Vol. 797
No. 286

Monday
8 April 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Questions
Air Pollution 381
Brexit: Date of Exit 383
Retailers: Business Rates 386
Operation Brock 388
Business of the House
Motion on Standing Orders 390
European Union (Withdrawal) (No.5) Bill
Committee 392
Online Harms
Statement 426
European Union (Withdrawal) (No.5) Bill
Report and remaining stages 439
Royal Assent 442

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2019-04-08

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

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

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

© Parliamentary Copyright House of Lords 2019,
this publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

House of Lords

Monday 8 April 2019

2.30 pm

Prayers—read by the Lord Bishop of London.

Air Pollution

Question

2.37 pm

Asked by ***Baroness Kennedy of Cradley***

To ask Her Majesty's Government what action they are taking to reduce air pollution.

Baroness Vere of Norbiton (Con): My Lords, the Government's clean air strategy, published in January of this year, sets out an ambitious programme of action to reduce air pollutant emissions from a wide range of sources. The World Health Organization has recognised this strategy as an example for the rest of the world to follow. This complements the £3.5 billion package announced in 2017 to tackle roadside nitrogen dioxide concentrations.

Baroness Kennedy of Cradley (Lab): My Lords, today London's ultra-low emissions zone comes into force, cutting toxic emissions and making London's air safer for millions, especially children. First, I commend the Mayor of London for this bold, world-leading scheme to tackle toxic air. The forthcoming environment Bill is the Government's chance to be as bold. The clean air strategy is a welcome step forward, but without any legal force it is just an aspiration. Will the environment Bill include legally binding targets in line with WHO air quality standards on particulate matter, and will the new office for environmental protection proposed in the Bill have the power to hold the Government to account for breaching air quality standards?

Baroness Vere of Norbiton: Noble Lords will have heard us mention the office for environmental protection a number of times over recent months—it has been the subject of much discussion. When the environment Bill comes before your Lordships, it will contain provisions which will give the OEP the ability to hold government and other bodies to account, and to work retrospectively. We are already looking at the targets set by the WHO. The targets are very tough; no other major economy has so far been able to adopt them. What we have decided to do is look at them and see what action we would need to take to reach them.

Lord Trefgarne (Con): My Lords, can the Minister say what steps are being taken to devise means by which older cars will cause less pollution, for example by catalytic converters, filters and other methods of that kind?

Baroness Vere of Norbiton: Air pollution is a complex area—not only is it about what comes out of cars, but also what comes out of stoves and things such as carpets and paints. We need to move people on from older cars, which are far more polluting, and get them into ultra-low emission vehicles. The way to do that is to provide various grants and other schemes to encourage them in that direction. Eventually, people do change their cars, and I hope that they will look at zero-emission vehicles.

Lord Fox (LD): My Lords, that answer is interesting, because it is older cars—as the Minister and the noble Lord pointed out—that are the trouble. Sadly, it is the poorest people and smallest businesses that own the oldest cars. For them, changing is nigh on impossible. The Minister mentioned grants and encouragement; scrappage schemes, fiscal incentives, better public transport and mobility credits would all be of benefit in moving the poorest people off the most polluting vehicles. Which of these schemes will the Government be introducing, and when?

Baroness Vere of Norbiton: I think noble Lords have heard us talk before about the scrappage schemes. In our view, the evidence of their deliverability and value for money simply is not there. We are not pursuing that currently. However, on the other side, the *The Road to Zero* strategy, published in 2018, sets out a wide range of things that can be done to move people towards ULE cars and to make sure they have the charging points at which to charge them.

Lord Krebs (CB): My Lords, where I live in the centre of Oxford there is a considerable number of houseboats moored along Oxford Canal, which burn diesel or solid fuel as a form of heating. Could the Minister tell us what steps the Government are taking to restrict this form of air pollution in urban environments?

Baroness Vere of Norbiton: The noble Lord makes a very important point: we have already been able to tackle the biggest sources of industrial pollution, and now we are coming on to the more difficult areas. For example, *Aviation 2050*, which has been published, looks at aeroplanes and what they can do up to 2050; *Maritime 2050* is out for consultation, and it will be published shortly. I am not sure whether *Maritime 2050* includes houseboats, but I will certainly find out for the noble Lord. There is also rail: what are we doing about our trains, some of which currently run on diesel? This will be published soon. We will be rolling that out by 2040.

Baroness Blackstone (Ind Lab): My Lords, I declare an interest as chair of the British Lung Foundation. Given that last year's WHO figures showed that 49 UK towns and cities failed to meet international standards on air pollution, will the Government work with local authorities to implement a network of charging clean air zones in all those towns and cities that have high levels of air pollution?

Baroness Vere of Norbiton: I thank the noble Baroness for raising that, because it is exactly what the Government are doing. The roadside nitrogen dioxide plan basically directs all local authorities to come up with a plan to reduce air pollution in their area. Clean air zones are very much supported. Noble Lords will know that Leeds will have the first one, which will start in January 2020. It will be the first authority, but many others will follow suit. Other places, such as Nottingham, have decided to go a different route by retrofitting their buses. The point we have to understand in all of this is that there is no one-size-fits-all solution. Each city,

[Baroness Vere of Norbiton]
area and local authority needs to come up with a good plan that the Government will stamp and approve to reduce roadside nitrogen dioxide.

Baroness Jones of Moulsecoomb (GP): My Lords, the Minister may not know, but I have tabled a clean air Bill. I suggest that, if the Government were to pick that up, the whole problem would be solved a lot faster than the route they are taking. Perhaps the Minister would like to meet me to discuss my clean air Bill.

Baroness Vere of Norbiton: I will certainly have a look at the noble Baroness's clean air Bill and have a think about it.

The Earl of Listowel (CB): My Lords, is the noble Baroness, Lady Vere, not quite right to single out children? The risks to children from not addressing this are particularly severe. Is that not why it is so welcome that the Mayor of London has introduced these steps and the Government are taking steps? There is an especially severe risk to children's long-term health from exposure to pollution.

Baroness Vere of Norbiton: The noble Earl is quite right to mention children. Many vulnerable people are also significantly impacted by poor air quality. The Government are developing personal air quality messaging systems for them so that, when air quality is poor, they know that they need to take action. The Government are also providing funding to local councils to trial low-cost sensors, which can be placed around schools, so that they can monitor the air quality around schools much more effectively.

The Lord Bishop of London: My Lords, I thank the noble Baroness for her answers so far. Can I pick up the issue of children? As the Bishop of London, I am very grateful for the ultra-low emission zone being implemented today. Can the Minister reassure us that money is going to be put into research to ensure that we know the long-term effects on the health of those children who have already incurred high emissions?

Baroness Vere of Norbiton: Certainly we need to understand the impact on children's health. The London Mayor has also committed to look at the air pollution around 50 primary schools in London. The more we can do to reduce fine particulate matter, which is a relatively new measure which has come to our attention, the better for everyone's health.

Brexit: Date of Exit

Question

2.46 pm

Asked by ***Lord Shinkwin***

To ask Her Majesty's Government what steps they took to ensure that Parliamentarians were aware that the United Kingdom's date of exit from the European Union could be changed by a decision of the European Council.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, various EU treaties outline the role of the European Council in any negotiations to leave the EU. We have been clear that any extension requires agreement from the Council. We sought and agreed an extension with the Council. This was followed by debates in both Houses, which supported the Government's decision to extend Article 50.

Lord Shinkwin (Con): My Lords, I thank my noble friend for his reply. He will be aware of the growing sense of disbelief at the decision to collude with anti-Semitic Marxists to thwart the will of the people. That aside, I do not recall your Lordships' House being told during the passage of the European Union (Withdrawal) Act 2018 that the Brexit date inserted in that Act was, in effect, purely academic. Why did the Government not make crystal clear the simple fact that the EU could go over our heads and change the date on which Parliament had decided we would leave the EU?

Lord Callanan: I understand very much the concerns of my noble friend, but there are two processes in play here. There is the Article 50 process, which is a matter of international and European law, and the domestic EU withdrawal Act, which had to be changed to reflect that new date using secondary legislation powers in the Act, which were extensively debated at the time, as he will recall. Following that, there were debates in both Houses that then agreed those dates.

Lord Wallace of Saltaire (LD): My Lords, does the Minister accept that national sovereignty in a peaceful world order is not something which allows you to tell everyone else to sod off whenever you want, but is the right to negotiate with others on mutually acceptable rules for international order? Can he explain the evident contradiction between what the ERG and the Bruges Group have been saying for the last three years—that we have absolutely no influence over decisions of the European Council—and recent remarks by spokesmen for those two groups that if we stay in the European Union for the next year, we can block it and impose an effective veto on what it wants to do?

Lord Callanan: I think I need to apologise to the noble Lord: I thought I was here to answer questions on behalf of the Government, but apparently he thinks I am now here to answer questions on behalf of the ERG. I suggest that the best way for him to get answers to his questions is to pose them to the gentlemen who made those statements.

Lord Watts (Lab): My Lords, when I suggested an extension, the Minister said that there was no need for one. Obviously, now there is. Can I suggest that he takes my advice and goes for a referendum to confirm any deal in the future?

Lord Callanan: I always value the advice of the noble Lord, but I think in this case we will not be taking that particular piece of advice.

Lord Framlingham (Con): My Lords, could I urge the Minister to make it clear that, if we should leave the European Union this coming Friday, it would be

neither catastrophic nor chaotic? It is true there might be some initial problems, but a lot of major issues would be cleared away immediately, and certainty would certainly be welcomed by the whole nation. It would give us a chance for a successful departure from the EU.

Lord Callanan: My noble friend is right to point out that we have been making extensive preparations across government for no deal, and I think that is a situation we could manage. Nevertheless, we are where we are. The House of Commons has refused to pass the withdrawal agreement and, with its agreement, the Prime Minister has decided that we need to seek a further extension.

Baroness Smith of Newnham (LD): The Minister has suggested that he is not here to answer questions on behalf of the ERG. I hope he can answer a question linked to the letter from the Prime Minister to Donald Tusk, in which she writes:

"The United Kingdom proposes that this period should end on 30 June 2019".

In line with a question asked by the noble Lord, Lord Shinkwin, when did the United Kingdom decide on this date, given that the European Union has already rejected 30 June? I do not believe that this House or the other place voted for 30 June as a preferred date.

Lord Callanan: The Prime Minister and the Cabinet agreed that date. The Prime Minister made the proposal but, as the noble Baroness will understand, given her extensive experience of European law, this is a matter for negotiation with the European Union. The Council of 28 will decide that on Wednesday.

Lord Tugendhat (Con): My Lords, does my noble friend not recall that, when the legislation first went through Parliament, a number of us warned that, if we are to secure an orderly withdrawal from the European Union, it would be better not to fix a date in the calendar but to allow the negotiations to take their course, and that by fixing a date we are putting a gun to our own head? I would be grateful if he would say whether he recalls that. Does he not also agree that, when the country faces a crisis—and we certainly face a crisis now—it is in the British tradition to seek all-party agreement to get out of it?

Lord Callanan: I agree with my noble friend that there were extensive debates on all aspects of the European Union (Withdrawal) Bill at the time—at late hours of the day and night—and the matter of the date was of course discussed. It would of course be preferable to have all-party agreement across the House, if we can, and we are trying to get that.

Baroness Finlay of Llandaff (CB): My Lords, how much collaborative working have the Government undertaken with the devolved nations' Governments? They may be of a different political persuasion, but they have good working relationships with many countries within Europe, which could be helpful in the negotiations.

Lord Callanan: I assure the noble Baroness that there are extensive discussions with the devolved Administrations—in fact, I was in a Cabinet sub-committee meeting only last week with the First Ministers of Scotland and Wales. I chair one of the joint working arrangement groups on ongoing EU business, involving all the devolved Ministers. So there is extensive collaboration going on.

Retailers: Business Rates
Question

2.52 pm

Asked by ***Baroness Neville-Rolfe***

To ask Her Majesty's Government what steps they are taking to reduce business rates on retailers with physical premises so that they are charged less than those which trade online.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, business rates are an annual tax on non-domestic property. Bills are based on rateable value, which represents the annual rent the property would achieve if let on the open market, at a set valuation date, as assessed by the Valuation Office Agency.

Baroness Neville-Rolfe (Con): I refer to my entry in the register of interests. Although anomalies remain, I am grateful for what the Government have done on small business rate relief, but it is not enough given the scale of the challenge in our towns and high streets. Because of the requirement to raise over £30 billion from business rates and the decline in the number of physical shops, the burden of rates is increasing for many retailers. Does the Minister accept that this is no longer appropriate, and that changes in taxation on business property should be carefully considered, perhaps with a freeze on the pernicious multiplier and a move to a framework that is more fit for the 21st century?

Lord Bates: My noble friend looked at this area when she was Commercial Secretary to the Treasury. As a result of that review in 2016, a number of changes were made that had a significant impact, such as doubling small business relief from 50% to 100% for those with a value less than £12,000, moving to more frequent revaluations, which were asked for, and moving the multiplier in inflation rates from the RPI to the CPI. All these things are making a difference. It is not that we cannot see the big problems on the high street at the moment, which is why the Chancellor announced his £1.6 billion package in the Budget of 2018.

Lord Bird (CB): Can we accept the fact that a bookshop on a high street has such an enormous social echo that it actually makes the high street a lot better? Can we start seeing our bookshops in a different way and not simply as traders in the marketplace?

Lord Bates: There is a social value there, and significant steps are being taken on the purely financial side—the retail discount and the small business rate relief apply to eligible bookshops—to protect that vital form of social and intellectual capital on our high streets.

Lord Dubs (Lab): Does the Minister agree that it is becoming depressing that there are so many empty shops, not just in poor parts of the country but even in affluent areas? Is not the problem that there is no level playing field between shops and the online people, either in business rates or in tax dodging? Do we not have to tighten up both those areas and give our high streets a chance?

Lord Bates: We have looked at that area, and the Select Committee on Housing, Communities and Local Government is looking at this precise time to see what can be done. We have to remember that options such as an online sales tax would hit many high street stores, because they are hybrid business models that have a physical presence but also an online business.

Baroness Kramer (LD): My Lords, does the Minister accept that taxing just the land value of commercial sites would achieve many of the goals that other questioners have put forward? It would encourage small firms to take on new technology and to expand, and would reduce the business rates for many, with the consequence that they would face a more level playing field with the online players.

Lord Bates: The land value option was looked at in the review in 2016, which I talked about earlier. The review concluded that a land value tax would also result in anomalies and problems. Under the business rates system that we have at the moment, it is easy to collect and easy to understand the calculation, which is why we are sticking with it at the moment.

Lord Naseby (Con): Do Her Majesty's Government recognise that the high street is still suffering and has been suffering for well over six years now? Against that background, should we not segment off the independent retailers? I am not talking about small retailers: there are independent retailers up and down this country who need help. With business rates at nearly 50% of rateable value, that is a huge fixed cost on any business. Surely we should look at segmenting the high street and finding answers to this problem; otherwise, we will have no high street before long.

Lord Bates: That is why the Chancellor took the action that he announced in 2018 and why potentially 90% of businesses can claim the retail discount that we announced for the next two years. We have taken 655,000 businesses out of paying business rates altogether through small business rate relief. These are complex problems, but we are mindful of them and are seeking to address them.

Lord Davies of Oldham (Lab): My Lords, as well as shops being boarded up in high streets, the Minister must be aware that 100,000 jobs have gone in the last three years and that for many retailers the situation is at a crisis. I welcome the support for small businesses, but none of the measures that the noble Lord mentioned would have had any impact at all on House of Fraser, Debenhams or many Marks & Spencer stores. When these have closed, it has had repercussions for the economy of whole neighbourhoods. Why does the noble Lord not accept that online retailing is providing fierce competition for many other stores, which need some kind of support?

Lord Bates: Those businesses to which the noble Lord refers will have benefited from corporation tax falling from 27% to 19%—it is due to go down to 17%. It is also one of the reasons why, notwithstanding all the points highlighted by the noble Lord, levels of employment in this country are at a record high.

Lord Campbell-Savours (Lab): My Lords, does the Minister believe that the relationship between the high street and online retailers is fair in terms of competition? This is a very simple question; it is either fair or not fair.

Lord Bates: Let me refer to a quote from the British Retail Consortium. It looked at this situation, and said:

"We fail to see how adding additional new taxes to the industry is really going to resolve the challenges we currently face".

John Lewis said,

"this would actually have a detrimental effect … high streets need successful retailers with both a physical and online presence".

I am not saying that this is easy and straightforward. It is complex, but the Government are seeking to come up with flexible solutions that address the concerns.

Lord Kennedy of Southwark (Lab Co-op): My Lords, in addition to the measures outlined by the noble Lord, what is the overall government strategy to deal with these matters?

Lord Bates: The overall strategy, if the question is about business rates, is pretty straightforward: we collect about £25 billion in business rates, about 25% of which comes from the retail market and the remaining 75% from offices and industrial premises. At the moment, we are seeing the business rate book, if you like, increasing in value. Through the retention scheme, local authorities will get an extra £2.5 billion as a result of the growth of businesses in this country. At the same time, we are looking at how we deal with online businesses to ensure that there is fair taxation. That was the purpose behind the digital services tax.

Operation Brock

Question

3.01 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government whether they have reassessed the safety of the contra flow on the M20, installed as part of Operation Brock, following a series of accidents since the installation of barriers.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the Operation Brock contraflow system using barriers on the London-bound carriageway between junctions 8 and 9 of the M20 has been in place since 25 March. Although some incidents have been reported, which is of course regrettable, this is not dissimilar to other roadwork contraflows. Highways England and Kent Police agree that no changes are currently required as a

result of these incidents, but they will continue to closely monitor the use of Operation Brock to ensure driver safety.

Baroness Randerson (LD): My Lords, there have already been half a dozen accidents, one of which held up the traffic for 13 and a half hours on that short stretch of motorway. That is not normal for motorways in this country. The impact on the rest of the roads in Kent is considerable, because people are seeking to avoid the contraflow. Can the Government give us an assurance that, in the light of yesterday's criticism from DFDS ferries and Kent County Council, a full audit of the situation will be undertaken? Can the Government undertake to remove the contraflow if and when we resolve our issues on Brexit?

Baroness Sugg: My Lords, since Brock became active, five road traffic collisions have been reported to Highways England, although that is yet to be validated as an official statistic. It is not dissimilar to other contraflows; there have been five incidents in the same period within the adjacent M20 smart motorways roadwork. However, I reassure noble Lords that Highways England will closely monitor the performance of the contraflow and ensure that the M20 continues to operate safely. The point of Operation Brock is to ensure that the M20 does not close down, which would obviously have a terrible effect on local roads. Both Highways England and Kent Police will continually monitor the situation.

Lord Berkeley (Lab): My Lords, is not the answer to contraflows to set appropriate speed limits and then enforce them? I have seen many people caught speeding in contraflows. If speed limits are properly enforced, surely that will reduce accidents.

Baroness Sugg: The noble Lord is right to point out the benefits of having speed limits within contraflows. For safety reasons, there has been a speed reduction in the area while the contingency is in place: for the freight side the limit has been reduced to 30 miles per hour, and for the non-freight traffic travelling in the contraflow it is now 50 miles per hour. Highways England has redeployed 80 traffic officers to support Operation Brock, which will ensure that there are 30 on duty at any time. That action will ensure proper enforcement measures. We are also considering activating speed cameras and further signage.

Lord Swinfen (Con): My Lords, is not the trouble on the M20 often caused by strikes in France, so it is not in fact our fault at all?

Baroness Sugg: Operation Brock is designed to be an improvement on Operation Stack, which we saw huge problems with in 2015. We actually used Operation Stack in mid-March; that was caused by high winds. My noble friend is right to point out that disruption can have a number of causes. That is why we have the contraflow in place: to ensure that we can deal with any disruption.

Lord Tunnicliffe (Lab): My Lords, the Minister will know that my rule of transport safety is: if it can go wrong, it will go wrong. That seems to have proved true in this case already. Accidents will create enormous delays and completely destroy the whole operation. Can she assure us that everything is being done to reduce the risk to as low as reasonably practical?

Baroness Sugg: As I said, there is no evidence for the cause of the current accidents, but we are of course looking at the circumstances around each collision and considering what can be done to prevent future incidents. Highways England has already reduced the spacing between cones on the coast-bound carriageway to reduce the risk of illegal parking. Additionally, the junction 8 coast-bound entrance slipway, which is currently closed, has had CCTV infrastructure installed. The department is assured that Highways England is doing everything it can to reduce the risk of accidents.

Baroness Scott of Needham Market (LD): My Lords, of the existing places where the vehicles are going to be checked, one is very close to the Port of Dover and the second is very close to Eurotunnel, with the danger that they will themselves generate enough congestion to trigger Operation Brock when it might not have been necessary. What other locations are being considered and when might we expect them to open?

Baroness Sugg: My Lords, of course we aim to ensure that all movement through ports will continue to be as frictionless as possible in a no-deal scenario so that the effects on businesses using the Port of Dover and the Channel Tunnel are minimised. To achieve this, our modelling for roll-on roll-off freight moves the customs processes away from the border. Furthermore, in early February HMRC announced transitional simplified procedures, which will help businesses using those facilities. But, as I say, we are working hard to mitigate any disruption caused by additional checks.

Lord West of Spithead (Lab): My Lords, the Minister will be aware that the M20 provides access to the Cinque Ports, which of course gathered together in a time of crisis because our nation did not have enough ships. Does the Minister think there is a similar technique we could use to resolve the problem we have at the moment of too few ships?

Baroness Sugg: I am not sure I can comment on that specific solution. We are of course working very closely with the local resilience forums and all ports to ensure that we mitigate disruption wherever possible.

Business of the House

Motion on Standing Orders

3.07 pm

Tabled by ***Baroness Hayter of Kentish Town***

To move that 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 its remaining stages this day.

Lord Robertson of Port Ellen (Lab): On behalf of my noble friend Lady Hayter, and with her agreement, I beg to move the Motion standing in her name on the Order Paper.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, I will respond briefly to the Business of the House Motion. We had lengthy and passionate debates last Thursday on the most appropriate way to handle this Bill. This Motion gives me the opportunity to express my gratitude to all those who worked together in the margins of the Sitting to agree what I think is a more sensible way to proceed. By all sides compromising, we have had the opportunity to give this Bill more scrutiny than was possible on Thursday and have recognised the desire of those who want to see it progress following that scrutiny. Noble Lords have had a short but useful amount of extra time to consider the Bill and propose amendments for the House to consider. It has also allowed the Delegated Powers and Regulatory Reform Committee and the Constitution Committee to produce reports on the Bill to further aid the House's scrutiny, and I am grateful to them.

I am pleased to see amendments tabled on the particularly problematic issue of the Bill inadvertently affecting the royal prerogative, and I hope that this can be resolved positively. I am grateful to the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge, for bringing their expertise to bear in this area. The noble Lord, Lord Robertson of Port Ellen, who is today leading the Bill in the absence of the noble Lord, Lord Rooker, has tabled amendments that will allow the Motion to be debated in the Commons tomorrow should the Bill receive Royal Assent after midnight, and to maintain usual drafting practice by referring to a "Minister of the Crown". The noble and learned Lord, Lord Goldsmith, has an amendment to remove two subsections of Clause 1; removing these subsections will allow greater flexibility after the European Council on 10 April and any further debates that need to be scheduled in the House of Commons. These are necessary amendments in light of our considerations today, which the Government will support to facilitate the tabling of business in the House of Commons.

Despite what I hope will be improvements, the Government's position has not changed: we oppose the Bill and remain of the view that it is unnecessary. We are concerned about the manner in which both Houses have had to consider it, and its passage should not be taken as any sort of precedent. It has always been my belief that it is important in this House that all sides of an argument are aired and given due respect before decisions are taken, which is why I am pleased that we have additional time to consider and scrutinise the Bill. I trust that we will be able to consider its remaining stages in a timely fashion, and send it back to the House of Commons in a better shape than it arrived here. Although the Government oppose the Bill and the way in which it has been taken through both Houses, we will not oppose this Motion.

Lord Forsyth of Drumlean (Con): My Lords, I do not intend to detain the House. However, having read the Delegated Powers and Regulatory Reform Committee report, the wisdom of us having an opportunity to consider it is reinforced. It makes some serious recommendations, which no doubt we will be able to deal with later this afternoon.

I very much agree with my noble friend the Leader of the House in her assertion that she hopes that the treatment of the Bill will not act as any kind of precedent. It arrived here as an orphan, it was being supported by the noble Lord, Lord Rooker, it is now being supported by the noble Lord, Lord Robertson of Port Ellen, who is acting on his behalf, and the whole thing has been done at a great pace. The very fact that the Opposition are moving a business Motion is undesirable. I hope that in the future, the House will consider whether what we all thought was the position in line with our constitution—that only a Minister should move a business Motion—will be the position going forward. However, I hope that we can now proceed.

I put on record my gratitude to the Chief Whip for the way in which he dealt with business on Thursday, which enabled us to carry out our duties speedily—or relatively speedily, compared to what might have happened.

Lord Strathclyde (Con): My Lords, I too will reflect briefly on what happened on Thursday, when the House did not serve the interests of the people we serve, Parliament, or indeed this House and ourselves. I hope that my noble friend the Leader of the House might consider asking the Procedure Committee to examine what happened on Thursday, either to make sure that it is not repeated or so that we manage ourselves in a better way. In addition, the usual channels should acknowledge that the House operates considerably better when the usual channels are aligned, as they are today, rather than when they are not, as was the case on Thursday.

The Duke of Montrose (Con): My Lords, I also express gratitude to those who worked out the business to allow us time to consider the Bill before it goes into Committee. My interest stems from the fact that I had an ancestor in Lord Townshend's Administration at the time that this order was introduced. It is easy to think that we are in difficult and dangerous times but at that point people had seen real constitutional crisis: the end of the War of the Spanish Succession, the Act of Settlement 1701, the Act of Union, and a European monarch installed in a situation where there was an incipient civil war, which broke out about three months later. If we think we have a crisis now, we need to think about what other people have faced.

Lord Robertson of Port Ellen: My Lords, I have the right to speak at the end of this brief debate, but because everyone agrees that the debate should be brief, I do not intend to use that opportunity.

Motion agreed.

European Union (Withdrawal) (No. 5) Bill

Committee

3.13 pm

Relevant documents: 51st Report from the Delegated Powers Committee, 19th Report from the Constitution Committee

Motion

Moved by ***Lord Robertson of Port Ellen***

That the House do now resolve itself into a Committee upon the Bill.

Lord Robertson of Port Ellen (Lab): My Lords, on behalf of my noble friend Lord Rooker, who is not here today, and with his agreement, I beg to move.

Motion agreed.

Clause 1: Duties in connection with Article 50 extension

Amendment 1

Moved by ***Lord Robertson of Port Ellen***

1: Clause 1, page 1, line 2, leave out "after the day"

Lord Robertson of Port Ellen: My Lords, along with Amendment 1, I shall also speak to Amendments 2 and 3. As the Leader of the House has outlined—more eloquently than I could—this is a technical amendment designed to ensure that the other place can debate the Bill tomorrow. It arises from a confusion between parliamentary days and calendar days. I therefore beg to move.

Amendment 1 agreed.

Amendments 2 and 3

Moved by ***Lord Robertson of Port Ellen***

2: Clause 1, page 1, line 2, after "Assent" insert "or on the day after that day"

3: Clause 1, page 1, line 2, leave out "the Prime Minister" and insert "a Minister of the Crown"

Amendments 2 and 3 agreed.

Amendment 4

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

4: Clause 1, page 1, line 10, after "date" insert ", which must not be later than the end of the 2019/20 financial year,"

Baroness Neville-Rolfe (Con): My Lords, Amendment 4 seeks to insert a restriction on the date referred to in line 10:

"which must not be later than the end of the 2019/20 financial year".

This may in practice be a variation on the provision proposed by my noble friend Lady Noakes in her amendment, but, as I explained at Second Reading, it is born out of frustration at not being able to table specific amendments on financial impact.

I want to draw attention to the fact that this Bill—agreed by all to be a constitutional innovation—is not the subject of a money resolution, as the Speaker decided in the other place. Equally pertinently, it has no impact assessment, and yet it could bring about a delay in Brexit without end or resolution, which could be extremely costly to this country.

Whatever one's views on Brexit, it must surely be common ground that altering the date of the event will have financial consequences. I accept that some of the costs will be negative and some will be positive, but the longer Brexit drags on, the more the cost of uncertainty for all economic players and the extra cost to the Treasury in payments to Brussels will weigh against the benefits of avoiding no deal.

Although we cannot persuade the Speaker of the House of Commons to change his mind on a money resolution, I believe that the promoters of the Bill should work up an impact assessment, which would cover some of the same ground. I also believe that adding a date gives the Government an incentive finally to resolve matters. Alternatively, if the promoters will not produce an assessment today, one should be required when the Government use the power to define the length of an extension in their statutory Motion.

Let us look at some of the costs of the new approach, as the costs of no deal, now threatened for 12 April, have been well articulated already and are well understood. As a businesswoman, I know that they are real worries and that they are especially acute in farming, the motor industry and industries such as food which depend on just-in-time supply chains and mutual recognition of labelling. But there is also a huge cost to uncertainty. There are literally billions of pounds which business is waiting to invest once, but only once, the Brexit uncertainty disappears. This could be a great driver of growth and productivity, because the combination of low capital investment and cheap, flexible labour from the EU is a key reason why productivity is flatlining, despite an increase in infrastructure, digital and R&D investment by this Government.

In other sectors such as financial services, which now represent a very large percentage of GDP, the critical thing is to turn the political declaration into a free trade agreement with the EU 27. Unfortunately, the Bill as drafted could allow the EU 27 to delay negotiations to the point where the resulting uncertainty has allowed it to steal more and more of our market. The beauty parade to attract investment which would have taken place in the UK to go to Paris or Milan is very energetic. We heard in the EU Financial Affairs Sub-Committee last week how jobs and work are moving, never to return, to Frankfurt, Dublin, Amsterdam, Brussels and elsewhere, even if we stay in the EU.

I feel that the Brexit process has lacked transparency from day one. If there was a fuller and more honest discussion of the complexities of what is planned when and of the likely implications, more dynamic analysis, objective pros and cons, both economic and political, and less of Project Fear, the country would be less divided and perhaps less critical of what we in Parliament have achieved.

There is another reason why a system of financial assessment and timetable constraints is desirable. We will have let the genie out of the bottle if this rushed, defective and uncosted Bill is passed. I fear very much that it will act as a precedent for future Private Members' Bills even more financially damaging, such as on the regulation of utilities or whatever. This is a constitutional revolution and, as I said last week, there will be no way to hold Back-Bench sponsors to account if the mechanism in such a Bill causes damage.

[Baroness Neville-Rolfe]

As my noble friend the Leader of the House just said, it is important not to set a precedent. The Bill is about stopping a premature no deal, for which I have some sympathy, but for the reasons I have stated the Bill needs amendment. I would be glad to hear from someone among the opposition promoters—although I am not sure who; perhaps the Deputy Leader of the Opposition the noble Baroness, Lady Hayter, who has always supported impact assessments, or another of her colleagues—on how we might meet some of these concerns about proper assessment. My noble friend the Brexit Minister may also be able to think of a way to do so.

Given our often tedious scrutiny role—I am afraid that this is a technical point, and some may feel it is tedious—it was cheering to hear the Secretary of State for Exiting the European Union express the expectation that this House would correct the flaws in the Bill. That is what we need to do today. I beg to move.

Lord Pannick (CB): My Lords, I oppose the amendment. It would frustrate the very purpose of the Bill, which is to leave it to the House of Commons to identify what it thinks is the appropriate date.

Baroness Noakes (Con): My Lords, I support my noble friend's amendment for two reasons. First, this remains a wretched Bill, taking power away from the Government and their ability to use the royal prerogative. Therefore, I would support any restriction on that measure being put into the Bill. Secondly, I support the points made by my noble friend in respect of the financial impact of different variants of a delay in leaving the EU. The fact that the Bill was not treated as a money Bill in the other place is beyond my comprehension, as is the fact that my noble friend was unable to table an amendment explicitly calling for an impact assessment or something else—but the ways of the Public Bill Office are strange on occasion. I support my noble friend.

Baroness Smith of Newnham (LD): My Lords, there may be some flaws in the Bill—hence the support from these Benches for some of the other amendments. However, we agree with the noble Lord, Lord Pannick, that this amendment is unnecessary and that it should be for the other place to set a date.

Lord Forsyth of Drumlean (Con): My Lords, noble Lords are saying that it is for the other place to set a date. My understanding is that it will have one hour to consider our amendments and every aspect of the Bill. It is apparent from the speech made by my noble friend that there is an issue here. As I raised on Thursday, I do not understand why the Bill did not have a money resolution. It is perfectly possible that, in return for agreeing a date, the European Union could demand even more than the £39 billion already offered by the Prime Minister, and that the financial consequences could be considerable. This amendment seeks some kind of time limit on the process, which is sensible.

Lord Howarth of Newport (Lab): My Lords, we should be grateful to the noble Baroness, Lady Neville-Rolfe, for her amendment and for inviting us to consider the issues she identified. Any damage our economy is experiencing at the moment is on account not of the people's decision in the 2016 referendum but of the highly protracted process and continuing uncertainty that is paralysing economic decision-making, particularly in investment and consumer decisions. The noble Baroness is absolutely right: we need the best objective assessment available as to the damage that the continuation of this uncertainty would cause. The proponents of a long extension of Article 50 must address the question of their responsibility for the continuing economic damage that would result.

Lord Robathan (Con): My Lords, in rising to support my noble friend, I am somewhat confused because this is a Private Member's Bill that was absolutely pushed by the noble Baroness, Lady Hayter, who is not here today, from the Labour Front Bench only on Thursday. It was then taken forward by the noble Lord, Lord Rooker, who is not here today, and now it is being taken forward by the noble Lord, Lord Robertson. I am sure that that is all normal, but this is a huge constitutional step which seems to have, as my noble friend Lord Forsyth said, no parents. This is a very important step and we seem to be drifting into it without any considered thought at all.

Lord Adonis (Lab): My Lords, what has just been demonstrated is that the Bill has many parents and very wide support across the House. The point made by the noble Lord, Lord Pannick, is completely conclusive. It is for the House of Commons to decide what the date should be. The Commons have invited us to give them this power, and I think that we should get on with it.

Viscount Trenchard (Con): My Lords, I apologise for having failed to speak in the debate on Second Reading. I had to leave London early on Friday to attend a memorial service the following day. I was pleased to see that the normal operation of the usual channels was restored on Thursday, although I deplore the fact that the closure Motion procedure was excessively and improperly used. Indeed, I would guess that it was used more times than in the previous decade or more—I would like to know. The result was that I was unable to speak either in the debate on the amendment to the business Motion moved by my noble friend Lord Forsyth or in the debate on that tabled by my noble friend Lord True. Of rather more significance than my ability to speak, however, is the fact that the use of the closure procedure denied both my noble friends the right to reply to the debates on the amendments that they had moved.

As my noble friend Lady Neville-Rolfe illustrated so well at Second Reading, the nature of business in the UK Parliament and the UK Government seems to be increasingly last minute. It is simply unacceptable to try to rush through a Bill of such huge importance without proper time to consider its implications. It makes a mockery of our parliamentary democracy. The Bill received a Second Reading in the other place by the narrowest of majorities: just one vote. It is deplorable that many noble Lords thought it was nevertheless appropriate to suspend the normal procedural rules of this House—

Lord Pannick: My Lords, may I respectfully remind the noble Viscount that we are debating Amendment 4?

Viscount Trenchard: I am well aware, and I thank the noble Lord for his advice.

However, I congratulate my noble friend Lord Blencathra on the report from his committee and on the fact that he so quickly responded.

The amendment moved by my noble friend Lady Neville-Rolfe is much needed. In her speech at Second Reading and again today, she has made the very good point that the Bill has profound financial implications. My noble friend Lord Cathcart also made this point most clearly in his powerful speech. It is reasonable to say that the terms of withdrawal should require the UK to honour its commitments during the current EU spending round, provided of course that the UK is not disadvantaged by its decision to leave the EU in terms of the amounts that UK projects and companies would otherwise have received from EU programmes.

Besides that, any extension beyond 22 May would require us to participate in the European Parliament elections, and that requirement would of course have financial implications. It is therefore strange that the Speaker has ruled that this is not a money Bill, but it is not surprising given his increasing willingness to allow his own political views and prejudices—

Lord Kerr of Kinlochard (CB): My Lords, like the noble Viscount, I was not able to be here for the debate on Second Reading. I am therefore sure that he will agree with me that neither of us should intervene.

Viscount Trenchard: I hear that the noble Lord thinks that, but I regret that I take a different opinion. I have apologised for not having been present at the debate on Second Reading for the reason I have given, but this morning I took the trouble to read virtually the whole of the debate.

Lord Adonis: My Lords—

Viscount Trenchard: No, I would like to finish so I will not give way to the noble Lord again. It is therefore strange—

Lord Lisvane (CB): My Lords, I rise purely in a spirit of helpfulness. Perhaps the noble Viscount could keep in mind the difference between a money Bill and a Bill that requires a money resolution. It is quite a profound difference.

Viscount Trenchard: I thank the noble Lord for his helpful advice. Nevertheless, I find it strange that the Speaker made the ruling he did, as the—

Lord Taylor of Holbeach (Con): I must remind my noble friend that, under paragraph 4.45, it is incorrect for Members of this House to criticise proceedings in another place or rulings of the Speaker. I make this point only to help the debate to move on.

Viscount Trenchard: I thank my noble friend for his correction.

3.30 pm

Lord Goldsmith (Lab): My Lords, I take the place of my noble friend Lady Hayter today. She, like my noble friend Lord Rooker, is not able to be here.

To those, including the noble Baroness, Lady Neville-Rolfe, who have said we have to ensure there is not a precedent, I say that of course this is not a precedent, because the circumstances are exceptional. They are exceptional because, unless something is done, we risk leaving the European Union without a deal on Friday. It is in these circumstances that the other place took the decision that this Bill should be presented to us; we have been dealing with it. As I said at the conclusion of Second Reading, I very much hope we will be able to conclude it in time today.

As this is the first time I have spoken, I add my thanks to the Chief Whip for the work he did on Thursday to enable us to get to this stage. I remind noble Lords that we need to get to the end of this Bill, as he has said.

Lord Hamilton of Epsom (Con): If the circumstances are exceptional, why does that mean it has not created a precedent?

Lord Goldsmith: I think it speaks for itself. We have not found ourselves in this sort of situation before. Others in the House can deal with this, if they would like, through the Procedure Committee later.

So far as the amendment itself is concerned—

Lord Forsyth of Drumlean: Could the noble Lord help us understand what the word “exceptional” means? On Thursday we had five closure Motions, where the Lord Speaker had to read out a text that says this should be used only in the most exceptional circumstances.

Lord Goldsmith: That was the view the House took on each of those closure Motions.

To deal with the substance, we oppose the amendment, essentially for the reason put forward by the noble Lord, Lord Pannick—that we should not send this Bill back with constraints on the other place. What will then happen is for the Prime Minister and the other House to determine, but I urge the noble Baroness not to press her amendment.

Lord Howard of Lympne (Con): The noble Lord says we should not put constraints on the other place when we consider these amendments. Has not the argument been put forward many times from the Benches on which he sits that we should take into account the extent of the majority in the other place for any legislation we are considering? I cannot recall a narrower majority than the one by which this Bill was passed in the other place.

Lord Goldsmith: I will not attempt definitions of words; I am a lawyer, not a grammarian.

Lord Patten of Barnes (Con): The Government distinguished by the leadership of Lady Thatcher came into office on the basis of one vote, as I remember. All of us, including my noble friend—and he is a friend—benefited from that.

Baroness Neville-Rolfe: I am grateful for the support I have had for my amendment and for the echo that uncertainty in the Brexit process is a problem for business and for citizens of this country. We really need to resolve this.

Lord Framlingham (Con): Given that my noble friend has put uncertainty at the heart of her remarks, does she not think that at least some credence should be given to the idea of coming out and leaving Europe this Friday, which would give the certainty that everyone craves? There may be difficulties, but given that certainty is one of the overriding factors, surely that should be considered.

Baroness Neville-Rolfe: I will move on, rather than try to be Prime Minister for the afternoon. Clearly, I was concerned that it was not possible to look properly at the financial and business impacts in this Bill. I have heard it said that we would not take this as a precedent because of the special circumstances, which certainly gives me some comfort. I have to accept that the date is a matter that needs to be decided by a combination of the other place, the Prime Minister—and, of course, the EU, which I am afraid will also have a bearing on what date we eventually leave the EU.

In the circumstances and with thanks to those who have spoken, I beg leave to withdraw the amendment.

Amendment 4 withdrawn.

Amendment 5

Moved by ***Lord Goldsmith***

5: Clause 1, page 1, line 21, leave out subsections (6) and (7)

Lord Goldsmith: My Lords in moving this amendment, with the permission of the House I will also comment on Amendment 7 because the two are connected. I start with two realities. The first is that the most important purpose of this Bill is to ensure that we do not crash out or leave on Friday without a deal. It is critically important, therefore, that an extension is agreed before Friday. The second—

Lord Framlingham: My Lords—

Lord Goldsmith: I will not give way because the noble Lord has not even heard what I am trying to say.

The second point is that it is very clear that we are running out of time—or running out of road, to go back to the Question in Oral Questions. If we can pass the Bill today, as I explained at the conclusion of Second Reading, it can return to the other place and be agreed and a Motion can then be passed to inform what the Prime Minister does on Wednesday.

When the Prime Minister puts forward a resolution, it may be agreed by the other place but other possibilities arise. One is that the request is put to the Council but the Council comes back with a counter proposal—a different date. I doubt from my experience of European negotiations that it will be quite as neat as that, because these things tend to happen in discussions and something will emerge. That will be important when I come to explain one issue about the Bill as it stands.

The point was also made powerfully at Second Reading that it is necessary to give the Prime Minister the flexibility to be able to agree to something put to her by the European Council if that emerges in the course of debate. Amendment 7 in the name of the noble and learned Lord, Lord Judge, the noble Lord, Lord Pannick, the noble Baroness, Lady Ludford, and myself is designed to deal with that possibility. There was strong support at Second Reading for being able to use the royal prerogative so that the Prime Minister would be able to make such an agreement. Amendment 7 would enable that to take place and avoid a situation where we might accidentally end up with no deal because there simply has not been time to go through all the processes.

So what does that have to do with this amendment? This amendment would remove subsections (6) and (7) of Clause 1, which would require a Motion being put to the other place in the event that the European Council comes up with a proposal. The reason for removing those subsections is twofold—for simplicity and to promote legal certainty. It promotes simplicity because it does not require there to be another stage of backwards and forwards in the very limited time before Friday. If the proposal had to go back to the other place and be agreed and then something was then put forward, we could find ourselves in a situation where we accidentally dropped out of the European Union without having reached the point that we wanted to.

Lord Framlingham: My Lords—

Lord Goldsmith: I will give way to the noble Lord, but this will be the last time.

Lord Framlingham: It may be the only time I ask. The noble and learned Lord started his remarks by using the phrase "crashing out". Everybody talks about crashing out. The BBC talks about crashing out. Sky News talks about crashing out. It has been part of the propaganda all along. Precisely what problems will be caused if we leave this coming Friday?

Lord Goldsmith: I respectfully invite the noble Lord to read fully the debate at Second Reading, where that was explained by a number of noble Lords.

Amendment 5 would take out subsections (5) and (6). The first reason to do that is to avoid the problem which could result in us running out of time; that is, the matter having to go to the other place and then come back. We have the safeguard that that amendment would require that the extension agreed by the Prime Minister could not end earlier than 22 May 2019. That is an important part of the amendment that is about to be proposed. We are safeguarding ourselves against leaving without a deal.

Legal certainty comes into it for several reasons. First, if noble Lords look at the Bill, they will see that subsection (6) refers to the condition in subsection (7) being operated because,

"the European Council proposes an extension of the period specified in Article 50(3)".

There may be a question about whether there has in fact been a proposal.

Viscount Hailsham (Con): If the noble and learned Lord's Amendment 5 is carried and Amendment 7 is carried as well, is it not possible for the Prime Minister to agree a date which is never subject to parliamentary ratification?

Lord Goldsmith: So far as domestic law is concerned, in any event there will need to be a statutory instrument to change the exit day. I accept that in relation to domestic law, and we have had the debate about international law. A Motion will be put to the other place, which will have a full opportunity to express its views about the date, and in that way it is the subject of careful consideration. We accept that the Prime Minister needs the flexibility to be able to agree what is proposed by the European Council. The mood music we hear, if we read what is going on in the press, seems to be much more that we are likely to find that there is some meeting of minds—that there is some accommodation from the European Council—and I am less concerned about that. I am concerned about the risk of legal uncertainty, which I was just explaining.

Part of it is that we may find it difficult to be sure whether the condition in subsection (6) has been satisfied. It requires that the European Council has proposed an extension, but that may not be the way it works because in discussion and negotiation it may be questionable whether the proposal has come from the European Council or from the Prime Minister herself in the course of negotiations. Secondly, if the condition is triggered, under subsection (7) the Prime Minister must move a Motion in the House of Commons in the form set out in subsection (2) stating that that House agrees to the Prime Minister seeking an extension. How is this going to work in circumstances where as a result of a negotiation the Prime Minister has in effect reached an agreement with the European Council about what the extension should be? How does she then receive an instruction to agree a date that has already been agreed? It creates those difficulties of legal certainty.

3.45 pm

The further reason, and the most important, is that if we insert into the Bill the amendment proposed by the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge, supported by the noble Baroness, Lady Ludford, and myself, we would then have one provision saying that nothing in the Act prevented the Minister of the Crown from seeking or agreeing to an extension, and other provisions that seemed to suggest that as a result of the Act there needed to be prior permission from the other place, although they do not perhaps say so explicitly. That is a recipe for legal uncertainty and for litigation. This process has already been subject to litigation. As one of those who get involved in these things, I do not doubt that that would result in more litigation. That is not helpful to certainty.

I am putting forward this amendment to promote the simplicity of the process, to enable us and the other place to get through by the time when otherwise our period would expire, and to avoid legal uncertainty.

Lord Faulks (Con): My Lords—

Viscount Eccles (Con): My Lords—

Lord Goldsmith: I give way to whoever would like to speak on the opposite Benches.

Lord Faulks: I entirely agree with the noble and learned Lord that it is most important that there should be as much legal certainty as there can be, but also that the Prime Minister should have the proper role and authority to negotiate. However, does he agree that the royal prerogative exists to allow the Prime Minister to negotiate on our behalf in international and foreign relations unless Parliament actually restricts that authority? That of course was the subject of the Gina Miller case and the reason behind that decision. If we say nothing about the restrictions on the Prime Minister, she will be able to rely on the royal prerogative.

Lord Goldsmith: The noble Lord is quite right that that is a very important point. It was raised at Second Reading that the Government felt strongly, and I understand why, that the royal prerogative should not be subject to at least inadvertent erosion. Of course it has been eroded in certain respects over the years; we do not need to go into what they are but they include treaty making and waging war.

I take from the noble Lord's point this observation: one great benefit of the amendment proposed by the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, is that it makes clear that the royal prerogative is being maintained. I want to avoid seeing that apparently contradicted by other provisions in the Bill.

I have one other observation to make. I said a few moments ago that there were certain things that could happen: the European Council might accept the proposal or it might come up with another one. However, there is a risk that there might be no agreement at all; that needs to be considered. We have had discussions with the Government. I look to the noble and learned Lord, Lord Callanan—I am sorry, the noble Lord. He should be noble and learned as he has had to deal with so much of this Bill already; we will see if we can arrange that. I anticipate that he will give an assurance that, in the event that there is no agreement, the matter will be brought to the other place as soon as possible. Indeed, we expect it to be brought there this week, otherwise it might simply be too late.

When the noble Lord comes to respond on this amendment, I look forward to hearing what he says about that, and I hope he will give us sufficient assurance that if there is in fact a failure to agree at the European Council meeting then the matter will come back to the other place, which will therefore be able to debate what should happen next. It should do so on an amendable Motion so that it can put forward and support its view on what should take place. I do not know whether it would be for the convenience of the House if the noble Lord could tell us now what he will be able to say but, if not, I look forward to hearing what he says when he comes to respond to the debate.

Baroness Deech (CB): My Lords, I tabled Amendment 6.

Lord Pannick: It is not grouped with this one.

Baroness Deech: I would be the mover of Amendment 6. I originally proposed with the Public Bill Office precisely the amendment that the noble and learned Lord, Lord Goldsmith, tabled. I am sorry that we were not able to communicate about it. However, it shows how wise it was for this House to have had the weekend to think about things. Not only has the temperature cooled a bit but it has given us the chance to read two very important reports that were hastily brought out over the weekend. I congratulate the members of the two Select Committees—the Constitution Committee and the Delegated Powers and Regulatory Reform Committee—and all those who worked to achieve this on getting the reports published. They raised an important issue and, to some extent, answered my question. My amendment would have been a probing amendment.

I tabled this amendment for clarification. After we have debated all the amendments, it will demonstrate even further just how toothless and pointless this Bill is. I was minded to put this amendment down for the following reason, which has also been suggested by the noble and learned Lord, Lord Goldsmith. Let us suppose that the Prime Minister picks up the phone to Brussels, or goes there, and it says that it will give an extension for however many months, provided we pay more, or enter into discussions with Spain about Gibraltar, for example. I am glad to see the return of the royal prerogative because I assume that that will mean that she can simply say no and put the receiver down. As drafted, the Bill concerns only the date; it has nothing about conditions. The date may well be inextricably mixed up with conditions.

As things stand, there would be nothing to get either House involved, or to stop the Prime Minister rejecting or accepting such a condition. Moreover, if you look at the drafting—of course, you draft in haste and repent at leisure—Clause 1(2) requires her only to seek an extension, not to achieve or accept it, or anything like that. Going back to my phone call metaphor, if she seeks an extension, and picks up the phone to Monsieur Barnier and says whatever, and he says no or she does not like what he says, she puts the phone down—end of. I maintain that this Bill does not wholly achieve what it sets out to do, which is to stop no deal, but I am happy to see a return of the royal prerogative. I agree with the noble and learned Lord, Lord Goldsmith, that those two final clauses should be removed because they simply confuse the issue.

How wise we were to wait for those reports. The one from the Constitution Committee explains exactly what I have said. Paragraph 5(c) says:

"The European Council might agree to the extension but subject to certain conditions (e.g. UK participation in elections to the European Parliament)".

I add in brackets that our human rights will be broken if we are still members of the EU and cannot vote—there was a case on this a few years ago. The report continues:

"If such a situation were to arise, the Bill would have no further application—that is, it would not impose any further duties on the Prime Minister nor make any relevant further provision".

I am glad to hear that. In other words, if Monsieur Barnier says we have to enter into talks with Spain about Gibraltar, the Prime Minister can put down the phone and say no. We will come to the other report later in this discussion.

In sum, no deal is not blocked by this Bill, but the House of Lords is relegated, as has happened quite often, I am afraid, in all our interesting and productive debates about withdrawal. We do not get reported in the media and we are completely sidelined from future decisions by this Bill. If the amendment from the noble and learned Lord, Lord Goldsmith, is accepted, then mine will of course be withdrawn, but I am glad to get this clarification on the record.

Lord Forsyth of Drumlean: My Lords, I am rather confused as to what is going on here. Who is answering these important points?

A noble Lord: The Minister.

Lord Forsyth of Drumlean: No, it is not for the Minister to answer them, as it is not a Government Bill. I do not know whether the noble Lord, Lord Robertson, is going to deal with these points, because we have the Opposition criticising the Bill, and seeking to amend it as we go along in Committee. To my mind—I am blessed with not being a lawyer—the noble and learned Lord, Lord Goldsmith, is riding two horses at once. On the one hand, he is saying that it is important that we retain the royal prerogative, because the Prime Minister has to be able to deal with the situation as it arises, and on the other hand, he says that we need this Bill in order to prevent the Prime Minister doing what she thinks is appropriate. If the noble Lord, Lord Robertson, is the sponsor of this Bill, perhaps he could enlighten us and deal with the important points which the noble Baroness, Lady Deech, has just made.

Lord Pannick: My Lords, the noble Baroness, Lady Deech, accepted that Amendments 5 and 7 remove the concern that she otherwise had—that is what she told the House.

I support Amendment 5 in the name of the noble and learned Lord, and I also want to speak to Amendment 7, which has, as I understand it, now been grouped with Amendment 5.

A noble Lord: Has it?

Lord Pannick: It is not on the list, but as I understand it, there have been suggestions that it would be helpful to the House if it debated Amendment 7 together with Amendment 5; that was what we were told by the Table Office. In any event, the noble and learned Lord, Lord Goldsmith, has referred to Amendment 7, and it may be helpful if I make my remarks as the person who has tabled Amendment 7.

A noble Lord: They are not grouped.

Lord Pannick: They are not grouped on the Marshalled List, but I was informed that the Table Office had been invited to list Amendment 7 with Amendment 5. I am entirely in your Lordships' hands as to what is of most assistance.

Lord Robathan: Does this not reveal the chaos of the current procedure?

Lord Pannick: My Lords, I will do whatever the Chief Whip thinks is most appropriate in these circumstances, as I always do.

Lord Taylor of Holbeach: I thank the noble Lord. The papers for today were prepared when, at a rather late hour, someone arrived to suggest that these two amendments be taken together. I have no comment to make on that matter—it is for the House to decide. If the House decides that they should be taken together, they can be.

Noble Lords: Take them together.

Lord Robertson of Port Ellen: As the sponsor of the Bill, I suggest that they are taken together.

Lord Pannick: My Lords, I can sense the mood of the House, and I am grateful to all noble Lords, particularly the Chief Whip.

The noble and learned Lord has already mentioned Amendment 7, which goes with Amendment 5. It addresses a practical concern that may arise at the European Council meeting on Wednesday night. The problem is that Clause 1 envisages that, if the Prime Minister is mandated by the House of Commons to seek an extension to a specified date, and the European Council then makes a counteroffer of a different date, the Prime Minister would have no power under Clause 1 to agree to that counteroffer. She would have to say to our European partners that she is required to return to the House of Commons on Thursday to seek its approval. She would have to say that notwithstanding the fact that the European Council is not going to remain in session—they are all going to go home. There is therefore a risk that, contrary to the aims of the promoters of this Bill, the restrictions on the Prime Minister's powers contained in this Bill may cause a no-deal exit on Friday at 11pm. Therefore, Amendment 7 makes it clear that nothing in this Bill prevents the Prime Minister seeking or agreeing on Wednesday night in Brussels an extension of the Article 50 period, provided it is not to a date earlier than 22 May.

Viscount Hailsham: I entirely understand the point about the Prime Minister agreeing to a proposal coming from the European Union. I am a little less certain about the desirability of enabling her to seek a date without prior parliamentary approval.

4 pm

Lord Pannick: This is a negotiation. It would be very odd to say that she can agree a date but she cannot seek one. There has to be give and take. I think that there is general agreement around the House that the Bill, whether noble Lords are in favour of it or not, ought not to constrain the Prime Minister's powers when she is conducting an international negotiation.

The noble Lord, Lord Faulks, asked whether this was really necessary: unless an Act of Parliament expressly takes away the Prime Minister's prerogative powers, surely they remain. My answer is that there is a danger that it might be said that the Bill, by necessary implication by reason of its contents, takes away the Prime Minister's prerogative powers. I think we would all agree that the worst of all possible worlds would be if the noble Lord, Lord Faulks, on Thursday morning was to be instructed by a client to go to court to obtain a declaration that the Prime Minister has acted in breach of her powers, given the Bill's contents.

Lord Goldsmith: If I may assist, Clause 1(4) would require the Prime Minister to seek an extension of the period required by the House of Commons. We are then dealing with what happens after that.

Lord Pannick: I entirely accept that.

It is necessary to have legal certainty on the retention of the Prime Minister's powers on such an important matter. That is why the noble and learned Lords, Lord Judge and Lord Goldsmith, the noble Baroness, Lady Ludford, and I have all put our names to Amendment 7.

Lord Howard of Lympne: My Lords, I have listened with care to the speeches of the noble and learned Lord, Lord Goldsmith, and the noble Lord, Lord Pannick, and the intervention from my noble friend Lord Hailsham. I do not have my noble friend Lord Forsyth's advantage because I have the misfortune of having trained and practised as a lawyer, so I am in that difficult circumstance. I am confused by the exchanges that have taken place. I draw only one inference from them: this appalling piece of legislation is totally misconceived. It seeks on the one hand indubitably to constrain the exercise of the royal prerogative by the Prime Minister. That is its main purpose. Now we have amendment after amendment that seek to persuade us that it is only in some circumstances that the royal prerogative should be constrained and that in others it is absolutely necessary because, as the noble Lord just said, the Prime Minister must be able to make use of the royal prerogative when she is involved in negotiations of this kind. It is negotiations of this kind that the Bill is all about.

The fact is that the Prime Minister will be involved in negotiations about the date on which we exit the European Union, the conditions in which we do so and any terms that might be sought by the European Council to limit the extent to which we might be able to act in accordance with the result of the referendum. The Prime Minister will be engaged in negotiations of that kind. She ought to be able to exercise the royal prerogative when she engages in those negotiations, as the noble Lord said a moment ago. This ludicrous Bill, which seeks in part to restrain the royal prerogative and then to subtract from the extent to which it constrains it, is wholly misconceived and should never reach the statute book.

Baroness Ludford (LD): My Lords, perhaps I could assist the noble Lord, Lord Howard, to see this situation in a different light when it comes to the European Council on Wednesday: as a happy blend of parliamentary accountability and government flexibility. I agree with the noble and learned Lord, Lord Goldsmith, and the noble Lord, Lord Pannick, that the combination of Amendments 5 and 7 supplies both legal and practical certainty. They perhaps take away the complication

[BARONESS LUDFORD]
that might be in the minds of the Council on Wednesday night about what happens if the Prime Minister proposes or agrees to a different extension to what is being discussed in the other place.

The noble and learned Lord, Lord Goldsmith, is also right that there could be some discussion about the difference in wording between Clause 1(7), about a proposal, and a scenario of agreement by the Prime Minister at the European Council. We need to remember that the specific context that is being addressed by Amendment 7 is envisaging what happens in those negotiations at the European Council. Like the noble and learned Lord, I look forward to the response from the Minister—

A noble Lord: It is not the Minister.

Baroness Ludford: Perhaps if noble Lords listened to the end of a sentence they would understand what the speaker was saying.

I look forward to the response about the wording which the Government have apparently discussed regarding an amendable Motion if there is no deal on Thursday, as well as to the response from the Bill's sponsor, the noble Lord, Lord Robertson.

Lord Cormack (Con): My Lords, I think we should remember that there is no precedent, no parallel, to the situation in which we have found ourselves in recent weeks. As we said at Second Reading last Thursday night, a group of very courageous Members from both sides of the House, and from minority parties, came together to fill a vacuum. After that, the Prime Minister made her welcome overture to other parties, something that should have been done after the general election when we lost our majority.

That changed the situation. Nevertheless, I believe that those who promoted this Bill were entirely justified in so doing. We have had this welcome development from the Prime Minister, so it is entirely sensible that the amendments moved by the noble and learned Lord, Lord Goldsmith, and the noble Lord, Lord Pannick, should be accepted by this House. They give the Prime Minister, in this, the ultimate hour—because that is what we are talking about—the freedom to be able to negotiate on Wednesday. It would be manifestly absurd if she did not have that freedom.

We should accept these amendments. I think they improve the Bill. I very much hope that those in another place accept them in the spirit in which they have been moved, and then, perhaps, we can all move on.

Lord Judge (CB): My Lords, I had not intended to speak. I do not think that this is a good Bill. There have been much better Bills, and the process that we have been through has not been the House at its best, because events have forced the situation on us. Therefore, I apologise to the House. I did not put my name down to speak at Second Reading—I had not intended to speak at all. I support this amendment, because I think it will make a bad Bill rather better.

May I diverge, however? We are setting a precedent. There is no point in pretending that we have not set a precedent by what has happened. If I may, I offer this comfort: sometimes precedents do not have to be followed. This allows a precedent. I suggest to whichever side of the House is in power for the next 20, 30, 40 or 50 years that we do not allow it to be followed again. At least we should communicate our view that this, whether precedent or not—and it was—is a one-off and goes no further.

The point of Amendment 7 is very simple: we want to make the Bill a little better than it is by removing the constraints that are otherwise imposed on the Prime Minister. That, I respectfully suggest to the House, is desirable. As I do not intend to speak or have my speaking taken as support for this—

Lord Hamilton of Epsom: Does the noble and learned Lord accept that, with an unwritten constitution, it is impossible to guarantee that a precedent will be a one-off? It will be used by others when it is convenient for them to do so.

Lord Judge: Of course it will be used by others. Lawyers use bad precedents constantly, but it does not mean that it has to be followed.

I did not intend to speak, for the reason I have given. This amendment will improve the Bill. That is the point of it. Beyond that, I do not wish to say any more, because it may indicate somehow that I am backing off from my concern about the Bill. So in lawyerly fashion I simply say that you have all heard the noble Lord, Lord Pannick. I agree with him. I have nothing to add.

Viscount Eccles: The noble and learned Lord tells us that it improves the Bill. Does it not change the Bill so materially that it is not the same Bill after all?

Lord Judge: No, it does not. We have to face the context, which is that the Commons has passed the Bill. So we are not having the first go at it; we are having a go at it after the Commons has resolved it.

Lord Faulks: The noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge, have helpfully identified a problem with the Bill, in that a counterproposal by the EU could fall between the cracks and result in an accidental no deal, thus frustrating the will of Parliament, in so far as that will is ascertainable.

In the event of a counterproposal, which seems likely, the amendment suggests that the Prime Minister has the power to seek or agree an extension to a date not earlier than 22 May. At col. 337, the noble Lord, Lord Pannick, suggested that approval would still have to be sought for that new date.

I wholly understand the thinking behind the amendment, but the apparent need for it underlines the strange constitutional waters in which we are now swimming. My understanding of the Gina Miller case is that the Government argued that Article 50 could be triggered without parliamentary involvement, whereas the opposing argument, advanced by the noble Lord among others, was that Parliament had legislated in such a way that the royal prerogative was enough on its own and that Parliament need not be involved. By a majority this argument prevailed, although there were three dissenting speeches.

The prerogative, however, allows Ministers, and in this case the Prime Minister, to make or unmake treaties unless Parliament has legislated to restrict that power. It rarely does, hence the paucity of useful precedents in the Gina Miller case. It seems to me that the Prime Minister would be allowed to agree a counterproposal as a matter of law. Whether that would be politically sound is a different matter.

The response of the noble Lord, Lord Pannick, is that it is or might be uncertain, but it seems to me that this amendment in fact fetters the royal prerogative. We have a dualist system of law in this country, which has worked well, and I wonder if it is wise to undermine the royal prerogative in this way. To make a constitutional change of this sort needs prolonged and serious thought. A Private Member's Bill that went through all its stages in the House of Commons in four hours, that was not given pre-legislative scrutiny and that, for good reasons, is hurrying through this House, is surely not the context in which to make significant constitutional changes.

Lord Goldsmith: Could the noble Lord enlighten me, at least, as to which amendment he is referring to?

Lord Faulks: I am referring to Amendment 7.

Lord Goldsmith: Amendment 7 does not fetter. It actually says the opposite.

4.15 pm

Lord Faulks: The amendment says, "nothing … prevents", which I suppose could be said to be saying that the royal prerogative exists—so to that extent it is unnecessary—but it restricts what the Prime Minister can do in its final words. That is my answer to my noble and learned friend.

The wise words of the noble Lord, Lord Norton of Louth, at Second Reading about the constitution are particularly relevant in this context. One of the repeated observations from the EU is that it wants to know what the UK wants. In the context of this Bill, it will ask the reasons for the extension. What answer is the Prime Minister supposed to give, acting as an agent for this disunited Parliament?

This amendment is a worthwhile attempt to clarify the mandate, which apparently the Prime Minister has by virtue of this Bill, but I doubt it is necessary, for the reasons I have given, and I suggest that the House thinks long and hard before making such an important change.

Baroness Butler-Sloss (CB): Will the noble Lord answer the points of concern of the noble Lord, Lord Pannick, as to why Amendment 7 is needed?

Lord Faulks: I do not want to misrepresent what the noble Lord said, but he suggested that there might be some legal uncertainty and that, theoretically at least, I or some other barrister might be instructed to argue something in court, and this is to avoid legal uncertainty. I am all for avoiding legal uncertainty, but the existence of the royal prerogative can surely not be in doubt, and this is, I suggest, an attempt to fetter that royal prerogative.

I finish with this observation. Lord Reed, Deputy President of the Supreme Court, said in the Gina Miller case of the royal prerogative that the,

"the value of unanimity, strength and dispatch in the conduct of foreign affairs are as evident in the 21st century as they were in the 18th".

This Bill and this amendment substantially undermine that strength.

Lord Trevethin and Oaksey (CB): My Lords, I am yet another lawyer. I apologise for that. I will not detain the House for long.

I respectfully agree with the noble and learned Lord, Lord Judge, that this came to the House as a bad Bill—I would say a very bad Bill. It sought to send the Prime Minister into the conference chamber not naked but wearing a straitjacket, and that was clearly inappropriate given the very delicate negotiations that are going to have to take place this week. As it stood, it was not proper legislation but, in the words of Nye Bevan, "an emotional spasm".

I fully support the amendments proposed by the noble and noble and learned Lords. They are obviously necessary, bizarrely, to prevent the Bill having the inadvertent effect of increasing the risk of an accidental no-deal exit, so I fully support them. However, I am concerned that, if these amendments pass, the Bill will appear to be, and be, a bit of a mess. The Prime Minister has already, as I recall, made one request for an extension, which is outstanding; I doubt whether it will be accepted. After the Motion is passed in the House of Commons, a further date will be introduced and she will have to write another letter, I think, to the EU specifying another date. That will presumably displace application number one for an extension.

The amendments, which I support, would make it open to her to make a further, third, application for an extension, specifying a further date. That will displace, as I see it, the second application made pursuant to the Motion in the House of Commons. What is left of the Bill, as I see it, is nothing more than this: an edict from Parliament that the extension that the Prime Minister is able to seek cannot end earlier than 22 May 2019. If it had been restricted to that, we would have saved a lot of time.

Lord Hamilton of Epsom: My Lords, I should like to pick up on something the noble and learned Lord, Lord Goldsmith, said about agreement on dates. As I understand it, the Prime Minister is asking to go to the end of June. Presumably she has Cabinet approval to do that.

A noble Lord: Very unlikely.

Lord Hamilton of Epsom: I agree, nobody knows. Let us hypothesise that she cannot go beyond that date. She goes to Brussels and says: "I would like to extend until the end of June". Suppose that Brussels says: "No, we are frightfully sorry but we have agreed two dates with you already. One is in the context of no agreement and the other is in the context of the agreement being agreed by Parliament. We are not prepared to move from that". I presume that the noble and learned Lord, Lord Goldsmith, will be answering on these amendments —I suspect the noble Lord, Lord Robertson, does not

[Lord Hamilton of Epsom]
feel that responsible for this Bill, having taken it over from somebody else. What happens if the EU does not move from the two dates that it has already agreed, therefore still leaving us in the position where the Prime Minister will come back on Thursday and say, "I can get no agreement from the EU to change the dates it has already given us"? How in those circumstances will we not come out with no deal on Friday?

Baroness Deech: My Lords, as I mentioned before, there is nothing in this Bill specifically to stop no deal. It requires the Prime Minister to seek and seek again. The root of the trouble is that for more than a hundred years we have observed the separation of powers in our constitution. The noble Lord, Lord Norton, is one of the greatest experts on this—I think he is not in his place, but if he were he would probably say that that separation is sometimes not exact. However, this Bill is a very good illustration of why it is not a good idea to mix up the powers of the Executive and the legislature. I would like to hear from whoever is the surrogate parent of this odd little embryo quite how it will prevent no deal. An abortion?

Lord Forsyth of Drumlean: Will the noble Baroness send a copy of her excellent contribution just now to the Minister for Children, who appeared on Radio 4 on Saturday morning and told an astonished nation that it was now illegal for us to leave without a deal?

Viscount Hailsham: My Lords, I will make a brief intervention in the hope that the noble and learned Lord, Lord Goldsmith, will respond to it. I entirely understand that in negotiations—the noble Lord, Lord Pannick, described the situation in which the Prime Minister and the EU are negotiating—there has to be give and take. What disturbs me is this: the Prime Minister might decide in advance to move outside the dates previously agreed by Parliament and go with an entirely fresh date into a negotiation. That is different in kind from negotiating when they sat down to discussion. It would be a deliberate attempt to go outside what Parliament has previously agreed to. It seems to me that Amendment 7 would enable her to do that, and I am profoundly uneasy about that prospect.

Lord Goldsmith: My Lords, I will respond on my Amendment 5, which is the one that has been moved. A couple of points need to be emphasised.

As has been discussed already, we are in unusual circumstances, and they demand some unusual responses. This Bill does not take away or give back the entirety of the royal prerogative. It says—this is why I made an intervention earlier—that it is for the other place, on a Motion put forward by the Prime Minister, to say what date she should seek. It may be that the European Council will accept that date, in which case it is done so far as the negotiations are concerned. It may come back with a different date, and the questions we have been considering are for those circumstances. Does she have to seek approval during the next two to three days before she can respond to it, or is she able to respond by agreeing to it or by putting forward a slightly different proposal?

There are two different amendments—my amendment would remove the fetters requiring her to come back, and that of the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, would enable her to reach an agreement without having had that prior approval. It seems to me that a balance is being struck between royal prerogative and necessary control by Parliament. It is absolutely the case—as the noble Lord, Lord Faulks, said—that of course the royal prerogative can be adjusted and amended by what Parliament says. On this occasion, the other place has said: "We believe that we should tell the Prime Minister what date she should seek. What happens after that will depend upon the circumstances but, whatever it is, it has to be done in this time".

I invite the House to agree Amendment 5 and then we can move on to the other amendments.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): As the noble and learned Lord, Lord Goldsmith, was kind enough to point out, I have not benefited from the disadvantages of a legal education, but I think I know flawed and badly drafted legislation when I see it. Nevertheless, it remains the reality that this has been approved by the House of Commons, and that is a principle that I believe should be respected. Noble Lords opposite can be assured that I will remind them of their newfound enthusiasm to respect the will of the House of Commons when we come to future legislation.

I will comment first on the amendments. As my noble friend the Leader of the House said, the Government support Amendment 5, moved by the noble and learned Lord, Lord Goldsmith. This seeks to remove Clause 1(6) and (7) from the Bill. As currently drafted, should the European Council propose a different date to extend Article 50 from that agreed in Parliament by virtue of approval of the Motion as set out in the Bill, the Bill would require the Prime Minister to return to the House of Commons on 11 April and put the EU's counterproposal to that House for approval through a further Motion. As the Government set out last week, we have very real concerns about how that would work in practice.

The Government hope that Amendment 7 will also be successful, which would allow us to reach agreement with the EU on Wednesday, so long as that extension ends no later than 22 May. The Government have been clear, as I said earlier, that we are seeking an extension to 30 June.

In response to the question posed by the noble and learned Lord, Lord Goldsmith, and the noble Baroness, Lady Ludford, scheduling of any further debates after the European Council on 10 April is a matter for the other place. I am sure it is paying close attention to our debates.

Lord Goldsmith: I think the Minister said, in relation to the date, "not later than 22 May". It should be "not earlier than 22 May". Perhaps he can confirm that. It is obviously a very important difference.

Lord Callanan: Yes, I take the noble and learned Lord's point. He is right on that.

As I said, I am sure that the other place is paying close attention to our debates and will address this when the Bill returns to the House of Commons for further debate this evening.

Amendment 5 agreed.

Amendment 6 not moved.

Amendment 7

Moved by **Lord Pannick**

7: Clause 1, page 2, line 3, at end insert—

"(8) Nothing in this section prevents a Minister of the Crown from seeking, or agreeing to, an extension of the period specified in Article 50(3) of the Treaty on European Union otherwise than in accordance with this section provided that the extension cannot end earlier than 22 May 2019.

(9) In deciding for the purposes of subsection (8) whether an extension cannot end earlier than 22 May 2019, the earlier ending of the extension as a result of the entry into force of the withdrawal agreement (as provided for in Article 50(3) of the Treaty on European Union) is to be ignored."

Amendment 7 agreed.

Debate on whether Clause 1 should stand part of the Bill.

Lord Wigley (PC): I will say a brief word in line with the comments I made on a matter that I flagged up at Second Reading. The main issue overshadowing today's debate is the danger of us reaching midnight this Friday with no agreement and of the UK leaving the EU on a no-deal basis, despite the House of Commons having voted overwhelmingly against such an eventuality.

I tried to table an amendment to address this along the lines of that tabled by Joanna Cherry MP in the other place—proposed new Clause 20—which was successfully tabled and appeared on the Commons Order Paper for 3 April. My new clause was ruled out by the clerks as being outside the scope of the Bill. If Joanna Cherry's amendment was in order, I fail to understand how mine could be out of order—a view shared by Jo Maugham QC, who helped me draft it.

The amendment sought to ensure that, if the UK Government failed to pass their meaningful vote or to secure an extension, and we therefore faced a no-deal scenario, the Government would be required to table a Motion indicating that the House of Commons agreed to leave the European Union without a withdrawal agreement—that is, on a no-deal basis—and if that Motion failed to pass, as might be expected, the Government would be compelled to revoke Article 50 in line with the ruling of the European Court of Justice in the Wightman case. The Labour Party at Westminster has failed to indicate that it would support an amendment to revoke Article 50 at this time; Sir Keir Starmer MP said on the Floor of the House that Labour would cross that bridge when it came to it. However, the First Minister of Wales, Mark Drakeford, has indicated that he would support the revocation of Article 50 in the event of no deal.

4.30 pm

This amendment was nothing more than a safety net or insurance policy to ensure that, in the event of a total breakdown of the Brexit process, we do not leave with a disastrous no-deal scenario, which would be a danger to jobs, wages and security, as identified by the Government's own analysis. Delay and indecision have led us to the edge of a precipice. We are peering over that edge, we need a safety net just in case we slip, and this revocation amendment would have done exactly that. I do not oppose Clause 1 stand part but I believe that in passing it, we should be aware of the central deficiency in the Bill.

Clause 1 agreed.

Clause 2: Procedure for ensuring domestic legislation matches Article 50 extension

Debate on whether Clause 2 should stand part of the Bill.

Lord Lisvane: My Lords, I speak as a member of the Delegated Powers and Regulatory Reform Committee. The chairman of the committee, the noble Lord, Lord Blencathra, is unable to be here today because he is absent on parliamentary business. No doubt noble Lords have a copy of the 51st report of the Delegated Powers Committee. The argument set out by the committee is brief, concise and telling. I will not attempt to summarise it or indeed to read out the report, because paragraph 5 could hardly be summarised more briefly than it has been set out by the committee.

The committee acknowledges in paragraph 4:

"The principal justification for clause 2 of this Bill is that it might be necessary to legislate at speed next week"—

in other words, this 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".

The committee goes on to say that on the other hand, there are powerful and telling arguments in favour of the affirmative procedure. It notes that were Clause 2 to be removed from the Bill, we would simply return to, as it were, the default setting.

Because this will be a matter of business management, the most helpful thing for your Lordships might be to have some indication from the Minister as to whether there is a balance of advantage of using the negative or the affirmative procedure. On that basis, it may be for your Lordships to decide whether Clause 2 remains in the Bill.

Lord Forsyth of Drumlean: My Lords, again, I am disadvantaged as being neither a member of the committee or a lawyer. I am surprised that the noble Lord has not drawn the attention of the House to the fact that, as I understand it, the committee report makes it clear that this House would no longer be able to be consulted on those matters. Is that not correct?

Lord Lisvane: It is indeed; the noble Lord is correctly quoting from the final bullet point of paragraph 5. I did not want to delay your Lordships further, but that is a helpful, additional piece of information set out in the report.

Lord Hope of Craighead (CB): Perhaps the noble Lord would also say a word about the effect of a petition against. The fact that the instrument is passed is not the end of the day, or at least not necessarily so. Could he elaborate a bit on the consequences if someone objects after the event?

Lord Lisvane: I should be happy to do so. The Convenor of the Cross Benches, the noble and learned Lord, Lord Hope of Craighead, has helpfully drawn attention to the possible uncertainty that might arise were the negative procedure to be kept in place and were there to be a successful Motion for annulment of the instrument that was made under that provision. I suggest that that is an additional argument for returning to the affirmative procedure.

Lord Goldsmith: My Lords, this has been a difficult matter to determine, but the priority as I see it remains ensuring that this can be done in time. That is the concern. I do not want to be disagreeable at this point in the debate, but we all know that the Prime Minister knew last December that the deal that she had done would not pass, but we find ourselves at the very last stages having to deal with the possibilities of what happens if she cannot reach an agreement.

The affirmative procedure gives rise to the concern that the matter will have to return, perhaps on Friday: it depends what time the European Council meeting finishes. We have already destroyed the recess for many people, and that would destroy the weekend as well. Although we on these Benches are normally strongly in favour of affirmative resolutions, on this occasion we see the force of what is in the Bill.

Lord Robathan: What confuses me is that the noble and learned Lord appears to be answering on the Bill, which is a Private Member's Bill sponsored by the noble Lord, Lord Robertson. He appears to be answering for the Opposition, so is this an opposition Bill or a Private Member's Bill?

Lord Goldsmith: The noble Lord should know that on any amendment or Bill in this House, the Government and the official Opposition will have a view, and we seek to help noble Lords by providing that view. That is exactly what is happening here.

Lord Pannick: I am not responsible for the Bill, but I offer a further argument in favour of retaining Clause 2. The practical reality is that, on Wednesday night, the Prime Minister will be offered a deal by the European Council. She will either accept it or not. The overwhelming probability is that she will come to some agreement with the European Council.

If the matter comes back on an affirmative resolution before the House of Commons and this House on Thursday or Friday, there will be only two choices: either we accept the date that has been agreed or we leave on Friday at 11 pm. The House of Commons has overwhelmingly voted that it does not wish to leave with no deal, and the view of this House is perfectly clear that it does not want to leave with no deal. Therefore, it seems to me that, in the extraordinary circumstances in which we now find ourselves, Clause 2 is entirely acceptable.

Lord Forsyth of Drumlean: My Lords, uncharacteristically, I think the noble Lord, Lord Pannick, made a slight slip when he said that the Prime Minister would come back with a deal. She will not be coming back with a deal; she will be coming back with a date. The committee report states:

> "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".

When the Government changed the date from 29 March to 12 April, they did so by statutory instrument placed before both Houses, and we were able to discuss and debate that matter. What is proposed, as the 51st report of the committee makes clear, is to remove that right from both Houses to approve a change.

I must say that in introducing the debate the noble Lord, Lord Lisvane, was very brief in his description. The outside world may not realise what is proposed here, which is entirely to cut the House of Lords out of approving the date, which the report rightly says is of the greatest political significance. Judging from the amount of grief I had at the weekend from people who are very disillusioned by the performance of Parliament on this matter, it is something that concerns many millions of our fellow citizens. I am therefore very surprised that this should be treated as just a matter of convenience.

The Delegated Powers and Regulatory Reform Committee, which is held in the highest regard and afforded the highest respect, made clear recommendations. The point made by the noble and learned Lord, Lord Hope, is important: if this is to be done through a negative resolution, we will be invited after the event to consider whether we agreed with it, thus creating uncertainty. Again, we had the same discussion on Thursday. This is not about what the House thinks on whether we should leave the European Union; it is about whether our procedures and processes should be respected. The idea that it might be inconvenient or difficult to meet the timetable, and that we should therefore ignore our processes, is not good.

Viscount Hailsham: Normally, my noble friend and I disagree on these matters but I am rather inclined to agree with him on this one.

Lord Forsyth of Drumlean: Hooray.

Viscount Hailsham: In the penultimate bullet point, it is clear that if the negative procedure is adopted and a Motion against the date is successful, the exit date will be invalidated and we will have to start again.

Lord Forsyth of Drumlean: I am grateful for my noble friend's intervention. I am most obliged to him as a lawyer for backing up my case—and doing so for free. We should treat the amendment very seriously. I look forward to hearing what my noble friend the Minister has to say. We have not heard a squeak from the noble Lord, Lord Robertson, who is apparently the midwife responsible for the Bill.

Baroness Ludford: My Lords, our position is similar to that of the Opposition, as outlined by the noble and learned Lord, Lord Goldsmith. We on these Benches

would of course normally want to uphold the affirmative procedure; after all, we fought hard for it in the EU withdrawal Act. However, we are in exceptional times and it would be absurd for us to get to the end of the week with procedure having got in the way of good legal order.

Lord Faulks: At Second Reading, the noble Baroness was inclined to agree with the removal of Clause 2. Indeed, she said so on the basis that the process could be done "expeditiously", as was done when the date was changed from 29 March to 12 April. Has she changed her mind?

Baroness Ludford: I was reflecting the position and view of my colleagues in the other place. As I said, in principle, we prefer the affirmative procedure. However, I would also prefer to avoid the catastrophe of no deal. Therefore, it would be ridiculous for us to get to the end of week and be prevented from amending exit day by the inhibitions of procedure. I take the point that negative procedure can be prayed against but that risk is relatively minimal.

It is true that Clause 2 is headed, "Procedure for ensuring domestic legislation matches Article 50 extension". If the Article 50 extension has been agreed to, it is in EU law. I remember the Government being slightly coy two weeks ago in acknowledging that EU law trumps domestic law. Our amending exit day to accord with the date of an extension is an essential tidying-up exercise in domestic law; otherwise, discordance between the two dates leads to uncertainty. It is essential that exit day accords with the Article 50 extension.

Lord Howard of Lympne: The noble Baroness was rather dismissive a moment ago about the inhibitions of procedure. Is this whole Bill not designed to put such inhibitions in place? That is what we are discussing. That is what it is all about.

Baroness Ludford: I have talked about the specific context. If we get to the end of this week, it would be absurd for us to be prevented from preventing no deal because of the need for an affirmative resolution. That is a very specific scenario which justifies the negative procedure in this case.

Baroness Deech: My Lords, a few days ago, the noble Baroness, Lady Hayter, while hurrying us along, said that she was prepared to sit right through the night and that breakfast would be provided. Our Easter Recess has been removed for the time being. I and, I am sure, all noble Lords are quite prepared to sit on Thursday, Friday, Saturday or whatever it takes.

A noble Lord: I am not.

Baroness Deech: It does not matter if some of us are not prepared to do so; some of us are.

Although I am not good at procedure, I hesitate to reject the report of the committee which contains Members who are luminaries in procedure and law. I cite my noble friend Lord Lisvane, the noble Lord, Lord Thomas of Gresford, and others. They must have met over the weekend and they have turned out this report. We cannot just dismiss it. What is our discomfort or the lack of a day or two's break compared with the terrific constitutional and future issues at stake?

4.45 pm

Lord Hope of Craighead: My Lords, I should like to add one point to what the noble Baroness has just said. Clause 2 is not concerned with the end of this week. The way it is worded, it will apply whenever the issue arises, and that is a matter of considerable concern. We might be moving forward to May. There will be ample time with ample warning, and yet the thing goes through under the negative procedure and is subject to the risk to which our attention has been drawn—of someone objecting—and in due course the date that was in the negative instrument would be declared invalid. That is a big risk to take and we should not be distracted from the fact that the end of this week has certain tensions about it because we are changing the law for all time. That is a very serious step to take.

Lord Butler of Brockwell (CB): My Lords, I hope that this is an unnecessary fear, but it ought to be clarified. My worry, which I am sorry to say has been intensified by what happened on Thursday, is that if an affirmative resolution is needed on Friday or Saturday, is there a risk that it could be filibustered and therefore not passed? We would then crash out because of that obstruction to the business of the House. As I say, that worries me very much, so for that reason I support the inclusion of Clause 2.

Lord Forsyth of Drumlean: My Lords, I know nothing of these matters but perhaps the noble Lord could explain how you can filibuster a statutory instrument?

Lord Butler of Brockwell: I imagine that you can filibuster it by continuously talking and thus prolonging the debate until past midnight on 12 April. That is what I fear.

Lord Forsyth of Drumlean: As the noble Lord will have discovered, we have a procedure which last Thursday was used on five occasions in order to bring the matter to a close.

Lord Howard of Rising (Con): My Lords, it is worth reminding the Committee that the first steps to dictatorship have, through the centuries, consistently been related to abandoning procedures and precedents which are put in place in order to ensure that legislation is properly considered. I am not saying that we are going as far as the Enabling Act, but this is a very dangerous path.

Lord Green of Deddington (CB): My Lords, this discussion has unearthed some serious issues. I hope therefore that there will be an opportunity to vote on this matter so that people's votes can be recorded.

Lord Callanan: Let me reassure my noble friend Lord Forsyth that I am not responsible for this Bill either, although I have to say that I am quite enjoying watching the Opposition perform procedural somersaults and disavow everything that has been said previously on matters such as respecting the House of Commons, affirmative resolutions and everything else. Nevertheless, we return to the subject.

It is the position of the Government that Clause 2 should remain part of the Bill. I appreciate the concerns expressed on this issue and the sentiments behind them, and of course I recall vividly the lengthy debate we had on parliamentary scrutiny of the use of delegated powers more generally during the passage of the EU withdrawal Bill. I seem to recall the Liberals arguing for precisely the opposite position at that stage, but consistency has never been their strong point. As noble Lords are aware, the Government do not support the Bill or the conditions it is attempting to impose on government. However, as I said earlier, given the support commanded in the other place, the Government have decided that they must intervene to improve and limit its most damaging effects.

The Bill creates a new parliamentary process that the Government must adhere to in order to agree an extension of Article 50 with the European Union, if the European Council proposes an end date to the extension different to that proposed by the House of Commons. Given that the European Council is on Wednesday 10 April and exit day is just two days later, there is a real risk that we will be timed out of agreeing an extension and therefore accidentally leave the EU without a deal. It would be extremely ironic, and it is clear the supporters of this Bill are opposed to that outcome.

Noble Lords will be well aware—indeed, I answered questions on this topic earlier today—that agreeing an extension is not a decision the UK can take alone. It must be agreed unanimously with all other 27 EU member states. Following this, we must also amend the date of exit in domestic law to ensure that the statute book accurately reflects what is set out in international law.

Under the draft affirmative procedure, both Houses are required to debate and approve the statutory instrument, which significantly increases the risk of this not being in force in time for 11 pm on 12 April. At that point all other EU exit SIs will come into force, regardless of the agreed extension date, causing considerable uncertainty and confusion for many. It is for that reason that the Government tabled this amendment—now Clause 2 of the Bill—in the other place, changing the procedure applying to the power in the 2018 Act from the draft affirmative to the negative procedure, and it is for this reason that the elected Chamber supported that approach. Nobody wants to take that risk.

Furthermore, not only has Parliament repeatedly argued in favour of an extension to Article 50 and against leaving the EU without a deal, both Houses have already debated and approved one SI to defer exit day. There is clearly widespread approval to use this power in such a way. As I am sure noble Lords are all aware, while the power has a significant effect—ensuring a functioning statute book—its scope is limited to changing exit day to the date already agreed in international law by the Prime Minister, and the SI cannot be made until that point. It is for this reason that the Government tabled the new clause and that the elected Chamber voted with a large majority to support this. I hope this House will support the same sentiment and allow this clause to stand part of the Bill.

Lord Framlingham: In among what is obviously an increasing shambles, can the Minister confirm that we leave the European Union this Friday by an existing Act of Parliament, and that the Government have conceded that—although this is not their chosen course of action—it could be quite successfully managed?

Lord Callanan: I answered a question from the noble Lord earlier today on that, and I am not sure there is much benefit in going back over those subjects. We are extensively prepared for no deal because that is the legal default, but we are now supporting this legislation—however flawed—that has been sent to us by the House of Commons.

4.53 pm

Division on whether Clause 2 should stand part of the Bill.

Contents 280; Not-Contents 46.

Clause 2 agreed.

Division No. 1

CONTENTS

Aberdare, L.
Addington, L.
Adonis, L.
Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Alderdice, L.
Allan of Hallam, L.
Amos, B.
Anderson of Ipswich, L.
Andrews, B.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Armstrong of Hill Top, B.
Armstrong of Ilminster, L.
Ashton of Hyde, L.
Bakewell of Hardington Mandeville, B.
Barran, B.
Bates, L.
Berkeley, L.
Berridge, B.
Best, L.
Bhatia, L.
Bichard, L.
Birt, L.
Black of Brentwood, L.
Blackstone, B.
Blackwood of North Oxford, B.
Blair of Boughton, L.
Bloomfield of Hinton Waldrist, B.
Bowles of Berkhamsted, B.
Boycott, B.
Bradley, L.
Brady, B.
Bragg, L.
Brennan, L.
Bridges of Headley, L.
Brinton, B.
Brookman, L.
Brown of Cambridge, B.
Brown of Eaton-under-Heywood, L.
Bruce of Bennachie, L.
Bull, B.
Burnett, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Caine, L.
Callanan, L.
Campbell of Pittenweem, L.
Campbell of Surbiton, B.
Campbell-Savours, L.
Carlile of Berriew, L.
Carrington, L.
Cashman, L.
Cavendish of Little Venice, B.
Chakrabarti, B.
Chandos, V.
Christopher, L.
Clancarty, E.
Clement-Jones, L.
Colgrain, L.
Colwyn, L.
Cork and Orrery, E.
Cormack, L.
Cotter, L.
Courtown, E.
Coussins, B.
Craig of Radley, L.
Crawley, B.
Cunningham of Felling, L.
Davies of Oldham, L.
Deben, L.
Desai, L.
Dixon-Smith, L.
Doocey, B.
Drake, B.

Drayson, L.
D'Souza, B.
Dubs, L.
Eames, L.
Eatwell, L.
Eccles, V.
Elder, L.
Falkland, V.
Fall, B.
Featherstone, B.
Fellowes, L.
Finkelstein, L.
Finlay of Llandaff, B.
Fookes, B.
Foster of Bath, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Geddes, L.
Giddens, L.
Goddard of Stockport, L.
Goldie, B.
Golding, B.
Goldsmith, L.
Goodlad, L.
Goudie, B.
Grabiner, L.
Green of Hurstpierpoint, L.
Greengross, B.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Hailsham, V.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harries of Pentregarth, L.
Harris of Haringey, L.
Haselhurst, L.
Haskel, L.
Hayman, B.
Hayward, L.
Healy of Primrose Hill, B.
Helic, B.
Hilton of Eggardon, B.
Hollick, L.
Hollins, B.
Horam, L.
Howe of Idlicote, B.
Howe, E.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussain, L.
Hussein-Ece, B.
Inglewood, L.
Irvine of Lairg, L.
James of Blackheath, L.
Janvrin, L.
Jay of Ewelme, L.
Jay of Paddington, B.
Jones of Whitchurch, B.
Jopling, L.
Jordan, L.
Judge, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Kidron, B.
Kinnoull, E.
Kirkhope of Harrogate, L.
Kirkwood of Kirkhope, L.
Kramer, B.
Krebs, L.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Lee of Trafford, L.
Levene of Portsoken, L.
Liddle, L.
Lipsey, L.
Listowel, E.
Livermore, L.
London, Bp.
Low of Dalston, L.
Ludford, B.
MacKenzie of Culkein, L.
Mackenzie of Framwellgate, L.
Malloch-Brown, L.
Manzoor, B.
Masham of Ilton, B.
McAvoy, L. [Teller]
McIntosh of Hudnall, B.
McIntosh of Pickering, B.
McNally, L.
Meacher, B.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Mitchell, L.
Monks, L.
Montrose, D.
Morgan of Ely, B.
Morris of Handsworth, L.
Murphy of Torfaen, L.
Murphy, B.
Neville-Jones, B.
Newby, L.
Nicholson of Winterbourne, B.
Northover, B.
Norton of Louth, L.
Nye, B.
Oates, L.
O'Loan, B.
O'Neill of Bengarve, B.
Osamor, B.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parminter, B.
Patten of Barnes, L.
Pendry, L.
Pinnock, B.
Ponsonby of Shulbrede, L.
Powell of Bayswater, L.
Prashar, B.
Prescott, L.
Prior of Brampton, L.
Prosser, B.
Puttnam, L.
Randerson, B.
Redesdale, L.
Rees of Ludlow, L.
Renfrew of Kaimsthorn, L.
Robertson of Port Ellen, L.
Rock, B.
Rosser, L.
Rowe-Beddoe, L.
Royall of Blaisdon, B.
Scott of Bybrook, B.
Scott of Needham Market, B.
Scriven, L.
Selkirk of Douglas, L.
Selsdon, L.
Sharkey, L.
Sheehan, B.
Sherbourne of Didsbury, L.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Finsbury, L.
Smith of Hindhead, L.
Smith of Newnham, B.
Somerset, D.
Southwark, Bp.
St John of Bletso, L.
Stedman-Scott, B.
Stern, B.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Symons of Vernham Dean, B.
Taverne, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Thomas of Winchester, B.
Tonge, B.
Tope, L.
Trefgarne, L.
Triesman, L.
Truscott, L.
Tunnicliffe, L. [Teller]
Turnberg, L.
Tyler of Enfield, B.
Vaux of Harrowden, L.
Vere of Norbiton, B.
Wallace of Saltaire, L.
Walmsley, B.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Richmond, L.
Watts, L.
Waverley, V.
Wellington, D.
West of Spithead, L.
Wheatcroft, B.
Wheeler, B.
Whitty, L.
Wigley, L.
Willetts, L.
Williams of Elvel, L.
Williams of Trafford, B.
Willis of Knaresborough, L.
Wilson of Tillyorn, L.
Winston, L.
Wood of Anfield, L.
Woolf, L.
Woolmer of Leeds, L.
Young of Cookham, L.
Young of Hornsey, B.
Young of Norwood Green, L.

NOT CONTENTS

Blackwell, L.
Borwick, L.
Browne of Belmont, L.
Carrington of Fulham, L.
Cathcart, E.
Clarke of Stone-cum-Ebony, L.
Deech, B.
Dobbs, L.
Fairfax of Cameron, L.
Farmer, L.
Flight, L.
Forsyth of Drumlean, L.
Framlingham, L.
Green of Deddington, L.
Hamilton of Epsom, L. [Teller]
Hodgson of Abinger, B.
Holmes of Richmond, L.
Hope of Craighead, L.
Howard of Lympne, L.
Howard of Rising, L.
Lamont of Lerwick, L.
Lilley, L.
Lisvane, L.
Loomba, L.
Magan of Castletown, L.
Mallalieu, B.
Mancroft, L.
Marlesford, L.
Meyer, B.
Morris of Bolton, B.
Morrow, L.
Moynihan, L.
Newlove, B.
Pidding, B.
Porter of Spalding, L.
Redfern, B.
Robathan, L. [Teller]
Sheikh, L.
Shinkwin, L.
Stevens of Ludgate, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Suri, L.
Trenchard, V.
Trevethin and Oaksey, L.
Wilcox, B.

5.10 pm

Clause 3: Interpretation, commencement, extent and short title

Amendment 8

Moved by ***Baroness Noakes***

8: Clause 3, page 2, line 12, at end insert—

"( ) This Act ceases to have effect on exit day."

Baroness Noakes: My Lords, I shall not detain the House long. My amendment would ensure that this legislation ceases to have effect on exit day. It could be said that the amendment is there just for the avoidance of doubt because, clearly, there is nothing to be done with this Bill after exit day. However, I wanted to table the amendment because this is, by almost common consent, a pretty terrible Bill. One of the best things that has been said about it today is that it is a bit of a mess.

[Baroness Noakes]
During the brief passage through your Lordships' House, it has been improved, which is what customarily happens when this House considers ill-thought-out Bills from the other place.

As I said at Second Reading, I have accepted that the will of the other place will prevail in the case of this Bill. Therefore, the powers that it creates to restrict the royal prerogative in this important area of international relations will come into force to the extent now drafted. I regret that, but I hope that we will return to the normal practice of leaving the royal prerogative for international relations and negotiations with the Government on an unfettered basis. I have tabled this amendment to make the point more forcefully that this should not be a permanent part of our statute book; we should write it out as soon as the purpose of those who have sought to make it the law of the land for this week comes to an end. I beg to move.

Viscount Trenchard: My Lords, I support my noble friend Lady Noakes on this amendment. As she explained so clearly on Thursday and in her speech today, the curtailment of prerogative powers envisaged in this Bill is significant. I agree with her that the powers available to the Government to negotiate international treaties are important and should not be curtailed.

My noble friend Lord Norton of Louth, who is acknowledged across your Lordships' House as the most knowledgeable constitutional expert, explained that the changes sought by the Bill, and the practices by which it was passed in another place, are not small but highly significant. I consider it unfortunate that your Lordships' House is likely to pass this Bill, but at least it would be better if its destructive elements could be made temporary. Surely even noble Lords who support the Bill would agree that, against the background of the views of the noble Lord, Lord Norton, on the matter, the restrictions on prerogative powers should be temporary. It would be unfortunate for the House to agree to a precedent created by such a rushed and controversial piece of legislation.

Lord Pannick: My Lords, this amendment is not needed to ensure that the provisions in the Bill are temporary. They are temporary in any event because the Bill is concerned with only the period for negotiations for withdrawing. Once we withdraw, the Bill has no effect whatever.

Lord Forsyth of Drumlean: My Lords, if that is the case, there is no reason at all why we should not accept this amendment. The Prime Minister sent her letter asking for an extension on Friday, so I have spent most of the weekend trying to work out what the point of this Bill was in the first place. Given that we have amended it in respect of the prerogative powers, it is just a very bad piece of legislation. My noble friend Lady Noakes is offering the House the opportunity to get rid of a very embarrassing relative. The Bill and its genesis are not something of which this House or the other place can be particularly proud. It is a very bad Bill, conceived for all the wrong reasons. It has ridden roughshod over our procedures. Having a sunset clause, which is what this amendment offers, would be a very good thing indeed. I very much support my noble friend.

5.15 pm

Lord Wallace of Saltaire (LD): My Lords, I have been thinking hard over the past few weeks about the meaning of parliamentary sovereignty, which was one of the things that the leave campaign strongly campaigned to restore. Last week, I was struck to hear Mr Jacob Rees-Mogg in the other place defend the relationship between the Government and Parliament at the time of Henry VIII as the most appropriate relationship between monarch and Parliament. Oliver Letwin replied that we had fought a civil war a century later to establish a proper relationship between the Executive and the legislature.

Much of what we are doing in this Bill is not entirely ideal. We need not have had this Bill if the Government had been more united, if negotiations had been expedited and if Parliament had been more actively engaged at an earlier stage. We are now up against a tight deadline and we have to take some emergency measures. That is where we are and we need to recognise that.

Lord Howard of Lympne: I wonder if the noble Lord might add this to the conditions in which this Bill would have been unnecessary: if Parliament had been prepared to respect the result of the referendum.

Lord Butler of Brockwell: My Lords, I understand the misgivings that many in this House have about this Bill, but I have to say to the noble Baroness that her amendment would not stop the Bill becoming an Act. It is going to become an Act, and that is the mischief, so she cannot stop through her amendment the mischief that she wishes to stop. As the noble Lord, Lord Pannick, said, the Bill ceases to have an effect, so she need not worry about that either.

There is another reason why we should not pass this amendment: with the amendments we have passed so far, supported by the Government, they will be supported in the House of Commons, and so we will not have ping-pong. If we were to pass the noble Baroness's amendment and the Government resisted it in the House of Commons, the Bill would have to come back here and there would be further delay. Therefore, I urge her not to press her amendment, because it is unnecessary and it will cause unnecessary prolongation of the procedures.

Lord Forsyth of Drumlean: Before the noble Lord sits down, why does he think the Government would resist this?

Lord Goldsmith: My Lords, the noble Lord, Lord Pannick, is right, though I understand where the noble Baroness, Lady Noakes, is coming from. The point has been made about the Bill itself, but this does not take the Bill away—it will have served its purpose, or not, and therefore we could not support this amendment. I imagine the Government would not either, but I wait to hear.

Lord Robertson of Port Ellen: My Lords, I will break my Trappist silence.

Noble Lords: Oh!

Lord Robertson of Port Ellen: Momentarily, of course, because that silence has been purely motivated by my loyalty to the Government Chief Whip and his assurance last Thursday about the speed with which this legislation would be put through. Like the noble Lord, Lord Forsyth, I am not a lawyer, I am simply—like him—a politician. I heard one of the Bishops this morning on "Thought for the Day" quoting somebody as saying that politics is the art of the possible, and indeed it is. It is the possibility that we leave on Friday of this week—my birthday, as it happens—crashing out without any withdrawal agreement, which should frighten us all. Anybody who is in any doubt about that might read the speech of the noble Lord, Lord Stern, at Second Reading last week—a chilling and brief speech about the consensus view of economists.

A lot of lawyers have spoken in this debate and, indeed, last week as well. The House has a range of opinions from which it can choose, as is usually the case when you commission lawyers. In my case, I choose the view of the noble Lord, Lord Pannick. I simply point to the fact that I have said not a word during these proceedings on the Bill, but people will notice that the size of the majority in the last Division probably achieved record proportions. Maybe some other people should take a lesson from silence.

Baroness Noakes: My Lords, it does not surprise me that I have been supported by some of my noble friends and opposed by people on other Benches. I say to the noble Lord, Lord Robertson, that the Bill does not stop us leaving this Friday. If the EU decides not to agree an extension, we will leave on Friday. I am not frightened about that. I believe that the Government have made many significant preparations towards it, as have many on the continent. A lot of scaremongering has been going on. But that is not the point of my amendment, which was to draw attention to the fact that this unfortunate piece of legislation has been brought before this House and the way in which it has been processed in both Houses. I will not delay the Bill further by seeking to call another Division, much though I am sorely tempted to do so. I beg leave to withdraw.

Amendment 8 withdrawn.

Clause 3 agreed.

House resumed.

Bill reported with amendments.

Arrangement of Business
Announcement

5.21 pm

Lord Taylor of Holbeach (Con): My Lords, I am advised that the Public Bill Office will now be accepting amendments for Report. Noble Lords will now have an hour in which to table any further amendments. Further timings for this period of tabling will be confirmed by the annunciator. We will now adjourn during pleasure until 6.22 pm—60 minutes from now—and then repeat the Statement on online harms before returning to the Bill for its Report stage.

Lord Pannick (CB): Given the urgency of this matter, would it not be more appropriate to proceed with the Statement in perhaps 30 minutes so that we can proceed with the Bill in one hour's time?

Lord Taylor of Holbeach: This is on the threshold, and the clerk was watching the screen to see whether the Statement had started. I thank the noble Lord, because he has intervened at the appropriate time and now there is only 60 minutes to go, so I suggest we adjourn for tabling amendments and resume here at 6.23 pm.

Noble Lords: Oh!

Lord Taylor of Holbeach: I have been told that the adjournment should be 90 minutes from now.

Noble Lords: Oh!

Lord Taylor of Holbeach: The Statement has now started in the Commons. That is the point I was trying to make. The Table Office is open for amendments and we will adjourn during pleasure after the Statement has concluded until 90 minutes from now, which is 6.54 pm.

Lord Pannick: Can I suggest to the noble Lord that it might be better to resume in one hour? If the Statement has not finished and we cannot start it, let us proceed with the Report stage of this Bill—given its urgency and given that the House of Commons will be waiting for it, as indeed will Her Majesty.

Lord Tunnicliffe (Lab): My Lords, I understand that we are able to start the Statement now. I suggest we take it now and, during it, the usual channels confer on a sensible time to restart.

Online Harms
Statement

5.25 pm

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, with the leave of the House, I would like to repeat a Statement made by my right honourable friend the Secretary of State for Digital, Culture, Media and Sport, in the other place recently, as follows:

"The Government have today published a White Paper setting out our proposals to make the internet a safer place. For so many people, the internet is an integral part of daily life. Nearly nine in 10 UK adults are online and, significantly, 99% of 12 to 15 year-olds are too. As the internet continues to grow and transform our lives, we need to think carefully about how we want it to develop. In many ways it is a powerful force for good. It can forge connections, share knowledge and spread opportunity across the world, but it can also be used to circulate terrorist material, undermine civil discourse, spread disinformation and abuse, or bully. Our challenge as a society is to help shape an internet that is open and vibrant, but which also protects its users from harm. There is clear evidence that we are not succeeding. Over 8,000 sexual offences against children with an online element were reported to the police in 2017, a figure that is continuing to rise. Up to 20% of young people in the UK have experienced bullying online. The White Paper sets out many, many more examples of harms suffered.

[Lord Ashton of Hyde]

People are closing their social media accounts following unacceptable online abuse. For the vulnerable, online experiences can mean cyberbullying, exposure to abusive content and the risk of grooming and exploitation. We cannot allow this behaviour to undermine the very real benefits that the digital revolution can bring. If we surrender our online spaces to those who spread hate, abuse and fear, then we all lose. This is a serious situation and it requires a serious response.

The Government have taken time to consider what we might do and how we might do it. I am grateful to Members across the House and indeed in the other place for their consideration of these issues, in particular the DCMS Select Committee. I am grateful too for the discussions I have had, including with the honourable gentleman opposite and his Front-Bench colleagues. We intend to continue these conversations and to consult on what we propose, because it is vital we get this right. No one has done it before. There is no comprehensive international model to follow and there are important balances to strike in sustaining innovation in the digital economy and promoting freedom of speech as well as reducing harm. None of that is straightforward and the Government should not claim a monopoly of wisdom. That is why the consultation which will follow will be a genuine opportunity for Members of this House and others to contribute to these proposals.

It is also right to recognise that some work is already being done to make the internet a safer place, including by online companies themselves, but it has not been enough and it has been too reactive. It can no longer be right to leave online companies to decide for themselves what action should be taken, as some of them are beginning to recognise. That is why my right honourable friend the Home Secretary and I concluded that the Government must act, and that the era of self-regulation of the internet must end, so the Government will create a new statutory duty of care, establishing in law that online companies have a responsibility for the safety of their users. It will require companies to do what is reasonable to prevent harmful material reaching those users. Compliance will be overseen and enforced by an independent regulator.

The White Paper sets out expectations for the steps that companies should take to fulfil the duty of care towards their users. We expect the regulator to reflect these expectations in new codes of practice. In the case of the most serious harms—such as child sexual exploitation and abuse, and the promotion of terrorism—the Home Secretary will need to approve these codes of practice and also have the power to issue directions to the regulator about their content. The Home Office will publish interim codes of practice on these subjects later this year, and we are consulting about the role that Parliament should have in relation to these codes too.

If online companies are to persuade the regulator that they are meeting their duty of care to keep their users safe, there will need to be transparency about what is happening on their platforms and what they are doing about it. If they are unwilling to provide the necessary information voluntarily, the regulator will have the power to require annual transparency reports and to demand information from companies relating to the harms on their platforms.

It is also important to give users a voice in this system, so they can have confidence that their concerns are being treated fairly, so we will expect companies to have an effective and easy-to-access complaints function, and we are consulting on two further questions: how we can potentially provide users with an independent review mechanism, and how we might allow designated bodies to make 'super complaints' to defend the needs of users.

For a duty-of-care-based model to work, those subject to it must be held to account for how they fulfil that duty. That is why we have concluded that a regulator will be necessary, whether a new entity or an extension of the responsibilities of an existing regulatory body. The regulator must be paid for by the online companies, but it is essential that it commands public confidence in its independence, its impartiality and its effectiveness. To ensure that the regulatory framework remains effective within this fast-changing landscape, we believe it is right to define its scope by activity, not by the name of the company or even the type of company.

We propose that the scope of the regulatory framework will be companies that allow users to share or discover user-generated content, or interact with each other online. This includes a wide variety of organisations, both big and small, from a range of sectors. The new regulatory regime will need to be flexible enough to operate effectively across them all. There are two key principles to such an approach. The first is that the regulator will adopt a risk-based approach, prioritising regulatory action to tackle harms that have the greatest impact on individuals or wider society. The second factor is proportionality. The regulator will require companies to take reasonable and proportionate actions to tackle harms on their services, taking account of their size and resources. The regulator will expect more of global giants than small start-ups.

It is also necessary for the regulator to have sufficient teeth to hold companies to account when they are judged to have breached their statutory duty of care. That will include the power to serve remedial notices and to issue substantial fines, and we will consult on even more stringent sanctions, including senior management liability and the blocking of websites, but this is a regulatory approach designed to encourage good behaviour as well as punish bad behaviour. Just as technology has created the challenges we are addressing here, technology will provide many of the solutions—for example, in the identification of terrorist videos online and images of child sexual abuse, or in new tools to identify online grooming. The regulator will have broader responsibilities to promote the development and adoption of these technologies and to promote safety by design.

The truth is that, if we focus only on what the Government or the online companies do, we miss something important. We all need the skills to keep ourselves safe online and too few of us feel confident that we have them, so we will task the regulator to work on promoting those skills and we will develop a national media literacy strategy.

This White Paper does not aspire to deal with all that is wrong with the internet—no single piece of work could sensibly do so. It forms part of the Government's response to the many challenges the online world brings. But it is focused on some of the most pernicious harms found online and it expects much more of the companies that operate there in tackling those harms. These are big steps, but they need to be taken.

Some say the internet is global so no country can act alone, but I believe we have both a duty to act to protect UK citizens and an opportunity to lead the world on this. With well-deserved worldwide reputations for fostering innovation and respect for the rule of law, the United Kingdom is well placed to design a system of online regulation that the world will want to emulate. The more we do online, the less acceptable it is that content which is controlled in any other environment is not controlled online.

A safer internet is in the interests of responsible online companies that want their customers to spend more time online, and is a legitimate expectation of those we represent. That is what this White Paper will deliver and I commend it and this Statement to the House".

5.36 pm

Lord Griffiths of Burry Port (Lab): My Lords, it is with pleasure and a great deal of relief that I speak to this Statement and the White Paper that lies behind it. Having sat through endless hours of the previous debates and the acrimony generated by them, and having found ourselves in places where I suspect none of us wanted to be, it is a pleasure to come to proper business again and to look at something that affects the whole of our society. We must find remedies and seek a legislative way forward that deals with the problems that we know are part and parcel of this innovative and brilliant thing that we call the internet and the technological advances that go with it.

Having read the White Paper and listened to the Statement, I am convinced that, across the Benches of this House, we must see this as unique in a party-political system in that we must act together. Consensual approaches and sensible resolutions to the problem are a duty that falls upon all of us. After all, the internet affects every part of our society—all of us have felt the questions it raises and enjoyed the wonderful opportunities it affords—so I hope that we can approach this in a consensual and cross-party way.

I congratulate the Government—is it not wonderful to hear someone from these Benches saying that?—on generating a report that is lucid and clear and will generate the kind of discussion that the consultative period, now beginning, will need. It is well laid out; my son is a printer, and he constantly beleaguers me about layout as I understand it and layout as he understands it, and he would be pleased with this. I can give no higher commendation. Congratulations are in order.

I know that we will have detailed, forensic debates when the results of the consultation are before us. At the moment, highlighting some of the headline aspects will have to do. The duty of care has been spoken to already and we must emphasise it; after all, we are all aware of those who are harmed by the abuse of the internet. Some well-publicised cases leave their images constantly before our eyes, especially when we think that some of them, indeed a lot of them, are children. In previous legislation that we have debated on the Floor of the House, we have talked about designing the internet in such a way that the interests and rights of children are protected. I am quite sure that we will take all that forward in the outworking of the further proposals in this White Paper.

We want to protect people from harms, and we will no doubt want to discuss what we think constitutes harms in the proper sense. There are indeed in this White Paper, rather conveniently, tabulated harms: those that are illegal, that are dangerous; that deserve attention. These are indicative lists, and no doubt we will want to move things from here to there and there to here, and add to and subtract from as time goes on, but it is a pretty good starting point to show us the range of conducts and activities that we will need to give attention to.

It is a bold White Paper. It claims to be bold and boasts of being bold. For me, there is one aspect that teases me, and I hope the Minister can give us some reassurance on it. It is the whole idea that while the internet and online activity affects us locally—in our homes and elsewhere—this has to be balanced against the fact that the companies, across whose platforms the material that generates these problems come, are global. We have seen how difficult it is to deal with the taxation aspects of these global companies. It will be equally difficult to think about legislation that could bring them all into line, and a word about that would be very helpful as we steer our way into the consideration of these proposals.

Statutory measures are mentioned, and I am delighted about that, of course, because these proposals and this way forward need to be underpinned by the full force of the law, and the regulator will be endowed with powers that are appropriate to the importance of the job. I wonder how we will bring a regulator to birth; some suggest that it should perhaps be an offshoot of Ofcom in the first place, that under the aegis of Ofcom we can get regulation built in to our way forward, and that it can evolve into something more complete later.

Any legislation that we bring forward will need to be nimble and flexible, because technology moves faster than the making of laws, and since the making of a law, as we know from the one we have been discussing, can be interminable, I hope that we will never be accused of tardiness in acting promptly, flexibly and nimbly to combat the downside of online activities.

So I congratulate the Government and I look forward to further debates and in greater detail.

Lord Clement-Jones (LD): My Lords, we, too, on these Benches welcome the fact that the Government's proposals have come forward today, and we support the placing of a statutory duty of care on social media companies. We agree that the new arrangements should apply to any sites,

"that allow users to share or discover user-generated content, or interact with each other online".

We think that is a fair definition.

[Lord Clement-Jones]

We are all aware of the benefits of social media networks and the positive role they can play. There is, however, far too much illegal content and harmful activity on social media that goes undealt with by social media platforms and creates social harm. The self-harming material on Instagram and the footage of the Christchurch killings are perhaps the most recent examples.

Proper enforcement of existing laws is, of course, vital to protect users from harm, but, as the White Paper proposes, social media companies should have a statutory duty of care to their users—above all, to children and young people—and, as I say, we fully support the proposed duty of care. It follows that, through the proposed codes, Parliament and Government have an important role to play in defining that duty clearly. We cannot leave it to big private tech firms, such as Facebook and Twitter, to decide the acceptable bounds of conduct and free speech on a purely voluntary basis, as they have been doing to date.

It is good that the Government recognise the dangers that exist online and the inadequacy of current protections. However, regulation and enforcement must be based on clear evidence of well-defined harm, and must respect the rights to privacy and free expression of those who use social media legally and responsibly. I welcome the Government's stated commitment to these two aspects.

We also very much welcome the Government's adherence to the principle of regulating on a basis of risk and proportionality when enforcing the duty of care and drawing up the codes. Will the codes, as the Lords Communications Committee called for, when exercising powers of oversight, set out clearly the distinction between criminal, harmful content and antisocial content? By the same token, upholding the right to freedom of expression does not mean a laissez-faire approach. Does the Minister agree that bullying and abuse prevent people expressing themselves freely and must be stamped out? Will there be a requirement that users must be able to report harmful or illegal content to platforms and have their reports dealt with appropriately, including being kept informed of the progress and outcome of any complaint?

Similarly, there must be transparency about the reasons for decisions and any enforcement action, whether by social media companies or regulators. Users must have the ability to challenge a platform's decision to ban them or remove their content. We welcome the proposed three-month consultation period; indeed, I welcome the Government's intention to achieve cross-party consensus on the crucial issue of regulating online harms. I agree that with a national consensus we could indeed play an international leadership role in this area.

Then we come to the question of the appropriate regulator to enforce this code and duty. Many of us assumed that this would naturally fall to Ofcom, with its experience and expertise, particularly in upholding freedom of speech. If it is not to be Ofcom, with all its experience, what criteria will be used in determining what new or existing body will be designated? The same appears to me to apply to the question of whether the ICO is the right regulator for the algorithms used by social media. I see that the Home Office will be drawing up certain codes. Who will be responsible for the non-criminal codes? Have the Government considered the proposals by Doteveryone and the Lords Communications Select Committee for a new "Office for Internet Safety" as an advisory body to analyse online harms, identify gaps in regulation and enforcement and recommend new regulations and powers to Parliament?

At the end of the day, regulation alone cannot address all these harms. As the noble Baroness, Lady Kidron, has said, children have the right to a childhood. Schools need to educate children about how to use social media responsibly and be safe online, as advocated by the PSHE Association and strongly supported by my party. Parents must be empowered to protect their children through digital literacy, advice and support. I very much hope that that is what is proposed by the online media literacy strategy.

At the end of the day, we all need to recognise that this kind of regulation can only do so much. We need a change of culture among the social media companies. They should be proactively seeking to prevent harm. The Government refer to a culture of continuous improvement being a desired goal. We on these Benches thoroughly agree that that is vital.

Lord Ashton of Hyde: My Lords, I am very grateful for the welcome by both noble Lords for this White Paper. Nevertheless, I am not complacent; I have worked with noble Lords opposite on several big Bills on digital matters and I know there is a lot of detail that will need to be included in the legislation. However, the principle that this is generally welcome and the fact that the main bones of the proposal are welcome—namely, the duty of care and the independent regulator—is good. We have made a point of saying that we want to work on a cross-party, consensual basis and one of the reasons for having an extensive consultation is to achieve that. In some ways, this is an old-fashioned way of making legislation, to the extent that we have had a Green Paper and a consultation, then a White Paper and a consultation: we hope that a lot of the issues can be ironed out, and some of the detail. The way we worked on the Digital Economy Act and the Data Protection Act shows that we can bring in some fairly big and complicated Bills in a consensual way.

The noble Lord, Lord Griffiths, talked about children. They are very important to our thinking. We have not written a specific chapter on the subject because we want it hard-wired throughout the whole White Paper. From the day the regulator is formed, any company in scope will have to say that it is thinking about the customers and users of its products in the design of its website and products means that it will have to, as part of its duty of care, think about the age, vulnerability and sort of people who will use it. That is built into the system.

We thought a lot about the international aspects of regulating the internet, because there is no point having a regulator or enforcement system that cannot cope with the way the internet works, which is, by definition, international. We will therefore think and consult on some of the further sanctions we could put on internet companies, such as individual liability. We might require representatives in the country in the same way as the GDPR does. Ultimately, we are consulting on whether

we should take powers to block websites completely. These are, in the main, money-making organisations—Google's second-largest advertising market is in this country, for example. The internet giants have significant economic stakes in this country, and they could be faced with a very serious penalty.

Above all, we are not expecting the internet companies, large or small, to do anything unreasonable. Some appalling things go on the internet, and the regulator will look at the duty of care—as said in the Statement—as a risk-based and proportionate approach. The big internet giants will be held to a different standard from the small start-ups.

Both noble Lords talked about the regulator. There is a possibility that an existing regulator could either take on this job or create the regulator which may be divested later. We are consulting on that, and would be interested in the views of noble Lords and other stakeholders. It is important to bear in mind that time is of the essence. We want to get on with this. We want to get it right—but we want to get a move on.

The noble Lord, Lord Clement-Jones, talked about some of the harms that are not just illegal. We absolutely agree. In some ways, the harms that are illegal are easy to deal with—they are illegal, and should be so offline as well as online—but things that are not specifically illegal, such as cyberbullying, can have a tremendous effect on people's lives. We certainly take those into account. The internet companies will have to take a reasonable and balanced approach; they need to show that they are taking seriously harms that can really affect people's lives, and that they are building their approach to them into the way they operate their companies. Terms and conditions should be met and abided by; there should be a proper complaints procedure, which we will demand be taken seriously, and there will be an appeals process.

The consultation actually started today. We have so far got eight responses. It will go on for three months, after which we will look at it. As I say, noble Lords are very welcome to contribute.

Finally, the noble Lord, Lord Clement-Jones, talked about a change of culture. I think the noble Lord, Lord Griffiths, implied the same thing. The point about this White Paper is that we are moving to a proactive system of regulation where we expect every company, be it large or small, to think in a proportionate way about the harms it could do and to take sensible measures not only to deal with them but to explain to the regulator what it is doing and to have transparent reporting. The regulator will be given powers to inquire of the internet companies what they are doing about these matters.

5.55 pm

Baroness O'Neill of Bengarve (CB): My Lords, I too welcome this White Paper. We have heard it heralded from the Front Bench week after week, and it is great to see it arrive. However, it deals with only part of the problem. That is, it is a paper about the private harms that may be done—for example, by cyberbullying, fraud or extremist material. All of those matter, but there is another set of harms: harms to public goods, democracy, culture and the standards of the media. The Digital, Culture, Media and Sport Committee in the other place recently had an interesting report on disinformation and fake news which discussed some of those harms—including those which I can loosely indicate by referring to the Cambridge Analytica scandal.

We are beginning to understand that there are people campaigning within democracies that our regulation cannot reach. The electoral commissioner cannot reach those harms. Is the proposal to reach those harms as well, or is that for another day? I fear that if we do not deal with those harms relatively soon, we will regret it. Political campaigning may be undertaken not only by legitimate, registered political parties and individuals, but also by non-citizens, other states, businesses and the security apparatuses of other states. I believe these public, online harms to democracy should be of the utmost concern to us, but they are little discussed in this White Paper.

Lord Ashton of Hyde: My Lords, I agree that those are serious issues and need to be addressed. We have made it clear in the White Paper the harms that are in scope, but have also been very open about those that are not. We have said that we are addressing some of the really serious issues on the internet which the noble Baroness describes as private harms. We have said that we cannot deal with everything, but we are dealing with matters such as disinformation and potential assaults on democracy. We do not want to duplicate within one big White Paper, followed by legislation, all the harms connected to the internet. We have said that we are not dealing with competition law, intellectual property violation, fraud, data protection and so on, but I absolutely accept that they are very important issues. The Cabinet Office is due to report on them soon, and it is right that that department, which has responsibility for the constitution, should be dealing with it. We have not neglected those problems.

Baroness Neville-Rolfe (Con): My Lords, as a former Digital Minister I came to the conclusion some time ago that we need some regulation to reduce online harm, rather in the spirit of the Health and Safety at Work etc. Act, which now has very wide support across the House. I welcome the White Paper. I had almost got to the point of tabling a Private Member's Bill on duty of care, because time was passing.

My noble friend has kindly already answered my first question, which was about breadth. Like the noble Baroness, Lady O'Neill, I am very interested in some of these wider harms, such as fraud, which affects millions online every year. My second question is whether there will there be a business impact assessment on some of this. I would encourage that, as these normally have cross-party support—although perhaps not today.

My final question is on the penalties. I cannot find them on a quick read, but the Secretary of State was talking in quite red-blooded terms this morning about fines of 4% of global turnover, prosecution of directors, and so on. That seems quite over the top, especially if you have a very strong regulator. We need to make sure that we do not chill future digital growth in the UK as people in small businesses—which the Minister helpfully referenced—and large businesses may take too risk-averse an approach. We will need to debate that when the Bill comes to the House.

Lord Ashton of Hyde: My noble friend has a long-standing interest in small and medium-sized businesses. The White Paper says categorically that the regulator will have a duty to promote innovation and to take account of small businesses. We expect it to be proportionate, which means, as I said, that large companies will be held to a different—although always reasonable—standard from that for small start-ups; for example, we expect that, as in financial services, the regulator will have a regulatory sandbox that small start-ups could work in.

As far as the penalties are concerned, we absolutely want to have the ability to hold the largest companies to account. That means the potential of serious penalties. My noble friend talked about 4% of global turnover. That would be a direct copy-over from the GDPR. We have not said that. We are consulting about some of the further, more serious penalties, such as holding individual directors to civil or criminal liability personally, but that is something that we would want to talk about. We would be interested in hearing my noble friend's views on that. We want serious potential penalties but we want the regulator to be proportionate in their use.

The Lord Bishop of London: My Lords, I add my voice to those of my friends, the right reverend Prelates who sit on these Benches, who have welcomed this White Paper as a first step. Many of the platforms that would fall under the proposed regulator are based overseas. I hope that the proposals set out in the White Paper will give sufficient power to any regulator to hold these and future international companies to account.

Lord Ashton of Hyde: The right reverend Prelate is right that holding international companies to account is absolutely crucial, as I think I said before. There are limits to that, obviously, but some of the methods that we are consulting on—ultimately leading to closing the website down completely—are pretty serious, particularly for the large companies. We absolutely understand that. In addition, we want to continue to work with our international partners, such as the G7, the G20, and those countries that share our views on freedom of speech and on balancing that with controlling and dealing with the worst harms. We want a free and vibrant internet but we do not want the harms that go with it. I absolutely take his point, and we will listen to what people have to say about the correct means of holding international companies to account, but it is crucial that we are able to do that. I can tell noble Lords that we have now had 50 responses to the consultation.

Lord Harris of Haringey (Lab): My Lords, like most of your Lordships, I think, I welcome this White Paper, because it has taken us forward in a sensible and thought-through way. However, first, I am slightly confused in relation to the question posed by the noble Baroness about how seriously and where the Government are taking on board issues which are about the undermining of democracy. They are flagged up early in the White Paper, in paragraph 4, but then there is a vague section about leaving it to the regulator and having a code of conduct. That may be a valuable approach but should the Government not be taking action directly on such matters? For example, Sweden has produced a counterinfluence handbook designed specifically for these purposes. What are the Government's intentions as far as that is concerned?

Secondly, the Minister said that time was of the essence so we are going through a three-month consultation process. Is the intention that there be legislation in the next parliamentary Session, whenever that may start? Thirdly and finally—I refer to my interests in the register on this—how are the Government planning to deal with adverts on the internet which are designed to be misleading? How will they deal with scammers who are on the internet?

Lord Ashton of Hyde: My Lords, with regard to disinformation connected with democracy and those essential questions, the White Paper deals with disinformation generally. With regard to electoral reform and how elections can be affected by the use of the internet, as I said, the Cabinet Office is bringing out a report soon to deal with that. It is right that constitutional affairs are dealt with there.

On disinformation, we have listed in the White Paper some of the areas we expect the regulator to include, such as:

> "Promoting diverse news content … Improving the transparency of political advertising"—

noble Lords can read it themselves; there are other things. That is how we are trying to do it across government. As I said, there are other areas that we deliberately do not cover in the White Paper, but that should not be taken to mean that work is not going on. However, I accept the noble Lord's suggestion that it is important and needs to be done soon. I take that on board.

As far as time is concerned, we are having a consultation, as the noble Lord said, which will end on 1 July. Obviously, it is not possible for me to say today when legislation will come before the House. That is a decision for the Government and the Leaders of both Houses. Judging by the discussions we have had today, and the feeling I get from across the House, all noble Lords think that this is an important issue. The Government think that this is an important issue. We are aware that we have taken time over the consultation. As far as the Home Office and DCMS are concerned, we want to get on with it.

We have just announced a review of advertising that will report in due course.

Baroness Kidron (CB): My Lords, I too welcome the White Paper. I thank the Minister and the Secretary of State for being open to discussions during the process, and for indicating that there will be more discussions. I feel that more discussions are required because it is a little lacking in detail, and I share others' concerns about the definition of harms. I was particularly upset to not see a little more work done on the everyday harms: the gaming, the gambling and the addictive loops that drive such unhealthy behaviours online. There are a lot of questions in the paper and I look forward to us all getting together to answer them—I hope quickly and soon. I really welcome the Minister's words about the anxiety of the Government and both Houses to

bring a Bill forward, because that is the litmus test of this White Paper: how quickly we get something on the books.

I feel encouraged by the noble Lord, Lord Griffiths, to mention that on Monday next week we have the launch of the final stage of the age-appropriate design code, which takes a safety-by-design approach. That is what I most welcome in the White Paper, in the Government's attitude and in the work that we have in front of us: what we want to do is drive good behaviour. We want to drive corporate responsibility. We want to drive shareholders to take responsibility for those massive profits and to make sure that we do not allow the tech sector its exceptionality. It is a business like any other and it must do no harm. In relation to that I mention Will Perrin and Lorna Woods, who brought it forth and did so much work.

Finally, I am really grateful for what the Minister said about the international community. It is worth saying that these problems are in all parts of the world —we are not alone—and they wait and look at what we are doing. I congratulate the Government on acting first.

Lord Ashton of Hyde: Obviously, there are details that need to be ironed out, and that is partly what the consultation is about. I expect there to be a lot of detail, which we will go over when a Bill finally comes to this House. In the past we have dealt with things like the Data Protection Act and have shown that we can do that well. The list in the White Paper of legal harms and everyday harms, as the noble Baroness calls them, is indicative. I completely agree with her that the White Paper is attempting to drive good behaviour. The difference it will make is that companies cannot now say, "It's not my problem". If we incorporate this safety by design, they will have to do that, because they will have a duty of care right from the word go. They cannot say, "It's not my responsibility", because we have given them the responsibility, and if they do not exercise it there will be serious consequences.

Baroness Grender (LD): My Lords, does the Minister plan to watch the last ever episode of the hugely successful comedy "Fleabag", by Phoebe Waller-Bridge, tonight? Does he agree that it is perfectly possible to have brilliant and base dramas like "Fleabag" while protecting our children and the most vulnerable, and that Ofcom and other regulators have delivered that objective, balancing freedom of speech and protection from harm with considerable success since 2003? Does he agree that if we can invest in and enhance existing regulators to deliver protections from online harm as soon as possible, that is exactly what we should do, rather than asking our children to patiently wait for protections tomorrow that they really deserve today?

Lord Ashton of Hyde: I agree with the noble Baroness that the television regulator and other media regulators have done a good job and that they are a good example. However, I will not be watching that programme, because I have an enormous amount of work today. If she promises not to ask any questions about the statutory instrument tomorrow, I might have a bit more time. But seriously, that shows that the decisions we are asking regulators to make are not easy. We are not trying to censor the internet. We want a vibrant internet which allows discussion, debate and different points of view but which does not allow some of the worst harms, which are indescribably bad. We need to deal with those, and we want to make the areas which are regulated offline also regulated online, in a reasonable and proportionate way.

Lord West of Spithead (Lab): My Lords, we must not delude ourselves; despite everything the major internet giants and the social media platforms say about how they are trying to advance the cause of humankind and make things better for us, they are there to make profit—to make money. In the same way as when you are dealing with a chap and you grab him by a certain part of his anatomy, his mind follows, if you grab their money, their minds will follow. Anything we do about punishing must focus on the money side, because that will grab their attention.

When we talked about the international side of things some years ago, we were concerned about countries such as China and Russia, which immediately said, "Oh yes, this sort of control is a wonderful thing", and we had to be careful to get ourselves unwound from that. Have we had any international discussions at all yet about what we are proposing in this White Paper?

Lord Ashton of Hyde: I agree with the noble Lord about money, although it is not only about money; individual liability is also important. If senior executives of companies are held personally responsible, that has a significant effect, as do criminal charges against companies. However, those things are part of the consultation.

On Russia and China, and countries that do not share our views about the open internet, obviously we have to take that into account, which is why, for example, there is a lot of discussion about disinformation and how companies will be expected to look out for that and deal with it by using technology and in many other ways.

Lastly, I am not aware of the detail of the international discussions, but no other country has taken this approach. For example, we have talked about individual measures that different countries have taken: Australia has set up a new safety commissioner, who is like an ombudsman, but again, that is reactive rather than proactive, and Germany has set up a law which insists that companies must take down material, but again, that is reactive. We have talked to countries about individual bits of legislation, but no one anywhere has taken a holistic and proactive approach to internet regulation. We certainly expect that if this goes through, is a success and works well, other countries will be interested, and we will certainly be prepared to talk to them about it.

Arrangement of Business

Announcement

6.15 pm

Lord Taylor of Holbeach (Con): My Lords, I regret that I have to bring this to a close. I have noticed that a number of noble Lords want to talk more about this

[LORD TAYLOR OF HOLBEACH]
subject, and I will see whether it is possible to arrange a time to debate the White Paper as part and parcel of the consultation with the House. In the meantime, however, I beg to move that the House do now adjourn during pleasure until 6.52 pm.

6.16 pm

Sitting suspended.

European Union (Withdrawal) (No. 5) Bill
Report

6.52 pm

Moved by ***Lord Robertson of Port Ellen***

That the Report be now received.

Lord Robertson of Port Ellen (Lab): My Lords, on behalf of my noble friend Lord Rooker, I beg to move that the Report be now received.

Report received.

Baroness Goldie (Con): My Lords, I beg to move that the House do now adjourn during pleasure until 7.37 pm, for Third Reading.

Noble Lords: What?

Baroness Goldie: No amendments have been received. Sorry, I should have made that clear.

6.53 pm

Sitting suspended.

European Union (Withdrawal) (No. 5) Bill
Third Reading

7.37 pm

Motion

Moved by ***Lord Robertson of Port Ellen***

That the Bill do now pass.

Lord Robertson of Port Ellen (Lab): My Lords, I believe—because I have no experience—that it is conventional at the end of long legislation to thank all those who were involved in the process. This may be slightly more difficult for me this evening than it would be in normal circumstances but, as many noble Lords have said, this is an historic moment. We are on the verge of some very significant discussions and negotiations that may well determine the future of this country—and, indeed, that of generations to come. Therefore, this piece of legislation, whether perfect or imperfect, will play a part in that history.

Oliver Letwin and Yvette Cooper were the godparents of the Bill; I came to it late in the day as a sort of adoptive parent. Its progress has been remarkable, from Wednesday last week to this evening, after which it will go to the other place. I thank those involved in the debate, significant as it is. Many people behind the scenes play a part in any legislation, never mind one fast-tracked in this unprecedented way. It is right at this point, having said so little in the debate myself, to pay tribute to those who have contributed constructively—and sometimes less than constructively—along with those who have made sure that the Bill has been carried forward expeditiously.

I hope that I speak for noble Lords across the House when I say that we hope that by the end of this week—especially by 11 pm on my birthday, on Friday—we will be in a much more secure position and the country will be in safer hands than perhaps we think it is tonight. I beg to move.

Lord Framlingham (Con): My Lords, this is really all about kicking the can down the road. I would guess that it must be quite a dented can by now. We have to ask where the road is leading: leave or stay, there is no middle way. All the other issues are just distractions. We have seen various complicated deals such as backstops, second referendums, customs unions—and now we have the thoughts of Jeremy Corbyn. They all muddy the water and they all hide the basic issue: are we going to leave to stay? Are we going to honour our promise to the British people or not?

The issue of timing, which is what we have been discussing, has become a farce. We were guaranteed that we would leave on 29 March, which then became 12 April. It may be 22 May, 30 June—or perhaps it will be Flexit. No one has any faith left. Perhaps the sooner we get to the stage where people have to vote for no deal or to revoke Article 50, the better. People have to decide to pin their colours to the mast by voting and taking the consequences.

This Bill is telling our Prime Minister what to do, which is a classic case of the tail wagging the dog, and therefore constitutional chaos. The Prime Minister will go to the EU and ask on bended knee for a change of date, or perhaps of terms. The EU members will leave her sitting alone in a separate room while they discuss her fate and our nation's future. Nothing could better demonstrate how powerful and unyielding the EU has become, how much we are under its thumb, and why we should leave on Friday with a clean break.

Fortunately, change is already happening. On 29 March the passports changed, which is really good news. We need a clean break and a managed departure, not the catastrophic situation that the fearmongering remainers constantly pretend is the way to go. True, there might be some initial difficulties but massive advantages too.

Noble Lords: Oh!

Lord Framlingham: Noble Lords may snigger, as they have done for the past two and a half years, but they have to listen sometimes. It would remove the uncertainty and businesses could get on with their jobs. We can make trade deals with nations like the United States and save £39 billion. It is the constant

fruitless, pointless debates and discussions that are so wearying and so debilitating. Once free from our EU entanglement, we will be able to move forward again in our own way. The noble Lord, Lord Robertson, said that politics is sometimes thought to be the art of the possible. I think that sometimes politics is the art of having the courage to do the obvious.

Lord Robathan (Con): My Lords, may I be the first to wish the noble Lord, Lord Robertson, a very happy birthday on Friday? I think he and I both agree that we do not want to meet here on Friday if we can avoid it.

Notwithstanding the second proponent of this Bill in two sitting days, this remains a terrible Bill. That needs to be put on the record. Will we get Sir Oliver Letwin and Yvette Cooper perhaps to answer questions on it? I fear not, because they have no responsibility. This Bill was described by my noble friend Lord Lawson as "constitutional vandalism", and it is something we should all be concerned about. We know that the Government are in complete disarray, we know that Parliament is in chaos, and I have to say that this is an unwise move by this House to support it.

Noble Lords will be happy to know that I do not intend to talk for the next hour and a half.

Noble Lords: Hear, hear!

Lord Robathan: I can if noble Lords would like. I thought the House would probably think that I spoke quite enough on Thursday, so I decided not to speak at Second Reading. I was rather put out, in this House based on courtesy—my noble friend Lord Cormack is always telling us how courteous we should be—to hear the noble Lord, Lord Hannay, who I see in his place, saying that I was behaving shamefully by not being in the House to listen to his speech. I have to tell him that they may have been pearls of wisdom, but not everybody wants to listen to his pearls of wisdom, which we have heard before. Anyway, he may consider that, if I were listening to them, they would be pearls cast before swine. I see a former Archbishop, the noble and right reverend Lord, Lord Eames, sitting there. He will remember that that is from Matthew, chapter 7, verse 6.

It is important that we observe courtesies and conventions. This is not doing so, and it is extremely unwise of this Parliament to pass this Bill.

Bill passed and returned to the Commons with amendments.

Baroness Goldie (Con): My Lords, I beg to move that the House do now adjourn during pleasure until Royal Assent can be signified in both Houses. The timing of the Bill in the House of Commons is still to be confirmed, so further timings for this House will be confirmed via the annunciator. However, we expect this to be after 10 pm.

7.47 pm

Sitting suspended.

10.59 pm

European Union (Withdrawal) (No. 5) Bill

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

Sitting suspended.

Royal Assent

11.05 pm

The following Acts were given Royal Assent:

Animal Welfare (Service Animals) Act

European Union (Withdrawal) (No. 5) Act.

House adjourned at 11.06 pm.

Volume 797
No. 286

Monday
8 April 2019

CONTENTS

Monday 8 April 2019