and to create, through the Bill, at least a possibility that the British people will have a chance to create some space to think further about the issue of Brexit. With some sensible use of the Bill, they would at least be presented with an opportunity not to experience the chaos of no deal, and not to experience a deal, not having given their approval to it, negotiated by the Prime Minister with the EU and with little clarity about the future.

This kind of legislation is necessary because there is plenty of evidence that the one thing all remainers and leavers now agree on is that the Government have

made a great hash of the negotiations. Those groups may be in that position for different reasons, but they both agree that this has been an unsatisfactory use of two years. Both sides of this argument are not terribly thrilled with the way the Government have handled things in trying to give effect to the referendum result. There is also plenty of evidence, whether we like it or not, that many people—on both sides of the argument, but particularly among those who voted to leave in 2016—have changed their mind after they began to understand what was actually involved in leaving the EU. That uncertainty, and the lack of confidence in the Government which helped create it, is why I support a people's vote. It is also why I support the Bill.

I would much prefer not to have needed the Bill, for all the constitutional reasons that people have adduced. But we are where we are, as they say: in the very uncomfortable position of the date arriving when, whether we like it or not, some pretty uncomfortable things will be done on behalf of the British people. Let us be absolutely clear: the reason we have got to this position is that the Executive have consistently failed to properly consult parliamentary opinion over the two years, or to convince those in Parliament of the merits of the deal. The Government have brought this serious problem on themselves, and the good guys and girls in all this are those in Parliament who, as we approach the end game, have really tried to create some time and space to produce a more reliable and better outcome to the Brexit issue. That is why I support the Bill, which will provide some possibility of helping this Prime Minister and the Executive rethink how they can proceed in a way that achieves more support for any exit, within Parliament and within the country.

8.52 pm

**Lord Willoughby de Broke (Non-Aff):** My Lords, I agree with only two things that the noble Lord, Lord Warner, said: one is the lack of trust in the country for this Government; the other is the botched mishandling of all our negotiations with the EU and in Parliament. But the lack of trust is largely due to the way Parliament is seen to have tried to block the result of the referendum.

I remind noble Lords in this House, who seem to have forgotten it, that in June 2016 the people of this country voted to leave the European Union. The turnout for the vote was 72%, which was one of the biggest turnouts for a democratic vote in this country's history. The result was conclusive: 52% to 48%. The remainers understandably did not like that and said that we did not understand what we voted for. Of course we understood what we voted for: we voted to leave. In fact, each household in the country was sent a leaflet by the Government of David Cameron, who was then Prime Minister, extolling the virtues of remaining in the EU, which said we would be absolutely mad to vote to leave. At a cost of about £9 million, that was a pretty shabby little exercise at the taxpayers' expense.

The last page of that leaflet was interesting, and I want to remind the House what it said:

“The referendum on Thursday, 23 June is your chance to decide if we should remain in or leave the European Union... This is your decision. The government will implement what you decide”.

That seemed to be echoed by the current Prime Minister in her Lancaster House speech, which was referred to by the noble Lord, Lord Adonis. At that point, she clearly accepted that the result of the referendum was a clear out. There would be no single market; no customs union; no part in, part out; and the famous, “no deal is better than a bad deal”.

Parliament seemed to agree with her on that, and with the vote in June 2016. I remind noble Lords of what the votes were, both in this House and the other place. The European Union Referendum Act 2015 was carried in the other place by a majority of 491 votes. The Commons voted to give the Bill its Third Reading by a majority of 263 votes. The Bill received its Second and Third Readings in this Chamber without Division. On the European Union (Notification of Withdrawal) Act 2017, the Commons divided, and the amendment was defeated by a majority of 236 votes. The Bill was given its Second Reading by 498 votes to 114; a majority of 384. The Commons gave the Bill its Third Reading by 494 votes to 122; a majority of 372. The same applied to the European Union (Withdrawal Act) 2018, which was passed by majority votes in both Houses. There is this sudden idea that this is somehow unconstitutional.

**Lord Robertson of Port Ellen (Lab):** Can I ask the noble Lord a question? Had the referendum gone the other way, would he and his friends have accepted it absolutely and stopped campaigning for Britain to withdraw from the European Union?

**Lord Willoughby de Broke:** Of course we would have accepted the referendum result—we would have had to. We would not have said that the whole thing was illegitimate and that we wanted another referendum; we would have had to accept the result, just as we were forced to accept the result of the 1975 referendum which unfortunately brought us into the clutches of the European Union, or the Common Market, as it then was. We accepted that, so the answer is that we would have accepted this.

Today, we were presented with a wretched Bill that orders the Prime Minister to go to Brussels as a supplicant, on bended knee, to request an extension until an unknown date. That we do not have a date in the Bill is a matter of contention which will be dealt with in Committee. It is a complete negation of the vote at the end of June 2016.

The noble Baroness, Lady Hayter, and the noble Lord, Lord Rooker, who spoke earlier to introduce the Bill, and other noble Lords, have said there is no appetite for no deal. I must disabuse them of that idea, and tell them that there is an appetite for no deal. Only this morning, a YouGov poll came out—not of Parliament, because we know the flavour of Parliament and have had enough of that for a long time, but of the country at large. Among the Conservatives polled, 72% were in favour of no deal and only 15% against. From the Labour Party, 21% still voted no deal and 34% against. In London, 26% were for no deal and 45% against. In the rest of the south of England, 44% were for no deal and 34% against. In the Midlands, where I come from, 46% were for no deal and 31% against. In the north, 41% were for no deal and 34% against. That was today; it is not imagination.

**Lord Bilimoria:** Could the noble Lord clarify the results he has just cited? When he says, “against”, is it no deal versus revoking Article 50? If not, what is it against?

**Lord Willoughby de Broke:** It is no deal versus remain in the EU. That is what the question was in the YouGov poll this morning. I have it on my mobile; I will talk to the noble Lord afterwards and give it to him.

**Lord Bilimoria:** I have got the figures right here. The latest YouGov poll, which I looked at today, says that 37% were for a second referendum, 26% for no deal and 11% for the PM’s deal. No deal being a bad outcome was 50%, versus 25% for it being a good outcome.

**Lord Willoughby de Broke:** That is very different from the poll I saw. Perhaps after this debate the noble Lord and I might share a drink and we can compare polls. However, I stand by the figures that I cited from today’s YouGov poll.

Earlier this afternoon, the noble Lord, Lord Owen, who is generally admired, warned this House to be very careful. He was right to say that. The reputation of this House has been damaged by the perception—perhaps no more than that—that it is against leaving the EU and against the result of the referendum voted for by 17.4 million people. If this goes on, and the House continues to thwart and block the result of that historic vote, I fear that the feeling will quickly turn to downright contempt, and deservedly so.

9.01 pm

**Lord Stern of Brentford (CB):** My Lords, we need the protection provided by the Bill because the potential losses from a no-deal Brexit are so grave. I will not repeat what the House has heard many times about potential short-term disruption, which could indeed be very serious. I will not repeat what it has heard about security and Northern Ireland, although these things are very worrying. As an LSE professor and current president of the Royal Economic Society—though I do not speak tonight for those institutions—I emphasise and understand how threatening a no-deal Brexit would be to our universities and our research, which are among the UK’s greatest assets and comparative advantages.

My basic purpose tonight is to dispose, very quickly, of the fatuous argument that a no-deal Brexit would bring some medium-term sunny uplands. It is assertion without evidence; it is fantasy. Every serious study, by the IMF, the OECD, the Bank of England, Her Majesty’s Treasury, the National Institute of Economic and Social Research, some of my fine colleagues at the LSE, although not myself, the merchant banks JP Morgan and Goldman Sachs—I could go on—points to medium-term losses of 5% to 10% of GDP per annum; that is not tomorrow but in 10 to 15 years. That is £100 billion or £200 billion a year to this country, dwarfing the £10 billion net that we pay to the EU. Where do these calculations on losses come from? They come from rising trading barriers to our major partner and discouraged investment. They take account of possible

reduced barriers elsewhere, but the suggestion that these could offset the other losses simply does not stack up. The results are consistent with the currency markets, with clear messages from business and with common sense. There is no pretence at precision here. We are simply understanding, from the serious work that has been done, that the medium-term costs from a no-deal Brexit look very serious.

The evidence for the argument of the medium-term sunny uplands is simply not there. The argument is a tissue of confusions, yet we have heard it today in your Lordships’ House. It cannot be taken seriously by those who take evidence seriously. The risk of a no-deal Brexit is grave in the short, medium and long run: that is why we need the protection afforded by this Bill.

9.04 pm

**Baroness Wheatcroft (Con):** My Lords, it is a pleasure to follow the noble Lord, Lord Stern, whose informed comments about the effects of no deal none of us should dismiss.

Earlier this evening the noble Lord, Lord Warner, reminded us of the film career of James Dean. I was reminded of another James Dean performance: “The Dark, Dark Hours”. We have been through the dark, dark hours—not least this afternoon. I feel that at last, with this Bill, we are beginning to see the light. When the country so desperately needs cross-party co-operation, as even my right honourable friend the Prime Minister now seems to accept, it is a huge relief that in the other place Sir Oliver Letwin has been able to work with colleagues from across that House to bring us this important piece of legislation. My noble friend Lord Cormack pointed out just what hostility some of these individuals in the Commons have had to face. They have been incredibly brave and I am full of admiration for them.

It is now clear that after three years of limping towards Brexit, the country needs significant time to plot a sensible course ahead. That is certainly not the Prime Minister’s deal, which has little to recommend it; nor is it to simply leave without a deal—we have already heard just how bad that would be. Business has been yelling from the rafters that no deal would be a disaster for this country. So we need time to come to a consensus on what the country could accept as its future relationship with the EU. The 27 have consistently said that they need the UK to say what it wants, not what it does not want. We have spent nearly three years establishing what we do not want; it is going to take us a bit of time to work out what we do want.

We have heard much today about the dangers of Parliament taking control. In normal times I would join that chorus urging caution, but if our unwritten constitution were working effectively, there would have been no need for such radical action. If the constitution were functioning, the Executive would have been listening to Parliament. Instead, they have consistently tried to ignore Parliament, from the start of this process until the recent attempts, over and over again, to bludgeon the Commons into accepting a flawed deal. This Bill gives Parliament the ammunition to require an extension to Article 50, which gives us time to plot an acceptable course. I always pay attention to what the noble and

noble and learned Lords, Lord Pannick and Lord Judge—and sometimes Lord Hope—have to say and I shall study their amendments, but in principle I support the Bill, which provides an insurance policy against our crashing out without a deal.

Earlier today, the noble Baroness, Lady Noakes, accused those of us who support the Bill of suggesting that we do not trust Mrs May. It is not about not trusting Mrs May; it is that Mrs May has to respond to changing events, and therefore what she says changes as events change. She may not even be there when D-day comes, so we need an insurance policy to avoid crashing out without a deal. I continue to believe that the best use of an extension would be to thrash out a deal that is acceptable to Parliament and then to put it to the people. Three years on from the 2016 referendum, such a major step as changing our relationship with Europe seems to me to require the informed consent of the public, and this is our opportunity to get it.

9.09 pm

**Lord Howarth of Newport (Lab):** My Lords, this Bill is misconceived in every aspect. It mandates the Prime Minister to seek an Article 50 extension, and in so doing its authors are pursuing what we used to call a chimera. I think we now call it a unicorn; the unicorn of soft Brexit. Where sovereignty is concerned there is no such thing, and it is sovereignty that is essentially at issue in Brexit. By sovereignty I do not mean power; the power of a nation is always circumscribed. I mean our right to make our own laws in our own democratic institutions, accountable to our own people and interpreted by our own courts. On that there should be no compromise. The choice in 2016 was between leaving and remaining. That is still the choice.

The people of this country took a robust view in 2016. They were warned of the possibility of economic disruption—indeed, they were warned in lurid terms by Project Fear. None the less, they voted as they did. Remainers are wont to say that no one voted to be poorer, but the people of this country voted as they did in full awareness of the potential consequences, including the possibility that leaving might make them poorer, and that was the decision they took. That was what they decreed.

The political parties committed themselves in advance of the referendum to accept the decision of the people, and in the wake of the referendum they committed themselves to respect it. It was therefore incumbent on the Government to pursue a clean Brexit. That meant being willing to leave the European Union and trade in the future on WTO terms, while of course seeking to achieve a free trade agreement as soon as possible—a Canada-plus-plus-plus deal. That would have been possible. Had the Government, following the referendum, stated that they were going to negotiate as soon as possible a free trade deal with the European Union, but that if the European Union was not willing to grant that for some time they would none the less be willing to leave with no deal, then our negotiating position would have been very much stronger. By now, this country would have been psychologically and organisationally much better prepared than it is today.

Remainers often assert that the real reason people voted to leave was fear of immigration. It is true that a minority were very much moved by that consideration, but there is no inconsistency between believing we should leave the European Union and being an internationalist—understanding and valuing the economic, social and cultural benefits of immigration. Reassuring those of our fellow citizens who are apprehensive and nervous about immigration is a very important challenge for our leadership. The best way to do that is to make it clear to them that in future we will have the power to make our own decisions about our own immigration policy. That is among the reasons why membership of the single market and the Norway option are inappropriate for this country.

From the point of view of democracy, no deal is indeed better than a bad deal, a phrase which the noble Lord, Lord Hannay, referred to rather contemptuously as “that appalling mantra”. It all depends on your point of view; if you believe that the issue of democracy is paramount in Brexit, then no deal is better than a bad deal. There is no such thing as a soft Brexit. It is not Brexit. Soft Brexit is actually soft remain. The Prime Minister’s withdrawal deal and the political agreement would entail the continuation of very important elements of lawmaking being controlled by the European Union, with the Court of Justice of the European Union hovering over our courts. A softer Brexit still, such as the customs union, would be Brexit in name only.

If as a remainder you believe that economics is what matters above all, you can well contemplate a soft Brexit. Of course there are degrees of separation that you may be willing to consider. However, the remainers paint a lurid picture of what our departure from the EU may mean. They suggest—the noble Lord, Lord Stern, made this case just now in stark terms—that to leave without a deal would be a catastrophe; my noble friend Lord Adonis described how the country would be “trashed” in such circumstances and talked of us driving at 100 miles an hour towards a cliff edge.

I prefer the sensible and calmer language of the noble Lord, Lord King of Lothbury, who is a very respectable economist—the noble Baroness, Lady Ludford, talked of reputable economists, but as far as I can see, her definition of a reputable economist is an economist who agrees with her. There are economists who do not. I prefer the view of the noble Lord, Lord King of Lothbury, to that of his successor, Mr Mark Carney, who has addressed this issue in rather alarmist terms, and I am amazed at the leaked document in which Sir Mark Sedwill, the Cabinet Secretary, described the possible consequences of no deal in melodramatic terms. How can he possibly contend that the price of food would rise by 10%? It is of course a possibility that there may be some devaluation of the pound at the moment we leave the European Union, but we will have the great opportunity—this is the crucial point—to abolish the tariffs on food and allow our people to have the choice of cheap food if that is what they want to buy.

It is not Brexit that is damaging our economy at the moment but the uncertainty associated with the Brexit process and the prolonged nature of it, which are paralysing decision-making and investment. Those who

[LORD HOWARTH OF NEWPORT] argue for a further extension, and that is what the Bill is about, are proposing to perpetuate this period of indecision and economic paralysis. The sooner we extricate ourselves from the close relationship we have with the European Union, the better the chances of our prosperity. Look at the condition of the German and Italian economies and at the structural flaws of the eurozone, with no integrated fiscal or economic policy. The European Union will change, because its present configuration is unsustainable. Either it will proceed to a much more integrated economy, as the President of France wants it to do—which I believe would be, politically, entirely unacceptable to us—or it will begin to disintegrate. The financial and economic consequences of that will be dire, and the more so if we are still in membership.

**Lord Judd (Lab):** We all have immense respect for my noble friend, but he has associated concepts and thoughts with the position of remainers on which I simply cannot remain silent. Some of us have always believed with deep conviction that, while politics and economic relationships are the mechanisms that helped to build the European Union, the purpose of the whole European drive has been to build peace and security on the European continent, and it has certainly achieved that. We are anxious that we do not give an example to the world in that, having done that successfully, we are now going into retreat.

**Lord Howarth of Newport:** I have the greatest respect for my noble friend. He is of course right that that was the founding vision of the European Union, and that has been its great justification. However, I put it to him that today's European Union is not an agent for peace and social harmony. If he looks at the levels of unemployment across the Mediterranean countries, the rise of neo-fascism in eastern Europe and the palpable tensions and indeed hostilities within the European Union, I fear that the model that attracted his idealism is no longer the European Union we have today.

**Lord Judd:** My Lords—

**Lord Howarth of Newport:** I must proceed, if my noble friend will allow me. I am grateful to him.

I find it extraordinary that those of us who believe that what is essentially at stake in Brexit is the future of our democracy and say that that is the most important thing should be characterised as hardliners. The fact that this language is used goes some way to explain the disillusion that there is among so many of our fellow citizens with politicians.

The endeavour of Brexit is about the self-respect of a country that has centuries of tradition of parliamentary government but gave away too much of its parliamentary government in 1972. It is significant that older people, who have longer memories of our parliamentary government and democracy, have been more disposed to vote leave, and that younger people, who have been brought up in a culture of cynicism about politics—a cynicism that I think derives from the democratic deficit of the European Union, in which we are implicated—are the main remainers.

The Bill, and the procedures under which it has been introduced and is being treated in Parliament, abrogate important elements of the constitution. It is flawed even in its own terms. As the noble Lord, Lord Norton, reminded us, it betrays a profound misunderstanding of the respective roles of the legislature and the Executive. Parliamentary government does not mean Parliament governing, and it is very wrong, as the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge, have intimated, that the Prime Minister should be dispatched by Back-Bench legislation to negotiate with the Council of Ministers with her hands so tied. That is an insult to her and her office. It is not in the gift of the Parliament of the United Kingdom to determine unilaterally the date of our exit.

As the constitutional proprieties have been so comprehensively junked in recent times, we would be well within our rights if we were to reject the Bill and ask the other place to think again. Of course, we will not do that, but I hope that we will seriously amend the Bill on Monday.

Meanwhile, I hope that we will indeed leave on 12 April. Our departure will be more ragged than it need have been because it has not been well prepared for. The House of Commons does not want us to leave with no deal but, as the noble Baroness, Lady Deech, asked: what would the extension be for? The House of Commons may not like no deal, but the House of Commons has been completely unable to determine what it wants. If we leave on 12 April or shortly afterwards, we can then embrace our birthright, renew our democracy, embark on a politics of reconciliation, address ourselves to the major issues that have been so badly neglected during this Brexit saga and seek a progressive internationalism for our country.

9.22 pm

**Lord Fairfax of Cameron (Con):** My Lords, it is a great pleasure to follow the noble Lord, Lord Howarth. I want to adopt many of his points, which I would have made myself. Speaking in this temple of remain, one often feels like a Spartan facing the 100,000 Persians. I am glad that the noble Lord, Lord Adonis, appreciates the analogy, given the part of the world his family originally comes from.

I must say, Parliament and the majority in this place are out of step with the country. I was going to refer to several statistics, but they have already been referred to by previous speakers so I will not. However, I have one that I think has not been mentioned. A recent poll—in the past week, I think—said that 55% of all voters believe that Parliament is trying to stop Brexit. That is worrying. The reason for that is obviously the great disconnect between the current constitutional make-up—of the House of Commons, in particular—and what happened in the referendum. We all know the referendum numbers but, apparently, about 500 MPs in the House of Commons voted to remain and only about 160 voted to leave. That is the reason for the disconnect we now face. I am afraid to say that, in accordance with that poll, Parliament is perceived as seeking to steal Brexit from the people; that is many people's perception.

The noble Lord, Lord Cormack, referred to palpable anger in the context of the earlier debate. There is palpable anger out there, outside this place, from people who believe Brexit that is being stolen from them. In this regard, 15 days ago, Justine Greening—a prominent remainder, of course—said:

“We can do a clean-break, hard Brexit, which I know many MPs want, and I respect that. Indeed, the millions of people who voted to leave had that kind of Brexit as their expectation”.—[*Official Report*, Commons, 20/3/19; col. 1117.]

That supports the point I have been trying to make.

I will also make a point about no deal that is not related to Brexit at all. Anybody in this House with any experience of life, particularly of business or negotiation, would tell you—common sense also tells you—that in any negotiation, your counterparty should always know that you could walk away. Take away that credible threat and—similar to what the noble Lord, Lord Pannick, said earlier—you are naked in the arena and have effectively raised the white flag of surrender. I am afraid to say that, in my view, this Bill does exactly that.

One or two noble Lords have spoken about the possible economic consequences of a no-deal exit. I will make just a couple of points. No one expects there to be no consequences of a no-deal Brexit—I want to make that clear—but many, including many businessmen, consider them manageable. Also in regard to no-deal planning, I refer to the resignation letter yesterday of Chris Heaton-Harris, the Minister in DExEU responsible for no-deal planning. He said that there has been an awful lot of no-deal planning by the Government and that, if anything, the Prime Minister appeared not to have been properly briefed about the extent of it. By implication, what she was saying in the public domain did not reflect that position.

A few speakers, including some from the Front Benches, have spoken about how a no-deal exit—a WTO exit—would be a disaster for business; the noble Lord, Lord Stern, referred to evidence, and so on. It depends where you choose to take your evidence from. We all know what the CBI, representing big international business, says, but that is not the evidence from the Alliance of British Entrepreneurs or from an entrepreneurial businessman I know, who told me, “Despite some disruption, especially initially, business will sort out its problems pretty quickly. That’s what business does”.

Closer to home, I pray in aid my youngest brother, who employs more than 100 people in manufacturing in the West Midlands. He exports to more than 30 countries worldwide, including several EU countries, and is the recent winner of the Queen’s Award for Enterprise: Innovation. I asked him what he had to say on this subject. He said, “A little short-term inconvenience is a small price to pay for a healthy long-term economic structure”. There are different points of view here; it is quite wrong to suggest that business generally thinks that it will be a disaster. That is a gross misrepresentation and distortion of the position.

I was going to go on and make a point that the noble Lord, Lord Howarth, made before I spoke: in fact, business fears not a no-deal exit but uncertainty.

Ask any businessman about that. It is about uncertainty. I am afraid that a prolonged and substantial extension would only aggravate that.

I have just a couple more points to make. I would like to say something about the position of the House of Lords, as one or two speakers in the debate have already touched on. In view of the admitted democratic deficit we have in this House and its delicate constitutional position, you might think that this place would tread carefully in opposing a majority decision of the people in a referendum. However, I am afraid that that does not appear to be the case. As I think someone else said, this place does not appear to have the self-awareness, to use that phrase, to look at itself. Outside this building, the Westminster bubble, central London and so on, everything looks rather different.

**Lord Adonis:** My Lords, does the noble Lord not think that we should take our lead from the House of Commons, which is of course elected and sent this Bill to us?

**Lord Fairfax of Cameron:** As I tried to say earlier, there is a massive disconnect between the current composition of the House of Commons and the outcome of the referendum. Earlier, someone—the noble Lord, Lord Willoughby, I think—quoted the Government’s pamphlet before the referendum; I was not going to repeat it. It said, “This is your decision. The Government will implement what you decide”.

**Lord Adonis:** Is the noble Lord saying that the House of Commons should not be expressing a view on the conduct of Brexit either? That is quite a fundamental revision of our parliamentary democracy.

**Lord Fairfax of Cameron:** I am saying that 55% of voters at the moment apparently thinking that Parliament is attempting to steal Brexit or stop it is not surprising in view of some of the things that have been going on recently.

Moving on from what I was saying, the majority of the country feels betrayed by what is happening. The contract between the elected and the electors has been fractured, and the consequences for democracy and the constitution of this country are potentially very serious. The Brexit genie is out of the bottle and will not be put back in again. At the moment, it looks to people like me as though the battle for Brexit may be lost, but as Monsieur Barnier would say, “La lutte continue”. Speaking as a Conservative, I regret to say that the Prime Minister is presiding, and has presided, over a national humiliation. In my view, I am afraid that this Bill will serve only to aggravate that humiliation.

9.32 pm

**Lord Liddle (Lab):** My Lords, it is normally form in this House to say what a pleasure it is to follow the previous speaker, but on this occasion I am finding it difficult to deal in the normal courtesies. All I would say to the noble Lord, Lord Fairfax, is what he has to remember is that he is looking at this completely from the perspective of someone who is a committed leaver.

**Lord Fairfax of Cameron:** I am looking at this from the perspective of the 17.4 million people who voted to leave.

**Lord Liddle:** I understand that, but you would think that they are the only people who count. What about the 6 million people who in the past two weeks have signed a petition to revoke Article 50? That is one of the biggest demonstrations of support for remaining in the European Union that we have seen. What about the 1 million people who went on the march? Are they just part of the London bubble and do not represent anyone outside London?

**Lord Adonis:** I thank my noble friend for giving way. How many of the 17.4 million does my noble friend think voted for a no-deal Brexit, six weeks' worth of medical supplies, the M20 becoming the largest car park in Europe, the ports not working, international driving licences having to be introduced and so on? Does he think that more than perhaps a few hundred thousand voted for those particular horrors?

**Lord Fairfax of Cameron:** Is the noble Lord inviting me to respond? Of course I will if he wishes me to do so.

**Lord Liddle:** My noble friend, as always, has taken the best parts of my speech. However, he is right.

We are in the gravest political and constitutional crisis that this country has seen since the Second World War. I am troubled by the tone of the debate this afternoon. There seems to be—certainly on one side of the argument—little realisation of how serious the crisis is. This might be a flawed Bill, brought here by an extraordinary process, but nevertheless it is part of the solution to the crisis in which we find ourselves, and that is why it should be supported.

The idea that Britain could leave the European Union credibly with no deal has always been a fantasy. The popular view was that coming out of Europe would be like bargaining about buying a house or a second-hand car and that unless you are prepared to walk away you will never get anything. This is a complete fallacy about the nature of our relationship with the European Union.

We have been in the European Union for 45 years and in that period the depth of integration across whole fields of our national life has been huge. It started mainly as a customs union, developed into a single market and in recent times there have been important developments in the security field which are vital to the safety of people on the streets in this country. The idea that we could simply walk away from all of this without any consequences or massive disruption is a complete nonsense.

I say with a heavy heart that I blame the Prime Minister for the fact that this argument has gained strength. I greatly admire—perhaps it is a false view—her sense of dogged public duty, but she made a terrible mistake in her Lancaster House speech in January 2017 when she allowed her chief-of-staff, Nick Timothy, to insert into that speech the populist line that, “no deal ... is better than a bad deal”.

That has been the driving force for the argument that has grown about no deal being a credible alternative for coming out of the European Union.

**Lord Willoughby de Broke:** Does the noble Lord therefore support a bad deal? Is that what he is saying?

**Lord Liddle:** I am certainly not saying that. I am saying that you have to recognise the realities of the 45 years of the relationship. It is almost certainly impossible to walk away from that relationship—which is what no deal involves—without massive disruption in all kinds of spheres.

We have heard a lot tonight of evidence from the association of entrepreneurs—or something—that no deal will not do us any harm, but every respectable business organisation takes the view that no deal would be very damaging. We have heard a lot about the views of the noble Lord, Lord King of Lothbury. We have heard very little about the views of Mark Carney, the current Governor of the Bank of England, who was devastating in the *Financial Times* today in what he said about his predecessor and the rank foolishness of what he was proposing.

**Lord Warner:** Does the noble Lord recall that the noble Lord, Lord King of Lothbury, is acknowledged to have been rather slow to spot the financial crisis in 2007 and 2008?

**Lord Liddle:** The noble Lord, Lord Warner, makes a point, but I did not want to get into that.

What has not been mentioned is the extraordinarily frank memorandum which the Cabinet Secretary, Sir Mark Sedwill, circulated to the Cabinet. Let us remember who he is. He is the personal appointee of the Prime Minister, one of the officials in whom the Prime Minister has the most trust. As we know, the Prime Minister does not get close to many people, but she certainly has become very close to Sir Mark Sedwill, and he has written the most devastating critique of what would happen under no deal.

I think the Prime Minister is in a bad situation. She found herself trapped by no deal. Look at the present situation in the Conservative Party as a result of that foolish statement she made in Lancaster House. There are about 160 Tory MPs saying they prefer no deal to anything else and 75% of Conservative Party members saying they prefer no deal to anything else. About half the Cabinet is saying that. Why is this? It is because the concept of no deal was not knocked on the head early on in these negotiations. It would be ruinous for Britain.

This Bill is a parliamentary response to the grave danger we face. It has to be supported, and I very much hope the House will back it.

9.42 pm

**Lord Bilimoria:** My Lords, I was on the phone at 7 am to one of my fellow directors in Australia. I said to him, “What a mess our country is in. It’s harming the UK so much”, and he said to me, “Karan, Brexit is not just a mess for the UK; it is a mess for all of us around the world”.

There is no question that Brexit was caused by the faction within the Conservative Party that has existed for more than 25 years and is vehemently anti-Europe, as we have seen today, and by UKIP, which polled 14% of the vote in the 2015 elections. Sam Gyimah, the former Minister, recently said in the *Evening Standard* that ambitious Conservative MPs used to talk about the economy and the big society, but:

“Now ambitious ... MPs are saying, ‘I have no fear of no deal’”.

We have heard time and again in this debate that no deal would be a disaster by all accounts. The noble Lord, Lord Stern, a world-renowned economist, has said that the damage could be up to £200 billion—20 times the £8 billion to £10 billion a year that we contribute to the European Union. The noble Lord, Lord True, who is not in his place, said that I have spoken in 40 debates about the European Union. It may be more. We have looked at specific aspects of Brexit. The noble Lord, Lord Cormack, and I spoke on Erasmus and Horizon 2020, and the noble Lord, Lord Hannay, and I have spoken in many such debates. In consumer rights and every field that you look at, no deal is a disaster for that area. It will be a disaster for our universities, our businesses and our consumers. This Bill is required because we are in a crisis. We are in an emergency and are facing a cliff edge. We have been watching a train crash in slow motion. The train is about to crash and in fact it nearly crashed on 29 March.

The Government and the Prime Minister have lost control. By how much more can you lose control than losing by 230 votes—the biggest loss in history—then 140-plus, then 50-plus? Three times the Prime Minister has gone back to MPs and asked them to change their minds, yet the people of this country are not given one chance to change theirs. That is hypocrisy beyond belief. How many times today, throughout the afternoon and in this debate, have I heard mention of the 17.4 million people? As the noble Lord, Lord Cormack, said: what about the 16.1 million? A true democracy is one that respects a minority, let alone a large minority. Let us not forget that, in the nationwide referendum in 1975, the number of people who voted to remain in the European Community was—wait for this, my Lords—17.4 million. The difference is that that 17.4 million people made up not 52% but 67% of the number that voted—an overwhelming, definite majority.

We have a divided Parliament, a divided House of Commons and a divided country. The House of Commons has voted more than once to say that no deal is not an option, but the Prime Minister has not been willing to legislate for that. The noble Lord, Lord Rooker, started this debate by saying that there is a lack of trust. The most important thing that I have learned in business is trust. If there is no trust, there is nothing. How can we now trust the Prime Minister and the Government when they say, “No deal is better than a bad deal”? They refer to “the will of the people”, but which people? They are talking about the people who voted three years ago.

Then they say that the will of the manifesto has now overtaken the will of the people. However, when it suits them, the manifesto is ignored. What about the grammar schools and the dementia tax? What about the fact that people do not read manifestos? There are

more than 200 items in every manifesto. First, people do not even know that they exist; secondly, they do not read all 200 items; and, thirdly, they do not vote for the one item in the manifesto that says, “We will implement the result of the referendum”. It is nonsense to say that.

The electorate has changed. We talk about the 17.4 million and the tyranny of the majority, but three years later two of my children are now of voting age, whereas they were not in June 2016. Three years later, there are 2.4 million people of voting age who were not of voting age then. Three years later, the youth who did not turn out to vote regret that they did not. If given another chance, they will mobilise and turn out in droves, and that 1.3 million majority will seem a pittance. This Bill is essential to delay Brexit and prevent no deal.

There is one thing that no one has brought up. In the final stages of Brexit, this House has been left out completely. We should have had all the meaningful votes and indicative votes that have been going on in another place. We should have been doing them side by side in this House to show what we feel about the issue, just as we do with legislation. We were not given the chance, although finally, today, we have been given a chance to have a say through this Bill. Time and again, it has been pointed out in the context of this Bill that the House of Lords is the guardian of our wonderful, special unwritten constitution and that it is a check and balance on the other place, yet time and again the Prime Minister has tried to sideline Parliament. She started by trying to implement Article 50 without coming to Parliament. It took the brave Gina Miller to take on the Government, the law and the whole of our constitution, with the Executive, the legislature and the judiciary being stretched and challenged, and finally we got a say through the courts. The Government then tried to bypass Parliament in not disclosing their legal advice.

Today, after 12 and a half years in this wonderful House, which I absolutely love, I have seen it at its worst. I have seen blatant filibustering by Members of the extreme Brexit wing. Seven Motions took seven and a half hours, but it felt like seven and a half years. They were strung out deliberately; those Motions could have been debated within one hour. In my 12 and a half years, I have never seen anyone use the Motion, “That the Question be now put”, which was moved by my noble Friend, Lord Pannick, just to put an end to the first round of filibustering, let alone seen it used so many times just to vote to get on with things. The worst part is that a lot of the movers of those Motions had their names down to speak in this debate, but there are only two of them here; the rest have scratched.

Then the Government tried to insert a Motion from the Finance Bill Sub-Committee of the Economic Affairs Committee, which I have sat on for many years, to do with making tax digital. There were two other debates, one of them to do with Europe, which I was going to speak in but were scratched, but that Motion was left in. And who were the speakers in that debate? People who signed up at the last minute who are Members of that extreme pro-Brexit wing, whom I

[LORD BILIMORIA]

have never seen in all my years in that Finance Bill Sub-Committee having anything to do with the committee or speaking on anything that it has produced. Luckily, that debate was pulled at the last minute.

**Baroness Noakes:** I have been a member of the Finance Bill Sub-Committee for many years, though not absolutely every year. I was a member of that committee this year, so I intended to speak. I hope the noble Lord is not referring to me in those remarks.

**Lord Bilimoria:** Absolutely not. The noble Baroness, Lady Noakes, is here. She was a member of that committee, and I have sat on the committee with her. I was referring to other people. By the way, today's running order was blessed by the Government. Could the Minister explain how they came to that?

Today, I was not proud of the behaviour of our House. At many stages I felt ashamed of the disgraceful behaviour that I do not think was befitting of the finest, highest-quality debating Chamber in the world. I asked one of our Members who has been here for nearly 50 years, "How bad is this compared with Maastricht?" He said, "Maastricht was a tea party compared with this".

My noble friend Lord Pannick has clearly said that the Bill is not perfect. None of us says that it is perfect; it was rushed through at the other end. However, he and my noble and learned friend Lord Judge have already found a way of amending the Bill in Committee that will allow it to be effective and will prevent us reaching the cliff edge.

Before I conclude, I want to emphasise how much we need the Bill, because what has been agreed so far is nothing. If my noble friend Lord Kerr were here, he would say, "I wrote Article 50 in order for those two years to be used to agree a future relationship. The withdrawal Bill just becomes part of that, and then you leave after two years having agreed it". We have not negotiated our future relationship. We have negotiated only three things: people, the backstop and money. And £39 billion out of a £2 trillion economy is absolutely not material in the long run; this big figure is actually not a material figure. What about the political declaration—the wish list of our future? Nothing has been negotiated at all: tariffs, customs, services, market access, regulation, financial services, digital, capital markets, intellectual property, movement of people, aviation, roads, maritime, energy, civil nuclear, data exchange, foreign policy, security, defence, space, cybersecurity or counterterrorism—

**Lord Howard of Lympne:** Would the noble Lord give way?

**Lord Bilimoria:** Do not ruin my momentum, please; I will give way in a second. Nothing has been agreed.

**Lord Howard of Lympne:** I have great sympathy with the point made by the noble Lord. Is it not a fact that it was the European Union that insisted on the sequencing of the negotiations and was not prepared to talk about the future relationship until the withdrawal agreement had been effected, contrary to Article 50?

**Lord Bilimoria:** The noble Lord, with all his experience, has pre-empted what I was about to say next. The European Union has played a blinder. Recently, I gave a master class at the University of Cambridge Judge Business School, where I am chair of the advisory board, using Brexit as a case study in textbook negotiating techniques. We have made all the mistakes—including on process, which the European Union dictated.

The biggest reason we are in the position we are is that the 27 different, disparate countries of the EU had one very clear mandate and one negotiator. How many times have our negotiators changed? The position of Brexit Secretary is a revolving door. That is why the EU has done so well: it has negotiated brilliantly and with a clear mandate.

Michel Barnier, in his speech on 1 April in Brussels, said clearly that the EU would accept the current deal, a customs union, a relationship similar to that with Norway or no deal, for which it claims it is better prepared than we are, having taken protective measures—though it has not done so willingly. Lastly, Michel Barnier said the EU will accept an extension, but it will need strong justification. What will that justification be? He has been clear that there will be a painful "political cost" for this extension and, if we have not left by 23 May, we will have to take part in the European elections. He also made it very clear that a long extension is for,

"a member on its way out".

The uncertainty is something the EU will hate.

This evening, I was meant to be giving a lecture for the London Business School about brands. I thought about the brands of Great Britain and the UK—

**The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con):** The noble Lord should have gone.

**Lord Bilimoria:** The noble Lord may not like what I am saying, but it is true. There is lots he has not heard. It is so heartening to see heckling from a sedentary position from a Minister; it makes me even prouder of this House.

I thought about the brands of Great Britain and the UK and the world saying, "What is this great country, at the top of the world table, doing to itself?"

We must pass this Bill. We must extend Article 50. It must be a long extension and we must put it back to the people—today's people, not the people who voted three years ago. We must put it back to today's electorate, reflecting today's world and today's facts, not those of three years ago. When people are given that chance, it will be a two-thirds majority to remain in the European Union—the best deal by far.

9.56 pm

**Earl Cathcart (Con):** My Lords, this is the first time I have spoken today, but I will try to be brief. I do not think that I can support this Bill, for the following reasons. We are told that this business is an emergency, but of course it is not. We have had nearly three years to prepare for it and the Government have assured us that they are ready to leave without an agreement if necessary. Indeed, more than half the public now

thinks that it is the right thing to do. I am rather nervous about using YouGov, but it did a study and asked voters:

“If Britain has not agreed a deal by April 12th, what do you think should happen?”.

I am sorry to disappoint the noble Lords, Lord Hannay, Lord Adonis and Lord Bilimoria, but every English and Welsh region outside the M25 would be happy to leave the EU without a deal if no agreement has been reached by the end of next week.

**Lord Bilimoria:** The overall result for the whole country, if you include Scotland and Northern Ireland, was 44% to 42%—a very narrow margin. It was not as stark as the noble Lord said.

**Earl Cathcart:** The result was still in favour of leaving with no deal. We are told that emergency legislation is necessary, but the reality is that the Prime Minister has already said that she will seek an extension beyond 12 April—so where is the emergency? The convention is that emergency legislation passed in one day has the consent of both Houses before being brought forward: in other words, it is not contentious. This clearly is not the case with this Bill, as could be seen in the voting last night in another place.

Not only is this Bill not an emergency but: it is not necessary. As I said, the Prime Minister has already agreed to seek a further extension, which is what this Bill seeks to achieve. If passed, it will become UK law. When the Prime Minister recently sought an extension to 30 June, the EU came back with the two dates of 12 April and 22 May. The withdrawal agreement said that extensions could be made if passed by a statutory instrument in both Houses. However, the Prime Minister circumvented that by getting Sir Tim Barrow, our man in Brussels, to write to Brussels accepting their offer. Hey presto—we were told that that was sufficient to be an international agreement, and that international agreements trumped UK law, so the SI was just a tidying-up exercise. So what is to stop the Prime Minister seeking another extension by getting our man in Brussels to write another letter? Then, hey presto, we would have another international agreement that would trump this Bill if passed.

I have another point: traditionally, only a Minister may move a money resolution in support of legislation that requires expenditure of public funds. There is a very good reason for that: it is because the Government have responsibility for the Budget. If they want to spend more, they have to raise more money through taxes or borrowing. This Bill could have very significant financial consequences indeed. Staying in the EU for any length of time would be an extremely expensive thing to do and I believe that it would need a money resolution, which must be moved by a Minister of the Crown in the other place. I understand that a report from the other place says that, if we extended our stay in the EU for two more years, it would cost the UK taxpayer some £36 billion—a huge sum of money.

I was quite taken by something that my noble friend the Leader of the House said in her remarks earlier today. She said:

“Because of the speed at which this legislation is being considered, we have genuine concerns that this Bill could tie the hands of government and, in fact, be contrary to its stated objectives”.

and could lock us into leaving without a deal. My noble friend then gave the example of the Prime Minister going to Brussels next Wednesday. She might ask for a further extension to, say, Friday 31 May. Brussels might say no but, late at night—as it has done previously—come back with a counter offer of, say, Monday 22 May. All the leaders of the 27 would then go home. This Bill would then allow Sir Oliver Letwin and his friends in the Labour Party to consider this offer on the Thursday and either agree it or not. That would leave the EU 27 only until Friday 12 April to agree the date or, indeed, a new date chosen by the Commons. We know that, if all the 27 have not agreed by 11pm on the 12th, we will leave with no deal. That, presumably, is not something that the movers of this Bill would want.

I do not think that that will happen. I do not believe that this Bill will have any teeth if it is passed. If the Prime Minister wants to accept the offer of a new date from the EU, she will just get her man in Brussels to write another letter. This will again create an international agreement, which will trump anything that the Commons proposes through this Bill.

10.03 pm

**The Duke of Wellington (Con):** My Lords, I declare, as before, my various European interests, as detailed in the register. I have been on holiday for the last week, as I had thought when I planned it that we would be out of the EU by now. While away, I have watched with dismay the way the other place has rejected yet again the Government’s deal. I really think that this Parliament has demeaned itself, and it has again failed. So it is unsurprising that, with the Government unable to carry their own deal through the House of Commons, Parliament should wish to legislate to prevent the country leaving without a deal.

In view of some of the comments made this evening, it seems necessary to repeat what I have said before. I have long since accepted that we are leaving the European Union, and would support the Prime Minister’s deal time and again, but we cannot leave on 12 April without a deal. If the Government cannot get their deal agreed by next Wednesday, we must try to agree a further extension with the EU 27. The Prime Minister has agreed to seek such an extension. The reason this Bill is necessary is that we cannot be sure that certain elements of the Government—or the Conservative Party—will not seek to prevent her carrying out her intention. In fact, I think that the passing of this Bill will strengthen her hand within the Government. With the help of the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge, I am sure that the Bill can be improved on Monday, and that will also strengthen the Prime Minister’s hand in her negotiations with the European Union.

The Prime Minister has said that she will seek only a short extension. I would support this. I have always thought that it would almost certainly be necessary to request a short extension. However, I am clear on this. Given the choice between a longer delay and leaving with no deal, it would, to my mind, undoubtedly be in the national interest to agree a longer delay. Only those driven by ideology still believe in a no-deal Brexit. We should all take serious notice of what was

[THE DUKE OF WELLINGTON] said earlier by the noble Lord, Lord Stern, who is no longer in his seat. A much-respected economist from the London School of Economics, he did not in any way exaggerate the dangers of a no-deal Brexit.

It worries me that those from all parties who seek to deliver Brexit but at the same time to minimise economic damage—those who are trying to seek cross-party agreement to get us out of this difficult situation—should be vilified from both the political extremes. I would like to associate myself with the remarks of the noble Lord, Lord Cormack, and other noble Lords, in applauding the efforts of those people—Sir Oliver Letwin, Yvette Cooper, Dame Caroline Spelman, Hilary Benn and others. This is surely a moment for moderation and pragmatism. In this House, and in the other place, we serve the country, not political parties or ideologies.

To my great and profound sadness, we are leaving the European Union. However, it is in that spirit that I support this Bill. I also commend the noble Lord, Lord Rooker, for taking over the Bill—I think it a pity that the Government did not take it over themselves—and I very much hope that on Monday we will pass it.

10.09 pm

**Baroness Neville-Rolfe (Con):** It is a pleasure to speak in the gap and to follow the words of wisdom of my roommate and noble friend Lord Cathcart and someone as experienced in EU matters as my noble friend the Duke of Wellington. I speak as someone who voted remain. However, I am not convinced that the Bill is the right approach and, like my noble friend Lord Howard of Lympne, I will vote against it should the opportunity arise. I have dealt with the EU all my career and I do not believe that the EU 27 will let us leave without a deal in the short term. I fear that the Bill plays into their hands.

Frankly and first, it is an attempt that will make the negotiation by the UK with the EU 27 of an acceptable deal more difficult or even impossible. It also goes against the past promises of both main parties. Those who advocate this week's takeover of Parliament have, I suggest, become more impudent. I believe that this abuse of the constitutional norms could bring Parliament into disrepute and set the Parliament against many of the people, with potential damage to the constitution. There is the added point that if everything goes wrong with the Bill, we do not know who to hold to account.

Secondly, as a businesswoman and former member of the Government—and indeed the bureaucracy—I very much dislike the increasingly last-minute nature of business in the UK Parliament and the UK Government. Looking at the Bill, I have several questions of detail such as about how the dates work, what happens about our European elections and what is to be done about any conditions that the EU may impose, notably on our reason for any extension.

I believe that this country would be much better served if we had proper preparatory paperwork and explanatory notes on the Bill, particularly given its constitutional significance. However, I appreciate the acceleration of work by the Constitution Committee and the Delegated Powers Committee, allowing the

usual channels to find a way forward and therefore agree to a Committee stage on Monday. The fact that there was a special report on concerns about rushed legislation and amendments as HL Paper 116-I, which was mentioned by my noble friend Lord Hunt, shows the scale of the problems that we can have with rushed legislation.

Finally, I was astonished when I heard the House of Commons Speaker ruling that this is not a money Bill. I will as usual be probing on the financial implications and impact of the Bill—both positive and negative, because they go both ways as a result of any delay—even though I have not been able to persuade the parliamentary authorities to agree to having amendments to require the necessary impact assessments or a sensible post hoc review on such a very important issue.

10.12 pm

**Lord Wigley:** My Lords, I am delighted to share the gap with the noble Baroness, Lady Neville-Rolfe. I will say a few words briefly and I make clear my support for the Bill in general terms. But my concern, which I flagged up in my intervention earlier, is that it fails to cover one key circumstance which could well arise during the coming days.

The Bill as it stands requires House of Commons approval of a new date as specified in Article 50(3) of the treaty but the Bill does not apply if no withdrawal agreement has been ratified under Section 13 of the withdrawal Act, and if no agreement has been reached under Article 50(3) of the treaty to extend the date at which the treaty ceases to apply to the UK. In these circumstances of possibly ongoing negotiations, there is the very real danger of the UK crashing out without a withdrawal agreement. That point has been referred to a number of times in the last few speeches. If that is the wish of the House of Commons, so be it; but the votes of the Commons indicate a strong rejection of such a course, with some 400 MPs voting accordingly. It is therefore my opinion that the Bill should be amended to tidy up that loophole, and it is my hope to present an amendment in Committee to remedy that defect.

10.14 pm

**Lord Goldsmith (Lab):** My Lords, I am happy to support the Bill from these Benches, and I thank my noble friend Lord Rooker for bringing it to this House. I share the view that has been expressed that it would have been better if the Government had brought it, but we are where we are. I look forward to seeing it pass.

The purpose of the Bill was expressed quite shortly by my right honourable friend Yvette Cooper in the other place. I will quote what she said, which seems so right:

“The Bill simply provides for a simple, practical and transparent process to underpin the Prime Minister's plan. It ensures that the extension has the support of the House of Commons, but also that we keep the parliamentary safeguard in place... She has recognised that she cannot implement anything in only nine days, which is why the extension is needed. This is a hugely important Bill”.—[*Official Report, Commons, 3/4/19; col. 1135.*]

I agree with that. It was described by the noble Lord, Lord Anderson of Ipswich, as a modest Bill. Modest it may be and, in certain respects, that is much to its

credit, but it is an important Bill because of the issues that so many noble Lords have spoken about this evening. As the noble Lord, Lord Cormack, said:

“It was created in a vacuum, and the vacuum was created by a lack of leadership”,

because of uncertain times.

In listening to this debate, three points came across to me. The first was objection to the Bill from those who either view a no-deal Brexit with insouciance or actually welcome it. A number of noble Lords spoke in that way, such as the noble Lord, Lord Howard, who knows the high respect in which I hold him, the noble Lord, Lord Willoughby de Broke, and my noble friend Lord Howarth of Newport, for whom I also have great respect. I profoundly disagree with their view that a no-deal Brexit is not a great problem.

This evening we heard from the noble Lord, Lord Stern of Brentford, important evidence-based concerns about what a no-deal Brexit would do. Other noble Lords have spoken about that in detail, and I want to add the reference that has already been made, although belatedly, to what Sir Mark Sedwill has said about the risks. It is not, as the noble Lord, Lord Fairfax of Cameron, described it, “a little short-term inconvenience”. Those are the merits of the principal point that has been debated.

The noble Baroness, Lady Wheatcroft, rightly described the problem not so much as not trusting the Prime Minister, but not trusting the circumstances in which she finds herself and the people she finds around her. It is therefore an insurance policy. It may well be that, without this, the Prime Minister is able to achieve what she now wants, but it is important to have an insurance policy, as my noble friend Lord Liddle described it.

That took up most of the debate this evening. The second main point was the question of constitutionality. The noble Lord, Lord Norton of Louth, referred to that. I was privileged to sit on the Constitution Committee when he chaired it, so I always listen to what he says with great respect. The problem is that we are in, as my noble friend Lord Liddle said, perhaps the gravest crisis since the Second World War and exceptional circumstances require exceptional measures. They are exceptional in a number of respects, not just because of the gravity of the situation with which we are faced but because of the apparent lack of ability of the present Government to solve it. That has led to the other place taking the view that it must step in to help resolve the problem.

There is a need for the Bill. It is important that we respect the other place, which has sent it to us. We will be giving it scrutiny, and I am glad that we will now continue this debate in Committee next week, although I have something to say about the critical need to get it done on Monday.

I am also glad, as the noble Lord, Lord Cormack, said, that we have been able to have this Second Reading debate in a much better atmosphere than we had earlier in the day. It was an unpleasant afternoon for all of us. The comments made about Sir Oliver Letwin were uncalled for. He did not deserve them, given what he has been trying to do in the interests of

the country, having been a loyal servant of the public. Although he did not come up so much in this debate, I also mention Dominic Grieve, who was my shadow when I was Attorney-General. A more honourable and honest man I do not know. I agree with the noble Lord, Lord Cormack, that it was a pleasure to see the noble Lord, Lord Spicer, back in his place.

A number of noble Lords, including the noble Lords, Lord Howell of Guildford and Lord Cormack, and the noble Baroness, Lady Noakes, referred to the importance of compromise. The Bill at least provides an opportunity for that to take place. Whether it happens is another matter.

I am very conscious that the House has been debating this, one way or another, for a number of hours, so I will wind up quite quickly. On the detail of the Bill, the noble Lord, Lord Pannick, raised the most important point about the royal prerogative. Following on what the Leader of the House said, the noble Earl, Lord Cathcart, raised the danger of the Prime Minister finding herself in a situation where something is offered which she would want to accept but which is not actually covered by the Motion that has been passed by the House. Does she have to come back? That ought to be looked at and, for our part, we will look at it before this matter comes back next week.

I want to underline, and end on, the importance of getting this done. Noble Lords will be aware, because they will all have read the Bill carefully, of the way it works. The day after Royal Assent is given, a Motion needs to be presented to the House of Commons—which it might or might not accept—setting out the time for the extension. That gives rise to two issues. One is that it is proposed by the Government—I would anticipate, by the Prime Minister—for the other place to consider. It is not the European Union setting out the timetable, but the Prime Minister must be given the date in time to pass it to the members of the European Council so that they can consider it before they meet on Wednesday. They will not thank anybody, I understand, if they are given it with very short notice. It is obviously an important decision for them and they will want to discuss it among themselves. That is why we must reach the position on Monday where we have dealt with all amendments in time for the other place to also deal with them that day and Royal Assent be given, so that the following day, Tuesday—only one day before the Council meeting—a decision can be reached on the timing.

A number of noble Lords have expressed happiness that we have been able to reach an agreement so that this does not go through the night tonight, but that was on the basis that we will conclude this on Monday—the Chief Whip talked about 8 pm. I hope all noble Lords will be able to co-operate on that. We have our work cut out, but not if we do it efficiently. At the end of the day it remains quite a straightforward and simple Bill, which we will be supporting.

**Baroness Deech:** The noble and learned Lord referred to this as the greatest crisis since the Second World War. Briefly, that brought to mind the famous case of *Liversidge v Anderson*, the facts of which I need not remind him of. There were emergency powers and the majority of the court held, “Yes, that’s all right, let’s

[BARONESS DEECH]

lock this chap up". The judgment we remember now, and it was famous even then, was the judgment of Lord Atkin, who said:

"In England, amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace".

We stick to the principles we have always had. His reference to Second World War reminded me of that: when you have an emergency—and I would not compare this with the Second World War—it is all the more important to use the proper constitutional principles.

**Lord Goldsmith:** I am grateful to the noble Baroness. I remember that case very well, of course, though I did not have the pleasure of being one of her constitutional class. Of course, what the House of Lords decided in that case was that it was not for individual Ministers to make decisions; that is what the case was about. It was about control of executive power: they were not to make determinations themselves. In this case, the Bill seeks to give primacy to the House of Commons to enable its decision, perhaps in the face of the wishes of the Executive, to be effected.

10.26 pm

**Lord Callanan:** My Lords, as this is not, of course, a government Bill, I am sure noble Lords will be delighted to know that I can keep my remarks brief. Legislation has been debated, scrutinised and passed by this House since July 2016 to prepare for our exit from the EU, including many statutory instruments that noble Lords have scrutinised thoroughly to ensure that in any scenario, our statute book will function properly and appropriately. At the most recent count, more than 500 statutory instruments have been considered by the SLSC and more than 200 SIs debated by this House under the affirmative procedure. However, the Bill before us today in the name of the right honourable Member for Normanton, Pontefract and Castleford offers little but constitutional ambiguity and greater, not less, uncertainty. The Government strongly oppose the Bill.

I agree with many of the criticisms of the noble Lord, Lord Howarth, my noble friends Lord Howard of Lympne, Lady Noakes and Lady Neville-Rolfe, and the noble Baroness, Lady Deech. The approach to this Bill risks setting an unhealthy and constitutionally irregular precedent for this and future Governments. The noble Baroness, Lady Deech, asked me a simple question: do we need this Bill at all? The simple answer is no. Most importantly, the fundamental flaws in its drafting not only undermine what it seeks to achieve but may even increase the risk of an accidental no deal next week. I also note the Lords Constitution Committee's report and thank it for its efforts to produce its report so quickly.

Noble Lords will recognise the ambiguity that would arise should the Bill pass, particularly regarding the royal prerogative and the long-established convention that the Government of the day lead on our international negotiations. Heads of Government are able to enter into international agreements without preconditions set by the House that constrain their ability to negotiate

in the national interest. This Bill not only calls that ability into question, it does nothing to provide any clarity on what we should, in fact, seek.

The other place has consistently demanded greater certainty for businesses and for citizens. Despite this, noble Lords will no doubt be very alive to the risk that the conditions imposed by the Bill bring to life the very real possibility that we cannot agree an extension in time, a point well made by the noble Lord, Lord Pannick, by my noble friend Lord Cathcart and at the end by the noble and learned Lord, Lord Goldsmith. This is because the Bill creates a new parliamentary process whereby any counteroffer on the extension of the Article 50 period by the EU must be put to Parliament and agreed on the day after the offer is made by the EU. As we saw at the European Council on 21 and 22 March, when the original extension was agreed, it requires a request by the UK, a decision by the 27 EU member states and then agreement from the UK.

I am pleased to say that yesterday the other place approved a government amendment to the Bill to change the parliamentary scrutiny procedure that applies to an SI, amending the definition of "exit day" from affirmative to negative.

The Bill creates processes that increase the risk of us being timed out, but, even if agreement were possible in time, we would still need to ensure that any extension agreed in international law was reflected in our domestic statute book. The Government considered it prudent to seek to amend the Bill to make the SI needed for this purpose subject to the negative procedure to ensure that our statute book reflects international law.

However, I regret that the other place did not pass the amendment that the Government put forward to address the dangerous constitutional precedent set by this Bill overall. It would have protected the Government's ability to reach an agreement with the EU on an extension to Article 50. In doing so, it would have clarified the position on the royal prerogative to ensure that nothing in the Bill would prevent the Government being able to seek and agree an extension.

The Bill therefore remains fundamentally flawed. It could tie the hands of the Government and bring about a situation contrary to the purpose expressed by its movers. This legislation is not a sensible or desirable approach to take and I urge noble Lords not to support it.

**Lord Hannay of Chiswick:** Before he sits down, could the Minister answer two questions? I asked the first earlier, and I would be grateful for an answer. Have the Government taken the necessary steps to prepare for a European election should the extension go beyond 23 May? Secondly, I found missing in his remarks any recognition that the elected House had actually taken a decision—that it had adopted this Bill and sent it to us. If we adopt it on Monday, is he seriously saying that the Government consider themselves to be somehow above decisions taken by the two Houses? If so, that is a very peculiar constitutional suggestion.

**Lord Callanan:** Of course we do not. I can answer both his questions with the same statement. The Government will abide by the law of this country in all

circumstances—both European Parliament election law and any law made by this Parliament—in the appropriate fashion.

10.32 pm

**Lord Rooker:** My Lords, I did not hear much compromise in that last speech. The only reason we are here discussing this Bill is lack of trust and compromise throughout the whole process. We have just heard the embodiment of it, which was different from many of the other speeches over the last three and a half hours—they have been, as someone said, much pleasanter than what we might call the afternoon session, where it got pretty het up.

I will not try to wind up, but I will also not fall out with the staff of the House, so I might need some help. One of the early speeches that made me think was the very sharp speech of the noble Lord, Lord Norton of Louth. There is a lesson for us all in what he said not just about this Bill but beyond it about changes. I was really taken with that, as I was with the point made by the noble Lord, Lord Cormack, that there was a vacuum which the Commons started to fill. That is the reality. People may not like it, but a vacuum was left there.

Many noble Lords—I will not list them all—supported a second vote. I did not mention that in my opening speech, but I certainly support putting whatever decision is finally taken back to the people. It is preposterous to argue that we can all change our minds three or four times in both Houses but the people are not allowed to change their minds or think again when they know more facts.

First of all, criminal offences were committed by the leave campaign—no one has mentioned that. The fact is that a whole series of court cases is probably coming up, and I certainly hope that a few people will be locked up as a result of them. However, the fact is that things went wrong there. It is not relevant to the Bill, but it is there in the system, and it is partly that which has caused the lack of trust, as well as some of the bitterness around on both aspects of it.

**Lord Hunt of Kings Heath (Lab):** My Lords, what about Russian money, for instance, which is another example?

**Lord Rooker:** Dirty Russian money flooding into London, which allegedly funded part of the campaign on digital media, is a serious issue. We in this country have not taken it as seriously as the Americans have started to take it. One only has to look at the material that comes out of the Khodorkovsky Center and what happens in parts of London. We have taken legal powers, but we have not taken enough action about the money that is swilling around.

The noble Lord, Lord Stern, also made a powerful speech. Economics has never been my strong point, but, to be honest, what he said scared the hell out of me. The consequences of walking out without any arrangements in place are very worrying.

I will touch on another aspect: the food issue, which my noble friend Lord Howarth mentioned. We were due to have a debate on Brexit-related food prices and on the effects of leaving without a deal. Some 30% of

our food comes from the EU, 50% is made here, and 20% comes from elsewhere. A 22% average increase in tariffs will not lead to a 22% increase in food prices, but, when you talk to industry, you realise that the 10% that the National Security Adviser scared the hell out of the Cabinet with is realistic. That is a 10% increase at the checkout as a result of no deal. You cannot gainsay that—the facts and the evidence are there. It is no good saying, “You’ve been a-scaring—it’ll be all right in time”. It will be all right in time for those who can afford to carry the burden in the meantime, but that is one serious problem that the National Security Adviser warned the Cabinet about.

**Lord Cormack:** Is my friend, the noble Lord, aware also of the frightening predictions that have been made by the extremely able president of the NFU, Minette Batters?

**Lord Rooker:** Yes. The NFU has been the quiet dog on this issue for three years. It never had a position on Brexit. It did not campaign—it was split. Many took one view and many took another. I know NFU members, ex-presidents, who worked their socks off travelling the country, trying to organise for remain. But the organisation was split—it never put its corporate voice into the debate.

**Lord Cormack:** That may be so, and I agree, but the president has recently come out very clearly on this, and it is terribly important that that is put on the record. Does the noble Lord not agree?

**Lord Rooker:** Yes, I absolutely agree, and I applaud the role that the new president has taken.

**Lord Newby (LD):** I am sorry to interrupt the noble Lord’s peroration. He may be aware that, contrary to what a number of noble Lords said, many people who, like myself, live hundreds of miles outside London, are very aware that the majority of farmers, particularly upland farmers in the Yorkshire Dales, voted leave—frankly, they do not like people from Leeds, far less people in Brussels; the noble Lord, Lord Woolmer, appreciates the strength of that view. They voted leave, not carelessly, but not thinking that it would have any personal consequences for them. Now, they very much realise that leaving without a deal could mean the end of their careers. Therefore, when the extremely impressive group North Yorkshire for Europe held a stall at the Leyburn cattle market a couple of months ago, expecting to be nearly lynched by all these farmers who voted leave, much to their surprise they were if not physically embraced, mentally embraced, by people who said, “My goodness! We now realise that our livelihood is seriously at risk”.

Is this not just one example of the many we have heard from noble Lords today of the potential economic consequences—not minor but visceral—of crashing out without a deal for the livelihoods and lives of people we respect for the contribution they make not just to the economy but to the environment, and who, as we speak, are going to bed worried about what is happening to our country?

**Lord Rooker:** I am grateful to the noble Lord. My very last point—it is my very last point, because it follows from what I said earlier—is about the warning

[LORD ROOKER]

from police chiefs this morning about the language being used. We have heard it here today: “betrayal” and “stealing”. The police have warned us not to use that kind of language because, in this sensitive area, it is almost inciting people to violence. Those words have been used, as have some others this afternoon, but I did not list them all. We either listen to what the police say or we do not. It is absolutely preposterous that language like that is used in Parliament, given the official advice this morning.

With that off my chest, and given the announcement that we are not having a recess next week—I am damn clear that I am keeping to my short family holiday, and my noble friend Lord Robertson of Port Ellen will be here on Monday to carry the burden of Committee—I beg to move that the Bill be read a second time.

*Bill read a second time and committed to a Committee of the Whole House.*

*House adjourned at 10.41 pm.*



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