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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's party affiliation:

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

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

House of Lords

Monday 7 September 2020

1 pm

Prayers—read by the Lord Bishop of Rochester.

Introduction: The Lord Bishop of Manchester

1.06 pm

David Stuart, Lord Bishop of Manchester, was introduced and took the oath, supported by the Bishop of Birmingham and the Bishop of Worcester, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

1.09 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally.

Oral Questions will now commence. Please can those asking supplementary questions keep them short and confined to two points? I ask that Ministers' answers are also brief.

Small and Medium-sized Enterprises: Public Procurement Contracts

Question

1.10 pm

Asked by ***Lord Choudrey***

To ask Her Majesty's Government what steps they are taking to ensure that small and medium-sized enterprises are awarded public procurement contracts.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the Government are determined to ensure that SMEs win public contracts when they offer good value for money. We are committed to tackling the barriers that SMEs face. Each department publishes an SME action plan setting out its commercial strategy to increase spending with smaller businesses. Central government spend figures published for 2018-19 show that SMEs earned £14.2 billion through government contracts. That is nearly £2 billion more than the previous year and the highest since government records began in 2013.

Lord Choudrey (Con) [V]: I thank the Minister for that Answer. SMEs account for 98% of the UK's business population. The Government are prudently seeking to enhance their engagement with the SME sector. In that regard, the Government's own target for spending with SMEs is 33% by the end of 2022. As we go through one of the worst recessions in our country's history, there will be a greater desire to achieve economies of scale through higher aggregation of demand in the form of centralised procurement, potentially at the cost of SME participation. However, we know that the SMEs are incredibly innovative and efficient. When given the opportunity, they would be able to drive national economic growth and prosperity. The Government must therefore harness their true potential and ensure that the SMEs are able to play a vital role in the procurement framework and are not left out of the national strategies. Government departments will need to listen to SMEs' concerns and find solutions without compromising delivery and value for the taxpayer.

Lord Callanan (Con): Each government department publishes its own SME action plan, which describes how it is engaging better with the SME sector to address the department's own needs and increase spend with SMEs. Particular departments hold early-market engagement events to explain and discuss their requirements with a wide range of suppliers.

The Lord Speaker (Lord Fowler): Short questions, please.

Lord Lucas (Con) [V]: My Lords, could my noble friend please tell me what departments are doing to make sure that SMEs can get on the preferred list of companies—where departments use this—and that the buyers within those departments are rewarded for making the extra effort to deal with small suppliers and are not risking their own careers by doing so?

Lord Callanan (Con): The noble Lord makes a very good point. We encourage all SMEs that are interested in bidding for public sector opportunities to use Contracts Finder, which lists all tenders over £10,000. SMEs can create an account to get email updates for opportunities that align with their business interests. Public sector contracts are, of course, awarded after a fair and open competition process and commercial buyers are encouraged to ensure that all tenders are suitable for SMEs

Lord West of Spithead (Lab) [V]: My Lords, one area where there is a ready-made opportunity for boosting our industrial output and supporting struggling —and, indeed, collapsing—SMEs is defence. The Prime Minister recently stated that our nation requires

"a shipbuilding industry and Royal Navy that reflect the importance of the seas to our security and prosperity."

Hurrah for that, but our shipyards—and particularly the SMEs that support them—are in dire straits. They need a commitment to a rolling programme of warship building if they are to survive, and the Navy is desperate for more ships. Can I ask the Minister whether this requirement is being given prominence in the current integrated defence review?

Lord Callanan (Con): The noble Lord is, of course, well aware that I am not a Minister in the Ministry of Defence, so I shall have to write to him on that.

Baroness Burt of Solihull (LD) [V]: Would the Minister agree with me that, as well as being good business, it is morally incumbent on the Government to procure from SMEs owned and run by people who look like those that they serve? If he does agree, could he explain why—despite years of lobbying from people like myself and groups representing BAME and women-owned businesses—the Government still do not know how many such businesses they are procuring from? What you do not measure, you cannot manage.

Lord Callanan (Con): I can tell the noble Baroness that, since its launch in 2012, something like 20% of our start-up loans have gone to entrepreneurs from black, Asian and minority-ethnic backgrounds and, throughout this crisis, we have hosted a series of round tables on our wider support scheme for BAME businesses.

Lord Wigley (PC) [V]: My Lords, the Government are keen in their EU negotiations to allow UK companies to benefit from state aid where appropriate. Will the Minister therefore confirm that it is equally important for the Governments of Wales, Scotland and Northern Ireland to ensure that the SMEs within their own territory are helped to secure public procurement contracts for which those devolved Governments are responsible?

Lord Callanan (Con): Of course, I cannot speak for the devolved Governments, but I am sure they are doing all in their power to ensure that as many small businesses as possible receive contracts.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, as you know, the Federation of Small Businesses is running a campaign called "Fair Pay Fair Play" about what it calls the scourge of late payment. Can the Minister enlighten the House as to when key components of this campaign, such as putting the Prompt Payment Code on a statutory basis and giving powers to the Small Business Commissioner, will ever be introduced?

Lord Callanan (Con): We are completely focused on fulfilling the Government's manifesto commitment to clamp down on late payments and strengthen the powers of the Small Business Commissioner to support small businesses that are exploited by their larger partners. At the Spring Statement, as the noble Lord will be aware, the Government announced that they will require large companies' audit committees to review payment practices and report them in their annual accounts.

Baroness Warsi (Con): My Lords, does my noble friend have details of the financial value of UK companies that are engaged in delivering EU public procurement contracts? In the run-up to the post-Brexit period, are the Government engaged with these firms regarding support because, for many businesses, this may be their main or whole business?

Lord Callanan (Con): The noble Baroness asks a good question. Unfortunately, we do not gather data on how many UK SMEs are involved in EU procurements. However, there will, of course, be a high level of access to markets in the EU once the UK has joined the WTO general procurement agreement as an independent member. This is expected to be at the beginning of 2021. The UK's market access offer for services is the same as the current coverage under the EU's GPA schedule. Reciprocal coverage will continue once the UK is a GPA party.

The Lord Speaker (Lord Fowler): I call the noble Baroness, Lady Scott of Needham Market. Baroness Scott? No? We will go on. I call the noble Baroness, Lady McIntosh of Pickering.

Baroness McIntosh of Pickering (Con) [V]: My Lords, can I ask my noble friend the Minister what opportunities there will be for small and medium-sized businesses in the food sector to bid for contracts to deliver food to schools, hospitals, prisons and other public sector services? This is a wonderful opportunity to have locally produced food locally delivered for local consumption.

Lord Callanan (Con): I agree with the point that my noble friend is making but, of course, each individual contracting authority will have its own strategy for food procurement. The Crown Commercial Service has established a number of frameworks for the provision of food, and this agreement will deliver a UK-wide SME-inclusive food-procurement service for public sector food buyers.

Lord Bhatia (Non-Afl) [V]: In the Covid era, small businesses are most at risk and need help from the Government. Can the Minister answer whether he agrees?

Lord Callanan (Con): Of course, all businesses will need help during the Covid crisis, and we have one of the largest programmes of help for companies and businesses in the western world.

Baroness Altmann (Con) [V]: My Lords, could the Minister explain to the House the—[*Inaudible*.]—The procurement process for public contracts is often enormously cumbersome, time-consuming and costly—[*Inaudible*.]

Lord Ashton of Hyde (Con): My Lords, I am afraid the noble Baroness, Lady Altmann, is completely inaudible, but I suspect the Minister might have an idea of what she is trying to say.

Lord Callanan (Con): If we heard the noble Baroness correctly as she was interrupted, I think she was asking about the bureaucracy associated with public sector procurement contracts. We have removed complex pre-qualification questionnaires from low-value contracts and increased the transparency of opportunities via the Contracts Finder website, which covers current

and future public sector contracts and award notices above £10,000 in central government and £25,000 in the wider public sector. Contracts Finder is available on a single, free-to-use digital platform and we encourage all SMEs to access it.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked, fortunately, and we now move to the second Oral Question.

Highway Layouts

Question

1.21 pm

Asked by ***Baroness Benjamin***

To ask Her Majesty's Government what weight is given to the effect of new or modified highway layouts on adjacent sites of ecological, cultural or scientific significance.

Baroness Benjamin (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare an interest as a vice-president of the RHS.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, we always try to avoid or minimise any adverse impacts when we design and develop major highway schemes. The impacts are considered carefully when making value-for-money assessments and when projects are put forward for planning consent. The Planning Inspectorate weighs all relevant material considerations and may subsequently recommend to the Secretary of State that consent is not granted.

Baroness Benjamin (LD): I thank the noble Baroness for her Answer. The Government have pledged to plant millions of trees to improve biodiversity, reduce flood risks and capture carbon. However, Highways England's proposal for junction 10 of the M25 will do the exact opposite. Some 44 irreplaceable trees will be lost. There will be longer, more polluting and more convoluted traffic journeys and building disruption lasting many years, all critically harming RHS Wisley's heritage site. Also, the RHS charity could see an income reduction of millions of pounds. Will the Government ensure that all evidence is considered, especially the alternative, common-sense proposal to this scheme from the RHS and Wisley's cultural significance, before making a final decision?

Baroness Vere of Norbiton (Con): I thank the noble Baroness for reminding all noble Lords of government policy. She is absolutely right that this Government are committed to the environment and want to see improvements within it. The scheme she mentioned is a live planning application. It is with the Planning Inspectorate at the moment so I cannot comment on the detail, but I reassure her that the DCO process is designed to make sure that any proposal is subject to the highest level of scrutiny to ensure that it complies with planning law. It may interest the noble Baroness to know that this scheme had four rounds of public consultation.

Baroness Boycott (CB) [V]: Following on from the Question of the noble Baroness, Lady Benjamin, Wisley is part of the Thames Basin Heaths Special Protection Area, which is a key site for safeguarding very important fauna and flora in England and which we really cannot afford to lose. What action will HM Government take to ensure that the Secretary of State for Transport has all the evidence available to conclude with certainty, as the law requires, that the proposed new junction 10 of the M25 will not harm the integrity of the Thames Basin Heaths Special Protection Area?

Baroness Vere of Norbiton (Con): It is up to the Planning Inspectorate to make sure that it feels comfortable that it has all the information it requires. If not, it will ensure that it goes out and gets it. I reassure the noble Baroness that under RIS2, the new road investment scheme strategy which came out in April 2020, Highways England has various KPIs which relate to biodiversity. HE's KPI is that there will be no net loss of biodiversity, using Natural England's assessment approach.

Baroness Pidding (Con): My Lords, my question cites the example of the UNESCO world heritage site of Stonehenge and the A303, where the current situation is intolerable for both the local community and air quality. Notwithstanding the importance of this route for travel to the West Country for residents and the vital tourism trade, we see constant traffic jams. Does my noble friend agree that we must come to a position balancing preservation against progress?

Baroness Vere of Norbiton (Con): As my noble friend will be aware, this scheme is also with the Planning Inspectorate and I therefore cannot comment on it in great detail. However, she will know that the decision was delayed owing to an archaeological find and therefore further consultation will take place with all the relevant stakeholders within the particular field. This will enable all relevant matters to be considered and, as she rightly said, a balanced position to be reached. We expect a position to be reached by 13 November.

Lord Rosser (Lab): As part of the Planning for the Future consultation, the Government are considering the relationship between infrastructure, including roads, and the planning system. With the White Paper asserting that decisions to grant planning consent should no longer be taken on a case-by-case basis but be

"determined by clear rules for what can and cannot be done",

can the Minister give an assurance that the outcome under these future rules for what can and cannot be done will not result in diminished consideration of the environmental impact of proposed roadbuilding, bearing in mind that the environmental impact of roadbuilding and development, including on adjacent sites of ecological, cultural or scientific significance, varies considerably from case to case?

Baroness Vere of Norbiton (Con): On a case-by-case basis, each road scheme must comply with the national policy statement on national roads, which states that a DCO applicant must show, for example, how the project has taken advantage of opportunities to "conserve and enhance" biodiversity and geological conservation interests. There are many other issues in that national policy statement which will apply to roads now and in future.

Baroness Randerson (LD): My Lords, we are at a crucial point as we try to recover from the pandemic. Do we try to go back to business as usual or grasp the opportunity to build back greener? Does the Minister agree that the Government's priority after the pandemic should be investment in a zero-emission public transport fleet, including the creation of more cycle lanes and safe walkways, and not the creation of more highways? Will the Government look at the amount of money and the number of schemes they are planning to invest in?

Baroness Vere of Norbiton (Con): The Government have clearly set out within RIS2 the schemes that will be invested in and the enhancements that will be made. As the noble Baroness will know, for enhancements it is often not a case of building a new road—very few absolutely new roads are ever built—but of improving the existing roads and, as importantly, maintaining our existing infrastructure. I reassure her that, for example, within the funding envelope of RIS2 there is a designated environmental and well-being fund which can be spent not on specific schemes but where it is best needed. That fund amounts to £345 million.

Lord Randall of Uxbridge (Con) [V]: I am confident that my noble friend recognises the importance of biodiversity in highway verges. I urge Her Majesty's Government to seriously consider creating meaningful nature corridors alongside any new-build highways.

Baroness Vere of Norbiton (Con): I reassure my noble friend that we certainly consider nature corridors along new highways—not for all of them, because obviously not all are suitable for that sort of thing. Highways England has a huge commitment to biodiversity. For example, my noble friend will be pleased to know that we will improve the habitat alongside the M6 corridor from Preston to the border with Scotland.

Lord Bradshaw (LD) [V]: My Lords, in making the business case for the proposed roadworks close to Wisley Gardens, it is likely that the time-savings for road users will be taken into account? What proportion of the expected time-savings is of two minutes duration or less? Also, has account been taken in such calculations of the likely fall in commuter traffic and flows to and from Gatwick and Heathrow?

Baroness Vere of Norbiton (Con): As I have stated previously, I cannot go into detail about the scheme the noble Lord mentioned, but I can say that the junction around the M25 is one of the most highly congested junctions on our motorway network, and it sees 270,000 vehicles a day. Therefore, even two minutes per vehicle would be a significant time saving, both from an economic and social perspective, and it would also have environmental benefits.

The scheme is also designed to improve safety. That particular junction has the highest casualty rate on the M25. It is too early to understand what the long-term impacts of Covid are, but traffic levels have rebounded very strongly. However, each scheme already has a low-growth scenario, which is taken into account in granting planning.

Baroness Walmsley (LD) [V]: My Lords, to improve air quality around areas of sensitive ecology, we must encourage green transport. According to a Department for Transport survey, only 1% of households own an electric car, and 2% own a hybrid. The main barriers to increasing these numbers are access to charging points and the cost of purchase. Therefore, why are the Government spending £2 on unrestricted fossil fuel subsidies for every £1 promoting clean energy, such as the EV charging infrastructure?

Baroness Vere of Norbiton (Con): My Lords, this Government have a huge respect for electric vehicles. Certainly, the numbers the noble Baroness quotes are low and are historic, because the number of electric vehicles is increasing, and we expect it to increase in the future. However, while we are transitioning to electric vehicles, Highways England is doing a huge amount of work on air quality. For example, in late September, Highways England will introduce 60 miles per hour speed limits on certain sections of the strategic road network, in order to bring down speeds and improve air quality.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked, and we now move to the next Question.

Post Office: Horizon Accounting System

Question

1.32 pm

Asked by ***Lord Arbuthnot of Edrom***

To ask Her Majesty's Government what progress they have made in the review of the Post Office's Horizon accounting system.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the Government are keen to see this review launched as soon as possible. We are making progress with the appointment of a chair. Once this process is complete, the review will then be formally launched. My colleague, the Minister for Small Business, Consumers and Labour Markets, has also spoken to Paul Patterson—managing director and head of sales and country leadership for Fujitsu UK—who has confirmed that Fujitsu will collaborate fully with the review.

Lord Arbuthnot of Edrom (Con): My Lords, I am grateful to my noble friend. The delay to this review suggests that the Government are having some difficulty finding someone unwise enough to take on the chairmanship. Is my noble friend aware that the historical shortfall scheme, set up to give compensation to sub-postmasters who have suffered through the Horizon fiasco, is not available to those sub-postmasters who have been employed through others—like McColl's or the Co-op—even though they have suffered in exactly the same way as the rest? Is this not another injustice inflicted on sub-postmasters who have surely suffered enough already?

Lord Callanan (Con): I pay tribute once again to the tenaciousness of my noble friend in raising this sad tale. The historical shortfall scheme was open to people or companies who had, or have, a direct contract with the Post Office, including companies such as McColl's and the Co-op. Assistants of postmasters or employees of other companies who had no contract with the Post Office would not be eligible, as they had no contractual liability directly to the Post Office.

Baroness Bakewell (Lab) [V]: My Lords, there are three strands to this scandal: the continuing failure of the IT scheme, the devious behaviour of the Post Office and the heroic persistence of 550 postmasters and postmistresses. In their case, it has been a story of lost livelihoods, bankruptcies, prison, mental health problems, and now death. Seventeen claimants have died, some without their convictions being quashed; the doctors of one, Julian Mason, spoke of the stress as a contributing factor. There has also been a suicide. Will the Government acknowledge the urgency of this review to bring peace of mind to those who have suffered and, indeed, to hear their evidence before it is too late?

Lord Callanan (Con): I certainly acknowledge the urgency of the situation. We are working as fast as possible to get the review under way and to announce the chair—we will do so as quickly as possible.

Lord Holmes of Richmond (Non-Afl): My Lords, my heart goes out to all the sub-postmistresses and sub-postmasters who have been dragged through this Horizon hell. They have been treated despicably. Will the Government act ahead of this review and pay the legal fees of those brave sub-postmasters and postmistresses who took legal action? They were awarded £57 million; after legal fees that is now down to £11 million. Surely the Government can take that action without having to wait for the review to commence?

Lord Callanan (Con): Of course, there was an agreed settlement for the sub-postmasters who took legal action. It would not be right for the Government to interfere in that settlement.

Lord Polak (Con): As is clear for the individuals and families caught up in the Horizon disaster, life continues to be unbearable. I ask my noble friend the Minister to help me answer my friend Rita Threlfall, the former sub-postmistress from Liverpool, whose story I highlighted in this House on 18 June. She said this weekend: "We seek reasonable justice, and it is still our aim to have a judicial inquiry, as we all feel it is the only way to uncover the truth behind the reason we have suffered financial loss through no fault of our own. But more importantly, it will help us in some way to mend our broken lives."

Lord Callanan (Con): The lady that my noble friend mentions is one of many tragic cases arising from this. It is indeed an appalling scandal. Of course, there has already been a judicial finding of faults in this, and the comments of Mr Justice Fraser are well worth reviewing. We want to go further than that: we want a proper review, and to be fully assured that through the review there is a public summary of the failings that occurred at the Post Office through this scandal—drawing on the judgments from the Horizon case and by listening to those most affected—without repeating the findings of Mr Justice Fraser.

Lord Taylor of Goss Moor (LD) [V]: This has been the most appalling scandal. Those impacted are still waiting for justice, not just for themselves but in holding to account those who appear to have sought, at every stage, to cover up what actually went wrong. Can the Minister give some assurance that the appointment of a chairman, and this going ahead, is imminent, and that those responsible at the Post Office and elsewhere will be held to account?

Lord Callanan (Con): I can certainly give the noble Lord the assurance that the appointment will be made as quickly as possible. We are under no illusion about the urgency of the case and the need to get on with it as quickly as possible. I am hoping that an announcement can be made very shortly.

Lord Cormack (Con): My noble friend the Minister made similar comments three months ago when my noble friend Lord Arbuthnot, to whom we all pay tribute, raised this subject. It is a disgrace. The Government, as my noble friend will agree, have both an actual and a moral responsibility here. Can he remember the old adage that "justice delayed is justice denied"?

Lord Callanan (Con): I agree with my noble friend on this: we need to get on with it. There have been a number of delays, for various reasons, but I am hoping that an appointment can be made imminently, because we all want to see this under way as quickly as possible.

Lord Stevenson of Balmacara (Lab) [V]: Can the Minister confirm that the review will not have the powers under the Inquiries Act 2005? Therefore, how will the reviewer compel witnesses, including Ministers, to give evidence, or see the papers necessary to assess, for example, whether lessons have been learned and that whistleblowers in the Post Office will not be treated in such a disgraceful way again in the future?

Lord Callanan (Con): The review is non-statutory, but the Post Office, Fujitsu and the Government have all committed to co-operate as fully as possible with the review. The chair will, of course, be fully independent of both the Post Office and Government, and will draw conclusions and recommendations as they see fit.

Lord Hain (Lab) [V]: My Lords, we all know that sub-postmasters are the pillars of local communities, and yet they have suffered by being compensated for an insultingly small proportion of the losses they incurred through this terrible scandal and the cruel unfairness that followed. The Minister says that he does not want to interfere, but the Government are 100% owner of the Post Office—the Permanent Secretary of the department is its accounting officer and there is government representation on the board. The Government are ultimately responsible for this scandal. It is not good enough to keep delaying this with lots of process and reviews. They must be compensated fully.

Lord Callanan (Con): The court case resulted in a substantial award of compensation and the Post Office has a separate historical shortfall scheme, which it is looking at and progressing. We want to get on with this as quickly as possible. I agree with all the comments which have been made. This is an appalling scandal: it has originated over many years and we are doing what we can to try to get to the bottom of it.

Baroness Redfern (Con) [V]: My Lords, so many careers have been ruined and reputations destroyed because of the failings of the Horizon system. How has the Post Office been encouraged to strengthen its relationship with postmasters? Has there been postmaster training to help build a commercial partnership?

Lord Callanan (Con): I have spoken to the chief executive of the Post Office, as has my ministerial colleague who is responsible for this matter. We are conveying the strongest possible message that the Post Office of course needs to have a strong and robust relationship with its sub-postmasters.

Lord Berkeley (Lab): My Lords, I am very grateful to be here; I thought I might have to be scratched as my train was late. The Minister has said that there was a substantial award against the Post Office, but every noble Lord who has spoken has pointed out that most of that went on legal fees. Is it not the duty of the Government to properly compensate the people who have incurred this loss?

Lord Callanan (Con): I am pleased that the noble Lord's train was not late. I understand the frustration expressed by noble Lords. When I first saw the award, I shared some of that frustration, but that was the process and that was the judicial outcome. There is a separate historical shortfall scheme, which the Post Office is following. We believe that this is the appropriate way for compensation to be awarded.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed.

Digital Evidence

Question

1.43 pm

Asked by ***Lord Hayward***

To ask Her Majesty's Government what progress has been made towards finalising a digital evidence policy for access to complainants' and witnesses' mobile phones, particularly in relation to cases of alleged rape and sexual assault.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, cross-government work continues to ensure that complainants and witnesses are asked only to provide what is necessary and proportionate to investigate crime. Policing and the Attorney-General will publish new and updated guidance and the Home Office will work with policing to ensure that this is enabled by appropriate technology and training.

Lord Hayward (Con): My Lords, there is a sense that, in recent years, police policy in sexual offence cases has swung from favouring one side to favouring the other. Following recent court cases, and the need to review how police deal with digital evidence, can my noble friend and the Home Office officials help ensure that both the alleged victim and the accused have fair and reasonable access to all relevant communications at all times?

Baroness Williams of Trafford (Con): I share my noble friend's sentiment. While rape and sexual assault are devastating and serious crimes, we expect all investigations to be conducted thoroughly and fairly to ensure equal access to justice for both victims and defendants. We are engaging with partners, including the NPCC, the CPS and the College of Policing, to ensure that the police have the appropriate framework, technology and training to strike the right balance between a victim's right to privacy and reasonable lines of inquiry.

Baroness Chakrabarti (Lab) [V]: My Lords, the important Question from the noble Lord, Lord Hayward, was one of policy, but there is a prior and more fundamental question of legality. Can the Minister tell the House what is the specific legal foundation for taking rape complainants' phones? She will know that, to comply with the Convention on Human Rights, this kind of intrusion into personal privacy needs not just to be necessary and proportionate; it has to be in accordance with the law, as well. Mere consent will not work, not least when that consent is given in exchange for the right of something as serious as a rape complaint to be taken forward.

Baroness Williams of Trafford (Con): The question of legality is good and pertinent. The ICO found that there is a complex legislative interplay in this area. Officers should be extracting data from victims and witnesses only when it is strictly necessary as part of the investigation. We are working with the police and the CPS to ensure that the proposed framework meets both the requirements of officers to fulfil their lawful duties to pursue all lines of inquiry and to meet their

duties of disclosure, as well as providing clarity and transparency about the safeguards and assurances to complainants on their right to privacy.

Lord Paddick (LD): My Lords, the recent Court of Appeal case makes the issue of examination of the contents of mobile phones and other electronic devices of both complainants and accused far more complex. It is not simply a question of the police investigators receiving additional training. Quite often, the Crown Prosecution Service instructs officers to carry out further investigation. What co-ordination is taking place between the Home Office and the Ministry of Justice to make sure that the training is consistent, both for the police and the CPS, and is in line with that Court of Appeal guidance?

Baroness Williams of Trafford (Con): The noble Lord is absolutely right: there has to be consistency and training has to be sufficient across the piece. The CPS, the Home Office and the Ministry of Justice are working through this together. The rape review, led by the Home Office, the Attorney-General's office and the Ministry of Justice, is considering fully the reasons for a drop in referrals, to which the noble Lord has alluded in the past, and whether the digital disclosure is part of this.

Baroness Gardner of Parkes (Con) [V]: My Lords, earlier in my career, from 1982 to 1988, I was the UK representative on the United Nations Commission on the Status of Women. Interestingly, when we had meetings in Brasilia and in adjoining countries in South America, I was very impressed by how much more real help was available for the victims of such bad situations. I support the view that we should do everything we can to stay ahead of these needs. While I have listened to the various technical points raised, will the Minister bear in mind that this would really help women who are in a very desperate situation?

Baroness Williams of Trafford (Con): My noble friend is right that this could indeed help to clinch a case one way or another. At the heart of this is that police and prosecutors have a duty to pursue all reasonable lines of inquiry in every investigation. Increasingly, evidence is coming digitally. In response, the police have to ensure that they are acting in a way that is proportionate, but which also protects privacy, as talked about by the noble Baroness, Lady Chakrabarti.

Baroness Gale (Lab) [V]: My Lords, is the Minister aware that Claire Waxman, the London Victims' Commissioner, has called on the police and the CPS to implement the ICO's recommendation of introducing a code of practice to prevent excessive and disproportionate requests for data, as real victims could otherwise be deterred from pursuing the justice they deserve? Will she accept recommendation 1 of that report, as she seemed to indicate earlier, that the Government should strengthen the current legislative framework by producing a statutory code, or other equivalent measures, to ensure that the law is sufficiently clear and foreseeable?

Baroness Williams of Trafford (Con): The public consultations on the Attorney-General's Office's updated disclosure guidance and the Criminal Procedure and Investigations Act code of practice ended recently, and the AGO is seeking to implement them later this year. It will implement the recommendations made in the 2018 disclosure review and the Justice Select Committee report on disclosure published in July 2018.

Baroness Barker (LD): Will the review which the Minister mentioned consider whether there is a differential effect on women raising complaints because of the way in which digital data is used by police?

Baroness Williams of Trafford (Con): I am sure that it will take such things into account, perhaps particularly the anxiety that women might feel when handing over something that is so much more about our lives in general now than just being a phone. That is where the balance must be struck. We want women to come forward. Rape is such an underreported crime, and we want people to come forward, not to feel hindered.

Baroness Jones of Moulsecoomb (GP): Rape prosecutions have fallen to a record low. Does the Minister think that this is a result of the Met's intransigence about data grabbing from victims' phones, the CPS's ego-driven attempt to improve its conviction rate, or perhaps the Government's swingeing cuts?

Baroness Williams of Trafford (Con): The noble Baroness obviously has firm views about all three areas, but the rape review will consider all the reasons behind recent drops in referrals—they are low anyway—and charges, prosecutions and convictions of rape cases, so the impact of digital disclosure is being considered as part of that.

Lord Rosser (Lab): In the light of the recent legal challenge and the change of stance by the National Police Chiefs' Council through withdrawing the digital data extraction forms, what early evidence is there that the experience of the legal system for victims of rape is now actually improving?

Baroness Williams of Trafford (Con): I cannot stand at the Dispatch Box and say that there is clear evidence. I am saying here that the Government are doing a number of things across a number of areas to make it easier for people to come forward, to be listened to, and for evidence to be gathered in a proportionate and non-intrusive way. Digital extraction is one part of that, but we would not want that to impede a woman's—or man's—willingness to come forward.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed, and that brings Question Time to an end.

1.53 pm

Sitting suspended.

Arrangement of Business

Announcement

2.01 pm

The Lord Speaker (Lord Fowler): My Lords, the hybrid sitting of the House will now resume. Some Members are here in the Chamber, respecting social distancing, others are participating virtually, but all Members are treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

We now come to the Motion in the name of the Senior Deputy Speaker. The Procedure Committee agreed that this type of business should be conducted as physical proceedings only, with no opportunity to participate virtually other than by the mover, in this case the Senior Deputy Speaker. There is no speakers' list, but Members present in the Chamber are entitled to participate. However, the Procedure Committee guidance requests any Member intending to speak on such Motions to give notice in advance.

Hereditary Peers' By-elections

Motion on Standing Orders

2.02 pm

Moved by ***The Senior Deputy Speaker***

> Further to the Order of 23 March, that Standing Order 10(6) (Hereditary peers: by-elections) be suspended until Thursday 31 December 2020.

The Senior Deputy Speaker (Lord McFall of Alcluith) [V]: My Lords, this Motion will further delay outstanding hereditary Peers' by-elections until the start of 2021. Standing Order 10(6) states that by-elections must take place within three months of the vacancy occurring. On 23 March, the House agreed to suspend these provisions until 8 September, which at that time was expected to be the first day back after the Summer Recess. On 16 July, the Procedure and Privileges Committee met and agreed that a further suspension until the end of the year was necessary. The Motion before the House today gives effect to that decision.

The current state of the pandemic makes this suspension necessary for a number of reasons, including the difficulty of holding hustings, of allowing Members to vote in person in whole-House by-elections, and indeed for newly elected hereditary Peers to come in to take the Oath in person before contributing. I beg to move.

The Lord Speaker (Lord Fowler): I call the noble Baroness, Lady Smith of Basildon.

Baroness Smith of Basildon (Lab): My Lords, I am happy to comment, but I wonder if other noble Lords wish to speak before I do.

The Lord Speaker (Lord Fowler): I will go through the short list that I have. I have been notified that those Members who want to speak are the noble Lords, Lord Cormack, Lord Trefgarne, Lord Newby, Lord Balfe, and the noble Baroness, Lady Smith. I therefore now call the noble Lord, Lord Cormack.

Lord Cormack (Con): I thank the Lord Speaker. I hope that we should not infer from what the Senior Deputy Speaker has just said that we are going to return on 1 January; I sincerely hope that that will not be the first sitting day.

To be serious, perhaps I may say at the outset that while I welcome this opportunity, I am increasingly convinced that we need to up our act in this Chamber. It is disgraceful that so few Members are allowed to sit in here. It would be very easy to have at least three Peers on this Bench, or to have one on each of certain other Benches. Depriving Members of your Lordships' House of the opportunity to participate properly in debate is a disgrace and I hope sincerely that those who have charge over these things will look imaginatively at what can be done. Of course we have to remain safe, but nobody can have ultimate safety. We must have a viable Chamber that can hold the Government to account and debate more expeditiously—as it could if more of us were here—the great issues of the day.

I do not oppose this measure but I feel that it would be more sensible to heed what the Lord Speaker has said about the numbers in this House and to delay further by-elections indefinitely—perhaps until a proper and definitive decision has been made on the Grocott Bill. I am sorry not to see my friend the noble Lord, Lord Grocott, in his place. It is very important to underline that the continued participation in this House of any existing life Peer is not and must not be threatened by that Bill. We have valued colleagues and I hope that they will be here for a very long time, but by-elections that sometimes produce more candidates than electors, a point which has often been made, do not enhance the reputation of your Lordships' House.

We need to look carefully at how we admit Members to your Lordships' House. Today we have welcomed the right reverend Prelate the Bishop of Manchester, and I am only sorry that his supporters had to stand at a distance from him. If ever there is proper social distancing in this House, it is when a new Peer is introduced, so it is farcical that the right reverend Prelate's two supporting Bishops had to stand on the steps of the Throne. As we begin to introduce new Peers over the next two or three weeks, I hope that there will be a sensible arrangement whereby the supporters are able to support. I hope that they will be able to be robed, but if not, at least the Peer being introduced should be robed and the others should be here. I hope very much that the Lord Speaker will be able to use his considerable persuasive powers to ensure that that happens.

We do believe that too many are coming in, but each one will be courteously and individually welcomed, as is always the case and as it should be. However, we have an underlying problem with numbers, and the sooner that the full House can have another proper debate on the Burns report and on the wise words of our Lord Speaker, the better. I hope sincerely that we will soon reach a stage where, if someone is given a peerage, he or she does not automatically come in immediately. The right reverend Prelate the Bishop of Manchester came in because he has been waiting for a considerable time. There is a finite limit on the number of Lords Spiritual, at 26, which includes the two archbishops and the right reverend Prelates

the Bishops of London, Durham and Winchester. The others have to wait their turn. I believe that we can take an example from that.

I also believe that Prime Ministers should be able to give a peerage without a seat in the House of Lords, because the Prime Minister himself has created an extra problem for your Lordships' House. All of these things should be looked at together in the round. It would be a good idea if the Lord Speaker asked the noble Lord, Lord Burns, to bring an updated report before your Lordships' House in order to re-emphasise some of the existing recommendations and perhaps introduce new ones, and for us as a proper House of Lords to debate. The Government should then listen to what the Lords have said.

It is entirely possible for your Lordships' House to refuse to admit somebody. A peerage has been given but we do not have to sanction immediate entry. There is precedent going back to the reign of Queen Victoria, when she tried to create a life Peer—in 1862, I think. I am not suggesting that we invite a confrontation by doing that immediately, but that in the interests of the House we have to do two things: first, to demonstrate that we are a proper, functioning House—which we are not at the moment—and secondly, to try to ensure a membership that is more in line with the other place.

Lord Trefgarne (Con): My Lords, I will not detain the House for more than a moment. As your Lordships will be well aware, I am not a supporter of the Private Member's Bill tabled by the noble Lord, Lord Grocott, and am sure I never will be, unless circumstances change and House of Lords reform has by then been completed, which was the condition on which the hereditary noble Lords came to this House in 1999. In the meantime, there is room for more than one respectable view on the present circumstances. I do not, therefore, oppose the present proposals but I am not particularly strongly in favour of them.

Lord Newby (LD): I support this Motion for the reasons given by the Senior Deputy Speaker, and because at the moment no elections to any public office are being held. Elections were postponed in May and no local council by-elections are being held. If the only election at this point was the hereditary peers by-election in the House of the Lords, it would make us look even more foolish—if that were possible—than we already do.

I very much hope that this is a stopgap measure. The strong balance of opinion in the House is that this system should be done away with, and we need to make progress. We are in a difficult position, in that Private Member's Bill debates are not taking place. I think it is the Procedure Committee that needs to take an in-principle view on this—given the ways of your Lordships' House, and having been here only 20 years, I am not quite sure about that. Now that we are more back to normal, we need to get more back to normal in dealing with Private Members' Bills. Then, we could deal with the Grocott Bill, because at the moment it is in limbo, and we need to move on it.

Until recently it was possible to argue that abolishing by-elections for hereditary Peers altogether should not go ahead because it was being beastly to the Conservative Party, which would lose disproportionately. However, the profligacy of the Prime Minister in his recent appointments list—however unwelcome in so many ways—means that the Conservatives can no longer feel unfairly done by. I hope, therefore, that the Government and all their Back-Benchers will review their position and support permanent abolition of by-elections for hereditary Peers.

Lord Balfe (Con): We are clearly a long way from being back to normal. I endorse everything said by my noble friend Lord Cormack, because we need to get back to normal. We could get many more people in this Chamber, but we also need some willpower behind the need to get back to normal. A certain lassitude and reluctance to get things done seems to have descended on us. We certainly should not be having by-elections until we get back to normal. The Procedure and Privileges Committee will meet in December, I believe—certainly before this new Motion expires on New Year's Eve. The middle of a vacation does not, in any case, seem a very good date for it to expire, particularly since the Deputy Lord Speaker may, in the tradition of his country, be somewhat busy on New Year's Eve.

I would like the Procedure and Privileges Committee to look at the need for these by-elections and whether we should make time for the Grocott Bill to be heard. I listened to what the noble Lord, Lord Newby, had to say, but the Grocott Bill will not remove a single Peer from this House: it allows them to die away, over the course of half a century. Some would say that that is an extremely generous way to treat them, but it has nothing to do with the Conservative Party.

We have to start standing up for ourselves. My noble friend Lord Cormack made reference to the Library and the rule brought in when Queen Victoria created a life Peer, and that was turned down. It goes back a lot further than that, however. I read the Library report, but there was also something in the *New Statesman* and I asked the Library for an account of what had happened in relation to life Peers. I read a debate from around 1860, I think, and I can inform the House that life peerages go back to the reign of Henry III, in the 13th century.

There have been regular life peerages. They used to end them by chopping off the heads of the Lords when they fell from favour. This is no longer recommended procedure, but I have had advice from an extraordinarily senior source to the effect that the sovereign creates but the House sits, and we would be within our powers to amend our Standing Orders to create a queue for Peers waiting to take their seats, as my noble friend Lord Cormack suggested. The size of the House would be determined and there would be a Burns-style distribution, based perhaps on previous elections or other criteria: there would be an allocation to each party.

At the moment I often look at the ranks of the Labour Party—my former party—and I feel a bit sorry for them, because they could do with strengthening, frankly. Democracy in this House relies on having a strong Opposition, not just strong Conservative Benches; it needs to be much wider than that.

I would therefore like to see this Motion passed and the noble Lord, Lord Burns—or, if he thinks it is a poisoned chalice, someone else—to look, in the way

[Lord Balfe]
suggested, at the means by which this House can implement the desires it endorsed at the time of the Burns report. We have weapons in our armoury that could be used. Although it saddens me to say so, I do not think that the present Prime Minister will follow our advice unless there is some strength behind it—the ability to say, "No, you cannot do that", and the powers to stop it. Otherwise, we will be ridden roughshod over. I therefore support the Motion. I ask the Procedure and Privileges Committee to consider coming back to this House before the end of December with its thoughts, and that this House look at limiting our numbers, getting a legislative or rule-based way of doing it, and saying to the Government, "Fine, you create, but we will admit".

Baroness Smith of Basildon (Lab): This has been a rather wider-ranging debate than either I or probably the noble Lord, Lord McFall, as Senior Deputy Speaker, anticipated. I agree with the point the noble Lord, Lord Balfe, made about the Prime Minister not listening to advice. I think the only advice he listens to is that of the Deputy Prime Minister, Mr Cummings. Perhaps if we could persuade him, we might have more success in him treating the House and Parliament with some respect.

I had not expected the debate to go back to the 13th century. The House of Lords sometimes looks backwards rather than forwards, but it does not often go quite so far back. I think this illustrates the scale of the problem. We are dealing with something here and now, and the Motion before us has my full support. The noble Lord, Lord Newby, made the most telling point. If local government elections have been stopped around the country and the public are not entitled to elect, it would be nonsensical for an unelected House to elect one of its few elected Members to this place.

I want to put on record that this is a policy issue. This is not about the merits or otherwise of any individual who serves in this House, by whichever route they come in. All Members of your Lordships' House are welcomed. In fact, most of us really do not know who are the life Peers and who are the hereditary Peers, except those who make an effort to defend the continuation of the hereditary principle ad infinitum with the temporary position introduced in 1999.

I disassociate myself from some of the comments of the noble Lord, Lord Cormack, which is unusual. We all want to get back to working as normally as possible as soon as possible, but we can do so only in realms that make us safe. Indeed, my understanding is that no Member of your Lordships' House has wanted to speak physically but not been able to attend physically. We have to respect those who for many reasons—whether for travel or because they live in hot-spot areas or for their own medical conditions—wish to participate remotely. I think we do better than the House of Commons in that regard.

Finally, on the comments made about the noble Lord, Lord Grocott, he was unable to be with us today. For very understandable reasons, he would want to be here. I am sorry the noble Lord made that comment. It would be remiss of me not to mention his Bill. It has had the overwhelming support of your Lordships' House on many occasions. It is not fit for today's House of Lords to have by-elections for hereditary peerages. The only reason we do not have that Bill, and have the Motion before us today, is that the Government do not want it. We have invited the Government many a time to say, "We will help give this a speedy passage through Parliament", but because of the processes, a few Peers who do not support it have blocked that Bill with parliamentary vandalism tactics. We will return to that Bill, but I make a plea to the Government. It is a Bill that has the overwhelming support of your Lordships' House.

The noble Lord, Lord Burns, gave a way forward on the size of the House, and that is one issue, but the Motion before us has nothing to do with that. It is about having a sensible process: we should not have by-elections to your Lordships' House in the current circumstances. It has my full support.

The Lord Speaker (Lord Fowler): My Lords, I have not received notice that anyone else in the Chamber wishes to speak, but does anyone else in the Chamber wish to take part? No. If that is the case, I call the Senior Deputy Speaker to reply.

The Senior Deputy Speaker (Lord McFall of Alcluith) [V]: My Lords, I thank Members for their comments and for the history lesson, which I followed with great interest, but I remind them that the Motion before the House relates to a suspension of the Standing Order relating to by-elections. I am very happy for Members to write to me on the relevant wider issues they wish to see the Procedure Committee looking at, and I will certainly take a report back to the Procedure Committee as a result of the wider debate today. I note that the noble Lord, Lord Trefgarne, is not in favour of these proposals or the Grocott Bill.

It is my information that the Lord Speaker's Committee has agreed to meet again to consider the latest situation—but, again, that is not relevant to the Motion. The points made today about delaying by-elections indefinitely, with some individuals saying they should be abolished, are certainly policy issues, as the noble Baroness, Lady Smith, noted. I am content to take any comments, including those today, back to the Procedure Committee for discussion. We will meet regularly. We are meeting in the next two weeks and then in the first half of October. We have a number of meetings before the Christmas Recess, so the noble Lord, Lord Balfe, can be reassured that there is sufficient time for us to look at these issues. With that, I beg to move.

Motion agreed.

Kickstart Scheme

Commons Urgent Question

The following Answer to an Urgent Question was given on Thursday 3 September in the House of Commons.

"Yesterday, the Government launched our new Kickstart Scheme, as set out in the Written Ministerial Statement and the letter sent to all Members of both Houses. This £2 billion programme will fund the direct creation of thousands of additional jobs for young

people at risk of long-term unemployment, to improve their chances of progressing to find long-term, rewarding and sustainable work.

As we build back our economy and return fully to work, a lack of work experience can be a barrier to stepping on to the jobs ladder, which is why, through Kickstart, employers will be supported to access a massive recruitment pool of young people who want to work and are bursting with potential. Employers from all industries and across the private, public and voluntary sectors are eligible if they can meet our simple criteria on the provision of roles. Employers will need to show that these are additional jobs which provide the experience and support a young person needs to improve their chances of permanent employment. These need to be new roles that do not simply replace staff recently made redundant.

Funding available for each job covers the relevant national minimum wage rate for 25 hours a week, the associated employer national insurance contributions, and employer minimum automatic enrolment contributions, as well as £1,500 for wraparound support. There is no limit to the number of jobs that can be created, and organisations of all sizes are encouraged to participate.

If a business wants to offer only one or two Kickstart jobs, as set out in the online guidance, employers can contact their local employer support managers with an expression of interest, and we will work to link them to an appropriate intermediary. These intermediaries could include local enterprise partnerships, local authorities or business groups, ensuring the necessary support is in place to deliver placements effectively. We will continue to be proactive on involving employers and intermediaries following the scheme's launch yesterday.

We have already undertaken substantial engagement on our labour market strategy. I want to pay tribute to our civil servants in DWP and the Treasury who have brought this scheme to fruition, and I particularly want to thank and recognise my honourable friend the Member for Mid Sussex (Mims Davies), the Minister for Employment, who has worked tirelessly with her usual passion for helping young people get on in life and who I know will continue to do so.

Kickstart is a key strand of our plan for jobs focused on young people and will be a boost for the British economy. I want to encourage businesses and organisations all to take advantage of the most ambitious youth employment programme in our history and help Kickstart to become a flying start for our young people."

2.25 pm

Baroness Sherlock (Lab) [V]: [*Inaudible.*]—young people not in full-time education or employment. We have been urging government to introduce an equivalent to the last Labour Government's Future Jobs Fund, which was shown to be so effective in getting young people into jobs, so we welcome the Kickstart Scheme, but it must offer a route to real jobs for those most in need. How will the Minister ensure that these are genuinely new, additional jobs? How will she ensure the scheme is taken up by employers of all sizes in all regions of the UK?

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): I thank the noble Baroness for her question. She has started us on a very important issue to do with the Kickstart Scheme. The jobs secured through the Kickstart Scheme will go through a very rigorous process. One of the major benefits of the new Kickstart Scheme is the involvement of the private sector. We will ensure that the jobs provided under Kickstart will be good quality. We believe the best chance for a sustained job will come from taking part in the scheme. The employers will have a chance to see if they can place participants permanently in their establishments.

Lord Taylor of Goss Moor (LD) [V]: While it is incredibly important to get young people into work, small businesses are struggling to make sense of how they can access this scheme—yet the poster child is Tesco, which is taking on people, growing and benefiting from coronavirus and will now get free members of staff. How can the Minister ensure that those people taken on at government cost would not have been taken on in any case by Tesco and that they will get some kind of qualification or hope of a job at the end of this?

Baroness Stedman-Scott (Con): I am pleased to say that the latest briefing I have had today is that a range of companies wish to take part in Kickstart—large companies, as the noble Lord suggested, and small companies, as well as charities. There will be a rigorous process to follow to ensure that those jobs are additional and not previously advertised. I am sure the process we go through will result in good-quality opportunities for our young people.

Lord Bates (Con): Prior to my noble friend becoming a Minister, she had devoted much of her life to helping some of the hardest-to-reach and troubled young people in the country find their way into the dignity of work. How will she ensure that the Kickstart programme supports our most vulnerable young people, who already face the greatest barriers to employment, and does not leave them to fall further behind?

Baroness Stedman-Scott (Con): The Kickstart Scheme really is very exciting for young people. First, they will have a work coach who will be with them throughout their journey. They will have full support from Jobcentre Plus and employer support; the HR teams will hopefully work with them. They will be able to put together a CV, understand the world of work and undertake training opportunities that enhance their employment prospects. The flexible support fund of £150 million will be deployed and, most importantly, when somebody is in a Kickstart placement, there will be regular reviews of their progress to ensure that we do not miss any opportunity to keep them in that placement, rather than them falling out. Without blowing my own trumpet, there are all the key components we deployed at Tomorrow's People that made the outcomes so successful.

Lord Harries of Pentregarth (CB) [V]: My Lords, I congratulate the Government on this initiative, but I would like to ask the Minister what plans they have for when it ends. The danger, of course, is that too many

[Lord Harries of Pentregarth]
people will simply drop back into unemployment, as happens too often in France. I wonder whether it is possible to have continuing support at a lower level, so that there is a tapering off, as with the present furlough system? Would the Government give further thought to this?

Baroness Stedman-Scott (Con): My Lords, I am pleased to say—and I reiterate the points I made before—that all through the Kickstart Scheme journey, young people will have the support services of their work coach and the full support of the Jobcentre Plus system, along with their intermediaries and employers. Work coaches will continue to support claimants into work after their placements have been completed. They will not be left to drift. We want as many young people as possible to gain support from this service. On the noble Lord's point about changing the mechanism of the programme, I am not aware of any plans to do that at present.

Lord McKenzie of Luton (Lab) [V]: My Lords, for those employers whose individual job needs do not amount to 30, arrangements can be put in place, as we have heard, by intermediaries. What is the process for this? Is it just a DWP recommendation? Is there a quality assurance process for recognition of intermediaries? Who has responsibility for delivering the various programmes—individual employers or the intermediary entity?

Baroness Stedman-Scott (Con): My Lords, I must apologise to the noble Lord, as the sound was not great, but I think I got the gist of his question. Where employers have robust HR teams and can manage the process, they will obviously be able to bid. Where employers have only one or two opportunities, the role of the intermediary steps in. There will be a quality assurance process for their procurement. I understand that yesterday Movement to Work and the Prince's Trust were gearing up to fulfil this role. We will make sure that the best possible people are taking part as intermediaries.

Lord Forsyth of Drumlean (Con) [V]: My Lords, I congratulate my noble friend on this excellent scheme and the speed with which she has put it in place. I understand why it has been necessary to focus on people who will give an opportunity to a batch of youngsters, but the real hope will be small businesses that can help one or two. Once the scheme is up and running, will she consider the ways in which small employers can engage directly? Will she also recognise that the sooner Britain gets back to work the better, because many of these young people will need support and guidance in the workplace? Does she think there are enough work coaches in place to maintain the scheme?

Baroness Stedman-Scott (Con): I can assure all noble Lords that, as the Kickstart Scheme is implemented and progresses, it will be kept under constant review. If the noble Lord, or any Member of your Lordships' House, has some idea about how it could be amended for the better, my door is always open to receive those. We are doubling the number of our work coaches. We will make sure that there are ample people to offer support on the journey. I could not agree more: the sooner we are back to work the better. Young people will receive the support they need to ensure that they make a good transition from Kickstart to work.

Baroness Uddin (Non-Afl): My Lords, I welcome the proposed Kickstart programme, although I would have liked to see apprenticeships and some graduate programmes extended; this remains a glaring gap. I steered the Labour Government's first mentoring project, the People into Management Network, for three years. It primarily targeted young Asian women, undergraduates and graduates, supporting over 500 young people with 100 leading organisations, including Microsoft, the Foreign Office, the police and others. 10 Downing Street itself provided placements, mentoring and ongoing support for three months, for a comprehensive and impactful placement experience. I am glad to hear that prolonged coaching and support will be available. Will the Minister take the opportunity to meet me and other noble Lords interested in discussing how to improve the programme?

Baroness Stedman-Scott (Con): My Lords, my door is open and I would be very happy to meet noble Lords to discuss this if it helps them. If I may, I will build on a point that the noble Baroness made. With our plans for jobs, we are doubling the work coaches and putting £2 billion into Kickstart, and there will be no cap on places. We have expanded the youth offer, we are expanding the work and health programme, we are expanding the sector-based academies, and we have put an extra £40 million in for additional capacity for an online job-finding support scheme. I am very proud of what my Government are doing to make sure we help as many people as possible.

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, the time allowed for this Question has now elapsed.

2.36 pm

Sitting suspended.

Arrangement of Business

Announcement

2.45 pm

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, the hybrid proceeding will now begin. Some Members are here in the Chamber, respecting social distancing; others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

The House is to be in Committee on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. I will call Members to speak in the order listed in the annexe to today's list. Members are not permitted to intervene spontaneously; the Chair calls each speaker. Interventions during speeches or "before the noble Lord sits down" are not permitted. During the debate on each group, I will invite Members, including Members

in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in order of request and will call the Minister to reply.

The groupings are binding and it will not be possible to degroup any amendment for separate debate. A Member intending to press an amendment already debated to a Division should give notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group. We will now begin.

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

Committee (1st Day)

2.47 pm

Relevant document: 11th Report from the Constitution Committee

Clause 1: Repeal of the main retained EU law relating to free movement etc.

Amendment 1

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

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

"(2) Within six months of this section coming into force, the Secretary of State must lay a report before Parliament on how the provisions under Schedule 1 are to be enforced."

Baroness Neville-Rolfe (Con): My Lords, I rise to speak to Amendment 1 in my name and that of the noble Lord, Lord Green of Deddington. I start by thanking my noble friend the Minister and her team for the briefing sessions arranged since Second Reading and the substantial package of materials circulated last week, including some illustrative statutory instruments, which I always find helpful in understanding how Bills will work. We will come on to those in later groups.

I know from all the legislation that I have made as a civil servant and as a Minister, and complied with as a businesswoman and a citizen, that how a new law is enforced and the resources devoted to it are almost as important as the law itself. Our amendment, the first in this group, is a probing one designed to elicit detailed information on enforcement ahead of Report. I note that there is very little in the Bill, no doubt because the enforcement provisions, penalties, powers of entry and enforcement officers responsible sit in existing legislation, but we need a road map. We need to know as much as possible now and, failing that, we need a public report to Parliament within six months, as stated in my amendment—the way the excellent Bill clerks thought that we could ensure the provision of adequate information.

As discussed at Second Reading, my general approach is that government policy should align itself more closely with the majority of public opinion, which has consistently held over many decades that more rigorous controls are needed and that the rules should be enforced fairly and firmly. This was shown unequivocally in the Brexit referendum.

There are a number of troubling issues with enforcement implications. The number of migrants seeking ever more novel ways to get into the UK illegally is growing. Last week, it was reported that a record 416 migrants exploited fine weather to make the crossing from France to England in one day, arriving on beaches all along the south coast. Immigration law can be enforced by tightening border controls or by deporting those without a right to remain in our country, yet we see repeated reports of the failure of government steps to remove migrants who have already sought asylum elsewhere or have no right to remain for other reasons. Last week, a charter flight took off for Spain that was meant to carry 20 such migrants; in the event, only 11 boarded the plane, after late legal challenges. The week before, the Government abandoned a similar flight with 23 migrants on board, after last-minute legal action. Many thousands are attracted to dangerous ways of entering the UK, because the authorities are known to be useless at enforcing the law.

We have passed many laws and regulations in recent years, including in 2014—when I had the pleasure of supporting the then Home Office Minister, my noble friend Lord Taylor of Holbeach—but enforcement has been weak. As a result, businesses, banks and landlords play a big part in policing the rules at very considerable cost to themselves—as I remember well from Tesco. Yet immigration continues to increase. There are large numbers here illegally, both putting pressure on our public services and housing and risking ill treatment and exploitation—for example, in modern slavery or in dangerous low-paid working environments.

The Bill focuses on the EEA and Switzerland, and migrants arriving from those countries are not exempt from the problems that I highlighted. There is never-ending pressure on the EU's southern and eastern borders, and the growth of hotspots of deprivation in EU urban centres. This phenomenon, most shockingly shown by the queues across Europe a few years ago, helped to bring us Brexit. The Bill must provide the powers we need to tackle these issues properly or we will never be forgiven.

Against this background, I have some questions. First, where are the enforcement provisions that will apply to the Bill and regulations made under it? What are the fines and criminal sanctions that apply and to whom? Secondly, the Bill contains powers to amend primary legislation elsewhere. Can that include enforcement provisions and how would such powers be limited? Thirdly, what are the enforcement authorities—the Border Force, the police, local authorities, the Home Office or the DWP?

Fourthly, what resources are available for enforcement and how much will they be increased? For example, the UK points-based immigration system, set out in CP 258 and at the useful briefing arranged by my noble friend the Minister, requires a huge new administrative structure post Brexit and an ESTA-style system involving millions of individuals every week. According to the department's interesting impact assessment—thank you to the Home Office for doing one, by the way—there were 142.8 million passenger arrivals in 2018. That included nearly 41 million from the EU and 20.5 million non-EEA citizens. That necessitates

[Baroness Neville-Rolfe]
a lot of checking. Add to that the pressure on our authorities of the illegal attempts I described earlier, the complications of Covid and post-Brexit trade, and you have a case for much more resource.

Fifthly, what scope is there for the use of technology to ease the obvious pressures on our enforcement? Does that also have downsides that have been anticipated?

Finally, will the Minister take another look at the economics of deportation flights? At Second Reading, I suggested the Government take advantage of the current market to buy some small planes for this purpose. Having some experience in this area, I was not happy with the response in the Minister's letter. Given the failure rate and the apparent ability of lawyers to delay deportation on flimsy grounds, I am sure it would be cheaper, in the longer term, than charter flights. I am clear that, given media coverage and public concern, the public would not put up with the use of scheduled or mixed flights for that purpose. This approach would generate more confidence, and we need that. I urge the department to work with the Treasury if necessary to do a proper cost-benefit analysis, rather than applying some narrow procurement mantra.

In conclusion, I support Clause 1. However, we need to be clear about the rules for enforcement and entry. The other amendments in this group cover other aspects, and I look forward to colleagues making the case for these, although I must admit to reservations about some of them.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, in following the noble Baroness, Lady Neville-Rolfe, I agree with her that we need to tackle modern slavery and exploitation in the UK and that this is something the Government need to properly fund and prioritise, focusing on the exploiters, not the victims. I am, however, speaking in direct opposition to her statement as I am opposing Clause 1.

Today marks another step in the robbing of rights from millions of Britons that they were born with and the removal of rights for future generations. Clause 1 is a key step by which freedom of movement for Britons and to Britain ends. I believe we should not allow the destruction of rights and freedoms for Britons to pass unmarked, which is why I have put down my intention to oppose Clause 1 standing part of the Bill.

As I did that, I was thinking back a couple of years to a rally in the centre of Brussels, held in ankle-deep snow, where I heard from lots of Britons who had come from across the continent to talk about how freedom of movement had changed and improved their lives. In particular, I think of a woman who, when young, had upped sticks when her life in the UK had not worked out, moved to several European countries over the years, built a couple of different careers and made a full, interesting, varied life for herself. She came from a very poor area of England and from a family with few financial resources. But she had bought a cheap coach ticket, shifted across a continent and found opportunities, interesting experiences and a comfortable place for herself in the world.

The wealthy have always been able to do this and, no doubt, will always be able to. Many an aristocrat set out on the Grand Tour and, by choice, never came home. Many a black sheep from a wealthy family snuck off to the continent and rebuilt their life away from scandal. The arrival of freedom of movement meant the chance for everybody to exercise that freedom to seek the opportunities, the experiences, the enhancements of life that change can bring and the chance to meet new and different people, learn a new language and find a different culture, environment and way of life.

Making that opportunity available to all was a huge step towards balancing inequality, and now it is being wiped out. All our lives are much poorer with the loss of freedom of movement. Of course, it has also been a safety net. British builders escaping the deprivations of 1970s Britain in Germany became a stereotype, but it was a fact. In our shock-ridden, insecure and unstable world, how vital might that right have been to many in the future?

As a noble and learned Lord pointed out to me when I was discussing my intention with him, I do not have the power to simply restore that movement right for Britons. That right is granted by other states under EU membership, which we have now lost, and all those rights will go when we end the transition period at the end of this year. These are rights, incidentally, that quite a number of Members of the House of Lords have availed themselves of. Freedom of movement exercised before the end of December will continue, unless by tearing up the withdrawal agreement signed just eight months ago, as was being threatened this morning, Boris Johnson puts into question the rights of the 1.3 million Britons who thought they were secure through their existing residence in the EU. What I am proposing would keep the rights of citizens from EU states in the UK. But the principle of reciprocation is strong, and we could, in accepting these rights, expect that reciprocation.

Moving countries is something that many people will never consider. My aim will always be for a world where no one is forced to leave their home by poverty, war, discrimination or environmental crises. But there are always people for whom this is an exciting idea: for some, the possibility of escape is attractive, and for others, the possibility of a fresh start they cannot find in their birthplace is essential.

We are also denying ourselves the talents, skills and energy of people from across the continent, who, without free movement, will not have the same opportunities their elders enjoyed. I am sorry about that too.

When young British people ask me what I did to keep their freedoms and opportunities, I will be able to say I did my best to defend them. I ask Members of your Lordships' House: how would you answer that question? I am not going to ask Members to put their votes on the line today, but I intend to in the future.

3 pm

Lord Pannick (CB) [V]: My Lords, that was indeed a passionate speech.

When I was a first-year law student at Hertford College, Oxford, we learned that apparently the Roman Emperor Caligula ordered that laws should be displayed in small letters as high up as possible to make it difficult for people to know their legal rights and obligations. Amendment 3 focuses attention on an extraordinary provision in this Bill—paragraph 4(2) of Schedule 1—which, if enacted, will make it impossible for people today to understand their legal rights and obligations.

Paragraph 4 is concerned with the EU regulation on free movement of workers. Paragraph 4(1) is a model of clarity; it says that Article 1 of the regulation "is omitted". However, paragraph 4(2) displays the parliamentary draftsman at his or her most coy. It is so extraordinary that it must be read out:

"The other provisions of the Workers Regulation cease to apply so far as—

(a) they are inconsistent with any provision made by or under the Immigration Acts (including, and as amended by, this Act), or

(b) they are otherwise capable of affecting the interpretation, application or operation of any such provision."

It is simply not acceptable that when people want to know whether a provision of an EU regulation continues to apply, they must ask themselves whether the provision is

"capable of affecting the interpretation, application or operation"

of a provision of the immigration Acts. This is drafting so opaque that it puts a brick wall between the individual and the law which applies to him or her. It is drafting so lazy that it is comatose. The same woeful drafting technique also appears in paragraph 6(1) of Schedule 1, a provision addressed in Amendments 4 and 5 in this group tabled by the noble Baroness, Lady Hamwee, which I support. If the Government want to ensure that provisions of a regulation cease to apply, they should say so with clarity.

Amendment 3 is in my name, and in the names of two other members of your Lordships' Constitution Committee, the noble Baroness, Lady Taylor of Bolton, our chair, and the noble Lord, Lord Beith. The Constitution Committee's report, published last week, drew attention to paragraph 4(2) of Schedule 1 as unacceptably vague and inevitably productive of legal uncertainty. We quoted the evidence given to the Commons Public Bill Committee by Adrian Berry, the barrister chair of the Immigration Law Practitioners' Association. He said of this provision:

"You need to make better laws. Make it certain and put on the face of the Bill those things that you think are going to be disapplied because they are inconsistent with immigration provisions."—[*Official Report,* Commons, Immigration and Social Security Co-ordination (EU Withdrawal) Bill Committee, 9/6/20; col. 52.]

I agree. Basic standards of legislative drafting need to be upheld. Paragraph 4(2) of Schedule 1 is way below what is acceptable. I can think of no precedent for such a provision.

I hope that the Minister says that she understands the objection to this provision and that she will bring forward a suitable amendment on Report. I give due warning that if the Government do not address this concern, and if other noble Lords share my concern, I will return to this topic on Report.

Lord Beith (LD): My Lords, I support the amendment and the arguments advanced by the noble Lord, Lord Pannick. I apologise if the Committee starts its debate on another report from the Constitution Committee before this section is concluded.

In many respects this is a skeleton Bill, and in this area it changes significant amounts of primary legislation into secondary legislation, therefore making it open to less effective parliamentary scrutiny when powers are used. If something needs to be changed because of inconsistency, then the face of the Bill is the place to put it, but here we are with the concept of inconsistency so subjective and vague that it is difficult to imagine how a court would interpret it. Is

"otherwise capable of affecting the interpretation, application or operation of any such provision"

restricted to precluding the operation of the Act, or does it extend to casting doubt on provisions in this Act? What is it supposed to mean?

In our report on Brexit legislation, the Constitution Committee said that

"delegated powers should be sought only when their use can be clearly anticipated and defined",

yet in this Bill we get terms such as "appropriate", "in connection with" and the ones which I have just quoted. It is an unsatisfactory way of drafting, and I am bound to wonder what instructions were given to the parliamentary draftsmen when they worked on this section.

The Constitution Committee has had quite a bit of discussion over the last couple of years about the drafting of legislation and the circumstances in which parliamentary draftsmen should say, "No, this is not a way in which we write laws, this is not acceptable", and if a dispute arises, then not only departmental Ministers but also law officers should be involved in defending the basic principles of law. Having looked at these provisions, which I hope the Government will find a way to remove, we concluded that

"they risk making a complex area of the law even more difficult to navigate and understand for practitioners and individuals alike",

and that they threaten to

"frustrate essential ingredients of the rule of law."

These seem to me to be compelling arguments for the Government to have more thought on this issue.

Baroness Prashar (CB) [V]: My Lords, the proposed new clause in Amendment 60, which has cross-party support and is sponsored by the noble Baronesses, Lady Fookes, Lady Garden of Frognal, and Lady Morris of Yardley, is largely self-explanatory. If accepted, it would continue allowing minors to travel from the European Union, other European Economic Area states and Switzerland to the UK on identity cards rather than passports beyond 31 December 2020.

Large numbers of junior nationals from these jurisdictions travel to the UK every year for school exchange visits, English language courses, adventure holidays and a range of sporting and cultural activities. Last year over 150,000 European Economic Area juniors travelled to the UK for English language courses alone, many of them travelling in groups for study programmes that lasted for less than two weeks. This is an invaluable cultural and educational exchange that builds friendships and fosters good will between the UK and other nations. Most of these students

[Baroness Prashar]
currently travel on identity cards. Many do not own passports but travel freely on identity cards throughout the EU and EEA states with no need for passports.

A survey last year by English UK, the trade association for English schools, showed that, in 2019, 90% of under-18 EU students who came to this country did so on an identity card to study at colleges accredited by the British Council, an organisation on which I served as a deputy chair for six years. The parents of these under-18s do not want to go through additional bureaucracy or incur the cost of getting a passport, having saved for the cost of the trip itself. Furthermore, if just one junior due to travel in a school exchange group was without a passport, the viability of the whole visit could be put in jeopardy. If this travel on identity cards ceases, the UK will lose out to other countries and its position as a popular destination could decline. This new clause would help to rectify the situation and sustain the UK's position as a popular destination. I emphasise that the proposed extension of identity card-based entry for under-18s coming to the UK for a single stay of no longer than 30 days in any calendar year would mean that this concession would be available only to those presenting little or no border security issues or risk of abuse.

Some may object that allowing the continuation of ID card travel presents the UK with an unacceptable security risk. EU citizens with settled status will be allowed to continue to travel on ID cards, so why not children coming for short-stay trips, largely travelling in large managed groups?

Furthermore, the EU passed a regulation last year to increase the security of ID cards issued in EU states. The regulation requires that within two years of June 2019, all new ID cards need to be machine-readable biometric cards. Existing cards will be phased out by 2023 if they are not machine readable. This will bring the security features of ID cards into line with those of passports.

As this small exception would be a continuation of an existing procedure, I do not believe it would be very complex to administer. If the clause is accepted, it will be welcomed by our European partners as a significant gesture of good will. It is also worth noting that Iceland, Norway and Switzerland allow travel for EU nationals on an ID card, so I urge the Government to accept this amendment.

Lord Green of Deddington (CB) [V]: This is rather a mixed bag of amendments. I would like to return to Amendment 1, on enforcement; a very useful amendment proposed by the noble Baroness, Lady Neville-Rolfe. As she so clearly described, enforcement has long been one of the weakest points in our immigration system. Indeed, enforced returns have been in steady decline for years. They fell from 16,000 in 2010 to just under 7,000 in 2020—that is more than half—and that was the lowest level since records began. Voluntary returns have also fallen since 2015. Partly as a result of these failures, we now have 90,000 immigration offenders living in the community; that is somewhat more than the size of the British Army. Furthermore, more than half of them—about 55,000—no longer even bother to report to the Home Office as they are supposed to do: they have simply disappeared.

I shall make three brief suggestions about how this could be tackled. First, we should adopt a much tougher approach towards those countries that take an unreasonable attitude to taking back their own citizens—India, Pakistan and Iran come to mind, but there are a number of others. As noble Lords will know, illegal immigrants frequently destroy their documents, and these countries usually refuse to accept the biometric identity documents that the British Government produce for them. I think that our willingness to issue visas for the UK should take this attitude into account.

Secondly, we also need to retain—indeed, restore—the detained fast-track system for asylum claims that are obviously very weak. It was very effective for some years, but was quietly dropped by the Government quite recently after several years in a legal morass. Thirdly, we should be much more effective in enforcing the laws on illegal working. It is clear that this is a major pull factor for illegal immigration.

Finally, a particular difficulty facing the new immigration system is that of preventing EU visitors and other non-visa nationals working while in this country. A report to Parliament on enforcement, as proposed in this amendment, would be a valuable first step.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): The noble Baroness, Lady Taylor of Bolton, has withdrawn from the debate, so I call the noble Baroness, Lady Ludford.

3.15 pm

Baroness Ludford (LD): My Lords, I very much regret the end of free movement rights. This has often been presented as a one-way system, as if it applied only to nationals of other EEA countries inward to the UK, but it has of course been a two-way system, and something over 1 million UK citizens have taken advantage of their free movement rights to live, work and settle in other EU and EEA countries. When I was an MEP, I was proud to work on the 2004 citizens' rights directive, which is often called the free movement directive. We did not get everything we wanted, as the European Parliament did not have quite the rights over legislation that it has today. However, it allowed lots of people who were not particularly well off to take advantage of EU rights to move, live and work abroad—it was democratised, if you like.

I fear that there could well be resentment in future, as divisions appear between those who retain a right to move around and those who do not. I also think that some British citizens who currently enjoy EU free movement rights may not fully have taken on board what is about to hit them. When I talk about divisions, for instance, there are those who will be able to get an Irish passport. I declare an interest here: apparently—I did not realise this until a few years ago—I am already an Irish citizen because my mother was born in Dublin. I have not yet got round to applying for the passport. I put it off partly in the hope that somehow Brexit would be averted, and also because I feel a little sheepish about my right to it. But I have not had to apply for Irish citizenship, as it has sort of fallen out of the sky, courtesy of my mother—or her mother, I should say.

There will also be people with means who will be able to move abroad. We know that it is possible to buy so-called golden passports in some EU countries. There are also investor visas. One way or another, it is not going to be the rich who will be affected by the grab of free movement rights.

This Bill is largely about the future of EU and EEA citizens in the UK and them coming under immigration control, but as the organisation British in Europe so splendidly details, we must remember the difficulties for UK citizens in EEA countries.

Reference has been made to Amendments 4 and 5, which my noble friend Lady Hamwee will probably talk about. The noble Lord, Lord Pannick, talked about Amendment 3. These amendments are similar in that they are objecting to wording about powers,

"capable of affecting the interpretation, application or operation of any provision … under the Immigration Acts … or … capable of affecting the exercise of functions".

The two committees that have very helpfully reported to us—the Constitution Committee and the Delegated Powers Committee—have pointed out the legal complexity of immigration law. It is a complicated policy area. I think it was the Constitution Committee that said,

"the complexity of law had developed to the point that it was a serious threat to the ability of lawyers and judges to apply it consistently—not to mention raising rule-of-law concerns as to the ability of the general public to understand the law to which they are subject."

This is the system into which we are catapulting EEA citizens who, up to now, have enjoyed the protection of EU law. I hope they continue to enjoy the complete protection of the withdrawal agreement, but noises off in the last 24 hours have not reassured people of the Government's commitment to upholding all the provisions of the agreement.

This is a complex area. I know we are going to talk about the Immigration Rules on a later amendment but, as this Bill does not set out the domestic immigration framework that will apply to EEA citizens, there is understandable nervousness. One of the things that people are worried about is a retrospective demand to show private health insurance—the famous "comprehensive sickness insurance". The Minister will know that it is interpreted by the European Commission—and was always understood when we were legislating on the citizens' rights directive—that in a country such as the UK, which has a national health service, free at the point of delivery, the right to use the NHS is the comprehensive sickness insurance for people paying tax and national insurance. They should not be required to have private health insurance. There is a lot of worry that when people come to apply for citizenship the Government will say, "Show us that you had private health insurance all the time that you have been resident in the UK." Perhaps the Minister will be able to reassure me on that point.

Colleagues in my party and, indeed, people in other parties believe that there should be an automatic system instead of the EU settlement scheme, which is an application system. A letter went to the Prime Minister yesterday from representatives of five parties, including my friend in the other place Alistair Carmichael MP, urging the Government, even at this stage, to replace the settled status process with an automatic right to stay for EU citizens, guaranteed in primary legislation, as a declaratory system. It is something that we have persistently asked for and will not stop asking for. I see that the Minister looks dismayed.

One group—I think it was the Law Society of Scotland—raised an interesting question. Perhaps the Minister can clarify this. It asked whether Clause 1 is necessary in the light of powers in the EU withdrawal Act 2018 for Ministers to repeal retained EU law. I would be grateful for her guidance on that subject.

Finally, I thoroughly support Amendment 61 on EEA citizens having access to eGates, which the noble Lord, Lord Paddick, will speak to.

Baroness Fookes (Con): My Lords, before I turn to Amendment 60 to which I have added my name, can I say, as a member of the Constitution Committee and a former chairman of the Delegated Powers Committee, I agree wholeheartedly with the searing criticism from the noble Lords, Lord Pannick and Lord Beith? I am appalled that we should start to have laws that are incomprehensible. It might be meat and drink for the satirist, but it should be no part of our arrangements.

By contrast, the amendment to which I have added my name, that of the noble Baroness, Lady Prashar, is clear, straightforward and simple to understand. The noble Baroness gave a very good account of it and its intentions so I will not repeat them now for lack of time, but I want to make a serious point. If young people—minors—are not able to come to this country without a full passport, it is unlikely, when things return to normal, that many of them will come at all. They are far more likely to go to some other English-speaking country—one thinks immediately of the Republic of Ireland or even Malta. One might even think of the Netherlands, where it seems to me that they sometimes speak English better than we do.

Be that as it may, this is a very real worry. It is bad enough that young people have suddenly stopped coming over to schools and organisations as a result of Covid-19. Such organisations are in dire straits and we do not want to put some ghastly obstacle in their way as things gradually return to normal. I hope that my noble friend the Minister will look carefully at this to see if we can simply have the identity cards, which are used at the present time and are simple and easy to use. They would be using only those that are properly instituted by the various countries of the EEA and Switzerland.

There is a further problem, looking forward. Many people first come to this country as a youngster on an exchange. Very often they will return, perhaps for higher or further education. We do not want to cut that off at the beginning. That would be extremely short-sighted.

Some areas of the country have a number of language schools. I am thinking of where I live in East Sussex where, within quite a small area of Hastings, St Leonards and around, there are three notable language schools. The same could be said of the constituency in Plymouth of which I had the honour to be the MP. If one looks round at some of the seaside resorts, one will find a good many more there too.

[Baroness Fookes]

This is a useful, small part of the major issues of which this Bill is party, but I believe it is very important and I hope that my noble friend will be inclined to accept the amendment.

Baroness Morris of Yardley (Lab): My Lords, along with the noble Baroness, Lady Fookes, I support Amendment 60, which the noble Baroness, Lady Prashar, spoke to so ably. It is a good thing for young people to come over to learn English here or to have adventure holidays or to do an exchange. We can all remember it if we had that opportunity. Those who, like me, were teachers, knew the benefit for children, and the children and grandchildren of many of us have taken this opportunity.

I cannot think of one reason why we would want to make it more difficult for these things to continue. It is one of those things that we can all agree on—it is what we would want for young people, whether they are our own children or somebody else's. It is not just meeting people and learning the language, there is something about it that, perhaps, you only realise as you get older. The seeds that you sow in those early years, culturally and in terms of understanding, stay with you for life. Even if you do not come back to university in the United Kingdom in a few years' time, in your heart you remain friends with somewhere you have been as a young person. I had an opportunity to be an exchange student in America when I was doing my teacher training. It has had a huge effect on me throughout my life. There is an affection, a loyalty and an understanding that I have never lost. Why would we want to make it difficult in the future for more children to have an opportunity like that?

There is a problem with the Bill. I do not think it is intentional, but an unintended consequence of the rules and regulations. It is not just a few young people who would be affected; most young people in this group travel with identity cards rather than passports, and that certainly makes it easier for the group organisers. If a card is lost, it is easier to replace it when you are abroad than it is to replace a passport. Quite simply, it is an extra cost, and parents will have choices—there are English-speaking nations other than ours that their children could visit. Therefore, it will make a difference. Schools are already trying to recruit for next year and they will be put at a disadvantage because we are now putting a further barrier in the way.

The noble Baroness, Lady Prashar, outlined the solution very clearly. Along with people who are here with European Union settlement status, for the next few years—at least, while we think this through—there should be the opportunity for people to make this kind of journey, restricted to 30 days once a year and very often to language schools approved by the British Council, with an identity card, rather than putting a barrier in their way and making them have a passport if they make such a journey.

3.30 pm

Baroness Garden of Frognal (LD): My Lords, having been reprieved from the Woolsack, I rise to speak on Amendment 60, to which I have added my name and which was so ably introduced by the noble Baroness, Lady Prashar, and to which the noble Baronesses, Lady Fookes and Lady Morris, have also spoken persuasively.

In the post-Brexit landscape, preserving good relations with our EU neighbours is of the utmost importance. Of course, freedom of movement is ending but that does not mean that we need to create unnecessary barriers to cultural exchange and destroy all the good will and soft power benefits created by school exchange visits, English language study programmes, sports, culture, leisure holidays and the like.

As someone who has covered, among other policy areas, education, rural affairs and tourism, either from the Opposition Front Bench or as a coalition Minister and Whip—we were multitalented in coalition—I can certainly attest to the important educational role played by school exchanges and the opportunities they afford our children to experience other cultures, as well as the economic contribution that the English language teaching sector makes to, for instance, rural and seaside communities here in the UK. Equally, the sector plays an important export role, as evidenced by its membership of the Education Sector Advisory Group, run out of the Department for International Trade.

As a linguist who studied French and Spanish at university before going on to teach both languages here and in Germany, I know the value of spending time in the country of the language being learned—it really is the best way to do so. I was a child in France and a student in Spain, and I lived in Germany with my RAF husband, where, as a French and Spanish speaker, I managed to get a job teaching in a German school, so I learned quite a lot of German as well. I fully agree with some of the other arguments that have been made in support of this proposed new clause. They are also familiar to me as a co-chair of the All-Party Parliamentary University Group and a vice-chair of the All-Party Parliamentary Group on Modern Languages.

As has been mentioned, many Europeans under the age of 18 do not own passports and their parents will find it expensive, cumbersome and unnecessary, in the ordinary run of things, to obtain them. If these trips do not go ahead because one or more of the children in a group does not possess a passport, that means that UK teenagers are likely to miss out too. School exchanges are just that—reciprocal exchanges. If schoolchildren from Europe cannot travel here for lack of a passport, ours are unlikely to be hosted by their counterparts in France, Germany, Belgium, Spain or other countries.

Currently, nearly 40% of UK children in our secondary schools take part in at least one international exchange visit during their school careers. This rises to nearly 80% of teenagers at independent schools in the UK. Therefore, while privately educated children from the independent sector may go on exchanges to wealthier parts of Europe, where parents may have less financial difficulty in obtaining a passport for their children to come to the UK, pupils in state schools could be very badly affected by this.

The stated aim of the Government is to boost these sorts of trips for all British schoolchildren, given the life-changing experiences and academic opportunities that they can afford them. However, the Government

can hardly be said to be promoting this if one of their first acts is to place barriers in the way of under-18s from the European mainland coming here. A simple amendment to the Bill, in the form of this proposed new clause, allowing these children to continue to come to the UK on their national identity cards for short visits, would resolve this issue. As a former member of the EU Sub-Committee on Home Affairs in this place, I too look forward to hearing what the Minister has to say. This amendment will do the Government no harm and will generate a great deal of international good will.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am delighted to follow the noble Baroness. I associate myself with comments made during this debate by the noble Baroness, Lady Bennett, the noble Lord, Lord Pannick, and my noble friend Lady Neville-Rolfe, and I would like to ask a couple of questions in this regard.

If the purpose of the Bill is to repeal EU law on the free movement of people and if the provisions are not already enshrined in retained EU law elsewhere, can my noble friend the Minister take this opportunity to explain why, as has already been mentioned, Clause 1 is required? Like others, I would like to say how much I benefited from the free movement provisions—which have been in place since 1973—as a student and then as a stagiaire in the European Commission. I went on to practise European Union law before becoming an adviser to, and eventually being elected to, the European Parliament.

I come to my main concern with Clause 1. Can my noble friend put my mind at rest that, in repealing EU law on the free movement of workers from the EEA and Switzerland, we will still have access to a constant supply of labour in essential services such as health and social care? I would also like to add food production, farming, and vegetable and fruit growing. I know that the amendments failed in the other place, but I hope that my noble friend will look very carefully at this with fresh eyes.

It is also extremely important to ensure that those whom we welcome from the EEA and Switzerland after 1 January 2021 are made to feel welcome and are employed and given access on exactly the same basis as UK nationals. In this regard, will my noble friend confirm that migrants will continue to be employed on the same basis as UK nationals? Will the principle that has existed to date of non-discrimination on the grounds of nationality still apply, so that no employer can discriminate between a UK national and an EEA or Swiss national who might find employment in this regard?

I am conscious that there have already been a couple of very unfortunate cases of Covid-19 outbreaks in food processing plants, partly due to the fact that the working environment is very cold but also partly because, by necessity, the employees probably sit very close to each other. We will obviously need to revisit many of these conditions going forward, but will the principle of non-discrimination on the grounds of nationality still apply to the Bill and other provisions?

Given my background, I have some sympathy with those who have put their names to and supported Amendment 60, and I will listen very carefully to what my noble friend says in replying to that debate.

I support the comments of the noble Lord, Lord Pannick, who spoke to his amendment. I regret the lack of transparency and what appears to be very poor drafting, and, again, will listen very carefully to what my noble friend says in summing up on that. However, as regards this amendment, those are the questions I would like to put to my noble friend at this stage.

Lord Kerr of Kinlochard (CB) [V]: My Lords, I strongly support what was said so authoritatively about Amendment 3 by the noble Baroness, Lady McIntosh, and the noble Lord, Lord Pannick, supported by the noble Lord, Lord Beith, and the noble Baroness, Lady Fookes. We need to hear what our Constitution Committee has said, and I hope the Minister will tell us that the Government will do this.

My purpose is to say a few brief words on Amendment 61 in the names of the noble Lord, Lord Paddick, and the noble Baroness, Lady Hamwee. Before I do so, I want to say a quick word on the wider context. Admirable though the quality of this debate is, I cannot help feeling that we are fiddling while Rome burns. In Downing Street, it seems that the Government are planning to take powers in the internal market Bill to override certain provisions of the withdrawal agreement—in particular, Articles 5 and 10 of the Irish protocol. Tearing up ratified treaties is what rogue states do; sanctions usually follow. If such a proposal were put to us, I would expect us to examine it particularly stringently. I cannot recall any precedent in UK diplomatic history. What we are doing today is important, but what we might have to do then would be historic.

Turning to Amendment 61, it seems to me that it is either completely unnecessary or absolutely essential. I hope the Minister will be able to assure us that it is unnecessary because the Government have no intention of making our closest neighbours stand in a queue at the frontier. If she cannot make this assurance, we must surely ask the Government to think again.

It seems highly likely that, for the next few years, the relationship with the EU will become damagingly rebarbative. That would, of course, become a racing certainty if we tore up the withdrawal agreement, but even if we do not, the disruption, the economic damage and the inevitable frontier friction—deal or no deal—is likely to drip poison into the relationship for some time to come. So we should be careful about choosing to add insult to injury. We have left the EU, but we do not need to leave Europe. If the noble Baroness, Lady Hamwee, is right to detect a risk, we would be right to support her Amendment 61.

Lord Paddick (LD): My Lords, I have Amendment 61 in this group, and I am grateful for the support that it is receiving. Clearly, the Government say that EU citizens will be allowed to continue to use e-passport gates at airports after the end of the transition period, but that is the problem. From what I can see, as a result of leaving the European Union, far from ending free movement of people, the Government are effectively opening it up to the citizens of more countries outside of the European Union, the EEA and Switzerland.

[Lord Paddick]

I must make it clear that, like the noble Baroness, Lady Bennett of Manor Castle, and my noble friend Lady Ludford, I am in favour of free movement. The point I am making is that lack of enforcement means that, in practice, free movement will not end at the end of the transition period.

EU, EEA and Swiss nationals have been able to use the e-passport gates at UK airports because, under European Union freedom of movement rules, they have been entitled to come to the UK without restriction. With the UK's imminent departure from the EU, and the Government's commitment to ending preferential immigration from the EU, the Government were faced with turmoil at the UK border if EU, EEA and Swiss nationals were not able to use the e-passport gates but had to be manually checked by Border Force staff; the queues for non-EU passport holders were already verging on the unacceptably long. Rather than remove the ability of EU citizens to use e-passport gates, the Government extended their use to citizens of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States of America, thereby delivering on their promise not to give EU citizens preferential immigration rights, as these are now shared with the citizens of some non-EU countries.

3.45 pm

Continued use of the e-passport gates means that, at the end of the transition period, and as set out in documentation from the Government, EU citizens will be able to spend up to six months in the UK with no visa and no stamp in their passport, and with no questioning of the purpose of their visit, how long they intend to stay, or how they are going to sustain themselves financially during their time in the United Kingdom. As far as I know, there is no way of checking whether they have left the UK before the six months expires—or gone to Lille for the day at the end of that time and then stayed here for another six months.

The Government may reply that these people will not be able to work or continue to live in the UK because of the hostile environment that they have created for those who plan to live and work in the UK illegally. Under the hostile environment strategy championed by the former Prime Minister, Theresa May, when she was Home Secretary, the onus has been put on landlords, banks, employers and even hospital staff to check the immigration status of those with whom they come into contact. However, according to a report in the *Times* on 3 September, an analysis of Home Office data carried out by the Institute for Public Policy Research found that these measures do not appear to be working.

The IPPR analysis comes up with different numbers from those given this afternoon by the noble Lord, Lord Green of Deddington, but it paints a similar picture. According to the report in the *Times*, since 2015, the number of undocumented migrants leaving the UK voluntarily has fallen from about 4,000 to 2,000 a year, and the number of controlled returns supervised by the Home Office fell from about 3,000 to less than 1,000. Research cited by the National Audit Office puts the number of people in the UK with no legal right to remain at more than a million.

Let us take the right to rent as an example: can an EU citizen or a citizen from one of the other B5JSSK countries—those who are allowed to use the e-passport gates—rent a property? Noble Lords might think not, but, in *A Short Guide on Right to Rent*, the Home Office advises that landlords can establish a B5JSSK national's right to rent by checking their passport—which will of course have no stamp to show when they entered the UK—together with evidence of the date they last travelled to or entered the UK. What happened to the solely digital system for proving immigration status? This evidence might be a boarding pass or an airline, rail or boat ticket, a booking confirmation, or

"Any other documentary evidence which establishes the date of arrival in the UK in the last six months."

The Home Office guidance also confirms that, although visitors have only six months' leave to remain in the UK, landlords who have conducted these right-to-rent checks correctly will obtain a statutory excuse against a civil penalty for 12 months from the date of the check.

So after the transition period ends, EU citizens can rent a property for six months from the date shown on any boarding pass or airline, rail or boat ticket they present to a landlord, who can rent the property to them for up to 12 months without fear of any penalty—a day trip to Lille on the Eurostar would provide new evidence of entry into the UK within the past six months. In fact, as long as someone has a ticket or a boarding pass, they may not even have to make the journey.

I asked at Second Reading how the Government will ensure that EU citizens who use e-passport gates at UK airports leave after six months, and ensure that, as the Government have promised, they cannot

"in effect live in the UK by means of repeat continuous visits."

After repeatedly asking for a response, last Thursday I finally received an email; I am grateful to the Minister for that, although a letter copied to others who spoke at Second Reading, with a copy placed in the Library, would be usual. The email says, among other things, that "we are satisfied" that the use of e-passport gates

"has been implemented in a way that will still allow the Home Office and these nationals"

—that is, B5JSSK nationals—

"to continue to prove their status in the UK, as we use various data sources to confirm time spent in the UK, not just date stamps, and we are able to confirm their status in the UK if needed."

My understanding is that, before they were allowed to use e-passport gates, about 1,600 United States of America citizens a year were refused entry to the UK by UK Border Force officials, mainly on the basis of the interview conducted at the border, where, among other things, the Border Force official was not satisfied that the passenger would leave the UK at the end of their permitted visit.

I understand that e-passport gates will deny entry only if an alert has been placed on the system against the passenger prior to their arrival in the UK. EU citizens seeking to live and work in the UK illegally are extremely unlikely to have an alert against their name. What data sources are the Home Office relying on to ensure that EU citizens leave before the end of their six-month permitted visit? I understand that the National Border

Targeting Centre screens incoming passengers, but that is not linked to passengers leaving the UK. If their systems do not detect—if indeed they can—that the EU citizen has not left the UK, what systems will the Government use to find that EU citizen among the 66 million residents and the estimated 1 million who are already illegally in the UK?

Rather than taking back control of our borders by ending free movement of people from the EU, the Government have effectively opened up free movement by adding citizens from seven more countries to the citizens of the EU member states, EEA countries and Switzerland who have unrestricted entry to the UK.

The analysis by the IPPR and the examples I have given suggest that it would be very difficult if not impossible to ensure that, once in the UK, they leave again. Apparently, the end of so-called uncontrolled immigration from the EU, itself a fallacy, was a major if not a potentially deciding factor in the referendum on our continued membership of the European Union. If leavers believe the UK is taking back control of its borders at the end of the transition period, the evidence suggests they have been misled.

Lord Adonis (Lab): The noble Lord, Lord Paddick, has raised pertinent points on which we look forward to hearing from the Minister. Like so many of the groups when we are in Committee, this is a massive catch-all group, and I sympathise with the Minister for having to cover so many bases at the end.

I completely sympathise with the noble Baroness, Lady Bennett of Manor Castle, in not wanting Clause 1, but we are a revising Chamber and have to take for granted that this broad power is going to be taken because it is consequential on us leaving the EU. The issue for us is what its specific and defined consequences will be. All the issues raised so far seem to be valid ones that we would wish to return to on Report if the Minister cannot give us sufficient assurance. On Amendment 60, tabled by the noble Baroness, Lady Prashar, I agree with everything that my noble friend Lady Morris said: it is vital we do not do anything to imperil the free exchange of students and young people in and out of the country. I cannot believe it is in the mind of the Government for that to happen. If this simple change in Amendment 60 can safeguard that, we should surely make that possible.

The noble Lord, Lord Paddick, and others have spoken powerfully about Amendment 61. The points made by the noble Lord, Lord Pannick, about the legal abuse involved in Schedule 1 were also very well made. Could I ask the Minister more about the consequences for British citizens when seeking to exercise their existing EU rights on the continent? One of the problems of legislating on this issue in real time is that it is not always clear to the House what we know and what we do not, and that will be important when we come to Report.

The big issue when we leave the EU is that the rights we take away from EU citizens are liable to be taken away from British citizens in respect of travel, work and study on the continent. As the noble Baroness, Lady Ludford, said, these are essentially reciprocal rights. It is hard to think that if we take the rights away from fellow EU citizens, they will not be taken away from us. The question is, what exactly are we taking away? The single biggest source of the exercise of these rights by UK citizens is those who want to travel as tourists and those who want to study, live or work on the continent. On the biggest group—those who travel—I want to ask the Minister if my understanding is correct because it will have some bearing on where we go on Report. My understanding at present is that for travel from 1 January 2021 no visa, or visa equivalents such as an ESTA, will be required for what are defined as short trips to the EU. Short trips are defined as 90 days in any 180-day period. I assume that that would be reciprocal. However, I quote from the Government website on changes from 1 January:

"You may need a visa or permit to stay for longer, to work or study, or for business travel."

Therefore, under the current withdrawal agreement—that said, almost everyone is concerned that this could all be thrown up in the air—is there agreement that visas will not be imposed on EU citizens coming here, or vice versa for short, tourist-related trips, but it is entirely open as to what will happen about visas or permits required for longer stays or for work, study or business travel? If I have got that right, what is the regime likely to be for working longer periods and business travel, which is of huge consequence to us?

Just as the noble Lord, Lord Pannick, said, we are legislating in the dark for the withdrawal of many rights of EU citizens coming here, it is also true that we are legislating in the dark for the rights that we are going to be taking away from UK citizens that they can currently exercise in respect of their travel and legitimate business on the continent. That is not sufficiently appreciated. Could the Minister confirm the situation? What is definitely agreed? My understanding is that short trips will definitely not be covered by visas or ESTAs. Also, what is the situation for other forms of travel, work and study, including business travel?

It may seem an unlikely alliance but I agree entirely with the noble Lord, Lord Green, and the noble Baroness, Lady Neville-Rolfe, about the integrity of the immigration system. There cannot be any doubt that one of the things that causes most public concern about extending the rights of people to come here is the fear that those rights will be abused. In principle, their concern about the implementation of Clause 1 is well-founded, and it does not apply to policing and monitoring of the immigration system just for EU countries, but for other countries. This amendment, which is just a probing amendment, asks for a report after 90 days on what progress Government are making and their policy on security.

As our legislative stages are a process of mutual learning, I wonder whether I could put the debate back to the noble Broness, Lady Neville-Rolfe, and the noble Lord, Lord Green—particularly to the noble Lord, who is probably one of the greatest experts in the country on the detailed working of the immigration system. I can see the Minister is smiling; the noble Lord creates a great deal of work for her and others. I do not begrudge that: it is the job of people in this House and in interest groups and policy groups to see that we are well-informed. It would be useful for us to know, if they want to retable this amendment on Report, what specific changes and improvement to the policing of

[Lord Adonis]
the immigration system they think Parliament should be considering. The noble Lord referred to recent changes to the policing and detaining of asylum seekers and illegal migrants. It would be useful for us to know what they would wish to do and see the Government report on within 90 days. That might get a more fine-grained debate on Report on what further steps we should take to police the immigration system.

4 pm

Although the Bill is partly to do with EU withdrawal, it is also an opportunity to legislate on immigration issues more widely. We should not lose the opportunity to see that the system is as robust as it could be. Unless it is robust, what the noble Lord, Lord Green, raised in his important Second Reading speech may happen: the fear that we could find that, in the guise of taking back control, we have lost significant further control over the immigration system—the remarks of the noble Lord, Lord Paddick, in this respect were well made. If that were to happen, the great British public would feel a deeper sense of betrayal than there is now about the whole way the immigration system is managed.

Baroness Hamwee (LD) [V]: My Lords, we on these Benches—I am on them virtually—make no bones about how much we oppose the ending of free movement. That includes both welcoming EEA citizens—the collective term which includes the Swiss for this purpose—and their families to live and work in the UK, and the equal and opposite right for British citizens in the EU. For myself, it offends my politics, my emotions, my values, my logic and, you might say, my whole outlook on life. However, I will endeavour to keep my remarks within the scope of the Bill and not to seek to reopen what has irreversibly been decided—although "irreversible" may have gained a new definition overnight—nor do I want to make a Second Reading speech.

What is relevant is that the Bill does not set out what will be in place of the current arrangements. Like the noble Lord, Lord Adonis, I am with the noble Baroness, Lady Neville-Rolfe, regarding the importance of the integrity of the system. We might want different systems, but what we have should be robust.

The noble Baroness and the noble Lord spoke in terms of enforcement—a term used in the amendment. I prefer to talk in more inclusive rather than exclusive terms. She talked about so many of the issues that we are addressing now, or failing to address. One must use the opportunity to say that the best way to address them is to create safe and legal routes to the UK. I do not want to divert on to the wider question of those who seek sanctuary, but I have to disagree with her approach and some of the language that she used.

By no means all of the new, much-heralded immigration system which will apply to EU citizens is yet in the public domain. The noble Lord, Lord Adonis, referred to UK citizens in the EU; he may see that Amendment 23, which we will come to later, may give us more of an opportunity to discuss their position. When the system is in the public domain, however, we will not be able to rely on it in the same way as we can rely on primary legislation because of the flexibility—would that be a polite word?—provided by the Bill. So much of our system is contained in rules which Parliament cannot realistically amend, and indeed often it takes an awful lot of background knowledge and experience, application and concentration to understand those rules. It is no wonder that the Government had some years ago to require a particular level of expertise to advise on immigration. The rules are difficult for most of us—other noble Lords may say that they waltz through them with no difficulty; I do not—and they are often impenetrable to those directly affected. I have too often heard Ministers say, "It is on GOV.UK." That is not everyone's bedtime reading. Indeed, however detailed the rules and however much they flesh out the Bill, it remains a skeleton.

My noble friend Lady Ludford and I have three amendments in this group, all to Schedule 1. The noble Lord, Lord Pannick, referred to the coy but comatose draftsman—I may use that term on other occasions—and my noble friend Lord Beith asked an important question about what instructions had been given to the draftsmen and draftswomen. After all, the responsibility lies with Ministers.

Amendments 4 and 5 take out some of the most offensive words in Schedule 1, which I do not think I need to read into the record again, as others have referred to them. They are wide and imprecise; there are references to "application or operation of" provisions, and

"otherwise capable of affecting the exercise of functions in connection with immigration."

If any of your Lordships on Opposition Benches were to produce amendments using that sort of terminology, we would quite rapidly be shot down, and rightly so, by the Government Front Bench.

A lot of functions are connected with immigration, and we will come on later to employment, renting property—the rest of the hostile environment. There are also all sorts of functions which I would accept are necessary but which I would not want brought within the repeal of

"rights, powers, liabilities, obligations, restrictions, remedies and procedures",

to which Section 1 applies.

Amendment 6 in our names would add words to the schedule by not applying it to rights which do not arise under an EU directive. Directives which do not relate to immigration include, in our view: the protection for victims of trafficking in the anti-trafficking directive—there is an amendment specifically on that—the protection for asylum seekers in the reception conditions directive 2013/33, and the protection for victims of crime in the EU victims' rights directive 2012/29. We do not suggest that we believe that these protections are at risk, but we do not know. If the Bill remains as it is when it becomes an Act, the only way to know for certain is to test the matter in the courts. The noble Baroness, Lady Neville-Rolfe, was critical in the context of removals from this country of applications to the courts. However, that is what they are there for, and they are applying law that has been made by Parliament, or by Ministers subject to the rather inadequate scrutiny that parliamentarians are able to give them.

On Amendment 6—this is something that has been identified by the Immigration Law Practitioners' Association; the noble Lord, Lord Pannick, mentioned the comments on the Bill by its chair, Adrian Berry—the

protections are potentially at risk as what the association describes as "collateral damage". We hope that they do not fall within the scope of the Bill, but I think it is a matter for the Government to explain what the position is. This is all about the lack of clarity, the bad rule-making, to which other noble Lords have referred, all offensive to the rule of law.

To return to the first amendment in this group, I welcome reports to Parliament and parliamentary scrutiny. I am hesitant to criticise or comment on the wording of the clause, having learned from the noble Baroness that the clerks were involved in crafting it, but I am not sure that the provisions of Schedule 1 are correctly described as enforceable. A provision within six months would take us beyond the end of the year. However, I should not carp about that sort of detail because, whatever the language, I understand that the supporters of Amendment 1 are seeking to ensure that free movement ends and that Parliament is told how. We have made our views about the first part of that very clear.

Before I finish, I want to mention the amendment by the noble Baroness, Lady Prashar. I thought the points made by noble Lords were very telling regarding the reference to soft power. I was reminded of listening to the European Union Youth Orchestra a couple of years ago in Edinburgh. That was a very special experience and it rather goes to why we are so distressed by what we are having to go along with in the Bill.

I think I have said enough not to have to refer specifically to our opposition to Amendment 1.

Lord Rosser (Lab): My Lords, this group of amendments seeks to address the issue of the lack of clarity in the Bill, not least in Schedule 1. I am sure we have reached the stage now where noble Lords want to hear the Government's response. I wish to comment briefly on three of the amendments in this group, although all of them raise issues of significance, as my noble friend Lord Adonis has said. That has become clear from noble Lords' contributions, even though noble Lords have not all been coming from the same direction.

Three days ago, we were sent a letter from the Government sharing illustrative drafts of regulations that they propose to make under the powers in Clause 4 of the Bill. One wonders why at least some of the terms of these draft regulations could not now be or already have been incorporated in the Bill and thus be open to proper parliamentary scrutiny.

Schedule 1 revokes Article 1 of the EU workers regulation, which provides freedom-of-movement rights. Paragraph 4(2) of that schedule provides that other parts of the workers regulation cease to apply so far as they are

"inconsistent with any provision made by or under the Immigration Acts"

or

"capable of affecting the interpretation, application or operation of any such provision".

This is a very broad drafting. Amendment 3, to which the noble Lord, Lord Pannick, spoke with his usual considerable authority, would remove paragraph 4(2), as it is so broad and lacks clarity. We share the concern that that amendment seeks to address.

No doubt the Minister, in giving the Government's reply, will be giving a pretty comprehensive list of examples of how and why, in the Government's view, other parts of the workers regulation might credibly become, first, inconsistent with provisions made by the Immigration Acts and, secondly, capable of affecting provisions made by or under the Immigration Acts.

4.15 pm

My name is attached to Amendments 4 and 5, to which the noble Baroness, Lady Hamwee, has already spoken. Alongside those specifically repealed, Schedule 1 provides that other EU-derived rights and powers cease to be recognised and available in domestic law so far as they are

"inconsistent with, or are otherwise capable of affecting the interpretation, application or operation of, any provision made by or under the Immigration Acts … or … they are otherwise capable of affecting the exercise of functions in connection with immigration."

"Capable of affecting" in particular is very subjective and generalised wording that could be interpreted to cover a multitude of circumstances and situations.

Amendments 4 and 5 would tighten up the wording to a degree, so that only parts of the EU-derived rights that are inconsistent with provisions made by or under the Immigration Acts can cease to be recognised or available under domestic law. Once again, these two amendments provide the Government with an opportunity in their response to persuade the House, through a clear explanation of the specific circumstances in which the power would be applied, that the wording in paragraph 6(1) of Schedule 1 is not in reality catch-all wording enabling the Government to do whatever they want without further full parliamentary scrutiny in relation to the recognition and availability in domestic law of EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures related to immigration.

As has been said, our Delegated Powers and Regulatory Reform Committee and our Constitution Committee have expressed themselves in pithy and forthright terms about the sweeping powers that the Government are seeking to grab under this Bill. We await the Government's response to this group of amendments with interest.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I thank my noble friend Lady Neville-Rolfe, supported by the noble Lord, Lord Green of Deddington, for her thoughtful amendment. I understand noble Lords' concern about the repeal of EU law relating to free movement set out in Schedule 1 and how that will be enforced. Before I address that, I want to pick up a question from my noble friend Lady McIntosh of Pickering, who wanted confirmation that the Bill was non-discriminatory. The whole point of this immigration Bill is that the whole world is treated the same, so I can confirm that.

Schedule 1 sets out a list of measures to be repealed in relation to ending free movement for EU, EEA and Swiss citizens, with the intention that both EEA citizens and their family members will fall within the scope of the Immigration Act 1971 and become subject to the UK's immigration control—for ease of reference, I will refer to this group as "EEA citizens" during the

[Baroness Williams of Trafford]
committee debates. This will create a level playing field for EEA and non-EEA citizens. Those EEA citizens and their family members who arrive here after the end of the transition period from January 2021 must have leave to enter or remain. The Government want EEA citizens who are resident in the UK before that date, and who wish to do so, to stay, and our focus has been on helping them to apply for that status. They can apply online for the EU settlement scheme free of charge. As of 31 July, we have received 3.8 million applications, with plenty of time until the deadline of 30 June 2021.

In order to protect those living in the UK before the end of the transition period, we propose to use the power under Section 7 of the European Union (Withdrawal Agreement) Act 2020 to save free movement rights otherwise repealed by Clause 1 of the Bill and Schedule 1 so that those EEA citizens and their eligible family members resident by the end of 2020 but who have not yet applied to the settlement scheme will continue to be treated the same until 30 June next year. This will ensure that they are able to apply to the EU settlement scheme by the deadline and retain their existing rights in the meantime. This includes pending the decision on their application after that deadline and pending the outcome of an appeal against any decision to refuse status under the EU settlement scheme.

During this grace period, immigration officers who encounter EEA citizens who are still able to apply under the EU settlement scheme will not take any enforcement action but may encourage them to apply by the deadline. Furthermore, we have always been clear that where EEA citizens and their family members have reasonable grounds for missing the deadline, they will be given a further opportunity to apply. We will take a flexible and pragmatic approach to this, and those who need it will be supported through the application process.

Ultimately, however, we are aiming to reach the position where EEA citizens who do not qualify for leave are treated in the same way as non-EEA citizens. As such, if they require leave to enter or remain in the UK but do not have that leave, they will be liable to the same sanctions and enforcement measures. These enforcement provisions are set out in the Immigration Acts and my noble friend Lady Neville-Rolfe has mentioned that those cover the rights of access to work, renting property and banking services. It would take a long time for me to list all the relevant provisions here, but I would be happy to write to my noble friend to set those out.

In response to my noble friend's question on whether this Bill can be used to amend the legislation, I do not think this is the right Bill in which to make any changes to enforcement provisions, which would need to cover both EEA and non-EEA citizens because it is limited to immigration changes as a result of EU exit. However, we are actively exploring legislative options to ensure that key elements of our immigration system, including around enforcement, can be tightened up. This work is at an early stage.

My noble friend also asked me about who the enforcement authorities are. They are primarily those of the Home Office Border Force and immigration enforcement, working in partnership with the police and other government departments, including the DWP, HMRC and the Ministry of Justice.

With regard to my noble friend's question about available resources for enforcement using technology and the economics of charter flights, which she was right to ask, planning is under way to factor in the requirements of the new points-based system and ensure that all aspects of operational resourcing, recruitment and training are fully delivered. These plans include the redeployment and/or recruitment of new staff where appropriate to deal with applications from EEA citizens. Part of our long-term vision has always been to make better use of digital technology and greater automation to improve the passenger experience while maintaining security at the border.

In terms of staffing, we will always ensure that the Border Force has the resources and the workforce needed to keep the border secure. We will also introduce electronic travel authorisations—or ETAs—for visitors and passengers transiting through the UK who do not currently need a visa for short stays or who do not already have an immigration status prior to travelling. I hope that answers the question of the noble Lord, Lord Adonis. This will allow security checks to be conducted and more informed decisions to be taken on information obtained at an earlier stage as to whether individuals should be allowed to travel to the UK. Therefore, the ETA scheme will add an additional security measure while also providing individuals with more assurance at an earlier point in their time about their ability to travel. The noble Lord also asked about longer-term visit visas for EU citizens, and he is right. Arrangements for longer visas will be set out in the Immigration Rules for people coming to the UK.

On my noble friend's question about charter flights, the majority of returns take place on commercially scheduled flights. Where a chartered flight is required, the Home Office procures the use of chartered aircraft through a broker to ensure competitive pricing and access to different aircraft and contractors depending on the requirements of the operation. We think that this blended approach provides the best value for money for the taxpayer. However, I will take her point back and ensure that it is made. I also assure noble Lords that the Home Office will be updating its published enforcement policy with regards to EEA citizens at the end of the transition period.

The noble Lord, Lord Green of Deddington, pressed that point about enforcing laws on illegal working, as did my noble friend Lady Neville-Rolfe. The overarching ambition of the illegal working strategy to tackle illegal working is to work with businesses to deny access to the labour market and encourage and ensure compliance. The illegal working strategy is intelligence-led and it focuses on three main areas: deterring illegal migration, safeguarding the vulnerable and protecting the UK economy,

The further report this amendment requires is unnecessary because policy guidance on enforcement is already published on the GOV.UK website. I can hear the noble Baroness, Lady Hamwee, virtually moaning from behind the screen on referring her to the website. However, I am sure noble Lords will join me in

encouraging all those who are eligible to apply before the deadline expires next June. On that note, I hope that my noble friend will withdraw her amendment.

I turn now to the opposition of the noble Baroness, Lady Bennett, in total to Clause 1. The clause introduces the first schedule to the Bill, which contains a list of measures to be repealed in relation to the end of free movement and related issues. Noble Lords have asked whether it is needed at all. It fulfils a purely mechanistic function to introduce the schedule. Without Clause 1, we cannot deliver on the will of the people in the 2016 referendum result; we cannot end free movement without repealing Section 7 of the Immigration Act 1988.

In line with long-established practice, the detail of this future system will be set out in the Immigration Rules rather than in this Bill and it will be in place from January 2021. It is of paramount importance that, as an independent sovereign state, the UK must have the ability to forge its own immigration policy and depart from EU law. The people of the UK gave us the mandate to end free movement when they voted to leave the EU and the Government gave a commitment in their manifesto to deliver on that mandate. The people are now expecting us to uphold that commitment; Clause 1 is essential to doing so and this House should not stand in the way of delivering what is a priority for the people of this country. I hope that the noble Baroness, Lady Bennett, withdraws her opposition to Clause 1.

I turn now to Amendments 3 to 6. I thank the noble Lord, Lord Pannick, and the noble Baroness, Lady Hamwee, for speaking to their amendments. Their purpose is to retain rights derived directly from EU law after the end of the transition period. I say to the noble Lord, Lord Pannick, that, unlike Caligula, I am not going to put the law up at a height and in small writing so that people cannot read it.

However, I know that the noble Lord has an issue with paragraph 4(2) of Part 2 of Schedule 1 to the Bill, which disapplies directly effective provisions of the workers regulation where they are capable of altering the interpretation, application or operation of any part of the Immigration Acts. His amendment seeks to remove this paragraph, meaning that provisions within the workers regulation, which may be inconsistent with those in the Immigration Acts, will continue to apply.

4.30 pm

For example, as we set out in the Explanatory Memorandum to the Bill, article 10 notes:

> "The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions."

If the noble Lord's amendment were accepted, it would permit an EEA citizen to claim a right of residence here if their child was in education here. It does not support the ending of free movement.

Paragraph 4(2) of Schedule 1 does not prevent the child of an EEA citizen who is legally resident and employed in the UK being able to rely on article 10 to access UK education on the same conditions as a British citizen. This remains unchanged by the Bill as it relates to education and not immigration. However, I note the noble Lord's criticisms and will arrange a meeting before Report with noble Lords on this provision so that we can perhaps go through it more fully.

Paragraph 6(1) of Schedule 1 disapplies directly effective rights under EU law to the extent that they conflict with domestic immigration law or immigration functions. The amendments of the noble Baroness, Lady Hamwee, would instead allow directly effective rights to be retained in an immigration context. Directly effective rights are rights conferred on individuals in EU law that can be relied on in national courts, even without national legislation transposing them.

The European Union (Withdrawal) Act 2018 incorporates EU law into UK domestic law at the end of the transition period. It incorporates directly effective rights deriving from EU directives and treaties. If no action is taken to curtail those rights, they will continue to apply and be available in UK law after the transition period. EEA citizens could then attempt to rely on those rights to resurrect provisions of EU free movement law which had otherwise been repealed by the rest of this Bill.

I mentioned in response to the opposition of the noble Baroness, Lady Bennett, to Clause 1 the importance of the UK having the ability to forge its own immigration policy, independent of EU law. The Government are committed to delivering the people's priority of ending free movement; terminating directly effective rights for immigration purposes is an essential part of that.

The purpose of paragraph 4(2) of Schedule 1 is to protect the new law the Bill outlines from being affected by any directly effective EU law not being repealed by this Bill. The paragraph ensures that the provisions of the Bill take effect as drafted, are not subject to interpretation and are clear. To remove this provision and potentially have the Immigration Acts operating in parallel with retained EU law, in so far as it is contained within the workers regulation, would have the opposite effect to the stated intention of the noble Lord, Lord Pannick. It would cause confusion in how the Immigration Acts operate and would allow EU law to continue to affect our immigration policy. We cannot allow that to happen.

In turning to the amendments proposed by the noble Baroness, Lady Hamwee, I note that the drafting of paragraph 6(1) of Schedule 1 ensures that nothing is missed that might mean free movement was only partially repealed. The noble Baroness proposes that we do not disapply directly effective rights deriving from EU directives. That would mean that all the rights conferred by the EU's 2004 free movement directive—to enter and reside without leave and to be accompanied by family members—would continue even after the UK's implementing legislation had been repealed. This would again lead to confusion and incoherence and would frustrate the will of the British people that EU free movement be ended, safely but completely.

Schedule 1 does not disapply directly effective rights in their entirety. Some, such as the right to equal treatment in the field of employment, as mentioned by my noble friend Lady McIntosh of Pickering, range more widely than immigration policy; they are disapplied only to the extent that they impact immigration laws

[Baroness Williams of Trafford]
or functions. With these reassurances, I hope noble Lords who have tabled these amendments will withdraw or not move them.

I move on to Amendment 60 in the name of the noble Baroness, Lady Prashar, supported by my noble friend Lady Fookes and the noble Baronesses, Lady Morris of Yardley and Lady Garden of Frognal. I thank the noble Baroness for her amendment, which, in light of the Government's published intention to phase out the use of national identity cards for travel to the UK in 2021, seeks to encourage EEA minors to choose the UK for their English language studies by enabling them to travel here once a year using a national identity card. I note the concern of the noble Baroness, echoed today, that we might lose such students to Ireland or Malta.

We fully recognise the concerns of English language schools and acknowledge that they will have been exacerbated by the impact of coronavirus on travel, tourism and education this year. EEA students with status under the EU settlement scheme will be able to use their national identity card to enter the UK until at least 31 December 2025. However, it is our intention that all other EEA students should in future be treated like students from the rest of the world; they will be able to come either under the visitor route or as a student. We have, however, left the EU and it would not be appropriate for EEA students to be given the right of entry on production of an identity card that this amendment would confer.

Passports are required for travel to most countries outside the EU and are typically valid for between five and 10 years and priced accordingly, so should not be considered an uncommon or short-term investment. I also highlight that students of other nationalities, including those from the UK and from EU member states where ID cards are not available, must have a passport if they wish to travel abroad.

One alternative suggestion put forward by the noble Baroness at Second Reading was to create a passport-free joint travel document which could be used by a group of students travelling together with a group leader. The noble Baroness, Lady Morris of Yardley, alluded to that today. I am happy to report that such a document already exists in the form of the Council of Europe collective passport, which is a very good way for an organised group of young people to make a trip between certain European countries. While they are not widely used, the ratifying countries have the option to issue them.

The noble Baroness suggested that such a document would minimise delays at the border. However, for those eligible to use them, the fastest way to enter the UK is by using our e-gates. Following the end of the transition period, although we will keep our position under review, it is our intention that EEA citizens will continue to be able to seek entry to the UK using our e-gates—including 12 to 17 year-olds when accompanied by an adult—but only when travelling on a biometric passport.

The proposed amendment from the noble Baroness would also require an additional assessment of whether the EEA citizen was the right age and was seeking to enter the UK for the permitted period. That would further prolong the transaction time. Moreover, national identity cards are among the most abused documents detected at the border. Consequently, as well as reflecting our departure from the EU, limiting the use of national identity cards for travel to the UK to those with a retained right to use them under the withdrawal agreements will improve our national security.

Finally, the amendment proposed by the noble Baroness is inappropriate for this Bill because, as drafted, it does not recognise the ability of particular categories of EEA citizens to use their identity cards without restriction until at least 2025 under the terms of the withdrawal agreements. In addition, it would oblige us to treat certain EEA citizens without such rights more generously than others by giving them a right of entry at a time when we are ending free movement rights to align the immigration treatment of EEA and non-EEA citizens.

The noble Baroness also talked about improvements to the standards of ID cards. We recognise that EEA member states are looking to raise the standards of their ID cards, but the less secure documents will still be in circulation for quite a long time. I hope that, with all the explanation I have given, she will feel able not to press her Amendment 60.

I now finally move on to Amendment 61 in the name of the noble Lord, Lord Paddick, which seeks to ensure that EEA and Swiss nationals continue to have access to e-gates at UK ports. The Government have previously set out that EEA and Swiss nationals may continue to have access to e-gates at the end of the transition period. However, it has also been clear that this policy will be kept under review to ensure that we can run our border in the UK's best interests. This position was most recently set out in *The UK's Points-based Immigration System*: *Policy Statement*, published in July. Further details of any changes to border control procedures affecting EU citizens will be announced in due course, following the negotiations on the future UK-EU relationship.

Changes to the methods by which non-UK and Irish citizens may be permitted to enter the UK are usually covered by changes to the Immigration (Leave to Enter and Remain) Order 2000. The vires for the 2000 order are derived from Section 3A of the Immigration Act 1971, which allows the Secretary of State to make provision for how leave to enter may be granted. This secondary legislation process has already been used to extend e-gate eligibility, as the noble Lord pointed out, to nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the US.

The existing process of secondary legislation provides the flexibility required to run our border in the national interest, allowing us to respond quickly and appropriately to any changes in risk and threat. Therefore, we do not need to make the proposed change by way of this Bill, and noble Lords can be assured that there are processes available to make such an amendment to the 2000 order before the end of the transition period.

I finally turn to a question from the noble Baroness, Lady Ludford, on comprehensive sickness insurance; the Committee will come on to amendments relating to citizenship another day, but I will answer that. It is a requirement, under EU law, for EEA citizens who are

students or self-sufficient to hold comprehensive sickness insurance but, if people who were previously here as a student or as self-sufficient lack this, it does not mean that an application will be refused. The British Nationality Act allows for discretion to be applied around this requirement in the special circumstances of a particular case. My officials will examine each application to understand why such a requirement has not been complied with, together with any grounds which can allow us to nevertheless grant an application. Our guidance reflects this, and our application form encourages anyone so affected to provide as much information as possible to allow us to reach a decision.

I am sorry I have gone on for quite a long time, but I hope that noble Lords will not press their amendments.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): My Lords, I have received requests to speak after the Minister from the noble Lord, Lord Paddick, the noble Baroness, Lady Jones of Moulsecoomb, and the noble Lord, Lord Pannick.

Lord Paddick (LD): My Lords, I thank the Minister for her extended explanation. She talked about electronic travel authorisations and referred to *The UK's Points-based Immigration System: Further Details* document. As far as ETAs are concerned, that document talks about the "border of the future" and that it is part of a phased programme to 2025. How will EU and EEA citizens using the e-passport gates be stopped from coming in if they have not provided details in advance? If it is not necessary for them to provide details in advance, why are the Government introducing ETAs for EU and EEA citizens up to 2025?

4.45 pm

I am sorry to keep repeating this, but I specifically asked the Minister what the various data sources were to confirm time spent in the UK, to ensure that EEA citizens do not stay for more than six months if they use the e-passport gates or to stop them effectively having a continuous six-month rolling period by going out of the UK for a day and coming back again. She has not referred to that. In particular, I asked her what data sources would enable an EU citizen who had not left the UK after six months to be tracked down and, if necessary, deported.

Baroness Williams of Trafford (Con): The noble Lord asked about the lead-up to 2025 and the ETA. It is a new immigration system—there will be a pragmatic approach to people coming in and out of this country, because it is a whole new system and will take some time to bed in. The ETA will give both security and certainty on people coming in and out of this country.

In terms of data sets, we obviously now use exit checks; if someone has a visa, it will be on their visa how long they are able to stay. The noble Lord talked about the person who literally went in and out of Lille in one day in order to update their boarding card. He makes a very good point.

This system will take some time to bed in. I will write to the noble Lord about some of the very specific supplementary questions he has asked; I am just giving him the answers that I know off the top of my head. As for sanctions for someone who has not complied, obviously it is easier for someone with a visa, and less easy for someone doing a series of short stays.

Baroness Jones of Moulsecoomb (GP): I am very sorry to correct the Minister, but she made a statement earlier that was incorrect. In response to my noble friend Lady Bennett, she said of retaining—or not taking away—freedom of movement that it was the will of the people and what the people voted for with their Brexit vote. That is absolutely not true. We voted—I voted—for Brexit for many different reasons, and freedom of movement did not particularly come up as a reason. Quite honestly, none of us understood that the Government were going to make such a shambles of it. We could not have predicted that it could be so badly handled. So please, it is not the will of the people, and it was not what people voted for with Brexit. They voted for a variety of reasons.

Baroness Williams of Trafford (Con): My Lords, we did vote to leave the EU, and I do not think anyone can be in any doubt about some of the reasons. People voted for a variety of reasons, but the noble Baroness will totally understand that I am not going to get into a debate about why people did or did not want to leave the EU. I will leave it there.

Lord Pannick (CB) [V]: My Lords, I am grateful to the Minister for her careful response to Amendment 3. It was very thoughtful—not a response off the top of her head. I am also grateful for the offer of a meeting, which I will happily take up.

The Minister gave an example of a provision in the regulations that she said was inconsistent with the Immigration Acts. I accept that there may well be many such provisions. My point is very simple: spell them out in Schedule 1. Do not use this vague language of drafting which means that people cannot identify what their rights and obligations are. My amendment is not designed to keep or remove any particular right; it is simply designed to require the Government to instruct the parliamentary draftsman to produce a provision that implies basic standards of legal certainty. I hope the Minister has noted the substantial concern around the House at this lack of certainty in the drafting of Schedule 1. It is simply not good enough and it needs to be addressed. I look forward to discussing this with the Minister prior to Report.

Baroness Williams of Trafford (Con): I totally understand the point that the noble Lord makes about certainty. In addressing this, I should like to meet him, because I totally get what he is saying. He is not being difficult; he is just asking that we lay out the law and provide certainty.

Baroness Neville-Rolfe (Con): My Lords, I am grateful to all noble Lords who have taken part in the debate on this catch-all group of amendments. There have been some very high-quality contributions. In particular, I thank my noble friend for her careful and full answers; they have got us off to a good start.

I was rather surprised to hear the noble Lord, Lord Pannick, quoting the insights of the sociopath Caligula. However, I think he—and other noble Lords—made some good points about clarity of drafting and

[Baroness Neville-Rolfe]
the complexity of immigration law, which makes its fair, efficient and firm enforcement more difficult. It also creates a great deal of work for lawyers. That is not an unvarnished advantage.

The noble Lords, Lord Beith and Lord Rosser, rightly referred to the use of secondary rather than primary legislation, and I am sure we will come back to that when we come to scrutinise Amendment 9.

We heard good support for the two practical amendments on minors visiting the UK using identity cards and on e-gates. The response was a bit disappointing on identity cards, but there were some very good points made about e-gates, and the Minister will obviously answer the more detailed questions on that from the noble Lords, Lord Paddick and Lord Adonis.

The most powerful intervention about robust enforcement was from the noble Lord, Lord Green of Deddington, whom I call a friend. He made a number of practical suggestions. I am not sure I have heard quite enough about how the Bill will be enforced or its "integrity", to quote the noble Lord, Lord Adonis. I will talk to the noble Lord, Lord Green, and we may return to the issue on Report, in the same or in some alternative form, because enforcement of the law is very important. For now, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 1 agreed.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): My Lords, we now come to the group beginning with Amendment 2. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 2

Moved by ***Lord Hunt of Kings Heath***

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

"Duty to commission an independent review of the social care sector in regard to the effects of section 1

(1) The Secretary of State must commission an independent review of the matters under subsection (3) and lay the report of the review before each House of Parliament within six months of the day on which this Act is passed.

(2) The Secretary of State must appoint an independent panel to undertake the review.

(3) The review under subsection (1) must consider an assessment of the effects of section 1 on—

(a) the social care workforce;

(b) the adequacy of public funding for the social care sector;

(c) the ability of care sector employers to improve the pay and conditions of their employees; and

(d) such other relevant matters as the independent panel deems appropriate.

(4) A Minister of the Crown must, no later than six months after the report has been laid before Parliament, make arrangements for a motion relating to the report to be debated and voted on by the House of Commons and the House of Lords."

Member's explanatory statement

This new Clause would require an independent review of the impact of section 1 of this Act on the social care sectors to be produced and laid before Parliament.

Lord Hunt of Kings Heath (Lab): My Lords, I declare an interest as a member of the General Medical Council board.

I want to return to a major theme from Second Reading: the decision of the Home Office to exclude the great majority of care workers from the new health and care visa, as they do not meet either the income or the skills threshold. At Second Reading, the noble Baroness, Lady Williams, justified this by saying that employers had to end what she described as "the easy option" of using migrant labour to undercut our own workforce "for far too long". She also pointed to the advice of the Migration Advisory Committee, which has maintained that the problems in the care sector are caused by a failure to offer competitive terms and conditions, in itself caused by a failure to have a sustainable funding model—quite.

I certainly do not need reminding of how important skilled care worker jobs are; I want to see more people training and entering the care sector at a decent wage. However, surely it is disingenuous for the Government to call for better wages and conditions, when they have so much influence on the financial health of care services. The Government are the main source of funds for local authorities; they are the direct funder of the National Health Service; and they set the conditions under which the private care market operates. The Home Office, which I have always thought of as being a bit semi-detached, is essentially saying that the Government—of which it is a part—has neglected the care sector over many years. They have been in government for 10 years now and have had a series of reviews, none of which has come to fruition.

Our own House of Lords Economic Affairs Committee reported that, in 2018, 1.4 million older people in England had an unmet care need. It found that publicly funded social care support is shrinking, as diminishing budgets have forced local authorities to limit the numbers of people receiving public funding. Just as demand goes up with the demographics, the funding of social care gets lower and lower in real terms.

When we turn to the workforce, we see a diverse range of nationalities and backgrounds. Some 83% of the workforce is made up of British nationalities, with 7% coming from other EEA countries and 9% from non-EEA countries. As such, the UK is reliant on a fair and balanced immigration system. Overall, however, the social care workforce is already facing a crisis, with more than 120,000 vacancies and a growing level of demand among people who need to access care services. This is a real problem for the future.

We also have the problem that the Government classify social care workers as unskilled. Unskilled? As Mencap points out, their colleagues are trusted every day with people's lives. They are trained to provide medication, to undertake feeding, to deal with seizures and to administer first aid. They help people manage their finances, their health and their well-being, and they provide emotional support. Unskilled they are not. Yet as Unison has pointed out, many migrant workers are not included in the category of people who

have had their visas extended free for a year. Many are struggling to save the large amounts needed for visa renewals.

The Minister says that staff should be paid more. I agree, but is she going to will the means? Will she commit to increasing the level of support to local authorities? Is she willing to see self-funders pay more? If she is, I remind her that if you took the current lifetime pension allowance of £1,073,000 and bought an annuity with it at age 60, you would not have enough to pay the average nursing home fee.

We are in a vicious cycle. After decades of reviews and failed reforms, the level of unmet need in our care system is increasing and the pressure on unpaid carers is growing stronger. The supply of care providers is diminishing and the strain on the care workforce is continuing. And that is before these new immigration controls are imposed at the end of the year.

At Second Reading, the noble Baroness said that she would not be drawn on the details of the long-term social care plan which apparently the Government are still promising to bring forward. She did refer to various sides in the Commons trying to sort a consensus on the way forward, but there is not much sign yet of the Government reaching out, and given the state of the public finances, I would not bet on immediate action in any case. I refer the noble Baroness to the letter in July from the Chancellor to Secretaries of State on the forthcoming comprehensive spending review. From that, it is clear that spending will come under a huge squeeze. It is noticeable that, while the Chancellor said then that he would prioritise the NHS, no mention was made of social care at all.

The argument I put before noble Lords is this. If the Home Office is convinced that the woes of the care sector are entirely down to the sector itself, let it produce the evidence. Let Ministers agree to the quick review that I suggest in my amendment, looking at the funding of the sector and the impact of Clause 1 before shutting off an extremely valuable source of labour for this important but vulnerable part of our society. I beg to move.

5 pm

Baroness Hamwee (LD) [V]: My Lords, my noble friend Lady Brinton has her name to the amendment moved by the noble Lord, Lord Hunt, which we support. My noble friend is indisposed at present, but I know that she will be here in spirit. I start by saying to the Minister that I will try not to moan. I generally try not to moan. It is reasonable for her to refer a Member of the House to GOV.UK; my point was that most of the public would be bemused by the reference. I think I can see on my screen that she is nodding.

There was enthusiasm for tabling amendments quickly after Second Reading, especially on what were particularly topical issues. A health and social care visa was one such. It remains topical, as does the whole operation of the social care sector, even though it is not in the headlines quite so much. I have spoken about immigration arrangements being in the rules. The scheme set out in our Amendment 47 may not be ideal—I confess I do not think it is—but it is about pinning down the arrangements into primary legislation to make them not too easy to amend.

My noble friend Lady Brinton and I also have our names to Amendment 57, on a social care visa. Many of your Lordships will have direct experience of the work of those in social care and share what the noble Lord, Lord Hunt, has talked of—the importance of proper payment reflecting the level of skill, which is very significant. As it happens, I cannot praise too much someone who recently cared for a close relative. She came from Romania.

The essential core skills are not ones that can be trained into anyone; there are the practical, technical aspects of care, but you cannot train someone to care as part of their personality. They either have it or they do not. That is why so many carers, little supported, are people who look after their spouses, children or parents at home. I mention this because, last time I mentioned care at home, the Minister thought I meant domiciliary care. That is part of the subject matter of the amendment, but I depart from the scope of the Bill for a moment to recognise the dedication and sheer hard work that family members undertake, which is inadequately recognised. Other noble Lords in the debate may know how much, in pounds and pence, that work saves the state.

The noble Baroness, Lady Masham, will explain the importance of her proposal in Amendment 66. I simply say that my noble friend Lady Thomas of Winchester added her name to that amendment, and she is very sorry that she cannot take part in today's proceedings.

Also in the group is Amendment 82 of the noble Lord, Lord Patel, which I thought was interesting. Some of us leap in; calmer heads propose an analysis of the issue. I suspect that will not preclude some pithy points in support of progressing with analysis.

Baroness Masham of Ilton (CB) [V]: My Lords, Amendment 66 would provide for the creation of a fast-track health and social care visa for EEA and Swiss nationals who provide personal care for severely disabled people, after the end of free movement. The visa would be limited to EEA and Swiss nationals who, immediately prior to the commencement of Clause 1 and Schedule 1, had the right of free movement into the UK.

Subsection (1) of my proposed new clause says:

"The Secretary of State must provide by regulations made by statutory instrument for the introduction of a fast-track health and social care visa for a relevant person who provides personal care for severely disabled people in the United Kingdom."

Subsection (2) defines "fast-track" and "relevant person":

"In this section, 'fast-track' means processed by UK Visas and Immigration within three weeks from the day on which the applicant provides their biometric information, and 'relevant person' means an EEA or Swiss national who immediately prior to the commencement of section 1 and Schedule 1 had the right of free movement into the United Kingdom."

The proposed new clause would provide for the introduction of a fast-track health and social care visa for a person who provides personal care for severely disabled people. The visa would be limited to EEA or Swiss nationals who, immediately prior to the commencement of Clause 1 and Schedule 1, had the right of free movement into the UK. This is a probing amendment to see what consideration the Government

[Baroness Masham of Ilton]
have given to extending their new health and social care visa to persons who provide personal care for severely disabled people in the United Kingdom.

In July, the Home Secretary and Secretary of State for Health and Social Care announced that a

"new Health and Care Visa will be launched this Summer, creating a new fast-track visa route for eligible health and care professionals and delivering on a key manifesto commitment."

However, the Government have been criticised for excluding care workers from being able to apply for visas designed to fast-track those coming to the UK to work in the health and care sector.

On 13 July, the Home Office released details of the UK points-based immigration system, which will come into effect from 1 January 2021. Under the new system, the health and care visa will allow people working in eligible occupations, who speak English and have a job offer, to come to the UK. Under this visa route, workers and their families will gain fast-track entry to the UK, with reduced application fees and dedicated support, the Government said. Those who are eligible to apply and their dependants will also be exempt from paying the immigration health surcharge—a move that has been welcomed by doctors. But applicants must meet a salary threshold of £25,600, which is €28,200 or $32,000, to be eligible to apply for the visa, unless they are entering a shortage occupation, such as nursing and medicine. The NHS workers' union, GMB, said that this threshold would mean that many NHS cleaners, porters and support staff will not qualify for the visa.

The Government have faced a backlash because social care workers are not eligible to apply for the visa, although the Migration Advisory Committee, on whose advice much of the new system is based, recognised the workforce shortage faced by social care in its most recent report and did not recommend that care workers be added to the list of shortage occupations. I cannot understand this. Perhaps the Government can tell us why. Instead, the committee said that it hoped the Government's forthcoming Green Paper on social care would provide more clarity on the future of the sector in the UK and contain concrete proposals to improve terms and conditions for care workers. Waiting is not acceptable. There is a crisis.

Critics have said that the exclusion of care home staff from a post-Brexit, fast-track visa system for health workers could prove to be an unmitigated disaster and may increase the risk of spreading coronavirus. Professor Martin Green, the chief executive of Care England, which represents the largest private providers, has said that the decision amid the pandemic in which 20,000 people have died in UK care homes has the potential to destabilise the sector even further, with disastrous consequences, confirming that there could be no special treatment for carers coming to the UK from the rest of the world.

The Government have said that they hope that Britons will fill the shortfall of around 20,000 workers, equating to 10% of all posts. Currently, 17% of care jobs are filled by foreign citizens. In the debate on Second Reading, I drew attention to this when I said:

"There is a danger that people who cannot get work of their choice are pushed into doing care work, with such horrifying results as happened at Whorlton Hall near Barnard Castle, Thors Park in Essex and Winterbourne View near Bristol, where patients were abused and bullied. This cruelty was exposed by 'Panorama'. We must surely try to prevent this sort of thing happening again. I hope the Government will listen before it is too late." —[*Official Report,* 22/7/20; col. 2251.]

The health and care visa has been designed to attract the brightest and best from around the world. It has been criticised for excluding front-line care home workers and contractors. It has been pointed out that the minimum salary threshold means that many cleaners, porters and other support staff will not qualify. This will discriminate against severely disabled people living in their own home who need paid carers. The Government are discriminating against any care workers.

Vic Rayner, the executive director of the National Care Forum, has said that in London, where around 38% of care workers are non-British, the policy could be "an unmitigated disaster." She said:

"We have 122,000 vacancies, growing demand for our services, and then the tap is turned off like this … It is not good news at all. What you need for good care is a stable, skilled and plentiful workforce. And in the context of Covid-19, where you are trying to minimise movement of staff, any shortages might increase movement of staff and use of agency staff, which we are trying to avoid."

Robin Hall, the secretary of the Hampshire Care Association, has said that a shallower pool from which to recruit could drive up wages, which, without greater public funding, would mean fewer staff employed per resident. She said:

"That will damage the quality of care we can deliver … You also may have to get less choosy about who you employ, and that's a dreadful thought. A lot of our EU staff are highly skilled. They are smart, articulate and speak three or four languages. We don't get that quality of applicants from the UK because of the status the profession has.'"

With the advances in medical treatment made over the years, many severely disabled people are living in the community in their own home. Many of them need live-in or daily carers. We also have an increasing elderly population. A bright young man called David who broke his neck in a rugby accident and was paralysed from the neck down had been cared for by his mother. As she got older, her arthritis became worse. David was fearful that he might end up in a care home, which was something he could not accept. David lived in a comfortable bungalow with a garden and a lily pond. One day he was found drowned in that pond. In desperation, he had driven his electric wheelchair into it to end his life. Surely we do not want more cases like that.

Good care workers who work in people's homes must be dedicated to the job, get satisfaction from it, be honest, skilled, compassionate and flexible. Caring for severely disabled people is not for everyone, but those who undertake these positions are special and they should be valued, not treated as "also rans".

I look forward to hearing the Minister's comments on Amendment 66, and I hope that it will be taken seriously.

5.15 pm

Lord Patel (CB) [V]: My Lords, before I speak to my Amendment 82, I want to support strongly the noble Lord, Lord Hunt of Kings Heath, who spoke with his usual passion when presenting his amendment. I hope the Minister will respond to that.

Amendment 82 can be taken in the context of the Covid-19 pandemic, which has highlighted the exceptional contribution and sacrifice made by our health and social care workers every day in protecting and caring for people in the community. It has also made clear how much we depend on our international workforce. Around 29% of doctors working in NHS hospitals and almost 14% of healthcare workers overall in the United Kingdom are from overseas. International workers account for approximately one-sixth of care workers in England.

The pandemic has had a profound impact on all aspects of our health services, but I draw the attention of the House to its impact on the all-too-often overlooked sector of social care. Between March and July this year, there were 30,500 excess deaths among care home residents as well as 4,500 excess deaths among people receiving care in their home. Figures from the Office for National Statistics also show that social care workers are among the occupational groups at the highest risk of Covid-19 mortality. The United Kingdom recorded the second highest number of deaths among healthcare workers in the world, second only to Russia, and a significant number of those deaths were among social care workers. These figures highlight the immense sacrifice and heartbreak that these workers have faced while trying to do their job in a system that was already overstretched. The vital contribution they make to the health system has been overlooked and undervalued for too long.

Adult social care is facing stark recruitment and retention challenges, with an estimated 122,000 vacancies, while the demand for social care workers is expected to rise in line with the UK's ageing population. The CQC's *State of Care* report concludes that workforce shortages in adult social care are

"affected by the lack of value given to social care by society and disproportionate levels of pay."

The pandemic should serve as a wake-up call that we need to value our social care workforce more. In a sector where one in six of the workers is from overseas, any changes to the UK immigration system that could deter or prevent those who want to work in this country are of deep concern. There is a risk of significant implications for the staffing of health and social care services, as well as the quality of care and patient safety in the future. While measures to help recruit doctors to the NHS, including the fast-track NHS visa, are welcome, the lack of any route into the UK for social care professionals is extremely concerning. The average salary for a care worker in England is between £16,400 and £18,400, which means that individuals would fail to meet even the lower salary threshold of £20,480 to enable them to trade points to be eligible to work in the United Kingdom.

The current proposals for new immigration controls risk exacerbating the current social work workforce shortages and, as a result, putting some of the most vulnerable members of our society at risk, as already mentioned. Social care staff play an integral role in the efficient and safe running of the health service, and it is vital that any future immigration system recognises this. We owe our overseas health and social care staff a huge debt of gratitude. We should do all we can to keep these dedicated workers and ensure that there are no barriers to future recruitment.

It is important to grow our domestic workforce to help to meet workforce challenges, and to improve working conditions, pay and training as part of that. However, we must also provide an entry route for overseas staff who want to join such a vital part of a healthcare system that would struggle to cope without them. There is a consensus across healthcare organisations, as well as growing support for the idea from parliamentarians right across the political spectrum, that social care needs a long-term, sustainable solution that includes better funding. In the short to medium term, the immigration system must include a migratory route that meets the needs of the social care sector, which is facing severe challenges. We now need the political will to act and reverse this public policy omission.

I therefore hope that my amendment will be supported. It is supported from outside very strongly—by the Royal College of Nursing, the British Medical Association, UNISON, Independent Age and the Royal College of Physicians. It places a duty on the Government to report on migratory options for health and social care workers ineligible for the skilled-worker route.

The amendment would require the Secretary of State to lay before Parliament a report setting out in detail the options for overseas workers excluded from the skilled-worker scheme, within a period of 30 days beginning on the day on which this Bill is passed. It would need to specify a migratory route for care workers, home workers and healthcare support workers. It is time we recognised the vast contribution of the social care workforce to our community. Showing that there is a migratory route into the UK for them would be a step towards achieving this. They have demonstrated that in low-paid jobs they provide good social care, and even die for us, as shown by Covid-19.

I had not indicated that I intend to divide the Committee today, but I look forward to the Minister's response and I will reserve my judgment. All I can say is that the support for this amendment outside and from all sides is immense, and I hope the Minister will respond to that.

Baroness Jones of Moulsecoomb (GP): My Lords, I shall speak in favour of my Amendment 93. It is obvious that many of the amendments in this group are heading towards the same sort of thing, which is protection for people of all kinds as well as holding the Government to account for what they do. I support several of the amendments that have been spoken to, and I have been moved by some of the speeches from noble Lords.

My amendment is supported by over 50 organisations from all the devolved nations, including the Health and Social Care Alliance Scotland, Macmillan Cancer Support, UNISON and the Association of Camphill Communities. Amendment 93 would require an independent evaluation of the impact of the effects of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill on the health and social care sectors across the UK. This would be made after consulting the Secretary of State for Health and Social Care, the Scottish Ministers, the Welsh Ministers, the relevant Northern Ireland department, service providers, those requiring health and social care services and others.

[Baroness Jones of Moulsecoomb]
One would hope that this would be automatic with any measure that a Government introduce as they really need to know whether it is working or not.

Proposed new subsection (1) would require the Secretary of State to lay a copy of the report before both Houses of Parliament no later than one year after this Bill is passed. Proposed new subsection (8) would require a Minister of the Crown to make arrangements not later than six months after the report has been laid before Parliament, for the report to be debated and voted on in both Houses.

My amendment is necessary to safeguard the interests of the many people who rely on the contribution of EU citizens and non-EU citizens for the provision of health and social care across the four nations. This of course includes disabled people, children and young people, older people, unpaid carers and those with long-term health conditions. I should perhaps declare an interest in that I am getting older and this might apply to me in a decade or two.

Prior to the UK leaving the EU, a number of studies had highlighted the significant adverse impact of Brexit on the health and social care sectors across the UK. These studies, and the initial information about the points-based immigration system provided in the Home Office's policy paper, *The UK's Point-based Immigration System: Policy Statement*, suggest that the ending of freedom of movement and the introduction of a points-based immigration system will potentially have a major adverse impact on the health and social care sectors across the UK. I think every speech so far has highlighted that fact.

The proposed independent evaluation that would be introduced by Amendment 93 could play a key role in supporting the health and social care sectors across the UK, helping them to address a range of concern about the proposals. These include concerns that many health and social care workers from other European countries, and from non-European countries, would not meet the proposed income threshold under this system, and that the requirement to have a job offer is unnecessarily restrictive, and will create addition administrative burdens and cost for health and social care organisations trying to recruit staff from abroad. As we have heard, there is a lack of recognition of health and social care specific skills, experience and professional qualifications in the proposed points-based system. As a result, it does not recognise the skills and experience of the workers from across the EU, and from non-EU countries, to enrich health and social care support and services here. Nor does it value the sector and its growing importance as a result of demographic changes.

There is much wrong with the Government's immigration policy, but health and social care will feel a particularly brutal impact. This independent analysis is required so that the Government can think properly about the needs of health and social care and develop policy accordingly.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I declare my interest as chair of the National Mental Capacity Forum. I speak to Amendments 2 and 66, to which I have added my name, and I strongly support Amendment 82, tabled by my noble friend Lord Patel.

The current proposals will exclude a group of workers we desperately need: carers for those with physical and/or mental disabilities, especially, as my noble friend Lady Masham highlighted, those with spinal injuries and similar severe physical constraints, and those with severe impairments of mental capacity for a wide variety of reasons. Many of these people are at a high risk of Covid and some will have been on the official shielding list. They wish to remain in their own homes and need care around the clock. For them, a live-in carer is the best option, but the annual salary of such a carer will fall below the level to accrue points in the system. That workforce just does not exist here. UK residents are not coming forward to train as live-in domiciliary carers.

Those carers already here are fearful that they will not obtain leave to remain. UNISON is calling for key workers to remain here and be eligible for NHS care—that is, to be exempt from the "no recourse to public funds" criteria—during the pandemic. Around 17% of the social care workforce is made up of migrant workers, with 115,000 European nationals and 134,000 non-EU nationals.

5.30 pm

Vacancy rates in the care sector now stand at 6.5% in England, and 38% of care agencies report vacancies. In related sectors—sectors that support front-line, hands-on care workers—29% of hospital doctors in the NHS and 12% of healthcare workers overall are from overseas. Austerity has led to local authority spending on adult social care shrinking by 7% per person in the past decade. Price is by far the most dominant factor in decisions on care commissioning. Councils have tightened eligibility thresholds in recent years, meaning that at least 1.5 million elderly and disabled people have unmet care needs.

The sector was already in crisis before Covid-19. The problem will not be solved by rising unemployment: significant skills are needed to deliver high-quality care. Good care is complex; bad care kills. Just because care work is low paid and badly undervalued does not mean that it is low skilled. While staffing shortages and recruitment problems in the sector require a holistic solution, it is disingenuous for the Government to call for better wages and conditions in sectors left out of their new immigration plans. The criteria for the points system include the threshold of £20,480 for those with additional tradable points, such as an occupation on the shortage occupation list, and a fast-track NHS visa for applicants with a job offer who speak English and are trained to a recognised standard. [*Inaudible*]—workforce meets even these criteria. Others in low-paid health and social care sectors, such as clinical scientists, lab and theatre technicians, porters and cleaners, many of whom are EU nationals or from elsewhere overseas, play an integral role in the efficient and safe running of the health and care services, yet none of them would fit these criteria. I fear that the rhetoric of cutting immigration is being driven forward, ignoring the devastating effect on the NHS and social care sectors, despite all the nice words about how these people have coped and saved lives while themselves at risk during Covid.

Warning after warning has shown how the NHS and care sectors will collapse without their overseas workers. That is why there is a need for a fast-track category health and social care visa, as outlined by my noble friend Lady Masham, and an urgent need for the criteria to be looked at independently, as proposed in Amendment 2.

We cannot put our heads in the sand and think that unemployment will miraculously and rapidly create a workforce of skilled, low-paid carers to look after those with complex needs, and that vacancies will evaporate. They will not. I believe that we will be coming back to these issues at Report, and dividing the House.

Baroness Meacher (CB) [V]: My Lords, I speak in support of Amendment 47, to which I added my name, but I also strongly support other amendments in the group, particularly that of my noble friend Lord Patel, who spoke powerfully in favour of making sure that we do not create barriers preventing health and social care staff coming to this country. I do not want to duplicate what others have said, so I will speak briefly about the difficulties we have in recruiting staff over here, which others have certainly emphasised.

The NHS employs half a million staff and has 100,000 vacancies reported by trusts, many of them among low-paid workers. This figure is projected to rise over the coming years, rather than diminish. Our problems will become pretty well impossible to manage unless we do something about it.

We want more support staff employed in primary care. This has been a policy goal for a long time and the NHS long-term plan continues to reflect this ambition, but the number of support staff working in community services has continued to fall, and I expect it to continue to do so. GP surgeries are desperate to appoint support staff but cannot do so. As others have said strongly, a similar picture applies to the social care sector, where we have 8,632 vacancies, according to the latest available data—surely unsustainable, as the number of elderly people needing care rises relentlessly, not to mention, as others have, the many people with disabilities and a range of problems.

The *NHS Long Term Plan* acknowledges that international recruitment will continue to be vital in the short to medium term if we are to deal with our staff shortages. This is being constrained, says a report by the Health Foundation, by immigration policies. Surely the Government need to pay attention to that, and I hope the Minister will respond to that point. Immigration policies are really causing problems for our health and social care services. Instead of imposing barriers to EEA and Swiss entrants, would it not be better for Ministers to concentrate on reducing barriers to well-qualified migrants with good English from the rest of the world? Amendment 47 is key, as are the other amendments in this group, if we are to improve our health and social care staffing or to avoid a serious drop in the quality and availability of these crucial services. I look forward to the Minister's response.

Baroness Altmann (Con) [V]: My Lords, I support all the amendments in this group. I have added my name to Amendments 47 and 66, but the intentions and sentiments already expressed so well by many noble Lords are ones that I fully endorse. I thank the noble Lord, Lord Hunt, the noble Baronesses, Lady Hamwee and Lady Masham, and other noble Lords for the excellent way in which they have explained the urgent need for measures in the Bill that specifically address the shortage of social care staff. I implore my noble friend on the Front Bench, who I know cares about this issue as much as so many of us around the House, to take back to the department the strength of feeling across the House on this matter and address some of these issues before Report.

We are talking here about the biggest failure of social policy in modern times. The inadequacy of our social care provision is already well documented and well known, and the Government are already committed to addressing this issue as soon as possible. We cannot move forward and improve the quality of social care without staff. We cannot mechanise this. Care workers may be low paid, but that does not mean they are low skilled. They are essential to enabling increasing numbers of people to live decent lives. We are not talking about bringing in low-paid shelf stackers; we are talking about the emotional, physical and mental well-being of some of our most vulnerable citizens.

Given that the Government are the main funders of social care and have not yet funded adequately social care providers who employ staff who might generally earn above the £25,000 cut-off, that imposes on the Government a duty to ensure that our immigration policy does not deter those who might be willing to work for less than that figure—most of the people who work in social care already do so—from coming to this country when, as we have already heard, around one in five of our social care staff is already from overseas.

I know my noble friend responded to these concerns at Second Reading by saying that the Government hope that Britons will fill the shortfall, but hopes are not good enough. It takes time to try to find any UK nationals, train them in the right skills and raise the standards of pay. What are these elderly and disabled people supposed to do in the meantime? They need care. I therefore hope my noble friend might still consider the implications of these amendments, or at the very least agree to a transitional, temporary social care visa, perhaps for five or 10 years, that specifically enables social care providers and individuals who need to employ somebody to care for them in their own home to find those overseas workers who are willing to come here and fill the gaps we currently have, rather than having an immigration system that rules out being able to bring them in.

The Deputy Chairman of Committees (Baroness Garden of Frognal) (LD): The noble Baroness, Lady Jolly, has withdrawn, so I now call the noble Baroness, Lady Lister of Burtersett.

Baroness Lister of Burtersett (Lab): My Lords, it is a pleasure to follow the noble Baroness, Lady Altmann, and I very much agree with what she had to say. I am speaking primarily in support of Amendments 2 and 93, but I am supportive of all these amendments. I underline the importance of what the noble Baronesses, Lady Masham and Lady Finlay, said about personal care.

[Baroness Lister of Burtersett]

When the Bill was postponed in the House of Commons, I thought that perhaps the Government were thinking again about the treatment of care workers in the points-based system in light of the Government's and the country's applause for them during the height of the pandemic. How naive I was; there was no rethink. Despite the crucial role they played and continue to play and the range of skills involved in their work—organisational, clinical and

"soft skills of empathy and patience",

as the chief executive of the National Association of Care & Support Workers has explained—the Government, as has already been said, continue to confuse pay with skill and contribution.

Back in February, the Home Secretary herself conceded that

"care is not a low-skilled occupation"—

so why is it being treated as one now? To do so in the proposed points-based system is in effect discriminatory, as the equality impact assessment makes clear. It says:

"The Government is aware that prescribing a minimum … threshold could have differential impacts on individuals on the basis of their sex. Women may find it disproportionately more difficult to meet the threshold than men."

Indeed, but there is no "could" or "may" about it. It will have a differential impact and women will find it disproportionately difficult because, of course, women make up the majority of care workers. Moreover, black and minority ethnic women are disproportionately represented in the care sector, and the equality impact assessment shows that BAME workers will also be adversely affected by the salary threshold.

In the Commons, the Immigration Minister said that

"our vision for the future of the care sector is about providing rewarding opportunities to UK-based workers, not basing it purely on immigration."—[*Official Report*, Commons, 13/7/20; col. 1250.]

Likewise, the Minister, at Second Reading, said that

"the immigration system is not the sole solution to the employment issues in the social care sector."—[*Official Report*, 22/7/20; col. 2232.]

No one is suggesting that immigration provides the sole solution or that the future of care should depend purely on immigration but, to quote the Cavendish Coalition of 37 organisations in health and social care:

"For a sector where one in six are foreign nationals and which is struggling with 122,000 vacancies in England alone it would be unwise to believe that domestic recruitment will solve all social care's immediate problems."

It warns that we are

"swiftly heading towards an alarming destination with no obvious solution for the care sector."

Can the Minister explain how the Government will ensure that those "rewarding opportunities" to which the Immigration Minister referred are to be provided when local authorities are already on their financial knees? As we have heard, funding has gone down in the care sector and the Government have done nothing about it over their 10-year period in office. Do the Government believe that the market will miraculously provide the solution in the absence of immigrant labour?

5.45 pm

I might feel greater confidence in the Government's

"vision for the future of the care sector"—[*Official Report*, Commons, 13/7/20; col. 1250.]

if they actually had a strategy for it. But as my noble friend Lord Hunt reminded us, despite many a promise—I have lost count—we are still waiting for that strategy, like "Waiting for Godot". As it is, it is irresponsible to go ahead with this policy in the absence of such a strategy—one that should include decent rewards for all those who work in the care sector. This is the kind of question that Amendments 2 and 93 would address. To refuse to accept the call for an independent review on these lines would be doubly irresponsible. What possible justification could there be for refusing such a review?

Baroness McIntosh of Pickering (Con) [V]: My Lords, this has been an excellent debate. I associate myself in particular with Amendments 2 and 82 but, like other noble Lords, I support many of the amendments in this group in principle.

A constant theme since Second Reading is the need for key workers to continue to supply workforce in the UK, not least in the NHS and social care. It is a matter of fact that, quite apart from us potentially sending out the wrong message to those coming from countries other than the EEA and Switzerland—international care workers on whom we currently depend—many of our care home workers and care workers in general are sourced from Poland, Latvia, Estonia, Lithuania and other EEA countries. I therefore suggest that this is a wake-up call to the potential immediate crisis that the social care sector could face on 1 January next year as a result of the Bill, if my reading of it is correct.

I always remember that during my time as an MP, when I used to ask the local jobcentre where the main vacancies were, the answer usually came back that the vacancies that were the most difficult to fill and therefore the longest on the register were those in the care sector. I hope this might provide an opportunity to really look again at the status of social care workers. They are the flip side to the NHS family. I remind the Committee of my interest in that I come from a medical family; my brother and father were GPs, and I currently work with the Dispensing Doctors' Association. We can see the extent to which we were dependent on care homes taking often still quite poorly patients out of hospitals in the immediate pandemic circumstances of Covid-19.

I hope that my noble friend the Minister will use her good offices to liaise with the relevant departments in this regard, particularly the Department of Health and Social Care, to look at valuing the skills and caring qualities of our social care workers and look to raise their salaries to more realistic levels.

I also ask my noble friend whether a compromise in this regard, particularly in view of the visa requirements, might be to look at whether it would be appropriate for the immigration system that will commence in the new year to have a two-year temporary work visa so as not to leave the country potentially short-staffed in this crunch period, as we deal with the knock-on effects of Covid and its economic consequences and as a result of our ending the transition period as we leave the European Union.

Furthermore, like other noble Lords who have spoken, I am deeply concerned that many of the details are not in the Bill and that we are relying very heavily on secondary legislation and a points system, the details of which are not that transparent.

I conclude by lending my support to Amendment 2 in particular, in the names of the noble Lords, Lord Hunt and Lord Adonis, and the noble Baronesses, Lady Finlay and Lady Brinton. It requires the Government to commission an independent review of the social care sector, which would, I hope, cover many of the points that I raised today.

I also support Amendment 82, in the name of the noble Lord, Lord Patel, which would introduce a duty to report on migratory options for health and social care workers who are ineligible for the skilled worker route. It is nonsensical to have such a constraint on a sector on which we are so heavily dependent.

I found the speech by the noble Baroness, Lady Masham, very moving. In my days as an MP, I visited a Leonard Cheshire home, where I encountered the tragic case of a young Olympic rower who had suffered a stroke and was incapacitated. If this Bill was passed, these two amendments—and all amendments in this group—could do so much good for people of all ages who are in care, particularly the vulnerable and the disabled in the community.

Baroness Barker (LD): I want to return to the points made by the noble Lord, Lord Hunt of Kings Heath, in his introductory remarks. The important amendment in this group is Amendment 2. All the others could be things that potentially fall out of a review, and so the key is to have that review and then look at the most appropriate way forward.

Many of the issues that have been spoken to in this debate are not new; we have been talking about social care for as long as I have been in the House. We could say many things about the current situation we find ourselves in, and some of the issues are fairly long-standing. One that I talk about a lot, but not many others do, is the fact that there are currently about a million people who are ageing and do not have children. Our health and social care service is predicated on the fact that you have children who will look out for your needs in any health or care setting. We will have 2 million people in that position by 2030. We have, therefore, an acute and growing need for paid social care. Also, at the moment, a number of our biggest care providers are owned by private equity firms, run at very low cost and margins—they are not about to stay in this business if they cannot do that, and to them, it is a business.

At Second Reading, the noble Baroness talked about the need for the United Kingdom to stop colluding in an international trade in low-cost care. I can understand that argument but, at this moment, given where we are, we would be the first affluent western country to take itself out of what is, in effect, an international market in care. No other affluent western country—nor Australia, for that matter—has solved its care problem by suddenly turning off all access to people from other nations. It would be a very bold statement if we were to do that, but noble Lords have today pointed out the dangers of doing so.

The noble Lord, Lord Hunt, is right to argue that, at this moment, there is a case for a review. The Government, if they were not being so ideologically pure on the matter, would want to give themselves flexibility in addressing these issues as they arise. There is no need to do this: it is just government ideology. The Government could bring in a transitionary process, over about five years, that would enable people to get through a period of uncertainty. I therefore commend Amendment 2 to the Minister and ask her to look at some of the other amendments in this group.

Lord Lilley (Con) [V]: My Lords, I will focus on Amendments 82 and 93, and particularly their implications for reviewing the need, or otherwise, to recruit nurses and doctors from overseas. I am grateful to the noble Lord, Lord Patel, and the noble Baroness, Lady Jones, for tabling them.

I suspect, however, that these amendments are based on the common fallacy that the NHS needs to recruit doctors and nurses overseas because supposedly not enough British people want to do these jobs. That is simply untrue. The latest year for which UCAS figures are available is 2019; I apologise to the House for giving out-of-date figures at Second Reading. The most recent figures show that 53,000 young British people applied to train as nurses last year, of whom 20,250 were turned away—that is 43% of applicants, or nearly half of those who applied. UCAS unfortunately does not produce figures on the same basis for those seeking to train as doctors, but it is clear that an even higher proportion of those who apply to medical school are turned away.

This is a double scandal. First, it means that tens of thousands of young Brits who aspire to serve their country as doctors or nurses are refused that chance and have to pursue less attractive options. Secondly, we have to recruit tens of thousands of doctors and nurses from abroad, mostly from countries that are far poorer, have fewer medical staff per head of population, and can ill afford to train people who then migrate to the United Kingdom.

This double scandal is compounded by the way this issue is excluded from the national debate. Why do we allow this situation to persist? We allow effectively unlimited numbers of students to study every subject from art history to zoology. The only subjects where places are numerically restricted are medicine, where they are formally restricted, and nursing, where they are de facto restricted.

I will pass over the political reasons why it may have seemed wise to advocates of mass immigration to invoke the needs of the NHS and nurses and doctors to sanctify their cause. The other reason is nakedly economic: we found it cheaper, in the short term, to employ people trained at the expense of foreign taxpayers, rather than pay to train our own citizens. At the same time, relying on nurses and other health workers from abroad, on whom many other noble Lords have focused, helps to keep wages low. What a paradox it is that many noble Lords who have spoken today and railed against the level of inequality in our country pursue a policy whose prime justification, as they have made clear today, is that it depresses the wages of the lowest-paid people in this country and keeps them below what

[Lord Lilley]
economists call the domestic market clearing rate—the rate at which we could meet our needs from our own employees.

I was at first minded to support these amendments, but, on looking more closely, I note that one thing the reports that they call on the Government to produce do not cover is the scope for training more of those aspiring to become nurses and doctors in the UK, so that we can end the plundering of foreign health services. That is a very significant omission and shows that there is a blind spot in this discussion, which I hope we will not perpetuate in future debates.

6 pm

Lord Green of Deddington (CB) [V]: I had intended to withdraw from the debate, but having heard the noble Lord, Lord Lilley, I have to say that I agree very strongly with what he said. The debate so far has covered the case for a short-term arrangement to make sure that our failure to train in recent years can be made up for, but there is no justification in the medium term for taking doctors and nurses to look after people here from countries that need them far more than we do. That is our responsibility; it is time we trained our own and got a grip on it.

Lord Blunkett (Lab): My Lords, I rise to support my noble friend Lord Hunt's amendment and the brief, excellent speech he made at the beginning of this debate. I also want to reinforce points that have been made by the majority of your Lordships, with the exceptions of the noble Lords, Lord Lilley and Lord Green. Although I do not dispute for a minute that both noble Lords have a point, they have highlighted what I hope to put across this evening, which is the complete contradictions that exist in this debate.

I shall start by picking up those points made by the noble Lords, Lord Lilley and Lord Green. I am presuming that, when we reach Report, they will be moving amendments that will remove the so-called health and social care route announced in July, because under that route doctors and nurses could be recruited from across the world to fill vacancies at that level.

One of the contradictions that I want to highlight relates to young people. Young people who cannot find a job anywhere else due to the aftermath of Covid-19—the 20% drop in GDP and the knock-on effect on unemployment—might decide to go into social care. Most young people I speak to want a career and to be able to progress, and there is progression in both residential and social care. However, as things stand with the proposals by the Government, the area from which we would allow people to be brought in from overseas would be at that higher level, whereas at the lower level the vacancies that have been mentioned—122,000 in England alone—would not be fillable from outside the country. I do not know whether the Government believe that, given the crisis in unemployment that is about to accelerate, people will just take up those vacancies even if they are not emotionally and physically suitable to take up caring duties. As has been made clear in this debate, you have to be a particular type of person to take up some of the less attractive duties of caring for someone who is severely disabled or frail and has dementia.

The contradictions, also mentioned by the noble Baroness, Lady Barker, abound. We all want to see improved wages in this sector. That would not only reward people morally for what they do but help fill vacancies. But the danger of simply putting money into the sector, given the level of private equity ownership, might well be that it gets creamed off, rather than helping to fill vacancies. Or, they will simply close the homes if the money is not provided, which will cause an even bigger problem—as part of the contradictions, we would end up with older, frailer and more severely disabled people in hospital settings, which are more expensive but would allow for staffing to be brought in from outside this country. We saw that in March and April, when people who should have been in different settings in the first place were cascaded out into the residential sector unchecked for Covid-19 and ill-prepared in terms of PPE to be able to deal with it. The consequences, as the noble Lord, Lord Patel, said, are obvious for all of us to see.

The biggest contradiction of all—and I put this to the noble Lords, Lord Lilley and Lord Green—is that, on the centre-left in politics, people are generally suspicious of markets and, on the right, people generally embrace markets. But as I said on Second Reading, in the case of the labour market, the situation is reversed, and those who believe vehemently in markets are against a labour market and against being able to draw in from across the world those who have something to offer the area we are talking about this evening.

We need to sort out the contradictions. That includes the issue of austerity, which led to a bigger downturn in funding for local government services and those funded by local government than any other public service area in the country, with the result that local government has been struggling both with its own direct health provision and with funding in the market and the ability to sustain services.

I have one question—I have learned over the Covid-19 period that you do not get an answer from the Minister unless you ask them a question. My question is simple, and the Minister might be able to answer it tonight: we know what the vacancy level is, but do we have an up-to-date picture of the turnover level in the social care sector? The turnover gives you an idea of how long people can stand working in this challenging but often rewarding setting. What steps might have to be taken if the Government's hope is that the downward pressure on job availability will help fill, in the short term, the vacancies that we have talked about?

At the end of the day, what we are talking about is the care of human beings. We are not talking about markets or political or economic theory; we are talking about the reality of caring for people in their own homes and stopping them, therefore, having to move into hospital, residential care or residential settings that are dealing with people at very difficult times of their lives. In the end, we have to care enough to get it right.

Lord Hodgson of Astley Abbotts (Con): My Lords, I listened carefully to the powerful opening speech from the noble Lord, Lord Hunt of Kings Heath, who is very experienced in this field, and to the speeches that have followed.

Who can argue about the need for a properly skilled, staffed, trained social care workforce? "Skilled and settled", I think, was the phrase used by the noble Baroness, Lady Masham of Ilton. That is why the issues in subsections (3)(a), (3)(b), (3)(c) and (3)(d) in the noble Lord's proposed new clause seem entirely appropriate questions to ask. But when they are tied back into an immigration Bill, I begin to get nervous. The noble Lord, Lord Blunkett, talked about contradictions, and I listened carefully to what he said, but the fact is that the issues in subsections (3)(a) to (d) are issues for the sector not linked directly to the immigration matter we are discussing this evening.

I recognise I am probably swimming against the tide, but it is important to realise that workplace psychologists will tell you that you go to work for three reasons. First, you go for the money, and let us not be precious about that. Secondly, and equally importantly, you go for what they call self-actualisation —to improve and increase your life skills, work with decent people, have career progression, have a good performance that is noted and rewarded and, hopefully, operate in an atmosphere of good team spirit. Those are the internal desires most people have in going to work.

The third area is external reputation. When you mention where you work, what do people say in the saloon bar of The Dog and Duck or around the table at a dinner party?

It is worth taking those three yardsticks and applying them to the social care sector. First, there is the money. There is no getting around it: £8.70 an hour is clearly not good enough when compared with £9 for stacking shelves in a supermarket. However, money is not the only motivator here, and when we turn to self-actualisation —the second of the criteria that I mentioned—the situation is quite serious. I have had the privilege of serving on the boards of many companies in my career. When I join one, I often say, "Tell me about your staff turnover." No staff turnover is not an attractive thing; very often it means that the company has got a bit complacent and is not at the cutting edge, and that the service is not as good as it could be. You want some staff turnover—5%, 10%, that sort of level—to provide the dynamic but, if it rises above that level, it is operationally destructive, distracting and expensive, and the quality of the service starts to fall away.

I understand that in 2018-19 there was a 32.2% turnover in directly employed staff in the sector. Worse, among care workers the turnover was 39.5%. Further evidence of a lack of considered career progression is that half the workforce—excluding registered professionals —have no relevant social care qualifications, which seems to me a question not of money but of managerial grip and organisation, and of making the sector better managed.

Lastly, on the external reputation, one of the great advantages and developments of the pandemic is that people have begun to see how useful, worthwhile and attractive social care can be. People have begun to think about it. Long may that continue but, historically, we all must accept that its reputation has not been that good.

This is a system under acute stress, as many noble Lords have said. The danger of amendments such as these is that they will result in new arrivals, and that immigration will be used as a crutch to maintain what is close to being a broken system. I cannot believe that this is the right approach. More importantly, if the sector believes that it has a "get out of jail free" card, to use the inference that the Minister made when winding up at Second Reading, then there is no pressure on the sector to make any improvements or changes to how the businesses are run or operated, nor indeed is there any pressure on the Government to do likewise. We must find ways to improve the operational performance and the financial performance.

I have two final points. First, on the issue of morality, referred to by my noble friend Lord Lilley, the noble Baronesses, Lady Barker and Lady Meacher, and the noble Lord, Lord Patel, recruitment in this area is a zero-sum game. What we have, other people lose. Maybe one could say that within the EU there is sufficient prosperity for us not to worry about it, but the noble Lord, Lord Patel, mentioned the wider recruitment. This is a very serious issue. We must look at ourselves in the mirror and decide whether it is right and fair for us to be recruiting doctors, nurses and care workers from less-developed countries. It may be serious within the EU, but it certainly is serious around the world.

I will give just one example. When the Ebola virus struck Sierra Leone, there were 136 doctors there, one for every 45,000 people; in this country, the equivalent figure is one for every 300 people. At that time, there were 27 Sierra Leone doctors working in the NHS. If we had not employed those people, we could have given a 20% boost to Sierra Leone's health facilities. It is not the answer but when we set out our stall for the future we must consider our attitude towards the less-developed world, and whether we will, as the noble Baroness, Lady Barker, said, take ourselves out of the international market for health and social care workers.

6.15 pm

My other point is about the dependency ratio, the ratio between those in work and those who are in education or are retired. A 26 year-old from overseas who comes to work in a care home here will, in 40 years' time, be looking to go to the care home as a patient, not as a worker, requiring more people to come and look after them. Therefore, we will need to find other ways to boost the sector. David Attenborough has called this a population Ponzi scheme. The noble Lord, Lord Turner of Ecchinswell, who is not in his place today, said that if you wish to keep the dependency ratio as it was in 2006, you must plan to have 100 million people in this country by 2060, compared to the 66 million that we are today. While I absolutely understand the good intentions of all noble Lords who have been putting forward these very worthwhile amendments, on balance I must ask the Minister to reject them.

Lord McCrea of Magherafelt and Cookstown (DUP) [V]: My Lords, it is clear that many fear the impact that a sharp and purely tailored approach to ending free movement on growth could have in certain important economic sectors, especially within Northern Ireland. The move to reduce the £30,000 salary threshold to

[Lord McCrea of Magherafelt and Cookstown] £25,600 for skilled migrants coming to the UK is welcome. However, it is not sustainable in Northern Ireland because quite a number of jobs, especially in the care sector, pay less than £25,600. The requirements of the sector have always been different from most of the rest of the economy, but I address my remarks mainly to Amendments 2, 82 and 93, and the need for workers in the health and care sector.

The pandemic has shown the enormous contribution of overseas workers to our health and social care system. Indeed, they have put their lives at risk to keep us safe. Over these last months the care sector has been under extreme pressure, and clearly any major changes will have serious consequences. Unless we have a breakthrough with a vaccine, care homes and that sector of our health provision will still be battling Covid-19. A large percentage of our doctors in the NHS are from overseas, yet there are thousands of posts vacant across the medical profession. There are serious staff recruitment and retention problems within health and social care, even with freedom of movement and flexibility of opportunity. Added to this is an ageing population with increasingly complex care needs. The Government have ambitious plans to fill staff vacancies, which noble Lords have spoken about, but it will take a concerted effort and a very considerable period of time to train doctors and nurses—even if they are recruited tomorrow—and to provide thousands of professional care home staff for our various facilities across the United Kingdom.

In my opinion, this is a mammoth task. It is not realistic to pretend that we can address the vacancy shortage within a short period. To suggest that those who have lost their employment elsewhere would adequately fill these vacancies is also unacceptable, as we are speaking about a caring profession; vulnerable people who need assistance need loving, professionally skilled attention. I fear that deterring the recruitment from overseas of care assistants and other junior care workers who already have skills will lead to a serious decline in the quality and availability of care for the most vulnerable in society.

We also need an independent evaluation of the impact of the Bill on the health and social care sector across the United Kingdom. The appointment of a person independent of government should be done following consultation between the Secretary of State for Health and Social Care and the relevant Ministers in the devolved Administrations. If what is being done under the Bill is right and professionally competent, there is nothing to fear from such a comprehensive independent evaluation. This new clause requires the Secretary of State to lay a copy of the report before both Houses of Parliament no later than one year after the Bill is passed, and that no later than six months after the report is laid it will be debated and voted on in the Commons and Lords. The effects of these changes on disabled people, older citizens, children and young people and those with long-term health conditions—in other words, those who rely on the service provided by health and social care to make life bearable—could be profound. Therefore, we had best be sure that we get it right.

Lord Hain (Lab) [V]: My Lords, I wish to speak particularly to Amendments 2, 47 and 57. I strongly agree with the excellent opening speech on this group by my noble friend Lord Hunt and with many other speeches, including those of the noble Baroness, Lady Altmann, and my noble friend Lady Lister. This Bill illustrates that the pandemic has revealed fundamental flaws in the present United Kingdom non-EU immigration system and the Government's post-Brexit plans for immigration. In an economy which previously had record levels of employment, and despite the joblessness effects of Covid on the labour market, their proposed points-based system could produce damaging labour shortages in many sectors, including the NHS, social care, which has been spoken about authoritatively in this debate, farming, food processing and construction.

None of this should come as a surprise, as the 2016 referendum campaign was based on rhetoric falsely linking the free movement of EU workers with the legacies of Tory austerity: housing shortages, depressed wages and huge cuts in public services, especially social care. The promise to take back control of borders may have appealed to nationalistic jingoism, but it was never rooted in the reality of modern Britain, where EU and non-EU migrants of all skills levels and income brackets keep the economic and social wheels turning. EU and other migrant workers were always, in fact, net contributors, through tax and national insurance, to the National Health Service, social care and other public services. Despite the Government's intention to equate low pay with low skills and low value, the pandemic has abruptly brought migrants' significant front-line roles as key workers in keeping the country afloat to the attention of the public, among whom it is now widely recognised, whereas perhaps it was not in 2016. As the Joint Council for the Welfare of Immigrants has stated, the Bill

"will deny our communities the care and professionalism contributed by migrants in these areas, to our own detriment."

The Bill does not set out in detail what the future points-based UK system will look like. These changes will be covered in unamendable Immigration Rules. The Bill gives the Government Henry VIII powers to modify primary or secondary legislation as appropriate. Despite the Government's claims that these powers are usual, they will diminish the role of Parliament in an area of policy where many, including the Lords' Delegated Powers and Regulatory Reform Committee in its 2019 46th report, have concluded that greater scrutiny is already required.

In the social care sector, on which millions of extremely vulnerable British people depend—many of them our relatives, in care homes and in their own homes—the vast majority of social care roles do not meet the planned immigration system's salary threshold of £25,600. The noble Lord, Lord McCrea, who spoke immediately before me, emphasised that point in relation to Northern Ireland. Using data collected before—I stress, before—the height of the Covid-19 pandemic, Skills for Care estimated the number of vacancies in the sector at 133,000. It also estimated that 5% of the 1.65 million workforce, or more than 80,000 staff, are at risk of losing their employment rights at the end of the transition period, in a sector where nearly half of

employers are already struggling to fill existing vacancies because of low pay, anti-social hours and the demanding nature of care work.

The Government, in their wisdom, have decided that front-line social care staff will be excluded from their fast-track health and care visa, with the Home Secretary stating that this will encourage employers to invest in workers from the UK. Who is going to pay for this? Will it be people receiving care, cash-strapped local authorities, whose budgets have been massively cut, or private-sector care providers, many of whom are teetering on the brink of financial collapse? Parliament's library briefing confirms that

"a wide range of organisations are concerned that short-term funding pressures remain. In 2018, the Local Government Association estimated that adult social care services faced a £1.5 billion funding gap by 2019/20 and £3.5 billion gap by 2024/25."

While the points-based system is a fundamental change, other aspects of the non-EU immigration system such as enforcement, the right to bring dependants, settlement criteria, asylum, no access to public funds and more will remain unchanged when EU citizens without settled status become subject to them in 2021—next year. The pandemic has demonstrated that because of these policies, many such migrants are at significant risk of exposure to the virus, fear accessing healthcare, lack access to safe housing and are unable to stop working or to self-isolate because they are on poverty wages. This is not only detrimental to the health of migrant communities; the health of the wider public is also put at risk.

The Bill is a missed opportunity to deal with many more important questions, on which I support contributions and amendments from noble colleagues, including measures to combat modern slavery and indefinite detention, and to address family reunion for refugees and safe routes for unaccompanied children. These unresolved issues mean that the existing UK immigration regime for non-EU immigration is already a stain on our national reputation. Its extension to EU citizens from 2021 is a matter of deep regret, creating a new Brexit generation alongside the Windrush generation.

All British citizens living in the EU want to be reassured that we will uphold the treaty rights of EU citizens in the UK, the better to insist that they are upheld for our citizens in the EU. The Bill fails to provide that reassurance. If the Government want to retain the respect of our former friends and partners, they should listen to the concerns expressed by EU ambassadors and others and accept amendments which will guarantee the rights of the Brexit generation of European Union citizens, including vital social care workers, who have legally made their lives in our country, by writing them into this primary legislation.

6.30 pm

Baroness Ludford (LD): My Lords, we have heard from across the Committee the concern about this crisis in social care. Many noble Lords have considerable expertise on this topic and I am grateful to them for sharing their knowledge.

History will record the failure to deal with the fragile state of the provision and funding of social care as one of the major failures in domestic policy, and one has to say that particularly of the last 10 years of Conservative and Conservative-led government. I wish that as much energy had been applied to this subject as to Brexit. It shows a peculiar set of priorities.

I do not know whether the Government are being ideologically pure, to use the term employed by my noble friend Lady Barker. I certainly think that they are being obdurate and, I am afraid, unintelligent in not responding to the enormous problems in social care. The idea that in a short space of time we are going to find loads of people in the United Kingdom who want to work in this sector when they have never previously shown any interest in, inclination towards or aptitude for such work is pie in the sky. We learn that there are 120,000—the noble Lord, Lord Hain, referred to an estimate of 133,000—vacancies in the social care sector. When a quarter of a million social care workers—that is, 20% of the workforce—are EU or non-EU nationals, the ending of free movement under this Bill will lead to even greater shortages of staff.

I agree that it is wrong to exclude care workers from the health and care visa route, since only maybe senior care workers will be included under the salary level criterion. My understanding is that Canada and New Zealand have sector-specific visa routes. Since they are flavour of the month, why don't we follow countries like them?

I was very moved by the tragic account from the noble Baroness, Lady Masham, of the suicide of quite a young man through the fear of a lack of care. I experienced this a little when my late husband, four years before he died, had to have a leg amputated due to sepsis. He benefited from carer support, as well as, I hope, from my support. I can absolutely relate to the emotions—the fear and anxiety—of people, whether the elderly or those with a range of disabilities, who do not know whether they will be able to get care either in a care home or in their own home.

As many noble Lords have pointed out, low skilled and low paid does not equal low value. My noble friend Lady Hamwee and the noble Lord, Lord McCrea, referred to the right caring personality being one of the necessary skills, but somehow that seems to be disregarded as though it comes with the territory, not least with women. Women are expected to be natural carers; well, we are not necessarily.

My noble friend Lady Barker referred to an acute and growing need for paid social care as the number of people without children grows to, I think she said, 2 million in 2030. I am one of those guilty parties—I have failed to grow the population—and my noble friend makes a very good point. Many families are not necessarily in a position anyway to provide care within the family, but she makes a very good point about a factor that increases the necessity.

Various amendments call for a review. Some of them could talk about health and social care but the emphasis in this debate, just like Amendment 2, which was very ably moved by the noble Lord, Lord Hunt of Kings Heath, has rightly been concentrated on the social care sector, which is where we are facing a crisis. One of the factors in that crisis is going to be the lack of an adequate workforce, and quite honestly it is astonishing if the Government do not respond to that. I hope the Minister can give us some hope of progress when she replies to the debate.

Lord Rosser (Lab): Like the noble Lord, Lord Patel, and others, I congratulate my noble friend Lord Hunt of Kings Heath on his powerful speech opening this debate. I wish to speak in particular to Amendment 57 in this group, to which my name is attached, although I agree with the concerns that have been expressed by noble Lords who have spoken to other amendments in this group. I note that the noble Lord, Lord Hodgson of Astley Abbotts, advised the Minister to reject my amendment before I have even spoken to it, though I fear that my speech will probably only reinforce his view of his advice to his noble friend.

The amendment would make provision for the Secretary of State to provide a dedicated social care visa for EEA and Swiss nationals who had the right to free movement and have a job offer to work in the social care sector, and to their dependents. They would not be subject to the NHS surcharge or the immigration skills charge and the visa route would be available for three years from the end of the transition period, with the option to extend for further years if necessary.

The thinking behind the amendment is that the Government's intention to suddenly shut the entry door at the end of the transition period in a few months' time on the overwhelming majority of future overseas social care workers under the criteria laid down in the new points-based immigration system, and the exclusion of care workers from the qualifying list for the health and care visa, will have serious and immediate adverse consequences for our already stretched social care provision in the UK. The amendment would remove the suddenness associated with this policy change through the social care visa available for three years with an option to extend, and would give the social care sector a realistic chance of being able to adjust to the loss of a significant source of labour.

A Commons Home Office Minister said in July said that the reason why care workers had been excluded from the qualifying list for the health and care visa was that the Government had a "vision" for the social care sector that it should no longer

"carry on looking abroad to recruit at or near the minimum wage",

and that the Government's priority was that in future care sector jobs would be

"valued, rewarded and trained for, and that immigration should not be an alternative."—[*Official Report*, Commons, 13/7/20; cols. 1249-50.]

If that means significantly better rates of pay and an associated increased degree of widely accepted and acknowledged professionalism in the underpaid and undervalued social care sector, that is to be welcomed—a widely accepted and acknowledged professionalism that does not leave care homes and care workers at the back of the queue when it comes to personal protective equipment and does not regard the care sector as so forgotten and unimportant as to send vulnerable people from hospital into care homes who have not been tested for Covid-19.

The fundamental change needed is far from the current position and cannot be achieved in the space of the next few months, when the transition period ends, without potentially serious adverse consequences for those who are vulnerable and dependent on care provision either at home or in a home. It requires a change of culture and attitude both towards and within the sector, a change that the Government have to accept is their responsibility to lead. That will take time, as the Government implicitly accepted when they said in July that with the vast majority of social care staff employed in the fragmented private sector, their

"ability to influence pay rates there"

is limited.

Some 17% to 20% of the social care workforce are migrant workers, with 115,000 EEA nationals and 134,000 non-EEA nationals. Vacancy rates in the care sector now stand at 6.5% in England and 5.5% in Scotland. Since there are already 100,000-plus vacancies in England's care sector alone and the current flow of people from abroad to fill low-paid care sector jobs is about to dry up, the Government cannot possibly have been able to satisfy themselves that not only will UK-based workers immediately appear to fill that gap but they will be there in sufficient numbers—with the right training, aptitude and caring qualities for social care work—to lower the vacancy levels in the sector as well.

One assumes in making that statement that the Government do not believe that anyone can successfully do this kind of work and that anyone available should be recruited. We are told that the Government have an "oven-ready plan" to address the issue of funding the increasingly expensive social care sector. Unfortunately, the person claiming to have this plan for more than 12 months now has been unable to figure out how to turn the oven on.

If higher pay rates did suddenly materialise in the social care sector in a few months' time, which would apparently solve the labour shortages—as the Government seem to assume will happen as a result of the points-based immigration system and the drying up of non-British labour—there will presumably be a potentially significant increase in the cost of providing social care. What do the Government think that increase in cost will be since it is only a few months ahead of us in a sector with a 30%-plus annual staff turnover rate, a high vacancy rate and a major source of labour about to end? Will it be the elderly, vulnerable care home residents and people receiving care at home—the self-funders—who will have to find yet more money? Will it be the already cash-strapped local authorities? Will it be the providers of care provision or will it be the Government themselves financing the cost of a much better paid, more highly valued, more highly trained and increasingly professional social care workforce? I hope that the Government will provide an answer to this point in their reply.

The care sector was in crisis before Covid-19. Local authority spending on adult social care in England has fallen, I think, by some 7% per person in the past decade, thanks to austerity and cuts in grants from central government. Councils have had to tighten eligibility thresholds as cost, rather than need, has become the dominant factor in decision-making. One inevitable result is that some 1.5 million elderly and disabled people have unmet care needs and care workers are often expected to deliver home care within a 15-minute visit or less.

The work is usually low paid and seriously undervalued. However, high-quality care is not low skilled and the Government's apparent policy that the rising unemployment on which they are banking will solve problems of staff shortages is misguided and potentially dangerous. What is needed is a better funded and resourced care sector with a new focus on training and continuing professional development. We need a cultural change in how we view social care and the value we place on those who work in the sector, including the way in which the immigration system regards social care workers—a change that recognises that there is direct competition from the NHS for many care staff, an NHS that offers higher pay levels and a career structure. With nearly one-fifth of the adult social care workforce being from overseas, in a sector with already high levels of vacancies and turnover rates it is unrealistic to believe that the effect of shutting the door to future care sector staff being recruited in any numbers from overseas can be overcome in rapid time by finding and training appropriate personnel with an aptitude for care sector work from within the ranks of British citizens, both already employed and unemployed.

6.45 pm

I hope that the Government will reflect further not on their apparent aim for a much better-paid social care sector, but on their view that we can achieve that better-paid, resourced and valued and increasingly professional care sector at the drop of a hat in a few months' time simply by cutting off the supply of staff from overseas. We cannot. We need a period of time, as provided for in Amendment 57, to sort out the increased funding, the finance for the better pay the Government envisage, and to find, recruit and train—from within this country—the hundreds of thousands of increasingly professional staff with an aptitude and a desire to work in the care sector that are going to be needed. I hope the Government can give a positive reply to this group of amendments.

Baroness Williams of Trafford (Con): I thank all noble Lords who have spoken in this debate. The noble Lord, Lord Blunkett, says that we are a contradictory lot and I do not disagree with that, but what we are all consistent on is that this is a matter that, through Covid, we have seen as incredibly important. We need people with these skills; they are valued and their careers can progress in this sector. He raised a very pertinent point around the turnover. I think you can tell the state of a sector or indeed a business by its turnover. Turnover is high; it is estimated to be around 31%. That is a high turnover in anyone's book. I will confirm that figure because it is one that I have on the top of my head but my officials might disagree with it. If it is any different, I will confirm that in writing.

The amendments cover a range of issues, all of which relate to health and social care. They can be broadly split into three themes: the need to review the effects of the new immigration system on the health and care sectors, dedicated visa routes for health and social care workers, and immigration routes for those who do not meet requirements under the future skilled workers route. I am grateful to the noble Lords who tabled the amendments because they give us an opportunity to discuss a very important issue. It might be worth reflecting that there is nothing more important than how we, as a society, look after the most vulnerable people, be they young or old.

I will say another general thing about the health and social care sector, not as a Home Office Minister or even a Member of your Lordships' House but as someone who formerly led one of England's major metropolitan councils—which, as with all local authorities, was a significant user of care services, which consumed a substantial portion of the council's budget. I became leader in 2004; it was an issue then and it is even more so now. I assure noble Lords that the Government very much appreciate the contribution of the social care sector, and its value to this country has never been better demonstrated than during the Covid crisis, as the noble Baroness, Lady Lister, and the noble Lord, Lord Patel, said. The Government are working alongside the sector to ensure that the workforce has the right number of people to meet increasing demands with the right skills, knowledge and behaviours to deliver quality, compassionate care.

I will respond to the point of the noble Baroness, Lady Lister. The Department of Health and Social Care has recently launched a new national recruitment campaign, called "Every Day is Different", to run across broadcast, digital and social media. The campaign highlights the vital role that the social care workforce is playing right now during this pandemic along with the longer-term opportunities of working in care.

The Government have commissioned Skills for Care to scale up capacity for digital induction training, provided free of charge under the DHSC's workforce development fund. This training is available for redeployees, new starters, existing staff and volunteers through 12 of Skills for Care's endorsed training providers.

Finally, of course, I must mention—and I am sure noble Lords have heard me saying this before—that the Government are also providing councils with access to an additional £1.5 billion for adults and children's social care in 2021. This is a significant funding uplift.

On the amendments, I will start by addressing Amendment 2 from the noble Lord, Lord Hunt of Kings Heath, and Amendment 93 from the noble Baroness, Lady Jones of Moulsecoomb, which are similar in intent. Both would require an independent review of the effect of our new points-based immigration system on the care sector. I very much agree that it is essential that policies are kept under review, particularly when the Government are introducing a new, points-based immigration system from January. Independent scrutiny and review are a good thing, but I am not sure that we need to legislate to provide a whole new mechanism.

We are very fortunate in already having the Migration Advisory Committee, a body that is widely recognised for its expertise and impartiality. It is testimony to the MAC's standing that it has operated under a Labour Government, a coalition Government and Conservative Governments. In each instance it has been valued for the quality of its advice, and its recommendations have been accepted. Noble Lords should be in no doubt about the close interest that the MAC takes in the health and social care sectors. To put it into context, social care featured prominently in the MAC's

[Baroness Williams of Trafford]
report from January of this year on salary thresholds and the points-based immigration system, just as it did in its report from last year on the shortage occupation lists, where there was a dedicated section on the sector, and in its 2018 report on EEA migration. I can assure noble Lords that the MAC will continue to look at these issues, particularly as the effects of the new immigration system start to be felt.

I also remind noble Lords that the Government have expanded the MAC's remit. It is no longer constrained to reacting only in response to specific commissions from the Government; it now has licence to consider, and comment on, any aspect of immigration policy. To that end, we have asked it to start producing annual reports that not only cover issues such as its budget or staffing but provide a commentary on the operation of the immigration system. The MAC has accepted this challenge with customary gusto, and I understand we can look forward to the first such annual report later this year.

Therefore, while I totally understand the sentiment behind Amendments 2 and 93, they are not necessary. We already have a world-class, independent body to review the operation of our immigration system. Accordingly, I hope that the noble Lord will withdraw the amendment.

I turn to Amendment 47 from the noble Baroness, Lady Hamwee, Amendment 57 from the noble Lord, Lord Rosser, and Amendment 66 from the noble Baronesses, Lady Masham, Lady Finlay and Lady Thomas. I join noble Lords in having been profoundly moved by the words of the noble Baroness, Lady Masham. These amendments seek to introduce a dedicated route for health and care workers to come to the UK. I do not think that any of us would disagree about the value of the work that migrants and all staff working in the health and care sector do, and I recognise that these amendments were tabled to highlight and enhance this vital sector. That is obviously of great importance to those individuals with severe disabilities and care needs, who will rely even more on the support of health and care workers.

That is why I am pleased to be able to confirm that the Government launched the health and care visa on 4 August. The visa is available to health and care workers, and their families, from all parts of the world, not just EEA and Swiss nationals. Applicants pay a visa fee of £232 for a visa lasting less than three years, and £464 for a visa lasting more than three years. Applicants, and their families, are also exempt from having to pay the immigration health surcharge. Finally, most applicants for the health and care visa can expect a decision within just three weeks of enrolling their biometrics.

That leaves two further points for discussion. First, if inserted into the Bill, these amendments would require the Government to establish a scheme to admit care workers. I am not sure that that would be a wise way to proceed. The decision not to offer a general immigration route for those who do not meet the skills and salary thresholds is not one the Government have taken lightly. We have done so on the advice of the MAC which, as outlined earlier, is the Government's independent adviser on migration issues. We also need to respect the wishes of the people of the UK, as expressed in the referendum vote four years ago.

The MAC has been very clear that the solutions to the challenges which the care sector faces do not lie in migration. My noble friend Lord Lilley and the noble Lord, Lord Green, made this point, as, largely, did my noble friend Lord Hodgson of Astley Abbotts. I draw your Lordships' attention to the evidence which the chair of the MAC, Professor Brian Bell, gave to the committee in the other place. When asked about a visa route for care workers, he said:

"If people say that the response to the social care issue should be, 'Well, employers should be allowed to bring in as many migrants as they want at the minimum wage', first, that does not sound like the low-wage problem of the social care sector is being dealt with and, secondly, it suggests that one of the groups that will really suffer from that is the social care workers. You are saying that you are going to keep on allowing their wages to be held down by allowing employers to bring in workers at the minimum wage, whereas we want to see wages rising in that sector."

That is a telling point. It would be a very odd position for this Government and for noble Lords to take if we were to conclude that the best way to reward those working in the care sector—the vast majority of whom are British—for their selfless and unstinting actions over the past few months was to institute a visa regime which, as the MAC chair has indicated, has the effect of depressing their wages.

Amendment 57 from the Official Opposition suggests putting in place a scheme for three years to tide the sector over and allow for some adjustment. Again, it is worth reflecting on the wise words of the chair of the MAC—this time when he appeared before the Home Affairs Committee in June. On the issue of some sort of temporary or transitional scheme for those working in social care, Professor Bell said:

"The risk is that you say that there needs to be a temporary arrangement for social care to make sure it can still access workers at usually minimum-wage wages from the rest of the world. That often then becomes a permanent solution".

Indeed, I note that Amendment 57 explicitly contains a provision to allow it to be extended beyond its three years.

In the very next question, the chair of the Home Affairs Committee asked Professor Bell whether there would be a transitional scheme for social care workers, something my noble friends Lady Altmann and Lady McIntosh of Pickering talked about. He explicitly said that he did not advise that course of action. He went on to say:

"If unemployment rises very substantially in the next few months, of which there is certainly a risk when the furlough scheme unwinds, there will be a large supply of workers in the UK looking for work. If social care is ever to succeed in attracting workers, that is a pool of workers that they should be able to attract. If they can't, I go back to my point that there is something fundamentally wrong here and it is nothing to do with immigration."

These amendments seek to exempt health and care sector employers from paying the immigration skills charge. However, we consider it is right that the immigration skills charge continues to apply. In its September 2018 report on the impact of EEA migration in the UK, the MAC supported continued application of the immigration skills charge, without exceptions

for particular sectors, alongside salary thresholds, as a way to protect against employers using migrants to undercut the domestic workforce, as my noble friend Lord Lilley and the noble Lord, Lord Green, said.

The Government stand by this requirement, given our desire for immigration to be considered alongside investment in, and development of, the UK's resident workforce. My noble friend Lord Hodgson of Astley Abbotts made the point very strongly about the sector taking responsibility here; my noble friend Lord Lilley and the noble Lord, Lord Green, also made these points. This has only become more important due to the uncertainty that many UK resident workers will face as a result of the current pandemic.

7 pm

On Amendment 82 from the noble Lord, Lord Patel, I recognise that he is looking for the Government to reassure Parliament that we will continue to support our essential health and social care sector and ensure that it has the staff it needs to support the health and well-being of the citizens of the United Kingdom. I hope that I can provide that reassurance today.

We recognise that the proposals under the UK points-based immigration system represent a significant change for employers in the UK and those migrants who would previously have benefited from free movement. It does not mean that employers will not be able to fill vacancies in the health and social care sector. As mentioned earlier, the Government are working closely with Skills for Care to help employers to train new recruits and volunteers and refresh the skills of their current workforce, in addition to introducing a proper career structure, as the noble Baroness, Lady Lister, talked about. This will provide opportunities for those in the sector and make it an attractive profession for prospective careers.

We must also keep in mind that, sadly, many people have lost their jobs because of the pandemic. It is right that the Government encourage employers to look first at the domestic labour market. As is now the case, there will continue to be a source of people with general rights to work in the UK: for example, people who come as dependents, on a youth mobility scheme, and on some family routes. We have already guaranteed the rights of many EU family citizens and their family members who are working in the social care sector; as noble Lords will know, there have been over 3.8 million applications to the EU settlement scheme. I can absolutely assure noble Lords that we will continue to keep labour market data under very careful scrutiny to monitor pressures in key sectors.

I hope that noble Lords can see that there are a range of options for those working in health and social care. Ultimately, it will be for individuals to consider the most appropriate route for them based on their specific circumstances. The sector, as my noble friend Lord Hodgson of Astley Abbotts says, needs to rise to that challenge. I hope that with those words, the noble Lord will feel happy to withdraw his amendment.

Lord Hunt of Kings Heath (Lab): My Lords, this has been an excellent debate, and I am grateful to noble Lords who have given their support to my and other noble Lords' amendments.

The Minister and the noble Lords, Lord Lilley and Lord Green, say we should not be using migrant labour to undercut our own workforce. Let me make it clear: I absolutely agree. I also agree with the noble Lord, Lord Hodgson, that the current turnover of care staff is appalling and cannot possibly be defended. But, as my noble friend Lord Rosser said in his marvellous winding-up speech, you will not solve the care sector's problems by suddenly snapping off its ability to recruit staff from abroad from the end of the year. All you will do is tip it into an even bigger crisis than it is in. This is complete madness. We know what is going to happen; towards the end of the year, or at the beginning of the new year, there will be a total panic in the Government and they will reverse the decision. They have had practice at reversing decisions in the last few months, have they not?

On those pressures, noble Lords who oppose what I am saying seem to think it is the care sector's fault. This is a government-controlled sector. The Government are the main funder and regulator; they set the whole context in which the sector operates. They have had countless reviews but will not face up to coming forward with a costed solution. We all know that the Green Paper, if it eventually comes, will be about funding the sector 20 to 30 years in the future. It will not deal with the issues as they now are.

The noble Baroness, Lady Williams, says that, if you go for my noble friend's amendment, which I commend, a transitional arrangement will become permanent. That is the point: it is down to the Government to make sure that it is not permanent. The beauty of my noble friend's amendment is that it sets the challenge to Government. Let us go for a transitional arrangement but, if the Government want it to end, they have to come forward with effective proposals to reform and sort out the care sector, once and for all.

I do not see the Migration Advisory Committee in the same way that the noble Baroness does. She quoted the chair of that committee presumably proclaiming the rise in unemployment that he foresees as the solution to the care sector problem. I have been trying to ponder the Government's Brexit strategy. Clearly they are prepared to let the automotive and aerospace industries go to the wall and, presumably, they are happy about that, because the care sector's problems will be solved as a result of the decimation of people working in those sectors. You could not make it up. This is the worst Government there has been in my lifetime. From issue to issue, they clamber around with some ideological nonsense about what the British people were supposed to have voted for in the referendum, and we end up in this dire situation. Having said that, it has been a great debate, and I beg leave to withdraw my amendment.

Amendment 2 withdrawn.

Schedule 1: Repeal of the main retained EU law relating to free movement etc.

Amendments 3 to 6 not moved.

7.07 pm

Sitting suspended.

7.36 pm

The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con): My Lords, we now come to the group consisting of Amendment 7. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Schedule 1: Repeal of the main retained EU law relating to free movement etc.

Amendment 7

Moved by ***Lord McColl of Dulwich***

7: Schedule 1, page 8, line 35, at end insert—

"( ) The reference in sub-paragraph (1) to any other EU-derived rights, powers, liabilities, obligations, restrictions, remedies and procedures does not include a reference to any rights, powers, liabilities, obligations, restrictions, remedies and procedures arising under the EU Anti-Trafficking Directive (2011/36)."

Member's explanatory statement

This is a probing amendment to confirm the status of the EU Anti-Trafficking Directive under EU retained law and how it might be affected as a result of Schedule 1, paragraph 6.

Lord McColl of Dulwich (Con) [V]: My Lords, I have tabled Amendment 7 because, as I raised at Second Reading, there is a great deal of concern about the situation that will be faced by victims of modern slavery after the Brexit transition period concludes at the end of December. Other noble Lords raised this concern at Second Reading, including the noble Lords, Lord Morrow and Lord Randall, the right reverend Prelate the Bishop of Bristol, who has kindly added her name to my amendment, and the noble Lord, Lord Kennedy, who was gracious enough to support the Private Member's Bill in my name, to which I shall return later.

The Minister will know that I firmly support the Government's aim of bringing immigration policy solely within the control of the UK Government and that leaving the EU should also mean that the UK is not bound by EU law, other than that which we have chosen to incorporate into domestic law. However, I was and remain a strong advocate for the content of the EU anti-trafficking directive which the Government agreed to adopt in 2011. Having left the EU, exercising our sovereignty does not compel us to make fewer provisions for victims of trafficking than those available under the directive. Indeed, I suggest that we should use this freedom to ensure that we have the very best provisions for victims of human slavery.

Since the Government opted into the directive, we have passed the excellent Modern Slavery Act 2015. However, that does not contain any provisions relating to immigration status or access to support or benefits for victims, something which my Private Member's Bill, the Modern Slavery (Victim Support) Bill currently before the House, seeks to rectify.

The directive has filled this gap to a degree, since the direct effect of the EU directive in practice made it part of domestic law, unlike the statutory guidance and the Council of Europe anti-trafficking convention. The statutory guidance is valuable but does not have the force of law and can easily be changed; the convention creates obligations for the Government, but these are not rights which would take precedence over other UK law such as, for example, immigration law.

I hope noble Lords will bear with me as I detail some background to my amendment. In a nutshell, there is uncertainty about whether aspects of the directive remain part of what is known as EU retained law. If parts of the directive are retained EU law, it is also uncertain whether they could then be disapplied by this Bill under paragraph 6 of Schedule 1, because they conflict with immigration policy

On the first uncertainty—namely, whether rights under the anti-trafficking directive remain recognised and available in domestic law—the answer depends on whether rights under the directive fall within the relevant definitions in the European Union (Withdrawal) Act 2018. The key definition is set out in Section 4(2)(b) of the 2018 Act, which requires that the rights in question are

"of a kind recognised by the European Court or any court or tribunal in the United Kingdom".

Given that definition, part of the problem associated with trying to understand whether rights will obtain after the end of this year is because, to my knowledge, the phrase "of a kind" has yet to be interpreted by the courts. The Explanatory Notes to the 2018 Act offer some assistance, indicating that where a UK or EU court has recognised rights arising under directly effective provisions of directives, these will remain in law, meaning that they

"could be relied upon by other individuals who are not parties to that case".

What is less clear, however, is the status of other rights in the same directive that may meet the test for having direct effect but have not yet come before the court. Will these be "'of a kind" with those other rights and be available in domestic law? Or, as the Explanatory Notes—but not the legislation itself—seem to imply, will those rights no longer be available simply because they will not yet have been tested in court?

The second area of confusion relates to those rights that do fall within the withdrawal Act definition and have been retained in domestic law. The issue here is the broad nature of the terms used in paragraph 6 of Schedule 1 to this Bill, which could see those retained rights being disapplied because they conflict with immigration policy. Since the majority of the victims of modern slavery in the UK are not British nationals, there is necessarily an intersection between immigration policy and the rights relating to the support and other treatment of those victims. It is the combination of these two uncertainties that compounds the risk for victims of trafficking.

Experts who support victims of modern slavery, including the Immigration Law Practitioners' Association —the ILPA—have said that, in the light of the above concerns, some of the protections which may be lost include the

"protection against removal of a victim of trafficking because they never received sufficient support and assistance under Article 11, or because an investigation was never conducted, or the protection against removal during their reflection and recovery period."

7.45 pm

In reply to a Written Question I asked earlier in the year about the status of the directive, the Minister said that EU law ceases to have effect. Knowing my concerns about the directive, the Minister kindly arranged for a government position on the directive to be sent in advance of this debate, which states: "We do not consider that any directly effective rights which may exist under the EU Anti-trafficking directive 2011/36 conflict with or will conflict with the Immigration Acts or immigration functions (per the disapplication provision in para 6 of Schedule 1 to the ISSC Bill)".

I am extremely grateful to the Minister for giving us this information before the debate, but it highlights the problems faced by victims and those supporting them. The Minister refers to "any directly effective rights which may exist"—the Government are not referring to rights that do exist, but rights which "may" exist. Which are these rights? Is it certain whether they will exist or not? I am asking the Minister to put on the record specifically which rights will exist and which will not. Will all existing rights and obligations under the EU anti-trafficking directive remain part of domestic law following the end of the transition period, separate from any rights and obligations set out in the Modern Slavery Act, statutory guidance and the Council of Europe anti-trafficking convention? If her answer does not clearly address this broader question, how can this House, and trafficking victims, be reassured that the rights will not be disapplied by this Bill?

I am strongly of the view that Brexit should not lead to fewer protections for victims of human trafficking. It is not clear to me that victims will be able to rely on all the rights they had under the directive, but to settle for anything less would damage the integrity of the Brexit project in a way that is unthinkable. Leaving is not about gaining sovereignty so that we can have worse laws, but so that we can have better laws. At minimum, I urge the Government to use our sovereignty to ensure that our laws afford victims of modern slavery the same statutory rights next year as they enjoy this year, which I think will require further amendment to this Bill.

Rather than constraining their vision, I urge the Government to seize the opportunity to go further than the directive and boldly use our sovereignty to put in place a more robust system of protections for confirmed victims of human trafficking, as set out in my Modern Slavery (Victim Support) Bill, which is so ably championed in another place by the former Conservative Party leader, Sir Iain Duncan Smith. This would make sure that all victims in England and Wales have recourse to statutory support and assistance for a minimum of 12 months, something that does not apply in this jurisdiction. They would also be provided with leave to remain during their recovery period. My Bill would bring certainty for victims and help us to move into the Brexit age with a truly enlightened use of our new-found sovereignty. I urge the Government to make time for my Bill as soon as possible. I beg to move.

The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con): The right reverend Prelate the Bishop of Bristol has withdrawn, so the next speaker is the noble Lord, Lord Randall of Uxbridge.

Lord Randall of Uxbridge (Con) [V]: My Lords, it is a great pleasure and an honour to follow my noble friend Lord McColl, who has been such a doughty campaigner on this issue. I would like to say at the outset that I would be a strong supporter of his Private Member's Bill. I should start by declaring that I am a vice-chairman of trustees of the Human Trafficking Foundation, a position I share with the noble and learned Baroness, Lady Butler-Sloss, who with her legal background is more able to discuss these matters.

I share the concerns of my noble friend Lord McColl that the anti-trafficking directive from the EU will not necessarily be implemented into domestic law; he has explained clearly the exact position. I would like to say this. There has always been a conflict between the victims of modern slavery and the people who find them, who are often the same officers who check on illegal immigration. Many of the victims, certainly those not from the EU, could well be illegal immigrants. When they were EU citizens who had free movement, even if they were brought here under duress or false pretences they would not have been illegal immigrants. What will happen is that there will probably be more of an impetus to remove people, even though they are victims. That is not what the Government intend, and I am sure that the Minister will say so, but it might well be the result. In theory, the fact that we are supposed to be taking control of our borders might well mean that we should be in a position to stop more people coming in who are actually victims, and particularly to try to stop the evil purveyors—the traffickers themselves.

I am proud that when the Modern Slavery Act was brought in, I was still in the other place and able to be part of that. However, it is light on victim support. While it is acknowledged that it is world-beating in many respects, its provisions on victim support are not sufficient. There is therefore, as my noble friend Lord McColl has said, a real opportunity for this country to prove once again that we take the terrible crime of modern slavery extremely seriously and to be the world leader in how we deal with its victims.

I want also to commend to my noble friend on the Front Bench the review recently instigated by the Government. I am not sure, but I think that we are still waiting for a response to some of the points raised in the review by the noble and learned Baroness, Lady Butler-Sloss, the soon to be ennobled Frank Field —I do not know whether technically he is yet a Member of the House—and Maria Miller, an esteemed Member of the other place. While this is a probing amendment, we want assurances. This is a fantastic opportunity to do the right thing and to do it very well.

Lord Morrow (DUP) [V]: My Lords, I am pleased to speak in support of Amendment 7 in the name of the noble Lord, Lord McColl. I was one of those who raised concerns about paragraph 6 of Schedule 1 at Second Reading. As I stated then, an important body of EU-derived rights stems from the anti-trafficking directive—in particular, victims' rights to support, assistance and protection. I have a particular interest in this subject because I took Northern Ireland's equivalent legislation to the Modern Slavery Act—the human trafficking and exploitation Act—through the Northern

[Lord Morrow]

Ireland Assembly. Although one of the central purposes of the directive is that the assistance and support should

"enable the victim to recover",

there is no statutory requirement for support and assistance for victims in the Modern Slavery Act.

Section 50 of the Act, which deals with the statutory requirement to provide victim support, has never been used and remains optional, depending on the views of the current Minister. In this respect, the Modern Slavery Act is quite unlike the human trafficking and exploitation Act in Northern Ireland or, indeed, the Human Trafficking and Exploitation (Scotland) Act, in both of which the obligation to enable the victim to recover is transposed from the trafficking directive and on to the face of law in Northern Ireland and Scotland.

I note that, when previously challenged on this point, the Government said there would be no erosion of the rights of victims of human trafficking in England and Wales following the demise of the directive at the end of this year because legal obligations to victims under the Council of Europe human trafficking convention and under Article 4 of the European Convention on Human Rights remain unchanged. However, this assertion is deeply problematic and, to remind noble Lords why, I ask your Lordships to recall the period of May 2010 to March 2011. In May 2010, Britain was subject to both the Council of Europe trafficking directive and Article 4 of the ECHR, and the Government decided that they would opt out of the EU anti-trafficking directive because they claimed we did not need it. There was then a public outcry and a campaign by NGOs and Members of this House which resulted in the Government U-turning and opting into the directive in March 2011.

The convention covers much of the same ground as the directive, including victim support. The reason why those who work with victims of trafficking were not prepared to say, "Don't worry about the EU anti-trafficking directive, because we are already signed up to the convention," is very simple. The sanctions that exist in international law are much weaker than those in domestic or EU law. The passion that drove those who care for victims of human trafficking to campaign for Britain to opt into the EU anti-trafficking directive between May 2010 and March 2011, when we were already signed up to the human trafficking convention and Article 4 of the ECHR, means that the ongoing presence of the human trafficking convention and Article 4 of the ECHR are never going to result in those of us who speak for victims of human trafficking meekly trading the directive for the Modern Slavery Act, as currently defined, when that Act provides no statutory right to victim support.

Some might say, "But isn't the statutory obligation to provide victim support part of retained EU law?" If we could be clear today that victim support is part of retained EU law, then the Government could respond to this debate by promising not to use the powers in paragraph 6 of Schedule 1 to remove these rights. That would at least provide an assurance as far as the current Administration are concerned.

8 pm

The problem rests with Section 4(2)(b) of the European Union (Withdrawal) Act 2018, which makes it plain that the legal rights of victims in the directive will be deemed to be part of retained EU law only if they are

"of a kind recognised by the European Court or any court or tribunal in the United Kingdom".

As the noble Lord, Lord McColl, has pointed out, the difficulty here is that the meaning of this is currently unclear because the phrase "of a kind" has not been interpreted by the courts. This concern is validated by the Explanatory Notes, which state:

"rights arising under a particular directive that have been recognised by a court before exit day as having direct effect, could be relied upon by other individuals who are not parties to that case, in circumstances which the directive is intended to address."

This implies that any rights not recognised by the court will no longer be available to victims. In this context, the Immigration Law Practitioners' Association suggests that victims of trafficking could lose the protection against removal, because they never received sufficient support and assistance under article 11 of the directive, because an investigation was never conducted, or the protection against removal occurred during the reflection and recovery period.

This situation is politically unsustainable, especially when seen from the perspective of the campaign for the Government to opt into the EU anti-trafficking directive between May 2010 and March 2011. Unless the Minister can provide an assurance that the Government will not use its powers, under paragraph 6 of Schedule 1, to remove retained EU rights to victims, and clearly demonstrate that the victim support rights in the directive will constitute part of retained EU law, then action must be taken between now and the end of the year to place victim support on a robust statutory footing.

Having taken up the case for victims of modern slavery in 2015—just as we took up the cause in 1807 and 1833—it is politically unthinkable that we should now stand by and allow an erosion in the rights of victims of modern slavery in this country. Brexit is supposed to be about allowing the UK to better express its true values and identity, not about being disinherited from them. The Government are confronted by a considerable opportunity in this regard. While Brexit certainly should not provide the occasion for the erosion of the rights of victims of modern slavery, neither should it provide the occasion for us to use our sovereignty to simply follow the EU. Instead, the Government should use our new-found sovereignty to lead the way, just as we did in 1807, and provide more robust rights for victims than those set out in the directive.

In that regard, the Modern Slavery (Victim Support) Bill—sponsored as it is by two eminent Conservative parliamentarians, the noble Lord, Lord McColl, and a former Conservative Party leader, the right honourable Sir Iain Duncan Smith—is now surely a Bill whose time has come. Reflecting the wisdom and experience of those working in the field, the Bill recognises that in order for a confirmed victim of modern slavery to recover, such that they are no longer vulnerable to re-trafficking and have the boldness to give evidence in court against

their traffickers, thereby making convictions possible, a minimum of 12-months' support must be offered. Moreover, the Nottingham University Rights Lab report has demonstrated that, rather than costing money, this will actually save money. This is a win-win for the Government that will also open the door for Northern Ireland and Scotland to make similar provisions, which we currently cannot do because some aspects of the modern slavery Bill pertain to non-devolved competences.

Baroness Hamwee (LD) [V]: My Lords, this afternoon my noble friend Lord Newby, speaking on a business Motion, made the point that Private Members' Bills should come back on to our Order Paper. This would certainly be a candidate for that. I referred to this directive when I spoke to my Amendment 6 earlier today. We have heard long, careful and impassioned speeches from previous speakers, so I do not intend to say a great deal, but that should not be taken to be any indication that I do not feel strongly about these issues.

The amendment moved by the noble Lord, Lord McColl, is about how the support that we would all want to see for victims of trafficking is given. The Modern Slavery Act is only five years old, but thinking has moved on since then. Knowledge and understanding have moved on. We need to continue to develop and refine the support that is made available and recognise it as a right beyond guidance. It is a moral duty and it needs to be made certain in law. It does not require much imagination to understand that the need for protection varies from victim to victim, but it is likely to have to be long and intensive and, as we have debated in other contexts, certainty is an important component of recovery. I support this amendment very warmly.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I am delighted to support amendment moved by the noble Lord, Lord McColl of Dulwich, and I pay tribute to his tireless work in this area over many years and I wish him success in the future. I am sure he will be successful. I hope we will shortly hear a positive reply from the noble Lord, Lord Parkinson of Whitley Bay, confirming that the EU anti-trafficking directive will still apply and that the Government will go further. As the noble Lord, Lord McColl, told us, leaving the EU does not compel us to offer less protection and less support to victims of modern slavery and trafficking.

I am also aware that in March, only a few months ago, the Government said that at the end of the transition period the UK will no longer be bound by the trafficking directive but they have not set out plans to retain or incorporate any of the directive into UK law. That is a worrying and alarming position. I will go further and suggest that it is hugely damaging to our reputation abroad. The UK has a reputation of being a safe haven for people fleeing persecution and for people in distress. We have a reputation as a compassionate country that deals with victims of abuse, trafficking and slavery justly, fairly and properly, but there have been too many occasions when this Government have shown a cruel, uncaring streak which I would not expect from a Government of the UK. The noble Lord, Lord Parkinson of Whitley Bay, can take up the challenge of the noble Lord, Lord McColl of Dulwich, and provide the Committee with the reassurance for which it is asking. At a minimum, we need to hear from the Government that they will put in place legislation that ensures that no matter what else happens as a result of Brexit, victims will be no worse off and will have no fewer rights than they have at present. In many areas they need to have more rights and to be treated with more compassion.

We also need to have on the record from the noble Lord, Lord Parkinson of Whitley Bay, the effect as he sees it of paragraph 6 of Schedule 1 on the position of victims of trafficking and their current protections. I support the call from the noble Lord, Lord Morrow, for at least a commitment from the Government not to use these powers to erode the rights and protections of victims.

I have in the past supported, and will continue to do so until he is successful, the noble Lord, Lord McColl, in his entirely correct campaign to speak up for the victims of modern slavery and afford them the same protections in England and Wales that legislation in both Northern Ireland and Scotland provides. The noble Lord, Lord Morrow, should be congratulated for taking the equivalent legislation through the Northern Ireland Assembly. It offers more protections that I, the noble Lord, Lord McColl, and other Members of this House want to see applied to England and Wales.

I support the call from the noble Baroness, Lady Hamwee, for Private Members' Bills to come back on the business agenda, and for me the Private Member's Bill from the noble Lord, Lord McColl, should be top of the pile. It is a matter of great regret that the Government have not been prepared to support the noble Lord's Bill. It is passed by this House and then crashes on the rocks in the other place, not even getting to the point of being discussed. That is a matter of much regret. The Government could in future agree to support the Bill and give it government time or, even better, announce maybe today or later that they will table a government amendment to appropriate legislation to ensure that the protections victims have in Scotland and Northern Ireland in terms of further care from the state will now be afforded to them in England in Wales.

Other than that, the Modern Slavery Act is a very good Act. Lots of good work was done by the former Prime Minister, when she was Home Secretary, to get it; she made a personal commitment to do that. My noble friend Lady Kennedy of Cradley served on the joint Bill committee to look at the legislation—I know lots of good work went on—but there is one area of further protections that the law is missing, and we should do more in that regard. For that reason, I very much support the call of the noble Lord, Lord McColl. I look forward to the noble Lord's response to this debate.

Lord Parkinson of Whitley Bay (Con): My Lords, I begin by echoing the words of the noble Lord, Lord Kennedy of Southwark, paying tribute to my noble friend Lord McColl of Dulwich for not just his important contribution to the debate this evening but his long-standing interest and valiant work in the field of tackling modern slavery. As he knows, the Government are firmly committed to tackling this appalling crime,

[Lord Parkinson of Whitley Bay]
ensuring that victims are provided with the support they need to begin to rebuild their lives and that those responsible for these crimes are prosecuted.

In October last year the Prime Minister reiterated his commitment to continue my right honourable friend Theresa May's world-leading work in tackling modern slavery, which I am pleased the noble Lord, Lord Kennedy, has paid tribute to this evening. As a result of that work, we are now identifying more victims of modern slavery and doing more to bring perpetrators to justice than ever before.

As your Lordships have heard, in 2015 the Government introduced the landmark Modern Slavery Act, which gave law enforcement agencies the tools to tackle modern slavery, including maximum life sentences for perpetrators and enhanced protection for victims—but as my noble friend Lord Randall said, there is always more we can do. As my noble friend Lord McColl put it, we should seek to have the very best provisions. As the noble Lord, Lord Morrow, said, we should show the way here. The noble Baroness, Lady Hamwee, is absolutely right that we see the tactics of the criminals evolve over time and we have to make sure we keep pace.

That is why the Government are currently undertaking a programme to transform how we identify and support victims of modern slavery, emphasising our continued commitment to having a world-leading system as we leave the European Union. As part of this, we are looking carefully at the legal framework in this area.

As I hope my noble friend Lord McColl will recognise, the system of identification and support for victims of modern slavery and the legal framework around it go far beyond the scope of the Bill we are debating. Indeed, the most commonly represented nationality among those referred to the national referral mechanism in 2019 was British. It is important to see this as distinct from an immigration issue alone.

8.15 pm

With regard to the EU's anti-trafficking directive, I am very happy to put on record that the Government do not consider that any directly effective rights which may exist under the directive conflict with, or will conflict with, the immigration Acts or immigration functions as a result of the repeal of provisions in paragraph 6 of Schedule 1, and they are not therefore disapplied by this Bill. As my noble friend Lady Williams of Trafford made clear in her response on Schedule 1, there is no definitive list of directly effective rights available, since this category also includes rights arising from judgments of the European Court of Justice. It is not therefore possible to list them exhaustively but we have provided an indicative list in the Explanatory Notes. I reiterate that paragraph 6 of Schedule 1 only disapplies directly effective rights to the extent that they conflict with domestic immigration law or immigration functions. The Bill does not disapply such rights more widely than is strictly necessary.

At the end of the transition period in December this year, therefore, the UK will no longer be bound by EU law. However, the Modern Slavery Act 2015 and the Council of Europe's convention against trafficking in human beings, which sets out our international obligations to victims, and which we already exceed, will be unaffected. I also reassure my noble friend and other noble Lords that the UK's obligations under Article 4 of the European Convention on Human Rights will not be affected by our departure from the European Union. We are happy to continue discussing these important issues with my noble friend Lord McColl and other noble Lords who are interested, but I hope this gives him the reassurance he needs to withdraw his amendment.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received a request to speak after the Minister from the noble Lord, Lord Kennedy of Southwark.

Lord Kennedy of Southwark (Lab Co-op): I want to respond to a couple of points. The Modern Slavery Act, which has been mentioned, is a very good piece of legislation, but I hope that the noble Lord will agree to talk to his colleague the noble Baroness, Lady Williams, and others in the Home Office, because the noble Lord, Lord McColl, has a real point here. Good though it is, the Act is not as good as the legislation that the assemblies in Wales and Northern Ireland have put on the statute book. This point has been raised persistently. For some reason, the Government, while willing to talk about it, are not willing to act. That is regrettable, because in other ways it is very good legislation. It would be good for our country if all our legislation was comparable. The protection of victims is deficient compared with other parts of the United Kingdom.

Lord Parkinson of Whitley Bay (Con): I am very happy to make that commitment to speak not just to my noble friend but also to the relevant Minister, Victoria Atkins, who I know is looking carefully at the legal framework here and will want to be sure that she has taken note of the contributions made this evening. I will pass them on to her and have that discussion.

Lord McColl of Dulwich (Con) [V]: My Lords, I thank all noble Lords who have taken part in this debate, and I am very grateful to the noble Baroness and to the Minister himself. It is very encouraging. I think the gist of it is that victim support rights specifically within the directive will definitely be part of retained EU law. I am thankful for that, and beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Schedule 1 agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we now come to the group beginning with Amendment 8. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this or any other amendment in this group to a Division should make that clear in the debate.

Clause 2: Irish citizens: entitlement to enter or remain without leave

Amendment 8

Moved by ***Baroness Hamwee***

8: Clause 2, page 2, line 13, at end insert—

"(6) The Secretary of State may not conclude that the deportation of an Irish citizen is conducive to the public good under section 3(5)(a) unless he or she concludes that, due to the exceptional circumstances of the case, the public interest requires deportation.

(7) No person of any nationality is liable for deportation under section 3(5)(b) on the ground that they belong to the family of an Irish citizen who is or has been ordered to be deported, unless subsection (3)(a) is satisfied in respect of that Irish citizen.

(8) An Irish citizen may not be deported or excluded from the United Kingdom if—

(a) the Irish citizen was born in Northern Ireland; and

(b) at the time of the Irish citizen's birth, at least one of his or her parents was—

(i) a British citizen; or

(ii) an Irish citizen; or

(iii) a British citizen and an Irish citizen; or

(iv) otherwise entitled to reside in Northern Ireland without any restriction on their period of residence."

Member's explanatory statement

This amendment protects the threshold for deportation of Irish citizens and ensures that no-one born in Northern Ireland may be deported.

Baroness Hamwee (LD) [V]: My Lords, Amendment 8 concerns protections against deportation for Irish citizens. It might seem a little counterintuitive to noble Lords that it is necessary to provide protection at all because it is inherent, as it were, given our relationship with Ireland, the common travel area and so on.

Since 2007, the Government's policy position has been to deport Irish citizens only where a court has recommended it in sentencing or where the Secretary of State concludes, due to exceptional circumstances, that the public interest requires it. That reflects the special status that Irish citizens have, as I have mentioned, with close historical community and political ties, as well as the common travel area.

However, this is a matter of executive policy not protected by any level of legislation. It currently permits the deportation of Irish citizens in a range of circumstances, circumscribed by EU law relating to free movement. The protections of EU law come to an end in less than four months, so there will be no law to stop a future Government reversing the position. Domestic law would allow them to do so. However, that is completely separate from the UK's membership of the EU. There is not a democratic basis on which to remove these protections when free movement comes to an end.

The Government have expressed no intention to change the policy position, so it would be good to take the opportunity to incorporate the greater protective status for Irish citizens into law. The position is particularly confusing, given that the Government have taken steps to remove Irish citizens from the automatic deportation regime. They could easily have done so for the rest of the regime and not just when an individual is sentenced to more than 12 months' imprisonment. The legal position is not corrected by the Bill, and in fact Clause 2(2) weakens the protection because it does not put in place a replacement for the safety net that EU law has provided.

The Good Friday agreement envisages that Irish citizens from Northern Ireland should not, as a matter of law, be able to be excluded or deported from the UK, but that is not currently reflected in UK immigration law. Because British citizens cannot be excluded or deported from the UK there is a risk that, when an Irish citizen from Northern Ireland is threatened with deportation, they will have to assert British citizenship in order to continue to live in Northern Ireland. That goes against both the spirit and the terms of the Good Friday agreement, which allows all people of Northern Ireland to remain in the territory whether they identify as Irish, British or both.

Mentioning the Good Friday agreement reminds us of the importance of the involvement of the devolved Administrations—the different experiences, economies and needs in Scotland, Wales, Northern Ireland and England. However, we also need to keep in our minds the Good Friday agreement and the opportunity that we have here to set what is executive policy into law.

Amendment 58 in the name of the noble Lord, Lord Rosser, requires the Secretary of State to publish a report on the reciprocal rights of the common travel area. I obviously do not oppose the substance of this but we are very near the end of the transition period. The law being created by the Bill—or perhaps I might say the law being destroyed by the Bill—will happen in less than four months, and the protection of rights is a matter for now.

Late on Friday, the Government published a draft statutory instrument, which we will have a word about when we come to the next group. It was only when I looked at the fact sheet that I saw something positive about Irish citizens. The clearest part of the instrument relates to exclusions but I would like to be inclusive. Therefore, although I support the sentiments of Amendment 58, I really think it is a matter for now, and I hope that noble Lords can support Amendment 8, which I beg to move.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the noble Baroness, Lady Hamwee, for her very clear introduction and explanation of the reasons for Amendment 8, to which I am delighted to attach my name. The noble Baroness set out very clearly the need for legal certainty and security for Irish citizens and people born in Northern Ireland.

Rather than repeating all these things again, I think it is worth very briefly addressing the whole issue of deportations. Of course, in this context, I cannot avoid mentioning the Windrush generation, the hostile environment and the fact that we have increasingly come to see people who have perhaps spent effectively all of their life in the UK, who have very close ties to the country and whose entire upbringing and experiences are in the UK facing deportation. That is utterly unacceptable in any circumstances but the situation with Irish citizens and the common travel area involves

[Baroness Bennett of Manor Castle]
two countries between which there has been continual, regular interchange and movement. A large number of people could potentially be affected by this situation, people who could see their lives torn apart. It is crucial that we build in these protections.

We have a great deal to do and it is already late so I will not go on too much longer, but I also want to mention briefly—having listened very closely to the noble Lord, Lord McColl, and the debate on the previous amendment, in which many expressed the sentiment that we should have world-leading protection in the UK for victims of trafficking and modern slavery—that I associate the Green group with those sentiments.

Baroness Ludford (LD): My Lords, I speak strongly in support of Amendment 8 as moved by my noble friend Lady Hamwee and supported by the noble Baroness, Lady Bennett. Like my noble friend, I understand Amendment 58 but, as she said, we need statutory underpinning rather than exploration of the situation because there is no one place where rights under the common travel area are collected. They are still largely expressed in a bilateral convention and now a memorandum of understanding.

The common travel area rights have been overlaid in recent decades by EU free movement rights, so it is entirely legitimate to worry about rights under the CTA when free movement is stripped away. My friend in the other place, Stephen Farry of the Alliance Party —I call him a friend because it is the Lib Dems' sister party—said that there had been mixed and confusing signals about Irish citizens and the EU settlement scheme. Some have been told that they need not apply but they can, while Irish citizens from Northern Ireland are told that they should not apply. As he also said, on the face of it, Clause 2 goes some way towards giving reassurance and addressing anomalies. However, it spells out not rights but only ministerial powers, and it only applies to immigration issues—especially deportation —whereas the EU settlement scheme covers a much wider range, such as family reunion, equality of treatment, rights of the employed and self-employed, recognition of qualifications and voting. Stephen Farry recalled that only the right of voting for Irish citizens is explicit in UK law. Ideally, therefore, there should be a UK-Ireland treaty perhaps or, at least, an elaboration in statute of the rights of Irish citizens.

8.30 pm

Stephen Farry said:

"The Northern Ireland Human Rights Commission has referred to the common travel area as being 'written in sand'. There was no public consultation on the memorandum of understanding, so it has not been stress-tested."

He went on:

"There may well be concerns, whenever we look to the implementation of the citizen clauses of the Good Friday agreement".—[*Official Report*, Commons, 30/6/20; col. 251.]

Similar concerns were expressed at Second Reading in this House by the noble Baroness, Lady Ritchie of Downpatrick.

Clause 2 should be brought in line with the Good Friday agreement, making it clear that Irish citizens born in Northern Ireland cannot be deported or excluded from the UK, as specified in Amendment 8. This position is not currently reflected in UK immigration law; this Bill is a missed opportunity to implement the Good Friday agreement. As my honourable friend said, there is a risk that, when an Irish citizen from Northern Ireland is threatened with deportation, they will be forced to assert their British citizenship to continue to live in Northern Ireland—something which goes against the Good Friday agreement.

As to other Irish citizens, the provisions regarding possible deportation are set out only in executive government policy, not in legislation. Hence, the other arm of Amendment 8 sets out a public interest test—which is in policy—in the Bill. I understand that the policy position of a public interest test was established in 2007, but being in policy is not strong enough; this needs to be in primary or secondary legislation.

It is not clear why the opportunity to incorporate these greater protections into law has not been taken. The Government did take steps to remove Irish citizens from the automatic deportation regime under—I believe—the 2019 regulations, but they have not done so for the rest of the regime; that is incorporated in law. Indeed, Clause 2(2) as currently written in the Bill has the effect of weakening the legal protections for Irish citizens because it fails to put in place a replacement for the safety net that EU law offers on deportation. It is necessary to amend Clause 2 to make sure that the protections against unfair, unjustified deportation are written into statute and not left to ministerial powers.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I am delighted to support Amendments 8 and 58. On Amendment 58, I speak as a person who holds Irish nationality but lives in the United Kingdom. For me, the purpose of this amendment is to oblige Ministers to provide a report that draws on the scope of the common travel area-associated rights, cross referencing and contrasting these with the rights under the EU settled status scheme. This would allow Irish citizens to make informed decisions on securing their rights after the end of the transition period. As a result of an amendment in Committee in the other place, information was received on the issue of deportation and the Government confirmed that the one advantage to an Irish citizen of applying to the EU settlement scheme is the right to a family reunion. The Government had not made that clear beforehand.

Clause 2 will establish a stand-alone right for Irish citizens to enter and reside in the UK. However, under the Good Friday agreement citizenship provisions, the people of Northern Ireland have birth-right entitlements to be British or Irish, or both, and to equality of treatment regardless of that choice. In practice, the legal underpinning of equality of treatment for British and Irish citizens in Northern Ireland on matters such as entry, residence, work and social protection, and so on, has been provided almost entirely by EU free movement law. After Brexit, the people of Northern Ireland who are Irish citizens, including dual British-Irish citizens, will retain EU citizenship, but the only route to retain access to such EU free movement rights is through the EU settled status scheme. This is the domestic route for EU citizens and their family members

in the UK prior to Brexit to retain EU rights and benefits under part 2 of the withdrawal agreement, which are usually retained for life.

I understand that the Government's position is that Irish citizens do not need to apply for the EU settled status scheme, but may wish to do so. The reasoning behind the Government's position that Irish citizens do not need to apply for settled status is that Irish citizens can still rely on the associated reciprocal rights of the UK-Ireland common travel area. However, at the time of the referendum, reciprocal rights of the CTA barely existed at all in UK law across key areas and thus a non-binding memorandum of understanding has been entered into since. With the exception of social security, CTA provision remains vague. In the words of the Human Rights Commission report, it is "written in sand", as the noble Baroness, Lady Ludford, already referred to, and it

"can be characterised by loose administrative arrangements or provisions that can be altered at any time."

While the clock ticks on the closing of the opportunity to apply to retain EU free movement rights under this settled status scheme, it is not possible for Irish citizens at present to make an informed choice because it is unclear ultimately what the associated CTA rights will cover and whether they will be enshrined in a legally binding manner.

The Home Office also initially debarred all people of Northern Ireland from applying for settled status, further to a policy position adopted in 2012 to treat all persons born in Northern Ireland as British. The decision was adopted to impede the exercise of EU rights by Irish citizens in Northern Ireland to be joined by non-EU family members. That position was challenged by the Emma and Jake DeSouza case, and the Home Office recently announced a policy change which will allow certain amendments in that area. It will also allow open access to relevant persons from Northern Ireland through the settlement scheme. Therefore, the purpose of this amendment is to oblige Ministers to provide a report that draws out the scope of the CTA associated rights, cross referencing and contrasting them with the rights under the EU settlement scheme.

In conclusion, I have two questions for the Minister. First, given that the opinion of both human rights commissions on the island of Ireland is that the rights of the common travel area are written in sand, what do the Government intend to do to enshrine those rights and ensure that they can be used to obtain legal redress? Secondly, in the absence of a report from the Government that contrasts the scope of the CTA rights with the rights provided for under settled status, do the Government accept that Irish citizens are left with little information to enable them to determine whether they wish to apply for settled status? I look forward to answers from the Minister in your Lordships' House this evening.

Lord Kennedy of Southwark (Lab Co-op): My Lords, there are two amendments in this group: Amendments 8 and 58. Amendment 58 is proposed by myself, the noble Baroness, Lady Ritchie of Downpatrick, and my noble friend Lord Rosser. The purpose of this amendment is clear and was ably illustrated by the noble Baroness, Lady Ritchie, a moment ago.

We often discuss matters around Ireland and Irish citizens, and I am always conscious that the noble Baroness, Lady Williams of Trafford, who is first-generation Irish, usually speaks for the Government, and I, who am second-generation Irish, respond for the Opposition. In addition, if you look at the number of people connected to Ireland around the House or in the other place, it sets out the great contribution that Irish people have made to this country and the great links we have there, whether in the Republic, Northern Ireland or elsewhere. Those links have done wonders for both our countries, and we must always ensure that we underpin that so the strength grows. My own parents lived in the UK for many years and have now retired back in the Republic. Amendment 58 seeks to add clarity to the situation for citizens that could be affected, which is always important when it comes to people's rights. People could lose their rights, so clarity is important.

The Bill as it stands ends EU free movement and establishes a stand-alone right for Irish citizens to enter and reside in the UK. As noble Lords have heard, under the Good Friday agreement citizenship provisions people in Northern Ireland have a birth-right entitlement to be either British or Irish or both. Equality of treatment is regardless of that choice, which is a very important underpinning. Nothing must be allowed to unpick that. The Government's position is that Irish citizens do not need to apply to the EU settled status scheme; they can rely on the associated reciprocal rights of the common travel area, but they can apply if they wish. We have heard talk about the common travel area's rights being written in sand. It is fair to say that we need clarity here, and that is the purpose of this amendment.

The amendment seeks that, within 30 days of the Bill becoming an Act, the Secretary of State must publish a report setting out in detail the rights of citizens under the common travel area, EU rights and benefits under the EU settlement scheme, and then delineate between the two so that we know exactly where we stand. This is necessary due to the inconsistency of the Government on a whole range of policy areas. Let us be clear: matters can be changed, clarified, replaced, restored, reversed, revisited, substituted, switched, U-turned and varied with such speed that, even when the Prime Minister was on his feet in the other place, the latest Government U-turn was under way. To expect people to rely on what the Government announce is not credible. We need this amendment on the face of the Bill, and we need the Secretary of State to produce the report.

Amendment 8, in the names of the noble Baronesses, Lady Hamwee, Lady Ludford and Lady Bennett of Manor Castle, seeks to put the protections enjoyed by our citizens on the face of the Bill. If the Government are not prepared to accept that amendment, can the noble Baroness set out how the rights as expressed in Amendment 8 will be protected and guaranteed by the Government?

8.45 pm

Baroness Williams of Trafford (Con): I thank all noble Lords who have spoken to these amendments. As the noble Lord, Lord Kennedy, says, I often speak as first-generation Irish and he speaks as second-generation

[Baroness Williams of Trafford]
Irish, so I think one could say that we have a personal interest in getting this right and reiterating those rights in the Bill. Both the UK and Irish Governments have committed to maintaining the common travel area, which I will now call the CTA. It is underpinned by deep-rooted, historical ties and, crucially, predates our membership of the European Union.

It has been agreed with the EU that the UK and Ireland can continue to make arrangements between themselves when it comes to the CTA. This means that we will continue to allow British and Irish citizens to travel freely between the UK and Ireland and reside in either jurisdiction, and commit to protecting a number of wider rights and privileges associated with the CTA. These include the ability to work, study and access healthcare and public services. Both Governments confirmed that position on 8 May last year, through signing a CTA memorandum of understanding, referred to by the noble Baroness, Lady Ludford. The Government has included Clause 2 in the Bill to ensure that Irish citizens can enter and remain in the UK, without requiring permission, regardless of where they have travelled from, except in a limited number of circumstances.

Amendment 58 also seeks to require the Government to publish details of the rights and benefits provided by the EU settlement scheme. The European Union (Withdrawal Agreement) Act 2020 protects the residence rights of EEA citizens and their family members for those individuals who are resident in the UK before the end of the transition period and for eligible family members seeking to join a relevant EEA citizen in the UK after that time. By applying for UK immigration status under the EU settlement scheme, they can also continue to work, study and, where eligible, access benefits and services, such as free NHS treatment, as they do now.

While Irish citizens resident in the UK by 31 December 2020 can apply to the EU settlement scheme if they want, they do not need to. Their eligible family members can apply to the scheme, whether or not the Irish citizen has done so. However, Irish citizens resident in the UK by 31 December this year may wish to apply to the scheme to make it easier to prove their status in the UK in the event that they wish to bring eligible family members to the UK in the future.

The Government have therefore already made it clear that both the CTA and the EU settlement scheme provide Irish citizens with a number of rights following the end of free movement, and we will continue to emphasise that commitment. I hope that that gives the noble Lords, Lord Rosser and Lord Kennedy, and the noble Baroness, Lady Ritchie, comfort enough not to move Amendment 58.

Turning to the question of deportation raised by either the noble Baroness, Lady Ludford, or the noble Baroness, Lady Hamwee—it is getting late—Amendment 8 seeks to make additional provision with regards to the deportation of Irish citizens and their family members. First, subsection (6) seeks to ensure that the Secretary of State may not conclude that the deportation of an Irish citizen is conducive to the public good, unless she concludes that, due to the exceptional circumstances of the case, the public interest requires deportation.

Subsection (7) seeks to ensure that the family member of an Irish citizen can be deported only on the grounds that their family member is or has been deported, where the Secretary of State has concluded that the deportation of the Irish citizen is conducive to the public good and, due to the exceptional circumstances of the case, the public interest requires their deportation.

I use this opportunity to reiterate our approach to deporting Irish citizens. While Clause 2 disapplies the right to enter and remain in the UK, without leave, for those Irish citizens who are subject to a deportation order, in light of the historical, community and political ties between the UK and Ireland, along with the existence of the CTA, Irish citizens are considered for deportation only where a court has recommended deportation or where the Secretary of State concludes that, due to the exceptional circumstances of the case, deportation is in the public interest—much in the way that was pointed out by the noble Baroness.

The Government are firmly committed to maintaining this approach. Irish citizens were exempted from the automatic deportation provisions in the UK Borders Act 2007 by the Immigration, Nationality and Asylum (EU Exit) Regulations 2019, which were laid in February 2019, as the noble Baroness, Lady Ludford, pointed out.

Under the Immigration Act 1971, the family member of an Irish citizen would not be considered for deportation on the grounds that their family member is or has been ordered to be deported, unless a deportation order was made in respect of that Irish citizen. The amendment also seeks to prevent the deportation or exclusion from the UK of an Irish citizen if they are among the "people of Northern Ireland" entitled to identify as Irish citizens by virtue of Article 1(vi) of the British-Irish agreement of 1998.

I make it absolutely clear that the Government are fully committed to upholding all parts of the Belfast agreement, including the identity provisions which allow the "people of Northern Ireland" to identify as Irish, British or both, as they may so choose, and the citizenship provisions which allow the "people of Northern Ireland" to hold both British and Irish citizenship. Recognising the citizenship provisions in the Belfast agreement, we would consider any case extremely carefully, and not seek to deport a "person of Northern Ireland" who is solely an Irish citizen. Exclusion decisions are taken on a case-by-case basis by Ministers. Exclusion of a person from the UK is normally used in circumstances involving national security, international crimes—including war crimes, crimes against humanity or genocide—serious criminality or corruption and unacceptable behaviour. It is essential to the security of the UK that Ministers retain the power to exclude in such serious circumstances, although of course all cases are considered extremely carefully.

I hope that with these explanations, the noble Baroness can withdraw her Amendment 8.

Baroness Hamwee (LD) [V]: My Lords, the Minister was unsure whether points were made by my noble friend Lady Ludford or by me. I cannot speak for my noble friend, whom I am very happy to be confused with, but speaking for myself, I cannot claim any Irish family connections, although I have a lot of friendships.

Amendment 58, calling for a report, begs the question of what would happen if the report showed that the current position is inadequate, as I think it would. That is the thrust of Amendment 8, and why it is seeking to use the opportunity of the Bill to set the position in stone rather than sand.

The Minister's response seemed to confirm the points that I had made. She talked about the common travel area memorandum, but it is only a memorandum. The Bill has the effect of weakening the legal protections. It does not reflect the spirit of the Belfast agreement.

I thought it was telling—and frankly embarrassing and even shaming—to hear the noble Baroness, Lady Ritchie, reminding the House that the protection depends on EU law. She made the point that it is not possible to make an informed choice, which is also extremely telling because, as she said, the common travel area arrangements are written in sand. I had not thought of that when I tabled my amendment, but it is intended to ensure that those sands do not shift.

I do not disbelieve what the Minister has said, but she has talked about the Executive attitude, not the legal position. While of course I do not question her integrity, she will know as well as I do that Executives change, as do their views. I am sorry that we have not been able to make more progress on this. I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Clause 2 agreed.

Clause 3 agreed.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, we now come to the group beginning with Amendment 9. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment, or any other in the group, to a Division, should make that clear in the debate.

Clause 4: Consequential etc. provision

Amendment 9

Moved by ***Baroness Hamwee***

9: Clause 4, page 2, line 34, leave out "appropriate" and insert "necessary"

Member's explanatory statement

This amendment would restrict the Secretary of State's discretion and preclude her or him from making regulations which are not necessary.

Baroness Hamwee (LD) [V]: My Lords, in moving Amendment 9, I shall speak also to Amendments 10, 11, 13, and 35 to 38, in my name and that of my noble friend, and to my objection that Clause 4 should stand part of the Bill.

In the debate on Amendment 3, we heard some precise and forensic criticism of the drafting of the Bill. I could almost say—but I will not—that we could just read across to this group all that was said in that debate. I will resist that temptation.

Clause 4 provoked the Delegated Powers and Regulatory Reform Committee to repeat the view of the Constitution Committee that skeleton Bills inhibit parliamentary scrutiny, that it is difficult to envisage any circumstances in which their use is acceptable, and that the Government must provide a justification for them. The committee describes the Bill as leaving so much of the post-transition period regimes for immigration and for social security co-ordination—the subject of Clause 5— to be "provided for in regulations". "By-passing Parliament", the phrase used, must cause anyone with any interest in the governance of the UK to be really worried. I must say that people are worried about the governance of the UK whether they think about it in those terms or, as is currently the position, they do not understand what the Government are telling them to do.

There is a need for the provision of mechanics for ending free movement; this has not suddenly come upon us out of the blue. While of course I accept that this is a complex area, it means that there is all the more need to have got on with the detail and published it, even during the Parliament before last, so that we could have considered it. After all, the referendum was held four years ago last June, and Article 50 was triggered in March 2017.

The "breathtakingly wide" powers—I quote the Public Law Project—which it is proposed will be given to the Secretary of State, would give anyone pause. The Public Law Project says that its work on Brexit

"seeks to promote Parliamentary sovereignty."

That is a point worth making in the context of this debate. The term "parliamentary sovereignty" may have a familiar ring in the context of Brexit.

9 pm

The Minister has circulated an illustrative draft statutory instrument, and I thank her for that. However, noble Lords will not miss the significance of the terms "illustrative" and "draft" coupled with "statutory instrument". For those who have not looked at it, it has 42 pages. I am not suggesting that it is totally impenetrable, but you need to have both the expertise and the time to work through all the omissions of certain words, or their substitution for other words, in section such-and-such of such-and-such an Act. I, for one, do not feel capable of making comments on that, given the short period for which we have had this statutory instrument, since late on Friday. In any event, it is illustrative and a draft, so it may not be in its final form at all. If this were to be the final form, it would have the inherent limitations of which we are all aware.

This group of amendments consists of omitting words which add up to what I regard as an offensive provision, together with the objection to Clause 4 in its entirety, to which I have put my name. Amendment 9 substitutes the word "necessary" for "appropriate", to restrict the discretion of the Secretary of State; "appropriate" does not provide for the objectivity of "necessary".

Amendment 10 would limit the regulations to those "in consequence" of primary legislation, not "in connection with". In paragraph 12 of its report, the Delegated Powers and Regulatory Reform Committee said that:

"The combination of … the permissive concept of 'appropriateness' … the words 'in connection with [Part 1 of the Bill]'

[Baroness Hamwee]

… the subject matter of Part 1 (ending free movement), and … the large number of persons who will be affected, make this a very significant delegation of power from Parliament to the Executive."

Amendment 11 would limit the use of regulations to matters for which the Government have already indicated they are intended to be used: the coherence of legislation; the consistency of treatment of differing nationalities; and the retention of the rights of persons with leave to enter or remain in the UK. This amendment does not seek to do anything against government policy. Amendment 13 would also set limitations.

Amendments 35 to 38 relate to the mechanisms. Clause 4(6) would make the first statutory instrument "made affirmative"; why? As the DPRRC notes, this could mean that the first regulations could be in force for a lot longer than 40 days without scrutiny. However, as it happens, the House has got to the Bill so late, and after the Summer Recess—I do not foresee any other long recesses this year, unless it is to shut us up a bit—and so this is not the issue that it was. However, that does not detract from the importance of having timely scrutiny of the first regulations. In the context of Covid, there have been many recent examples of regulations coming into force and being superseded, before either House has had an opportunity to consider them.

I will of course wait to see what the noble Baroness, Lady Neville-Rolfe, says about her Amendment 32. I do not disagree with the point, but it seems to be expressed rather narrowly.

This group of amendments amounts to opposition to the whole approach of Clause 4. I look forward to what I hope may be quite excoriating speeches from noble Lords. I beg to move Amendment 9.

Baroness Neville-Rolfe (Con): My Lords, I rise to speak to my Amendment 32 and to thank the noble Lord, Lord Green of Deddington, for his support. This amendment would ensure that the powers in Clause 4 were limited in line with the spirit of the Long Title, which addresses EU law, and would not allow the Secretary of State to change the rules regarding non-EEA or Swiss migrants under the cover of "connected purposes".

I tabled this amendment for two reasons. First, like the noble Baroness, Lady Hamwee, I am concerned about the wide nature of the powers in the Bill—breath-takingly wide, in her words—and the excessive use of secondary legislation. Others have already made this point better than I can in earlier discussion, and I look forward to hearing the Minister's response to concerns expressed today and to the recommendations of the Delegated Powers and Regulatory Reform Committee. It would be a great pleasure to hear from its chairman, my noble friend Lord Blencathra, who is sitting next to me in a socially distanced manner.

Secondly, in discussion with our excellent clerks, it emerged that amendments to Clause 4 tabled in this House could relate only to EEA or Swiss citizens. Examples include Amendment 26 in the name of the noble Lord, Lord Green, on immigration caps, Amendment 27 on the prior advertising of jobs in the domestic market—to which I have added my name—and Amendment 29 on the employment of asylum seekers in the name of the noble Baroness, Lady Meacher.

My reading of the paperwork on, for example, the points-based immigration system, and the discussion to date is that the Clause 4 power may be used to set down immigration rules or revisions which apply to third-country citizens as well. I must ask my noble friend the Minister for a clear answer on whether this is the intention or not. If that is the case, I am sure that she and the whole House would agree that we must be able to table amendments to the Bill that relate to third-country citizens as well, otherwise we will not be scrutinising the Bill properly.

Baroness Ludford (LD): I also very much look forward to hearing from the noble Lord, Lord Blencathra, as his committee has provided us with two excellent reports which have been of great assistance, particularly with regard to Clause 4.

My noble friend Lady Hamwee pinched one of my quotes, but I will use the other one from the Delegated Powers Committee report, which stated that

"we are frankly disturbed that the Government should consider it appropriate to include the words 'in connection with'. This would confer permanent powers on Ministers to make whatever legislation they considered appropriate, provided there was at least some connection with Part 1, however tenuous",

and by negative procedure regulations, unless it amended primary legislation. I think we can take from that that they do not think very much of Clause 4 and the schedule.

Even if there is some value in the fact that the first regulations are by "made affirmative" rather than negative procedure, those rights could be abolished by new regulations under Clause 4, when the negative procedure would apply. Therefore, any value there is in "made affirmative" over negative procedure could be removed by some deft sequencing of regulations. Everything points to the justification of having a test of necessity.

Paragraph 6 of Schedule 1 is also problematic. It potentially disapplies any retained EU law in the context of immigration. This could lead to the repeal of legal protections far beyond the realms of free movement. It could dent the EU law retained by Section 4 of the European Union (Withdrawal) Act 2018 because, even though provisions might have been partially saved by the Act, those provisions would not apply to the extent that

"they are inconsistent with or otherwise capable of affecting the interpretation, application or operation of any provision made by or under the Immigration Acts or otherwise capable of affecting the exercise of functions in connection with immigration".

That is amazingly broad. We had some fun over the Brexit draft legislation with delegated powers, Henry VIII clauses and so on, but I have not seen anything quite to match this. The phrase

"functions in connection with immigration"

can relate to almost any aspect of immigration control within the UK. This is broadened even further when it is linked to the test of "capable of affecting". It lacks any objective parameters by which to be able to ascertain the intended targets. Immigration practitioners trying to advise clients will be totally at sea. It undermines the rule of law if people do not know what the law is or could be in this area. They are going to be unable to make their behaviour fit the law.

A number of measures could be cited. Trafficking victims have already been discussed on an earlier group of amendments. Asylum seekers were protected under the reception conditions directive, which the UK opted into although it did not opt into all the asylum legislation. During the debate on an earlier group of amendments, my noble friend Lady Hamwee mentioned the protection of victims of crime and the victims' rights directive. These protections are potentially at risk as collateral damage from the ending of free movement. Even if the Government do not intend at this moment to repeal these provisions, they must explain why they could fall within the Bill and how they are going to introduce some rigour into the drafting of the Bill, such that this collateral damage does not happen.

With my support, my noble friend Lady Hamwee has put forward one solution in Amendment 11. All the amendments in this group are intended to provide the tightening up that is so sadly lacking from the drafting of the Bill as presented to us.

Baroness Bennett of Manor Castle (GP) [V]: It is my pleasure to follow the three noble Baronesses who have spoken. In our earlier session I strongly disagreed with the noble Baroness, Lady Neville-Rolfe, but in this case, I agree with her concerns and share her experience of apparent inequality. I sought to table a number of amendments to the Bill to deal more broadly not with just EU and EEA citizens, but I was told that they were outside the scope, yet it appears that the Government are being given open slather to address anything they like through the Bill.

9.15 pm

I rise specifically to speak to Amendment 11 in the name of the noble Baronesses, Lady Hamwee and Lady Ludford, to which I was pleased to attach my name. As other speakers have said, this group of amendments broadly addresses the problem that this is a skeleton Bill that gives the Government a huge range of powers and opportunities to make decisions in an undemocratic, untransparent way, and to make mistakes.

I reflect on that particularly because last week I took part in the debate on the Jobseekers (Back to Work) Schemes (Remedial) Order. The Grand Committee of your Lordships' House spent a fair bit of time disentangling something that had been going on for the best part of a decade, with inadequate and inaccurate information being provided to people being forced into workfare. The Minister told us it affected some 5,000 people, who spent 30 hours a week on it. The Bill's skeleton framework gives the Government powers that are so much broader and larger in terms of the impact on people's lives that it will be as large as workfare was.

This Bill gives the Government the chance to decide at the stroke of a pen where people can live and work, where they can form relationships and whether they can spend years of their life living with their children. If they lose those years they will never be able to get them back. Given the capacity taken up by one error in workfare, does your Lordships' House and the whole system have the capacity to deal with the level of mistakes and legal errors and do the courts have the capacity to deal with issues being taken through them? We need to focus on the human impact.

The explanation given by the noble Baroness, Lady Hamwee, for Amendment 11 is that it limits the use of regulation-making powers to matters for which Her Majesty's Government have indicated that they are intended. In this area—in every area, as we soon will be talking about the Agriculture Bill, which is crucial for our environment and society—but particularly when we are making crucial decisions about people's lives, there has to be legal clarity. As the noble Baroness, Lady Ludford, said, for people to be able to follow the rules, they have to know what the rules are, the intentions behind them, and that Parliament has been able to scrutinise them democratically.

Lord Green of Deddington (CB) [V]: My Lords, I am glad to support Amendment 32, which is an important amendment tabled by the noble Baroness, Lady Neville-Rolfe. As she indicated, this amendment bears directly on the anomaly that lies at the heart of the Bill. It purports to deal with aspects of our withdrawal from the EU, so one would expect it to deal with the consequences for citizens of the EU and the EEA only. However, in its report of 2 September the Constitution Committee stressed that this Bill effectively changes significant areas of immigration law from primary to secondary legislation.

I expect the Government to argue that changes to the Immigration Rules have long been dealt with by a process similar to that for statutory instruments, but to introduce an entirely new system in this way is a very different matter. Furthermore, in its report of 25 August, the Delegated Powers Committee, from which we will hear very shortly, pointed out that the "made affirmative" procedure that the Government have chosen will mean that the new regulations will come into force before they are debated in Parliament.

Finally, as I understand the position, the Home Office is working on a complete revision of the Immigration Rules which might run to several hundred pages. They could be put through Parliament with no serious examination before they come into force. I think the Minister mentioned something to this effect earlier. Will she clarify the position? Is this indeed what is likely to happen?

Baroness Meacher (CB) [V]: My Lords, I support the noble Lord, Lord Rosser. As a member of the Delegated Powers Committee I strongly support all the points made in our report and, along with other noble Lords, I very much look forward to hearing from our chairman, the noble Lord, Lord Blencathra.

I am aware that part 6A of the Immigration Rules sets out the points-based system which applies to migrants from the rest of the world. EEA citizens will move from a position of free movement to having to find their way through a thicket of literally hundreds of pages of rules and guidance currently applying to the rest of the world. Will the points-based system be adjusted for EEA citizens? If so, in what ways will the EEA rules diverge from the current system set up in part 6A? The framework should surely be in the Bill.

[Baroness Meacher]

Clause 4 has potentially life-changing consequences for a large number of people—an issue raised by the Delegated Powers Committee report. Ministers are given the power to modify primary legislation or to modify retained EU legislation, which has a similar status to primary legislation, as noble Lords know. These provisions, together with the power for Ministers to introduce regulations on any subject in connection with Part I of the Bill, provide incredibly wide powers for Ministers.

I want to take just one example of an issue which needs to be dealt with in the Bill and I am sure that the noble Lord, Lord Blencathra, will raise a number of others. Tier 3 of the PBS which applies to unskilled workers has never been opened. We know that the UK is likely to face severe shortages of so-called unskilled workers in some sectors, most particularly health and social care but a number of others as well. Can the Minister press her colleagues to spell out in the Bill the key changes envisaged to the PBS, at least for the short to medium term, to keep the UK economy functioning adequately? Then, of course, Ministers could have the powers to introduce regulations to adjust the system over time. I fully recognise that there would be a need for that.

We all understand the need for Ministers to be able to introduce consequential amendments through secondary legislation, such as removing the references to free movement scattered across the statute book. Typically, however, most consequential amendments are put in the Bill and then regulations are used to tidy up the bits and pieces that were somehow missed during its passage.

We are invited by counsel to the Delegated Powers Committee to consider whether Ministers' powers to make consequential amendments through regulations should be restricted by a test of necessity. Can the Minister convince the Committee that the wide powers to make consequential amendments to this Bill are in fact necessary? It would be very interesting to hear the Minister's defence, if you like, of the breadth of those consequential amendments left to regulations. Why cannot most such amendments be included in the Bill before Report? I am sure colleagues would support a short delay before Report to allow that to be done.

Even more serious than the power to make unlimited consequential amendments is the power to make regulations in connection with Part I of the Bill, as other noble Lords have mentioned. I strongly support the amendment from the Baroness, Lady Hamwee, to deal with that issue. This would of course become redundant if Clause 4 were replaced with a string of substantive clauses.

Can the Minister provide an adequate justification for the broad discretion given to Ministers to levy fees or charges on anyone seeking leave to enter or remain in the UK who until the end of the transition period would have had free movement rights under EU law? If not, then these matters must surely be in the Bill with provision for Ministers to adjust the fees or charges over time. As others have said, transitional protections for EEA nationals who are resident in the UK before the end of the transition period are surely known. Why are they not in the Bill? Perhaps the Minister could explain that.

Finally, I had understood that Brexit was all about restoring the sovereignty of the UK Parliament. This is just one of a series of Bills transferring powers from the EU not to the UK Parliament but to Ministers. We know that even where the affirmative procedure will be used, Parliament has no real power to influence the shape of those regulations. I hope the Minister will do all she can to achieve a more democratic outcome to this Bill, even at this late stage, by replacing Clause 4 with a series of clauses spelling out the Government's policies, or at least the framework of those policies, to adjust the points-based system to meet the needs of the UK economy in the post-Brexit world.

Lord Blencathra (Con): It is a delight to follow the noble Baroness, Lady Meacher, one of the most distinguished members of the Delegated Powers Committee. I am particularly grateful that she has not stolen all the sexiest bits of our report and has left me some original bits to quote, although a number of noble Baronesses and the noble Lord, Lord Green of Deddington, also quoted extensively from it. Perhaps I should sit down and say, "I agree with everyone who has gone before me", but since I have been here in the Palace for about eight hours, working upstairs, I feel I should earn my crust.

I am speaking on Clause 4 stand part only to draw attention to some of the key points of the Delegated Powers Committee report on the Bill. I am privileged to chair that committee but, in view of some of the highly critical reports we have made recently, my noble friends may be pleased to know that I will be standing down as chair. My term is up by Christmastime, so there may be a more emollient chairman in future.

Last week I spoke on the Delegated Powers Committee report on the medicines Bill and quoted extensively from it. Our report then was hard hitting and I make no apology that I was robust—I suppose I was not robust but scathing—in my condemnation of the delegated powers, which in my opinion were an affront to democracy. I said then that the Bill was "not unique", just another in a long line of skeleton Bills with all the blank spaces to be filled in by delegated legislation—much of it negative, of course.

Today I will not be as vicious in my remarks, but I report in sorrow that this Bill also has some fundamentally excessive delegated powers. Clause 4(1) confers on the Secretary of State powers to make regulations containing

"such provision as the Secretary of State considers appropriate in consequence of, or in connection with, any provision"

of Part 1 of the Bill, including Henry VIII powers to amend primary legislation. The combination of the permissive concept of whatever the Minister thinks appropriate, as opposed to necessary, the words "in connection with" the Bill, the subject matter of Part 1, ending free movement, and the number of persons who will be affected make all this a very significant delegation of power from Parliament to the Executive.

With regard to those provisions, my Committee said:

"As we said in our earlier Report, we are frankly disturbed that the Government should consider it appropriate to include the words 'in connection with'. This would confer permanent powers on Ministers to make whatever legislation they considered appropriate, provided there was at least some connection with

Part 1, however tenuous; and to do so by negative procedure regulations (assuming no amendment was made to primary legislation)."

As for the scrutiny of regulations, we are concerned that the first set of regulations would be made by the "made affirmative" procedure, avoiding legislative scrutiny before they come into effect, but subsequent ones would be draft affirmative—but only if they amended primary legislation. Everything else would be negative, even if the regulations amend or repeal what is known as retained direct principal EU legislation. By contrast, the approach in the European Union (Withdrawal Agreement) Act 2020 is that the affirmative procedure is mandatory where regulations modify retained direct principal EU law.

We were also concerned that delegated legislation could alter fees and charges enacted in primary legislation. As mentioned by noble Baronesses earlier, it is usual for legislation to have a schedule at the end listing consequential amendments and a provision that regulations can tidy up any missing bits or loose ends with further consequentials, but in Clause 4 the bulk of the consequentials will be done by regulations afterwards.

So we concluded, overall, the following:

"We remain of the view, expressed in our earlier Report, that clause 4(1) contains an inappropriate delegation of power and that the Bill should be amended so that: the words 'or in connection with' are removed from clause 4(1); consequential amendments are included in the Bill itself, but with a power to add others (subject to a test of necessity) by regulations (subject to the affirmative procedure if primary legislation or retained direct principal EU legislation is amended or repealed); transitional protections for EEA nationals who are resident in the UK before the end of the transition period are included on the face of the Bill; clause 4(5) (about fees and charges) is removed, unless the Government can provide full justification for its inclusion and explain how they intend to use the power; and clause 4(6), which provides for the first set of regulations under clause 4(1) to be subject to the made affirmative procedure, is removed from the Bill."

Those were the principal conclusions that we reached.

9.30 pm

Most noble Lords will know this but perhaps I may point out just for the record that my committee does not take a view on the merits of the Bill. We consider not the policy nor the politics but whether the proposed delegation of powers to Ministers is appropriate. If we had a Bill before us on the slaughter of the firstborn, we would comment not on the merits but on whether the powers delegated to Herod's satraps or his personal guard, the Doryphnoroi, were appropriate and whether his earlier demand for all of Judea to be taxed should be on the face of the Bill. That would be our concern in the Delegated Powers Committee.

Nor have we changed our criteria one iota for what we consider to be inappropriate. It has stayed the same since 1922—I mean 1992; that was a Freudian slip from a member of the Conservative Party—when the committee was created. What has changed over the years, and not just in the last few years, has been the number of Henry VIII clauses included, regulations masquerading as protocols in order to avoid scrutiny, skeleton Bills, and the great myth perpetrated by the parliamentary draftsman's department that there can be only negative or affirmative procedures, and draft affirmatives and made affirmatives do not seem to exist.

We reached exactly the same conclusion with regard to Clause 5, but I have no intention of boring the Committee by making the same arguments again. Noble Lords can take it as read that we have exactly the same concerns on that clause.

Therefore, I hope that the Government will make at least some of the amendments that we suggest. They will still get a good Bill which will deliver all they want and be able to deliver it just as quickly but with some proper parliamentary scrutiny added to it.

Lord Kennedy of Southwark (Lab Co-op): My Lords, this group of amendments is concerned with the purpose, scope and extent of delegated powers conferred on Ministers by Parliament. I am grateful to the Delegated Powers and Regulatory Reform Committee for its report on the Bill and to the members of the committee who have spoken, including their chair, the noble Lord, Lord Blencathra.

The report raises serious concerns about the inappropriateness of the delegation of powers to the Executive and proposes changes which I fully support and endorse. However, it is disappointing that, as the noble Lord, Lord Blencathra, highlighted, the committee has over some considerable time produced such reports but then the next Bill has come along and the same issues have been identified.

During the Brexit campaign, we kept being told about taking back control and the sovereignty of our Parliament, but here lots of things are being passed on to Ministers and that does not quite seem to me to be taking back control. It is a bit like the pledge about the NHS on the side of the leave campaign bus that has quietly been forgotten about.

Amendments 9 and 10 seek to deal with the first two points raised by the committee by removing the word "appropriate" and inserting "necessary", and removing the words "or in connection with". They are amendments to which I have put my name and which I fully support.

Amendment 11 seeks to put on the face of the Bill what the power to make regulations is intended to do. I look forward to hearing the Government's explanation if they are not prepared to accept this.

Amendment 13 again adds "only", seeking to ensure the powers taken are used only for what they are intended to do. That seems sensible to me. I hope the Government will accept it.

Amendment 32, in the name of the noble Baroness, Lady Neville-Rolfe, also seeks to ensure that the Bill does only what the Government say they want it to do. Like other amendments in this group, that seems a very sensible and proportionate measure, and I hope the Government will support it.

Amendment 35, which I have signed, seeks to implement the recommendations of the Delegated Powers and Regulatory Reform Committee and ensure that SIs under Clause 4(1) are affirmative. Amendments 36, 37 and 38 follow on from that. The clause takes considerable powers for the Executive, as we have heard from a number of noble Lords tonight. These powers are not justified, and I support those noble Lords, including my noble friend Lord Rosser, who have opposed the clause standing part of the Bill.

[Lord Kennedy of Southwark]

Your Lordships need only look at some of the points raised by the committee to see why noble Lords have tabled their opposition to the clause standing part. In paragraph 19, the committee is "disturbed" that the Government would use words to grant and confer permanent powers on Ministers to make whatever legislation they considered appropriate. In paragraph 26, the committee argues that

"transitional arrangements to protect existing legal rights … should appear on the face of the Bill".

In paragraph 28, its expressed view is that

"clause 4(1) contains an inappropriate delegation of power".

I hope that, in the response to the debate, we will see considerable movement from the Government and that they take on the comments from the committee, which I fully support.

Baroness Williams of Trafford (Con): My Lords, I think I get the committee's views on the delegated powers in this Bill, and they are not pretty. However, I thank the committee for making them.

I first thank the noble Baroness, Lady Hamwee, for speaking to this group of amendments and my noble friend Lady Neville-Rolfe for speaking to Amendment 32. These amendments seek to limit the scope of the regulation-making power in Clause 4 and address the parliamentary procedure for the regulations. It is right that Parliament pays close attention to the provision of delegated powers. I have noted the recommendations made by the Delegated Powers and Regulatory Reform Committee in its latest report of 25 August.

I am pleased that we have been able to share draft illustrative regulations to be made under this power later this year, subject to Parliament's approval of the Bill. The draft regulations—which I understand will not be subject to any significant change, to answer the point of the noble Baroness, Lady Hamwee, from tonight and the other day—will, I hope, provide some reassurance as to how the Government intend to use the regulation-making power in Clause 4.

There are clear constraints on the use of the power in Clause 4. It can be used only to make regulations that amend primary or secondary legislation

"in consequence of, or in connection with"

Part 1 of the Bill on ending free movement and protecting the rights of Irish citizens. It cannot be used in relation to the UK's withdrawal from the EU more generally or to make wider immigration changes.

Amendment 9 seeks to limit the use of the power to making changes that are considered "necessary", not "appropriate". Amendment 10 seeks to limit the power to changes that are only a consequence of Part 1 of the Bill and not in connection with it. I invite noble Lords to consider the illustrative draft of the regulations and take comfort that this power is specifically to deliver the end of free movement; it is not to be used for general changes to the immigration system.

The regulations will make the statute book coherent on the repeal of free movement, align the treatment of EEA citizens arriving from next year with that of non-EEA citizens and implement our obligations to afford equal treatment to those within scope of the residence provisions of the withdrawal agreement—nothing more than that.

Furthermore, Amendment 10 prevents the Government making changes required to align the treatment of EEA and non-EEA citizens in the immigration system, which would undermine the new global points-based system. We cannot, therefore, accept these amendments.

The Government have made every effort to specify in the delegated powers memorandum the type of changes to legislation required as a result of ending free movement and protecting the rights of Irish citizens, and to make provision for them in draft regulations. However, Amendment 11 would prevent the Secretary of State making appropriate provision and would unacceptably narrow the scope of the power. Amendment 13 would have the effect of restricting the scope of the power to the powers listed in Clause 4(3).

Amendment 32, tabled by my noble friend Lady Neville-Rolfe, seeks to confine changes to fees and charges to EEA and Swiss citizens. That is already the principal purpose of Clause 4(5). However, the amendment would then prevent us applying the skills charge to non-EEA family members of EEA citizens and from exempting from the skills charge a non-EEA family member with rights of residence and equal treatment under the withdrawal agreement. It would amount to a breach of the UK's commitments under those agreements, and for that reason alone we cannot accept the amendment.

It is the will of the British people that we bring free movement to an end. This means ending the bias in our immigration system that favours EEA citizens over the citizens of any other country, which is the primary purpose of the Bill. Limiting the Government's ability to apply a skills charge to EEA citizens in the same way as they apply to non-EEA citizens would mean that certain elements of free movement had not been fully repealed by the Bill, and that EEA citizens still had an advantage in our immigration system. That is not an outcome that the Government can accept.

On Amendments 35, 36, 37 and 38, to which the noble Baroness, Lady Hamwee, has spoken, the first set of regulations made under this power will be subject to the "made affirmative" procedure, whereby they must be approved by both Houses within 40 days of being made if they are to remain in force. The "made affirmative" procedure is needed in the likely event that there is a short window between Royal Assent to this Bill and the end of the transition period. For that reason, the affirmative procedure proposed by the noble Baroness does not work.

The people of the UK voted to leave the EU and take back control of our laws and our borders. It is therefore imperative that this House helps to deliver on that democratic mandate by ensuring that free movement is brought to an end by 31 December. It is important to ensure that regulations made under this power commence by then. Under the "made affirmative" procedure, both Houses will be asked to approve the regulations within 40 days of them being made for them to continue in force, so Parliament has scrutiny over the use of this power. If Parliament does not approve the regulations then they will cease to have effect, but subsection (10) preserves the effect of anything done under them before that point in order to ensure

legal certainty. Using this power does not mean avoiding parliamentary scrutiny—far from it—as the secondary legislation to be made under the power is subject to full parliamentary oversight using established procedures.

I think it is right that Parliament should set the scope of the power in Clause 4 in terms that are appropriate to the purpose of the Bill in ending free movement and protecting the rights of Irish citizens. It is also right that Parliament should retain appropriate oversight over the exercise of this power. However, the Government are committed to ending free movement now that we have left the EU, and this parliamentary procedure is an essential part of delivering that. I hope the noble Baronesses and my noble friend Lady Neville-Rolfe have been assured of the content of the draft regulations and the explanation of how the Government will use the delegated power. I therefore ask the noble Baroness to withdraw her amendment.

Furthermore, some noble Lords have spoken to oppose that Clause 4 stand part of the Bill. I must emphasise the importance of this power for the effective implementation of the Bill. I trust that sight of the draft regulations provides further reassurance that the power does not give Ministers a blank cheque to make wide-ranging changes to immigration policies. The power can be used only to make provision as a consequence of or in connection with Part 1 of the Bill on the ending of free movement and protecting the status of Irish citizens, but without the power we cannot align immigration treatment between EEA and non-EEA citizens, and cannot then build up our global points based system.

The regulations will be subject to full parliamentary scrutiny using well-established procedures. Free movement must end on 31 December and the "made affirmative" procedure is needed to ensure regulations made under this power align the treatment of EEA and non-EEA citizens who arrive in the country from 1 January 2021. It is important to debate the appropriate use of delegated powers, but the Government are committed to ending free movement now that we have left the EU and this clause is an essential part of it.

9.45 pm

Baroness Hamwee (LD) [V]: My Lords, the noble Baroness, Lady Neville-Rolfe, expressed some frustration about the limitations arising from the scope of the Bill. The noble Lord, Lord Green, referred to similar points on the report of the Constitution Committee. I have long taken the view that, when people with very differing views have the same criticism as I do, we must have a point.

I omitted to thank the Delegated Powers and Regulatory Reform Committee and its chair, although my thanks must be implied by all the references I made to them. That I quoted from the report did not steal the thunder of the noble Lord, Lord Blencathra, at all. He cannot be surprised, because they were very good quotes. I said that I hoped for some excoriating speeches. I had him in mind, but he has moved on to sorrow. However, he did not disappoint.

When I started to read Clause 4, I picked up my pen and did not put it down, which was obvious from my raft of amendments, which almost amounted to an edit of the clause. The Minister says that she seeks to reassure us about how the Government intend to use the powers. As I so often say, I do not doubt the good intentions behind all this, but I ask her if she would be comfortable if—unlikely as it may seem—our positions were reversed. Would she take comfort if I produced a draft that was illustrative only? She said several times that the Government cannot accept the amendments. It really amounts to "will not" accept the amendments. As regards "made affirmative", how realistic would it be for Parliament to block the instrument regarding the ending of free movement, after free movement had ended?

There is such an absence of detail on the workings of the policy. The six "consequential repeals" in Schedule 1 do not "scratch the surface"; that is not my analysis but that of the Bingham Centre for the Rule of Law, given the huge amount of immigration legislation. It also says that "a solitary page", paragraphs 5 and 6 of Schedule 1, purporting

"to remove all rights, powers, liabilities, obligations, restrictions, remedies and procedures which derive from EU law … is lazy law-making. If people are going to have their rights removed, it is incumbent on Government to list precisely what those rights are and then specifically to remove them."

It says that that would also enable

"parliamentarians to know precisely what they are voting for".

To revert to the reference made at the beginning of today's debate by the noble Lord, Lord Pannick, Caligula might have been proud of Clause 4. This is not the time to pursue the matter, although I am clear that we have to return to it. I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendments 10 and 11 not moved.

The Deputy Chairman of Committees (Lord Lexden) (Con): We come now to the group beginning with Amendment 12. I remind noble Lords that anyone wishing to speak after the Minister should email the clerk during the debate. Anyone wishing to press this amendment, or any other in this group, to a Division should make that clear in debate.

Amendment 12

Moved by ***Baroness Hamwee***

12: Clause 4, page 2, line 40, at end insert—

"(2A) The power to make regulations under subsection (1) does not include power to make provision inconsistent with the withdrawal agreement as defined by section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation)."

Member's explanatory statement

This amendment would ensure that the power cannot be used inconsistently with the Withdrawal Agreement.

Baroness Hamwee (LD) [V]: My Lords, in moving Amendment 12, I shall speak also to Amendments 18, 19 and 83.

There is nothing subversive in Amendment 12—there is no cunning plan. All the amendments in this group are intended to ensure consistency with the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020. It does what it

[Baroness Hamwee]
says on the tin. In the light of Clause 4, which spells out the power to make regulations which "among other things" may modify primary legislation, these amendments seem to us to be necessary.

I was about to refer to the British in Europe group as a campaign group, but it is far more than that: it represents its stakeholders and argues very powerfully for the interests of British citizens in Europe. As the group puts it, the withdrawal agreement is the vital underpinning of rights created in UK law for UK citizens living in the EU and for EU citizens living here. In various debates over the past few months, noble Lords have tended to focus on the latter, because living here means being subject to UK law. But British citizens in the EU are British and must not be prejudiced by anything that is not in accordance with an international treaty.

I say that without having heard much news since this morning because of being, as it were, in the Chamber, but the news this morning was very much about not following through—not complying with—an international treaty. After all, we should all be entitled to rely on an international treaty.

Immigration law is so complex that to allow an inconsistency to slip through unintentionally is a real danger. Amendment 12, therefore, provides in terms that the power to make regulations does not include a power to make a provision inconsistent with the withdrawal agreement.

Amendments 18 and 19 aim to bring the clause into line with the two pieces of legislation that I have mentioned. Section 7(2) of the European Union (Withdrawal Agreement) Act 2020 provides that, if the Minister considers it appropriate, regulations under subsection (1) may be made so as to apply both to persons to whom the provision in question applies and—this is the relevant point—to persons to whom the provision does not apply but who may be granted leave to enter or remain in the UK by virtue of residence scheme immigration rules and who do not have such leave. Amendment 18 would replicate that.

Amendment 83 deals with Clause 5, and it may be appropriate to come back to it when we debate Clause 5. However, again, its purpose is to ensure that the power created by the clause can be used only in ways which are consistent with our country's obligations under the withdrawal agreement. "Retained direct EU legislation" is the full gamut of EU legislation on social security co-ordination, and under the withdrawal agreement the UK is committed to applying this legislation to all those who come within the scope of Part 2. Among other things, the legislation covers the aggregation of social security contributions made in different countries, mutual healthcare arrangements, the payment of pensions and pension increases for pensioners living in different countries, and the regulation of other cross-border benefits.

In practical terms, the most important aspect for British citizens covered by the withdrawal agreement is the continued right for them to receive their pension and pension increases. Many noble Lords will recall debates regarding pensions and pension increases for people who have moved away from the UK, outside the EU, and whose pensions have been frozen. Other aspects are the continued right of pensioners to healthcare under the S1 scheme, which enables a pensioner residing in a country not responsible for their pension to receive healthcare in the country of residence at the expense of the country paying the pension contributions. This is a mutual arrangement that also applies to EU pensioners living in the UK. One aspect of this is the continuation of the scheme whereby those who have worked in the UK and one or more EU countries have their contributions aggregated, so that they do not fall foul of the national rules on minimum contribution periods.

One of the very big concerns of people who lose the right of free movement is the impact on their retention of rights and ability to move in the course of work as their careers develop and their jobs take them to different countries. Without this scheme, many people who have contributed for a full working life but have moved several times would end up without a pension at all. Again, we are faced with the possibility of a Government modifying—or worse, perhaps—these provisions by regulation alone.

All the points that have been made this afternoon and this evening about what could happen are relevant here. Social security legislation probably rivals immigration legislation in its complexity, so the point that was made earlier about unwitting breaches of the withdrawal agreement would apply as well. I assume that we will have similar answers to this amendment, but, although the points may be similar and parallel, they are no less important or worthy of being pressed and explored, as I am seeking to do with Amendment 83. However, at the moment, I will formally move Amendment 12.

The Deputy Chairman of Committees (Lord Lexden) (Con): I call the noble Lord, Lord Flight. Lord Flight? As he is not present, I call the noble Baroness, Lady Altmann.

10 pm

Baroness Altmann (Con) [V]: My Lords, I have added my name to the amendments in this group. I echo the words of the noble Baroness, Lady Hamwee, who moved them clearly and explained the importance of what is being sought by introducing them.

As the noble Baroness mentioned, this seems timely, given some of the recent very troubling reports. Lately, the possibility has arisen that the Government are not satisfied with the withdrawal agreement in some way, having signed it recently in good faith, while working, hopefully, towards an agreed exit after the transition period at the end of this year. I hope the Minister will be able to reassure the House that there is no intention of trying to override the withdrawal agreement in any way and that our country will not be seen to be trying to renege on an international agreement, especially so soon after having signed it.

I hope that UK citizens living in the EU can be reassured that the measures in the Bill will not be affected deleteriously by future regulations that might change what they thought was already enshrined in this international agreement and that pensions, pension increases, other benefits and health care will be protected, as was intended and implied in the withdrawal agreement.

I also hope that the measures in the Bill will remain consistent with the withdrawal agreement and that no powers under the Bill will be used to make provisions inconsistent with that agreement.

I know these are probing amendments and I hope that the reassurances or necessary changes can be made to satisfy the House. I support the intention of these amendments and look forward to my noble friend's response.

Baroness Ludford (LD): My Lords, this group of amendments, led by my noble friend Lady Hamwee, is about ensuring that the Government cannot legislate by regulation, contrary to the withdrawal agreement. This is a prescient set of amendments, tabled when it might not have been thought that there was a particular danger of that happening. However, the pronouncements and press reports since last night—there is some backtracking going on, however, which we will debate in the Chamber tomorrow—raise serious fears about the Government's reliability and integrity in respecting the withdrawal agreement, and, indeed, any other treaty commitments. It raises the question of whether they can be trusted.

We will be debating separately the question of the Government's refusal to give settled status applicants a physical document, not just a digital code. I will raise a brief query here: whether a digital code alone would satisfy the requirement in Article 18 of the withdrawal agreement for

"a document evidencing such status which may be in a digital form."

Those latter words were added at the UK's insistence, as we understand it, but it still talks about a document evidencing status. I wonder whether a digital code is a document.

Not least as a feature of the settled status scheme which has been flagged up by the3million, which does excellent work and has provided some fantastic briefing—I shall use this occasion to thank that organisation along with the organisation, British in Europe—non EU-national family members get a physical document in the form of a biometric residence permit. Since Article 12 of the withdrawal agreement requires the Government not to discriminate on the grounds of nationality, it is odd that EU citizens do not get a physical document but those in the family who are not EU citizens have a biometric residence permit. That is rather strange.

In the context of group 1, I raised comprehensive sickness insurance. The Minister said that the Government would use their discretion in deciding whether the absence of CSI in the past would bar a person from getting UK citizenship. I know that this will come up again in a later group. However, it is important to note that the UK is regarded by the European Commission as being in breach of EU law by insisting on the term "comprehensive sickness insurance" as it is in the 2004 citizens' rights and freedom of movement directive. The Commission insists, as indeed MEPs did at the time, that this means only that relevant persons should have access to whatever the health system is locally, so the Government's insistence that they should pay for private health insurance is, as I understand it, the subject of ongoing infringement proceedings.

In 2017, Prime Minister Theresa May promised EU citizens that the CSI—I prefer to call it private health insurance because that is what we are talking about—for those who had been economically inactive would be dropped as a requirement for settled status under the new system. However, what is happening now is that those people applying for citizenship are at risk of having their applications refused because in the past they did not have private health insurance, even though they had been told that they did not need it for their settled status application. When they apply for citizenship, they are told that retroactively they will be barred if they did not have private health insurance in the past. This feels like moving the goalposts, playing cat and mouse and so on, and the Government will not make any friends by this. The Minister referred to a power of discretion, but I do not believe that any details have been made known about how that would be applied, so that leaves people in the dark and in a state of anxiety.

I should mention also that Article 10 of the withdrawal agreement states that those covered by the citizens' rights provisions of the agreement include

"Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law".

Union law—that is, EU law—means that the ability to use the NHS qualifies as "comprehensive sickness insurance"; that is the view of the European Commission, which as I say is following infringement proceedings. If the Government persist with this, I fear that they will come up against problems under the withdrawal agreement and there is a risk that they would be seen to be acting in bad faith. The amendments in this group therefore insist that the Government must abide by the withdrawal agreement in making regulations under both Clause 4 and Clause 5, and that should include doing away with the retrospective demand. I hope that the Minister will be able to give us some reassurance on that point.

A great deal of justified concern has also been expressed about children either in or leaving care. I do not have time to talk about this now because it will come up again at least in part in a later group, but it is a matter of great concern. Local authorities, even with the best will in the world, have found over the past six months with the challenge of Covid that they have not had or have not applied the resources to assist children who ought to be applying under the settlement scheme. They are finding it very difficult to get the evidence together, so I hope that the Government can give some reassurance about the assistance that they will be given. We will also talk later about the dangers of another Windrush.

Lord Rosser (Lab): My Lords, Amendments 12 and 83 provide that regulations under Clauses 4 and 5 respectively cannot make a provision that is inconsistent with the withdrawal agreement. Amendments 18 and 19 alter the language of Clause 4 to bring it in line with the 2018 and 2020 withdrawal Acts. The wording of the Bill does not appear to preclude the concerns which these amendments seek to address. Indeed, Clause 4(1) states that

"The Secretary of State may by regulations made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of, or in connection with, any provision of this Part",

namely Part 1 of the Bill.

[Lord Rosser]

Clause 5 deals with the power to modify retained direct EU legislation relating to social security co-ordination, and again appears not to provide for the limitations sought in Amendment 83. Presumably it is not the Government's intention to nullify or weaken the terms or protections of the withdrawal agreement, or the terms or protections of the withdrawal Acts, by regulations that avoid the full and proper parliamentary scrutiny and challenge that is achieved only in respect of primary legislation. That should become clearer from the Government's response, which will be interesting in the light of media reports today of their allegedly negative attitude to keeping to the terms of the withdrawal agreement. Whether there is any significance to the wording in Clause 4(4) being different from the terms of the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020 will also become clear.

Baroness Williams of Trafford (Con): My Lords, I thank the noble Baroness, Lady Hamwee, for speaking to this group of amendments, which concern the scope of the delegated regulation-making power under Clause 4 and, in the case of one of the amendments, Clause 5. As I have said, it is right that Parliament pays close attention to the provision of delegated powers, and to assist we have shared draft illustrative regulations to be made under Clauses 4 and 5, subject to Parliament's approval of the Bill.

Amendments 12 and 83 prevent the Government from using the powers in Clauses 4 and 5 to make regulations which are inconsistent with the EU withdrawal agreement. We already have a legal obligation to comply with that agreement, which also has direct effect in domestic law in accordance with the European Union (Withdrawal Agreement) Act 2020. These amendments are unnecessary and would call into question why they are not included in every other item of legislation across the statue book.

I turn to Amendments 18 and 19. Clause 4(4) allows the regulation-making power to make provision for those who are not exercising free movement rights at the end of the transition period. This group may nevertheless be eligible for status under the EU settlement scheme and are therefore still affected by the repeal of free movement. Clause 4 does not allow changes to the statute book for migrants from the rest of the world, who are not affected by the repeal of free movement. The suggested amendments are unnecessary and would add confusion and hinder our ability to make appropriate provision for those affected by that repeal.

It is right that Parliament should set the scope of the power in Clause 4 in terms appropriate to the purposes of this Bill in ending free movement and protecting the rights of Irish citizens. It is also right that Parliament should retain the appropriate oversight over the exercise of that power. The Government's intention here is simply to ensure absolute clarity of purpose.

The noble Baroness, Lady Ludford, mentioned some issues that I have already addressed, namely comprehensive sickness insurance and the form versus the digital form. Article 18(1) explicitly provides that a document evidencing status may be in digital form. She also talked about children and the EU settlement scheme, specifically children whose parents—or indeed institutions in which they live—may not have signed them up. We will provide for reasonable excuses; I believe that we will come to that later in the Bill.

Baroness Hamwee (LD) [V]: My Lords, I am particularly grateful to the noble Baroness, Lady Altmann, with her knowledge of pension provisions, for contributing to this debate. My noble friend said that I must have been prescient in tabling this amendment. I think it was more about a continuing, underlying, and rather generalised sense of anxiety—not about resiling from the withdrawal agreement, which had not struck me as a possibility until a few hours ago.

The Minister has given us some reassurance; I hope that I have heard correctly over the airwaves about the legal obligation to comply with the withdrawal agreement. I suppose that this does not mean there will not be an attempt to change that legal obligation in some way. Anyway, that is not for tonight and certainly not for after 10.15 pm. Probably the best I can do at this moment is to beg leave to withdraw Amendment 12; I do so now.

Amendment 12 withdrawn.

Amendment 13 not moved.

Lord Parkinson of Whitley Bay (Con): My Lords, this might be a convenient place to pause in our proceedings.

House resumed.

Non-Domestic Rating (Public Lavatories) Bill

First Reading

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

House adjourned at 10.17 pm.

Grand Committee

Monday 7 September 2020

Arrangement of Business

Announcement

2.30 pm

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): My Lords, the Hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded, or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) (Amendment) Order 2020

Considered in Grand Committee

2.31 pm

Moved by ***Lord Bethell***

That the Grand Committee do consider the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) (Amendment) Order 2020.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): It is a sad fact of life that the NHS is not immune to fraud. As noble Lords will be aware, this Government have backed the NHS with the biggest cash boost in its history—an extra £33.9 billion by 2023-24. This money will go on investment, recruitment and epidemic response. This is taxpayers' money and we are determined to get the best return on that investment, so that it makes the biggest difference to the most people. Yet fraudulent activity in the NHS means that the money intended for patient care ends up in the pockets of those who did not legitimately earn it. This is wrong. From a practical point of view, this means that fewer resources are available to be spent on front-line health services such as patient care, healthcare facilities, doctors, nurses and other staff. On a reputational front, it damages trust in the system. From an ethical point of view, it is our duty to fight fraud, because this is taxpayers' money and we have a duty to spend it appropriately. That is why we have prioritised the NHS Counter Fraud Authority—to ensure that it is an effective counterfraud organisation. We believe it is best that it operates independently as a body which can act without external interference or influence and perform those functions that cannot be undertaken at a local level: serious and complex investigations, such as those that cross borders, and cases of alleged bribery and corruption on a national level.

Since its inception as part of the department in 1998, its function has evolved and in autumn 2017 it was launched as an independent special health authority. As a result, due to the NHS Act 2006, it is limited to a maximum lifespan of three years and so is due to be abolished on 31 October 2020. To prevent this, a statutory instrument was laid on 11 June 2020 to extend the abolition date by three years to 30 October 2023. I will take this opportunity to highlight the important work of the NHSCFA and set out why we need to extend its lifespan for a further three years.

The NHSCFA is a national centre of excellence. Fraud is a hidden crime and to fight it you have to find it. The CFA has done a valuable job in building the right relationships with organisations across the health and enforcement sectors to take that fight to the thieves who seek to deprive the NHS of resources for patient care. The NHSCFA is continually developing its intelligence and investigation capabilities and is breaking new ground in how to detect and prevent fraud. It has also set important national standards for the counterfraud work of NHS providers and commissioners, which apply to independent healthcare providers and NHS organisations. Its work is clearly bearing fruit; the NHSCFA's latest strategic intelligence assessment shows an overall estimated reduction in losses from fraud of £60 million between 2017-18 and 2018-19. It also shows a £28 million reduction specifically on dental contractor fraud, thanks to a relentless focus by the NHSCFA over recent years, along with an £85 million annual reduction in fraud losses from false claims to entitlement to help with healthcare since 2017.

It is clear that this approach is working and that to change direction now would be a mistake. This concerted approach by NHSCFA to improve fraud awareness and drive up fraud reporting across the NHS is bearing fruit. We need it more than ever, especially when we are in the middle of the greatest threat to public health that we have seen for generations. As part of the government response to coronavirus, the Chancellor has repeatedly said that the NHS will get whatever funds it needs. An initial £5 billion coronavirus fund was established in the Budget in April 2020 and this was increased to £48.5 billion in the coronavirus emergency response fund in the Chancellor's summer update, of which £31 billion has been approved to support our health services. We are continuing to work with the NHS and HMT to ensure that the NHS gets the funding and resources it needs, so total funding may change.

Although we have seen the nation coming together to celebrate the heroic work of NHS staff, unfortunately coronavirus presents a heightened risk of fraud, where criminals may seek to exploit the situation. Never before has a counterfraud response to protect this investment been so important. To us, "Protect the NHS" is about protecting not just staff but the money that taxpayers contribute to this invaluable national resource. The NHSCFA has played a key role during this period and has produced and shared coronavirus threat assessments with partners, and coronavirus counterfraud guidance specifically for the NHS. This includes guidance outlining the unique risks to the coronavirus response and specific guidance outlining types of mandate fraud and how to identify, prevent and respond to them.

[Lord Bethell]

As technology evolves, the risks to the NHS will evolve too, especially from fraud, so we will need organisations such as the NHSCFA to co-ordinate the response at a national level. If we made the decision to abolish the NHSCFA today, it would expose the NHS to significant financial risks. It would mean that there was no ability to accurately record and assess the nature and scale of fraud and to inform the response, both within the NHS and across the wider health group. It would result in serious and complex fraud investigations being transferred elsewhere; for example, to other NHS bodies, the police or the DHSC. It would involve costly additional expenditure for local NHS bodies at a time when they should be focusing on a global epidemic. It would undermine the funding of much-needed resources that are critical for patient care.

I urge noble Lords to keep this vital organisation in place and allow it to keep doing its important work, providing confidence and certainty to so many people. I commend this draft order to the Committee.

2.38 pm

Lord Jones (Lab): My Lords, I thank the Minister for his introductory remarks, his comprehensive review and his brevity. I support the order. The NHS has been magnificent at tackling Covid-19. Perhaps we should consider striking medals for that army of devoted NHS servants. I was a Health Minister in three Administrations. There was fraud in those far-off days; there is fraud now. Ministerial intervention was not effective then; my colleagues and I did not stamp out fraud. The Minister now is finding fraud to be resilient if he seeks a renewed continuation of the NHS Counter Fraud Authority. Surely he is engaged in a positive, considered and professional reactive policy.

I could say that a distinguished Chief Medical Officer said in my hearing that in this respect, the NHS is a monster and it has got a brain. The Minister has a more positive attitude than that exasperated senior official, the Chief Medical Officer. The noble Lord, Lord Lawson, got it right when he ventured to say most positively that the NHS is the nation's religion. Certainly, it is a great NHS: that is absolutely certain.

I have some brief questions for the Minister. How many prosecutions for fraud were there in each of the years 2018 and 2019? How many successful prosecutions were there in those years? By what process are prosecutions initiated? With reference to paragraph 7.2 in our helpful notes, does his department have an estimate in money terms of the amount of fraud currently under way? How does his department gather and seek such information? Given the large sums of fraudulent moneys that have been discovered to be involved, will he consider enlarging the budget of the authority for better and ever more effective working? How many staff are engaged in the authority? Perhaps the Minister will give the name of the current chair or director of the authority and indicate the salary paid annually to that person. In conclusion, congratulations must go to the authority on saving the sums of money already indicated.

2.43 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Jones, one of the most liked and respected politicians in Wales. I thank the Minister for bringing forward the order, which I certainly support. The NHS is rightly a cherished national institution and extra funding has indeed been brought forward by the Government. That is quite right, particularly in light of the current challenging crisis that faces us.

Fraud is always to be condemned, but there is something especially nauseating when it is taking money away from patient care in our cherished national institution, the NHS. Fraud is something that we should all take very seriously. Like the noble Lord, Lord Jones, I thank the NHS Counter Fraud Authority for the work that it has been doing developing intelligence against fraud and saving the NHS money by uncovering fraud: £60 million in the last year for which figures are available. Of that, £27.6 million related to dental contractor fraud, so that was a considerable amount.

The Minister for Care in the other place said that coronavirus presents a heightened risk of fraud; indeed, the Minister said the same again today. In the light of that, does the Minister believe that additional resources are needed in these challenging circumstances to save additional money for the NHS? If so, what is being done in that regard? I know that the Counter Fraud Authority has been working on a revised strategy, but I do not believe that it has yet been published. Does the Minister have any detail on that, and will he indicate when that strategy will be published?

I believe that PPE for combating Covid—which has presented, in some respects, a challenge with regard to fraud—is purchased centrally by the Government and is therefore not subject to the scrutiny and supervision of the NHS Counter Fraud Authority. Can the Minister indicate what body is scrutinising this area for fraud, what supervision does exist, and if that body—whatever it may be—is working alongside the NHS Counter Fraud Authority in order that the two bodies can be truly effective in that respect?

I thank the Minister very much for bringing these regulations forward; we should all welcome them. I hope that we are able—because I realise that this is on a three-year rolling cycle—to assure the people who are doing this vital work that their jobs are safe. I am sure that is the case, but I fear that when we see these things on a three-year rolling cycle, towards the end of the three years the employees and those working for the authority might perhaps be wondering what will happen to their jobs. I am sure that that is not the case, but anything that the Minister can say about the continuing security of these jobs would be welcomed by the House. With that, I lend my support to this order.

2.46 pm

Lord Bhatia (Non-Afl) (V): My Lords, I support this order fully. It will allow the NHSCFA to continue to protect the NHS from fraud, bribery and corruption, thereby safeguarding taxpayers' money. Some £286 million of savings has already been made over the past few years. Doctors and dentists who defraud citizens will face charges. This order will be able to deal with this kind of corruption.

2.47 pm

Lord Naseby (Con): My Lords, this is a very important order. I declare my interests; I am married to a former full-time senior partner GP and I was for 12 years a member of the Public Accounts Committee, specialising in health matters.

I congratulate the Minister on bringing this forward. It is very timely. I wonder why three years was chosen rather than a Parliament, but that is not a key issue. I note, though, that paragraph 3.4 of the Explanatory Memorandum states that this applies to England only. Does that mean that there is a comparable body in Northern Ireland, Wales and Scotland? I hope the answer to that is "yes"—but if it is not, why on earth is it not?

I am not clear—and this goes back to my Public Accounts Committee years—who is actually auditing the work of this very important body. Is it the National Audit Office or some other organisation? Certainly, in my experience across a wide spectrum of departments and semi-independent bodies, the Comptroller and Auditor General in that organisation does a superb job and refers problem areas to the Public Accounts Committee. If the Minister is not able to answer that this afternoon, I hope he will be able to write to me.

I will raise an issue that might not be absolutely key at this point. I note that there are still too many examples of two chemists in a town trading under different names but actually belonging to the same company. The whole respect of the pharmaceutical and chemist world is basically that they get a primary payment, and that should not be happening.

Of course, at the top of my mind is the protective equipment that has had to be bought. While there were challenges there—not everything went as smoothly as I am sure the Minister would have liked—nevertheless I recognise the enormous effort that was put into providing protective equipment. But of course, when things are done at speed, inevitably there are loopholes, and I just wonder what we are doing in terms of helping this organisation to look closely at the contracts that were signed, the delivery of those contracts and whether the product was up to specification, to ensure that public money, paid for by the taxpayer, is well spent and that if the contract has not been delivered as thought, there will be not necessarily prosecution but some form of retribution repaid to this organisation.

I will ask another question that may seem strange. Is there any part of the NHS that is excluded from this organisation? It is very important that there is nobody and no part of the NHS that shall be excluded.

My noble friend Lord Bourne raised an absolutely crucial question. There is, it is rumoured—so I am told and I thank my noble friend for reminding me of this, because I did pick it up the other day—a revised strategy circulating somewhere. If there is, it seems to me that it should not be circulating for very much longer, because we really do want to know what is happening on the ground.

I will make just two further small points that are tangential to this. A colleague of mine whom I met a couple of days ago went for a test at Olympia. She was told that there was no space at Olympia and that she should go to Wellingborough—which happens to be next door to my former constituency. Upon complaint, it was discovered that there was space at Olympia. So that is a problem and a waste of resources.

In the papers over the weekend we saw the problem of past tests, where people have been cleared but there is some residue in their body that means that when the results are tested again, they come up as positive. That is another problem.

Finally, my noble friend—I do treat him as a friend, because I have known him for many years—Lord Jones has asked the right questions. How many people have been prosecuted? How many special prosecutions have there been? How many special initiatives have there been? Is my noble friend in a position to update the figures for savings that we have here?

I say again to my noble friend that we owe a huge thank you to the staff who are doing this work. It must be challenging and I hope that they are getting all the resources they need. I hope that they are getting the right skills. If they are short at all, will my noble friend confirm that, as far as he knows, they have got all the staff they need to do a first-class job?

2.53 pm

Baroness Thornton (Lab): My Lords, first, I need to declare my interests as a former member of a clinical commissioning group and a current non-executive member of a hospital trust—because, of course, we get trained in fraud when we take up these non-exec positions. So I have been diligent in doing my online training with the NHS fraud authority. It is very rigorous and it makes you think very carefully about the whole range of fraud that might occur in the NHS, including in recruitment, procurement and so on. So I will just say that it is very useful that it is so diligent in this. Of course, it is part of the whole audit process that goes on within NHS foundations and NHS bodies all the time.

I thank the Minister for introducing these provisions, which we will of course be supporting. Fraud is by definition a hidden crime and those who commit fraud are of course in a minority. But we are talking about significant sums here. The 2018-19 estimates say that fraud cost the NHS about £1.27 billion. So fraud is not and never has been victimless, and in this case it impacts directly on patient care. I commend the work of the fraud authority in uncovering scams and ghost patients, but there is still quite a long way to go.

Unfortunately, Covid-19 presents a heightened risk of fraud, and it does so across the whole of society. As someone who had to have their bank cards changed three times during lockdown, I say that unscrupulous crooks are seeking to exploit the fact that systems are not working and in particular that our health system is under unprecedented pressure—and they are doing it for their own financial gain. I think all noble Lords will agree that robust response is imperative to safeguard the reputation and resources of our health service, so we welcome these provisions and the extension of their lifespan for a further three years.

The disruption caused by Covid-19 has seen a reported spike in fraud cases across health and social care, ranging from fake PPE to recruitment, as well as cybersecurity attacks. I think noble Lords will agree

[Baroness Thornton]
that this is deeply concerning, so what assessment have the Government made of reports that levels of fraud have been increasing during the Covid-19 crisis, and is the noble Lord able to share any preliminary figures with us today?

Like my noble friend Lord Jones, I say that it is imperative that the fraud authority has the resources it needs to investigate, detect and prevent fraud. So could the Minister assure the Committee that the resources that it does need to investigate, detect and prevent fraud are there, and that there has been increased funding, commensurate with the increased risk?

An urgent concern is the relaxation of recruitment rules and practices to allow NHS bodies to hire staff working across the health and social care sector. I completely accept that this has been necessary at a time of emergency, but I wonder what assessment the Government have made of these exceptional circumstances and the unique pressures that may impact on methods of preventing fraud in recruitment. What advice and support is the fraud authority giving to NHS organisations to help them prevent fraud in these difficult times?

PPE has already been mentioned in this debate, and we have talked a lot about it in the last few months. It is of enormous concern that amounts of public money have been directly awarded outside the usual tendering process, with no competition. What steps is the authority taking to prevent fraud linked to PPE procurement? Given that PPE procurement for Covid-19 is now centrally managed, can the Minister confirm whether this falls outside or inside the remit of the authority? Who will be investigating this as we move forward? Are cases being referred to the Department of Health's anti-fraud unit, supported by the authority? I hope that the Minister will also take the opportunity to confirm that there will be an inquiry into PPE procurement as we move forward.

The Minister has already mentioned something of vital importance: cross-working. The most recent annual report identifies a number of challenges and potential barriers that affect the ability to tackle fraud against the NHS and highlights the fact that the level of understanding of the nature of fraud in the NHS continues to be uneven across the health system. So if there is underreporting of fraud and suspicious activity, that is of continuing concern. Can the Minister expand on what the authority intends to do to improve cross-NHS working?

In June, as has been mentioned, the Cabinet Office published the *Counter Fraud Functional Standard*, which is intended to be introduced across the NHS by the end of the financial year. We certainly welcome this move towards a common counter approach across the public sector. But what steps is the NHS Counter Fraud Authority taking to support the NHS organisations to implement this change? Can the Minister confirm that this will be introduced across the NHS by the end of this financial year, as intended, or will it need to be delayed? Perhaps he could explain that.

So we welcome this order and I think that these are all questions that will probably need to be answered in due course.

2.59 pm

Lord Bethell (Con): My Lords, I thank noble Lords who contributed to this lively debate. I completely endorse the comments of several of them, including my noble friend Lord Naseby, who thanked the CFA for its work. It is tough work; it requires huge diligence. It is not always glamorous, exciting, blue lights and fun; it is about grinding out huge amounts of detective work and auditing and being thorough. I am extremely grateful for the work of the CFA and say a massive thanks for its impact. Some of that is seen directly through the numbers, but a lot of it, as was alluded to by the noble Baroness, Lady Thornton, is seen through soft impacts such as cross-working, "encourager les autres" and a general sense of grip, which it is an important thing for NHS management to have over the system.

With all the taxpayers' money that is going into investment, recruitment and epidemic response, never before has counterfraud been quite so important—a point made by several noble Lords. The CFA has been instrumental in providing guidance and organisation across the health sector and, very importantly, in sharing intelligence with law enforcement partners.

A number of noble Lords asked about the approach of the CFA. We know that preventing loss is much more cost effective than prosecuting suspects and recovering funds. That is why the CFA does an enormous amount of work on fraud prevention methodologies. It is pushing hard to build and develop capabilities across the NHS and to share national standards and best practice with all parts. That is why it is driving a national, co-ordinated and cross-organisational response focused on prevention—the approach alluded to by the noble Baroness, Lady Thornton.

I say in response to my noble friend Lord Naseby that the CFA was established as a special authority only in 2017, but we have seen from its own strategic intelligence assessment that there has been a year-on-year reduction in fraud loss estimates. For that, we are enormously grateful.

The noble Lord, Lord Jones, asked about the number of prosecutions. The CFA has 45 ongoing investigations, involving 165 suspects. In 37 of those cases, a potential fraud value has been calculated which exceeds £34 million. I hope that that gives the noble Lord an idea of the scale of this work. The estimate for NHS fraud has been reduced, according to the strategic impact authority, from £1.27 billion to £1.21 billion, which shows the recent impact of the CFA. The chair is Tom Taylor and his salary is currently £14,450 for an average of two or three days a month.

The noble Lord asked also about the type of fraud investigated by the CFA. Covid fraud has been focused on—cyber-enabled fraud through malicious emails, apps and SMS texts. It has also investigated fraudulent appeals designed to exploit public sympathy and the spreading of false information. In this, the CFA has worked closely with the Cabinet Office, which has provided incredible support.

On how much fraud is reported to the CFA, it receives around 5,500 reports each year. The figure of 5,500 for 2018-19 was an increase of 700 over the year before.

Almost half of those reports relate to fraud committed by NHS staff and a quarter to fraud committed by NHS patients.

My noble friend Lord Bourne asked a number of questions about the budget. The current budget of the CFA, which is an indicative, non-ring-fenced revenue budget allocation, is £11 million. That budget is funded through the DHSC in the same way as other health arm's-length bodies. In 2019-20, we detected and recovered a total of £126 million which would have otherwise been lost to fraud.

My noble friend asked also about the PPE supply chain. PPE procurement during Covid-19 is currently managed centrally and not by NHS trusts. Therefore, Covid-19 procurement activity falls outside the CFA's remit. The DHSC anti-fraud unit is working with partners to scrutinise transactions and reduce the risk of fraud against the Government—the noble Baroness, Lady Thornton, asked about that specifically. The CFA is supporting this work, but I will take a moment to give special thanks to my noble friend Lord Agnew, who is very much leading the charge from the Cabinet Office in the anti-fraud campaign. I am a representative member from the health department on what is known as the "fraud board", which meets regularly to update policies and programmes in this area.

I thank the noble Lord, Lord Bhatia, for his comments. On my noble friend Lord Naseby's question about the devolved authorities, I want to clarify that the CFA, although focused on England, provides a huge amount of training, technical support, data and other specialist support for DAs. Although they handle this as a devolved area, they benefit greatly from the CFA's expertise.

My noble friend is entirely right about Covid spending. I would like to have said that everyone behaved immaculately through the Covid campaign, but that is not true. We were subjected to an enormous, co-ordinated and systematic campaign by those who sought to defraud taxpayers. We are conscious of that. We put in place enormous co-ordination with the police authorities in order to spot fraudulent efforts. They were extremely energetic but not always successful, and we have prosecutions in place to chase down fraudsters who sought to take money unreasonably off taxpayers.

Auditing of the CFA is done by the National Audit Office. I reiterate the thanks given by my noble friend Lord Naseby to the CFA.

On the CFA's three-year cycle, it is an arm's-length body established as a special health authority under the National Health Service Act 2006, which gives it a maximum tenure of three years. It is therefore out of the electoral cycle. Affirmative secondary legislation is required to extend the tenure for a further three years until 30 October 2023, which is why we are here today.

I think that I have addressed a number of the comments made by the noble Baroness, Lady Thornton, but I reiterate what I said on PPE in particular, which was subject to a concerted, organised effort by the criminal world to defraud the British taxpayer. Our response has been energetic and remains ongoing.

Extending the current model provides an opportunity for the CFA to continue its work. Its budget, which a number of noble Lords asked about, is under review, but we believe that it is ample for the work that it is doing. The department will continue to oversee the function of the CFA in its sponsorship role to ensure that it is fit for purpose. This will also allow the department to consider the best operating model for the CFA in the long term. The order is important secondary legislation that is integral to allowing the CFA independence and a crucial remit to continue. I urge noble Lords to approve it.

Motion agreed.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): The Grand Committee stands adjourned until 4 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.09 pm

Sitting suspended.

Arrangement of Business

Announcement

4 pm

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing; others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering, except when seated at their desk, to speak sitting down and to wipe down their desk, chair and any other surfaces that they touch before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I shall immediately adjourn the Committee.

Treaty Scrutiny: Working Practices (EUC Report)

Motion to Take Note

Moved by ***Lord Goldsmith***

That the Grand Committee takes note of the Report from the European Union Committee *Treaty scrutiny: working practices* (11th Report, HL Paper 97).

4.01 pm

Lord Goldsmith (Lab): My Lords, it is my privilege as the chair of the International Agreements Sub-Committee of your Lordships' European Union Committee to move this Motion. In doing so, it is my very pleasant duty to acknowledge and thank the chair of the European Union Committee itself, the noble Earl, Lord Kinnoull, and the chair of your Lordships' Constitution Committee, my noble friend Lady Taylor of Bolton, for the earlier reports for which they were responsible. They will be moved to be noted immediately after I have spoken. I also want to thank the Secondary Legislation Scrutiny Committee, chaired by the noble Lord, Lord Hodgson of Astley Abbotts, for its continued engagement with the issues that we are to debate this afternoon.

[Lord Goldsmith]

The purpose of this debate is to consider how we will undertake the new and critically important task of scrutinising the international commitments that the Government propose that the country enters into. It is a critically important task because international agreements can be every bit as important as the domestic legislation it is the job of this House to scrutinise, but they receive only a fraction of the scrutiny. This point was made as long ago as 1872 by Walter Bagehot, who said, in his second edition of *The English Constitution*:

"Treaties are quite as important as most laws, and to require the elaborate assent of representative assemblies to every word of the law, and not to consult them even as to the essence of the treaty, is prima facie ludicrous."

We have moved on from there, though it has been a slow and, many would say, still incomplete process. Our report traces some of the developments and, importantly, the Ponsonby rule, which goes back to the peace treaties of the First World War. Yet we lag far behind many countries in our parliamentary scrutiny of international commitments. The EU and USA have developed detailed arrangements for approval of agreements. The theme in all the reports that are for consideration today is whether the Constitutional Reform and Governance Act—CRaG—processes will enable this House to perform the task of scrutiny which I believe everyone believes that it should.

We are disappointed that we have not had before this debate the reply of the Government to our report; it would have made it a more constructive and useful debate if we had had that. None the less, we look forward very much to the Minister's reply. I welcome in that respect the positive engagement of both the Minister here today and the noble Lord, Lord Grimstone, for their repeated statements in correspondence and orally that the Government share the view that scrutiny by Parliament, including by this House, is crucial. I look forward to hearing that repeated as well. I am particularly appreciative of the positive steps of the noble Lord, Lord Grimstone, to keep the committee that I chair informed of developments.

The three major issues I will refer to this afternoon are information, time—those two are connected—and what commitments are covered. We need information; we need to know what agreement is proposed and what its terms are. The worry is that, if we see the information and the text of a treaty only when it is signed, it may be too late for any effective scrutiny. Will the opportunity to improve the arrangements simply have passed, and does it then become an unwelcome choice of take it or leave it? This can be managed by sharing information in different ways, before the CRaG clock starts, through advising Parliament of negotiating mandates and enabling debate on those, keeping us informed of the progress of negotiations and providing notifications of what is likely to be laid soon. That may involve sharing information in private, which is not ideal, as many or perhaps all of us would prefer transparency. But if otherwise we will not see the outcome until much later, we have said that we will be prepared to receive it in private.

The second issue is the time available for our scrutiny. CRaG allows 21 sitting days, which is very tight, especially if we want to consult experts or stakeholders. We are very concerned about this issue. In Command Paper 63 in February 2019, important assurances were given by the Government, which included assurances that adequate time would be available for scrutiny—and scrutiny indeed by both Houses. That was the Government of Mrs May and not of Mr Johnson, but we hope that we can still receive the same assurance from the present Government. Can the Minister provide today the assurances that the present Government will do just as much as was promised in February 2019 and will now reconfirm those commitments? A sliding back, just at the moment that we need to see these agreements which Mr Johnson's Government much vaunted during the Brexit debates, would be very regrettable. At the very least, it would raise the question of whether CRaG can be made fit for purpose at all.

Before proposing amendments to CRaG, we have proposed a pragmatic approach. We hope to be testing out this sort of arrangement on the agreements that we are scrutinising—or not yet scrutinising, but where inquiries have been opened—including the earliest, which is likely to be the UK-Japan deal. In a spirit of co-operation, Parliament and Government can test what works well, and develop new practices and approaches together. Still, some points that the Government need to act on are immediately clear, and were clear to my noble friend Lady Taylor's committee and to that of the noble Earl, Lord Kinnoull, including increased and regularised co-operation with the devolved regions and Crown dependencies and overseas territories.

One issue is that we need to find a way forward for enabling scrutiny of agreements beyond the strict terms of CRaG, in particular where amendments to existing agreements arise, and memoranda of understanding. Under the third limb of the Ponsonby rule, the Government accepted that Parliament ought to

"exercise supervision over agreements, commitments and undertaking by which the nation may be bound in certain circumstances and which may involve international obligations of a serious character, although no signed and sealed document may exist."

Yet, despite the fact that this description clearly covers memoranda of understanding, which can have profound political consequences, we have thus far been unable to obtain assurances from the Government that these will be routinely disclosed to the committee, even when they involve significant international obligations.

MoUs can relate to important issues, such as deportation of terror suspects with assurances that they will not be tortured, or, more recently, the diplomatic immunity of individuals not covered by the Vienna Convention on Diplomatic Relations. I refer here to the Harry Dunn issues. So we need to see these. The point was raised in our committee, including by Members with great experience and knowledge, that this might overwhelm the committee because of the number of such arrangements. It cannot be right for the Government to decide which amendments and MoUs are subjected to scrutiny; that must be a matter for Parliament.

So we have proposed a pragmatic and practical approach to sift such documents for scrutiny, and we hope that the Government will engage with this in a positive fashion. Our current solution therefore is to propose a sifting process so that only a manageable number of these would rise to the level of requiring

detailed scrutiny. That is a proposal on which we particularly look forward to the Government's response to the reports and their agreement on a way forward.

What is the timetable for agreeing a system for routinely sending us amendments, and other relevant treaty information? When can we expect to see a system in place that reports amendments and memoranda of understanding that are agreed, so that we can get on with our work? Are the Government willing to commit to providing regular lists of what has been agreed to help the committee identify where scrutiny needs to be applied? I am looking forward to hearing not just from the Minister but from other noble Lords this afternoon as to how they see the work that we are to do going forward, and I hope that the debate on these reports will very much advance the aim that we have. I beg to move.

4.10 pm

Baroness Taylor of Bolton (Lab) [V]: My Lords, I am happy to follow my noble and learned friend Lord Goldsmith. I am pleased that his committee has been established. I will say a few words as chair of the Constitution Committee to give some background as to why we took an interest in this issue.

The Constitution Committee launched an inquiry into Parliament's role in the scrutiny of treaties in October 2018. We did so for three basic reasons. The first and obvious one is that we believed that treaty scrutiny mechanisms were not adequate, had failed and were flawed. That was based not just on the Ponsonby rule, which has been mentioned. We of course also looked at the provisions of the Constitutional Reform and Governance Act 2010, but we concluded that more needed to be done, and not just because times have changed and current procedures are no longer adequate. The fact is that Parliament has little or no chance to influence treaties while they are being negotiated and, indeed, only a very limited opportunity to potentially block ratification at the end of the whole process. That stops Parliament fulfilling some of its obligations and responsibilities to hold the Government to account.

Added to that is the fact that treaties have changed in nature over the years. My noble and learned friend Lord Goldsmith pointed out that modern trade treaties touch on a wide range of policy issues that have a very significant and direct impact on everyday life. That is becoming increasingly clear when we see the treaties currently being discussed. So there was a strong case for change.

On top of that, we have the third factor, which might change urgently, which is, of course, Brexit. These issues have become more pressing because Brexit is now a fact of life and because Parliament will have many more treaties—indeed, some very complex ones—to scrutinise once we are in the situation, as we are now, of replacing EU trade agreements.

The committee worked hard on this issue and we published our report in April last year. I place on record our thanks to Professor Stephen Tierney, Professor Mark Elliott and our excellent parliamentary team of Matt Korris, Matt Byatt and Lloyd Whittaker. I am sure that my committee would want me to express our appreciation for the work they did to help us.

Our report concluded that there was a very real degree of urgency about this situation and that Parliament really needed to act quickly to deal with all these issues. One of our recommendations was that there should be a committee along the lines of the one just suggested by my noble and learned friend Lord Goldsmith. That committee has to scrutinise treaties, as he said, but it also has a responsibility to bring to the attention of the House some of the issues that are important and have to be considered by us all.

However, as I think my noble and learned friend indicated, establishment of the committee in itself is not enough. A lot depends on what happens from now on and on the Government's attitude. Indeed, most of the successful working of the committee will be dependent on the Government's attitude. We have had some signs of potential progress, but, again as my noble and learned friend touched on, we must make sure that there is sufficient time for the treaties committee not just to look at a treaty's proposals but to complete its work before things come forward to the House. We are talking about very short timeframes on occasion. This is something we have to be wary of, because Parliament is being bounced into making very hasty decisions on a lot of issues at the moment, and this should not happen so far as treaties are concerned.

The second point is very important. Again, my noble and learned friend touched on this. The Government must provide more information about trade negotiations, and must do so at the appropriate time. The Constitution Committee was not naive about this. We accept that there are areas where there is sensitivity about negotiations and there are times when perhaps things will have to be withheld from the committee, but it is important that we get the balance right. So we recommended that there should be not a legal requirement for transparency but a general principle in favour of transparency throughout the treaty process—a general principle that disclosure to the committee should be the norm and that withholding information should be the exception. The Government have made some comments, some of them potentially helpful. I am sure that the new committee will seek to get the right balance. It is possible for a committee to deal with sensitive information. As someone who chaired the Intelligence and Security Committee for some years, I know that that procedure is possible.

I must highlight one other issue: the question of devolution. The Constitution Committee has on many occasions commented on the difficulties of this Government and the devolved institutions working properly. There have been many times when we have had to comment on the shortcomings of intergovernmental relations. This is a very real and current problem that will cause many difficulties. We really do worry about it. Indeed, in our most recent report on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill last week we said:

> "It is extraordinary and profoundly disappointing that the official review of inter-governmental relations has yet to reach any conclusions."

That has been going on for a very long time. We also urged the Government to publish the Dunlop review as soon as possible. We are seeing real problems in this area and the Government have not been taking the issue as urgently as they absolutely need to.

[Baroness Taylor of Bolton]

To conclude, we welcome the new committee and I welcome my noble and learned friend Lord Goldsmith to his role. There will be a great deal of work because of Brexit, and it is pertinent to so many areas of life. There are some important issues to contend with, as my noble and learned friend said. The sifting process is right, but we really need to get the right attitude on the part of the Government if the committee is going to be able to fulfil its role.

4.18 pm

The Earl of Kinnoull (Non-Afl): My Lords, it is a great privilege to follow two such excellent opening speeches. The noble and learned Lord, Lord Goldsmith, has already made a considerable mark in chairing the new International Agreements Sub-Committee, as demonstrated in his speech, and its first report is one of great authority, clarity and importance. The noble Baroness, Lady Taylor of Bolton, and the ever-excellent Constitution Committee once again produced a report of great weight and incisiveness, and just now she produced a speech to match. I warmly thank the noble Lord, Lord Boswell, under whose chairmanship the EU Committee's June 2019 report was produced just before I took over, but who has graciously suggested that I lead off today.

The three reports we are considering build on each other. The cornerstone is to be found at paragraph 33 of the Constitution Committee's April 2019 report, which says:

"The current mechanisms available to Parliament to scrutinise treaties through CRAG are limited and flawed."

No serious academic or legal voice has challenged that conclusion.

The EU Committee's interest in the subject derived directly from our scrutiny of Brexit. For many years the committee scrutinised, to varying degrees, the EU's exercise of treaty-making powers on behalf of the UK, via the system of document-based scrutiny. This role for EU national Parliaments and their European affairs committees has in recent years been supplemented by an enhanced role for the European Parliament. These mechanisms for parliamentary oversight and accountability, honed and developed at European level over half a century, now no longer apply in the UK. Their disappearance leaves a democratic deficit. There are many ways one could address this, but the essential fact is that the task of scrutiny has now fallen back on the Westminster Parliament, and there is a need to design, with the Government, a proportionate new approach that will apply from here on to Governments of whatever colour.

Against this backdrop, and with the blessing of the Procedure Committee, in early 2019 the EU Committee and its sub-committees embarked on the first attempt at systematic parliamentary scrutiny of treaties, within the confines of the CRaG Act. We published 22 reports on more than 50 agreements, all directly Brexit-related. We assessed them against set criteria, modelled on those used by the Secondary Legislation Scrutiny Committee in scrutinising statutory instruments. The report we are debating today sets out the lessons learned from this substantial programme of work. Here, I should take a loop and thank the staff of the European Union Committee, who worked incredibly hard and, as we have already heard, to unbelievably short timetables to produce reports of outstanding quality for the House.

I go back to our 2019 report, in which our first and most important conclusion, echoing the Constitution Committee, is that

"the CRAG Act is poorly designed to facilitate parliamentary scrutiny of treaties."

As has been said by the noble Baroness, Lady Taylor, and the noble and learned Lord, Lord Goldsmith, it simply does not allow time for meaningful, merits-based scrutiny, let alone evidence-based analysis. The sole agreement on which we were able to take evidence was the UK-South Korea deal, and that was thanks only to the time gained from the non-Prorogation of Parliament last September.

CRaG was, after all, an Act designed to fit into a constitutional layout where the UK was a member of the EU and of all its scrutiny arrangements for new treaties. But, as has been noted, treaties can be as important as much primary legislation and with far-reaching implications: think of the European Convention on Human Rights, the World Trade Organization agreements, the forthcoming trade agreement with the United States, and many others. The post-Brexit position is that the Government can enter into such constitutionally and politically important agreements simply by exercising the royal prerogative, and that Parliament is given just 21 sitting days to rubber-stamp them at the very end of the process, just prior to formal ratification. As noted by the noble and learned Lord, Lord Goldsmith, and the noble Baroness, Lady Taylor, this is not defensible.

More is needed: this is the consistent message of all three reports that we are debating. It does not necessarily require a statute but requires at least a consistent and durable understanding. A good model would be a concordat between the Government and Parliament, analogous to the very successful EU scrutiny reserve resolution. This would cover such issues as: the publication of and consultation on negotiating objectives; the sharing of information with relevant parliamentary committees, either publicly or—as pointed out by the noble and learned Lord, Lord Goldsmith—confidentially, as negotiations progress; and undertakings to allow committees sufficient time to publish their conclusions and recommendations, and to take those views into account. I too feel strongly that it would need to provide for meaningful engagement with the devolved Governments and legislatures. It would have to cover issues such as amendments to agreements and those agreements, including memoranda of understanding, which do not fall within the terms of the CRaG Act. It would also define exceptions: most importantly, for instance, when for special reasons the Government need to bypass the full parliamentary scrutiny. I would be grateful for the Minister's initial comments on this line of thinking.

We too read the positive notes from the previous Government and the Department for International Trade, in their Command Paper of February 2019, outlining their plans for engagement. We had excellent contacts throughout 2019 at the official level with the FCO, the DIT and DExEU. I should take another

loop to thank the officials concerned for the courteous and efficient way in which they came back to us, understanding the timing difficulties for us in producing our reports. They never failed. More recently, however, we have seen rather limited progress from the Government in engaging with our recommendations.

I hope for a positive statement from the Minister today in response to the unanimous view of our three committees—a common view, based on careful consideration of the issues and substantial practical experience. None of us wishes to tie the Government's hands or to intrude into confidential negotiations. But in today's world, given the complexity and variety of international agreements, we need structures to provide appropriate democratic oversight and accountability. Now that we have left the EU, we have the opportunity to design those structures. We do not need to ape the existing European Parliament structure or that of any other institution. We can devise our own structure and processes to suit the needs of our Government, our Parliament and our people. I look forward to the Minister's response.

4.25 pm

Lord Purvis of Tweed (LD): My Lords, it is a genuine privilege to follow three such highly respected chairs and, on behalf of my colleagues, I thank them for their chairmanship. I also thank the members of their committees, and the predecessor committees, for their reasoned reports and characteristically sensible and proactive recommendations.

If the reporting in the *Financial Times* is correct and we see on Wednesday proposals to renege on treaty commitments for joint decision-making, in an agreement not yet a year old, this is a sobering backcloth to a debate on treaty-making and the ultimate trustworthiness of a UK Government in implementing treaties. It shows that this is not just a purely constitutional or theoretical debate but one of practical politics—one that affects people's livelihoods across the country.

As all three Lords committee reports made clear, there are two areas without contention. The first it that is has always been and will continue to be the responsibility of government—not Parliament—to open, negotiate and sign international agreements; the second is that these vary in complexity, scope and significance. But the consensus among the committees, if not the Government, is expressed in paragraph 33 of the report quoted by the noble Earl. He read the first part of that paragraph. It goes on to say:

> "Reform is required to enable Parliament to conduct effective scrutiny of the Government's treaty actions, irrespective of the consequences of Brexit."

All committees have proposed improvements to the process and some progress has been welcomed, as indicated, such as in Command Paper 63 on trade agreements, but in other areas more improvements can be made. I shall focus the remainder of my time on trade agreements, while my colleagues will cover the wider breadth of the reports and the consequences of their recommendations.

Whereas the committees did not propose that Parliament extend its authority by resolving to approve a trade negotiating mandate, and then an agreement, the House has done so. A clear majority of the House voted for this in the Trade Bill last year. No doubt this will be debated tomorrow, during the Second Reading of another Trade Bill. While a Motion has not been laid relating to Section 20 of the Constitutional Reform and Governance Act to withhold support for a trade agreement, in March last year I moved the first Motions in the House in accordance with Section 21: to extend the scrutiny period for the agreement establishing an economic partnership agreement between the eastern and southern African states. There were similar debates on the Faroe Islands and Switzerland agreements. During the debates, the then Minister apologised for a lack of consultation with the devolved Administrations and committed to changing procedures, and clarified areas of concern that the EU sub-committee had raised in its report, as indicated by the noble Baroness, Lady Taylor. Without the debate that I secured, these commitments could not have been given to the House. I pointed out that it should not really be down to an individual Member to secure Motions, but I am glad I did. I hope the Minister will respond positively on implementing committee recommendations to change this.

Asserting greater parliamentary authority over the setting of negotiating mandates, then approval of the agreements, does not reduce the ability to exercise prerogative powers. It actually strengthens it—the noble and learned Lord, Lord Goldsmith, referred to this—as we saw for the United States and the EU. In the two biggest economies in the world, which we are negotiating with, there is recognition that trade agreements now go well beyond their traditional roles, such as on bilateral tariff rates. In both economies, there is a vote on the text of the agreement. They also have a process for setting the mandate; we have neither. In both the US and EU, the relevant committees can be provided, through agreed protocols, negotiating documents and classified negotiating texts. This was alluded to in the UK Government's Command Paper but was subsequently watered down. Clarity from the Minister on that would be most welcome.

It thus makes sense to build on the dualist system, and for Parliament to approve the agreements before the process of seeking to support their implementation into domestic law. This is one area where we would see progress. Given the concerns about what we may see on Wednesday regarding the UK internal market process, this is even more important. I hope that the Minister will move beyond the current Government's position and act to deliver on some of the recommendations from these very sensible committee reports.

4.30 pm

Lord Moynihan (Con): My Lords, the consequences of the imminent prospect of the UK having an independent trade policy at the end of the year have been well covered by the noble Lord, Lord Purvis.

As has been pointed out, the EU Parliament has been the principal scrutiny body for the many treaties and international agreements negotiated and ratified by the EU, and it is clear that Parliament should now have the additional powers to ensure additional scrutiny of the treaties and international agreements that the UK will enter into in future. This is all the more important because the nature of debate and scrutiny

[Lord Moynihan]
of all legislation in the current living-with-Covid environment has been reduced to a substantial restriction of accountability to Parliament and of the ways in which we would normally hold the Government of the day to account. However, Covid-19 and living in a post-Covid-19 world is not the principal argument in favour of further change to the CRaG framework.

In its excellent report, the Constitution Committee rightly observed that treaty scrutiny, under the function of the Government under royal prerogative and subject to the negative resolution process, has not moved with the times. Treaties now cover far more than broad principles of international relations, encompassing detailed public policy issues—issues that must be subject to detailed scrutiny by Parliament.

For example, one of the sectors in which I specialise, sports policy, is relevant in this context because it is the field in which the EU's responsibilities were first introduced into treaty obligations under the Treaty of Lisbon in December 2009. This demonstrates clearly the way in which treaties have now descended into the detail of sectoral policy. In the immediate aftermath of the Lisbon treaty, a specific budget line was established for the first time under the Erasmus+ programme. Article 165 referred to the specificity of sport and Article 165(2)(b) refers to

"developing the European dimension in sport by",

inter alia,

"protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest"—

a catch-all clause that could be interpreted to cover the criminalisation of doping, for example.

The Bosman case, the tripartite agreement—which is critical to the free, unimpeded movement of racehorses across the borders between France, Ireland and the United Kingdom; without it, Cheltenham and the Derby meetings would be decimated—international agreements that cover competitive professional football, the criteria under which players can move from club to club and the number of players permitted under the Cotonou agreement to play in individual professional sports in this country are all covered by treaty and are critical to the continued smooth running of professional sport. Any changes will have far-reaching consequences.

Where treaties and international agreements continue to descend the political waterfall into the minutiae of sectoral policy, I ask the Government to consider going considerably further than recommending that the Constitutional Reform and Governance Act provides adequate scrutiny. Systematic parliamentary consideration beyond committee consideration is essential as we move forward, so that Parliament can undertake its key role of holding the Executive to account. All three reports are very much welcomed. I hope that the Government's response will be sympathetic and urgent.

4.33 pm

Baroness Donaghy (Lab) [V]: My Lords, first, I congratulate the noble Earl, Lord Kinnoull, my noble friend Lady Taylor and my noble and learned friend Lord Goldsmith on their reports. They provide an excellent basis for the future if the Government are prepared to listen.

I am a member of the EU Select Committee and I chair the EU Sub-Committee on Services. I also chaired the former EU Sub-Committee on Internal Markets. We scrutinised a number of rollover treaties, such as those with South Korea and Switzerland, and experienced the weaknesses of the current CRaG Act procedures. The CRaG Act needs reform, even though the Government have stated that they are not minded to do it. I agree with the Constitution Committee's conclusion that the current system of treaty scrutiny is "anachronistic and inadequate".

An article in *Parliament Research* entitled *Treaty Scrutiny: A New Challenge for Parliament*, said that the CRaG Act

"relegates Parliament to a 'weak form of sign off at the end of the process'."

Parliament has a responsibility to develop its scrutiny capacity, even within the confines of the CRaG Act. This House has responded with the setting up of the International Agreements Committee, which will aim in principle to be open and transparent and will have a good chance of securing time for debates on significant treaties.

We have had warm words from the Government about drawing on the extensive experience and expertise of both Houses, but we should not be used just as a reference library. Treaties, whether on trade, the environment, protecting our public health service or jobs and employment standards, directly affect our daily lives, which is why parliamentary scrutiny and accountability are so vital. It is also why keeping faith with the devolved Administrations is so important. They have a legitimate interest in any agreement reached on their behalf in terms of both policy and devolved competencies. It might just help to keep the United Kingdom together.

The content of future treaties is for another debate. However, the House might be interested to know that one of the witnesses to the Internal Markets Sub-Committee produced a complete table of contents of modern free trade agreements—a massive piece of work. Countries bind themselves to various restrictions, standards or regulation in order to reach a deal. We should remember that when we hear all the stories of the UK freebooting on the high seas.

Incidentally, all such treaties contain some reference to level playing fields or non-regression clauses. Disguise it as you will, any Brexit deal will have to cover this—as will all other treaties. The irony is that we are applying for membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, where the UK will be expected to conform to some kind of restrictions on standards, dumping or dispute resolution. If it is half a world away, it is okay; if it is a country within half a day's travel, apparently it is not okay.

4.38 pm

Lord Beith (LD): My Lords, I speak as a member of the Constitution Committee. I welcome the fact that our report is being debated and that it is being debated alongside two excellent reports, which have been equally well presented.

The point made by both committees is that treaties now extend far more into the daily lives of people than many did in the past, particularly when their primary

concern in the past was either tariffs or international boundaries of countries other than our own. People who do not know their Ponsonby rule from their CRaG will find their daily lives affected on issues that have been mentioned, such as standards and environmental rules of the kind that appear in many trade agreements.

That is one part of the background. Of course, there are lobby groups that know perfectly well what is involved and are very active when trade negotiations are going on. We are about to lose a much higher degree of systematic parliamentary engagement with and accountability for treaty-making in the areas for which the EU had responsibility, notably trade. The European Parliament carried out that scrutiny vigorously, with a degree of engagement and information not to be found in Westminster's scrutiny of treaties. That will go, and when it has gone, we will not be able to control our laws in the sense of those other than the Executive controlling our laws. They will be subject to much less democratic control than they were before.

Clearly, treaty-making is a function of the Executive, but they must be an accountable Executive, subject to oversight continuously through the process. One thing that happens when Executives are subject to scrutiny is that the question is asked during the process: will Parliament wear this? Is this something that we can get through or will it be opposed? Will we have to rely on loyalty and the fact that people do not want a general election at the moment to ensure that we get it through? It is at that level that our treaty scrutiny has tended to be, I am afraid.

Governments worry that demanding effective parliamentary scrutiny prevents the Executive doing their job, but that clearly was not the case with the European Commission, which had to accept detailed scrutiny by the European Parliament. It comes strangely from those who thought that the Commission was too powerful to ignore the fact that when we want to create a system here, there is no reason we should not have that level of accountability.

We have argued in our report for a Westminster alternative. Indeed, the process has been going on because existing and newly created committees have started to assume that role. There are some things which a trade scrutiny committee can do itself; there are others which might be better done by a committee which specialises in a particular field. But the committee structure of the two Houses of Parliament really needs to engage with this task.

There is some government recognition in their response of the need for improvement, but the rejection of the presumption of transparency is a mistake. It is not that everything by law would have to be transparent; the working assumption would be that there was transparency, backed, where necessary, by confidential discussion with the committee—which, again, featured in the European Parliament, which must be just as likely to be subject to the pressures around leaking that we worry about here.

If noble Lords want to know what the Government really think, they should look at page 8 of their response, where they make this very generous offer:

"If a third country's domestic procedures mean it will publish a draft treaty at an earlier stage, then the Government will also look to do similar to ensure that the UK Parliament is not receiving less information than the Parliaments of negotiating partners.

In other words, we might get some information if some other country decides to release it and we then have to. The pointer has to be shifted towards real transparency, with full recognition of the need, which any negotiating body has, for a degree of confidentiality. I think the system in Parliament is capable of accomplishing that and we should give it the opportunity to do so, when these things have such a profound effect on the lives of the people we serve.

4.42 pm

Lord Boswell of Aynho (Non-Afl) [V]: My Lords, I am pleased to participate in this important debate. Colleagues may be relieved that, having signed one of the reports under discussion today—and the remarkable range of consensus is striking—this will, I believe, be the last duty arising from my seven years of chairing the EU Committee. This stretch was almost bisected by the Brexit referendum and, incidentally, amounted in total to roughly the same time I spent as a Minister in the other place. I remain unsure in which role I acted as poacher and in which as gamekeeper. Today I want to emphasise the importance of effective treaty scrutiny.

First, and emphatically not as a formality, I record my support for the noble Earl, Lord Kinnoull, who has succeeded me as chair, and for colleagues across the House who give their time and formidable expertise, together with my appreciation of our admirable parliamentary staff, whose support has been unfailing. This enabled us swiftly to assume on behalf of the House the additional role of scrutinising continuity trade deals. The weakness of the CRaG Act procedure became quickly apparent. We have fallen behind the scrutiny mechanism available to most of our fellow democracies, to the extent that if we achieve a post-Brexit deal with the EU, ratification could be as much of interest to any EU regional parliament as to this one, although of course the issues today are of much wider application even than Brexit.

Effective treaty scrutiny is an important technical issue, but equally one of high political sensitivity. In my time in the EU Committee I have experienced a variety of poor responses from the Government, ranging from the casual to the downright obstructive. In fairness, sometimes these have been interspersed with more positive engagement with Ministers and contacts between various officials. I believe that scrutiny remains an essential component of good governance—just as, if I may say, Covid testing is essential in handling the pandemic, even if it sometimes reveals inconvenient facts. My strong advice—and it is reflected in all three reports being considered today—is for us collectively to be ready to use our elbows to expand the role of treaty scrutiny. It needs to take place across the whole spectrum, from consideration of negotiating mandates to final ratification and the associated implementing legislation, and to be based on the principle of transparency wherever possible.

There will be a predictable response from government —as a former Minister, I know the playbook—along the lines of cramping government discretion, creating

[LORD BOSWELL OF AYNHO]
diplomatic embarrassments, and so forth. I recognise that these are sometimes entirely valid objections, but they are not universal ones. If necessary, we are mature enough here to receive sensitive material appropriately without betraying confidences, and we have the collective expertise to make a positive contribution to the national interest. The admirable report of the new sub-committee shows also the need for the implications for the devolved Administrations, Crown Dependencies and other stakeholders to be understood, and it gives a flavour of the growing complexity as treaties evolve from the traditionally purely diplomatic into trade agreements which themselves may also carry other, wider implications.

Finally, although this is not strictly an issue of direct treaty scrutiny, I am sure the House will wish to remain alert in the analysis of the impact of outcomes arising from treaties on our economy and society over the years. To judge by breaking overnight news, we may also wish to interest ourselves in the Government's compliance with international law in respect of the treaties they have concluded.

4.47 pm

The Earl of Sandwich (CB) [V]: My Lords, it is a real pleasure to follow my noble friend. We owe him a great deal for these deliberations. I was a happy member of the EU External Affairs Sub-Committee until a year ago, when, under new Brexit jurisdiction, I entered the jungle of international agreements. These are predominantly trade deals of some complexity. I record my thanks to the clerks and professional advisers who are steering our treaties committee through them.

The German expression "Handel ist Wandel"—trade means change—has been used to describe the positive economic and political changes in eastern Europe, but the wheel may have turned as applied to the ongoing US negotiations with China, featuring strong sanctions and withdrawal from Huawei. Addressing human rights or climate change through trade with some countries now seems inconceivable, but we need to maintain standards, especially with the countries we already know and relate to.

Our Government have embarked positively on several new deals simultaneously, the most critical being with the EU itself. There I believe we are dragging our feet, given the historic importance of this partnership and its importance to other agreements. It is a subject which needs urgent debate, especially if the Northern Ireland agreement is threatened, as we heard today. I am glad that this will come up tomorrow. Every day we get wooden answers from Ministers while vital mutual questions of health, agriculture, climate change and security remain unresolved.

Then there are the other agreements: the important but half-baked US deal; and the more promising agreements with Japan, Australia and New Zealand and, through them, a possible one with the Pacific. It is an ambitious programme to say the least and it is vital that Parliament and the stakeholders concerned keep abreast of it. Using the CRaG framework, as we have heard, has been a good start, encouraged by a number of Select Committee reports. Our new committee, acting in conjunction with the Commons International Trade Committee, has already received evidence on the US and Japan deals, and has heard from both the Secretaries of State. It has also published a report on working practices. In that report there are important recommendations, already mentioned, on transparency, timescale and the need for trust between Parliament and the Executive.

It is important to recognise that the Government have in these early stages co-operated quite closely with the committee, but I repeat the need for the FCO to pay more attention to the human rights sections in the EMs, difficult as this will be. We have had reassurances from our Human Rights Minister, the noble Lord, Lord Ahmad, and he may well refer to these today.

My background being with development NGOs, I am also concerned that NGOs and lobbyists have proper access to information. These days, there are at least as many experts among NGOs as there are in government; in fact, many of them have moved into government. Of course, there are also confidential issues which have to be discussed inside Parliament. The Trade Bill in the Commons was highly disappointing from the point of view of our report. It could have done more to reassure the public as well as Parliament. Jonathan Djanogly and others were trying to insist, through reasonable amendments, that the Government should provide proper reporting on the content of agreements interlined for negotiation and ratification. I did not speak on this at Second Reading and I am using this opportunity to reiterate those complaints made by Members of Parliament.

I end by thanking the noble and learned Lord, Lord Goldsmith, for presenting our report so well, my noble friend Lord Kinnoull for leading for the European Union Select Committee, and the Minister for replying and for the positive remarks that I know he is about to make.

4.51 pm

Lord Lansley (Con): My Lords, I share with other noble Lords an appreciation of the excellent way in which these reports have been introduced, not least by the chairman of the International Agreements Committee, on which I serve. I was formerly a member of the EU Internal Market Sub-Committee. We have looked at the scrutiny of treaties, including the rollover treaties, over the course of the last year. I will reiterate a number of points that have been made but, first, this is not simply about asking the Government to come up with solutions. It is also about Members of this House, and the other place, making sure that we have a really effective system. I urge that the International Agreements Committee should, at the earliest possible moment, be given its own status, rather than be a sub-committee of the EU Committee, since much of what we do is not about the European Union any more. I know that there are positive discussions between the International Agreements Committee and other committees, including the International Trade Select Committee in the House of Commons, and this is important.

We have to make sure that the excellent reputation which this House achieved for its EU scrutiny, not least under my noble friend Lord Boswell, is replicated in our scrutiny of treaties. Speaking as a former Leader of the House of Commons, I know that we cannot rely

upon that House to scrutinise in the detail necessary to expose the issues relating to treaties; this House must do that.

When we do that, we will rely on the Government being transparent. I share with the noble Lord, Lord Beith, regret that, in their reply to the Constitution Committee, the Government did not accept a presumption of transparency—not a requirement, nor an obligation in all circumstances, just a presumption. They could yet shift on that ground. As the noble Lord rightly said, and our committee has said in more recent discussions, we want to see the initialled and signed agreements with Japan when the Diet in Japan sees them. What the Government have said about seeing them when third countries see them is, I am afraid, an indication of their lack of willingness to put their own views forward.

As my friend, the noble Lord, Lord Kerr, has repeatedly said in our committee, transparency in these trade negotiations is often a strength for the negotiators themselves. The requirements for ratification by the Diet in Japan are quite restrictive and onerous. I declare an interest as chair of the UK-Japan 21st Century Group, which hears a great deal from our Japanese friends about their requirements to secure parliamentary approval and to run to a parliamentary timetable. I see no evidence that this has impeded or restricted Japan's effectiveness in arriving at what they wish to see from international trade negotiations.

I hope that we will continue to have a positive approach by Ministers, not only by repeating their commitments in February 2019 but going beyond them in some of the areas discussed in our report. We have had excellent co-operation from Ministers to date; I hope that we will be able to build on that in the months and years ahead.

4.55 pm

Lord Whitty (Lab) [V]: My Lords, I am pleased to hear that the chairs of each of these committees agree on so much. We are presented with a unique opportunity to change the balance between the Executive and Parliament in this respect. For many centuries, the elite and the people of Britain seemed to agree that treaties were a matter for Kings and not for Parliament. That changed very slightly in 2010, with the CRaG Act, but my experience, like that of so many speakers, is that that Act is not fit for purpose in these post-Brexit circumstances. When I was my noble friend Lady Donaghy's predecessor, we started to look at some of the new, post-Brexit, rollover treaties. That was not an easy process; we were improvising. It showed me what an enormously complex job this is, and how CRaG is not really fit for purpose. We were, of course, involved only in looking at the final texts. In reality, the House of Lords had no leverage and the Commons had just 21 days before ratification to comment on an already agreed text. That is not scrutiny; nor does it confer parliamentary legitimacy on the outcome.

I commend the EU Select Committee for setting up the new International Agreements Committee, but that has to be seen as a temporary expedient. We need much more leverage, and that means the involvement of a new, powerful parliamentary committee throughout the process, from setting a negotiating mandate, receiving reports back through the negotiations, and scrutiny and comment on the final text. We also have to take account of the differential role, under CRaG—indeed, under our parliamentary system—of the Lords and the Commons. It has been my view throughout that the optimal parliamentary scrutiny of treaty negotiations should combine legitimacy and expertise and that there should, therefore, be a joint Commons and Lords committee on treaties. This should probably have equal numbers, but a chair from the Commons, and include significant expertise from this House. It should report back to both Houses, which would each have the right to debate and propose amendments to the treaty, although only the Commons could block it or alter it entirely. There is also a need to involve the devolved Administrations in this process.

As my noble friend Lady Taylor and other noble Lords have said, there would have to be confidentiality and security provisions, as there are currently with the joint Intelligence and Security Committee. However, that joint structure is the best form of scrutiny, and this House should propose it. I appreciate that some future Foreign Secretaries and some future—and possibly current—mandarins and political advisers may see this as a constraint and a chore, but in many respects a powerful parliamentary committee could strengthen the hand of the Government of the day, both in negotiating with other countries and in delivering domestic acceptance and ratification of the treaty process. It would help both those processes if Parliament could be seen to be fully involved and to have the final say.

It is Brexit that has triggered our attention to this. Many of our important treaties in the last 40 years have been negotiated for us by the EU, but not all. In those 40 years, parliamentarians, including British Members of the European Parliament, have had a say on those treaties. However, that is true not only of the European Parliament; the US Congress negotiates treaties, particularly ones on trade. It also happens in Canada, Australia and, as the noble Lord, Lord Lansley, said, in Japan. These are countries which are now in our sights for new bilateral trade and other arrangements. The level of parliamentary scrutiny has, in many different ways, been significantly higher than that provided by CRaG. We now have the opportunity to change that.

5 pm

Baroness D'Souza (CB) [V]: My Lords, treaties are legally binding on signatory states. They have a serious impact on citizens and therefore should be subject to the same level of scrutiny as all other domestic legislation. That this is not the case at present arises from adherence to the 100 year-old Ponsonby rule and weaknesses in the subsequent CRaG Act. CRaG offers little new to help Parliament scrutinise treaties or hold power more accountable. Despite this, the Government have reiterated their satisfaction, both in debate in the Chamber and in their response to the Constitution Committee report, with the current legislation, while conceding the desirability of greater information sharing in advance of CRaG procedures.

However, the essential concern remains that new treaties and treaty change can occur in the absence of appropriate scrutiny. This makes it impossible to have a current picture of UK international obligations, including decisions on any amendments to and/or

[Baroness D'Souza]
derogations from ratified international conventions. The main scrutiny body prior to Brexit was the EU Parliament, which had considerable powers, including one of veto. As from January 2021, treaties in trade as well as non-trade areas, such as environment security and extradition, will be in abundance. My concerns relate to current and future draft legislation that impinges on human rights treaties ratified by the UK. Some current policy in these non-trade areas would seem to necessitate amendments to treaties on human rights protection. If the existing treaties have to be amended, what mechanisms are there to review the process?

For example, the Overseas Operations (Service Personnel and Veterans) Bill would create a presumption against prosecution for even severe allegations of torture and ill treatment overseas. This would create a two-tier system, in that it would introduce a statute of limitation for all crimes committed by military or other personnel overseas, except those that entail a sexual offence. In brief, those suspected of war crimes, including murder and torture, will benefit from the five-year limitation, but those accused of sexual crimes will be exempt. This is incompatible with the UK's obligations under Article 7 of the UN Convention against Torture, for which there is no impunity. The Bill also includes a requirement that the UK Government consider derogating from Article 15 of the European Convention on Human Rights. Thus, military personnel would be exempted from the obligation to act within the international rules-based system.

Furthermore, the recently introduced 2019 principles relating to the detention and interviewing of detainees overseas will undermine UK treaty obligations under the UN Convention against Torture. These principles give Ministers discretion to authorise UK actions where there is a serious risk of torture, and in so doing are inconsistent with the absolute non-derogable prohibition on torture under Article 2 of the convention. The report sets out strong recommendations that emphasise the need for additional scrutiny in advance of the CRaG procedures and the establishment of a scrutiny committee that harnesses expertise and the work of other related committees.

The International Agreements Sub-Committee, set up in April this year, is a welcome and valuable addition. However, there has so far been a lack of political will on the part of the Government to agree to a more general presumption in favour of transparency, including the advance publication of implementation plans on UN recommendations and a more co-ordinated approach to monitoring and reporting implementation and impact assessments. Until this happens, Parliament does not have the necessary tools to do its job of scrutiny.

5.04 pm

Lord Inglewood (Non-Afl) [V]: My Lords, as a number of your Lordships have said, this is an important debate. That is particularly so because the Constitution Committee concluded—other Members have quoted this, too:

"The current mechanisms available to Parliament to scrutinise treaties through CRAG are limited and flawed. Reform is required to enable Parliament to conduct effective scrutiny of the Government's treaty actions, irrespective of the consequences of Brexit."

It would be difficult to be clearer than that.

Before continuing on that theme, I will comment on the Covid crisis, because there is a lesson to be learned. Everyone is agreed that, after it is all over—whenever that might be—the new normal will not be the old usual. The same is true about the post-Brexit world, which will not be the same as the one we left when we joined the EEC some 50 years ago. I do not believe that this has been thought about sufficiently, either at the time of the referendum or since.

Since that time, as a number of your Lordships have said, the world has changed significantly, in ways that are in no way connected with Brexit. Socially, economically and technologically, the world is a much more interdependent and hence more cross-jurisdictional place than it was then. This will not change unless we want to evolve into some kind of North Korea.

We must remember that, because over recent years the EU has negotiated on our account in many international fora and the Government have been deeply engaged in the Council of Ministers, there will be a great deal more treaties than more than 50 years ago. As has already been said, Governments are always accountable to Parliament, as much as in exercising the royal prerogative as in dealing with domestic policy and legislation. There should be no equivocation about that. Intergovernmental agreements by their very nature cannot deal with the minutiae or the detail and complexity required to put necessary provisions on to the domestic statute book. The frameworks within which that is done are set and mandated outside the jurisdiction, but they define domestic legislation.

Furthermore, matters agreed in intergovernmental negotiations can be implemented in more than one way, and how that is done is a matter for the UK Parliament. In short, I believe that Parliament's legitimate concerns encompass not only domestic legislation but the terms of any international agreements which will affect the UK statute book. In terms of Parliament being able to exercise its role, the existing arrangements, based on a Hobson's choice between approving and rejecting an agreement and, frequently, a similar choice in respect of implementing agreed terms through statutory instruments, are essentially a parody of parliamentary government and, as such, unacceptable, not least because I have been told that, on occasion, Whips' Offices have been known to deploy methods of persuasion that gangmasters might be proud of.

I spent 10 years in the Legal Affairs Committee of the European Parliament. The scrutiny given to the implementation of decisions taken in both the Commission and the Council and in respect of international agreements was on an entirely different level from that seen here, as a number of your Lordships have pointed out. While it is far from a perfect template or precedent for what we might do here, it draws attention to and highlights the shortcomings of our domestic arrangements and procedures. Checks and balances have always been an integral part of our constitution for hundreds of years, and delay where, in the last analysis, the House of Commons can insist on its way is foursquare within our constitutional practices and conditions.

When we joined the EEC, Sir John Foster led the evolution of a new way of doing parliamentary business. We now need another Sir John Foster, or a series of

Sir John Fosters, to take another root-and-branch look at where we go from here and how to plot a way forward.

5.08 pm

Baroness Noakes (Con): My Lords, it is a pleasure to be back physically in your Lordships' House, despite the hostile environment that the risk-averse House authorities have created for us. It is also a pleasure to take part in this debate on a trio of interesting reports from committees of your Lordships' House.

I particularly welcome the Constitution Committee's acknowledgement that treaty-making is a function of government exercised through the royal prerogative. I also welcome the fact that the committee did not recommend that our Parliament copied the European Parliament's procedures.

There is undoubtedly at present a greater appetite in Parliament for detailed involvement in treaties. The Government responded positively to that with the new procedures for FTAs set out in their February 2019 Command Paper, and I understand that that broadly remains government policy. But the three reports being debated show that there is an insatiable beast lurking in the committees of your Lordships' House. This beast wants more information and more involvement on more aspects of treaty activity.

The beast also has the CRaG Act in its sights. That is clear from all the reports we are considering, although the treaty sub-committee's report pragmatically accepts that there will be no immediate change to the CRaG Act and has wisely concentrated on its working procedures. The Ponsonby rule, which underpins the CRaG Act, was quite good enough for Parliament in the days before we joined the EU. It should be quite good enough for Parliament now that we are a free-standing nation again. I can see no need to change the Act.

In particular, given that new FTAs will be discussed with Parliament at various stages of their evolution, the 21 sitting days, which is practically five elapsed weeks, seem to provide an adequate window for final scrutiny prior to ratification. It may well be that your Lordships' House needs to work in more agile ways to accommodate that timeframe, but the starting point need not be that more time is required.

I believe that the root cause of this desire to spend more time scrutinising treaties is a belief in your Lordships' House that Brexit is a bad thing and that everything the Government do as a consequence of it is potentially bad. Even when our new pro-Brexit Peers arrive, that will likely remain the dominant view of your Lordships' House. I hope that the House will continue its journey through the various stages of grief over Brexit and arrive at the final stage of acceptance. I predict that at that stage the appetite for spending significant time on treaties will diminish. We will of course still need a treaties committee in your Lordships' House, unless a Joint Committee is set up. But, like my noble friend Lord Lansley, I hope that it will be a fully fledged Select Committee, not a mere sub-committee of the EU Committee, which will itself of course recede in importance as we start to live in a post-Brexit world.

5.12 pm

Baroness Smith of Newnham (LD): My Lords, it is quite rare to be able to respond directly to another Member in Grand Committee, unlike some other parliamentary business in normal times when we can jump up and respond. I had planned to start by talking about this dystopian world in which the working practice seems to be to sit in little booths—we could be in a call centre, calling people to ask, "Were you mis-sold a treaty? Did you sign up to the European Communities Act 1972 by mistake?" For people watching on television or merely reading *Hansard*, it is perhaps not quite clear how the Grand Committee is working in the current hybrid system. The noble Baroness, Lady Noakes, referred to it as a hostile environment. That might be the only point of her speech with which I agreed.

I obviously fit into the category of noble Lords who are rather disappointed that the United Kingdom has left the European Union. However, I do not believe for one moment that the need to scrutinise treaties and the importance we are giving to that this afternoon is simply because we are leaving the European Union and Members are unhappy about that. It is precisely the opposite. The clarion call of the Vote Leave campaign was "Vote leave, take back control". I do not believe for one moment that the people who voted on 23 June 2016, or in the general election last year, thought that they were voting for Mr Dominic Cummings to set the agenda, nor that taking back control meant that Parliament would become supine. The idea that Parliament should become more supine the further we get from membership of the European Union is quite wrong. The role of your Lordships' House is as a revising Chamber, but it is also to hold the Government to account. A fortiori, it is the role of the House of Commons to hold the Government to account. What each of these reports is saying is that, in the context of a post-Brexit world where international treaties have ever-greater scope, it is essential that Parliament plays that role.

Now, it is not clear what the current Prime Minister thinks about scrutiny. There has been reference to the previous Government's comments in February 2019. The Lords Library also notes that, in response to the Constitution Committee's report of July last year, Theresa May's Government said that they thought that the CRaG Act remained a "viable legal framework". However, they agreed that information sharing between the Government and Parliament could be improved, and they committed to

"engaging with whatever parliamentary scrutiny structures the Houses implement".

That is our role.

As the noble and learned Lord, Lord Goldsmith, rightly said earlier, it should not be for government to decide which amendments are scrutinised. It should not be for government to set the agenda on scrutiny or set the timeframe; it should be for Parliament to do that. Parliament is not some beast seeking information; Parliament is looking to make sure that any treaties that the United Kingdom Government sign are in the best interests of this country. However, looking at the changes currently being suggested for the withdrawal

[Baroness Smith of Newnham]
agreement legislation that went through last year after extensive scrutiny, one might wonder whether this Government take very much notice at all.

5.17 pm

Lord Bilimoria (CB) [V]: My Lords, the noble Earl, Lord Kinnoull, wrote in an excellent article earlier this year in *The House*:

"The Treaties Sub-Committee will be vital in ensuring trade deals and international agreements are scrutinised".

He stated clearly that

"the Government will negotiate important trade agreements with major economies around the world. These agreements need scrutiny as they have a direct effect on people's lives in the UK … Treaty scrutiny is a crucial … area for Parliament",

particularly post Brexit. He also said that, as we know:

"Previously, much of the work negotiating international agreements was … scrutinised in detail by the European Parliament, including UK MEPs. On the domestic front"

the excellent, world-renowned and respected

"European committees … scrutinised the decisions made by UK Ministers at the main EU decision making body—the Council of Ministers. These mechanisms have now come to an end … following our exit from the European Union on 31 January 2020 … At present … under UK law, treaty scrutiny at Westminster only takes place once agreements have already been negotiated and signed."

This is not the case in other countries; I will come on to that later.

Almost every speaker has mentioned the Constitutional Reform and Governance Act 2010. The noble Earl stated that it provides Parliament with "very restricted" powers, that the House of Lords cannot block anything—although it can pass a resolution to delay things—and that

"there is no mechanism by which Parliament can refuse to consent to an agreement that it thinks is not in the country's best interest."

Surely parliamentary scrutiny is absolutely crucial, particularly over the next year when, as the noble Earl explains,

"we expect the Government to negotiate important trade agreements with the United States, Japan and other major economies. These agreements may affect jobs, and the price and availability of goods in the shops."

The report, *Parliamentary Scrutiny of Treaties*, outlines the situation clearly:

"The UK is party to over 14,000 treaties and normally negotiates around 30 new treaties each year"—

indeed, many more now that we are looking down the road. It states that everything

"is based on the Ponsonby rule, established nearly 100 years ago and subsequently set out in the Constitutional Reform and Governance Act 2010 (CRAG)."

Really, this needs to be reformed. All three reports address the shortcomings in Parliament's scrutiny of treaties and recommend that this new treaty scrutiny Select Committee be established. That is going to be excellent.

No one denies that the treaty function is a significant function of government, but Parliament's scrutiny processes have not kept up. As many noble Lords have said—including the noble Baroness, Lady Smith of Newnham, just now—on the role of Parliament, we are the guardians of the nation. I thank the noble and learned Lord, Lord Goldsmith, the noble Baroness, Lady Taylor, the noble Earl, Lord Kinnoull—and of course the noble Lord, Lord Boswell, for all the excellent work that he has done. On scrutiny of international agreements and lessons learned—again, they have emphasised all the points that we made earlier. The impact of international agreements does not necessarily end on signature.

On the *Treaty Scrutiny: Working Practices* report, it is excellent that the sub-committee has now been established and effective scrutiny is now required. But will the devolved nations be consulted, as well as other departments, apart from the Department for International Trade? In February 2019, it had a report that said clearly that there was a strong and effective role for Parliament in scrutinising our trade policy and free trade agreements. It said:

"Our departure from the EU does not change the fundamental constitutional principles that underpin the negotiation of international treaties, including FTAs",

and that it would

"draw on the expertise of Parliament".

On international comparisons, can the Minister confirm something to us? We keep talking about the Australian points-based system and an Australia-style FTA. Countries such as Australia and the United States give clearly defined roles to their legislatures as part of the process of negotiating and concluding treaties. In the UK Parliament, can we provide equal scrutiny?

To conclude, with the difficult precedent of the withdrawal agreement from the European Union, we must not underestimate the challenges ahead. This is where the expertise of our House comes to bear, and the Government should make full use of it.

5.21 pm

Lord Foulkes of Cumnock (Lab Co-op): My Lords, at last in a Grand Committee meeting we are having a real debate, and on three excellent reports, the recommendations of which I agree with, particularly the one from the Constitution Committee. However, I am not as optimistic as the noble Earl, Lord Sandwich, and others, that these will be accepted by the Government. This is a Government who currently see the House of Commons as no more than an electoral college for choosing the Prime Minister. Look at the way they treat this House—suggesting that we might move to York and appointing Russian oligarchs to our membership. Does that show confidence in the role of this House as an effective revising Chamber? I certainly do not think so.

As the reports say, the current process for parliamentary scrutiny, at 21 days, is not enough anyway. With all the treaties that we are now having to deal with because of our unfortunate exit from the European Union, it is certainly not enough, as we move towards an increasing and looming disaster. I support the committees' recommendations to establish a parliamentary treaty review group to examine treaties, to refer them to Select Committees for scrutiny and to create opportunity for parliamentary debate. Like my noble friend Lord Whitty, I think it should be a Joint Committee of both Houses. It should have the status of the Intelligence and Security Committee but not the way that it is appointed. It should be appointed or elected by both Houses.

As others have said, and I have said in the past—and the noble Baroness, Lady Taylor, emphasised—the devolved Administrations must be consulted, particularly on areas where they have a devolved responsibility. I look forward to hearing what we get from the Government in response from the Minister in relation to that.

I look forward to the Minister's response on when and how the Government will implement the recommendations of this committee, including with regard to the devolved Administrations. I, for one, will be watching very carefully, as I am sure will the noble Baroness, Lady Smith of Newnham, and a number of others on this side of the House, to see whether the words that we hear today are followed up by actions relevant to those words.

5.24 pm

Lord Wallace of Saltaire (LD) [V]: My Lords, I was struck by the quotation from Walter Bagehot's volume, *The English Constitution*, in paragraph 8 of the most recent report we are debating. He clearly stated 150 years ago:

"Treaties are quite as important as most laws, and to require the elaborate assent of representative assemblies to every word of the law, and not to consult them even as to the essence of the treaty, is prima facie ludicrous."

This is not a new issue. Long before the huge expansion of treaties and international agreements that we have seen since 1945, 19th-century constitutional authorities considered Parliament's role in scrutinising treaties before and after they had been signed to be inadequate. Bagehot saw Crown prerogative as unjustified and outdated on treaties long before any of us were born.

The Vote Leave campaign fought the 2016 referendum with a promise to restore parliamentary sovereignty. This Vote Leave Government are now determined instead to restore executive sovereignty, and to put Parliament back in its box. Yesterday and today, No. 10 has been briefing that UK sovereignty entitles the Government unilaterally to reinterpret international agreements that they have recently signed. Treaties limit national sovereignty. If you assert an absolutist interpretation of sovereignty, as the noble Lord, Lord Frost, has stated in recent speeches, no other Government will trust you to observe international agreements.

There are those on the hard right of American law and politics who deny that international law can override American decisions because of the exceptional nature of the US constitution. But however exceptional our Government think England is, they should be wary of undermining trust in our observance of agreements, whether on Northern Ireland, human rights or commercial regulation. If our Government assert their unilateral sovereignty, no deal with the EU will be followed by no deals with a lot of other countries.

Nine months ago, the Conservative manifesto promised to

"look at the broader aspects of our constitution"

and

"set up a Constitution, Democracy & Rights Commission".

No. 10 briefings now suggest that the Government have also made a U-turn on this and instead want only to address specific judicial and other issues. But the scale of the transformation of our international obligations and commitments, now we have left the European Union, requires adjustments in our constitutional arrangements which any Government committed to the maintenance of constitutional democracy should address.

The reports we are debating also note that the issues to be covered in future trade arrangements will require an extension of co-determination with the devolved Governments if we are to avoid drifting into a position where England emerges from a broken union, sovereign over only a shrunken country. In the light of her speech, I remind the noble Baroness, Lady Noakes, that constitutional arrangements which may suit your own Government when you are in power must be strong enough to work when other Governments are in power.

The Prime Minister looks to Australia and New Zealand as models for our future relationship with the European Union, as well as for recruits to advise the Government. The Parliaments of both countries have trade committees which play "a significant role", as Alexander Downer told the Constitution Committee. Our Government should not resist this Parliament gaining similar significance in scrutinising treaties.

5.28 pm

Lord Taylor of Warwick (Non-Afl): My Lords, I thank the committees and their chairs for their hard work, expertise and excellent reports. In my view, it is only right that any trade deal or agreement has to result from proper vetting, not just voting. Scrutiny does not mean mutiny. The Government do not need to fear that the direction they are sailing in will be hijacked by a rebellious crew. On the contrary, scrutiny provides opportunity. It allows the UK Parliament the chance to examine closely, and influence positively, trade and other international agreements. After all, this is in keeping with the whole rationale of Brexit.

Transparency is vital because treaties will directly affect our daily lives. The Government have already started discussing important trade agreements with America, Japan and other major economies. These agreements will affect jobs, services, prices and the availability of goods in our shops. As we know, Parliament's role has been defined by the Ponsonby rule, which is nearly 100 years old. Maybe it is symbolic that the initials of the CRaG Act also describe a high and rough mass of rigid rock that sticks out from the land around it. It is no longer fit for purpose.

It seems that the committees have come up with four very sensible recommendations, and I would like the Minister to indicate whether he is sympathetic to them. The first is that Parliament should be regularly updated during these agreement processes; the second that there should be a general presumption of transparency from the Government. That is not a legally codified or binding point, but just a presumption. There should also be a draft text of the agreement proposed and parliamentary trade reports from the Government, indicating full impact assessments on different sectors of the economy and labour markets. All this would be subject to confidentiality and security provisions. Will the Government indicate when they will give a formal, published response to these recommendations? The concept of a group of counsellors

[Lord Taylor of Warwick]
or advisors scrutinising such agreements goes back, in principle, to the Old Testament. This is a tried and tested principle: it is nothing new.

Brexit allows us to trade with the entire world. No longer is this great trading nation shackled by the European Union but, in a true democracy, those trade agreements must have effective scrutiny and that should come from Parliament. Parliament is more than an ornament.

5.31 pm

The Deputy Chairman of Committees (Lord Bates) (Con): I call the next speaker: Baroness Goudie.

Baroness Goudie (Lab) (V): *[Inaudible]*

The Deputy Chairman of Committees (Lord Bates) (Con): If we cannot reach the noble Baroness, Lady Goudie, we will go to the noble Baroness, Lady Bowles.

Baroness Bowles of Berkhamsted (LD) (V): My Lords, the three reports we are considering today—

The Deputy Chairman of Committees (Lord Bates) (Con): Baroness Bowles, I do apologise. Can we can just pause for a moment while we try to reconnect with the previous speaker?

Baroness Goudie (Lab) (V): Thank you, my Lords, I am so sorry: I forgot to unmute. I welcome the reports of the noble Baroness, Lady Taylor, the noble and learned Lord, Lord Goldsmith, and the noble Earl, Lord Kinnoull, on the setting up of the new committee. I tend to agree with a number of my colleagues that it ought to be partly made up with Members of the House of Commons. Further, we must talk and be involved with the devolved Parliaments. This is very important, particularly in respect to Northern Ireland.

I am a member of the European Union Security and Justice Sub-Committee, where we have been looking at a number of these issues over the last 12 months. I wish to concentrate today on the final recommendation of the committee report *Scrutiny of International Agreements*, which draws attention to the fact that the CRaG Act applies only to international agreements that are binding under international law. This leaves a scrutiny gap because it excludes scrutiny of both political agreements and agreements with non-state entities. Important examples of political agreements excluded from scrutiny are memoranda of understanding, which are the same as treaties in terms of political commitment.

Paragraph 71 of the report highlights

"Air Services Agreements, which had been treaties between the EU and third countries"

but, as part of the Brexit process, have been converted into memoranda of understanding and not published. Air service agreements are important in facilitating international, commercial air-transport servicing and granting economic bilateral rights. These agreements have been around almost as long as flight itself. This scrutiny gap must be plugged. Proper scrutiny must not be circumvented. The committee's recommendation is helpful so far as it goes, but it is too weak in asking only for consideration to be given. There are likely to be further examples of EU treaties under third countries being replaced by UK arrangements with those countries.

5.34 pm

Baroness Bowles of Berkhamsted [V]: My Lords, I will start again. The three reports we are considering today provide a wealth of wisdom and background, as the excellent spoken contributions have done; most things have been said.

My own knowledge is derived more from practical experience in the EU than from UK legislative history and procedure. But I cannot help but think that we have not moved very far when we are left clinging to a 1924 precedent as a best hope, in this age of complex compound treaties and 24-hour international media. If a weak deal is negotiated by the Government, everyone will know. If Parliament has not been informed over time on tricky play-offs, that is when Parliament becomes difficult rather than an ally, and reasonable choices can end up misunderstood and publicly criticised.

The reports emphasise scrutiny and holding the Government to account, which of course is a primary purpose of Parliament. The Government's approach is overly biased towards maximising their secretive freedom, believing that that always enables playing their best hand. That is not my experience. The Government can be in a stronger negotiating position if Parliament is on their side on the journey.

I first joined the European Parliament before the Lisbon treaty—before the Parliament's veto came into force. I recall admissions that the Commission found itself weakened because countries would play the "Parliament/Congress won't agree" card, to which it had no answer. No matter how tough you think you are in negotiations, just saying no—"Because I don't want it, because it's not my policy"—is hard. The reply comes back: "We're blocked and you're not. You're the one that has to move." The backing of a democratic mandate is strong in the pecking order.

When the Lisbon treaty came into force, the first parliament vetoes were on passenger name recognition and banking data transfers via SWIFT, which did result in better data protection standards. As well as holding Governments to account, parliaments provide equality of arms and can assist in discussions with other parliaments—which does not happen so much if there is no power.

I became involved in various public and private meetings on trade in financial services—a trade sector still not well developed. At a conference in the US Congress on one of my visits, I was spontaneously asked by a Senator on the banking committee to explain how the EU's TTIP proposals on financial services would work in the US legal system. It was not a trick question, and Commission officials present confessed afterwards that they wished they could explain it as well as I had done. They noted that I had the advantage not only of being more specialist but of being in tune with the concerns of US parliamentarians, with whom I already had a working relationship.

We have a long way to go to harness the benefits of parliamentary involvement and grow our own modern method, and I commend the pragmatic proposals in

the *Treaty Scrutiny: Working Practices* report. The Government should not waste the benefits of Parliament as an ally and on the interparliamentary front—both externally and within the devolved UK.

5.38 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank noble Lords for introducing the committee reports and note how strongly worded all three are about the need for change and the inadequacy—not to mention the ancient nature—of much of what currently governs the oversight that we have.

I think it is worth revisiting the words quoted by the noble and learned Lord, Lord Goldsmith: trade deals are as important as most laws. It is one of the ironies of Brexit that, whatever happens, we have lost not only the oversight of laws by a democratic Parliament—as neither House in this place is—but the very strong oversight of trade deals and treaties in general that comes under the Lisbon treaty, as the noble Baroness, Lady Bowles, just alluded to.

I will quote an independent report from the European Parliament think tank, which says that the European Parliament is

"powerful and active in trade policy, on a comparable level to the US Congress."

We should aim for that level of scrutiny here in the UK. I note the powerful words of the noble Baroness, Lady Smith of Newham, that we can safely conclude that "take back control" did not mean that the people wanted to hand over control of our international treaties to Dominic Cummings.

However, I agree with Boris Johnson that we need to find a new place for the UK in the world, given where things are now. That is crucial to our security. This is an unstable, insecure world, threatened by multiple shocks, of which Covid-19 is just one. That place should be as chair of COP 26 and as a champion of climate action. Given our strong history in the UK as a place where much human rights law originated and much human rights campaigning has been done from, we should be a champion of democracy and human rights. However, we are not in a position to do that, just as we are not in a position to be a champion for climate action, unless we get our own house in order first. These three reports set out very clearly that we currently do not have that in place.

I will briefly refer to the debate in the Chamber today, which referred to the debate around the withdrawal agreement. The noble Lord, Lord Kerr of Kinlochard, noted that repudiating treaties is what rogue states do. I probably spend more time on Twitter than most noble Lords, but I can tell any noble Lords who are listening that the hashtag "#PerfidiousAlbion" has been trending across most of the UK. If we are to be trusted in the world and if we are to take a stable, secure place in the world, democracy, oversight of treaties and full scrutiny have to be part of that process.

5.42 pm

Lord McNally (LD): My Lords, I thank the chairs and members of these committees for their excellent reports, which are as topical as tomorrow's headlines. I also thank the noble Baroness, Lady Noakes, for her contribution. There was grave danger of this being a rather herbivorous Committee, with us all agreeing and, knowing that the noble Lord, Lord Ahmad, is himself a very skilful soother of worried brows, that we would have gone home tonight thinking that there is no problem and that it is all done and dusted. So I am grateful to the noble Baroness because I suspect that what she said was closer to what No.10 is thinking than any other contribution around this table tonight. I say to her that, yes, I am a remoaner, but the onus is now on her and her Brexiteer friends to deliver what they promised to the British people, which was sovereignty back to Parliament.

The noble and learned Lord, Lord Goldsmith, is giving the new committee a dry run, and I hope it becomes a Joint Committee. There is an absolute reason for reform of the CRaG Act. As somebody else pointed out, it was written while we were fully embedded in the EU, with the European Parliament taking on a lot of the heavy lifting on these treaty matters. The CRaG therefore needs to be reformed.

On the royal prerogative, I do not go as far back as Bagehot, but I do go as far back as Tony Benn. I remember him putting forward reform of the royal prerogative to the then Prime Minister, Jim Callaghan. Unfortunately, Jim was far too much of a small "c" conservative on these matters to tolerate it—but in fact he was right. The quote from Bagehot that was given is right as well. The noble Earl, Lord Kinnoull, suggested some of the ways forward in looking at the royal prerogative, but the status quo is certainly not enough.

I also worry because the noble and learned Lord, Lord Judge—I am sorry that he is not here today to contribute—has given us ample warning of the overuse of Henry VIII powers in legislation. Along with Tony Benn, another voice from the 1970s and 1980s, Lord Hailsham, warned us of the danger of the democratic dictatorship, where, unless Parliament builds in the checks and balances to ensure both transparency and accountability, we will not be in a new era of parliamentary democracy in this country. We will find it very difficult.

This is the moment for a Parliament to exert itself. In a year's time or two years' time, we will be blithely told from the Dispatch Box, "Well, the precedent was established when we saw X Bill through or Y Bill through." This is the moment of maximum leverage for Parliament. The Government have a lot of business to get through. If they want the co-operation of both Houses of Parliament in doing that, they should give cast-iron assurances that they will make the kind of amendments to our checks on the Executive called for in these three reports.

5.46 pm

Lord Balfe (Con): Let me first put on record my thanks to the three chairs for producing these reports, which have given us an excuse and a reason to debate where we go from here.

I welcome the government response to the Constitution Committee report on the parliamentary scrutiny of treaties, because it brings out into the open what the Government are really up to. On page 5, it states:

"The Government welcomes the Committee's recognition of the fundamental right of the Executive to negotiate for the UK on the international plane."

[Lord Balfe]

In other words, returning power is returning power to Whitehall and not to Parliament. It continues:

"At the start of negotiations, the Government will publish its Outline Approach … Parliament will have a role in scrutinising these documents … The committee(s) could have access to sensitive information … and could receive private briefings … the committee(s) would have the power to produce a detailed report"—

but it does not say how long we might spend doing it.

I must say that I find this whole procedure depressing; no one has ever doubted where I have stood on this exercise. I am convinced that multilateralism is the only way forward in the modern world. Only in Moscow and Washington are there other Governments who believe that they can repudiate inconvenient parts of international agreements. I spent 25 years in Brussels in the European Parliament and have spent 15 years since then doing odd jobs for it and the Commission, and I can tell noble Lords that the only way forward is negotiation. You have to work with your colleagues; you do not win all the battles, but we are a big a country and we had a record of winning most of them. We won far more battles than we ever lost in the European Parliament.

We are losing sight not only of treaties as they retreat into the Foreign Office but of what is happening in Brussels. We are losing sight of the Lisbon process, and the inevitable end will be what happened when I was on a delegation to Vietnam last year. We interviewed the Trade Minister and he said, "Yes, of course we will be looking forward to a full, comprehensive trade agreement with you." Then there was a pause of about five seconds before he said, "Of course, we couldn't put anything in it that Brussels objected to because they are quite big, you know, in our trade arrangements." This is the reality of where we are going. I hope that we get a treaty scrutiny committee. I am not sure whether it should be a Joint Committee of the two Houses, because the way in which the Commons treats the Lords is not always conducive to equality, but we certainly need something. We need to be informed and to be taken into consideration by the Government.

The European Union has many faults; it also has many strengths. One of its strengths is the system of rapporteurs, who are independent individuals appointed to look at specific trade and other agreements, and who have expertise in those countries. I had 20 years on the EU-Turkey Joint Parliamentary Committee. I knew everyone from the President down to the Ministers, and I could get in to see them. If we could look at a way of combining the trade envoys and the rapporteurs, it would be a good way forward. There is a lot to be gained in the future, but I would not in any way want to be where we are today. We are making the best of a bad job.

5.50 pm

Baroness Northover (LD): My Lords, I too thank the noble Lords who have introduced these three impressive reports. As my noble friends Lord Purvis and Lord Wallace have noted, it is an irony that the Committee is having this debate on a day on which the Government have flagged that they may go back on an agreement they have already made, with the EU, on the Northern Ireland border. If indeed that is what they plan to do, this has huge consequences for peace on the island of Ireland, and for the unity of the United Kingdom. I expect emollient words, as usual, from the Minister, whatever he may privately feel. The Government do seem to be rowing back a little today, but whose bright idea was it to throw out agreements already made? When I bear in mind how we endeavour to ensure that China adheres to its signature on the 1997 Sino-British treaty on Hong Kong, the Minister will absolutely know what risky ground the Government may well be on. How can we ask others to adhere to treaties if we feel we can pick and choose which ones we will adhere to?

It is clearly vital to the rules-based global order, which we say we support, that countries guide their relationships through treaties, not conflict, and adhere to agreements made. Treaties have become more numerous and complicated than was the case with traditional peace treaties, or ones which bound one country to assist another if attacked. The Constitution Committee's 2019 report, *Parliamentary Scrutiny of Treaties*, noted this, and that Brexit made the examination of treaties, which were now likely to multiply, very pressing for the United Kingdom. It pointed out:

"During the … UK's membership of the EU, the nature of treaties changed fundamentally—broadening from areas largely associated with international affairs—peace settlements and security alliances—to wide-ranging economic and trade agreements, encompassing diverse public policy issues."

There had already long been concern about Parliament's ability or otherwise to scrutinise treaties, dating back to Victorian times, as the noble and learned Lord, Lord Goldsmith, said. I recall the concern in the early 2000s about the agreement we made with the United States on extradition, which was not subject to parliamentary scrutiny and was not reciprocal. We see those concerns playing out in reality now, not least in the case of Anne Sacoolas and Harry Dunn, yet we have had to extradite those with clear and major mental health problems.

The CRaG Act of 2010 sought to address some of the concerns about proper and thorough scrutiny of treaties, just as legislation should also be subject to proper and thorough scrutiny, not least lest unintended consequences may be shown up. As the noble Lord, Lord Whitty, the noble Baronesses, Lady D'Souza and Lady Donaghy, and other noble Lords have said, CRaG is not fit for purpose post Brexit. The Act requires that a treaty be laid before Parliament 21 sitting days before ratification, alongside explanations of any such treaty. That was certainly a step forward, but it has not proved effective in providing adequate scrutiny or, in effect, allowing Parliament the power to amend a treaty or prevent ratification. It occurs when the treaty has already been agreed. As the noble Earl, Lord Kinnoull, pointed out, most treaties were scrutinised within the European Parliament.

It is clearly important to look at such treaties in advance, before they are concluded; otherwise, the matter is delivered as a fait accompli. It is a bit like the case with statutory instruments, where you do not necessarily want to reject the whole SI—an action regarded as a very rare nuclear option.

Scrutiny of treaties has not kept up with where we are. As the noble Lord, Lord Boswell, and others put it, scrutiny is essential. As the nature and number of

treaties expanded while we were in the EU, many of them were negotiated at an EU level. The noble Baroness, Lady Noakes, may wish to go back to a pre-common market period, but life has moved on—and so have treaties.

The noble Lord, Lord Lansley, and others pointed out that transparency does not impede the Government but can assist them. My noble friend Lady Bowles showed how it helped in the case of EU negotiations with the United States. Now that we are negotiating our own treaties, such as trade deals, updating how we scrutinise them becomes urgent. My noble friend Lord Beith and the noble Lord, Lord Bilimoria, emphasised how important such trade deals are.

The International Agreements Sub-Committee was set up to address, as it was put, "some of the deficiencies" of Parliament's current treaty scrutiny processes. Surely the noble Lords, Lord Lansley and Lord Whitty, are right that the committee should stand alone and not just as a sub-committee of the European Union Committee. Given all that was said about "taking back control" to be delivered by Brexit—reference has been made to that today—including that this meant that the UK Parliament would expand its role, as my noble friends Lady Smith and Lord McNally said, and the expectation that various treaties would be brought forward as a result of Brexit, not least in terms of trade deals, clearly this issue must be addressed. As my noble friend Lord McNally pointed out, the Brexiteers promised increased sovereignty for Parliament.

The sub-committee has been set up and, as the noble and learned Lord, Lord Goldsmith, indicated, is looking at whether adequate scrutiny of treaties can take place within the current CRaG arrangements, not least because there is little time or opportunity for legislative change. But as this latest report makes clear, the feeling is that if this scrutiny does not work, then legislative change to CRaG will be required. The way in which the Government pushed back with their response to the 2019 reports makes this conclusion look more, rather than less, likely.

That brings us to the three reports we are debating. The Constitution Committee's report, *Parliamentary Scrutiny of Treaties*, is over a year old, as is the European Union Committee's *Scrutiny of International Agreements*. We have the working practices paper from the new sub-committee, which is more recent; as the noble Baroness, Lady Taylor of Bolton, said, the Constitution Committee recommended the establishment of this sub-committee. All the reports have called for greater transparency, a role for Parliament earlier in the process of negotiating international agreements and a proper role for the devolved institutions. Only the noble Baroness, Lady Noakes, thinks that the reports go too far. Others, such as the noble Baroness, Lady Goudie, argue the opposite.

Despite what the Government said in their 2019 response, the new sub-committee states that it expects the ratification of treaties to be extended beyond three weeks to enable proper scrutiny. Can the Minister tell us specifically whether the Government now agree? We do not want just warm words, to which my noble friend Lord McNally referred. Will they agree to this limited request?

The report notes that the FCO was unable in short order to answer its own questions. One might well ask why the Government think that three weeks is enough for Parliament to scrutinise a complicated trade deal. Of course, in terms of their own delays on a few questions, I note the Government have decided to use up some of their bandwidth, despite facing Brexit and coronavirus, by merging DfID and the FCO and changing their Permanent Secretaries. That cannot have helped.

The committee notes the complexity of scrutinising free trade agreements, covering many areas, as David Henig laid out, including the environment, employment relations, technical standards, food safety and much else. How might the Government facilitate this more complicated scrutiny? As I say, the noble Baroness, Lady Noakes, does not think that they need to and the noble Lord, Lord Foulkes, does not think that they will. I have a feeling that I agree with the noble Lord.

The European Parliament, of which we used to be a member, and to which UK citizens voted their representatives, has more power here than does the UK Parliament. I note that the Government do not want to replicate this, according to their response. Yet our leaving the EU, as the noble Earl, Lord Kinnoull, put it, results in a democratic deficit that Parliament must put right. Again, so much for taking back control—to the Executive, maybe. The US Congress has more powers, and we expect that those will be brought to bear in any agreement with the US on trade.

The Government pushed back hard on the 2019 reports, pocketing where the reports allowed the Government to take unilateral action but giving little in terms of transparency or timing on any scrutiny. For example, the Government welcome the fact that the committee saw no need to amend CRaG, exploiting its politeness. It is therefore useful to have this year's report on how things are working, or not really working. There are serious warnings in here. As the noble and learned Lord, Lord Goldsmith, my noble friend Lord Beith, the noble Baroness, Lady Bennett, and others have pointed out, treaties may have as great an effect on the UK and its people as the legislation we consider. I therefore look forward to specific proposals and agreement from the Minister, and for him no longer to endorse the Government's response that we have here.

6.01 pm

Lord Collins of Highbury (Lab): My Lords, treaties signed by the Government of the day have enormous ramifications for our country and our partners in their agreements. As the noble Lord, Lord Moynihan, said, they now increasingly have wide policy implications that they have not had in the past, which is why it is so important that Parliament, civil society and the wider public play a role in their development and scrutiny.

I, too, thank the three chairs for their excellent introductions to their respective reports, each of which shines a light on the inadequacies of the current arrangements. As we have heard, the Constitutional Reform and Governance Act 2010 is not necessarily fit for purpose. As my noble friend Lady Taylor, chair of the Constitution Committee, said, there has been little time and virtually no opportunity provided for Parliament to have a say prior to the agreement.

[Lord Collins of Highbury]

Of course, as we have heard in the debate, it is long established that the agreement of treaties is a matter for the Executive, but as we leave the European Union and take on significant new powers in treaty-making, it is right that we consider what scrutiny should be applied to this prerogative, as many noble Lords have said. As the noble Earl, Lord Kinnoull, said, these three reports can act as a cornerstone for those considerations. Each of them makes it clear that the provisions of CRaG do not suffice.

A tick-box exercise whereby the Government can claim that they have engaged with Parliament by laying the treaty under the negative resolution procedure is not a process of scrutiny. Again, as my noble friend Lady Taylor highlighted, the Constitution Committee did not express the view that Parliament should be required to endorse the Government's mandate prior to commencing treaty negotiations, but it came down firmly in favour of a general principle of transparency from the Government throughout the treaty process. That is what this debate is clearly about, and I hope that the Minister will respond to that specific call.

The Government have also been asked by all the committees about the need to engage more effectively with the devolved institutions throughout the process. We have of course heard about the Constitution Committee's recommendation and we now have a scrutiny committee, in the form of the EU International Agreements Sub-committee. The point made by my noble and learned friend Lord Golding—no, Lord Goldsmith; it is because I am seeing a note that he is a Whip, but he has hidden it now—is that it is simply not enough to have the committee. We need to ensure that it has sufficient time and is able to consider those necessary reports from the Government. The Government's response in July 2019 to the Constitution Committee said that the CRaG Act remained

"a viable legal framework for scrutiny."

However, they committed to engage

"with whatever parliamentary scrutiny structures the Houses implement",

so it is incumbent on the Minister today to say exactly what that means in respect to the committee that we have established. Exactly what will they do to ensure that there is proper engagement with the committee?

As we have heard, on the general issue of transparency, the Government said in that response that they did not agree that they

"should operate on a presumption of transparency for all treaty negotiations."

They said that, when deciding what information to make public, they had to balance

"openness against … factors including the risk of undermining the UK's negotiating position".

My noble friend Lady Taylor addressed that specific point. Again, it is incumbent on the Minister to set out to us what he sees that balance as being. Exactly how will the Government measure it?

As the noble Lord, Lord Lansley, said in his contribution, our recent trade agreements have included the one announced with Japan, which is of great interest to Members of both this House and the Commons. However, at present, no debate on its provisions is scheduled. We have not had the opportunity to comment properly on it and, unfortunately, present arrangements mean that such trade treaties will be scrutinised only when the Government see fit. I am sure there are many who believe that the Government will never see fit.

The noble Earl, Lord Sandwich, mentioned the need for standards in trade agreements. When considering the predecessor Trade Bill in 2019, noble Lords in this House made some 30 amendments covering employment, food and environmental standards, customs arrangements, Northern Ireland—we know that we will talk about Northern Ireland again tomorrow—and the future of EU collaboration. As the then Minister who was taking the Trade Bill through at that time put it,

"no legislation passes the scrutiny of this House without being improved."—[*Official Report*, 6/3/19; col. 615.]

She said that "this is unquestionably true" in relation to these issues.

This side of the House strongly believes that the Government need to establish appropriate parliamentary scrutiny of trade deals, whether as significant changes to the existing EU ones or new, free-standing FTAs. The International Trade Select Committee and the Lords' new International Agreements Sub-committee should have early access to negotiating mandates, receive ongoing negotiation reports and have the powers to make recommendations for the final approval of trade treaties and agreements. We must ensure that consumers, trade unions and wider civil society, and the nations and regions of this country, are fully engaged in trade policy.

As the noble Baroness, Lady Northover, said, these international arrangements are not limited to trade agreements. She mentioned extradition treaties as an example. This was recently the subject of debates on the extradition Bill. The Minister will recall that I previously tabled a Motion which led to the debate on the extradition treaty with Kuwait. I was pleased that the Government found time for that debate and allayed my concerns over the extradition of those who may face the death penalty. However, there is no single mechanism—no guarantee that Parliament will have that opportunity to scrutinise. As my noble and learned friend Lord Goldsmith said, we need proper structures for appropriate, democratic oversight. I repeat that it is incumbent on the Minister to set that out in very clear terms this evening, in response to these three excellent committee reports.

6.10 pm

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I join other noble Lords in thanking the noble and learned Lord, Lord Goldsmith, the noble Baroness, Lady Taylor, and the noble Earl, Lord Kinnoull. I am going to say something which I have probably never said before in your Lordships' House: I agree with the noble Lord, Lord Foulkes. He described these parliamentary reports as "excellent". I fear that that is where our agreement may come to a very Lord-like difference of opinion. I am, nevertheless, truly grateful to noble Lords for their insightful contributions to this excellent debate. I also echo the sentiments of other noble Lords in acknowledging the sterling work done by my noble friend Lord Boswell during his tenure.

I thank all noble Lords present, all committees and staff for their excellent work in the production of these reports. The noble Lord, Lord Inglewood, reminded the Committee that, whatever the new norm will be, life has changed. It is, therefore, a particularly strong testament to everyone involved that in the same 12 months that these reports were produced, Parliament has established a dedicated treaty committee, with the noble and learned Lord, Lord Goldsmith, as an exemplary chair. I welcome my early engagement with that committee.

I know the noble Lord, Lord McNally, well. One of my first jobs in government was to serve as his Whip. Those who have seen the noble Lord perform at the Dispatch Box will appreciate my great skill in ensuring that the words "Keep Calm and Carry On" were regular reflections of the exchanges that we had. I hope that, if I am not able to directly answer all the comments in the course of my remarks, I shall be able to provide the level of warm reassurance that the noble Lord mentioned.

The production of these reports is testament to the magnitude of the issue being considered today: how the United Kingdom negotiates and concludes our international treaties. As always, I listened very carefully from the outset. The noble Lords, Lord Whitty and Lord Foulkes, and my noble friend Lord Balfe talked about how the committee itself should be governed and operate. I noticed that there was a difference between my noble friend's perspective and what the noble Lords, Lord Whitty and Lord Foulkes, suggested on whether it should be a Joint Committee. As I am sure noble Lords will acknowledge, this is very much for Parliament itself. I engage directly with the Joint Committee on Human Rights in my capacity as Human Rights Minister and the Government look forward to working with any scrutiny mechanisms established by Parliament within the CRaG framework. I also welcome the International Agreements Sub-Committee, established in April this year.

It would be remiss of me not to pick up on the points made by the noble Baroness, Lady Northover, about the recent remarks that have been made and where we currently are in negotiations with our EU partners. In reflecting on the excellent contribution of my noble friend Lady Noakes, the noble Baroness said that my noble friend was looking at the past. I fear that my noble friend was attempting to remind noble Lords of the present: where we are today. We have left the European Union and therefore it is important, as the UK moves forward, to recognise that we will have full control of our treaty policy.

It is also right that Parliament takes a heightened interest in how the Government conduct their treaty negotiations. That has been reflected in the excellent debate today. We are at a crucial juncture in our constitutional order, and at this early stage I recognise that strong governance, as the noble Lord, Lord Collins, reminded us, is vital. Our actions this year will set a precedent for the UK's international agreements long into the future. However, the constitutional balance, which my noble friend Lady Noakes mentioned in her remarks, also requires us to be cautious about not tying the Executive's hands.

The three reports considered today recognise that treaty-making is, of course, a function of the Government, subject to appropriate parliamentary scrutiny. That scrutiny is provided for, as all noble Lords acknowledge, in the Constitutional Reform and Governance Act 2010, which enshrines the principles of parliamentary accountability in our international treaty relations. In the Government's response to the previous reports—I say to the noble and learned Lord, Lord Goldsmith, that I too hoped that we would have published my response to the report, but I hope we will issue it very shortly—we fully acknowledged the case for improving processes around the way the Act is implemented to ensure effective parliamentary scrutiny.

The noble Baronesses, Lady Donaghy and Lady Northover, and the noble and learned Lord, Lord Goldsmith, among others mentioned the CRaG Act. They also recognised the reforms that have taken place. As we know, the Act is barely 10 years old. The fundamental nature of treaties has not changed significantly in that time and it is the Government's view that CRaG respects the balance between the need for parliamentary accountability and the fundamental right of the Executive to negotiate for the UK internationally, exercising their powers under the royal prerogative. The rule is a result of centuries of constitutional practice, as we have heard, and it serves an important function. The Constitutional Reform and Governance Act allows the United Kingdom to speak clearly, with a single voice as a single actor under international law.

As noble Lords will also understand, negotiating a treaty is an art. However, I also acknowledge the contribution from my noble friend Lord Moynihan, who importantly reminded us of the strength and skills in our own parliamentary democracy, particularly—I add with perhaps a degree of bias—the expertise that we find in your Lordships' House. At some stage, though, in the negotiations themselves, both sides will have to offer compromises. I am sure, however, that many noble Lords will recognise that these compromises are best kept in reserve. I was in business for more than 20 years prior to joining the Government, and I learned that all negotiations require the need for big sleeves. Announcing your position in advance often risks giving your negotiating partner the upper hand. Sometimes, of course, confidentiality—which many noble Lords mentioned—will be key. We are, of course, reminded of the Good Friday agreement.

However, if we are too prescriptive in the requirements that we make around CRaG, we risk tying our negotiators' hands. Negotiators must be equipped to represent the national interest to the best effect. Equally, however, I respect the necessity, as has been said today, that they remain mindful of Parliament's interests. As any Minister negotiating a treaty will be aware, the importance of Parliament's role cannot in any way be ignored. Knowing that Parliament can resolve itself against ratification or may need to pass implementing legislation is an important consideration during the course of negotiations and in engaging with Parliament under CRaG.

The issues of CRaG, its reform and how Parliament moves forward with scrutiny were also matters of much debate in this regard. In the time I have I will

[Lord Ahmad of Wimbledon]
pick up on some of the specific questions that were asked about the Government's current position. As I already said, further details will emerge from the formal response that the Government will issue to the noble and learned Lord, Lord Goldsmith.

What has changed since CRaG was adopted, though, is the level of public interest now that the UK has control of its treaty policy, as the noble Earl, Lord Kinnoull, highlighted. I say to the noble Earl, Lord Sandwich, the noble Baroness, Lady Smith, and others that the Government welcome this increased interest. We accept that this justifies increased engagement and information within the CRaG framework whenever possible. As I said, this will vary at times due to individual negotiations but could include engagement through the negotiation process before an agreement is formally laid before Parliament under the Act.

The noble Baroness, Lady Bowles, also talked of the importance of parliamentary scrutiny. The Government acknowledge that, and I add that we also believe that parliamentary scrutiny does not necessarily end with ratification. I assure noble Lords that the Government are committed to publishing all treaty amendments, not just those that require ratification and thereby trigger CRaG. Likewise, for other implementations, derogations or withdrawals, we look forward to working with the International Agreements Sub-Committee to provide transparency effectively and appropriately.

On living up to these commitments, our response has to date focused on the important issue of trade deals—an area where there has been significant recent interest, for understandable reasons. I am pleased to note the positive response to the bespoke approach of colleagues in government, particularly those in the Department for International Trade, in this respect. This point was acknowledged by several noble Lords. Its regime of engagement and transparency allows for effective scrutiny of trade agreements. I suggest to the noble Baroness, Lady Bennett, and reassure the noble Lord, Lord Bilimoria, that we have seen through the recent compressive publications before negotiations—whether with the US, Japan, which the noble Lord, Lord Bilimoria, mentioned specifically, Australia or New Zealand—that the DIT, as well as other departments, will continue to keep Parliament informed through regular updates on negotiation progress.

In addition, the Government will also seek to allow time before finalising a new free trade agreement and laying it before Parliament under CRaG. That will allow the relevant scrutiny committee to produce an independent report. This open and detailed process will help Parliament and the public understand the agreement and its implications. This reflects the Government's continued commitment to transparency.

I will pick up on some of the specific questions. The noble and learned Lord, Lord Goldsmith, and other noble Lords mentioned the 21-day timescale. In this regard, the Government commit to continue the regular constructive meetings between officials and those in the committees. In addition, it might be appropriate in certain cases for the Government to share a signed or initial treaty text with the relevant Select Committee or the IAC in advance of laying formally under CRaG to help the committee manage its scrutiny workload. This is especially appropriate for the FTAs, as I mentioned, and the Government will seek, as I said, to allow time between finalising a new FTA and laying it before Parliament under the CRaG procedure. The noble and learned Lord asked specifically about the timescales, as did the noble Baroness, Lady Taylor, and the noble Earl, Lord Kinnoull. The Government will consider the use of Section 21 of CRaG, whereby Ministers can extend 21 sitting days where appropriate.

Another issue that came up from several noble Lords was MoUs. This was a matter of discussion between me and the committee during our exchanges. As noble Lords reminded us, MoUs are used where it is appropriate to include a statement of political intent or political undertaking. In general terms, MoUs are drafted in non-legally binding language to reflect political commitments. They are not binding as a matter of international law and are not published or laid before Parliament as a matter of government practice. Particular elements of this, including the Ponsonby rule, were covered by the noble Lord, Lord Beith, and the noble Baroness, Lady D'Souza. In situations where MoUs raise questions of public importance, it might be appropriate for the Government to draw such matters to Parliament's attention; for example, by way of a Written Ministerial Statement. Other measures are available to Ministers, as my noble friend Lady Noakes reminded your Lordships. However, it is not the Government's intention routinely to submit MoUs for scrutiny.

The issue of devolved Administrations approving treaties that affect devolved issues was raised by the noble Baronesses, Lady Taylor and Lady Donaghy, and the noble Lords, Lord Bilimoria and Lord Collins, among others. The United Kingdom Government recognise that the devolved Administrations have a strong interest in international policy-making in relation to devolved and reserved matters that impact on the distinct interests of Scotland, Wales and Northern Ireland. I assure noble Lords that the Government remain committed to working constructively with the devolved Administrations to facilitate the effective implementation of our international obligations.

The noble and learned Lord, Lord Goldsmith, and the noble Lord, Lord Wallace of Saltaire, mentioned ways of scrutiny in other countries. My noble friend Lord Lansley also reminded us of the importance of scrutiny. As I have said, the Government welcome the establishment of the IAC and will engage quite directly. In preparation for this debate, I looked at some of the measures deployed by other countries. JSCOT, the Australian scrutiny committee, has a sifting mechanism—the noble and learned Lord mentioned this—and we see its value. It is in the Government's interest to ensure that the most qualified committees scrutinise relevant treaties. Whereas under CRaG we allow 21 days, it is my understanding that the Australian committee currently has 15 days to scrutinise a particular treaty.

Human rights were also rightly raised—the noble Baroness, Lady D'Souza, and the noble Earl, Lord Sandwich, talked of their importance. I assure noble Lords that none of the 20 continuity trade

agreements already signed has reduced standards in any area. As my right honourable friend the Prime Minister outlined in his Greenwich speech, we remain committed to upholding high environmental, human rights and labour standards. The recent merger of the Foreign and Commonwealth Office with the Department for International Development aligns the importance of our values agenda with our development policy. For example, when transitioning the EU deal with the Republic of Korea, we agreed a joint statement on human rights within a separate political declaration signed by our ambassador and the vice-Minister for Foreign Affairs in Seoul. That was published on 21 August 2019. More widely, the Government have already committed to set out in Explanatory Memoranda whether there are any significant human rights implications so that departments consider the human rights implications of all treaties.

The noble Baronesses, Lady Taylor and Lady Northover, the noble Lords, Lord Beith and Lord Whitty, and my noble friend Lord Lansley mentioned the importance of confidential briefings. The IAC report specifically acknowledged the limits of sharing confidential information regarding FTAs. The Government have a responsibility to protect UK interests in our international negotiations and to ensure that we do not release information that would undermine our negotiating position or our partners' legitimate expectations of confidentiality. I know that noble Lords agree on this important principle. However, in line with our commitment to transparency and to aid parliamentary scrutiny, we have already seen our DIT colleagues share information where appropriate with the IAC on a confidential basis to keep it apprised of our FTA negotiations. Likewise, the Government will assess whether to give confidential briefings on a case-by-case basis.

I am coming to the end of my time. In acknowledging the excellence of the debate we have had, and the debate that I am sure will continue, I give a continued commitment in my capacity now as Minister of State at the Foreign, Commonwealth and Development Office to engage. I underline that the Government value parliamentary scrutiny and look forward to engaging closely with the committee in this respect. I assure all noble Lords that no one doubts that Parliament's role is to hold Ministers to account. Equally, I am sure that all noble Lords recognise that the Government have a responsibility to secure the best outcome when it comes to the national interest in our international negotiations.

One yardstick by which the country will be measured going forward is our record as a sovereign and independent nation on negotiating and concluding new treaties that reflect our new status. Therefore, there is a balance to strike, as I would say to the noble Lord, Lord Collins. But let me assure noble Lords that we believe that the framework of the CRaG continues to strike that balance. With the additional engagement that I have outlined today, which of course will be detailed in response to the noble and learned Lord's report, I believe that we will be able to provide more reassurance to all noble Lords about the Government's commitment to transparency and to work with the committee in a constructive and progressive way.

With the additional engagement and information-sharing measures that I have outlined this afternoon, I hope that I have provided a degree of those warm words for the noble Lord, Lord McNally, among others, with the added reassurance that the Government remain absolutely committed to working with Parliament for the effective scrutiny of our international agreements and obligations.

6.31 pm

Lord Goldsmith (Lab): My Lords, I want to start by thanking the Minister for what were not just warm words—there was some substance in them as well. We will study them very carefully. I know that he would have wanted to respond in more detail in writing to the report before today, if he had been able to do so, and I recognise that.

With the Minister, this has been an enormously valuable debate, and I think so for two particular reasons. First, it is because of things that noble Lords have said, to which we will go back many times, I imagine, to see just what they are. It is not just about the new touchstone for parliamentary ignorance from the noble Lord, Lord Beith, of whether you can distinguish your Ponsonby rule from your CRaG Act. It is also about the very important political statements about the importance of the job of scrutiny of international treaties. The second reason is that, with one notable exception, the Committee has almost unanimously been of the view that scrutiny by Parliament of international agreements is something that has to take place and has to take place in an effective way. The ideas and thoughts that have come from noble Lords are important. I suppose that it has not been before its time. Even in terms of the British Parliament, taking 150 years to come to the recognition that actually treaties are just as important as domestic laws is not that bad.

There are two points that I hope the Minister will take from the debate. One was the comment made by the noble Earl, Lord Kinnoull, about the importance of having evidence-based scrutiny. That is one of the reasons why the time to consider treaties is important. We want to hear from stakeholders and the public what they think, and 21 sitting days is not enough to do that. It is important to have that evidence, and we believe that it will help the Government, because they will need to know what the issues are so that they can, I hope, take them into account when they negotiate the treaties.

The second point, which was made by my noble friend Lady Taylor of Bolton, was about the Government's attitude. She suggested that that was the most important thing, and we look for not just warm words but an attitude of government that is determined to see scrutiny operate effectively. Of course, ultimately, the Government make the decisions, but we believe that they will be guided and helped by scrutiny from this place.

I would like to feel that this debate, which has gone extremely well, has taken account of what we said, particularly at paragraph 32 of our report, which is that it may be—and we hope it is—that in a pragmatic way we will be able to conduct the necessary scrutiny without amendment to the law. If not, we will look at

[LORD GOLDSMITH]
that and give fair warning of that. This debate has perhaps fired the starting pistol on that warning, and we will come back to it.

Motion agreed.

Parliamentary Scrutiny of Treaties (Constitution Committee Report)

Motion to Take Note

6.34 pm

Moved by ***Baroness Taylor of Bolton***

That the Grand Committee takes note of the Report from the Constitution Committee *Parliamentary Scrutiny of Treaties* (20th Report, Session 2017–19, HL Paper 345).

Motion agreed.

Scrutiny of International Agreements: Lessons Learned (EUC Report)

Motion to Take Note

6.35 pm

Moved by ***The Earl of Kinnoull***

That the Grand Committee takes note of the Report from the European Union Committee *Scrutiny of international agreements: lessons learned* (42nd Report, Session 2017–19, HL Paper 387).

The Earl of Kinnoull (Non-Afl): My Lords, I want briefly to say one or two things. First, I thank all the speakers, going in reverse order. I say to the noble and learned Lord, Lord Goldsmith, that it has been an interesting debate. Even the things that I did not agree with were of immense interest and the standard of debate was very high. I am grateful for that.

I am also grateful to the Minister, who was, as ever, charming. I thought that I was going to be disappointed but, in the end, he came back and said a number a things that, on reading, showed a lot of hope for the situation. I always thought that the general principle of Brexit was replication of EU law in British law; this appeared to be in danger of being the exception, in that the man in the street had the protection of the scrutiny of the European Parliament and others but was then not going to have any. I was heartened by what the Minister said, especially about the engagement with the International Relations Committee.

That brings me to today's guiding theme: the importance of an international agreements committee for the House. We have had a sense of the excellence that has already been injected into the committee by the noble and learned Lord, Lord Goldsmith. Like others, I very much look forward to it being established on a stand-alone basis for the House—and in short order. I know that that potentially means a long time in House of Lords-speak, but I mean in short order because the committee is already proving very valuable. I beg to move.

Motion agreed.

The Deputy Chairman of Committees (Lord Bates) (Con): My Lords, that completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 6.37 pm.

Volume 805
No. 102

Monday
7 September 2020

CONTENTS

Monday 7 September 2020