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OFFICIAL REPORT

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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

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House of Lords

Wednesday 23 September 2020

The House met in a hybrid proceeding.

12 pm

Prayers—read by the Lord Bishop of Worcester.

Arrangement of Business

Announcement

12.06 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.

China: Uighur Internment Camps

Question

12.07 pm

Asked by The Lord Bishop of St Albans

To ask Her Majesty's Government what assessment they have made of the condition of Uighur internment camps in Xinjiang in China.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, there are reports of torture and overcrowding in detention centres in Xinjiang, where over a million Uighurs are extrajudicially detained. We have repeatedly condemned the abuses of human rights perpetrated against the Uighurs in Xinjiang and again call upon China to immediately allow UN observers unfettered access to the region and to end extrajudicial detention.

The Lord Bishop of St Albans [V]: I thank the Minister for his reply. The International Olympic Committee's charter states that its goal is to

"place sport at the centre of harmonious development ... with a view to promoting a peaceful society concerned with the preservation of human dignity."

Given that the Chinese Communist Party's treatment of the Muslim Uighur minority in Xinjiang contravenes the principles of preserving human dignity, will the Government consider holding the IOC to account by pushing for a review of its decision to hold the 2022 Winter Olympic Games in the People's Republic of China?

Lord Ahmad of Wimbledon (Con): My Lords, as the right reverend Prelate will know, any representation to the IOC would be a matter for the National Olympic Committee. The British Olympic Association operates

independently of the Government. However, ensuring human dignity should be the approach of the Olympic committee or, indeed, any Government.

Baroness Bakewell (Lab) [V]: My Lords, I am co-chair of the All-Party Parliamentary Humanist Group. Does the Minister acknowledge the strength of feeling of people of all faiths on this matter? Will the Government persist in opposing the crimes of blasphemy and apostasy around the world, particularly in the case of Mubarak Bala, a humanist arrested for blasphemy in Nigeria?

Lord Ahmad of Wimbledon (Con): I can assure the noble Baroness that the Government's priority is, and will remain, to stand up against abuses of all human rights and for freedom of religion or belief anywhere in the world.

Baroness Northover (LD): My Lords, the noble Lord will now be very familiar with the China Tribunal's conclusions on the forced removal of organs from the Uighurs and others. Are the Government now taking this report seriously? Are the Magnitsky sanctions being considered for those who may be involved in this appalling practice?

Lord Ahmad of Wimbledon (Con): My Lords, on the noble Baroness's second point, I cannot speculate on designations. On the organ harvesting report, I have, as she knows, met with Sir Geoffrey Nice. We have also carefully considered the group's report of 1 March. That report contains numerous disturbing allegations of serious human rights abuses, including sexual violence, torture, and forced DNA testing. After reviewing the situation this morning, I have again written formally to the World Health Organization

Lord Polak (Con): My Lords, the appalling treatment of the Uighur Muslims by the Chinese regime is horrific. Yet China is expected to be re-elected to the Human Rights Council next month. Sadly, it seems that nothing can be done to halt the increasingly sinister influence of China within UN structures, seriously undermining the UN's credibility. Will the Minister confirm that China is continuing to block the office of the UN High Commissioner for Human Rights from having a presence in China? Will he also confirm that we will not support China's election to the Human Rights Council?

Lord Ahmad of Wimbledon (Con): My Lords, on the issue of election to the Human Rights Council, I assure my noble friend we consider carefully all countries' policies on standing up for human rights both internationally and domestically. On his earlier point, I spoke with High Commissioner Michelle Bachelet last week, and we have made the point directly to her that we continue to lobby for her unfettered access in Xinjiang.

In terms of the UN machinery generally, the United Kingdom has led on two statements—the only joint statements at the UN on Xinjiang—once last year and once this year in June at the Human Rights Council.

[LORD AHMAD OF WIMBLEDON]

I am intending to raise the issue in the UK's national statement at the 45th session of the UNHRC, which is scheduled shortly.

Lord Alton of Liverpool (CB): My Lords, I should mention I am vice-chairman of the all-party group on the Uighurs.

In the light of the near impossibility of arriving at a legal determination of alleged genocide or crimes against humanity in the Uyghur region, which Ministers in the other place have acknowledged, will the Minister join me in welcoming the new initiative of Sir Geoffrey Nice QC in setting up the Uighur tribunal? Will he confirm that the Government will do everything possible to co-operate with the tribunal, including providing evidence and agreeing to take seriously what will be a rigorous and impartial judgment when the process is completed?

Lord Ahmad of Wimbledon (Con): My Lords, I am fully aware of the formation of this new inquiry, and we are looking at it carefully. I am discussing our approach with officials. We intend to attend the inquiry as we did the inquiry on organ harvesting.

Lord Collins of Highbury (Lab): My Lords, I welcome the fact that the Minister has written to the WHO about forced organ harvesting. But it is not enough to write with the evidence; there needs to be concrete evidence. Would he argue with the WHO that this so-called self-assessment process needs to end, and that there ought to be independent verification of the harvesting of organs? Also, will he commit the Government to support my noble friend Lord Hunt and the noble Baroness, Lady Finlay, in making changes to the medicines Bill, which can address this issue and have concrete action to end this awful practice?

Lord Ahmad of Wimbledon (Con): My Lords, on the latter issue of the medicines Bill, that will be discussed in your Lordships' House; however, as a domestic piece of legislation, I do not think it is the right instrument with which to be looking at this issue, which is about international action. As for the World Health Organization, as I have said, we have taken steps. I will also seek a meeting with it to see what action can be taken. The evidence base is building, and it is clear that, if proven true, the abuses will be there for all to see. It is now important for the World Health Organization to consider the evidence carefully.

Baroness Smith of Newnham (LD) [V]: My Lords, returning to the original Question: could the Minister tell us what it would require for Her Majesty's Government to analyse the treatment of the Uighurs as a potential genocide, and what it would take for them to raise that internationally?

Lord Ahmad of Wimbledon (Con): My Lords, as I have already said, as well as raising this internationally, we are raising concerns bilaterally and directly, as my right honourable friend the Foreign Secretary has done, with the Chinese Foreign Secretary and State

Councillor. We are also raising this through multilateral fora, through the third committee at the UN and the Human Rights Council. On the specific definition of genocide, the noble Baroness is aware of the Government's position that this is something for tribunals or judicial authorities to assess.

Lord Mackenzie of Framwellgate (Non-Aff) [V]: My Lords, China has shown a callous disregard for the human rights of minority ethnic groups over a number of years. The evidence is now clearly overwhelming. Does the Minister not agree that the time is now right to instigate Magnitsky sanctions against those who perpetrate these indefensible wrongs against their own citizens? Words are clearly ineffective—this is time for decisive action.

Lord Ahmad of Wimbledon (Con): My Lords, as I have already said, I cannot speculate on future designations, but I am pleased that we have now initiated, through my right honourable friend's efforts, a formal procedure through the Global Human Rights Sanctions Regime, to ensure that those who abuse human rights are held to account.

Baroness Warsi (Con): My Lords, does my noble friend agree that states that do not live by basic international human rights standards should not have unfettered access to international trade markets? Is he aware of the Uyghur Forced Labor Prevention Act, which was recently passed by the US House of Representatives? Do Her Majesty's Government have plans for similar legislation to be introduced here in the United Kingdom?

Lord Ahmad of Wimbledon (Con): My Lords, my noble friend raises an important point. She will also be aware that it was through our support and initiation of the Modern Slavery Act 2015 and our support for the evidence taken by a particular inquiry in Australia that we saw many companies changing their approach to trade initiatives, particularly in Xinjiang. We are looking at the US legislation carefully, and whatever the outcome of those discussions, I will write to my noble friend.

Baroness Deech (CB) [V]: My Lords, the tragedy of this is that we have seen it before—these steps towards genocide. It is even more tragic that the United Nations is impotent due to the position of China. The only thing I believe the Government can do is publish a list of those brands to which it is thought forced labour by the Uighurs is contributing and call on the population to boycott those brands and hopefully prevent their import.

Lord Ahmad of Wimbledon (Con): My Lords, I have already detailed the action the Government have taken, and I believe it is for companies to make their decisions in light of that evidence.

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

Trade: Trans-Pacific Partnership Question

12.17 pm

Asked by **Lord Rose of Monewden**

To ask Her Majesty's Government what plans they have to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership; and if they have such plans, when they plan to join.

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership is a government priority and a key part of our trade negotiations programme. We aim to begin formal accession negotiations next year. Any final decision to apply will consider both the progress of bilateral negotiations with CPTPP members and our confidence that we will be able to negotiate accession on terms compatible with the UK's broader interests and domestic priorities.

Lord Rose of Monewden (Con) [V]: I thank the Minister for his Answer. Can he tell the House when he expects CPTPP members Australia, New Zealand and Canada, which are also our Five Eyes partners, to support our membership and sign trade deals with us? Also, I welcome the deal with Japan. There is a chapter on SMEs, an ambition I understand the UK has for all other FTAs negotiated. This will help our innovative small businesses break into new markets, but sadly, the Government's ambition for our global exports is more disappointing. Germany currently exports 47% of GDP, so why are the UK Government happy to set a low bar of just 35% for our exports?

Lord Grimstone of Boscobel (Con): My noble friend makes very good points. In terms of engagement so far with CPTPP members, the Trade Secretary met with ambassadors and high commissioners to discuss this, had a warm response and recently opened the first meeting between the UK and CPTPP officials to discuss preparations for the UK's application to join the group. I will take up his point about exports with my colleague the Minister for Exports.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, since the Government are in the process of reneging on the withdrawal agreement that they freely entered into, how can Australia, New Zealand, Canada and the other members of the Trans-Pacific Partnership have faith that this Government will abide by any agreement they make to become a member?

Lord Grimstone of Boscobel (Con): My Lords, the British Government take their responsibilities under agreements very seriously. Sometimes, special circumstances arise where they have to take a view on the matters in the agreement, but I assure the noble Lord that we will adhere strictly to any free trade agreement that we sign.

Lord Holmes of Richmond (Non-Aff): My Lords, what assessment have the Government made of any implications for UK intellectual property rights? What progress have they made in the establishment of a utility trade platform, which would truly enable us to be a 21st-century, global, electronically based trading nation?

Lord Grimstone of Boscobel (Con): My Lords, the UK will ensure that any future accession talks with the CPTPP are consistent with the UK's interests and the Government's stated policies and priorities. We will not make changes to our intellectual property regime that are in any way detrimental to ourselves.

Lord Purvis of Tweed (LD): My Lords, we on these Benches are enthusiastic for UK businesses to utilise any expanded opportunities to export to the CPTPP countries in future, but this is the future, and what we face over the next couple of months, according to the DIT website this morning, is the fact that the UK will be trading on a free trade basis with only 8% of all UK trade—the worst record for the UK since the 1930s. Does the Minister agree that that will be disastrous for British exporters in the current economic climate and a very weak basis to look for further opportunities around the world?

Lord Grimstone of Boscobel (Con): My Lords, the Government are very keen to reach agreement with the European Union because of the importance that the noble Lord refers to; we are still working very hard on that. We have plenty of other trading partners around the world. If that agreement is not reached, we will trade on WTO terms with the EU. I think that there will be a bright future for this country in any event.

Baroness Noakes (Con): My Lords, I congratulate the Government on not only obtaining the treaty with Japan but getting Japan's support for our membership of the Trans-Pacific Partnership. The partnership contains quite significant provisions in relation to state subsidy, competition and investor remedies. Does my noble friend think that these will be insuperable barriers to our membership?

Lord Grimstone of Boscobel (Con): I thank my noble friend for her question. Of course, we will accede to the CPTPP only if we are happy that the arrangements we are acceding to are in the UK's interest. We are confident that we will be able to reach that position with its members.

Baroness Falkner of Margravine (CB): My Lords, does the noble Lord agree that we face two spheres of internet governance at the moment: one controlled by authoritarian regimes, rife with surveillance; and the other, western, free and accessible to all? Does he therefore agree that, alongside the CPTPP, another priority should be digital FTAs with Japan, Australia and India?

Lord Grimstone of Boscobel (Con): My Lords, in the recent agreement in principle with Japan that we were so pleased to reach, there is an extensive data and

[LORD GRIMSTONE OF BOSCOBEL]
digital services chapter that we hope will be a model for our future free trade agreements. The points made by the noble Baroness are important and are always in our mind when we negotiate these agreements.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, can the Minister confirm that the CPTPP contains ISDS clauses? Given that the Secretary of State described this as an

“advanced agreement full of countries committed to the rules of international trade”,

why do the Government believe it necessary to provide secretive ISDS structures when we and the current members are in good standing and have perfectly adequate legal systems?

Lord Grimstone of Boscobel (Con): My Lords, the UK will ensure that any future accession talks with the CPTPP are consistent with our interests and our stated policies and priorities. We are clear that our future investment policy will continue to protect our right to regulate in the public interest and we will ensure that UK investors abroad receive the same high standard of treatment that foreign investors receive in the United Kingdom.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, there are some incompatibilities between the withdrawal agreement and the principles of the CPTPP, such as protection of traditional names for wine under Article 58.2. Those would require a carve-out. Has an assessment been made of how many carve-outs might be necessary to fit UK law into such areas as food safety and how many could be tolerated by CPTPP members?

Lord Grimstone of Boscobel (Con): My Lords, because we have not entered into negotiations on this agreement yet, it is hard to predict exactly how they will progress, but we are clear that more trade will not compromise our high environmental protection, animal welfare and food standards.

Viscount Waverley (CB) [V]: My Lords, picking up on the theme of the noble Lord, Lord Purvis, in wishing otherwise, I would not invest in the Pacific Alliance countries, having listened to a briefing of somewhat negative messaging about that region from our resident ambassadors. Knowing the opportunities that exist, will the Minister sit with his colleagues in government and agree to a sea change in approach that focuses on opportunities for a global Britain, which will need alliances with emerging and frontier markets—of which there are plenty in the Pacific Alliance, which additionally forms a useful springboard for such organisations as Mercosur, for example?

Lord Grimstone of Boscobel (Con): My Lords, the CPTPP is one of the largest free trade areas in the world. It represented 13% of global GDP in 2018, which would increase to more than 16% if the UK were to join. It is one of the world’s premier growth interests and we consider that it is very much in the interests of the United Kingdom to be part of it.

Baroness McIntosh of Pickering (Con) [V]: In the event that we are successful and negotiate a deal with the CPTPP, or individually with Australia, New Zealand and Canada, what will be the parliamentary oversight and scrutiny of that agreement? Will the Government follow the procedure set out so effectively by Henry Dimbleby in part one of his national food strategy?

Lord Grimstone of Boscobel (Con): My Lords, I am not familiar with my noble friend’s reference, but I will certainly look that strategy up and consider it in our future efforts in this area.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked.

Education: A-level Results *Question*

12.28 pm

Asked by Baroness Garden of Frognal

To ask Her Majesty’s Government what assessment they made of external expert advice prior to the use of the algorithm to determine A-level results for the 2019/20 academic year.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, the independent qualifications regulator, Ofqual, is responsible for securing qualification standards and promoting public confidence in regulated qualifications. As part of the development of the grading system introduced in place of exams this summer, Ofqual drew on the advice of experts from the exam boards and convened an external group of well-respected assessment experts to advise on the principles, main features and details of various aspects of the standardisation model.

Baroness Garden of Frognal (LD): My Lords, expert advice early on identified the algorithm as flawed and particularly damaging for state school and disadvantaged pupils. We have been told that the Secretary of State was fully in charge of his department throughout this debacle, yet two senior officials have resigned, which is outrageous. When I tabled this Question four weeks ago, I thought that he might have fallen on his sword by now—but no. So can the Minister confirm that the Conservative Government, with the exception of the noble and learned Lord, Lord Keen, have abandoned the principles of ministerial honour and responsibility?

Baroness Berridge (Con): My Lords, on the standardisation model, Ofqual is a non-departmental body. It is important in principle that our examinations are not subject to government interference. While the department was in contact with Ofqual during this process, the decisions made on the algorithm were Ofqual’s. That respects the appropriate relationship between a department and independent bodies such as Ofqual.

Lord Baker of Dorking (Con) [V]: Algorithms were a failure this year; they will not happen next year. Today, there are thousands of students—possibly even hundreds of thousands of students—who are not at

school because of the lack of testing. On Monday, Liverpool University Technical College had to send home all year 10, year 11 and year 12 children—hundreds of children, who may be out for 10 days. This will happen all over the school estate. There will not be a level playing field of attendance records for students, and it will not be their fault. It is therefore very unfair to test them by written exams next year, because each student will have a different level of attendance. The Government should recognise that teacher assessment will be needed this year, in which case they should issue guidance to teachers now on the state of reports they will have to keep on each student, not only on attendance but on progress. If written exams happen next year, the brightest children will do well and the disadvantaged will do very badly. That is simply not fair.

Baroness Berridge (Con): My Lords, every Tuesday, the department publishes attendance data. As of yesterday, nearly 88% of students in state-funded schools and institutions were in school. The guidance published before the summer holidays made it clear to schools that by the end of this month they must be able to stand up remote education in the eventuality that pupils are sent home in these circumstances. We are working with Ofqual, which is looking at the arrangements for next year's examinations.

Lord Singh of Wimbledon (CB) [V]: My Lords, the algorithm for predicting A-level results this summer was clearly too harsh, leading to overcompensation using teacher predictions and subsequent difficulty finding college and university places in subjects such as medicine. If the physical sitting of exams again proves impossible this summer, will the Minister ensure that the timetable for publishing results allows more time for the better matching of teacher and improved algorithm predictions with the availability of places in higher education?

Baroness Berridge (Con): My Lords, on the important issue of the placing of students—particularly for A-levels, which are more often progression exams—the noble Lord will be aware that the Government, working closely with higher education institutions, lifted the cap on certain courses to raise capacity. The most recent figures are that 89% of students who received a grade increase have got their original offer, their insurance offer or an offer at an institution with the same tariff as their original offer.

Baroness Morris of Yardley (Lab): My Lords, the most frustrating element of the algorithm was that it assumed that schools could not improve on previous years' best performance. That seems contrary to what any Education Minister should believe about the power of schools to improve and change children's lives. Did that element of the algorithm come from an external expert? If so, why was it accepted?

Baroness Berridge (Con): My Lords, as the noble Baroness will be aware, Ofqual consulted on the methodology and what aspects to include in the algorithm. The issue of what we termed “outliers”—highly performing students in institutions which have previously

not performed well—was raised and was in the balance; students who might be affected in that way could be put right through the appeals processes. However, when the balance became such that the level of anomalies outweighed this, the more just situation became to use teacher assessment grades rather than the algorithm to assess grades.

Lord Addington (LD): My Lords, could the Minister give us an absolute assurance that this algorithm or anything like it will never be used again? That is something we should hear today.

Baroness Berridge (Con): My Lords, all four nations of the United Kingdom attempted to use this method. At the moment, the Office for Statistics Regulation, which is part of the UK Statistics Authority, is looking at the algorithms used for all four nations. However, it is intended that exams will go ahead this summer.

Lord Watson of Invergowrie (Lab): My Lords, the Secretary of State, the Department for Education and Ofqual were all warned by Cambridge Assessment of serious flaws in the grading of exams two weeks before A-level results were published, yet no action was taken. Much more seriously, the Royal Statistical Society has said that the issues with the algorithm could have been avoided had independent expert advice been taken. As far back as April, the society highlighted to Ofqual the problems coming down the road and suggested the establishment of an advisory panel involving independent statisticians to deal with them. Can the Minister explain to the hundreds of thousands of young people whose lives and education have been disrupted unnecessarily why that course of action was not taken?

Baroness Berridge (Con): My Lords, a member of the RSS was present on the expert advisory group at Ofqual, which I have already outlined. Ofqual tested 12 different models of the algorithm. During the algorithm's development, there were various meetings between the department and Ofqual, and we were assured that any irregularities in its application could be put right through an appeals process. We responded when an issue arose in Scotland around its use of an algorithm.

Lord Lucas (Con) [V]: My Lords, will the Government conduct research into the extraordinarily large difference between predicted grades and actual grades at A-level, so that we can understand why deprived children fall below predicted grades so often and do something about it?

Baroness Berridge (Con): My Lords, there was a rise of about 12% in the top grades awarded this summer. We are not in a position to go behind the teacher assessment grades. The only appeal available to students is on the basis of administrative error in giving those teacher-assessed grades to the exam boards.

Lord Houghton of Richmond (CB): I draw noble Lords' attention to my relevant interests in the register as an adviser to a decision science company. Does the

[LORD HOUGHTON OF RICHMOND]

Minister agree that the approach taken to determine the outcome of this year's A-level results clearly demonstrates that using an algorithm or human expert judgment in isolation is flawed, and that highly complicated decision-making by government needs to embrace decision science, which seeks to exploit the right balance of artificial intelligence and human judgment?

Baroness Berridge (Con): My Lords, in relation to the involvement of human decision and algorithms, I have outlined the current investigation into the algorithm, but I will take back what the noble and gallant Lord says, because at the moment we in the department are at the juncture of Ofqual having consulted on the timing of exams next year.

Baroness Warwick of Undercliffe (Lab): My Lords, universities have the challenge of speedily picking up the pieces at the end of this sorry episode. Can the Minister tell us how the Government plan to support universities ahead of next year's admissions cycle to ensure that the year 13 students from this year, who have already faced Covid disruption, are not further disadvantaged by places already being filled by students who had to defer this year?

Baroness Berridge (Con): My Lords, we are grateful to the many staff behind the scenes in the admissions departments of universities who have managed to achieve the statistic I outlined previously. My colleague Minister Donelan is working with the higher education task force, which works closely with the universities. There are discussions around capacity of places for next year and particular concern about any delay in exams. Ofqual has been consulting on this to make sure that discussions are ongoing in the other section of the system, which is the admissions process.

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

Schools: Spending per Pupil Question

12.39 pm

Asked by **Lord Watson of Invergowrie**

To ask Her Majesty's Government, further to the report by the Institute for Fiscal Studies 2020 *annual report on education spending in England: schools*, published on 18 September, what plans they have to increase school spending per pupil.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, we are investing more in schools over the next three years, starting with an additional £2.6 billion this year and rising to £7.1 billion by 2022-23, compared to 2019-20. This will ensure that per pupil funding for every school can rise at least in line with inflation this year, and faster than inflation for most. The IFS has said that this investment will near enough restore schools' per pupil funding to previous levels in real terms.

Lord Watson of Invergowrie (Lab): My Lords, I thank the noble Baroness for that Answer, but schools in England have suffered the most severe funding cut in 40 years, with the biggest brunt falling on secondary schools in areas with the lowest 20% of incomes. School spending has decreased by around £1,000 per pupil over the past 10 years, and even the extra £7.1 billion which the Minister just mentioned will not reverse those cuts; there will still be a 1% in gap in funding since 2010. I should say that 1% equates to around £500 million per year.

With the Covid catch-up fund due to be spread across all schools, regardless of disadvantage, I ask the Minister when the Government's commitment to levelling up educational opportunity will be translated into a greater targeting of additional funding to schools in more deprived areas, and a real increase in funding per pupil.

Baroness Berridge (Con): My Lords, the national funding formula obviously takes deprivation into account, and 18% of that formula—£6.2 billion—is aimed at disadvantaged students. That is in addition to any supplementary funding such as that for music hubs, which is also directed funding to free school meal areas. There is also, in the catch-up fund, the £350 million national tutoring programme, aimed at disadvantaged students. Some of the figures that the noble Lord outlines, in relation to schools in the most deprived areas, relate to the fact that the most deprived students are now spread across more areas of the country. That is why there has been a decrease in funding in some of the most deprived areas, because the most deprived students—for whom the funding is there—are spread more evenly across the country. Therefore, the funding formula has taken that into account.

Baroness Watkins of Tavistock (CB): My Lords, I welcome the IFS report, which clearly outlines that the recent and future strategy for education spending in England was on track to deliver the Government's commitment to level up poorer regions of the country and to narrow the achievement gap between children from rich and poor families. However, the closure of schools during lockdown, and the need to restructure both teaching timetables and physical resources, is creating immense challenges for schools, which I particularly understand as a previous chair of a large academy in a deprived area in Plymouth.

I welcome the extra provision that the Government have already committed in recognition of the difficulties ahead for pupils and staff this year—but is it enough? Could the Minister inform the House whether additional funds will be announced, in the forthcoming spending review, for sixth-form pupils to accelerate their learning where cuts had been significant in previous years? Will there be a capital investment programme to return school buildings to at least a satisfactory or good condition, which the National Audit Office estimated in 2017 would cost in the region of £6.7 billion?

Baroness Berridge (Con): My Lords, in relation to the particular challenges—I mentioned those attendance statistics, and one cannot underestimate the effort made in our schools to get attendance at that level.

In relation to 16 to 19 year-olds, £96 million of the national tutoring programme fund is aimed at disadvantaged students in that year group, and an extra £400 million is going into 16 to 19 funding. Indeed, we should in the autumn get the list of the first 50 schools that will be rebuilt under the repair programme. Over the last five years, £23 billion has gone into the school estate. The noble Baroness is correct that we need to accelerate the building programme, not only to give our children the buildings they need to learn in but to motivate the economy and the recovery that we need.

Baroness Uddin (Non-Aff): My Lords, the House will have become familiar with the many government pronouncements of overwhelming investment in education and public services. Equally, the House will have noted the persistent and alarming social divisions shamefully ever increasing in the fifth-largest economy in the world. With the Government's levelling-up agenda and intention to close the gap between students from wealthy backgrounds and those who battle an onslaught of socioeconomic conditions—poor housing, poverty, racial and religious discrimination, and now the digital divide—what additional resources have the Government allocated to meet these challenges? Does the forward strategy include increasing the recruitment, retention and promotion of teachers from minority communities in leadership positions, which remains unacceptably low?

Baroness Berridge (Con): My Lords, in relation to the issues that the noble Baroness outlined, the Government are obviously concerned about the attainment gap and are trying to ensure that students from disadvantaged backgrounds have the opportunity of a great education. That is why £2.4 billion has gone into the system as pupil premium money for those students. At the moment, we have spent £100 million on remote education, and in addition to the 220,000 laptops that have been distributed, another 150,000 are being delivered to ensure that we can help schools, particularly in those areas with disadvantaged students, if they have to learn at home. As I have outlined, the national funding formula prioritises the most deprived students, and a significant proportion of that money goes to them.

BAME teachers are part of the recruitment strategy. In relation to governors, we are now making it a KPI of the forthcoming contract subject to spending review that they should be able to achieve targets for BAME representation in the governing of our schools.

Baroness Whitaker (Lab): My Lords, schools might be saving money on the large number of children being home educated, many of whom then miss out on proper education entirely and are vulnerable to being caught up in county lines and criminal gangs. What are the Government doing to enable proper standards in, and preferably to register, home education?

Baroness Berridge (Con): My Lords, the noble Baroness may be aware that, before the pandemic, the Government had consulted on precisely that issue of whether to have a register for the local authority of those who are home educated. There will be in the coming months, when it is appropriate, a response to that consultation.

At the moment, the teams on the ground are in contact with local authorities, and we have made it clear to local authorities that we want as much data as possible on trends in home education. We are advising local authorities to make clear to any parents thinking of opting for home education, although it is their right, the responsibility and obligation that this is. Delivering home education is very different from supervising at home the curriculum delivered by schools, and we recognise the safeguarding issues for many children if they are electively home educated but are then not actually being educated.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked.

12.48 pm

Sitting suspended.

Interest Rates

Private Notice Question

1.02 pm

Asked by Lord Young of Cookham

To ask Her Majesty's Government what assessment they have made of the announcement by National Savings and Investment about reductions in interest rates.

Baroness Penn (Con): Her Majesty's Treasury set NS&I an annual target of net financing to raise. In July, this was revised from the £6 billion set at the Budget to £35 billion to support the Government's higher financing requirement. NS&I reviews the interest rates on its products regularly and recommended a reduction in interest rates, with the objective of meeting its financing target, while returning to a more normal market position.

Lord Young of Cookham (Con): My Lords, I declare my interest as an optimistic holder of Premium Bonds. NS&I's decision to cut interest rates drastically to near zero was a direct consequence, as my noble friend has just said, of the Government's net financing target—a devastating decision for millions of savers who find their income decimated, or worse. NS&I is a key source of government borrowing but has a broader mission. I quote from its annual report:

“We want to inspire a stronger savings culture”.

That objective is out of the window. Earlier this year, a decision to reduce interest rates was reversed. Will the Government now enable NS&I to reverse this latest decision before it comes into effect in November?

Baroness Penn (Con): My Lords, perhaps I should also declare my interest as a holder of NS&I savings products. I can understand people's disappointment at the rate reductions. I reassure my noble friend that the prize fund rate for Premium Bonds, at 1%, even after the reductions, remains competitive relative to the savings market. I remind him that although NS&I has

[BARONESS PENN]

a remit to encourage a savings culture, it also has to balance that against providing value for money for the taxpayer and its position and effect on the broader financial services sector.

Lord Tunncliffe (Lab) [V]: I will deviate slightly from NS&I, important though that institution is to millions of British savers. Noble Lords will know that for various reasons a sizable number of people find it impossible to save at all. One in three adults had no savings at the onset of Covid, and one in four families had less than £100. Step Change estimates that 4 million people took on £6 billion of personal debt in the first months of the crisis—an average of £1,500 each. That figure is likely to grow as we enter a second wave. Does the Minister agree that, important as it is to consider the specifics of incentivising savings, we must give broader consideration to how we enable everyone to have a degree of financial resilience? With the furlough scheme due to be wound up within weeks, what steps are the Government taking to prevent those with no financial fallback experiencing serious hardship in the coming months?

Baroness Penn (Con): My Lords, the noble Lord is correct to say that we need to help those on low incomes to save, so that they have a buffer if they face unexpected financial events. That is why we have introduced Help to Save, a government-backed savings account that offers a 50% bonus on savings of up to £50 a month for those in receipt of working tax credits or universal credit, with a weekly earnings equivalent to at least 16 times the national living wage. Returning to National Savings and Investments, one of the other benefits of NS&I accounts, including Premium Bonds, is the low level of savings, at £25, with which people can start those accounts and access those rates.

Baroness Kramer (LD) [V]: My Lords, I have savings products with NS&I and was stunned yesterday morning to get an email announcing savage cuts to its rates. Every bank will now cut its offers in light of the NS&I decision, leaving millions of small savers with essentially zero returns. As the noble Lord, Lord Young, said, the rate cut rests at the door of the Treasury because it sets the funding target for NS&I. Does the Minister accept that this will destroy confidence and make savers even more reluctant to spend? It is an act of self-harm for an economy already in free-fall.

Baroness Penn (Con): My Lords, I disagree with the noble Baroness that the decision on NS&I interest rates will have an impact on interest rates in the wider market. It is partly because NS&I rates were so out of line with the wider market that this decision was taken. I should also point out that the interest rate decision was taken in light of the Government's net financing target, which was increased from £6 billion to £35 billion in response to the pandemic.

Baroness Altmann (Con): My Lords, I congratulate my noble friend for tabling this Question. After 12 years of miserly returns, surely, we need to encourage savers rather than punish them. Banks do not need savers'

money. In the current environment, might the Government consider “corona bonds” to help finance the current emergency spending and demonstrate that they believe in a savings culture?

Baroness Penn (Con): In effect, customers' deposits with NS&I are a form of government borrowing and could be interpreted in that way. The increase in the financing remit for NS&I has allowed it to offer those products to many more people without exceeding that remit. However, we have reached a difficult moment whereby it is on track to grossly exceed that remit if action is not taken. However, the Government want to encourage savings and that is why, over recent years, we have taken the vast majority of savers out of paying tax on their savings. We will of course continue to look at what more we can do.

Lord Flight (Con): My Lords, surely NS&I interest rates should roughly reflect market rates for different amounts and terms if government policy is to offer a modest premium over market rates to encourage saving. The proposed cuts look to take NS&I rates below market rates. They are too large and will damage saving. Is wanting to inspire a stronger savings culture still government policy?

Baroness Penn (Con): I assure my noble friend that that is still government policy, but I disagree with him on the fact that the changes to NS&I's interest rates take it below competitive rates in the market. As I have pointed out, on premium bonds, a 1% prize fund rate is extremely competitive while on a number of other tax-free instant access products, the rates remain in line with the rest of the market.

Lord Trimble (Con): My Lords, I must start with a disclosure. Many years ago, I invested what to me was a substantial sum of money in NS&I. We are now seeing the rates go down to well below 1%—indeed, to a fraction of 1%. Is it going to stop there? Will the Government look at negative rates? If not, will they make a clear commitment to move away from them? How much of that target of £35 billion has been achieved? Is there likely to be more than just that target? If so, will there be any return to those people who are dependent on National Savings?

Baroness Penn (Con): In response to my noble friend's question about whether the net financing target is due to be exceeded, I can tell him that in quarter 1 of the 2020-21 financial year, NS&I saw an inflow of £19.9 billion and delivered £14.5 billion of net financing. Demand for NS&I products has remained at similarly high levels during Q2. If the current trajectory continues, it will be on track vastly to exceed that net financing target.

Baroness Smith of Newnham (LD) [V]: My Lords, the Minister seems to have felt the need to disagree with almost all the noble Lords who have spoken. In particular, she disagreed with my noble friend Lady Kramer, who suggested that the impact of the NS&I cuts—[*Interruption.*] I am extremely sorry for that interruption; it was possibly from a website trying to

sell me bonds because I have been looking up NS&I activities. My noble friend Lady Kramer suggested that the cuts in NS&I rates would have a knock-on effect. The Minister disagreed. However, as that website has just pointed out, other banks have followed suit with their products in trying to match the NS&I higher rates. The fact that they are now being cut is likely to have a knock-on effect. Surely the Government cannot claim that they want to have a savings culture any longer.

Baroness Penn (Con): My Lords, I also expressed sympathy with those savers, including many noble Lords, who have been affected by the decision to change the interest rates. It is not an easy decision but I have tried to explain to noble Lords that the Government take several factors into account in this decision. One of them is the interests of savers. Premium bonds continue to offer a market-leading rate for those savers. However, that must be balanced against the need to protect the interests of taxpayers and the broader financial services sector.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I congratulate my noble friend Lord Young on securing this Question. Like him, I declare my interest as a holder of NS&I products. There is a particular cohort that has not been raised, and that is pensioners and others living on fixed incomes. After having saved all their lives to have a top-up on those fixed incomes, they will be devastated. Will my noble friend consider something like that put forward by my noble friend Lady Altmann: a form of corona bond for pensioners?

Baroness Penn (Con): The Government will continue to consider all the ways that they can to encourage saving. I am happy to assure both of my noble friends that I will take the specific idea of targeting toward pensioners back to Her Majesty's Treasury.

The Deputy Speaker (Lord Lexden) (Con): My Lords, all supplementary questions have now been asked.

Parliamentary Works Estimates Commission

Membership Motion

1.13 pm

Moved by Baroness Evans of Bowes Park

That Lord McFall of Alcluith and Lord Macpherson of Earl's Court be appointed as members of the Parliamentary Works Estimates Commission.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, this Motion appoints the Lords Members of the Parliamentary Works Estimates Commission, the two names having been nominated by the House of Lords Commission. I beg to move.

Motion agreed.

1.14 pm

Sitting suspended.

Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020

Motion for an humble Address

1.31 pm

Moved by Baroness Grender

That a Motion for an humble Address be presented to Her Majesty praying that the Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020, laid before the House on 17 July, be annulled because they will permit evictions of individuals who have been served a notice of eviction between 23 March and 28 August before Parliament has had an opportunity to debate the impact of the Rules on (1) homelessness, and (2) the spread of COVID-19 (SI 2020/751).

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee

Baroness Grender (LD): My Lords, in the last general election this Government promised to scrap Section 21 evictions—evictions that are mandatory and require no explanation from the landlord. In March, the Government promised that

“no renter who has lost income due to coronavirus will be forced out of their home”.

This Motion, with your Lordships' support, will achieve those objectives—those two promises from this Government—for thousands of renters who face the pandemic second wave and a bleak winter.

I thank all Peers who have joined me in discussions about this debate in advance. I recognise that this afternoon we may well touch a multitude of issues faced by both tenants and landlords, and many valid points will be made, but I urge Peers to comment on the significant loophole as a result of this statutory instrument, namely the Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020, laid before Parliament on 17 July. Its welcome baby sister, the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020, was laid on 28 August, introducing six-month notice periods for tenants, unless there are serious issues such as domestic violence and anti-social behaviour or significant rent arrears.

My only question to the Minister today is: why can we not explore methods to apply longer notice periods to ensure parity between those served notice before and after 29 August? This request was shared with the Government yesterday, and I gave the Minister notice of it this morning. I hope that he will answer this specific question. The letter sent to all Peers by the Government yesterday dwelled almost entirely on the second statutory instrument, not the first, which is the subject of today's debate.

As a result of this identified loophole, an estimated 55,000 households, according to Generation Rent, will not have six months' notice, so if a landlord served a Section 21 notice to their tenant during the height of lockdown, they could be coming to the end of their tenancy now. Indeed, many notices served at the height of the pandemic have already expired, or the best-case scenario is three months' notice.

[BARONESS GRENDER]

I have asked many parliamentary Questions about how many people will be impacted by this loophole. The MHCLG has answered each request for data with verbal claims of “unprecedented packages”, instead of answering my questions. It has put some data out on Twitter suggesting that the official statistics show that only 3,022 private and social sector landlords applied to the courts for possession of their property between April and June. Perhaps the MHCLG should heed the warning of the Ministry of Justice, which says that “the data is unlikely to be representative of general trends in possession actions.”

Most Peers involved in this debate will be only too well aware that tenants subject to a Section 21 eviction rarely make it to court, knowing that it is mandatory, requires no explanation from the landlord, has no discretionary role for the judges and leaves the tenant with the bill to pay for both the landlord and themselves.

The 55,000 households teetering on the brink of eviction are the subject of this vote today. That figure is calculated using widely accepted methodology based on population levels and numbers of private tenants. Given that Shelter has already said that by the end of June, 174,000 households had been warned that they would face eviction, we can safely assume that we are talking about tens of thousands having been served with an eviction notice between March and August of this year. All it takes is for a landlord to now reinvoke that eviction notice and during the second wave of an epidemic, in the run up to winter, these families will be searching for a new home. Some will face homelessness and many the misery of temporary accommodation, supported by local authorities that are struggling every day to help. My noble friend Lady Thornhill will elaborate. The winter truce was welcome, but it is too late for these tenants—tenants such as Kevin from Kendal, who told Generation Rent:

“Our landlord has decided to sell their house, no doubt to take advantage of the stamp duty holiday. We have paid our rent on time and in full for almost 4 years, even with the reduced income over Covid-19, but we received a Section 21 Notice. We’re struggling to find a suitable home in our town and are now having to consider moving away and changing our kids’ schools. My eldest son should be starting Year 7 at the local secondary in September. I was a child when I was evicted from my home 24 years ago. I never thought my kids would go through this.”

We must vote down this statutory instrument today to help tenants such as Kevin. The Government were warned and had time to prepare. They could have used the recommendations of the Housing, Communities and Local Government Committee back in May to give judges more discretion or to accelerate the abolition of Section 21, but they did not. In this debate, some will want to talk about how difficult it has been for many landlords. I agree, and I wholeheartedly support the package of proposals for tenants and landlords drawn up by the National Residential Landlords Association, Shelter, Crisis, Generation Rent and others, but that is not the subject of the vote today. If we vote against this statutory instrument, will landlords still be able to take action regarding more serious eviction cases? Yes, they will, because of the second statutory instrument. This Motion ensures that there is fairness between those threatened with eviction before August and those threatened with eviction after August. That is all.

I recognise that this House does not like to vote down statutory instruments—it is not a good precedent—but this Government have already abandoned due process. The Commons did not do its job and properly scrutinise this SI. The Government did not comply with the 21-day rule of having 21 sitting days before it was enacted. This week, the noble and learned Baroness, Lady Hale, set Parliament the challenge of not surrendering our role because of Covid-19. This is not comfortable parliamentary business, but neither is it comfortable for the tens of thousands threatened with eviction.

As for the Motion to Regret, clearly, I agree with its laudable aims, but if we vote for that, nothing happens. We will come back tomorrow to discuss more Covid-19 regulations, but we will not have changed the law. We must vote down this SI and change the law. The sky will not fall in. Serious evictions will still happen, but thousands of families threatened with eviction, with no cash and no options, will have your Lordships to thank for changing the law and giving them the reprieve that they need in these terrifying times.

1.39 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, Ministers promised that no one would lose their home because of coronavirus. The rules before this House today will see this promise broken. Tenants across the UK are struggling to make ends meet right now, and just as the furlough scheme ends, redundancies begin, and lockdowns start again. This Government’s response is to bring the evictions moratorium to a halt.

I remind the House of some of the figures that we heard from the noble Baroness, Lady Grender. Shelter estimates that close to 250,000 renters are now at risk of a Covid-19 eviction as a result of the ban being lifted. Already, 174,000 private tenants have been threatened with eviction by their landlord or letting agent. Even before this crisis, more than half of private renters aged between 25 and 34 had no savings. On top of this, 45% of renters have lost their income since March, according to Generation Rent.

The Government are well aware of this and rightly avoided the cliff edge back in August, when they chose to extend the evictions ban. However, less than a month later, they have driven off that very same cliff edge. I understand that the Minister will tell the House that the evictions ban cannot go on for ever—I accept that—but it is not what we, or anyone else, are asking for. We are asking the Government to stick to their word that no one will lose their home because of coronavirus.

In the months that have passed since the announcement of the moratorium, the Ministry could have put in place the right measures to ensure this promise is honoured. It could have brought in the right to support for tenants who are struggling, changes to the universal credit system and an uplift in local housing allowance. It could have also announced a credible plan to deal with rent arrears. Instead, it has leapt from crisis to crisis, wasted the summer months, and now tenants are facing the same predicament they faced at the beginning of the pandemic.

Yesterday, all Peers received a letter from the Minister in which he outlined the support the Government have brought forward to help with people’s living costs,

including rent. These measures are mitigation, but they are hedged around with discretionary payments and different eviction rules in different parts of the country, depending on whether there is a local lockdown. The central point for today's statutory instrument is that the eviction process will restart, and Government will break their promise to some of the most vulnerable people in our country.

The Government should feel compelled to extend the evictions ban because of the misery which will be caused to those who will lose their homes. They should also recognise that if they do not act, there will be wider implications for us all.

Sixteen health bodies, including the British Medical Association, have warned of a potential rise in Covid infections if the Government force people into homelessness or overcrowded accommodation. The consequences of these measures extend far beyond those who will be directly evicted.

The National Residential Landlords Association is also calling for more support for tenants. In other parts of the UK there has been recognition of the looming crisis. I draw attention to what the Welsh Government are doing, for example. They have extended minimum notice periods, launched an early alert scheme, introduced tenancy saver loans and begun a housing advice campaign. Through their local authorities, they have supported people in the private rented sector.

The Liberal Democrats' Motion is a fatal Motion; ours is a regret Motion. I believe that a fatal Motion would go against the express view of the House of Commons, but above that, it would be a diversion from the seriousness of this issue and quickly degenerate into a constitutional row, which would take the focus off the central importance of this issue.

The Labour Benches have repeatedly warned that the Government should not lift the evictions ban until they have a credible plan which ensures that people who have lost income due to coronavirus do not lose their homes. Regrettably, that has not happened. The ban will be lifted, and the plan to be put in place is insufficient for the Government to say they have kept their promise. I hope that today, the Minister can unveil a better plan.

1.44 pm

Lord Taylor of Holbeach (Con) [V]: My Lords, I am pleased to follow the noble Lords proposing the two motions before the House. The noble Baroness, Lady Grender, is an experienced Member of this House. I expect she fully understands that her proposition to annul these measures is contrary to the practice and conventions of this House. Such a proposition, if successful, will be greatly to the disadvantage of the House. I hope she reconsiders the matter and withdraws her Motion.

I will address the regret Motion of the noble Lord, Lord Ponsonby. I think he is wrong. In the light of the pandemic, I can understand the anxiety of noble Lords about this matter, but if we agree with the view that the justice process is not just about the resolution of difficult matters but also about fairness, we need to get the courts hearing cases again. Justice and fairness, to both landlord and tenant, cannot be put on hold just because of the pandemic, particularly as the

Government have introduced measures to assist fairness and justice following the working group convened by the Master of the Rolls. There has been reference to yesterday's letter from the Minister, Alex Chalk; it makes the measures in the practice direction clear. The prioritisation of cases will focus on anti-social behaviour, extreme rent arrears, domestic abuse, fraud and deception, illegal occupation and squatters, and abandonment of a property. I think noble Lords will agree that these cases are not just about parties to the dispute, but often about the rights and distress of neighbours.

1.46 pm

Lord Best (CB) [V]: My Lords, I thank the noble Baroness, Lady Grender, and the noble Lord, Lord Ponsonby, for giving us this chance to consider how a Covid-related rise in homelessness can be avoided. I declare my interests as on the register.

The pandemic has revealed how insecure and vulnerable is the private rented sector. Tenants, who can be paying over 40% of their income on rents, can lose their homes if they lose their jobs. Landlords, and there are over 2 million of them, can lose much of their income if they lose their rent. Therefore, the problems now faced by tenants and landlords call into question whether halving the size of the social housing sector—councils and housing associations—and doubling the size of the private rented sector, has been a sensible switch. We can now see the necessity not only of promised renters' reforms but of rebalancing the two rental sectors, so that more households once again have the greater affordability and security of council and housing association accommodation.

The immediate necessity, however, is to avoid thousands of households with rent arrears losing their homes, not least because temporary accommodation for homeless families is already costing £1 billion a year. The annulment Motion by the noble Baroness, Lady Grender, seeks to do this by addressing one unfair anomaly in the current arrangements. The Motion of the noble Lord, Lord Ponsonby, points to the lack of discretion for the courts in England—unlike their equivalents in Scotland—to refuse or delay a possession order where this is clearly justified.

I recommend that the Government also top up councils' Covid hardship funds and reconsider the Spanish tenants' loan scheme: a government-guaranteed, interest-free bank loan, repayable over six years or more, that pays off the arrears so the tenant is not evicted. The landlord is happy, the cost to government is very modest and to the tenant, bearable; and a rise in homelessness and misery is avoided.

1.48 pm

The Lord Bishop of Rochester: My Lords, it is always good to follow the noble Lord, Lord Best, with his knowledge of this area. I am aware of the importance of this matter for both landlord and tenants. I am grateful for many of the measures that have been in place hitherto and many of the protections and mitigations which will continue under these rules. However, to pick up a point made by the noble Lord, Lord Best, I am concerned about those who may now find themselves in significant arrears, not least because of the pandemic. I think we will find there are many more in this

[THE LORD BISHOP OF ROCHESTER]

situation than there were some months ago. This will disproportionately affect those from the most vulnerable groups in our midst, including migrants and those with mental health conditions.

A few months ago, the Everyone In initiative was in very many ways an astounding success and something of which the Government and others can, rightly, be proud. I would not want to see that being reversed by the effects of what is now being proposed, whether intended or not. My anxiety is that, just as infection rates may be rising, so evictions could reverse the good work that was done by putting people back on the streets. I will listen carefully to the debate. I hope for reassurance from the Minister but I have an inclination to vote for the regret Motion to give judges greater discretion in this matter.

1.50 pm

Baroness Thornhill (LD): My Lords, very briefly and swiftly I shall give the local government perspective of the impact of this SI.

This pandemic has merely highlighted and exacerbated a growing problem—namely, that, with a significant reduction in social housing over many years, many low-waged earners are now privately renting and, as a direct consequence, are spending a higher percentage of their wages simply on putting a roof over their head.

Pre-Covid, the most common reason for people turning up homeless to their local council was eviction from a private tenancy. That figure is still at 74% nationally. In the longer term, we must reverse this decline and provide significantly more social, not affordable, housing. Just 6,000 homes for rent were built last year.

Local authorities, with government help from the Everyone In initiative, have taken 15,000 homeless people off the streets, but there is not the appropriate accommodation to house them permanently. Adding to this number by enabling further evictions will exacerbate an already difficult and unsustainable situation. Councils are using hotels and hostels, which is a temporary solution. In the last financial year, councils' net expenditure on temporary accommodation was £140 million over budget. It is crucial that we prevent by whatever means possible any further homelessness.

To reduce evictions from the private sector, the Government should urgently bring forward their proposal to end Section 21 no-fault evictions and commit to maintaining the local housing allowance at the 30th percentile in the longer term. They should provide assurances to councils about the continuation of the much-needed discretionary housing payments for at least the next financial year and, finally, address the £2 billion local authority funding gap.

1.52 pm

Baroness Wilcox of Newport (Lab) [V]: My Lords, I wish the House to understand the view of the Welsh Government on the importance of housing and the private rented sector. It is a humane and supportive way of dealing with the fundamental issue of people having a decent home.

In February, the Welsh Government introduced an amendment to their housing Bill. The aim of the Bill was to improve security of tenure for those who rent

their home in Wales. Although its provisions will apply to all landlords, its greatest impact will be felt in the private rented sector. Increased security of tenure would be achieved by amending the Renting Homes (Wales) Act 2016 to extend the minimum notice period for a notice given under Section 173 from two to six months, and to restrict the issuing of such a notice until six months after the occupation date of the contract, currently set at four months. The net effect of these changes would be to double the length of time before a landlord could seek possession at the beginning of a contract from six months to one year.

The Minister for Housing and Local Government in the Senedd said that she was committed to ensuring that the Government continue to protect renters, while at the same time mitigating impacts on landlords and protecting communities from the harmful effects of anti-social behaviour. Where rent arrears have accumulated due to Covid-19, private rented sector tenants will be able to apply for a loan through the tenancy saver loan scheme, which opens at the end of this month and will provide £1.4 million to manage debt problems. Looking beyond the pandemic, the Welsh Government will continue with their Bill to amend the Act to increase the security of tenure, meaning that security of tenure in Wales will be greater than elsewhere in the UK.

This ground-breaking legislation sends out a very clear message—a secure home is essential and forms the basis of a decent society. The regret Motion in the name of my noble friend Lord Ponsonby follows that sense of decency in trying to protect tenants in England from eviction. I urge this Government to look at what we are doing in Wales to support people, particularly in these most difficult of times.

1.54 pm

Baroness Sanderson of Welton (Con): My Lords, although it was right to impose a ban on evictions as we worked to understand the effects of coronavirus, it was not without consequence, particularly for victims of domestic abuse. For months, victims have been trapped in their homes with their perpetrator, living in daily fear of abuse because landlords have not been able to end tenancy agreements. This situation cannot continue. If we do not redeem evictions, we will prolong people's suffering and let victims down. I know how seriously Members across the House take the issue of domestic abuse, so I am sure that this is something that none of us would want.

1.55 pm

The Earl of Lytton (CB) [V]: My Lords, my involvement in the private rented sector is parliamentary, personal and professional. I saw the freeze on evictions as a necessary but blunt instrument due to the prevailing immediacy of circumstances and for good order, given judicial incapacity. Landlords and tenants, lenders and borrowers, the honest and the less so, and many pre-existing or unrelated issues were swept up in this. However, coronavirus cannot go on being cited for all ills.

I might have supported the Motion to Regret and the Motion for an humble Address to annul the rules had it been possible to distinguish a genuine balance of Covid-related hardship from more opportunistic

practices, or indeed from unrelated pre-Covid matters. I could have done so had it been clear, on fair assessment, that the balance of hardship was invariably in favour of protecting renters and maintaining the freeze. However, I am not convinced. I note that over 60% of private rented sector landlords are owners of but one rented property. Perhaps the owner wanting to reoccupy their sole rented home, the pensioner, possibly in care and reliant on the rental income from their former home, and the buy-to-let borrower also need fair treatment or we risk serious consequences. The sector needs protection from poor tenants and poor landlords alike.

Covid ultimately affects our entire existence and economy, and we have to get back to normal somehow or other. I accept that the Government might offer financial assistance, which would ease the issue, and I would support that, but I feel that it is probably out of scope and I certainly do not believe that it is a cure-all.

Rocks and hard places apart, matters cannot just drift. The eviction freeze comes with moral hazards and abuses, and must revert to case-by-case assessment of the individual circumstances, so that landlords and tenants are subject to independent adjudication. Therefore, although the Government need to demonstrate an approach to the lacuna referred to by the noble Baroness, Lady Greender, I follow the reasoning and conclusions of the noble Lord, Lord Taylor.

1.57 pm

Baroness Chakrabarti (Lab) [V]: My Lords, I believe that the right to shelter is just that—a fundamental human right. Incidentally, in the light of recent remarks, I also think that that right comes even before someone's right to buy to let. That said, I understand the property right, but the crucial thing here is that in a pandemic, of all times, we do not need people to be rendered homeless, whatever the reasons for that homelessness. Therefore, it is my belief that the Government should enact emergency legislation after this debate to ensure that no one is homeless during the pandemic. How will it be possible to enforce further local or national lockdowns, or to deal with this catastrophic crisis of social mixing, before there is a vaccine if we cannot guarantee that everyone has basic shelter and that no one is homeless?

At the moment I am minded to support the regret Motion rather than the fatal one, and not just because of constitutional conventions, significant though they must be in the context of an unelected House. Can the noble Baroness, Lady Greender, explain in a little more detail in her summing up the legal effect of annulling retrospectively Civil Procedure Rules that have granted eviction protection for the past month? It is a concern about throwing that last month's protection and legal certainty into doubt that gives me real pause for thought about the fatal Motion.

Therefore, as I said, at the moment I am minded to support the regret Motion, but not just as a debating point. Your Lordships' House is not the Oxford Union or Cambridge Union; it needs to have more teeth than that. I am not a great fan of this Government but the noble Lord, Lord Taylor, is a fantastic representative of them and a distinguished Member of this House. However, this is not just about adjudicating fairness between landlord and tenant. If we are to be fair to

both, there is no problem with the Government stepping behind landlords and tenants, and providing the finances to make sure that no one need lose out or become homeless in this crisis. That can be done with emergency legislation to ensure a basic income, including the rent payments that people need and, where necessary, emergency social housing.

2 pm

Lord Greaves (LD): My Lords, I have nothing to add on the substantive issues to the excellent speech made by my noble friend Lady Greender. I just want to say one or two things on affirmative Motions. I have been a Member of this House for 20 years. During that time, there have been a handful of occasions when the Conservatives have moved or supported fatal Motions on affirmative instruments. Their view seems to change according to whether they are in government or not.

Whenever there has been an investigation into the powers of the Lords on affirmative instruments—there have been two major investigations in that time—on each occasion, the conclusion was that the Lords have the power and ought to keep it but it ought to be used extremely sparingly. Therefore, it is wrong to say, as the noble Lord, Lord Taylor, said, that this was contrary to the practices and conventions of this House. Rather, it would be contrary to the practices and conventions for such powers to be proposed and used frequently.

There are some occasions when fatal Motions are justified. One is when there is a very unusual situation and the Government have got themselves in a mess over what they are doing procedurally. That is the case at the moment, when all the statutory instruments that we are getting are not being dealt with properly, so we are in an exceptional situation. Another occasion when they are justified is when the fatality is technical. If this were to be voted down today, it would be a fatal Motion but not in practice. For example, 20 years ago, the House rejected a statutory instrument on GLA elections, but that did not stop those elections because it was possible for the Government of the day to turn around and sort it out.

Why have affirmative instruments in the first place? If we can never vote them down, there is no point in having them. The fact that we can, and occasionally do, vote them down actually gives all affirmative instruments a great deal more importance and means that the Government have to pay attention to them, so we should vote for this Motion.

2.03 pm

Baroness Altmann (Con): My Lords, the Government are absolutely right not to continue the blanket ban on repossessions. After six months, when many landlords have struggled without any government help, with tenants who have already not been paying rent since before lockdown or who are damaging the property and behaving violently, is it really right effectively to force landlords to continue to provide free social housing even to problem tenants, costing private individuals thousands of pounds? These are not rich tycoons: just under half rent out only one property. Many are pensioners relying on rent for their retirement security. A balance must be struck between protecting tenants affected by Covid and enabling a property owner to

[BARONESS ALTMANN]

recover their losses—or, indeed, to move into their own property on return from military service or working abroad when they would otherwise be legally barred from doing so.

The Motion of the noble Baroness, Lady Grender, to annul this statutory instrument, as my noble friend Lord Taylor of Holbeach explained, would be against the conventions of our House. It would also cause chaos around the country and would damage the availability of private rented accommodation, which will be needed so much in future. There are protections for tenants, and the prioritisation of the courts will focus on anti-social or violent tenants, squatters, fraudsters and those with arrears that already go back more than one year. Homelessness is a dreadful problem; the Government must get to grips with it. I support the calls from around the House for emergency funding to support landlords and tenants where they face such problems in the current emergency. However, this blanket ban on repossessions does not seem like natural justice.

2.05 pm

Baroness Greengross (CB) [V]: My Lords, earlier this year, research by Age UK found that there were 750,000 private renters over the age of 60 in the UK. Older renters are often forgotten, and many live in constant fear of being evicted. This happened even before the pandemic. Some 28% of those who have been shielding during the pandemic usually work; half of these people are over the age of 50. That is why I, along with a cross-party group of 46 other Members of this House, recently wrote to the Chancellor asking him to give those who need it most job security and a decent income while the risks of Covid remain high. As the coronavirus job retention scheme or furloughs come to an end, there is a risk that many of these people will end up in rent arrears and face eviction.

One in five people aged between 50 and 64 are carers, as research from the Centre for Ageing Better in August last year showed. Many of these carers are forced to reduce their working hours and their income to care for loved ones, as we know. ONS figures from April this year found that 17% of employed carers had to reduce their working hours during the pandemic, while Alzheimer's Society figures from 2019 showed that 112,000 people have left employment to care for family members who have dementia. Dementia Carers Count found that 36% of family carers provide care in excess of 100 hours a week.

The broken social care system means that carers' incomes have been reduced during the pandemic; they are at greater risk of falling into rent arrears and now could also face eviction. A 2018 survey conducted by Mind found that one in four people said that having an unstable tenancy had impacted negatively on their mental health. A 2017 study by the Association of Mental Health Providers found that people with mental health problems were more likely to be evicted for either financial reasons or disproportionate anti-social behaviour. The same study found that people who are evicted tend to have worse physical and mental health than the average person. Moreover, the process of eviction itself can have profound psychological

consequences and is associated with increased suicide risk. Do the Government have any plans to help these varied—

Viscount Younger of Leckie (Con): I am sorry to interrupt the noble Baroness. Could she conclude her remarks?

Baroness Greengross [V]: Yes, I have concluded.

The Deputy Speaker (Lord Brougham and Vaux) (Con): I remind noble Lords that the time limit is two minutes.

2.08 pm

Baroness Sherlock (Lab) [V]: My Lords, many people risk eviction because the pandemic means that they cannot afford to pay their rent. The Resolution Foundation found that 32% of private renters of working age have seen their earnings hit, and one in eight private renters have fallen behind in their rent since the pandemic started, with figures much higher for benefit recipients.

Renters who have claimed benefits during the pandemic are almost three times as likely to be struggling with housing costs. Many are shocked to find that benefits do not cover their rent. After years of freezes, the Chancellor announced that a local housing allowance will cover “at least 30%” of market rents in your area, but for many people, that is not true. The Commons Library brief says that

“the caps still bite at a lower level than the 30th percentile for half of the local housing association rates in central and inner London.”

Meanwhile, the number of households hit by the benefit cap increased by 93% in the quarter to May, driven by a 600% increase in the number of universal credit households being capped due to the pandemic. So much of this is driven by high housing costs. Ministers always say that you can beat the cap by getting a job—but what jobs?

Ministers have given some extra funding, and that is good, but it is clearly not enough. Labour has called for Ministers to act, asking them not to ditch the furlough scheme but to adapt it; to extend the universal credit top-up of £20 a week to legacy benefits; to suspend the benefit cap; to remove the two-child limit; and to end the five-week wait for universal credit, which is a massive driver of housing arrears.

I support the Motion of my noble friend Lord Ponsonby. Only this week, my church told me that homeless people are now being seen back on the streets of Durham. If Ministers do not address the underlying financial problems facing so many people in this pandemic, I am afraid that we will see a lot more people losing their homes before it is over. I urge the Government to act.

2.10 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, I declare my interests as stated in the register and fully support the way that, during the Covid crisis, the Government have tried to allay the fears of those tenants in cases where there is a danger of them being oppressed or evicted by bad landlords or unavoidable economic or social hardship.

However, we should reflect that the size of the private rental sector has grown dramatically in recent years. Nearly 25% of the UK population is now housed in the private sector—an increase, over 10 years, of over 60%. In the vast amount of cases, the relationship between landlords and tenants works well and to the satisfaction of both parties. In a small percentage of cases, it does not. This might be because of dissatisfaction felt by one party about the other over some of the arrangements between them or the quality of the agreement between them. However, in only a few cases—proportionally—is the behaviour sufficiently bad to require action by either of them. This may be the anti-social behaviour of a tenant or a long-term failure to pay rent without excuse, or it may be the threatening behaviour of a landlord or a precipitant notice to quit. However, in some cases, the only solution for a landlord may be to commence eviction proceedings.

The Government recognise that, in the present crisis, some tenants will be under especial pressure—both economic and social—and have therefore introduced changes to give breathing space before evictions can be effected. This is sensible but, surely, we must also consider the effects on many landlords, who are also under enormous pressure and who may well be exemplary in their treatment of their tenants. They also have bills to pay and responsibilities to maintain their properties. If they are without rents or cannot regain possession of properties where bad tenants are currently situated, what are they to do?

I ask my noble friend to do his best to ensure that there is a level playing field and that, in seeking to help tenants—which I am sure is right—he also looks to ensure that the consequent burden put on landlords is alleviated by more positive and balanced government assistance.

2.13 pm

Baroness Kennedy of Cradley (Non-Afl): My Lords, I declare an interest as the director of Generation Rent. I thank the noble Baroness, Lady Grender, and the noble Lord, Lord Ponsonby, for tabling these Motions, both of which I support. Because of the pandemic, rent debt is piling up for thousands of renters. Yes, the Government have given welcome support, but the scale of the rent-debt crisis means that much more is needed. Rent arrears have doubled, and that is before the end of the furlough scheme. However, when the Government were asked what estimates they have made of the number of private renters in arrears as a result of the pandemic, they were unable to answer. Therefore, I ask the noble Earl to answer that question today.

In addition, will he agree to review why the Government do not collect data on the number of Section 1 notices served or how often different grounds for eviction are used, especially as Sections 21 and 8—ground 8—are mandatory grounds for eviction, over which judges need to be given discretion? Without this, the information on Covid-19 that the Government have asked to be supplied cannot be used to good effect. The lack of government data on private renters as regards evictions has led to gaps in support, such as the issue raised today by the noble Baroness, Lady Grender.

Yes, the Government have given a six-month notice period, but it applies only to renters giving notice from 29 August. If you were handed a notice before this date, the six-month extension does not apply. If reactivated, your eviction will progress. Therefore, will the noble Earl agree to review and remedy this gap in support?

In conclusion, the situation for many renters is as follows: if they have little or no income, or not enough benefits to cover their rent, what are they to do? The rent just cannot be paid. If you are then asked to leave your property by your landlord but have accumulated rent debt, how do you move on? How do you get a deposit for a new home? How do you find a landlord who will take you on? Unless the Government step in with additional legislative and financial support, which will help renters and landlords alike, homelessness is the only option for many renters with rent debt and eviction notices. I urge the Government to act.

The Deputy Speaker (Lord Brougham and Vaux) (Con): The noble Lord, Lord Singh, is not with us, so I call the noble Baroness, Lady Bennett of Manor Castle. Are you there? I call the noble Lord, Lord Whitty. Please unmute.

2.16 pm

Lord Whitty (Lab) [V]: My Lords, I support my noble friend Lord Ponsonby's proposal that the court should have discretion to consider all the circumstances in relation to eviction orders in this terrible time. I also support the creation of an effective landlord-tenant mediation service and the kind of emergency funding that people have referred to in this debate.

The Government were clearly right to impose an evictions moratorium and to extend it. However, we now have the worst of all worlds, with the combination of the lifting of that moratorium and a tightening of general restrictions, the ending of the furlough scheme and an increase in business closures, all of which will mean more lost jobs and precarious incomes.

We are faced with tens of thousands of evictions of renters in the pipeline, a large proportion of whom have never previously been in rent arrears or engaged in anti-social behaviour. Many will inevitably swell the ranks of the unemployed. Therefore, my noble friend Lord Ponsonby's Motion is the one to support here, but there are also, of course, longer-term and fundamental issues. The structure of social security under universal credit—and the interplay between the various elements—is clearly not fit for purpose in this context.

On the housing market, I note that the absence of more secure alternatives to private renting has meant a massively increased reliance on that sector, enhanced by the tax advantages of buy to let, which has created a range of amateur landlords who cannot afford or do not know how to take account of their tenants' precarious incomes. Other countries with a high dependence on private renting have stronger legal protection and significant institutional elements in the market. Like the noble Baroness, Lady Thornhill, and others, I am in favour of a big increase in council housing, but the objective should also be to professionalise and institutionalise the private rental market.

The Deputy Speaker (Lord Brougham and Vaux) (Con): Let us try the noble Baroness, Lady Bennett of Manor Castle, again. No? I call the noble Baroness, Lady Eaton.

2.18 pm

Baroness Eaton (Con) [V]: I declare my interests as recorded in the register. I wish to oppose the two Motions—in the names of the noble Baroness, Lady Grender, and the noble Lord, Lord Ponsonby—before us today. From 21 September, courts can start to hear possession proceedings again. Since March, no landlord has had access to the courts to regain possession, even in cases where tenants have broken the law.

The effect of the Motion of the noble Baroness, Lady Grender, will be to reverse the ability of the courts to start hearing these cases. Surely, it is right that landlords can take action against tenants whose anti-social behaviour is causing misery to them and others, as well as those carrying out acts of domestic violence. Surely, it is also right that they are able to address situations where tenants have large arrears incurred before lockdown and in no way connected with the Covid-19 pandemic.

I know that all landlords have concern—rightly—for tenants badly affected by Covid-19. The Government's rules provide a good balance between the rights and needs of the landlord and the needs of the tenants.

The Deputy Speaker (Lord Brougham and Vaux) (Con): Let us try the noble Baroness, Lady Bennett of Manor Castle, again. No? I call the noble Baroness, Lady Watkins of Tavistock.

2.20 pm

Baroness Watkins of Tavistock (CB): My Lords, I declare my interest as outlined in the register. I really appreciate the need to balance the rights of landlords and those of tenants, and realise that the Government have put policies in place with an overarching aim to do so during the Covid-19 crisis. However, the recent increase in the rate of Covid infections has led to further sanctions to prevent transmission, as outlined by the Prime Minister and leaders of the devolved nations yesterday. This is not the time to accelerate the eviction of people in arrears associated with the financial challenges they may have experienced due to job losses or salary reduction over the last six months, or, as so ably put by my noble friend Lady Greengross, because they have mental health problems or caring responsibilities.

Generation Rent estimates that there are 55,000 renters at risk of eviction. I ask the Minister this: do the Government have an estimate of the numbers of these households that contain children of school age? Any such children would be disproportionately affected in their studies through eviction at this time. Can the Government do something further to protect such families from eviction for the next six months?

Some landlords wish to sell properties because of the current high values of homes and the reduction in stamp duty. Could Her Majesty's Government consider novel approaches to reduce evictions during the ongoing Covid challenge and secure tenancies by, for example, a stamp duty holiday for the purchasers of properties

where a landlord delays sale until after March 2021, or by offering interest-free loans to landlords until debts can be resolved?

Crisis is calling for three actions from the Government to protect renters who are facing homelessness: immediately introducing emergency legislation to give judges discretion to prevent evictions where tenants have accrued rent arrears because of Covid-19; providing financial support to help tenants pay back debts in order to remain in their current homes; and amending the benefit cap to add protection for people threatened by homelessness. Can the Minister inform the House whether the Government are actively considering the suggestions from Crisis at this time?

2.22 pm

Baroness Jones of Moulsecoomb (GP): My Lords, first I would like to congratulate the noble Baroness, Lady Grender, on her expert and compassionate opening remarks.

Being a sympathetic person, I see that the Government have faced an unprecedented challenge in the last few months. It would be a challenge for any Government, let alone a team newly in place, but it has not helped the Government that that team, and of course the Prime Minister, are arrogant and boastful, persistently making comments, claims and statements that bear absolutely no relation to the truth. It must be hard for a Conservative Government to spend so much public money so fast, albeit that a considerable amount was misspent.

I understand that the Government are trying to get back to normal, but I would argue that restarting evictions and allowing more people—families—to be pushed out on to the streets is not the answer. Everyone has the right to a home. It is plain cruel that, during a pandemic and a massive economic downturn, people are being forced out of their homes. The short extensions to the ban have done nothing to alleviate fears of renters up and down the country. We are now once again on the precipice of a homelessness crisis, which will not only bring misery to many but will hinder any effort to tackle Covid-19. We have to do whatever it takes to protect people during this pandemic, and that means a permanent ban on evictions for the duration of the crisis.

Of course, as with most crises, it is the poor and vulnerable who suffer most. It is within the Government's power to ensure that nobody is left without the basic human right of a roof over their head. The Green Party and I have urged the Government to extend the ban on evictions.

I would like to answer the noble Lord, Lord Taylor of Holbeach, for whom I have a huge amount of respect normally. He suggested that we were going to break with convention, but when we have a Government who break the law, what price convention?

2.24 pm

The Earl of Shrewsbury (Con): My Lords, I have in the past been a residential landlord and I am currently a residential tenant, so I am aware of the difficulties that can be faced by both entities. I am fully aware of

the very serious hardships experienced by both tenants and landlords alike from the current pandemic. However, in the property rental world there has always been a minority of bad tenants—those who cause misery for other tenants and neighbours through anti-social behaviour or for other reasons—and landlords need to address situations where a small minority of tenants are regularly in arrears. There are bound to be instances of arrears which go back way before Covid. While I have every sympathy with those who have suffered financial difficulties as a consequence of Covid, I have little sympathy with the other group.

It is plainly wrong to regard landlords as being wealthy individuals and businesses that can afford to take a hit from rent arrears. The majority of landlords have only one property, and a considerable number purchased a property with their pension fund and have the rent as their sole form of income. To evict a tenant for whatever reason is a slow, arduous and expensive exercise in itself, notwithstanding the considerable loss of rent.

I have no time to comment further, but suffice to say I strongly support the Government in their views on the rules before us today.

2.26 pm

Baroness Uddin (Non-Aff) [V]: My Lords, it is incumbent upon a civilised society not to ignore the dreadful impact of the inevitable consequences of these proposed evictions. I add my support to the noble Baroness, Lady Grender, and my noble friend Lord Ponsonby, with whom I am in total agreement in what they have said before the House.

While I accept that landlords must be protected from any intentional or criminal negligence caused by a small number of tenants, that problem is nowhere near the punitive impact of these measures on the majority of vulnerable families, with inevitable consequences that will place the burden on a local authority that is already well stretched. Measures to protect tenants must be in the forefront of our strategies and actions. The Government must consider writing off the debts of those who cannot afford to meet their financial obligations as a result of Covid-related job losses and not having access to other government support.

We have so many experts on housing solutions in this very House—the noble Lords, Lord Bird, Lord Kennedy of Southwark, Lord Young and Lord Kerslake—as well as the advice of Shelter and other notable NGOs. In addition to stopping the section 21 eviction notice, will the Government consider bringing together an expert group of Members and external advisers, alongside Ministers and civil servants, to consider how to create urgent housing solutions to meet the needs of homeless families, and particularly to avoid overcrowding and prevent the dangerous explosion of Covid-19?

2.28 pm

Lord Woolf (CB) [V]: My Lords, this is not an area that I normally get involved in in this House. However, having read the papers which were available to me, I realised that there is a deep problem here. Sometimes it does not help to rush in with a solution that just

involves depriving one set of people of all rights, as has been indicated by previous speakers. For that reason, and having looked at the statutory provisions, I would support the noble Lord, Lord Ponsonby, but only go that far.

The Deputy Speaker (Lord Brougham and Vaux) (Con): The noble Baroness, Lady Bennett of Manor Castle, is with us.

2.29 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I apologise for my wi-fi glitch and thank the House for allowing me back in.

It would have been my pleasure to follow the noble Baroness, Lady Kennedy of Cradley, and I share her concerns, particularly about discretion for judges. Today's debate is about emergency evictions, and my noble friend Lady Jones of Moulsecoomb has addressed the details of that. I am going to look at the broader picture.

We have a profoundly insecure housing model. As in so many other areas, Covid-19 has only exposed pre-existing weaknesses in our society. Houses have been treated primarily as financial assets rather than secure, genuinely affordable places for people to live. Just as in the UK in the depths of the Second World War, there was deep, effective planning for the NHS and the welfare state, we need to be thinking now about a different housing policy future.

In 1979, heading on for half the British population lived in council housing; they were secure. Then right to buy arrived. Now, nearly half the homes purchased under that and not replaced are owned by private landlords, massively subsidised by housing benefit and tax breaks. Money that might have gone into productive economic investments has gone instead into lifting prices. In private rental accommodation of 4.6 million households, one in 10 of which are insecure in the age of Covid, a significant number of tenants are over 50, as the noble Baroness, Lady Greengross, noted.

Insecurity is not the only problem; we know there is a huge problem with quality—draughty, cold, badly maintained housing stock. That poor quality sadly extends to homes being sold now to people who are stretching every financial sinew, with prices supported by Help to Buy, also known as “help to profit” for a few large corporations. In 2019, the National Audit Office noted that many buyers would immediately lurch into negative equity—something now of even greater concern.

It is tempting to think now that we should just patch the worst problems, but we also need to see the Government putting serious work into a different housing model.

2.31 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I thank my noble friend Lady Grender for bringing this Motion to Annul, and I also thank the noble Lord, Lord Ponsonby, for his Motion to Regret. However, my noble friend is right that the Motion to Regret will achieve no practical result, so the only way to protect

[LORD MARKS OF HENLEY-ON-THAMES]
the 50,000-odd households faced with eviction notices served between March and August is to annul this SI. It is important to note that the Motion would not protect tenants guilty of anti-social behaviour or domestic violence, as the noble Baroness, Lady Eaton, suggested.

I know my noble friend has thought carefully about this fatal Motion, but, although this step is serious, it does no more than annul this change in the Civil Procedure Rules, which can be changed again to produce a just and humane result. My noble friend put it into context. The Government promised in April 2019 to legislate to end Section 21 no-fault evictions—a promise they have not yet kept. But these are not just no-fault evictions, they are also no-discretion evictions. After an assured shorthold tenancy ends, a court “shall” make an order for possession when the notice period expires.

On 28 August, the compulsory notice period was extended by SI to six months for notices served from 29 August. That was a humane measure to protect renters from eviction during the pandemic. However, by this SI, tenants served with eviction notices between March and August have no protection. From this last Monday, they can be evicted without six months’ notice. They get no genuine protection from the new practice direction 55C. That requires only that the landlord provides information about the effect of the pandemic on tenants and dependants—in a reactivation notice in stayed claims, or under a protocol in new claims. Crucially, however, as the noble Lord, Lord Best, and many others have pointed out, the rules give no discretion, whatever the hardship and unfairness, for a judge to withhold a possession order provided only that the landlord has provided the required information.

We have heard of the likely practical effects of these short-notice evictions: untold hardship for tenants and their families hit by the pandemic, as the right reverend Prelate the Bishop of Gloucester said; pressure on local authorities unable to rehouse evicted tenants, described by my noble friend Lady Thornhill; increased homelessness and poverty; exposure of those newly homeless and their families to greater risk of coronavirus. Turning to the numbers, I am convinced by the evidence that the figure at risk is about 55,000 households, but the point is also one of principle. Each affected household is unfairly the victim of an anomaly that causes hardship and injustice.

Nothing in the all-Peers letter from Alex Chalk MP meets any of these points. The Government have been misguided in leaving these tenants without the protection of six months’ notice. If they will not back down, this House should exercise its undoubted power, of which my noble friend Lord Greaves spoke, to annul this unjust SI.

2.35 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first, I draw the attention of the House to my relevant interest as a vice-president of the Local Government Association. It is worth making clear right at the start: there is no blanket ban. There is nothing here suggesting that people who commit anti-social behaviour, domestic violence or other illegal activity cannot be evicted

today—absolutely nothing. It is important to recognise that this SI is about no-fault evictions: you have decent, hard-working people whose only crime is the fact that they have not been able to work since March in the entertainment industry or the hospitality industry and they do not have the money to pay their rent. I want judges to have discretion to consider the impact of Covid-19 on renters and/or their dependants.

I have several questions for the noble Earl. Some points have been raised across the House, but I am sure that, in the time he has, the noble Earl cannot answer all the points put to him, so I should like a commitment from him to write to me and other noble Lords on the points raised.

The first is on lockdowns. If lockdown conditions are resumed for England and Wales, will the evictions ban be put back in place? As regards local lockdowns, will the noble Earl confirm that bailiffs will not be able to perform evictions where there are restrictions on members of other households entering your home?

The second is on benefits. It is a fact that rent payments cannot be covered by benefits, and the caps on housing benefit and local housing allowance limit the amount you can have to pay your rent. Can we temporarily lift the caps and increase benefits to cover average rents? This will immediately ensure that thousands are not up for eviction and will help landlords and tenants alike.

Thirdly, it is clear that we need to get money into the hands of renters and landlords to help rent debt and avoid homelessness. I welcome what the Government have done, but the scale of the economic shock and the effect on jobs and incomes is now huge—so, sadly, it is not enough. Renters cannot pay to landlords what they have not got. Many landlords have been accommodating, but of course, as money gets tighter, more landlords will get more anxious about their own situation and more eviction notices will be issued, leaving homelessness as the only option for renters. So does the noble Earl agree that the Government must step in to stop this increase in homelessness and introduce a system of grants and benefit increases to stop thousands of renters being made homeless?

The fourth point is on data. Will the Government commit to collecting and publishing data on Section 21 notices served, and how often different grounds of eviction are used? The fifth is on discretion for judges. Landlords and tenants have been asked to provide information on Covid-19, but the judge cannot use that information to pause or change the terms of an eviction under Section 21 or Section 8, ground 8. Can this be changed? Will the Government bring forward emergency legislation to give judges discretionary powers to take Covid-19 into account?

The final point is on discrimination. The Government’s guidance published last Thursday states:

“In some circumstances, it may be possible to prevent the eviction if you feel the landlord has discriminated against you based on who you are”.

Can the Minister confirm that it is possible to stop an eviction under Section 21 if the landlord is seeking it based on the tenant’s gender, disability or other protected characteristics?

In conclusion, as I said earlier, the noble Earl cannot give a commitment on all the issues raised here, but I hope that he can respond to us all in writing. For me, this is about decent, law-abiding people whose only crime is that they cannot pay their rent because of the pandemic.

2.39 pm

Earl Howe (Con): My Lords, I first declare my interests as set down in the register. I am grateful to all noble Lords who have taken part in this debate, in particular the noble Baroness, Lady Grender, and the noble Lord, Lord Ponsonby, whose Motions have given rise to it. Each of those Motions highlights concerns about the effect of removing tenants' protection from eviction, which was provided by the stay on possession proceedings between 27 March and 20 September this year. Each Motion expressly criticises this instrument for not going far enough to protect tenants. I hope to demonstrate to the House that this criticism is unjust.

I start by addressing the Motion of the noble Baroness, Lady Grender, which seeks to annul this instrument. Lest any noble Lord has overlooked this, I need to make it crystal clear that, even though the stay on possession proceedings has now ended, the rules set out in this instrument and the practice direction they introduce contain some vital continuing protections for tenants, which I shall explain. The effect of an annulment would be to remove those protections.

Secondly, I remind the House of the policy the Government have consistently followed in this area since the start of this pandemic, which has been to strike a balance between protecting the vulnerable and supporting the legitimate rights and interests of landlords. I will say more on that theme shortly.

Thirdly, noble Lords should appreciate that this instrument and the accompanying practice direction form part of a wider package of measures that the Government have put in place to ensure fair treatment for both tenants and landlords going forward. I will summarise those measures in a moment, but the point here is that this instrument should not be considered in isolation.

The Government took unprecedented action to ensure that renters were protected from eviction at the height of the coronavirus pandemic, including agreeing with the courts to use powers in relation to court procedure to stay possession proceedings for a total of six months until 20 September—but that stay could only ever be temporary. The civil justice system and the rules that underpin it must be accessible, fair and efficient for tenants and landlords alike.

In what way does this instrument provide protection for tenants? Through these new rules, we have sought to make sure that where possession cases come to court, the resumption of such cases is carefully managed—first, to ensure that the courts are not overwhelmed; and secondly, to enable them to make decisions so that the most vulnerable can get the help and support they need, and in particular that tenants have access to legal advice and support.

For any possession proceedings up to 28 March 2021, the new court rules will also require landlords to set out any relevant information about a tenant's circumstances,

including—as the noble Baroness, Lady Grender, will wish to note—information on the effect of the Covid-19 pandemic on both the tenant and their dependants when making a possession claim. This information will enable the court considering the claim to have regard to vulnerability, disability and the social security position, and to those who are shielding. This is a requirement under the relevant practice direction, which parties are under a duty to comply with. The tenant will be provided with a copy of this information and may add to or correct it.

Landlords will also be required to notify the court and their tenant where they wish to continue pursuing a possession claim that was already in the court system prior to 3 August, so giving notice that the claim is being reactivated. If such notice is not filed by 29 January 2021, the claim will be subject to an automatic stay. Where claims are based on arrears of rent, landlords must produce a full arrears history for the previous two years, and they must do this in advance of, rather than at, the hearing of the claim. In other words, landlords cannot just pick up where they left off, so to speak.

The noble Baroness, Lady Watkins of Tavistock, asked how many of the 50,000 people at risk of eviction include families with schoolchildren and whether the Government are considering Crisis's recommendations. My advice is that the Generation Rent figures she quoted are not to be relied on. Analysis published by the Government shows that 3,022 private and social landlords applied to the courts for possession between April and June, 89% lower than in the same time last year.

I mentioned support. It is important that all parties receive appropriate support, and we have worked with the judiciary to put in place new court arrangements to that end. I am grateful to the working group convened by the Master of the Rolls and chaired by Mr Justice Knowles, who have played a key role in this.

The working group contained a broad range of stakeholders and, resulting from its recommendations, the judiciary will look to prioritise cases that can be classified as the most egregious—that is to say, those involving anti-social behaviour, extreme rent arrears, domestic abuse, fraud and deception, illegal occupiers and squatters or abandonment of a property—as well as claims started before the stay commenced in March 2020. That prioritisation will provide assurance to landlords, their tenants and neighbours, especially those who are having to confront really difficult and pressing situations.

I mentioned the availability of legal advice for those facing possession proceedings. We have made adjustments to the legal aid Housing Possession Court Duty Scheme to ensure that it can be delivered remotely where necessary. We have also tendered for new contracts to fill gaps in provision, to ensure that this vital support can be accessed by those who need it, wherever they are in England and Wales.

A number of speakers referred to notice periods for tenants, and I stressed a few minutes ago that this instrument should not be looked at in isolation. We have taken decisive legislative action, through a statutory instrument laid on 28 August to require landlords to

[EARL HOWE]

provide tenants with six months' notice in all but the most serious cases. That SI amends Schedule 29 to the Coronavirus Act 2020 and came into force on 29 August, providing reassurance to responsible tenants that they will not face new court proceedings during this time.

We recognise that in some circumstances, landlords have been dealing with a difficult situation in which there is no reasonable alternative to possession proceedings. We have therefore lowered notice periods for cases involving anti-social behaviour, domestic abuse, fraud and egregious rent arrears of more than six months to enable landlords to progress those cases more quickly. This approach ensures that tenants will remain safe and have additional time to find new accommodation, while empowering landlords to take action where necessary—for example, if a tenant's anti-social behaviour is severely impacting their neighbours' quality of life.

The noble Baroness, Lady Grender, asked whether we might explore ways to apply longer notice periods for those who were served notice before 29 August. As she will recognise, the difficulty here is that of applying retrospection to existing law and thereby undermining the certainty that the law should provide to all parties. In practice, those who received notice before 29 August were protected from eviction by the suspension of possession hearings until 20 September, as well as by the prioritisation of cases in the courts and the new requirements placed on landlords to which I have referred.

The noble Baroness referred to Section 21 of the Housing Act 1988, which permits no-fault evictions. I therefore add that the Government remain committed to bringing forward legislation to abolish Section 21 in due course. That does not mean ignoring landlords' legitimate interests. Any such legislation must balance greater security of tenure with an assurance that landlords are able to recover their properties where they have valid reasons to do so.

A number of noble Lords expressed concerns about forced evictions. We are taking steps to ensure that no enforcement of evictions will take place in areas where local lockdown measures are in force that restrict access to premises. Guidance has been issued to bailiffs to ensure that no enforcement of possession orders will proceed where local lockdown regulations restrict gatherings in residential properties to protect public health. I will write to noble Lords with further details about that.

One or two speakers, including my noble friend Lady Altmann, the noble Baroness, Lady Wilcox, and the noble Lord, Lord Kennedy, referred to the need to provide tenants with enhanced financial support. In addition to the measures I have mentioned, I remind noble Lords that the Government have already put in place a major package of financial support to help communities through the pandemic. There is the Coronavirus Job Retention Scheme, which has provided support for businesses to pay staff salaries. We have also strengthened the welfare safety net with a nearly £9.3 billion boost to the welfare system. That includes an extra £1 billion to increase local housing allowance rates so that they cover the lowest 30% of market rents, meaning we now have a £25 billion budget to help people with rent payments in the private and

social rented sectors. For renters who require additional support, there is an existing £180 million of government funding for discretionary housing payments made available this year. That is an increase of £40 million from last year for local councils to distribute to support renters with housing costs.

We need to look at all these measures in the round. Taken together, they strongly encourage landlords and tenants to sustain tenancies as far as possible and to discuss their situation before seeking possession and bringing a claim to court. Where cases end up in court, these measures ensure that court time can be used effectively, that the most egregious cases can be dealt with as a priority and that court users, both tenants and landlords, have the additional support they need. Comprehensive new guidance for landlords and tenants to explain all these new arrangements and how they impact on the court possessions process has also been published.

I will write to those noble Lords whose questions I have not covered in the time available, but please understand that things never stand still. The Government are clear that all measures to protect renters over this period will be kept under constant review in the light of the evidence on public health. I therefore say to the House that this instrument should be supported as a vital element in the safeguards that we are providing to parties and to manage cases sensibly in the courts. For those reasons, it most certainly should not be annulled; nor, I submit, should it be viewed as a matter for regret. I therefore do very much hope that the noble Baroness, Lady Grender, and the noble Lord, Lord Ponsonby, will feel able to withdraw their respective Motions.

Baroness Grender (LD): My Lords, I feel compelled to repeat one paragraph from my opening speech because it seems that it was not heard originally. I apologise if it lacked clarity. If we vote against this statutory instrument, will landlords still be able to take action regarding more serious eviction cases? Yes, because of the statutory instrument that was tabled in August, which is not the one the House is voting on today. I want to make sure that noble Lords are absolutely clear that egregious cases, domestic violence, long-term arrears, et cetera are included in the statutory instrument that was tabled in August.

It is therefore possible to vote to annul this instrument. It will not freeze or stop the egregious cases. If, as the Minister said, I am talking about so few cases—I do not agree with him; I think that the loophole is larger—then why not do it? What is the harm in ensuring that there is a longer notice period for people who were served notice between March and August? This is not for the egregious cases, just for the no-fault evictions under Section 21 with no explanation, because judges still have no discretion whatever.

I completely understand that it is difficult and messy to do this retrospectively. However, if this instrument falls, it would be up to the Government to come back. This House has done the job that the Commons failed to do: ask the Government to think again. This is about a very small but incredibly important factor; I believe that it is 55,000. The Minister has alternative figures, which I disputed in my opening speech.

Fourteen years ago, the Joint Commission on Conventions met. When summing up, the noble Lord, Lord Cunningham of Felling—Jack Cunningham—from the Labour Benches said:

“It is not incompatible with a revising Chamber to reject” a statutory instrument. I agree, and have thought long and hard about this since I put down this humble Address at the beginning of the summer. The Government tabled this statutory instrument with no 21-sitting-day period for it to be considered. That consideration did not happen. The Commons did not do its job, so it is up to this House to do the job for it. For that reason, the fatal Motion should go ahead. I therefore wish to test the opinion of the House.

2.55 pm

Division conducted remotely on Baroness Grender’s Motion
Contents 126; Not-Contents 266.

Motion disagreed.

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Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020

Motion to Regret

3.08 pm

Moved by Lord Ponsonby of Shulbrede

To move that the House regrets that the Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020 will not continue to protect tenants from eviction, and calls on Her Majesty's Government to amend the Housing Act 1998 to give courts temporary discretion on evictions, including on evictions arising from rent arrears (SI 2020/751).

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee

Lord Ponsonby of Shulbrede (Lab): My Lords, when the noble Earl gave his speech just now, he urged us to look at matters in the round. We are looking at matters in the round. We are not saying there should be an indefinite ban on evictions, but that the Government should honour their original promise that there should be no evictions as a result of coronavirus.

There have been a number of very knowledgeable contributions to today's debate, but the one from my noble friend Lord Whitty is worth emphasising. His point was that there are potentially tens of thousands of evictions in the pipeline. The Government's response, which we have heard today, is too little, too late. Perhaps this accounts for the huge discrepancy between the figures we heard from Generation Rent and those the noble Earl gave us today on what is actually within the court system. It is the pipeline of potential evictions that we are most concerned about.

I urge Members to support the Opposition's regret Motion. As I said in my opening remarks, a regret Motion is the best way of dealing with this matter as it keeps the central problem at the heart of the debate, rather than the constitutional issues which would be raised by taking an alternative route.

3.10 pm

Division conducted remotely on Lord Ponsonby of Shulbrede's Motion

Contents 268; Not-Contents 237.

Motion agreed.

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3.23 pm

Sitting suspended.

Covid-19 *Statement*

The following Statement was made on Tuesday 22 September in the House of Commons.

“Mr Speaker, with your permission, I will make a Statement on our response to the rising number of coronavirus cases and how we must act now to avoid still graver consequences later on.

At every stage in this pandemic, we have struck a delicate balance between saving lives by protecting our NHS and minimising the wider impact of our restrictions. It is because of the common sense and fortitude of the British people that, earlier this year, we were able to avert an even worse catastrophe, forming a human shield around our NHS and then getting our country moving again by reopening key sectors of our economy and returning children to school. But we always knew that, while we might have driven the virus into retreat, the prospect of a second wave was real. I am sorry to say that, as in Spain, France and many other countries, we have reached a perilous turning point. A month ago, on average, around 1,000 people across the UK were testing positive for coronavirus every day. The latest figure has almost quadrupled to 3,929. Yesterday, the Chief Medical Officer and the Chief Scientific Adviser warned that the doubling rate for new cases could be between seven and 20 days, with the possibility of tens of thousands of new infections next month.

I wish I could reassure the House that the growing number of cases is merely a function of more testing, but a rising proportion of the tests themselves are yielding a positive result. I also wish I could say that more of our people now have the antibodies to keep the virus off, but the latest data suggests that fewer than 8% of us are in this position. It is true that the number of new cases is growing fastest among those aged 20 to 29, but the evidence shows that the virus is spreading to other, more vulnerable age groups, as we have seen in France and Spain, where this has led to increased hospital admissions and, sadly, more deaths. In the last fortnight, daily hospital admissions in England have more than doubled. Tens of thousands of daily infections in October would, as night follows day, lead to hundreds of daily deaths in November, and those numbers would continue to grow unless we act. As with all respiratory viruses, Covid is likely to

spread faster as autumn becomes winter. Yesterday, on the advice of the four Chief Medical Officers, the UK's Covid alert level was raised from 3 to 4—the second most serious stage—meaning that transmission is high or rising exponentially.

So this is the moment when we must act. If we can curb the number of daily infections and reduce the reproduction rate to 1, we can save lives, protect the NHS and the most vulnerable, and shelter the economy from the far sterner and more costly measures that would inevitably become necessary later on. We are acting on the principle that a stitch in time saves nine.

The Government will introduce new restrictions in England, carefully judged to achieve the maximum reduction in the R number with the minimum damage to lives and livelihoods. I stress that this is by no means a return to the full lockdown of March. We are not issuing a general instruction to stay at home. We will ensure that schools, colleges and universities stay open, because nothing is more important than the education, health and well-being of our young people. We will ensure that businesses can stay open in a Covid-compliant way. However, we must take action to suppress the disease.

First, we are once again asking office workers who can work from home to do so. In key public services and in all professions where home working is not possible, such as construction or retail, people should continue to attend their workplaces and, like Government, this House will be free to take forward its business in a Covid-secure way, which you, Mr Speaker, have pioneered.

Secondly, from Thursday, all pubs, bars and restaurants must operate a table service only, except for takeaways. Together with all hospitality venues, they must close at 10 pm and to help the police enforce this rule I am afraid that that means, alas, closing and not just calling for last orders, because simplicity is paramount. The same will apply to takeaways, although deliveries can continue thereafter. I am sorry that this will affect many businesses just getting back on their feet, but we must act to stop the virus from being transmitted in bars and restaurants.

Thirdly, we will extend the requirement to wear face coverings to include staff in retail, all users of taxis and private hire vehicles, and staff and customers in indoor hospitality, except when seated at a table to eat or drink.

Fourthly, in retail, leisure and tourism and other sectors, our Covid-secure guidelines will become legal obligations. Businesses will be fined and could be closed if they breach the rules.

Fifthly, now is the time to tighten up the rule of six. I am afraid that from Monday a maximum of 15 people will be able to attend wedding ceremonies and receptions, although up to 30 can still attend a funeral, as now. We will also have to extend the rule of six to all adult indoor team sports.

Finally, we have to acknowledge that the spread of the virus is now affecting our ability to reopen business conferences, exhibitions and large sporting events, so we will not be able to do this from 1 October. I recognise the implications for our sports clubs, which are the life and soul of our communities, and my right

honourable friends the Chancellor and the Culture Secretary are working urgently on what we can do now to support them.

These rules—these measures—will only work if people comply. There is nothing more frustrating for the vast majority who do comply—the law-abiding majority—than the sight of a few brazenly defying the rules, so these rules will be enforced by tighter penalties. We have already introduced a fine of up to £10,000 for those who fail to self-isolate, and such fines will now be applied to businesses breaking Covid rules. The penalty for failing to wear a mask or breaking the rule of six will now double to £200 for a first offence. We will provide the police and local authorities with the extra funding they need, a greater police presence on our streets, and the option to draw on military support where required to free up the police.

The measures I have announced all apply in England, and the devolved Administrations are taking similar steps. I spoke yesterday with each of the First Ministers and again today, and I thank them for their collaboration.

The health of everyone in these islands depends on our common success. Already, about 13 million people across England are living under various local restrictions over and above national measures. We will continue to act against local flare-ups, working alongside councils and strengthening measures where necessary.

I want to speak directly to those who were shielding early in the pandemic and who may be anxious about being at greater risk. Following advice from our senior clinicians, our guidance continues to be that you do not need to shield except in local lockdown areas, and we will keep this under constant review.

I must emphasise that if all our actions fail to bring the R below 1, we reserve the right to deploy greater firepower with significantly greater restrictions. I fervently want to avoid taking this step, as do the devolved Administrations, but we will be able to avoid it only if our new measures work and our behaviour changes.

We will spare no effort in developing vaccines, treatments and new forms of mass testing, but unless we palpably make progress, we should assume that the restrictions I have announced will remain in place for perhaps six months. For the time being, the virus is a fact of our lives, and I must tell the House and the country that our fight against it will continue. We will not listen to those who say, 'Let the virus rip', nor to those who urge a permanent lockdown. We are taking decisive and appropriate steps to balance saving lives with protecting jobs and livelihoods.

I know all this will have profound consequences for our constituents, so the Government will give the House every opportunity to scrutinise our decisions. In addition to regular Statements and debates, Members will be able to question the Government's scientific advisers more regularly, gain access to data about their constituencies and join daily calls with my right honourable friend the Paymaster-General.

After six months of restrictions, it would be tempting to hope that the threat has faded and to seek comfort in the belief that if you have avoided the virus so far, you are somehow immune. I have to say that it is that kind of complacency that could be our undoing. If we

[LORD PONSONBY OF SHULBREDE]

fail to act together now, we will not only place others at risk, but jeopardise our own futures with the more drastic action that we would inevitably be forced to take.

No British Government would wish to stifle our freedoms in the ways that we have found necessary this year, yet even now we can draw some comfort from the fact that schools, universities and places of worship are staying open, shops can serve their customers, construction workers can go to building sites, and the vast majority of the UK economy can continue moving forwards.

We are also better prepared for a second wave with the ventilators, the personal protective equipment, the dexamethasone, the Nightingale hospitals and a hundred times as much testing as we began this epidemic with. It now falls to each and every one of us to remember the basics: wash our hands, cover our faces, observe social distancing and follow the rules. Then we can fight back against this virus, shelter our economy from even greater damage, protect the most vulnerable in care homes and hospitals, safeguard our NHS and save many more lives. I commend this Statement to the House."

3.28 pm

Baroness Smith of Basildon (Lab): My Lords, I assume that noble Lords have read the Prime Minister's Statement, given that in our new circumstances, the noble Baroness does not repeat it. Many of us would have seen it made yesterday in the other House. It is clear that we are now at a point which the whole House would have hoped to avoid. The warnings from the Government's own advisers are very stark, so when restrictions are needed, they will have our support because we need to avoid any confusion and have clarity in communication. However, perhaps I may raise a few issues with the noble Baroness.

I turn first to testing. The Prime Minister pretty much dismissed this yesterday. The lack of a comprehensive, even world-beating, test, trace and isolate system is making the nation's efforts to tackle the virus more difficult, but yesterday the Prime Minister said:

"Testing and tracing has very little or nothing to do with the spread or the transmission of the disease."—[*Official Report*, Commons, 22/9/20; col. 822.]

Surely the point of having the world-beating system that we are waiting for is to reduce the number of people who will be infected. What is that about? I heard the Prime Minister trying to explain what he meant at Prime Minister's Questions but, despite a lot of words, I did not understand his explanation, so it is now the turn of the noble Baroness. Perhaps she could try to explain what the Prime Minister really meant. Does his comment that testing and tracing has very little or nothing to do with the spread of the disease mean that that is now the Government's view, or did the Prime Minister get it wrong and the Government are still committed to a world-beating test, trace and isolate system?

On the new restrictions, we appreciate the difficulties in getting them right. Can the noble Baroness assist your Lordships' House in understanding the rationale behind them? In many of the areas currently managing

more restrictive measures, we have not seen the fall in the number of infections anticipated or hoped for. Were those results factored into the decisions taken for the rest of the country? It would also be helpful if she could say which rules the residents of those areas are now following. Is she confident that the actions being taken now will be effective and at what point will the Government make a judgment on their effectiveness?

Also, can she advise me on two sets of circumstances on which I would like some clarity? If I decide to go out for a curry tonight and I take five other noble Lords with me, that follows the rule of six and the six of us will be able to enjoy our meal in the restaurant. However, if two of those noble Lords come back to the House for the last business, does that mean that our group of six is now four, so two other noble Lords, perhaps from the Cross Benches, can join us for dessert? Is the rule of six the rule at any one point or can the six change during the course of the evening?

I am asking my second question for a friend. If a couple I know are at home with their two kids asleep in bed upstairs, does the rule of six mean that they can have only two friends round to socialise in their home, or can four friends come round? Again, what does the rule of six mean in those circumstances? Can six people be together or do the children, asleep in their beds, count as two of the six people in the home? That is the level of clarity that the Government will have to provide, and if the noble Baroness can respond, that would be really helpful.

On the furlough scheme, the noble Baroness will be aware of how valuable it has been to viable businesses that just need to get through this period so that they can survive until better days. The Government are bringing the scheme to an end for all businesses in all circumstances at the same time. Surely we can do better than that. The noble Baroness may have heard Paul Nowak of the TUC speaking earlier on Radio 4's "Today" programme. He called for a smarter, targeted version of furlough. She may have heard him offer to work with the Government to bring employer and employee representatives together to help design a scheme that has the kind of flexibility needed to respond to struggling industries—and struggling areas—and will help companies and workers alike to get through what will clearly be a difficult time in the months ahead. That seems a wise, practical and pragmatic suggestion. Will she take it to the Prime Minister today and bring his response back to your Lordships' House?

The Prime Minister also said yesterday that schools can access the tests they need and that every child with symptoms should automatically get a test. Of course that is right, but if the system is not in place yet, when will it be, and what is the current turnaround time for schools to get the results back?

Finally, this is a terrible virus. Many are suffering from the consequences of long-term Covid infection and others have lost loved ones, while people have had their lives restricted in trying to avoid getting it. The consequences of making the wrong decisions are enormous—literally matters of life and death. We know that there is pressure on the Prime Minister from all directions on what the appropriate course of action is,

but these decisions can never be predicated on placating one group or another. We just have to do what is right. I hope that the noble Baroness can answer my questions today—I can see her riffling through her papers—but if she is unable to do so, I hope she will write to me over the next couple of days.

Lord Newby (LD): My Lords, I thank the Leader of the House for agreeing to answer questions on the Prime Minister's Statement yesterday.

The Government now face four tough challenges in combating coronavirus. The first is how to act proportionately to drive down infections and deaths while at the same time allowing as much economic and social activity as possible to continue. This is an extraordinarily difficult balancing act but, if the threat is as severe as the scientists believe, I find it surprising that the rule of six remains intact and allows, for example, individuals from six different households to meet in a restaurant, possibly for several hours, with zero social distancing. If I were a generous-hearted soul, I could invite five noble Lords for breakfast, five different ones for lunch and five different ones for supper. That sounds a lot to me. Can the noble Baroness confirm that Professor Whitty argued for stronger measures than those now being proposed? The rules also appear inconsistent. Why can 30 people attend a funeral but only 15 a wedding? That seems bizarre. Can the noble Baroness explain the science behind that decision?

The second challenge is how to identify those with the virus quickly and then isolate them from the rest of the population. Sadly, the Government's track record on test, track and trace is hopelessly inadequate. It is miles behind the system devised in Germany, where, for example, anyone entering the country by car can have a prompt test at the side of the motorway, the results of which are quickly relayed to a working app, and where localised delays in getting tests done are so rare that they become major news stories. To argue that the German success and our failures have anything to do with our attitudes towards freedom is both risible and insulting. The Government are at least trying to be clearer on those who have priority in getting a test in future. But does the noble Baroness accept that it seems illogical to exclude from the priority list ancillary staff who work in hospitals, care homes and schools? Surely a caretaker, cleaner or member of the catering staff is just as capable of spreading the virus as a doctor, care worker or teacher.

The third challenge relates to persuading the public to adhere to the rules, and the Government have this week strengthened the stick and the carrot. On the stick, the Government have proposed increased penalties, but they are no good without more effective enforcement. The Prime Minister said yesterday that the Government will provide the police and local authorities with the extra funding they need to do this. But will he really live up to his promise? Up to now, the Government have provided extra resources to local government at levels well below what they believe they need to do their Covid work effectively. Will the noble Baroness confirm that the Government will now make funds available to police forces and local authorities at a level that they, not the Government, judge to be required

to do their job properly? On carrots, the Government have announced a new £500 isolation support payment for people on low incomes who have tested positive or been told to self-isolate. What is the definition of "low income", and how quickly and by what means do they intend to get this extremely sensible initiative up and running?

The fourth challenge relates to the additional economic damage that the new restrictions will bring. The hospitality, arts and sport sectors will be particularly badly hit. We are told that the Chancellor and Business Secretary will bring forward further plans to help support those most affected. But the new restrictions bite from tomorrow. So when will the promised new business support measures be announced and take effect? Businesses have a very small cash cushion to keep them going while the Government decide what they are going to do to support them.

Finally, the Prime Minister expressed the Government's willingness to give the Commons every opportunity to scrutinise government decisions. This is a sound principle but, as the noble and learned Baroness, Lady Hale, forcefully pointed out, Parliament has effectively surrendered its scrutiny role over Covid legislation. The principal Covid Act was passed with barely any debate, and the delay in debating statutory instruments means that by the time we do discuss them they have been in operation for many weeks in most cases. So the scrutiny is, in effect, meaningless.

This deficiency, however, could easily be rectified by the Government. Will the noble Baroness assure the House that future statutory instruments such as the one coming into force tomorrow will be debated at the earliest opportunity? In the specific case of those new rules, and in light of the completion of the debate on the Agriculture Bill yesterday, can she give any reason why the House should not discuss the new statutory instrument tomorrow, in advance of it coming into effect, rather than at a later date when it will already have done so?

For the Government's measures to work, individuals across the country have got to believe that they are necessary and proportionate. The scientists can set out the objective evidence, but only the Government can decide on the response. Bringing Parliament and the nation with them will be vital in the months ahead. To achieve that, they will need less bombast and more openness. I hope that we might now get it.

The Lord Privy Seal (Baroness Evans of Bowes Park)

(Con): I thank the noble Lord and the noble Baroness for their comments and questions. I assure the noble Baroness that the Government remain committed to the test and trace system, and it will clearly play an important part in our efforts to continue to tackle the virus. I am sure she will be pleased to know that the test and trace app will be rolled out nationally tomorrow, further enhancing that programme. It is designed to work alongside the traditional contact tracing services and testing to help people understand if they are at risk. On her questions about the rules, my personal interpretation is that she could indeed invite two noble Lords to join her for curry if two had left, as the rule is about six people. Children are counted as individuals, so they are counted as one of the six.

[BARONESS EVANS OF BOWES PARK]

Both the noble Lord and the noble Baroness talked about evidence. Certainly both the Government and the scientific advisers looked at a range of evidence in order to come up with the package that we have.

The noble Lord and the noble Baroness quite rightly talked about the economic impacts, which we are all extremely aware of. They will know that through the measures we have taken so far we have protected 12 million people and jobs through the furlough and self-employed schemes, at a cost of £40 billion. However, I entirely accept their points about the impact that this virus is still having, and the impact it is still having on our economy. I can certainly assure the noble Baroness that my right honourable friend the Chancellor, and those across government, are working with employers, representatives, unions and businesses to continue to work out exactly what the best form of support for businesses in all sectors is. We keep that package under constant review.

The noble Lord, Lord Newby, asked about the prioritisation of testing. He is absolutely right: at the moment prioritisation is for those who work in acute clinical care, broader NHS staff and people in care homes, and targeted testing for teaching staff. He is obviously quite right to mention other individuals who work within these settings, and we will keep the prioritisation under review. As we increase our testing and look towards the 500,000 tests that we hope to get to by the end of October, we hope to be able to offer tests much more widely and include more people within that prioritisation.

On face coverings, the noble Lord, Lord Newby, talked about indoor settings with lots of people. That is why we are now mandating face coverings in indoor settings and enclosed places which are freely accessed by the public, where it may not be possible to maintain social distancing. He will be aware that we already had those measures in place for shops and supermarkets and on public transport. It is for that very reason that we are now extending the mandatory wearing of face coverings to hospitality settings, taxis and private hire vehicles—again, in enclosed settings where it is particularly difficult for people to maintain social distancing.

The noble Lord also asked about extra funding for the police and local authorities. We have already announced an initial £50 million to support the range of enforcement activity we would expect to see in relation to the new rules that we have just announced. It will be up to the police to decide how they wish to deploy that—for instance, it could be used for increasing patrols to enforce social contact rules, deploying police to high-risk areas where there is rising concern, and providing more support to local authorities and NHS Test and Trace where quarantine and self-isolation breaches are being escalated. Of course, those are just some of the ways in which this funding could be used at a local level.

In relation to the new payment that was announced, the £500 is targeted at those on low incomes and who cannot work from home. It is an additional payment, on top of statutory sick pay and existing benefits or support, such as universal credit, employment support allowance, local housing allowance or hardship fund payments. It will become available for those who

are required to self-isolate from 28 September. Local authorities are working quickly to set up these support schemes, and we expect them to be in place by 12 October. Anyone who has had to self-isolate from 28 September will receive backdated payments. That is, I hope, the detail of the new scheme.

The noble Lord talked about parliamentary scrutiny, which is of course extremely important. Each SI has undergone full scrutiny, in line with the requirements of its parent Act. We have been using the appropriate parliamentary procedures for considering regulations, including waiting for the JCSI and the SLSC to report on them before they are debated. On Monday, we will have a more general debate, in line with the commitment we made, on the Coronavirus Act itself.

The noble Lord asked about tomorrow. As the noble Baroness, Lady Thornton—who is sitting there—will be well aware, we have two days of full discussions on coronavirus SIs, so I do not think we can criticise the House or anyone within it for the work they are doing on this. We will be discussing the SIs that were to be in the Grand Committee in the Chamber. We are dealing with them in order: there are deadlines within which we have to discuss these SIs, and that is the order in which we are taking them. I hope the noble Lord will accept that, as well as the fact that we have two coronavirus Statements today, we are taking this very seriously and ensuring parliamentary scrutiny.

Baroness Smith of Basildon (Lab): My Lords, the noble Baroness has not answered many of my questions on restrictions, schools, the TUC or the Prime Minister.

Baroness Evans of Bowes Park (Con): Sorry, I did have an answer on schools. Our advice for children is very clear: they should have a test only if they have symptoms. Obviously, we are well aware that there is a capacity issue in the system at the moment, which we are trying to address, so there are perhaps longer waits than we would like for tests. However, 64.7% of people who have a test get the results back within 24 hours.

The Deputy Speaker (Lord Faulkner of Worcester) (Lab): We now come to the 30 minutes allocated for Back-Bench questions. Please keep questions and answers brief, so that I can call the maximum number of speakers.

3.48 pm

Lord Kakkar (CB): My Lords, I join others in thanking the noble Baroness for taking questions on the Prime Minister's Statement, and in so doing draw your Lordships' attention to my declared interests.

The first wave of Covid-19 earlier this year saw major challenges for the NHS, in being able to treat patients with non-Covid conditions, such as cancer and cardiovascular disease, while dealing with the large numbers of patients needing admission for acute Covid conditions. How will Her Majesty's Government determine whether the measures now in place are having sufficient impact to be confident that the NHS will be able to manage not only patients requiring Covid-19 admissions but those with non-Covid conditions requiring urgent treatment during the winter? This is a critically important issue. Do they have modelling

available? How will they determine if these measures are going to have the desired impact and, if not, how will they act to ensure that the NHS will be able to look after all patients, both Covid and non-Covid?

Baroness Evans of Bowes Park (Con): I assure the noble Lord that the department is working extremely hard with the NHS to ensure an absolute minimum of disruption to other treatments. It was thanks only to the incredible work of staff that, even at the peak of demand earlier this year, hospitals were still able to look after two non-Covid patients for every Covid patient. A similar picture was seen in primary, community and mental health services. The most effective way to ensure that other treatments are not disrupted is to make sure we tackle this disease and try to make sure we do not have huge numbers of hospitalisations of patients with Covid. We are working towards that. We are also working on the principle that the most urgent treatments, including mental health support, should be brought back first. I assure the noble Lord that is a priority for the department.

Lord Robathan (Con): My Lords, what matters most in this crisis is not the number of coronavirus infections but the deaths that occur. All deaths are tragic, but I regret to say that they are mostly among the elderly, the frail and those with comorbidities. Two weeks ago, the number of deaths was approximately 11 or 12 a day. In the last seven days it has just about doubled. The number fluctuates, but it appears to be going up. Still, it is only between 1% and 2% of the average daily death rate in this country. That is after three months of greater social mingling.

I regret to say that this policy is incoherent, illogical and, without a vaccine, unending. It is doing incalculable harm to livelihoods, lives, the economy, our country's future and, worst of all, our children's future. Will my noble friend the Lord Privy Seal take this message back to the Prime Minister at the next Cabinet? Whatever focus groups may say, the British public are fed up and will not support the restrictions announced in this Statement any more than I do.

Baroness Evans of Bowes Park (Con): My noble friend has been very clear in his views on the actions being taken and I respect them. He speaks for people who feel that way but, I am afraid, as the CMO and Chief Scientific Adviser set out earlier this week, we know that death rates are a lagging indicator. We have raised the alert level because we have seen that the doubling rate of cases could be between seven and 20 days, and that in the last fortnight daily hospital admissions have doubled. There is enough concern that we have felt it absolutely necessary to take this action early so that we can try to stop a devastating second spike. I completely accept and understand the points he makes about the economy—I touched on that in my answers earlier—but we strongly feel we need to take this action. I am very sorry—I think we all are—for the inconvenience it causes, but it is worth it to save lives.

The Lord Bishop of Rochester: My Lords, I am looking forward to my invitation to curry supper. More seriously, I think I speak on behalf of all the

faith communities in welcoming the Prime Minister's continued affirmation of the importance of places of worship being open, albeit with restrictions, not just for the private benefit of the adherents of a particular faith but for wider community cohesion and well-being, bearing in mind not least that many of these places host food banks and other community care initiatives. I hope that, if any further measures are needed, that community well-being dimension will be kept in mind alongside others.

I return to the question asked by the noble Lord, Lord Newby, about the 30 and the 15 attendance at particular kinds of events and add to that the announcement made, I believe, this afternoon that as of Monday attendance at life events will be restricted to six. There is some confusion about definitions here. As a narrower question, can the noble Baroness confirm that an ordination service, of which there will be dozens all over the country in the next few weeks, is not a life event for this purpose but rather a regular part of church and community life? Restricting attendance to six in a space such as Canterbury Cathedral would seem a bit odd when tourists can visit every day.

Baroness Evans of Bowes Park (Con): I thank the right reverend Prelate. I am afraid I am not so on top of that detail as to be able to give him an answer I would have confidence in, but I will certainly take his point back to MHCLG, which I believe is the lead department on this. I am sure that Ministers there will want to talk to representatives from the Church and other faiths to make sure the rules make sense.

Baroness Walmsley (LD) [V]: My Lords, is the noble Baroness aware that there has been a considerable rise in mental and emotional ill health since the pandemic began? Many people are fearful, anxious and depressed. In the Government's messaging on the virus, does she agree that there needs to be a balance between frightening people about the seriousness of the disease so that they will obey the rules and reassuring people that, if they do obey the rules, they will probably be okay? Does she think the Prime Minister got that balance right yesterday? I am afraid I do not.

Baroness Evans of Bowes Park (Con): The noble Baroness is right about how incredibly important it is that we get messaging right. We are in a very complicated situation and everyone is doing their best. She is also right about concerns over mental health; for those with severe needs or in crisis, all NHS mental health providers have established 24/7 mental health crisis lines, and PHE has published its surveillance tracker to monitor the impacts of Covid-19 on the population's mental health. These are proactive steps to help ensure that our response to the effects of the pandemic is shaped by emerging data. I am sure work such as that will help feed in as we think about messaging now and going forward.

Baroness Hayman (CB) [V]: My Lords, during the Statement yesterday the Prime Minister spoke of Parliament's ability to "take forward its business in a covid-secure way".—[*Official Report*, Commons, 22/9/20; col. 798.]

[BARONESS HAYMAN]

Does the noble Baroness the Leader of the House recognise that there are grave concerns about how we are taking that business forward and the quality and effectiveness of current debate and scrutiny? As the noble Lord, Lord Newby, said, particularly concerning is the retrospective and often totally irrelevant nature of our scrutiny of statutory instruments which have been in force for weeks or months before they are ever considered in the House. In her response to the noble Lord, the noble Baroness did not seem to recognise that there was a problem. I urge her to read the words of the noble and learned Baroness, Lady Hale, and of her noble friend Lord Forsyth in the debate last Friday, and reconsider.

Baroness Evans of Bowes Park (Con): I am sorry if the noble Baroness did not think I gave due weight to that response. As I have said, we are very concerned to ensure we have scrutiny. We have ensured that each SI has undergone full scrutiny, in line with the parent Act, and worked around the appropriate parliamentary procedures. At this point I also thank the House authorities for all the work they have done to help us ensure we are a Covid-secure workplace. I hope noble Lords, while finding it frustrating, will continue to appreciate that we are working in a hybrid way and doing remote voting in an attempt to make sure that as many noble Lords as possible can continue the important work we do in this House in scrutinising legislation.

Lord Polak (Con): Following the lead of the right reverend Prelate the Bishop of Rochester, I thank the Government for the clear, helpful and sensitive guidelines given to the Jewish community for celebrating Rosh Hashanah, the Jewish new year, last weekend. It was Rosh Hashanah, but not entirely as we have always known it.

As more local lockdowns will inevitably follow, bringing difficulties for people and businesses—perhaps even a good crisis to exploit, were I the shadow Education Secretary—can my noble friend the Leader of the House explain what extra help will be given to businesses which find themselves in local lockdown areas?

Baroness Evans of Bowes Park (Con): Businesses in England required to close due to local lockdowns or targeted restrictions can now receive grants worth £1,500 every three weeks. To be eligible for the grant, a business must have been required to close due to local Covid-19 restrictions. The largest businesses will receive £1,500; smaller businesses will receive £1,000. Payments are triggered by a national decision to close businesses in a high-incidence area. That is specific help for businesses within local lockdowns but, as I alluded to in answer to the noble Baroness, Lady Smith, we are keeping the broader package of national support under review. That is why we have introduced things such as the £2 billion Kickstart Scheme, paying employers £2,000 for every apprentice they hire. There will be national measures and those specific measures I mentioned for local lockdown areas.

Lord Shipley (LD) [V]: My Lords, the Statement says the Government

“will provide the police ... with the extra funding they need”.—[*Official Report*, Commons, 22/9/20; col. 798.]

If that is the case, what exactly is the role of the military to free up the police, given that promise of adequate funding for the police?

Baroness Evans of Bowes Park (Con): The police will have the option to draw on military support if they require it. This would follow tried and tested mechanisms and so, for instance, could involve the military back-filling certain duties, such as office roles or guarding protected sites. What this is absolutely not about is giving additional powers to the military or having them replace the police in enforcement roles. They would not be handing out fines.

Lord Patel (CB) [V]: My Lords, I was pleased to hear the Leader of the House mention an increase in testing to 500,000; I hope that that includes a rapid turnaround time. My question is about the ambition, mentioned by the Secretary of State and the Prime Minister, to use testing as a mass screening tool. The current test and track system has lots of problems but mass screening has even bigger problems, so I hope that before it is introduced, the Government will publish the plans and consult beforehand.

Baroness Evans of Bowes Park (Con): I am sure that the department will take soundings and work with as many experts as possible as we look to develop this. It is a future aim to start testing people to identify those who do not have coronavirus and are not infectious with a quick, simple, scalable test but we are not near that yet, so we will certainly work with experts and companies to develop it. We will draw as much expertise as we can because, along with the development of vaccines, this will be critical hopefully to moving back to some kind of normal life.

Lord Hayward (Con): My Lords, the announcement yesterday hit sport very hard at all levels—not just those levels that are seen on television but community sport in whatever form. I believe that Ian Botham is to be introduced into this House on 6 October. Will my noble friend guarantee that sports will receive the same proportion of grants as have been given to the arts by the time that he arrives in this Chamber?

Baroness Evans of Bowes Park (Con): I thank my noble friend. Like him and many others, I am extremely disappointed that we have had to pause these events. I was able to get one of 1,000 tickets to see Norwich play football on Saturday as one of the pilot events and, in terms of the way that was held, I thought that it worked very well.

We absolutely understand the economic consequences, as he rightly says, particularly for community and grass-roots sports, which so depend on spectators. I know that my right honourable friend the Secretary of State is working at pace with representatives from a variety of sports to ensure that we can come up with some kind of package to help them.

Lord Craig of Radley (CB) [V]: My Lords, there is a well-supported view that, in or close to lockdown, the most elderly should be allowed to meet close family

and friends, or to self-isolate if they prefer, because of the human importance of such contacts. They should not be legally imprisoned for the rest of their natural lives in lockdown. Will the Government give this view serious consideration?

Baroness Evans of Bowes Park (Con): I can certainly assure the noble and gallant Lord that such considerations are at the forefront of everyone's mind. The noble Baroness, Lady Walmsley, talked about the impact on mental health generally; of course, many of us have not seen some of our relatives for a long time, which is very painful for them and for those of us who cannot see them. I assure him that we are considering that very carefully. It is why we are trying to take packages of measures that continue, at this point, to allow social contact, because we know how important it is. However, we will obviously have to take action if we cannot stop the virus continuing to increase, because it is critical that we save as many lives as we can.

Baroness Finlay of Llandaff (CB) [V]: The Statement drew attention to the fears of those who were on the shielding list and those who are shielding others. What additional practical support is being reactivated to ensure that those people can remain Covid safe? In relation to businesses and private rentals in the commercial sector, what are the Government doing about the exorbitantly high commercial rentals that are destroying local businesses, whose profits have fallen at the moment?

Baroness Evans of Bowes Park (Con): The noble Baroness will be aware that, in the announcement yesterday, the advice remains that the clinically extremely vulnerable do not need to shield at the moment, although this will be kept under review. Obviously, if things change, packages of support will be looked at. Local directors of public health are also able to offer specific advice for clinically vulnerable residents. Of course, in local lockdown areas there will be different packages of support, so that is absolutely something we will consider as and when the guidance changes. In relation to rents, I am afraid that I will have to write to the noble Baroness as I do not have information on that particular issue.

Lord Caine (Con): Following on from the comments of my noble friend Lord Hayward, my noble friend the Lord Privy Seal will be aware that, in May, the whole rugby league family applauded the Government for the £16 million lifeline that they made available to the sport. That money was, however, predicated on a 12-week lockdown, and yesterday's announcement on pausing the return of spectators could have a devastating impact on the viability of professional rugby league clubs both large and small. Can my noble friend therefore assure the House that the Government will engage urgently with the Rugby Football League to seek a quick solution to this issue and examine what more can be done to ensure a future for a sport that is so deeply embedded in communities such as mine in Leeds?

Baroness Evans of Bowes Park (Con): I thank my noble friend. As I said to my noble friend Lord Hayward, the Secretary of State is working on this as we speak.

He is well aware of the issues faced. As my noble friend said, we have already worked with the rugby league to help but, as he said, with the new situation unfortunately facing sport, we will certainly work to see what we can do because so many clubs in a range of different sports are absolutely central to their local communities and we want to make sure that they continue to thrive once this crisis is over.

Baroness Watkins of Tavistock (CB): My Lords, I thank the Leader of the House for being here to speak to this Statement today. I want to talk about people who need to remain at work, of which nothing was said in the Statement yesterday. What are the Government doing about PPE stocks, based on the highest prediction of need? Does the UK hold sufficient stock for the NHS, voluntary and independent providers of health and social care, and domiciliary care services? If so, for how many days? How rapidly can the stock be replenished and what proportions are now manufactured in the UK? Are the Government's distribution plans for PPE satisfactory, and have they adequately tested a system for distribution over the summer?

Baroness Evans of Bowes Park (Con): Obviously, PPE was a significant issue earlier this year. Lots of lessons have been learned. The department continues to work to make sure that we have plans in place. The noble Baroness will be aware that, for instance, we provided more than 250 million items of PPE. We are working with both the public and the private sector to ensure that we have robust plans in place so that we can make PPE available as and when it is needed. Obviously, one of the priorities, as I have just identified, is care homes.

Lord Cormack (Con) [V]: My Lords, would it not be deeply unfortunate if the economic devastation that has already been caused by Covid—devastation that will continue following yesterday's announcement—were compounded by a self-inflicted wound; namely, the total dislocation of the channel ports, as envisaged by the Chancellor of the Duchy of Lancaster this morning?

Baroness Evans of Bowes Park (Con): My noble friend is absolutely right: ensuring that we protect jobs and support those in work has been central to our work so far. As I mentioned in a previous answer, we have put in place an unprecedented package of support for businesses, including grants, loans and the furlough scheme. We will continue to support business to make sure that we have a thriving economy once we come out of this crisis.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, the noble Baroness, Lady Smith, the noble Lord, Lord Newby, and the right reverent Prelate the Bishop of Rochester have all effectively set out the scientific and medical problems with the rule of six and the lack of clarity or logic in the rules announced. Will the Government consider, instead, having rules that will be enforced and guidance for the public, with a clear division between the two? Confusion between the two has been a significant source of problems. Rather than, for example, threatening to roll out the Army for two groups of neighbours numbering seven

[BARONESS BENNETT OF MANOR CASTLE] who are standing at a distance and briefly exchanging greetings in the park, will they acknowledge that it is the vulnerable and communities already suffering discrimination who are most likely to be affected by such enforcement action?

Baroness Evans of Bowes Park (Con): I have made it clear that the military will not be rolling out but may be called upon to help with certain back-office duties, so I do not accept that characterisation by the noble Baroness. Of course, she and others have correctly talked about the need for clear messaging and guidance, which is, and will continue to be, at the forefront of our minds.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I thank the Minister for the Statement and for responding this afternoon. She will be aware of the massive investment that restaurants, pubs, clubs, bars and casinos have made to be Covid secure, so the devastation to the night-time economy following the announcement of the 10 pm closure will be considerable. The Prime Minister said that it is true that the number of new cases is growing fastest among those aged between 20 and 29. How are the Government specifically targeting that group to ensure that they stay safe, maintain a safe distance and are not super-spreaders?

Baroness Evans of Bowes Park (Con): Obviously, we continue to put out as much public messaging as possible, and we are looking at social media and other ways of getting the attention of that group of people. The other issue we need to recognise is that unfortunately, cases are now rising throughout all age groups, which is a concern. The package of measures we have put together is an attempt to stop the rise in cases while ensuring that the economy continues, albeit in a somewhat restricted fashion. We do not want another full national lockdown. We hope that, added together, this package of measures, as well as everyone sticking to the basics of social distancing, good handwashing and wearing face coverings, will help to stop the rise that we are seeing at the moment, before we have to take further and more unpalatable measures.

Baroness Altmann (Con): My Lords, I declare my interests as set out in the register and apologise to the House for omitting to do so in the debates today on the two rental Motions.

What assessments have the Government and their advisers made of the evidence from Sweden, which has managed so much better by not accepting the modelling assumptions predicting significant deaths? What estimates have government advisers and the CMO made of the number of deaths from undetected or untreated other illnesses such as cancer, stroke, heart failure and suicide, which have resulted from the NHS's seemingly singular focus on one serious illness? We may not be choosing between deaths from Covid and the economy; maybe the choice has been between deaths from Covid and deaths from other causes.

Baroness Evans of Bowes Park (Con): Certainly, the Prime Minister, the CMO and other advisers have been talking to their Swedish counterparts regularly in

order to learn lessons from there. Indeed, they have also been talking to other European countries such as Belgium, which have taken measures, in order to learn internationally. We are all learning the best way to deal with this virus, so I can certainly reassure my noble friend of that. As I said, we are trying to restore the NHS services that were suspended while we dealt with the initial impact of Covid. NHS England has issued guidance for the return of non-Covid health services to near normal levels, making use of the available capacity while protecting the most vulnerable from Covid. As I said, this is something that the department is very much focused on. The way to minimise disruption to other treatments is to deal with this virus as effectively as we can, so that we do not have a huge spike of people with Covid being admitted to hospital.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, all supplementary questions have now been asked.

4.14 pm

Sitting suspended.

Restriction of Public Sector Exit Payments Regulations 2020

Motion to Approve

4.20 pm

Moved by Lord Agnew of Oulton

That the draft Regulations laid before the House on 21 July be approved.

Relevant document: 25th Report from the Secondary Legislation Committee

The Minister of State, Cabinet Office and the Treasury (Lord Agnew of Oulton) (Con): My Lords, each year, hundreds of millions of pounds are spent on exit payments to public sector workers that exceed £100,000. The money funding these payments comes from taxpayers. This statutory instrument will fulfil the Government's 2015 manifesto commitment to end six-figure pay-offs by capping public sector exit payments at £95,000. This House discussed the proposals in great depth when considering the parent Act, the Enterprise Act 2016.

Public sector workers play a vital role in the running of our economy. Earlier this year, we accepted the recommendations of the independent pay review bodies and announced a significant, real-terms pay increase for around 900,000 public sector workers. For the majority, this was the third inflation-busting pay rise in a row. But we must ensure all aspects of public sector pay and remuneration deliver value for money for the taxpayer. It is our view that these large exit payments do not deliver that aim.

The coronavirus is having a very significant impact on the economy, labour market and fiscal position, and the Government will need to continue to take this into account in setting public sector pay and remuneration. Exit payments are important to an employer's ability to reform and react to new circumstances. They are

also an important source of support for individuals as they find new employment or as a bridge until retirement age.

However, these payments must be value for money and fair to the taxpayer. The high exit payments we have seen granted in recent years clearly breach this principle. That is why the Government are taking forward regulations to cap public sector exit payments as £95,000. The proposed cap, amounting to almost six times the maximum statutory redundancy payment entitlement, will still offer a significant level of compensation and support to employees.

The Secondary Legislation Scrutiny Committee noted these regulations as a statutory instrument of interest. I will address the points raised in its report. First, a number of bodies are exempt from these regulations. These include the armed services, the Security Service, the Secret Intelligence Service and the Government Communications Headquarters. This is appropriate due to their unique career requirements. Often, individuals working in these fields experience lifelong impacts, sometimes at early ages. It is right these individuals should be properly compensated, and their reward packages are typically designed to reflect that.

The regulations also outline which payments are deemed an exit payment for the purpose of the cap. The Government are clear that all payments conditional on an individual's exit from employment must be in scope of the cap to avoid opportunities for manipulation, with a few exceptions. Payments such as death in service will not be capped and should be paid in full.

The second point raised by the Secondary Legislation Scrutiny Committee is that public sector pension schemes may need amending to account for these regulations. Where required, these changes are the responsibility of the parent department. Some of these amendments are already under way, with the Ministry for Housing, Communities and Local Government publishing its consultation on amendments to the Local Government Pension Scheme on 7 September this year.

Prior to amendments being made where the application of the cap would result in an employer being unable to make a pension strain payment due to pension scheme rules, it may instead pay the pension scheme member an equivalent cash sum. The aggregate of that cash sum and any other exit payments must not exceed the cap.

The Government accept that in some limited circumstances, it will be appropriate for employees to receive an exit payment that exceeds £95,000, including where imposing the cap would cause genuine hardship. To account for these circumstances, a waiver has been designed that ensures flexibility, while maintaining an appropriate level of scrutiny from Ministers.

Today, the Government are taking forward regulations that deliver a long-term manifesto commitment and ensure value for money for the taxpayer. The regulations do this in a proportionate and thorough way, while ensuring the flexibility to protect the most vulnerable. I beg to move.

4.25 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I declare my interest as a vice-president of the Local Government Association. I have briefings

from the LGA, the Association of Local Authority Chief Executives and the BMA. All have the same concern—that lower-paid staff will be adversely affected.

The Government's aim to reduce the large redundancy payments made to highly paid staff in the public sector is one to which the public readily subscribe. But the way the Government are implementing this not only breaks the law but affects those on lower pay.

The pension strain payments should not be included in the cap. In 2019, ALACE indicated that including pension strain would affect long-serving staff earning well under £40,000. For these staff in their mid to late-50s, with service between of 35 and 39 years, earning between £31,000 and £34,000, the strain would exceed £100,000 if made redundant. Their redundancy payments would be well under £20,000. The regulations would mean that they would all suffer a reduced pension for the rest of their lives. I ask the Minister to confirm that this is, indeed, the case.

Junior doctors are similarly affected, in some cases having to make declarations for sums as small as £200. These are the very people who, up and down the country, are currently saving lives on the Covid-19 wards.

What the Government are proposing is for contractual arrangements between employers and employees to be broken and for those on very low earnings to be penalised. For local authorities, this is direct interference with the role and responsibility of elected councillors, who are well able to deal with these matters through full council. Instead, it will be dealt with by the Secretary of State.

This is at a time when MHCLG, as the Minister said, is currently conducting a consultation on the Local Government Pension Scheme. The regulations under this SI are due to come in immediately, well before the consultation on the LGPS has finished. It would seem that the right hand of government does not understand what the left hand is doing.

In addition to there being little communication between government departments, no equality impact assessment has been produced. Why not? Are the Government afraid that, if they produce one, it will be obvious that the bread-and-butter staff of public service are being caught in this trap?

However, I note that the Armed Forces and security services are exempt from this regulation. "Good," many will say, "our service men and women deserve to be exempt". But what of the rear admirals, air vice-marshals and lieutenant-generals, in cushy jobs at the Ministry of Defence, earning £120,000 to £150,000? Surely, they should not be exempt. The Government have got this wrong and should realise such and withdraw this SI.

4.28 pm

Baroness Eaton (Con) [V]: I declare my interest as a vice-president and former chairman of the Local Government Association. I am pleased to speak this afternoon.

The regulations before us bring into force the exit payment cap legislated for in 2015. I supported the principle of ensuring the best value for money by making payments to employees back when the House agreed this legislation, and that remains the case

[BARONESS EATON]
today. However, I have to raise concerns about the unintended consequences of the implementation of the regulations.

As my time is limited, I will focus on timing, which has been mentioned in part before. The regulations will come into force before the Ministry of Housing, Communities and Local Government is able to bring into force its changes to the pension regulations. The concern is that without the MHCLG regulations, the timing could lead to employees continuing to receive full pension payments despite the cap. This is because the exit payments the Government are seeking to limit are often made up of pension entitlements.

These regulations prevent the council paying the scheme the full cost of the employee's redundancy entitlement but do not remove the employee's legal right to the full pension payment. Therefore, the gap between what the council will pay and the amount that the employee will receive will need to be made up by the Local Government Pension Scheme until such time as the MHCLG pensions regulations are passed. That is clearly not the Government's intention, and I would be grateful if the Minister could use this opportunity to provide some reassurances about the situation and about the legal confusion that today's regulations are likely to cause.

As I said at the start, I support in principle the Government's aim of ensuring that taxpayers' money is spent wisely. In my time as a council leader, I took pride in how efficiently and effectively my council was run. However, it cannot be sensible to create entirely avoidable uncertainty for council employees or to put additional strain on the Local Government Pension Scheme and limit councils' ability to restructure or reorganise at a time when local government faces significant financial pressures and many councils are looking to work differently. I hope that the Minister can use the opportunity today to reassure the House on the timing of the regulations, as they are causing a lot of concern in local government.

4.31 pm

The Earl of Devon (CB): My Lords, this is not my area of expertise but since April I have been assisting Exeter City Council with its Covid response, chairing a visitor economy recovery group, from which I have learned first hand about the dedication and diligence of local government staff, the current unprecedented demand for their services and the budgetary cliff off which they are being driven.

These regulations come at a challenging time for local government. Although I generally support the aim of reining in six-figure public sector pay-offs to high earners, that is not the concern. The worry is the impact, as discussed by the noble Baroness, Lady Bakewell, of the pension strain payments for long-serving local government staff earning under £50,000. Those who have worked for many years in housing, benefits, environmental health or social work, and those who might have turned down much better-paid private work to continue their dedicated public service, stand to lose out on pension benefits that they have worked towards for decades if they are made redundant or seek early retirement after the age of 55. Why is that?

This is not a new issue. I see from *Hansard* that it was raised a number of times in November 2015, along with the serious concerns being raised now by the Local Government Association and the ALACE, which were well rehearsed nearly five years ago.

Local government is staring into a very bleak winter, with redundancies looking inevitable. The regulations as drafted will hit the pensions of the longest-serving and the most modestly paid. They will remove much-needed staffing autonomy from local councils, and, given that there is no equality impact assessment, they may well impact certain groups disproportionately, but we do not know that. Exeter City Council, for example, has over 700 staff members, whose average age is over 50. Why has no EIA been published?

I understand that the Government's preferred solution is to change the Local Government Pension Scheme to avoid significant pension reductions. However, the MHCLG consultations commence this month but do not close until November. Why do these changes to local government pensions not take place at the same time as the regulations, and why wait until now to begin a consultation?

Loyal long-term local government employees are being poorly treated and taken for granted. This is not the message that the Government should send out just as they tighten the lockdown. What assurances can the Minister provide?

Finally, I understand that the medical professional bodies, such as the GMC, are concerned that they might be included under these regulations. Will the Minister please provide some clarification on that point?

4.33 pm

Lord McCrea of Magherafelt and Cookstown (DUP)
[V]: My Lords, although I recognise that these regulations will not apply in Northern Ireland, the fact that devolved policy on public pensions and compensation is broadly benchmarked against terms in GB means that they remain of clear relevance to employers and employees in the Province.

I agree with the Government that it is important that public sector exit payments are proportionate and fair to the taxpayer. There has been an increasing number of six-figure sums paid out that exceed three times the average annual salary. However, at the same time, I would not favour a blanket cap that fails to allow circumstances to be considered on a case-by-case basis. The safeguards built into this legislation to waive the cap in cases of illness, death and statutory redundancy pay, for instance, are therefore positive.

The role of exit payments is vital to an employer's ability to make reforms and broaden the skills and talent base for the future. The use of exit payments as part of early retirement arrangements often incentivises young people to enter a specialism where there will be gaps in the skill base in the future. I think, for example, of the previous scheme for mental health nurses in Northern Ireland, which allows those who entered the scheme several decades ago to retire at 55 without detriment. This positive role that exit payments can play should be retained, albeit with a recognition that we need to balance it against the interests of the public purse.

It is important that those whose early retirement could be disrupted by these arrangements are not disadvantaged by being unable to re-enter the workforce to apply their skills to temporary roles in our hospitals and schools that desperately need to be filled—although without, of course, taking jobs from young people who desire full-time employment. We need to see a close and regular review of the impacts of the regulations. Back in Northern Ireland, it will be important for local Ministers to review the changes in England to ensure that public sector roles and payments in Northern Ireland are both competitive and fair.

4.36 pm

The Lord Bishop of Worcester: My Lords, the attempt to address egregiously large public sector exit payments is undoubtedly a good thing and I applaud it. However, to enact regulations without attention being given to unintended consequences for lower-paid staff is surely not.

Reference was made by the noble Baroness, Lady Bakewell, to the LGA's concerns with the regulations as drafted. The LGA believes that employees in scope of them could be earning far less than the Government have suggested. I am standing up because individuals in my diocese have expressed grave concern about this. They are frightened because pension strain is included in the £95,000 cap, as has been mentioned. The regulations could have lasting negative impacts on long-serving staff who do not earn large sums of money. The Minister mentioned cases of genuine hardship, and I would be pleased to hear what he means by that.

As the noble Earl, Lord Devon, made clear, in these economically uncertain times pension strain is particularly significant, as large numbers of public servants only a few years below pensionable age are increasingly likely to be made redundant. These regulations could penalise low-paid, long-serving, loyal public servants.

When the Scottish Government implemented similar regulations, they intentionally opted not to include pension strain payments, stating that

“including employer pension costs in any severance payment cap may unduly expose longer-serving and lower-paid employees to the cap”,

and that they have

“therefore decided to exclude these costs from the cap.”

Following in Scotland's footsteps might be a positive way forward in protecting lower wage earners at the heart of our public services.

It is of course right that high exit payments are brought to acceptable levels. However, it is surely vital that proper attention is paid to the unintended consequences that these regulations could have for lower-paid public servants who have dedicated decades in local authorities and public bodies to the common good. I would welcome any clarifications or assurances that the Minister is able to give.

4.38 pm

Baroness Falkner of Margravine (CB): My Lords, I begin by assuring the Minister that I too have no objections at all in principle to the imposition of a payment cap on public sector employees. I only wish that the private sector would voluntarily incorporate

some form of limit on what employers pay as golden goodbyes, but I fear that that is not imminent. However, I am troubled by the immediacy of these regulations, by their seemingly sweeping application—particularly as it impacts older workers on modest levels of pay—and by the burden imposed on individuals.

The rush to implement these regulations within 21 days seems inappropriate. Surely a longer period is required for the plethora of public sector bodies to examine the implications and communicate with employees who might be affected in the next several months, when finances and workloads will be particularly stretched. Why not pause the implementation for a reasonable period while HMT deals with the significant concerns that employers have and issues appropriate guidance after listening to those concerns?

I turn to the human rights implications. The briefing from West Midlands Employers concerns the impact on employees who might be caught by these regulations, who are mainly long-serving but on relatively modest incomes and disproportionately female. When the original legislation was passed in 2015, we expected it to deal with high-earning executives, but it now appears that it will also catch those I have mentioned due to pension strain costs. This is an issue on which almost every speaker has commented. The briefing gives an example of an employee who

“on a salary of £40,000, with 37 years of service, on early retirement, would require the county council to pay approximately £97,000 into the fund, without adding redundancy pay, notice, or holiday pay.”

The Minister has mentioned that a waiver might be available for a limited number of cases. Could he indicate whether guidance will be issued to explain what those circumstances might be?

The BMA highlights different issues and I hope the Minister will reclarify its main charge—that the regulations are unlawful because they capture individuals who have claims against their employer which arise during their employment. These might relate to claims for damages for race or sex discrimination, or any form of discrimination under the Equality Act 2010. They point out that this is a significant change from the 2015 statutory wording. My interpretation of Regulation 6(f) is that such payments would come under its terms. Could the Minister clarify what would happen if an employer settled a claim without resorting to a tribunal—that is, where Regulation 6(f) is too narrow in its scope and does not take into account this kind of settlement?

Why are such onerous terms of a requirement to inform placed on the individual by Regulation 9, rather than on the employer, as required by the 2015 Act? Here I have sympathy with the example of junior doctors frequently moving between NHS employers, particularly as the sums concerned are nowhere near the £95,000 cap. I look forward to the Minister's reply.

4.42 pm

Lord Wigley (PC) [V]: My Lords, I first declare an interest as a vice-president of the Local Government Association.

I do not object to the principle of a cap, but these regulations erode the rights of councils to decide workforce changes. Regulation 11 requires Treasury

[LORD WIGLEY]

consent for a full council decision in such matters. It is inconsistent with the Government's claimed support for devolving power to local authorities.

These regulations represent yet another government somersault. The Government have abandoned the values they defended back in 2015, when the noble Baroness, Lady Neville-Rolfe, referred to the need for full council approval to relax the cap without any Treasury consent. Will the Minister confirm that these regulations undermine the 2013 agreement between unions and employers on the Local Government Pension Scheme, and the 25-year guarantee of no change in the Public Service Pensions Act 2013?

Where are the transitional arrangements to protect people from the cliff edge of the cap? Pension strain payments should not be in the cap because that can reduce people's pensions for life. The Treasury's approach would mean that key local government workers, earning £30,000 to £40,000 a year, could, if made redundant, suffer pension reductions of up to a staggering 40%. These regulations do not affect only the highest paid staff. Can the Minister assure us that the regulations, if passed, will come into force at the same time as changes to the local government pension schemes? The Government's consultation ends on 9 November. It is essential not to have a gap between the two sets of regulations.

The Treasury's equality impact assessment was not published when the regulations were tabled. Why not? Is it because paragraph 2.4 of the assessment says that the

"target scope of this policy ... is the high earners in the public sector workforce"?

The reality is that these regulations will damage the pensions of long-serving key workers earning between £30,000 and £40,000. That, surely, is unacceptable.

4.44 pm

Baroness Finlay of Llandaff (CB) [V]: My Lords, I declare that I am a former BMA president. The BMA is so concerned that it is seeking a judicial review of the regulations, having sent a letter before action on 17 August 2020, setting out why these regulations would be unlawful, but received no reply. It believes that the regulations will force public bodies to act unlawfully. NHS staff have contracts of employment that, in the event of redundancy, contain clauses defining the level of contractual redundancy payments, which can exceed £95,000.

How can the Government justify extending the scope of the definition of exit payments to include payments made to compensate an exiting employee for an infringement of their legal rights during their employment, before their exit? The BMA believes that doing so is unlawful. What about a person with an equal pay claim that goes back years, who leaves before the back pay is settled? How can Government justify preventing public bodies paying money owed to an exiting employee—payments such as a contractual redundancy payment, to which the employee is entitled under existing lawful contracts of employment negotiated in the proper and recognised way? Again, the BMA believes this is unlawful.

Junior doctors rotate as part of their training, moving from one trust to another, often with varying overtime payments owing them a few hundred pounds. These complex calculations will now fall to the trainee, keeping them away from clinical work. Therefore, how can the Government justify imposing a reporting duty on all exiting employees, regardless of the amount due to them—even for £200—as would be the case for thousands of junior doctors who change employer regularly through their training and will frequently be owed sums by their former employer nowhere near the £95,000 limit? The BMA believes that this is unlawful and it is clearly irrelevant to the statutory scheme.

I gave prior notice of these questions. NHS staff are public sector, have worked above and beyond to tackle Covid-19, and must not be demoralised by these regulations, which appear unlawful.

4.47 pm

Baroness Kramer (LD) [V]: My Lords, the more time I spend looking at these regulations, the more concerned I have become. I start from a principle, as I suspect everyone in this House does, that employees in the public sector need to be treated fairly. We have all seen how incredibly effective and dedicated members of the public sector have been in dealing with the challenges of Covid.

These regulations were designed initially to deal with excessive payments to high-earning senior civil servants. I have not heard a single Member of the House object to that aspect of the regulations. However, again and again, one noble Lord after another has made it clear that the framing of the regulations is such that it impacts on public servants on modest incomes, whether through the issues raised by the noble Baroness, Lady Finlay, affecting junior doctors, or in the damage faced by mid-level local government workers who are made redundant, a point raised by nearly every speaker.

The biggest issue under these regulations is pension strain. Access to unreduced pensions for a worker made redundant after the age of 55 in local government is part of an agreement for local government workers enshrined in the Public Service Pensions Act 2013. We must keep in mind that salaries have been crafted with this benefit in mind. The relevant section requires the local government employer to contribute to the pension fund to offset the lost years of contribution created by a forced redundancy. That payment to the pension fund can easily exceed £95,000, even for a modestly paid worker. This is someone who gets only £14,000 or £20,000 as their redundancy payment. Now they are caught by the new cap, leaving them on a significantly reduced pension for the rest of their lives.

We understand that the Ministry of Housing, Communities and Local Government has begun a consultation on the consequences of the exit payment cap. It does not close until 9 November 2020 and regulations will take time to follow. It is beyond me, and I suspect most Members of this House, that the package has not been considered as a whole. These regulations should not be enacted without confirmation of what any mitigation might be.

I am worried by comments in the report from the Secondary Legislation Scrutiny Committee that HMT's answer is to suggest that the redundant worker make

up the contributions gap. Does it really think that a 55 year-old local government employee on a mid-level salary has a savings pot in the many thousands, especially as he or she faces redundancy? Does it then expect them to get high-paid work to enable them to contribute to make up the money that has not been paid by a local government authority?

In the original legislation, the local authority could waive the rule if approved by full council. That seems to me reasonable. Indeed, it is what the then Minister, the noble Baroness, Lady Neville-Rolfe, assured the House on 30 November 2015. Now the regulation gives that power solely to a Minister—in other words, the Secretary of State. The full council is overridden, and I join the noble Lord, Lord Wigley, in saying that this is entirely inappropriate. Taking back control is really starting to have an unpleasant new meaning.

To make matters more murky, the Government have not published their updated equality impact assessment, and women are expected to be among the hardest hit by this new regulation. None of us believes in rewarding failure, although we notice, interestingly, that the regulation makes an exemption for the banks owned by the Government. Apparently, those institutions are not to be bound by that same notion that failure should not be rewarded.

I am concerned that this regulation expresses a general hostility to civil servants, and we have seen that in other areas of government behaviour. The regulation makes exemptions for the Armed Services and for spies. I do not resent their luck in finding that they have exemptions, but that does not make it fair for others. I understand that whistleblowers and victims of discrimination are also exempt. Again, that is entirely appropriate, but, frankly, whistleblowers and victims of discrimination should not be made redundant in the first place.

This is a really badly crafted regulation. Its enactment needs to be halted so that a new version can be put in place once the whole picture is sorted and the various mitigations have been understood.

4.52 pm

Lord Tunnicliffe (Lab) [V]: My Lords, public sector workers carry out vital work each and every day. Over the past six months, their importance has become ever more apparent as they have provided the essential services that have kept the country running. To introduce these measures at a time when we appear to be entering a second wave of Covid-19 is not only unnecessary but, frankly, extraordinary.

The Government claim that the regulations are about ensuring value for money when spending public funds. That is a noble cause, and the Labour Party certainly does not believe in huge public sector exit payments for the sake of them. However, we have fundamental objections to how this policy is being implemented. It does not appear to be fully thought through.

We are told not to be concerned as the vast majority of those affected by the cap will be those who are highly paid. Indeed, the manifesto commitment was clear: the cap was for “the best paid public sector workers”. However, it is simply not the case that only high earners will be affected. Contrary to previous promises, the cap will quite easily capture midwives,

social workers and librarians who have served their communities for decades and who, when nearing retirement, happen to find their employment being terminated through no fault of their own. Does the Minister really think it is fair to arbitrarily limit the settlement that these workers would receive?

Noble Lords will be aware that there is no index-linking on the cap, meaning that the threshold will slowly reduce in real terms. The figure of £95,000 is the same amount floated by the Government back in 2015. How does the Minister justify the decision to set the limit at this level, which represents a real-term decrease on when the policy was announced?

Paragraph 10.4 of the Explanatory Memorandum mentions the introduction of a new waiver system “for use in exceptional circumstances”.

How will this operate in practice? Will figures relating to its use be published and, if so, in what form? Paragraphs 10.6 and 10.7 outline two options—an earnings threshold and a phased implementation—which were considered by the Government but either not consulted on or not taken forward. Does that not suggest that the 2019 consultation and the department’s meeting with the Trades Union Congress were mere box-ticking exercises rather than an attempt to find a mutually agreeable way forward?

The Scottish Government took the decision not to include pension strain costs when implementing a similar regulation. The UK Government’s decision to include such costs means that the regulations are likely to affect far more people than might have been expected. Has the department undertaken modelling on this point, and if so, what was the outcome?

I understand that no equality impact assessment was undertaken for the scheme, which strikes me as problematic. While the judiciary is excluded, staff of the Crown Prosecution Service are included. Can the Minister confirm whether his department looked at the demographic profiles of staff in these different elements of the justice system before that determination was made?

I hope the Minister can also provide a justification for including nuclear decommissioning workers within the scope of the regulations. He will know that such workers are often employed by private sector organisations which assist in the realisation of public policy. Why should the Government interfere in the redundancy arrangements of such workers, when their very success is defined by making themselves redundant?

We will not be formally opposing this instrument, as it is not the role of your Lordships’ House to do so. However, I simply cannot understand why the Government have decided to proceed now when there is more work required, and at a time when implementing this change will send such a negative message to the public servants we rely on. Just yesterday, the Prime Minister talked of how our collective compliance with the coronavirus guidance forms a protective ring around the NHS and other public workers. Why, then, is the Minister still seeking approval for an instrument that would unfairly penalise thousands of them? I hope he will urge his colleagues to pause this process, think again and do the right thing by those who were never supposed to be subject to this arbitrary cap.

[LORD TUNNICLIFFE]

I have dealt with many statutory instruments, and I have rarely experienced such unity among those taking part. The important point about this unity is that the individuals involved all have in-depth understanding of this environment. The hostility to these regulations surely should cause the Minister to pause the process, think again, take account of all the points made today and bring these regulations back in a much healthier form.

4.58 pm

Lord Agnew of Oulton (Con): I thank noble Lords for their contributions to this debate, and I will seek to address their comments and queries in my closing speech.

The noble Baroness, Lady Bakewell, together with several other Peers, raised the issue of pension strain. All payments relating to exit should be in scope of the cap. The option of employer-funded early retirement is often the most costly element and is ultimately funded by the taxpayer. There is of course a difference between redundancy and early retirement, and I think they can often be conflated.

I will address the points on the impact assessment a little later. The noble Earl, Lord Devon, also raised the issue of pension strain, which I have addressed. The noble Lord, Lord McCrea, also mentioned the waiver system. This allows us to look at the application of the cap on a case-by-case basis to consider whether an uncapped exit payment would be appropriate, as I mentioned in my opening remarks. We have that there to ensure that there are not cases of genuine hardship.

The right reverend Prelate the Bishop of Worcester is concerned about lower-paid people. The guidance document outlines situations where the waiver system may be used. It explicitly states that the discretionary waiver may be exercised with the approval of the sponsoring department and the Treasury if capping a payment would result in genuine hardship.

The noble Baroness, Lady Falkner, asked about the BMA judicial review. It is now a matter subject to litigation so I am not able to comment. However, we have certainly considered the issues that have been raised on that; no doubt they will come out further in due course.

The noble Lord, Lord Wigley, again asked about the waiver. The power to waive the cap is delegated to the full council as the decision-maker for local government pay. If the full council approves a waiver case, sign-off is required from the Ministry of Housing, Communities and Local Government, and then the Treasury if the waiver is discretionary. We believe that the waiver system as currently designed is appropriate, as the Government need to maintain oversight of how the system is being used. Any cases put forward for relaxation will be considerable sums of money and need to be properly scrutinised. Of course, we will ensure that cases are processed in a timely manner.

The noble Lord, Lord Tunnicliffe, addressed a number of points. I reiterate what I said in my opening remarks: we are very grateful to public servants for the work they do. The noble Lord is correct that we are in difficult times at the moment and public servants have had to go beyond the call of duty on many occasions. However, these regulations are simply about ensuring

that rewards and remuneration provide value for money by capping exit payments at £95,000. These payouts are funded using taxpayer money so it is right that we take action.

Since the beginning of the Covid-19 outbreak, the Government have agreed specific pay and pension packages for a number of public sector workforces—including the NHS—both to increase system capacity and, importantly, to recognise their work. As we respond to the financial impacts of Covid-19, the inappropriateness of large exit payments is reinforced. Ensuring that rewards are proportionate and taxpayer money is spent fairly must be prioritised.

Like many others, the noble Lord referenced the system—I hope that I have addressed this—in relation to the guidance and directions outlining the situations where the cap must be waived, including where a payment is made to settle a discrimination grievance, and where it may be waived, such as instances where implementing the cap may result in genuine hardship. Guidance and directions explaining the way the systems were published at consultation—and updated versions of these documents—will be published in due course.

Similarly, the noble Lord suggested that no equality impact assessment was undertaken. However, the Government did conduct and publish an assessment of the primary legislation. The previous impact assessment was linked to the 2019 consultation document. In addition, the 2019 consultation asked for comments and information related to impacts; an updated impact assessment has since been conducted based on the final regulations laid before Parliament and will be published in due course. We outlined this in the published consultation response.

As is also outlined in that response, we do not propose changing the level of the cap, as we still view £95,000 to be an appropriate level. However, the primary legislation allows for the figure to be changed in the future, taking into account the full contextual factors. The inclusion of the nuclear workers in the scope of these regulations has been debated extensively throughout the passage of the primary legislation and in a recent Commons Committee debate on Monday. I refer the noble Lord to *Hansard*, where some extensive passages deal with that.

We are able to exercise our own judgment, but, for the most part, the scope has been guided by the ONS, which makes objective judgments independently from these regulations. Based on the ONS classification, it is appropriate that the Nuclear Decommissioning Authority and its site licence companies are within the scope of these regulations. However, we have listened to concerns, and a mechanism to waive certain pension-related payments upon redundancy has been designed. This was agreed by the Treasury, BEIS, unions and the Nuclear Decommissioning Authority in 2017.

I believe that the Government are right to take this course. We are strongly of the view that these regulations will deliver value for money for taxpayers and put a stop to excessive payouts, which we have unfortunately seen too often in recent times. After a long period of consultation, it is now right that this policy comes into force.

Motion agreed.

5.05 pm

Sitting suspended.

Arrangement of Business

Announcement

5.09 pm

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the Hybrid Sitting of the House will now resume. The time limit for the following debate is one hour.

Immigration (Health Charge) (Amendment) Order 2020

Motion to Approve

5.09 pm

Moved by Baroness Williams of Trafford

That the draft Order laid before the House on 21 July be approved.

Relevant document: 24th Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as we have all witnessed during this pandemic, our National Health Service is one of our country's greatest assets. It has been a shining beacon of hope in this time of need and we could not be prouder of it. For those who live in the UK, it is the contributions made over the course of their lives that enable our NHS to continue its fantastic work.

We value the contribution of everyone who comes to the United Kingdom. It is a simple fact, however, that temporary migrants will not have built up the same contributions as a permanent resident of the UK. We therefore believe it is right that they make a fair contribution to the NHS's sustainability. That is why we introduced the immigration health charge in April 2015. The charge is currently paid by non-European Economic Area temporary migrants who apply for a visa for more than six months. It also applies if they wish to extend their stay in the UK for a further limited period. The charge is separate from the visa fee and is paid up front and in full for the length of leave granted.

From their point of arrival in the UK, a charge payer can access NHS services in broadly the same manner as permanent residents. This can be without ever having made any tax or national insurance contributions in the UK. They pay only those charges a UK resident would pay, such as prescription charges in England. They may also be charged for assisted conception services in England, should they choose to use them. To date, the charge has raised more than £1.5 billion for the NHS. This much-needed income is shared between the health administrations in England, Scotland, Wales and Northern Ireland, using the formula devised by Lord Barnett.

As noble Lords will all be aware, next year the new points-based system will be in place. This means that all migrants to the UK will be treated the same and

will pay the charge if staying for longer than six months. The current exemptions, including for certain vulnerable groups, will continue to apply.

The Government recognise the value and importance of migration. We welcome talented individuals and are immensely grateful for the contribution they make to this country. However, it is only right that migrants contribute to the wide range of NHS services available to them.

Last year, the Government's manifesto committed to increasing the annual amount of the charge to a level that would broadly reflect the cost of treating those who pay it. In line with that commitment, this order amends Schedule 1 to the Immigration (Health Charge) Order 2015. The Department of Health and Social Care has estimated that the cost to the NHS of treating charge payers in England is £625 per person, based on analysis carried out in April 2019, which used 2017-18 NHS England data. To support the administration of the charge, the new level would be set at £624 per person per year. As before, students, dependants of students and youth mobility scheme applicants would pay a discounted rate. This would increase from £300 to £470 per person.

The Government are aware the charge has a greater financial impact on family groups than on individual applicants. To support families, a new, lower rate would be introduced for those under the age of 18. This would be set at £470 and would be in line with the rate for students and those on the youth mobility scheme.

The Government are committed to supporting our NHS and health and social care workers, not least because of the vital role they have played during this pandemic. In May, the Prime Minister asked the Home Office and the Department of Health and Social Care to work together to exempt these workers from the immigration health charge. This order amends Schedule 2 to the principal order to provide an exemption for tier 2 general health and care visa applicants and their dependants. The tier 2 general health and care visa is for eligible health professionals, including doctors, nurses and allied health workers. These are people working in the NHS, for organisations commissioned by the NHS to provide essential services and in the adult social care sector.

The visa was launched on 4 August. It is a fast-track visa, offered with reduced application fees. Until such time as a formal exemption is in place for this group, the Secretary of State has waived the requirement to pay the health charge. In addition, tier 2 migrants who paid the health charge on or after 31 March 2020 but who would have qualified for the new health and care visa had it been in operation at this time, are being refunded.

Migrants who work in the NHS and wider health and care sector and who paid the charge on or after the 31 March, but who do not qualify for the health and care visa, may be eligible for reimbursement of the charge. On 15 July, the Minister for Health announced that this scheme will be launched in October. More details will be published by the Department of Health and Social Care shortly.

Now, more than ever, we need to ensure that the NHS is properly funded. The health charge is designed to benefit the NHS and to support its long-term

[BARONESS WILLIAMS OF TRAFFORD]
sustainability. We are indebted to overseas health and care professionals and it is right that they are exempt from the charge or have their payment reimbursed. For those migrants who come to the UK to work in non-healthcare related roles, it is only right that they should continue to pay towards our health service through the health charge. The government manifesto, as voted for by the public, committed to increasing this charge. The order delivers that commitment and I commend it to the House. I beg to move.

5.16 pm

Amendment to the Motion

Moved by Lord Rosser

At the end, insert “but this House regrets that the Order increases the immigration health charge; and fails to exempt key workers outside the scope of the Health and Care Visa, and National Health Service and social care staff already working on the frontline in the United Kingdom during the COVID-19 pandemic, from being required to pay the charge upfront.”

Lord Rosser (Lab) [V]: My Lords, I thank the Minister for her explanation of the content and purpose of this SI, which, as she says, increases the amount of the immigration health charge to £624 for adults and £470 where the applicant is aged under 18 at the date of application, or is a student or dependant of a student. The order also provides an exemption from the charge for migrants who apply for the new tier 2 general health and care visa.

The Immigration (Health Charge) Order 2015 was made under the Immigration Act 2014, and required a person who applies for entry clearance to the United Kingdom for a limited period of more than six months, or for limited leave to remain in the United Kingdom, to pay an immigration health charge. The amount of the charge was set at £200, apart from for students and dependants of students, for whom it was £150. The charge was doubled by the Immigration (Health Charge) (Amendment) Order 2018 to £400 and £300 respectively, so that for a family of four staying here for two years the cost would be £3,200.

The immigration health charge is currently payable by non-EEA nationals and enables them to access NHS services free of charge apart from those charges that UK residents must pay. It is, though, a matter of regret that the Government find it necessary to increase the immigration health charge at the present time, when we are in a public health crisis and access to healthcare is essential. It is an increase that will apply to those already in the United Kingdom. Yesterday’s announcement of a tightening of restrictions, to try to contain a second wave of Covid-19, simply emphasised how serious the situation remains and how it is likely to continue for many months, well into next year. Surely, this is not the moment to be increasing the immigration health charge on the argument that now, in the middle of a public health pandemic, is the very time for it to reflect the full cost of use.

It is a time when many people affected may well be struggling financially in vulnerable and precarious work and may also be facing the prospect of unemployment. These are people who could also be key workers who have paid into the system and worked hard, working on farms or in shops for example. Increasing the costs substantially for those already here who might be changing jobs or extending their stay, which means paying the fees again whether or not they will be reimbursed, is not what we should be doing now. This is surely not the time to be increasing the immigration healthcare charge by what appears to be over 50%.

We support the intention in the SI to exempt from the fees those who plan to come to the UK on the new health and care visa. However, that simply highlights the fact that this SI does not also offer automatic exemption from the immigration health surcharge to migrants currently working in health and social care. These migrant workers still have to pay the charge, with the promise of a refund at some date and within a timescale at present unspecified. They have put their own lives on the line, and continue to do so, to help us combat coronavirus. They have displayed the truly British qualities of commitment and stepping up to the mark in a time of need and crisis. In the care sector in particular, these key workers are on rates of pay that do not reflect the significant contribution that they make and the value of the work that they do—a reality that the Government appear to have just woken up to.

All those working in health and social care should be exempt from the immigration healthcare charge and should not have to pay the fee. The Government will issue refunds to those who are not automatically exempt under the tier 2 visa—a sizeable number of social care workers. But what will be the cost of administering these refunds? How will the Government ensure that all those to whom they should be paid receive such refunds? Why does it have to be done in this way? Why do we have to have refunds at all, rather than exemptions, when those affected will still have to find the money initially to pay the immigration health charge?

Last May, the Prime Minister pledged to abolish the immigration health charge for health and care staff as soon as possible, yet the reality for many migrant workers in health and social care is that they will have to continue to pay not just the existing fee but an increased fee if they move jobs and their sponsor changes, or if their period of time in this country is extended. Owing to their immigration status, some have no recourse to public funds so are not eligible for any state aid, such as free school meals or child benefit, yet will still have to pay the immigration health charge up front and face the financial pressure that that will involve.

The Government told us at the start of the pandemic that we were all in this together, a sentiment repeated by the Prime Minister in his broadcast last night. It is clear from this SI, though, that the Government’s togetherness does not appear to extend to many migrant workers who have shown true grit and determination in the invaluable, and at times life-saving, work that they have done and continue to do in our country during the pandemic. I beg to move.

The Deputy Speaker (Baroness Morris of Bolton) (Con): The original question was that the draft order laid before the House on 21 July be approved, since when an amendment has been moved by the noble Lord, Lord Rosser, to insert the words as set out on the Order Paper. The question I therefore have to put is that this amendment be agreed to.

5.23 pm

Lord Blunkett (Lab): My Lords, I rise to support my noble friend Lord Rosser in his amendment. I shall not delay the House for long because the Minister has heard me before on this issue. It was just a couple of weeks ago, when I was trying to point out the contradictions of a policy that encouraged people to go into the residential care sector and to progress, only to find that we are encouraging, enabling and supporting people who are coming in at a higher level—at management level as well as higher care levels—but not those who come in at the lower levels. We have the contradiction of expecting domestically resident employees to stick at the lower levels of residential care while we encourage migrants to come and take the more highly skilled parts of the health and residential sector. As I always do from the Minister, I felt I got an ironic smile when she said that she understood that this area and the world we are working in are full of contradictions.

It is a matter of great regret that we have chosen to provide the exemption just for the tier 2 health and care visa for higher skilled workers but not for those who are doing the grinding jobs. On a previous occasion, I asked the Minister for the staff turnover rate in residential and nursing homes. She was good enough to come up with a figure that I think was accurate—41%—which is staggering. It does mean that, over the months ahead, there will be substantial numbers of vacancies in work that supports those who are often at the most critical part of the care journey they are undertaking.

I also want to draw attention to the contradiction in relation to the increased charges for students and their dependants. At the moment, universities are on tenterhooks. While, thank the Lord, domestic undergraduate recruitment has been better than was previously predicted, we are still uncertain about the recruitment of overseas students, particularly for postgraduate taught courses and postgraduate research. This recruitment is crucial not only to maintaining funding for universities, which has been so badly hit, but also for cross-subsidy with other elements of the system, including vital research. By increasing these charges, we are discouraging people who are part of a cohort that draws down less on health services than other groups of the population simply by the nature of their demographic and well-being. At the same time, we are sending a message that, at a moment of crucial investment for both universities and the future for those individuals—as well as the soft power that that brings to the United Kingdom—we would like to charge them more. That is a matter of considerable regret.

5.27 pm

Lord Mann (Non-Affl): My Lords, I welcome the Government's proposal, which seems sensible and appropriate. It has always been rather baffling that our

welfare system is based on the principle of contribution and that our NHS is not in a position to get full and fair funding from all sources—particularly from those coming to this country from abroad. Having looked at the systems in Germany, France and Switzerland, for example, I can see that they are very different because they have that principle built in. Of course, they benefit from having ID cards. If Parliament had listened to the noble Lord, Lord Blunkett, when he was Home Secretary, that sensible proposal might have made it much easier at an earlier time. Indeed, some of our history might have been rather different if we had brought in identity cards.

One reason why identity cards would have been helpful is this. I uncovered some data from 2016; I have not seen it openly published since, although I am sure that it has been published somewhere. When I uncovered the figures, I found them quite extraordinary. They showed the differential between this country and other countries in terms of recharging for healthcare; that is, not recharging the individual, but for those European countries with which we have reciprocal agreements, we were recharging the sum of £49 million for their citizens to use our NHS, whereas through the British Government the British taxpayer was being charged—directly to the Government, not to individuals—£651 million. The deficit with Ireland was more than £200 million, while the figure for Spain, where there appears to be a significant number of British citizens who are often elderly and therefore use the Spanish healthcare system, was also a deficit. In other words, with all the Brits living in Spain and using the health service there, we were still in a deficit situation.

The Minister may not be able to do so at the moment but it would be useful for him to state afterwards in writing what the current situation is. There is no reason why our NHS should not be recouping those sums; they do not come from the individual but from the Government. Some £600 million a year, broken down into individual hospitals, is pretty much what the NHS deficit was running at until the current crisis. All that would be required is the presentation of some form of identity including nationality for that automatic process to be easily followed. A cultural barrier is holding this back, which is also why I am so supportive of this contributory initiative, of which the Attlee Government would have been proud and probably should have thought of at the time.

Let us have fairness in the system. It would be helpful if the Minister could take this issue back to her ministerial colleagues to ensure that we are charging back foreign Governments, not individuals, for their health treatment here. If not, perhaps there should be an explanation of where weaknesses in the system remain, so that some of us can pursue them with vigour.

5.31 pm

Lord Paddick (LD): My Lords, as the Minister has said, the 2019 Conservative Party manifesto contained a commitment to

“increase the health surcharge to ensure it covers the full cost of use”.

As a result, this statutory instrument, as the noble Lord, Lord Rosser, has said, increases the full immigration surcharge to £624 a year. However, in April 2019, the

[LORD PADDICK]

Department of Health and Social Care, using 2017-18 data, estimated the cost to the NHS of treating immigration health surcharge payers at £624 per year—the amount that the SI increases the charge by—but re-ran that estimate using 2018-19 data, putting it at £646 a year. Why are the Government using the old estimate and not the current one?

My understanding is that the Home Office takes a cut of the £624 charge to cover its costs. The amount therefore paid to the NHS is even less than the outdated £624 a year. What does the Home Office take out of the £624 allegedly taken to fund the National Health Service? Taking those two factors into account, the Government are falling short of their manifesto promise to cover the full cost of use.

I strongly disagree with the noble Lord, Lord Mann, not just on ID cards but on the statutory instrument. The flaw with the immigration health surcharge is that it takes no account of income tax, national insurance contributions and VAT, which are funding sources for the National Health Service paid by working migrants who also have to pay the IHS. The difference between the UK and most other countries with which the noble Lord was making a comparison is that they do not have health services that are free at the point of need, as we have in this country.

Analysis by Oxford Economics for the Migration Advisory Committee estimated that in 2017-18, the average non-EEA migrant made a net fiscal contribution of £310 more than the average UK adult. The average EEA migrant made a net contribution—that is, paid more in tax than they received in benefit from the state; for example, in healthcare, education and benefits—of £1,940 more than the average UK adult.

This analysis shows that migrants already pay more than the average UK adult towards government services, including the National Health Service, so why should they pay the immigration health surcharge on top? Even if we ignore the baseline figure, surely a further option the Government should have considered is discounting non-EEA migrants working in the UK by £310—the amount they contribute in addition to that contributed by the average person in the UK—and exempting EEA migrants altogether. Surely, this would cover the full cost of the use of the NHS. Or, why not charge migrants who do not work and not those who do?

These provisions are estimated to raise £177 million a year, a tiny fraction of the 2018-19 NHS budget of £114 billion, yet the impact on reducing the number of migrants seeking to come to the UK is estimated to be 2,500 people per year. Can the Minister confirm that the main objective of the immigration health surcharge, along with the vastly inflated sums charged for visas, is to reduce migration into the UK by pricing those least able to pay out of the market?

We then have the farcical situation whereby migrants working for the National Health Service have to pay the immigration health surcharge. Yes, there are exemptions, but these are for the more highly paid professionals such as doctors, dentists and pharmacists. Those least able to pay the IHS, such as porters and cleaners, are not exempt. NHS and social care staff

from other countries—many of whom are working on the front line of the coronavirus pandemic, as the noble Lord, Lord Rosser, said—should have the right to stay in the UK without having to renew their visas or pay the immigration health surcharge. That is why Liberal Democrats in the other place have tabled legislation to give them indefinite leave to remain.

There is no justification for imposing the immigration health surcharge on working migrants, who already contribute not only more to the Exchequer than they cost it, but more—in the case of EEA migrants, considerably more—than the average person in the UK. Failing to exempt all NHS and social care workers from the IHS adds insult to injury. We support the Motion of the noble Lord, Lord Rosser, and if he presses it to a Division, we will vote with him.

5.37 pm

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who contributed to what was quite a quick debate; nevertheless, they were thoughtful and insightful contributions. The health charge remains an attractive offer for migrants. It provides near comprehensive access to NHS services without further charge, regardless of the amount of care needed. It is not there to reduce migration, as the noble Lord, Lord Paddick, attests; moreover, it ensures that migrants do not need to worry about meeting the cost of unexpected treatment or arranging health insurance, which, for some people with health conditions, must be costly.

I turn to some of the specific issues that were raised. As set out in our manifesto, the Government believe that the health charge rate should broadly reflect the cost of treating those who pay it. However, the rates for students and those eligible for the youth mobility scheme will continue to be discounted. As I said, a new discounted rate for children will be introduced. The increased surcharge will continue to represent a very good deal for migrants who pay it, given the range of NHS services that can be accessed without further charge. The cost compares favourably to private medical insurance here and abroad, which is a common requirement for individuals wishing to migrate to many other countries.

We are really grateful to our essential workers and key workers who have performed such a public service throughout this pandemic, including emergency service workers, transport workers, teachers, delivery drivers, supermarket workers and many others. However, it is only fair to expect people arriving in the UK who work in non-healthcare roles to make a contribution to the full range of NHS services they can access from the point of arrival.

I will talk a bit about the reimbursement scheme, because the noble Lord, Lord Rosser, touched upon it. Tier 2 migrants who paid the health charge on or after 31 March 2020, but who would have qualified for the new health and care visa had it been in operation at this time, are being refunded. Migrants who work in the NHS and the wider health and care sector and who paid the charge on or after 31 March but who do not qualify for the health and care visa may be eligible for reimbursement of the charge. In July of this year, the Minister for Health announced that this scheme

would be launched in October. As I said earlier, more details will be published by the Department of Health and Social Care shortly.

Volunteers have been raised today and previously, and we absolutely pay tribute to the contribution they make to our communities. The Department of Health and Social Care is considering who will be eligible to apply for the surcharge reimbursement scheme and will publish that information shortly.

On tier 2 refunds, tier 2 migrants and their dependants who paid the health surcharge on or after 31 March of this year are, as I said previously, being refunded. Those who believe they are eligible for a refund on this basis may contact the Home Office; the relevant contact details are available on the GOV.UK website.

The noble Lord, Lord Rosser, and others talked about the impact on families and young people and the total cost of the applications people are faced with paying. I am absolutely aware of concerns regarding the combined costs—I think the noble Lord, Lord Paddick, raised this—of both the health charge and the visa fees, and the impact that this might have on families and young people in particular. The Government are committed to ensuring that the surcharge remains affordable for family groups and intend to provide, through this draft order, a reduced surcharge rate for children. The Government are clear, however, that migrants must pay the charge when they make an immigration application and should plan their finances accordingly.

The noble Lord, Lord Rosser, talked about those in a vulnerable situation, perhaps facing destitution. There is a fee waiver in place for those making specified human rights applications who are destitute or at risk of imminent destitution. Where the fee is waived, the requirement to pay the health charge is accordingly waived also. If you can demonstrate that you do not have adequate accommodation or any means of obtaining it, or cannot meet other essential living needs, that would be considered destitution.

The noble Lord, Lord Paddick, asked what cut the Home Office takes of the £624. I do not know if the Home Office does take a cut; he is asserting that it does. I do not have the answer today, and I will find that out for him. However, as to how the Government estimate the cost to the NHS of treating the charge payers, that was produced by the Department of Health and Social Care. Not to buck-pass, but the cost was produced by the DHSC, based on analysis it carried out in April 2019 using—the noble Lord is absolutely right—2017-18 NHS England data. I do not know how that data differs from the following year, but I will find out, and therefore get a more up-to-date picture for the noble Lord. The small increase from the previous analysis was mainly driven by health inflation and updated data. Mindful of the need to ensure that the surcharge is not set above cost recovery, the Government have decided to set the surcharge at £624 per person per year.

The noble Lord, Lord Mann, asked about recharging. It is something that has exercised me in the past: we pay ever so much and we get so little back. I do not know what the up-to-date figures are—he tells me £49 million versus £600 million, which is quite a gap

indeed—but clearly it is a matter for the NHS to collect the money. The noble Lord is nodding in an exasperated way—he knows that. If I can, I will get him more information on what the up-to-date figure might be.

The noble Lord, Lord Rosser, asked how we are targeting people affected by the change. We are looking to engage as many eligible people as possible through various means of communication.

The noble Lord, Lord Blunkett, talked about other people who may not be eligible but who have played their part in tackling the pandemic. While currently a subcategory of the tier 2 immigration route, the health and care visa offer will form part of the future skilled workers route. We intend to review the list of eligible occupations that can benefit from the offer to reflect the introduction of the expanded skills threshold, ensuring that those health and care professionals who meet the skills threshold can benefit from this offer.

I hope that I have answered all the questions. If I have not, I will follow up in writing.

5.46 pm

Lord Rosser (Lab): I thank the Minister for her reply and thank all noble Lords who have contributed to this debate. I will be brief. I am not sure that I have really had an answer to my question. Bearing in mind that some people coming into the country under the tier 2 visa will get automatic exemption, why can that not apply to all those in the health and care sector? I asked why we had to have refunds and why there could not be an exemption for all, but I did not get a very clear answer.

I also raised the specific issue of why it is necessary to make a dramatic increase in the healthcare charge now, when we are in the middle of a pandemic? A lot of those affected will be financially very stretched, and in certain circumstances will potentially have to pay the increase. I have not had an answer as to why that increase must be brought into effect now. The Minister quoted a manifesto commitment, but manifesto commitments do not all have to be implemented immediately. I do not suppose that when the manifesto was written it was envisaged that we would be in the middle of a pandemic crisis at this time. I have not really had an answer as to why it is necessary to make these substantial increases now.

However, I will leave it at that. I have made our two points, which are reflected in the amendment. I thank the noble Lord, Lord Paddick, for indicating that if I pushed it to a vote, I would have the support of the Liberal Democrats. I do not intend to do so. It has been an interesting debate and I have made clear the basis of our regrets about this SI. I am very grateful to noble Lords for their contributions and thank the Minister for her response. I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

5.49 pm

Sitting suspended.

Arrangement of Business

Announcement

6 pm

The Deputy Speaker (Baroness Pitkeathley) (Lab):
My Lords, the sitting of the House will begin shortly. I thank you for your patience.

The hybrid sitting of the House will now resume.

Covid-19 Update

Statement

The following Statement was made in the House of Commons on Monday 21 September.

“With permission, Mr Speaker, I would like to make a Statement on coronavirus. This deadly virus continues to advance across the world. The World Health Organization has confirmed that the number of new cases in Europe is now higher than during the peak in March. Here, the latest Office for National Statistics figures indicate 6,000 new infections a day—almost double the previous week.

As the Chief Medical Officer and the Chief Scientific Adviser said earlier today, we are seeing a rise in cases across all age groups. That pattern is emerging across the entirety of our United Kingdom. Earlier this afternoon, the Prime Minister held discussions with the First Ministers of the devolved Administrations and the Deputy First Minister of Northern Ireland to make sure that, wherever possible, we are united in our efforts to drive this virus down.

We know that the epidemic is currently doubling around every seven days and that, if we continue on that trajectory, we could see 50,000 cases a day by mid-October, so there can be no doubt that this virus is accelerating. We must all play our part in stopping the spread.

I would like to update the House on decisions the Government have taken so far. The first line of defence is, of course, the social distancing that every single one of us has a responsibility to follow. That includes the basics—hands, face and space, and the rule of six—and a crucial part of that is people self-isolating if they are at risk of passing on the virus. People who have tested positive and their close contacts must self-isolate. That is the primary way that we, together, break the chains of transmission.

I know that self-isolation can be tough for many people, especially if they are not in a position to work from home. I do not want anyone having to worry about their finances while they are doing the right thing, so we will introduce a new £500 isolation support payment for people on low incomes who cannot work because they have tested positive or who are asked to self-isolate by NHS Test and Trace. It will start next Monday. It will apply directly in England. The UK Government will be providing funding through the Barnett formula to the devolved Administrations so that similar support can be offered to people in Scotland, Wales and Northern Ireland.

As we are strengthening our support for those who self-isolate, we propose to strengthen the sanctions for those who do not. The vast majority of people who are asked to self-isolate do, but the rules are so important that we must ensure that nobody breaks them. We are therefore proposing a new legal duty to self-isolate, again for people who test positive or who are asked to do so by NHS Test and Trace. That is backed by fines of up to £10,000 for repeat offences and serious breaches.

We will step up enforcement too. NHS Test and Trace will make regular checks on those who are self-isolating, and we will crack down on employers who try to prevent staff from following the rules. Over the past few months, self-isolation has been instrumental in breaking the chain and blunting the force of this virus. We know that it works. With winter ahead, we will support everyone to do what is right to help stop the spread of the virus.

The next line of defence is testing and contact tracing. We are doing more testing per head than almost any other major nation. Our daily testing capacity is now at a record high of 253,521, and it continues to grow. On Thursday, we announced that two new Lighthouse labs will be set up in Newcastle and Bracknell, increasing capacity further. As the House knows, alongside that record expansion, demand has gone up, too, so we need to prioritise the tests for those who need them most to save lives, to protect the most vulnerable and to make sure that our health and care services and our schools can operate safely.

Today, we have published our list of where tests are being prioritised, setting out how we will make sure tests are allocated where they are needed most: first, to support acute clinical care; second, to support and protect people in care homes; third, NHS staff, including GPs and pharmacists; fourth, targeted testing for outbreak management and surveillance studies; fifth, testing for teaching staff with symptoms, so we can keep schools and classes open; and then the general public when they have symptoms, prioritising those in areas of high incidence. I want to reinforce this important point: the system relies on people coming forward for tests if—and only if—they have symptoms of coronavirus or have been specifically advised to by a health professional. The testing capacity we have is valuable and we must together prioritise it for the people who need it the most.

The next part of our defence is local action. We have been vigilant in monitoring the data and putting in place targeted local measures so that we can come down hard on the virus wherever we see it emerging. In the summer, when the virus was in retreat, we were able to relax some of the measures that we had put in place, but now as the virus is spreading once more we have had to act.

On Thursday, I updated the House on the changes we are making in parts of the north-east, and on Friday we introduced new rules for parts of the north-west, West Yorkshire and the Midlands. We have seen some concerning rates of infection in those areas. Liverpool, for instance, now has more than 120 cases per 100,000 population, and in Warrington it is about 100. As a result, working with local councils, we are putting in place stronger restrictions to protect local people. In parts of Lancashire, Merseyside, Warrington and Halton,

we are putting in place new measures from tomorrow. As with our strategy overall, our goal is to protect education and employment as much as possible, while bearing down on the virus. Residents should not socialise with people outside their own households or support bubble. Hospitality will be restricted to table service only and operating hours will be restricted, so venues must close between 10 pm and 5 am. From tomorrow in Wolverhampton, Oadby and Wigston and the whole of Bradford, Kirklees and Calderdale, people should not socialise outside their household or support bubble.

We know from experience that local action can work when local communities come together to follow the rules, to tackle the virus and to keep themselves safe. I know how hard that is. We are constantly looking to how we can ensure measures bear down on the virus as much as possible, while protecting lives and livelihoods.

I have heard the concerns about the impact of local action on childcare arrangements. For many, informal childcare arrangements are a lifeline, without which they could not do their jobs. Today, I am able to announce a new exemption for looking after children under the age of 14 or vulnerable adults where that is necessary for caring purposes. That covers both formal and informal arrangements. It does not allow for playdates or parties, but it does mean that a consistent childcare relationship that is vital for somebody to get to work is allowed.

I would like to thank colleagues from across the House, including my right honourable friend the Member for Berwick-upon-Tweed (Anne-Marie Trevelyan) and the honourable Member for Sunderland Central (Julie Elliott) and my honourable friend the Member for North West Durham (Mr Holden) for working with us on this important issue. I hope the change will provide clarity and comfort to many people who are living with these local restrictions. It shows the benefit of cross-party working across the House and listening to concerns as we all do our best to tackle this dreadful disease together.

The virus is spreading. We are at a tipping point. I set out today the measures the Government are taking so far. We are working right now on what further measures may be necessary, and the Prime Minister will update the House tomorrow with any more action that we need to take. This is a moment where we, once again, must come together to tackle this deadly disease. I commend this Statement to the House.”

6.01 pm

Baroness Thornton (Lab): I thank the Minister for taking questions on this Statement today. It was noticeable yesterday, and on Monday, that at no point was there any attempt to reveal any scientific basis or evidence for the impact on the spread of the virus of either a 10 pm curfew or going back to working from home if you can. A few weeks ago, we were all being urged to go to the office or workplace if we could. We have certainly not been told what SAGE’s modelling shows as the impact a ban on mixing households indoors would have.

The Government are lacking a clear Covid-management approach. We recognise that the pandemic, and its impact, are complex. The response can be no

better than the best compromise, and that should be admitted. Timely policies to rejuvenate the economy will fail if policies to contain the infection fail; we recognise that. In the absence of a vaccine, testing, tracing and isolation is the only response that matters now. Covid infection data should be published, to make it clear to the public where the risks are. The Prime Minister said that more information would be made available. I would like to know that it will and when that might happen.

This leads back to testing, tracing and, importantly, isolating, as every conversation about the containment of Covid-19 does at the moment. Looking back over the last few weeks of growing disquiet, and then serious concern, about not being able to get tests, does the Minister agree that part of the problem—leaving aside the seeming failure of the noble Baroness, Lady Harding, and her operation—is the clear lack of communication about testing? I plead with the Minister not to treat the House to the mantra about the record number of tests and so on. It is completely clear, from MP’s postbags and the media, that “them out there” were under the impression that tests were more widely accessible than they in fact are. Lecturing us on how simple all this is both misses the point and is dangerous.

As far as schools are concerned, I asked a headmaster how things were going. He said: “If they ran a school the way they are running the country, what Ofsted grade would they put on their self-evaluation form?” I thought that was quite a good question. The tone of the Secretary of State and the Prime Minister in their Statements rather gave the impression that the Government were blaming people for breaking the rules and allowing the virus to grow. The reality is that people have done everything that they were asked to do. They have missed birthday celebrations, weddings and funerals; they have, quite rightly, sent their children back to school; they have gone back to their workplace. They have done what they were asked to do. In return, Ministers were supposed to fix test, trace and isolate so that we could return to something like normality.

The mayor of Tower Hamlets, John Biggs, said:

“With cases rising the government is right to bring in stricter restrictions to prevent the transmission of COVID-19. In Tower Hamlets we need to keep each other safe by following these new rules”.

He added:

“Government also needs to ensure adequate testing is available and that there’s continued support for those losing out financially due to these restrictions. The next few months will continue to be challenging—as a community we’ll remain resilient and together can get through this”.

He puts the case extremely well.

The Cabinet Office Minister, Michael Gove, said the 10 pm curfew on pubs in England has been brought in after evidence from places such as Bolton, where the curfew has already been in place for two weeks, suggested it will drive down coronavirus infection rates. However, according to the latest figures released by Public Health England, the infection rate in Bolton has risen again. Does the Minister share my concern that the new regulations may be based on poor evidence? Will the Government review this decision and immediately publish the evidence to allow it to be scrutinised in peer review?

[BARONESS THORNTON]

Why is that 10 pm curfew not on all sales of alcohol? For example, you get thrown out of the pub at 10 pm with five of your mates; you go to the off-licence, buy whatever you want and go to somebody's home. I cannot see the evidence that this will make any difference. I would really like to know.

Returning to tests, can the Minister confirm that only half of all tests have been received in less than 24 hours and will he publish the Pillar 2 data which breaks down how many people asking for those tests were symptomatic and how many were asymptomatic? Many parents report going to walk-in centres with their sick children, when they had no symptoms, and being given a test. Was that a national policy? Has it been abandoned? This is further evidence of confusion.

I welcome what the Minister said about prioritising NHS staff, care workers and teachers, but can he clarify why he has issued guidance to hospital trusts placing restrictions on the number of tests they can carry out? Also, how he will protect care homes? In a previous exchange this afternoon between the Leader of the House and the Leader of the Opposition, my noble friend asked the noble Baroness about domiciliary care. I think she maybe did not understand what was being said—it might have been after a question from the Back Benches. Will people in domiciliary care, going from one home to another doing social care, be given PPE and will the tests available in care homes be available to them? I am trying to put it as simply as I can because it is a very important question.

Will the Minister ensure that no one is discharged into a care home without a Covid test? Given where the virus is, what is his advice to the shielding community? What protections is he putting in place for those from black, Asian and minority-ethnic communities, given that there are disproportionate numbers from those communities in intensive care units even today?

None of us wants to see another lockdown or circuit-break. We will understand if one becomes necessary, but test, trace and isolate should be fixed. The failure of that has left us vulnerable and exposed. It seems to me we must now act with speed to save lives and minimise harm.

Baroness Barker (LD): My Lords, three months ago the Secretary of State said that test and trace was the single most important thing that had to be done to conquer the virus. Yesterday the Prime Minister said it had “little or nothing” to do with the transmission of the virus. These two things cannot both be right. For six months, the problem has been that we have had confused messages, careless use of statistics and a persistent refusal to work with and listen to people who run local public services and know what needs to be communicated to whom and how.

All those are the fundamental reasons we find ourselves in this situation. We still lack an effective and timely track, test and isolate system. In its place and without any evidence base behind them, we have come up with messages which, quite frankly, do not make sense to the general public. The rule of six does not make any practical sense at all, as was very well evidenced today by my noble friend Lord Newby in an earlier interaction with the Leader of the House.

Yesterday, the Prime Minister said the Government now had granular data that enabled them to understand the transmission of the virus. When will that evidence be released? And when will it be released to Members of this House and the other place, who, next week, are going to be asked to renew emergency powers the like of which have never been seen before to this Government? If the Government cannot come up with that evidence—and, I have to say, over the last six months, they have persistently failed to answer any kind of detailed question from Opposition Benches in this House—why on earth should they be trusted to have those powers renewed? When are we going to get the evidence base?

It is helpful, looking at the Secretary of State's Statement, to see that finally, after repeated questions from these Benches and the Labour Benches, we have got a clearer statement on who is being prioritised for testing and in which area. But, as the noble Baroness, Lady Thornton, said, it is remarkable that there is nothing about black and minority ethnic communities, which we know are at greater risk, and nothing about the important people who work, for example, in domiciliary care, or who work in hospitals but are not medics.

I would like to ask one final question. When will they start listening to local authorities, who are persistently asking, in helpful ways, what they can do to expand the capacity for testing and to make sure that testing is better tied into the rest of the services? We are about to have an app launched, and local authorities are already telling us that there is soft intelligence that people who think they have symptoms but are unable to get a test just give up, and that people whose children are ill give up. It is all well and good for the noble Lord to say, as he did the other day, that they are going to completely redo NHS 111 to make it a more streamlined portal into the NHS, but if people have given up looking for tests long before they should, we are never going to get the data we need to get on top of this.

So I ask, as I did the other day: when they are revamping NHS 111, will they talk to the Royal College of Paediatrics and Child Health about the NHS 111 protocols? I agree with the noble Baroness, Lady Thornton; I think the public are desperate to do the right thing. They have been extraordinarily patient and have listened throughout, giving the Government the benefit of the doubt. But they will not go on doing that indefinitely while the Government continually fail to come up with a decent evidence base for their actions.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I am extremely grateful to the noble Baroness, Lady Thornton, for correctly characterising our response to the epidemic as “the best compromise possible”. It is a compromise. We have competing demands on our strategy: we have to protect lives and the NHS, but we also have to be conscious of the economy and the livelihoods of people, and we have to look after our students and pupils. The package of measures being put forward by the Government is the best compromise we can make for this moment, and we are unashamed of that compromise.

But the noble Baroness is wrong when she says we do not have a strategy. The strategy is really clear; it is to suppress the virus and protect the economy and education until the vaccine and mass testing are ready. It may not feel like it now, but there are glimpses of sunlight in the distance. The vaccine and mass testing provide a strong opportunity for us to suppress the virus. The strategy that we have put in place, as the Prime Minister rightly described in his address to the nation, is a way to “get through the months” until we have those arms at our disposal.

Both the noble Baroness, Lady Thornton, and the noble Baroness, Lady Barker, talked about the publication of data. I must confess that I have a genuine sense of confusion about that point, because we publish so much data. If there is one thing that this Government have got wrong, it is that we have published too much data too early. Too much has not been audited; too much has been put out as early as possible in our efforts to be transparent. Tomorrow, we will have a REACT survey; we will have an ONS survey; we will have test-and-trace data. There are SAGE minutes; there is NIHR; there is literally data coming out of every organisation of government. It is a fantastically huge amount of data. It is, I confess, extremely difficult to process all of that data all at once. The story it tells does chop and change at an amazingly fast rate—much faster than any experience I have ever had in my life. It is a rollercoaster that the Government have to ride.

I make no apology, however, for the fact that this Government have sought to act swiftly and to bring in measures quickly when the evidence has changed. In the last few weeks we have seen the latest example of that, where the infection rates have clearly lifted quickly in a way that was not expected, and we have had a discussion about that point in previous sessions in the Chamber. We have moved promptly to address the challenge that those worrying and concerning figures have presented to us.

The noble Baroness, Lady Thornton, raised the question of testing. I completely and utterly acknowledge the frustration of anyone who has not been able to get a test for themselves, for their child or for a loved one. It is true that we have more people wanting tests today than we have supply. However, I cannot avoid pointing out that—boy oh boy—we have come a long way since February, when we were doing 2,000 tests a day, to today, when we are doing 240,000 tests a day, and we are well on the way to doing 500,000 tests a day by October. Our aspiration is to do many times that within the near future.

That is not in any way to avoid the fact that I wish that we had more tests today. I want to convey to the House that this Government are 1,000% committed to answering the needs of this country for testing and have put every resource—human, technological, administrative and financial—behind the testing programme in order to deliver that promise.

The noble Baroness, Lady Thornton, raised the question of tone. I completely accept her point that the people of Britain have made a terrific sacrifice. There is no question at all of blaming the people of Britain, but we have to acknowledge that the spread of the virus indicates as a fact within itself that some people are not respecting the principles of social distance,

hygiene and isolation, and we have to move in order to shore up the basic principles of this country and, by the way, of any country that is effectively fighting the virus—because, if we do not, the virus will sweep through the country.

I thought that the Prime Minister put that challenge very well, and in a way that a large majority of this Chamber would support. He said that the choice was before us: we could ask those who are vulnerable and older and shielded to simply lock the door and we could turn our backs on them. That is not the choice that this Government have made. They have made a choice to fight the virus at every level, because we love the people whom we care about; and it is a pragmatic choice, because if we find the virus growing in one part of our society, whether that is young people, health workers or the very young, then sure as night follows day, it will sweep through the rest of society.

I turn to the evidence on the curfew. This is a moment where I do not have the science at my fingertips. However, I have been in pubs and clubs after 10 o'clock enough times to know about the proximity and intimacy of late-night drinking, and I know that what happens then is not conducive to social distancing. This is a moment when plain common sense can tell you that a curfew will help to break the chain of transmission among young people. It is, unashamedly, a signal that we cannot go on like this and, in particular, that young people have to change their behaviours because the signs of infection are crystal clear. The prevalence among young people is too high, and we have to turn that corner.

The noble Baroness, Lady Thornton, asked about symptomatic and asymptomatic testing. The honest truth is that it is very difficult to tell; if someone is standing in a testing queue, we do not turn them away. By the way, in order to get a test, people do have to fill in a form, on which they are asked if they are symptomatic. What we do know from closer analysis and questionnaires is that a proportion of testees—between 20% and 25% at current rates—do not meet the strict criteria of our testing. I am grateful to the British public for beginning to show respect for the fact that every test counts, and for helping us direct them at the most needy.

The noble Baroness, Lady Thornton, asked about domiciliary care, an issue that has been raised in this Chamber a few times. I reassure all those in the Chamber, including the noble Baroness, in answer to her specific questions: yes to PPE, yes to testing and, by the way, yes to new guidelines that help minimise contact and the number of patients seen by each itinerant domiciliary worker; and yes to substantial extra funds for the social care system, specifically to help social care avoid relying on people travelling from patient to patient.

The noble Baroness, Lady Barker, asked about our relationships with local authorities and the local teams. I reassure her that we have moved a very, very long way in the last six months and that the picture she paints is understandable but out of date. We have come a huge way to share all of our insight, data, analysis and systems with local authorities, local directors of public health and local infection teams. Decisions on lockdowns now have a protocol whereby they are

[LORD BETHELL]

led by local teams after engagement with local civic groups and brought to the Secretary of State after they have been agreed at a local level.

Substantial sums—billions of pounds—have been given to local authorities to help them afford the kinds of local intervention that they choose to make in order to support the most vulnerable and disadvantaged during the epidemic. Money is given to local authorities for PPE for the people that they decide need it. Community health is being supported within the NHS in order for communities to be given the support they need. Engagement with local civic groups and business leaders is at a level I have never seen in government before.

I will give one example in relation to contact tracing, which the noble Baroness, Lady Barker, specifically asked about. In Leicester, money has been given to the local council for it to commission its own contact tracing, because we recognise that the local authority may well have the insights, cultural connections and sensitivities, and contacts needed for this kind of work. Therefore, we have provided financial and logistical support, and professional advice on how it can fill the gaps. We recognise that a national system cannot do everything, and that we have to be both national and local at the same time.

The noble Baroness, Lady Barker, ended by talking about the public mood and her concerns that people are reaching a state of despair. I completely recognise the exhaustion that many people feel about the state of the epidemic. I particularly recognise the morale within the NHS and social care, where people have worked incredibly hard, often in circumstances and doing tasks that they did not originally sign up for, and the sacrifice that many people have made, whether they work in the healthcare system, are supporting people they love, cannot do the things they want or are isolated and on their own. Of course, lots of people have made massive sacrifices, but I do not recognise the world she describes.

I think the public largely support the steps taken by this Government to suppress the transmission of this virus. After all, it is the virus that is the enemy. In many respects, we have an incredibly united country in fighting that enemy. The way in which the British public have supported the regulations and guidelines, which have had a tough effect on many people's lives, demonstrates a huge amount of support. No Government—and certainly not this Government—will stretch that beyond what is tolerable. I posit to the Chamber that, to date, that support is still in place, and I remain extremely grateful for it.

The Deputy Speaker (Baroness Pitkeathley) (Lab): My Lords, we now come to the 30 minutes allocated for Back-Bench questions. As ever, I ask that the questions and answers be brief, so that I can call the maximum number of speakers.

6.26 pm

Baroness Watkins of Tavistock (CB): My Lords, I thank the Minister for coming to take questions on this Statement. I will ask about two issues. If he cannot answer me now, could he kindly write with information? My main concern is people who are still

going to work and caring for people who are Covid positive. Based on the highest prediction of need, how many days' worth of PPE stock does the UK currently have in store for the NHS and voluntary and independent-sector providers of health and social care, including care homes and domiciliary services? How rapidly can stocks be replenished? What proportion is produced and manufactured in the UK? Have we tested the distribution systems and are they satisfactory?

My second question is in relation to vaccination. Vaccination will obviously be really important, but what are we doing now to support the Prime Minister's approach, declared in August 2019, that we will increase MMR vaccination rates, among other needs, so that all people are protected as far as possible against other infections during the rise of Covid?

Lord Bethell (Con): My Lords, the noble Baroness asked about PPE, which is naturally a concern as we go into winter. I assure her that the NHS has 15-day, 45-day and 90-day plans for the supply of PPE to the NHS and the independent sector. Roughly half of that comes from British sources. The distribution mechanisms have been radically overhauled and tested, and have proved to be utterly modernised.

We are working extremely hard on the deployment of a Covid vaccination. She rightly mentions other vaccinations. I assure her that we have 30 million doses of the flu vaccination. As she rightly points out, there appears to be a strong link between having flu today, Covid tomorrow and problems with a combination of both at a later date.

Lord Hamilton of Epsom (Con): Sweden did not go for a total lockdown, as we did in this country. Although there is some evidence that its number of infections is going up at the moment, it still has far fewer deaths from Covid per 100,000 than we do. On top of that, its economy is supposed to be declining by about 5.5%, while ours will decline by at least double that. Does my noble friend think there are any lessons to be learned from Sweden?

My second question is about herd immunity. We started this whole process of dealing with coronavirus by talking about herd immunity. We then seemed to completely desert that idea and did not think it held any promise. Where do we stand now on herd immunity?

Lord Bethell (Con): My Lords, it is with sadness that I note that the infection rate in Sweden is inching up, and with regret that I note that Stockholm is bringing in many lockdown measures similar to those in the UK. The noble Lord is right that Sweden has had a distinctive approach, but it is not as distinctive as would appear. Many of the same regulations that we have had here have been applied in Sweden. One area where Sweden has shown leadership is in compliance among the public. When regulations have been brought in, there have been extremely high levels of compliance, and therefore the optics are different from the reality. This Government have never supported a herd immunity strategy.

Lord Hunt of Kings Heath (Lab) [V]: My Lords, I remind the House of my presidency of the Health Care Supply Association. I want to ask the Minister

about testing. He will be aware that the medicine supply chain rose to the huge challenge presented partly because, early on, pharmaceutical wholesale staff were classified as key workers. That gave them access to priority testing, but on Monday the Government issued a revised list that excludes those pharmaceutical wholesale staff. The Healthcare Distribution Association has reported to me that there are already delays in staff accessing these tests. It is very concerned that, if this continues, it will have a very detrimental effect on the supply of medicines to hospitals and pharmacies. Would the Minister be prepared to take this away, look at it and see whether they could be added back to the priority list?

Lord Bethell (Con): The noble Lord makes an extremely good point. I am grateful to him for alerting me to this question in advance. We take the contribution of pharmacists to the battle against Covid extremely seriously. I am not sure, right now, why pharmacists have been taken off the list and I would be glad to look into the matter and respond to him shortly.

Lord Greaves (LD): My Lords, turning to the new proposals affecting people advised to self-isolate, on the one hand, an isolation payment of £500 is being offered, which is an incentive; on the other, there is a new legal duty, the enforcement of which could result in some quite swingeing fines if people do not do it. It is a two-sided thing. I have two questions about this. First, what involvement will local authorities have in this process? Will it all be done centrally or locally—like the payments in the pilot areas—or will it be both together? Secondly, there is obviously a lot of scope for disputes about this—about individuals and how they are treated and so on. What documentation will be involved? It is rather more than simply getting a telephone call and being asked to do something. It is an offer of quite a bit of money, and it is an instruction to do things. Will they be sent pieces of paper or will it be done by email or whatever? Will there be documentation to back all this up?

Lord Bethell (Con): My Lords, implementation of both the payment and the legal sanctions will run their course through exactly the same channels as any other social care payment or the implementation of any other social duty. That will be led by local authorities, as it would be with any other social penalty. The police will be involved. The courts will be involved. Appeal processes will be involved. We hope that there will not be many sanctions, and that the payments will make a big difference to isolation protocols.

Baroness Chalker of Wallasey (Con) [V]: My Lords, I ask the Minister whether the Government have considered better ways of communicating the data to the public. One of the things that many of us have found, in talking the issues through with the general public, is that they simply do not understand the limitations of data analysis, which inevitably will be part of the whole story. Therefore, particularly when it concerns younger people, we should be trying to explain the data better than by giving the absolute numbers that always seem to come over. Inevitably, those who think they are not affected disregard the data. An improvement

here would help with people's agreement to isolate and to take preventive measures to stop the continued transmission of Covid-19.

Lord Bethell (Con): My Lords, I have said on other occasions that we publish a lot of data, and I would be glad to share a full list of our data sources with my noble friend. To put a different perspective on the point she makes, the biggest challenge we have is to persuade people that their personal health is not a private matter that affects only them; it is a public matter that affects the people they love, the people they are standing next to and everyone else. This is particularly challenging for young people, quite understandably. Young people may have very few symptoms or none at all. They may carry the disease without any personal implications whatever but are vectors of disease who carry it to the vulnerable, ill or elderly. Persuading the country that their health is a public matter is our number one priority. My belief is that we are making great progress, but there is some way to go.

Baroness Finlay of Llandaff (CB) [V]: To break the chain of transmission, people must isolate if carrying the virus. Therefore, people have to understand that a negative test means only that they were not carrying the virus at the time the test was taken. The new contact tracing app being launched tomorrow has the potential to interrupt the transmission of the virus, but in order for it to work, a large proportion of the population will need to download and use it. Is it true that only just over half the mobile phones currently in circulation in the UK are compatible with the new app?

Lord Bethell (Con): My Lords, the noble Baroness is entirely right that a test today only proves that you have not got it this morning; it does not necessarily prove that you might not have it in a couple of days' time, when you go and see your loved ones. However, she is not correct on two points concerning the app. First, all the epidemiological data suggests that even small numbers of downloads—even two people, but certainly 10% of the population—can make a difference. Our aspiration is much higher than that, but it is not true that a large proportion of the population needs to use it for it to be effective. Nor is it true that that it works on only half the phones: our belief is that it will work on a very large majority of phones.

If I may take a moment, I shall use it to advertise the "Distance Aware" badge sponsored by the noble Baroness. It is a really good device for encouraging people who are near those who are shielding to respect the social distancing rules.

Lord Rooker (Lab) [V]: Again, I take the Minister to his own department's weekly statistics for test and trace for the latest week, 3 to 9 September. He said on Monday that I did not understand the chart on page 8. Has he now read the annexe on page 37, which states, in table 1, in bold, that the number of people tested under pillar 1 and pillar 2 was 571,400? This amounts to 81,628 per day. So, can he now tell us the date on which more than 100,000 people were tested?

Lord Bethell (Con): My Lords, I can confirm that in the week to 22 September, in pillars 1 and 2, 188,865 tests were taken during each of those days.

Lord Bradshaw (LD) [V]: The noble Lord may know of my interest in public transport. Since the wearing of masks has been mandated by law, is he satisfied now that everything possible is being done to make the use of public transport safe for people?

Lord Bethell (Con): My Lords, I recognise the expertise of the noble Lord on public transport. It is my observation that the public have come a long way on mask wearing. When I was on the Tube this morning, absolutely everyone, including small children, was wearing a mask. That is huge progress. Yes, there is more that could be done, and we have brought in fines and support for isolation, but I pay tribute to the public attitudes that have moved a long way in this matter.

Baroness Verma (Con): My Lords, first, I thank the Minister for all the work that he and the Government have done in Leicester. The many millions that have been spent have been hugely helpful to our communities there. However, given yesterday's Statement by the Prime Minister about increased restrictions, my concerns relate to the mental and physical well-being of women and girls, in particular, in the densely populated areas of Leicester, as they will not be able to go out and get the right amount of exercise or make good choices when it comes to eating. Will my noble friend assist me in trying to get those messages across to people in communities such as mine in Leicester, where the messaging is so important? If the restrictions are extended, those communities will suffer far worse outcomes, and for much longer

Lord Bethell (Con): My Lords, I recognise that this epidemic has hit women hard—it really has—particularly in high-density areas such as Leicester where women and girls do not have access to the kind of exercise and space that they need in order to lead fulfilled lives. We have given substantial funds to the authorities in all cities, including Leicester. I greatly encourage those authorities, including the ones in Leicester, to think about how they can help women and girls to access the space and exercise that they need to fulfil their lives during this difficult period.

Viscount Waverley (CB) [V]: [*Inaudible*] the presence of the noble Lord, Lord Hunt, perhaps I may refer the Minister to his response to me when he presented a Covid update on 14 September, and indeed as he has confirmed today. On what calculation does he anticipate that

“we are looking at making up to half of our PPE requirements in the UK.”—[*Official Report*, 14/9/20; col. 1007.]?

Why do the Government have their sights on only 50%, and what plans do they have to increase national production? Is it suggested that this is the sum total of our manufacturing prowess?

Lord Bethell (Con): Absolutely not, my Lords. I pay tribute to British manufacturers, which have come an enormous distance—everyone from high-end manufacturers such as Burberry to those which once made recycled bin bags and have now turned their factories over to producing aprons and other important PPE articles. I pay tribute to my noble friend Lord Deighton, who has done an enormous amount to generate interest among British manufacturers of all kinds in order to support British PPE production. However, we have to have a balance to this. Some specialist goods, such as gloves, are best made elsewhere, but having the capacity and expertise to make 50% of our PPE means that we now have a route to making it all if necessary.

The Deputy Speaker (Baroness Pitkeathley) (Lab): The last question is from the noble Baroness, Lady McIntosh of Pickering.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I am delighted to hear that there are 30 million doses of flu vaccine. I remind the House of my interest with the Dispensing Doctors' Association. How and when will the flu vaccine reach doctors' and GPs' surgeries? My noble friend will be aware that PPE will presumably have to be worn for the dispensing of each dose of flu vaccine, which means that the vaccination will be administered at a loss to dispensing doctors and others. That does not seem sustainable. Is that an issue that my noble friend will be able to address?

Lord Bethell (Con): My Lords, flu vaccines are being distributed right now. I know that because I had mine yesterday. The person who gave me the vaccine was not in PPE and in fact spoke very movingly about the way in which walk-in methods are being used to make administering the vaccine as easy and quick as possible, removing all barriers to the public. When I asked him about the commercial practicalities, he gave me an encouraging update on the financial settlement for the distribution of vaccines by pharmacists. I am led to believe that there will be a huge amount of interest by pharmacists in distributing as many flu vaccines as they can.

House adjourned at 6.45 pm.

Grand Committee

Wednesday 23 September 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.32 pm

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, and 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 they may touch. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. When the expected Divisions take place in the House, the Committee will adjourn for five minutes.

I have been asked to make it clear that, in the debate that will begin in a moment, the following speakers whose names appear on the list will not be taking part: the noble Baroness, Lady Meyer, the noble Lord, Lord Vaizey of Didcot, the noble Baroness, Lady McIntosh of Pickering, the noble Lord, Lord Loomba, and the noble Baroness, Lady Ludford. The time limit is four and a half hours.

EU: Future Relationship

Motion to Take Note

2.33 pm

Moved by Lord True

That the Grand Committee takes note of the United Kingdom's approach to negotiating the future relationship with the European Union.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, I am grateful for the opportunity to open this debate for this Grand Committee to take note of the United Kingdom's approach to negotiating the future relationship with the European Union. I am looking forward to the usual extraordinarily well-informed and wide-ranging views that we will no doubt hear from your Lordships this afternoon.

It is over four years since the British people voted to leave the European Union in the largest democratic exercise in this nation's history. It was an historic vote for freedom, parliamentary sovereignty and change. Since then, two general elections have underlined and cemented the Government's mandate. The road has been hard and, at times, I confess, difficult—not least in this House and sometimes the other place. However, at the beginning of this year, thanks to this Government, Britain left the European Union.

As the 19th-century Danish philosopher, Kierkegaard, once said:

“Life can only be understood backwards; but it must be lived forwards.”

In that spirit, I believe that we must not lose sight of where we have come from. The principles of our approach for a future relationship are rooted in the

mandates that the British people have repeatedly given the Government—and, indirectly, all political parties—to regain our political and economic independence. No matter what happens in the negotiations, by the end of this year we will leave the customs union and single market and become a fully independent and sovereign country.

There is no mystery about where the British people and Government stand. We have been clear from the outset that we are seeking a relationship that respects the independence for which the British people voted and for an agreement with a free trade agreement at its core—one similar to those that the European Union has readily agreed with other countries. We are asking not for a special or bespoke relationship but for one which is grounded in precedent, which is aligned with the parameters agreed in the political declaration and which builds on the European Union's own past offer of a Canada-style deal. We have also always been clear that such a deal must of course accommodate the reality of the United Kingdom's well-established position on state aid and fisheries and fully recognise the United Kingdom as a sovereign equal party.

However, the European Union has continually insisted not only that we must accept continuity with EU state aid and fisheries policy, but that this must be agreed before any further substantive work can be done in any other area of the negotiation, including on legal texts, making it unnecessarily difficult to make progress. There is still a lot of work to do, but it remains our goal to reach an agreement and we will continue to work hard to do so.

We have kept the House updated throughout the negotiations. I have issued Statements after each round of negotiations when the House has been sitting and did so most recently on 14 September. I can now update the House again on progress and I welcome the opportunity to be able to do so in a debate of this kind.

We have entered the final phase of negotiations with the European Union. The chief negotiators and their teams met in Brussels last week, as planned. As set out in the terms of reference published online, UK negotiators have continued informal discussions with the Commission between formal rounds. These informal discussions continue today in London on a range of areas. The next formal negotiating round—round nine—will take place in the week commencing 28 September. Before that, there were useful exchanges in the eighth negotiating round, with all issues being covered in some detail, including the most difficult ones. There are large areas of convergence in many areas and we will keep working to bridge the gaps.

However, differences still remain, including on fish and state aid, where the EU continues to ask for continuity of the status quo. On fisheries, we have been clear that we will not accept any proposals that compromise United Kingdom sovereignty over our fishing waters. We are seeking a relationship based on the European Union's existing bilateral relationship with Norway. In order to make progress, the European Union must accept our position as an independent coastal state and any agreement on quotas must reflect that reality.

[LORD TRUE]

On state aid, the World Trade Organization rules are an internationally recognised common standard. Many major economies do not regulate subsidies beyond these rules. The European Union's state aid rules are unique and have been developed specifically for the single market. The United Kingdom's offer to the European Union goes further than World Trade Organization rules. We still believe that it would be straightforward to agree a free trade agreement, like those that the EU has agreed with other close partners around the world, and that this could be done quickly, but only if the European Union drops its unreasonable demands on fisheries and state aid.

As the Prime Minister has set out, there needs to be an agreement with the European Union by the time of the European Council on 15 October for it to be in force before the end of the transition period on 31 December. If there is no agreement, we would have a trading arrangement with the European Union like Australia's. This would still be a good outcome for the United Kingdom. It would represent us reclaiming our independence as a sovereign nation, and that is what the British public voted for—twice. That said, I repeat that we remain committed to working hard to reach agreement by the middle of October.

Whatever the outcome, we have already done a lot of work to prepare businesses and citizens for the end of the transition period when we will leave the customs union and single market. In July, we launched a major public information campaign to encourage businesses and citizens to take action to prepare for the changes that will take place. In addition, we are taking a number of practical measures to prepare, particularly around borders. Also in July, we published the border operating model which, alongside a £705 million package of investment for border infrastructure, staff and technology, will ensure our borders are operational after the end of the transition period.

We have said that we will introduce new border controls in a pragmatic and flexible way in three stages up until 1 July 2021—an announcement that was widely welcomed. This approach gives industry extra time to prepare for the new procedures for goods coming into the United Kingdom, particularly in light of the impact of the pandemic. My right honourable friend the Chancellor of the Duchy of Lancaster made a full Statement on border provision, which I shall, with the permission of your Lordships' House, repeat shortly.

As we set out in May's Command Paper, we are committed to working closely with businesses to implement the Northern Ireland protocol to ensure unfettered access to the rest of the United Kingdom and to maintain and strengthen the integrity and smooth operation of our internal market. In August, we set out further guidance for how goods will move into and out of Northern Ireland and the support available for businesses. For example, our new free-to-use Trader Support Service, backed by up to £200 million of funding, will also deal with all of the formalities on behalf of traders importing goods from Great Britain or the rest of the world.

The United Kingdom Internal Market Bill will protect jobs and trade across the whole of the United Kingdom after the transition period ends. It will guarantee that companies can trade unhindered in every part of the United Kingdom, as they have done for centuries, ensuring the continued prosperity of people and business across the four parts of the United Kingdom, while maintaining our leading high standards for consumers, workers, food, animal welfare and the environment.

On the measures relating to the Northern Ireland protocol that have—how shall I put it—prompted much discussion, these have been included as the actions of a responsible Government with a duty to uphold our commitments to the people of Northern Ireland. The measures create a safety net that ensures that Ministers can always deliver on their obligations and could take steps to protect the transformational progress in Northern Ireland seen in recent decades. Your Lordships will, of course, have the opportunity to scrutinise the Bill shortly, and I look forward to hearing your views then.

I have set out today our approach to negotiations with the European Union and have given an update. I have outlined how the Government are preparing, and helping businesses and citizens prepare, for the end of the transition period on 31 December, regardless of the outcome of the negotiations with the European Union. We have been clear from the outset that we are seeking a relationship that respects our sovereignty and which has a free trade agreement at its core. We have been clear from the outset that we will not accept any proposals, such as the EU's offer on fisheries and the so-called level playing field, which compromise UK sovereignty. We now need the European Union to understand the fundamentals of our position as an independent, sovereign country.

We believe there is still an agreement to be had with the European Union and remain committed to working hard to reach one by the middle of October. We need an agreement by 15 October; otherwise this will mean that we will have a trading arrangement with the European Union like Australia's. Whatever the outcome of negotiations, on 1 January, the United Kingdom will regain its economic and political independence and finally, after four long years of debate, honour the wishes of the British people. I beg to move.

2.46 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I thank the Minister for his lessons for life at the beginning and for his update. However, I am particularly pleased that the wording that he chose for the debate is about the Government's approach to the talks, given how very sadly the Government have managed to undermine trust—the trust that guarantees that “my word is my bond”. Well beyond our relationship with the EU, these tactics will affect our international relations beyond trade to “diplomacy and integrity”, in the words of our DPRR Committee. How the UK is seen globally, and whether we respect international law, affects our credibility, our moral authority and how other countries behave. It will also affect how Parliament is seen. As my PhD supervisor, and renowned Westminster watcher, the noble Lord, Lord Hennessey, mused to me, “All these years I've naively assumed that Parliament exists to make laws, not break them.”

Today, I want to touch on four points: obedience to the rule of law; state aid; UK citizens; and devolution. As Mrs May, other former Prime Ministers and Conservative Party leaders have stressed, disregard for the rule of law undermines trust in us as a nation, with the Government's own chilling words, to "disapply international and domestic law".

To the outside world, renouncing of established international law or a treaty matters for the future. No. 10's statement that

"unless the EU agree to each of the UK's demands in the joint committee, the UK will breach the withdrawal agreement,"

will be quoted around the world, to the detriment of a rules-based international order. The Prime Minister says he will renege on the very detail he himself signed, by removing checks from the GB/NI border if no deal is reached, but why did he not see that that is what he signed up to?

Late last year, the Prime Minister told firms that they could put forms "in the bin" because they would not be needed. We told him checks would be needed. Northern Ireland politicians told him. The Road Haulage Association told him. As we have heard from the Minister, the Trader Support Service has been set up to help this. Over £500 million has been allocated to the system for moving goods into Northern Ireland, as they will need customs declarations—indeed, Fujitsu has won the contract to help with this. His own Cabinet Office wrote to the Northern Ireland Executive about new border posts at ports in Belfast, Warrenpoint and Larne, for checks on agri-food. How come the Prime Minister professes not to know this and moved a Bill giving Ministers power to disapply Article 10 of the protocol unilaterally, by regulation, breaching Article 4 of the withdrawal agreement?

Foreign Governments, with whom we will need to negotiate, hear Mr Johnson threaten to break the withdrawal agreement if he does not get his own way—a breach of the UK's commitment, in Article 5, to implement it

"in full mutual respect and good faith".

Those foreign Governments witness our Government unpicking their own "oven-ready" deal, jeopardising trust in our willingness to keep to the rules and keep our word. What does this do to the trust that we will need when we negotiate around the world?

Along with the Minister, we want a deal with the EU. The City of London Corporation stresses the need for a positive relationship for the sake of households and businesses, wanting close regulatory and supervisory co-operation to make a success of our relationship. Business wants a deal, and at speed, as its needs certainty and time to adjust. Siemens needs to be able to work closely with the EU for its future prosperity and for jobs here. PwC and others urge a deal, not least for our SMEs, which are woefully ill-equipped at the moment for a no-deal outcome. The Food and Drink Federation is aghast at the impact of no-deal procedures on its imports and exports, possibly in 100 days' time, giving no time for adjustments. It is worse for some sectors—for the organic sector, for example, where, if mutual recognition of regulation is not sorted, it might not be able to sell into Northern Ireland, let alone the rest of the EU.

The economy is already in trouble, so our EU negotiations need to help, not hinder. We need a good deal, tariff-free trade, consumer protection for goods imported from the EU, and no two-day delays and the major back-ups that the Government anticipate. Today, we hear that they are even trying to put the blame on hauliers rather than on their own negotiating failure. Why are the Government willing to sacrifice a good deal, which I and others think is already there and ready to be done, as well as our reputation, on the altar of being able to write our own state aid rules and move away from a level playing field?

On state aid, it is hard to understand why a Government, unwilling to use the freedoms they already have over state aid, would risk a deal for the ability to do more. As it is, the Japan trade deal commits the UK to stricter state aid curbs than those being discussed with the EU. If this is all about tech companies, have not the Government noticed that Silicon Valley did not grow on government handouts? It is the same across the piece. Whether in our negotiations with the USA or any other country, the same questions will arise on environmental, worker, safety or consumer standards and over dispute resolution mechanisms or redress. That is the meat of trade deals.

Thirdly, what does the Government's approach to the talks mean for our citizens? Those living in the EU and following this delayed "I won't move" process worry about their status. As Ruth Woodhouse, a Brit living in Spain wrote to me from Malaga:

"UK citizens residing in the EU thought we had secured a relatively good, guaranteed level of protection in the withdrawal deal. However, if the government can tear up the rule book, clearly anything can be changed on a whim and nothing is guaranteed. I fear that our hard-fought rights could be just as easily be removed."

Yesterday, we learned that thousands of Britons living in the EU were told their UK bank accounts will be closed, with Lloyds, Barclays and others taking action due to the lack of a post-Brexit trade deal. It is no easier for employees, with JP Morgan sending staff off to other EU capitals, due to lack of confidence that an agreement will arise on services. Jobs, money and people's lives are all at risk because the Government are failing to negotiate.

Without a deal, there will be trouble for travellers, whether by air or sea. When the police imposed full border checks at channel ports last week—nothing to do with Brexit—the main road to London was snarled up within hours, with trucks parked up on the M20 motorway, a reminder of how any delay quickly causes chaos and will not be solved by lorry parks across Kent or, indeed, around Holyhead.

Finally, the UK's approach to the talks has challenged the devolution settlements, by excluding the devolved Governments from its thinking and talks. We see it in the internal market Bill described by the Welsh Government as,

"an attack on democracy and an affront to the people of Wales, Scotland and Northern Ireland, who have voted in favour of devolution on numerous occasions."

I remind the Minister that it is not just the referendum result that should be recognised but those votes for devolution. Indeed, the treatment of the Welsh Government led to the resignation of the Conservative MS, David Melding.

2.55 pm

Sitting suspended for a Division in the House.

3.01 pm

Baroness Hayter of Kentish Town (Lab): My Lords, just as the Welsh Government felt offended because they were not consulted on the internal markets Bill, and because the powers that it gave to the Government took away from the devolution settlement, there is a similar feeling about these talks, because they have been neither fully involved nor consulted in the Government's discussions with the EU. Do the Government not see that every time they upset the devolved Administrations, that challenges the very future of the union?

The economic disruption of leaving the transitional period without an agreement, or indeed with a deal which falls short of the Government's promises, would worsen the hit already caused to the country by Covid-19. We have left the EU but it remains our closest neighbour and most important trading partner. We still share a continent in which security and judicial co-operation help to keep all our people safe. The Government's approach to negotiations is weakening rather than strengthening our ties and mutual trust, and is therefore to be regretted.

The Deputy Chairman of Committees (Lord Lexden) (Con): I call the next speaker, the noble Lord, Lord Wallace of Saltaire. Lord Wallace? We might have a chance to come back to him later. In the meantime, I call the noble Lord, Lord Kerr of Kinlochard. Lord Kerr? Oh, there are some technical difficulties. We will adjourn until they are sorted out.

3.04 pm

Sitting suspended.

3.14 pm

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, the Committee will now resume. I call the noble Lord, Lord Wallace of Saltaire.

Lord Wallace of Saltaire (LD): My Lords, I hope you can hear me. Good.

In his opening speech, the Minister talked about the Government's well-established position on state aid. I am puzzled by that and I hope that he can explain. My understanding is that the European Union rules to which we now object were largely drafted by British Ministers and officials under Margaret Thatcher's Conservative Government and that the Government's current position on state aid has changed radically since last December, largely under the influence of the Prime Minister's special adviser Dominic Cummings, but is not yet entirely clear. Perhaps he can explain.

We are now approaching the end of the transition period. That means, as the City of London briefing spells out, that we have to focus on what it describes as "the necessities of the UK's future trading relationship with the EU"—

and not just the trading relationship. Britain cannot escape its geography, for all the nonsense put out by Brexit Central and others after the referendum about

the irrelevance of geography to Britain's future. The number of British citizens who travel abroad for holidays, study, or work to the European continent dwarfs the number who travel to Australia, New Zealand and the western Pacific. The City memorandum points out that 75% of the data flows across the UK's borders are with European countries. Cross-border crime is predominantly a matter affecting neighbouring countries. Britain's security, society and economy will all continue to be profoundly affected by the ease or difficulty of interaction with our neighbours across the channel.

The maintenance of close relationships requires a legal framework that is treaty based, as again the City memorandum stresses. Treaties limit national sovereignty: they build relationships of "shared sovereignty", as Sir Geoffrey Howe—that great and true Conservative—used to argue. The closer the levels of interchange, the denser the network of legal agreements that is needed to ease cross-border working. British Border Force personnel work in France under a bilateral agreement. British police exchange data on criminals with their counterparts in the Netherlands and Spain within a legal framework that safeguards confidentiality. British researchers collaborate with respected counterparts in Germany, Sweden and Finland. British holidaymakers have benefited for the past 40 years from access to a European health card in case of illness—a mutually advantageous arrangement, from which a large number of Conservative voters have benefited over the years and which the Government are now, sadly, determined to abandon.

To manage this future relationship, from 1 January 2021—three months from now—we need a legal agreement: a partnership, spelled out in treaty form. One of the most dishonest statements that the Government keep making to the public is that we can opt for an "Australia-type agreement" with the EU, when no such agreement exists. A no-deal future relationship threatens damage not only to our economy but also to our security and to the openness of our society.

Successive British Governments, from James Callaghan and Margaret Thatcher onwards, have negotiated agreements with our neighbours to manage the rising intensity of interactions between us—within the framework of the European Union. Our current Prime Minister signed up to a declaration 11 months ago on our future partnership, which envisaged a network of agreements to manage our unavoidably shared interests. Since then, however, he has retreated, under pressure from the ultras in his party and those now in the Cabinet who were previously in the Referendum Party or UKIP. The noble Lord, Lord Frost, has spelled out a doctrine of sovereignty that would suit North Korea but makes no sense for a democratic country with an open economy.

Worst of all, the level of hostility expressed by Ministers, Conservative MPs and the right-wing media towards the Governments of France, Germany and the other members of the EU has risen alarmingly. The City of London briefing that we have all received expresses

"growing concerns that acrimony between the UK and EU may result in a failure to reach an agreement ... a no deal outcome would be likely to engender ill will on both sides and damage the future UK-EU relationship."

Even if the Government reach a last-minute deal, the image of a Government who distrust their neighbours and break international treaties when they feel like it will damage Britain's ability to sort out the unavoidable problems that will follow from our more distant relationship. The Prime Minister talks about a global Britain and an independent foreign policy, but the failure to maintain close co-operation with our European partners in international organisations and negotiations across the world would leave us dependent on the limited good will of whoever comes out of the contested American presidential election and our distant friends in New Zealand and Australia.

Before the noble Baroness, Lady Noakes, repeats yet again her accusation that any criticism of the Government's stance flows only from remoaners who never wanted to leave, I stress again that we are now debating the future, not the past. We are debating the framework within which our holidaymakers will travel next summer, the difficulties that British banks will encounter if agreements on data flows and financial flows have not been reached, and the obstacles that British police and intelligence will face if there is no clear legal structure within which to maintain the co-operation that they have built within Europol.

The noble Lord, Lord True, is a real Conservative, not one of those who have entered the party from more right-wing groupings as more moderate Conservatives have left or been expelled. I hope and trust that if the Prime Minister deliberately crashes the final stages of the negotiations and leaves without a deal, the noble Lord will follow other colleagues and resign. The national interest requires a deal, and the Government will betray the national interest if they fail to agree one.

3.21 pm

Lord Kerr of Kinlochard (CB) [V]: How should one react if one's Government deliberately, knowingly, admittedly and formally break international law? Like the noble Baroness, Lady Hayter, I think that Mrs May got it exactly right in the other place on Monday, and I congratulate her on her honesty and courage.

What matters for our debate today is how the 27 will react. They will have been as shocked as was Mrs May by the Bill that the Government produced, and shocked again when our Prime Minister had the nerve to accuse them of bad faith. However, I do not see them breaking off the negotiation; I see them starting infraction proceedings. The European Union runs on laws and *pacta sunt servanda*. I do not see them rejecting an agreement if the Barnier-Frost negotiations are to produce one but I cannot see them signing it—not without suspending its coming into force if our Government persist with what is now Clause 45 of the internal market Bill. Suspension seems to me to be the minimum on which the European Parliament would insist.

Why are we in this mess and how can we get out of it—indeed, will we? Let us not waste time on the fanciful story, for which no evidence has yet been produced, that the 27 were planning to blockade Northern Ireland's food supplies. Who would enforce the blockade—the Commission navy, under Admiral Ursula von der Leyen? I suspect that the more banal context is our refusal to say what our future regime will be for

sanitary and phytosanitary checks. Perhaps we are refusing to say because the chlorinated chicken war may still be raging in Cabinet.

The withdrawal agreement leaves Northern Ireland in the single market. Third-country suppliers of foodstuffs to the single market need a working SPS regime but the noble Lord, Lord Frost, seems to be telling the EU that ours is none of its business. Surely that is a stalemate that is relatively easy to solve, with the solution entirely in our hands. As for the other three problems that we have now discovered in the protocol, first, the Article 5.3 issue—how to ensure that export declarations and goods moving to the mainland apply only to those originating in the Republic—is an obvious task for the joint committee, and a relatively simple one. Secondly, the Article 5.2 issue, relating to goods at risk of entering the Republic, disappears if there is a free trade agreement.

Thirdly, the Article 10 issue—reach-back into the mainland on state aid—falls away if the level playing field argument is settled. This could be the crux of the matter. On state aid, the EU has dropped its unrealistic bid for dynamic alignment and CJEU jurisdiction, but it wants to know that we will have an effective regime with an independent authority, transparency, legal redress and, where trade with it is concerned, a dispute settlement mechanism. However, we seem to have said again that all that is none of its business and we are not going to set up our system until next year—so there.

This is serious. I do not believe that there can be a UK-EU free trade agreement unless on state aid we meet the EU half way. It has moved but we have not; indeed, we have regressed, resiling on last October's political declaration when we agreed:

“Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field.”

The EU still believes that that is needed because it has heard far too much talk of Singapore-on-Thames, so I do not see us getting an agreement if on state aid—as on food standards, the environment, fish and carbon trading—we stick to saying, “Sorry, mind your own business, we're taking back sovereignty.”

It is the sovereignty point, so stressed by the noble Lord, Lord Frost, that really puzzles me most. I would say that France and Germany are sovereign states and that their sovereignty was not diminished by their commitment to co-operation. I would say that we never lost our sovereignty; indeed, we have just demonstrated that by using it to leave. Sovereignty does not just mean the right to be left alone. Without sovereignty one cannot make treaties, but having sovereignty does not confer the right to dictate, or unilaterally revise, the terms of treaties and does not preclude binding commitments to co-operation.

Of course, I may be being naive. If, contrary to today's reassuring remarks from the noble Lord, Lord True, we are actually on the ERG's preferred policy of no deal then “none of your business” and the Clause 45 blunderbuss are easily explained. Avoiding commitments to high SPS standards might make sense if one's priority was a deal with the United States. If so, there is a fatal flaw in that logic: if we blow up the

[LORD KERR OF KINLOCHARD]

Good Friday agreement, there will be no deal with the EU or with the US. The US is a guarantor power of the Belfast treaty, and American support for the Good Friday agreement is deep and bipartisan. The Foreign Secretary's attempt last week to convince Washington that the threat to it comes not from us but from Brussels was not British diplomacy's finest hour; it did not wash, nor will it.

I still hope for a second UK-EU treaty. That can only be thin now, but even a thin one would be better than nothing. However, it will not be agreed if we stick to our exceptionalist "mind your own business" sovereignty, and it will not come into force if we blow up the first treaty, which is only eight months old.

3.28 pm

Baroness Noakes (Con): My Lords, it is a pleasure to take part in this debate. I thank my noble friend Lord True for his usual masterful summary in opening the debate. It is also a pleasure to follow the noble Lord, Lord Kerr of Kinlochard, and to confirm that our views remain some way apart. Given the amount of excitement in the House that is normally engendered whenever our relationship with the EU is raised, I am quite surprised that our numbers today are rather modest. However, I am grateful for the fact that at least we have a decent amount of time to speak, which is rare in this ghastly hybrid House, and we must treasure the opportunity.

When we celebrated our freedom from the EU on 31 January this year, it seemed such a huge relief. We had put behind us the disastrous negotiations by the previous Administration and the prolonged period when Parliament tried to thwart the will of the people. We might briefly have cherished the thought that negotiating the future relationship was going to be the easy part after all that. But that did not last, and we have had to face the reality of trying to negotiate with an EU that does not yet accept us as a sovereign equal. It is completely natural for the EU to prioritise its own interests, but the EU seems also to want to punish the naughty child across the channel for its temerity in leaving. The EU knows that if we make a success of Brexit, other EU countries may well question the value of staying locked into the European project.

I pay tribute to my noble friend Lord Frost for the calm, measured and thorough way in which he has conducted the negotiations so far. It is certainly not his fault that we have failed thus far to deliver a deal on the basis of our own very reasonable requirements. We have asked for a free trade agreement like those that the EU negotiates with other trading partners. The EU has responded by saying that, because of our geographical proximity, we must have more restrictions placed on us, in particular in the area of the so-called level playing field. We have been clear, as my noble friend Lord True emphasised, that sovereignty is of paramount importance, but I do not think that the message has yet been received in Brussels. In the case of the level playing field, we do not need anything beyond WTO terms.

The issue of sovereignty is also at the root of the lack of agreement on fisheries. Our fishing industry was decimated by the EU's quotas, which allowed France and Spain in particular to take our fish. We have said,

perfectly reasonably, that we want sovereignty over our fishing waters back and that we will set the agenda for access for other countries. The EU thinks that it can carry on as before.

Northern Ireland was never going to be easy. It was the most difficult part of the withdrawal agreement, and it looks as if it is going to be the most difficult part of the long-term arrangements. The EU's bully-boy tactics of threatening to stop food imports into Northern Ireland from the rest of the UK are completely unacceptable, and I have it on very good authority that those threats were actually made. We should perhaps have expected trouble. Although he has denied it, Martin Selmayr is believed to have said that Northern Ireland is the price that the UK will pay for Brexit. While Mr Selmayr has been moved to somewhere he can do less damage, I expect that his spirit lives on in Brussels.

I shall support the Government when the internal market Bill comes to your Lordships' House. I believe that it is necessary to create the powers that are in that Bill to allow us to reconcile the conflicts between the withdrawal agreement, including the Northern Ireland protocol, and the Belfast agreement. I regret the clumsy initial characterisation of it as a breach of international law, because it is no more than a reserve power to deal with problems. I hope that we do not have to use it, but the EU needs to recognise that we are not giving it *carte blanche* in Northern Ireland, which remains a sovereign part of the United Kingdom.

I do not know how many other problems remain in the negotiations with the EU. While it would be interesting to have a bird's-eye view of the negotiations, they are best conducted behind closed doors. I was grateful for the update from the Minister on the negotiations when he introduced this debate. At the weekend, however, I read with incredulity that the Channel Tunnel, governed by the bilateral Canterbury agreement between the UK and France, is now part of the EU's power grab. I certainly hope that that story is untrue; perhaps the Minister can comment on it when he winds up.

I have always said that, while I favour a deal with the EU, it would not be the end of the world if we left without a deal. It would certainly be inconvenient and would cause some confusion in the early part of next year, which would not be helpful given the damage already done to our economy from the public health response to the coronavirus pandemic. But we would survive. We are a resilient nation and are capable of overcoming that. In the meantime, the Government are pressing ahead with free trade agreements with other countries, and will seek to join the Trans-Pacific Partnership next year. While the EU is certainly a large market, around 90% of global growth is expected to arise outside the EU, and that is where we must set our sights.

3.34 pm

Lord Hain (Lab) [V]: My Lords, just three months away from the end of the Brexit transition period, there is still no clear idea of a "landing zone" for the negotiations on the UK's future relationship with the EU, with the UK Government's latest threat to break international law destroying our negotiating trust and threatening a massively damaging hard or no-deal Brexit, compounding the economic recession resulting from Covid-19.

In March this year, your Lordships' excellent EU Committee report contrasted the latest negotiating position of the EU as a "development" of the political declaration, which the British Government had solemnly agreed, with London's new approach of turning its back on that. Within a couple of months, it had become clear that the EU was leaning towards an inclusive approach to the negotiations, with extensive consultations achieving consensus among member states, a willingness to engage in open and interest-based discussion aimed at problem-solving, and high levels of transparency. The UK approach, on the other hand, focused upon defending predetermined red lines, and decisions taken behind closed doors.

Now the Prime Minister has lurched into renegeing on the treaty commitments for joint decision-making, in an agreement not yet a year old. This may be pure brinkmanship—upping the ante, either to prepare to blame the EU for no deal or to retreat into a "thin deal" under the guise of triumphal Boris Johnson tub-thumping, as happened last October. The EU, although shocked at this tactic—which calls into question whether any treaty signed by the UK is worth the paper it is written on any more—and despite declaring its intention to mount a legal challenge, is still negotiating, to its credit under the present German presidency. It appears that its real objective is to get a deal, although not at any price.

One of the main bones of contention is state aid, where the UK Government were warned by civil servants in January that provisions in the Northern Ireland protocol could potentially "reach back" into the rest of the UK. It is very strange, therefore, that according to the *Financial Times* on 14 September, the recent trade agreement with Japan commits the UK to tougher restrictions on state aid than the ones the Government are currently offering to the EU.

If a solution to the state aid issue can be found—the Institute for Government has recently proposed a possible solution—there is every likelihood that compromises on other outstanding issues, such as fisheries, can follow. However, we still have no clarity on what the Government's aims are, apart from bombastic "sovereignty" slogans, which they continue, tragically, to confuse with UK power. No. 10 apparently wishes to see its discretion to subsidise "pet" projects unfettered by any agreement. Sir Ivan Rogers, the former UK ambassador to the EU, told the *Irish Times* on 16 September that he thought the Boris Johnson-Dominic Cummings view on state aid would prevail, with no deal the outcome. Perhaps we should hope that the Prime Minister, who was given six months to save his premiership in the *Daily Telegraph* last week, will decide there is a political premium from even a "thin deal" which, as the Centre for European Reform think tank argues, would at least provide a platform on which to build a more substantial EU-UK relationship going forward. Meanwhile, UK businesses are reduced to reading the tea leaves in trying to decipher what will be the trading environment for them after Christmas with the market which constitutes nearly half of the UK's trade.

Britons make almost 60 million trips in a normal year into mainland Europe. Next year, will they still enjoy the protection of the European health insurance

card, will pet passports still be valid, and will the current extension of UK mobile phone deals to EU countries, which means no roaming charges, still apply? Otherwise, UK citizens will need to take out costly health insurance, travelling with pets will be extremely onerous—with a new four-month process, including having cat or dog blood samples tested at an EU laboratory—and costly mobile phone charges will return. UK travellers will need at least six months' validity on their passports, and drivers will need one or more of three different types of international driving permit.

The UK imports 50% of its food, with 30% coming from the EU, and the Food and Drink Federation anticipates tariffs of 23% on £35 billion-worth of imports of food. There will be higher prices, lower quality, and less choice.

A large percentage of medical supplies come from the EU, and the Government wrote to suppliers in August advising them to stockpile, as "significant disruption" to trade was likely for six months. Pharmaceutical firms have told the Government that disruption caused by Covid-19 has meant stockpiles have been "used up" and it may not be possible to replenish them in time.

Manufacturing is threatened with tariffs and disruption to Europe-wide supply-chains, with the more than half a million cars exported to the EU last year facing in future a duty of 10%. Road haulage will face a limit on the number of permits, and two-thirds of UK firms will not be able to operate in the EU at all. In finance, many firms either have or are planning to relocate to mainland Europe. Restrictions on EU migrants will make it more difficult for UK businesses to plug their gaps with European workers, and the UK will be unable to return migrants crossing the channel without negotiating new bilateral agreements. It will become illegal for EU servers to send personal data to the UK. Law and intelligence agencies will lose access to pan-European criminal databases, and shared arrest warrants would be limited. In addition to the ending of trade agreements with the EU 27, the UK will lose the benefit of deals that the EU has with up to another 70 countries, except where these have already been renegotiated.

The list of potentially catastrophic consequences of a no-deal Brexit is endless. In Hemingway's 1926 novel *The Sun Also Rises*, a character is asked how he went bankrupt. The answer is: "Gradually, and then suddenly."

3.42 pm

Lord Bradshaw (LD) [V]: My Lords, that was a massive contribution from the noble Lord, Lord Hain, and a tremendous catalogue of the disadvantages that we will face. Monsieur Barnier reflected recently that the demands of the UK so far as concerned the road haulage sector—for this purpose, that includes short-sea shipping—were too close to the existing Common Market rights without meeting any of its obligations. I want to concentrate on road haulage because it is so essential to our economy and so vulnerable to any disruption.

What Monsieur Barnier said should have sounded warning bells, meaning we should prepare ourselves for a no-deal Brexit, particularly in the light of the steadily worsening relations with the EU and the rhetoric emanating from Downing Street, to which the noble

[LORD BRADSHAW]

Lord, Lord Hain, drew our attention. Business is not prepared for a no-deal Brexit and the likely disruption of supply chains affecting both food and production lines, which are dependent on just-in-time delivery.

Whatever Michael Gove is saying, the effect on the UK economy is potentially calamitous and awful. When the noble Lord, Lord True, replies to the debate, I wonder whether he will be a little less opaque than usual, not brush those real issues aside, and confirm that the Government will have a new freight management system before we leave the EU. That certainly is not the view of the logistics industry, which we heard this morning. Those people were mostly warm supporters of the Government's wish to leave the EU and feel angry that matters are now in some sort of limbo. Any special permits likely to be available will in no way be sufficient to meet demand. We heard in a debate on Monday that there were bilateral agreements on the way, that there would be more permits, and that there would be a need for further negotiations. None of that bluster, if I can call it that, actually faces up to the fact that we are in a desperate situation.

Since the UK has been involved with Brexit, the EU has been developing a new mobility package, which it published at the end of July and which impacts on freight transport access and access to the profession. Of course, the UK was not a party to those negotiations, but have the Government made any assessment of the impact of the new arrangements on the UK?

Assuming a worst-case scenario now—I am afraid that we have to—enormous lorry parks will be necessary for goods to await clearance. How large will those semi-permanent additions to local landscapes be? How will local planning consent be required to establish them, or will the Government simply ride over local wishes and dump them on unwilling localities that they choose? Will such facilities incorporate places for people to sleep, service lorries, refreshment and trans-shipment facilities? Who will pay for all this? It is a lot of money. In other modes of transport, it is usual for the operator to build his own facilities. Ship operators build their own ports. Train operators build their own stations. Bus operators build their own bus stations. But these facilities are likely to be very large impositions on neighbourhoods. I want to know how they will be policed, as I fear that they will be centres of totally unregulated crime, affecting both goods and people.

Those are a few of the problems on which the House, and more particularly the logistics industry, wants answers.

3.48 pm

The Earl of Kinnoull (Non-Aff): My Lords, it is a great pleasure to follow the noble Lord, Lord Bradshaw, in this thought-provoking debate; I thank the noble Lord the Chief Whip for finding such a substantial slot for this important Motion at a critical period in the lead-in to the final tableau of the Brexit drama. I also thank the Minister for his time in recent weeks, both virtually and physically, and for the courteous and frank way in which he engages with my committee.

In the period leading up to Sunday 6 September, I had thought that the two interrelated strands of UK-EU discussions implementing the withdrawal agreement

and the negotiations on the future relationship were on some sort of glide path to actual landing rather than crashing, albeit that the rhetoric between the parties had become sharp and the temperature had risen somewhat. It was on that day that the rumours of what was in the internal market Bill surfaced and boiling point was reached instantaneously.

Perhaps I could step back and start with the withdrawal agreement and its Ireland/Northern Ireland protocol. The protocol is a masterly fudge which left much to the joint committee structure to resolve. We reported on that in June this year, but I remind the Committee that the protocol consists of two pages of recitals, 19 articles and more than 40 pages of the seven annexes, which are really just lists of legislation.

The essential problem that it sought to address was to maintain the Good Friday agreement absolutely while protecting the EU and UK single markets. The soft recitals contain a number of very comforting paragraphs for the UK including

“DETERMINED that the application of this protocol should impact as little as possible on the everyday life of communities in both Ireland and Northern Ireland”

and later on

“HAVING REGARD to the importance of maintaining the integral place of Northern Ireland in the United Kingdom's internal market”.

The hard text of the articles suggests, that in the absence of further agreement at the Joint Committee, every EU customs rule and practice will apply on everything moving to or from Great Britain to Northern Ireland or the border in the Irish sea.

We were critical in our June report of what we saw as a lack of early government pace in implementing the withdrawal agreement. It is now our impression that this has been addressed, but still marrying up the aspirations of the recitals with the hard fallback position of the articles has not yet happened. This failure of process, of statecraft, on the part of both parties is also of great concern and will potentially have damaging consequences for all on the island of Ireland.

The withdrawal agreement as a whole contains plenty of dispute resolution mechanisms but, instead of going down this path, the Government now propose to take powers under the internal market Bill to allow them to disapply parts of the protocol. My committee anticipates reporting on these aspects of the internal market Bill in time for its Second Reading in this House, and we have written to the Chancellor of the Duchy of Lancaster asking for clarification on various assertions made by the UK since 6 September and why the dispute resolution mechanisms under the withdrawal agreement are not used. We expect a response at the end of this week.

The debacle on the withdrawal agreement has spilled over into the negotiations on the future relationship with the EU, and it could not be otherwise. After all, Michel Barnier is Maroš Šefčovič's deputy and alternate on the joint committee on the withdrawal agreement and the interrelation is shown by the simple fact that the deeper any future relationship agreement between the UK and the EU goes, the lighter the burden should be on the withdrawal agreement customs administration. We reported in March this year on the material available

on the negotiating positions of the EU and the UK and compared them with the political declaration. The Committee will recall that both sides had moved their positions away from the mutually agreed, but admittedly not legally binding, political declaration.

While the gap looked quite wide in March, the British position was that everything that they were now asking for was precedentially to be found in other EU international agreements. The EU has pushed back on this with various arguments, and I do not want to rehearse them here, save for one comment made to me by a senior EU official this month. He said that the UK had selected the best-in-class precedents on each of the difficult topics. It is, however, greatly to the credit of the two negotiating teams that, despite the very short time period, the additional problems posed by Covid-19 and the non-discussion of some issues due to the EU tactic of parallelism, they got to the point at the start of September where the finish line was within sight, just about, albeit with a small number of the most difficult issues to be resolved.

As I said, my strong impression was of progress at the start of the month. Nothing was tied down—the principle of nothing is agreed until everything is agreed applies—but the key differences between the two sides in terms of the future relationship were boiled down to state aid and fish—difficult, but, one would think, manageable. What the internal market Bill has done is place trust at the centre of the debate. It raised the already high temperature but also took these two separate but linked strands, each of which is difficult in its own right, and combined them into a single strand. It has doubled both the stakes and the difficulty, and has done so in the most public and confrontational way possible. The glide path for this single strand is much harder to discern and, without a bit of calm on both sides, I fear the prospects of a mutually beneficial landing are not good.

We heard much on the progress of the talks from the Minister in his opening, and I thank him for that. He covered the Northern Ireland protocol in his speech and the internal market Bill provisions that have caused so much uproar. My only question for the Minister is: will he explain why the dispute resolution mechanisms in the withdrawal agreement were not a sufficient safety net so that this extra safety net was necessary?

In closing, I note that with so many challenges facing us, surely it is time for some old-fashioned diplomacy to bring the two great democratic sides together.

3.55 pm

Lord Thomas of Cwmgiedd (CB) [V]: My Lords, it is a privilege for me to follow the noble Earl, Lord Kinnoull, on whose committee I serve and which—before I joined it, I must hastily add—has done so much to clarify the position in relation to Northern Ireland and other aspects of the negotiation. I thank the Minister for his clear and courteous introduction to this debate.

So many of the points I would have wished to have made have already been made, but I shall take three as briefly as possible. First, on the inclusion of the devolved Governments, I do not believe it is too late, even at this

11th hour, for there to be more involvement of the devolved Governments in the formulation of the final strategy and in the final negotiations. What has happened in the past few days in relation to co-operation on Covid-19 has, without doubt, been beneficial to the whole of the UK. Why not do this in respect of the UK negotiations? It is a sad conclusion to say that what has happened to date is wholly inadequate—as the noble Baroness, Lady Hayter, so eloquently pointed out—judged, as people should be judged, by deeds rather than words.

Secondly, it is important to move forward in a way that produces a good long-term relationship while respecting the sovereignty of the United Kingdom. A positive future relationship with the European Union is, without doubt, in the interests of the UK and throughout the EU. I make one point regarding the development of the law. We live in a world that in my current day-to-day experience is, despite the effects of the pandemic, becoming more global than ever. Online meetings and discussion fora have driven globalisation, dialogue and interaction at a faster and more inclusive pace over the past six months, and I think it is inevitable over the next six months. It is so easy to contribute worldwide without having to travel and yet to make the points powerfully at meetings, conferences and negotiations. Moreover we have seen how data is ever more easily transmitted, which is driving and building an even more valuable market quite apart from progress in digitalisation. This means that the law must develop apace. To date, the UK has exercised a considerable degree of influence in the development of the laws that underpin trade, commerce, including trade in data, and other aspects of the digital economy and our financial and professional services. We are currently leaders, and this is hugely beneficial to the UK. From the new year, we will be on our own. In relative terms we must accept that we are a small-sized player, and in such circumstances our reputation and integrity will be central to our continued ability to punch above our size. Apart from integrity and reputation, we need close working relations in order to drive forward legal development. What matters is that we have in place a good structure for legal development and also regulatory co-operation, supervisory arrangements and the management of data, which are allied to it. The City's suggestion of a memorandum of understanding is well made and entirely consistent with sovereignty, however you may wish to describe it. Relying on unilateral actions, such as the equivalence decisions, is not the way forward in our globalised world.

Our ability—and this is the third point that I wish to make—to move forward and build our position for the future must be done on good, sound legal foundations. It is a common experience for a lawyer that people disagree about the meaning of agreements, even those that may have been made only a short while before. I was not entirely surprised that there might be disagreements about the meaning of the Northern Ireland protocol or difficulties in working it through, but we agreed it. In such circumstances, what is expected is that the parties try to resolve their disagreements through provisions such as those in the protocol and the withdrawal agreement, and if they cannot resolve it by agreement, they do what litigants always do, and

[LORD THOMAS OF CWMGIEDD]

that is use the dispute resolution mechanisms. If a quicker decision were needed than through the mechanisms contemplated in the agreement, then modifications would be proposed. That regularly happens when a dispute arises that needs urgent resolution. I see no reason why the current dispute could not be resolved in a matter of a month or more. If the British Government believe that they are right, why not propose that?

Therefore, it is very difficult to understand why that obviously right course was not followed. However, what is entirely understandable is the resignation of the two expert leading government lawyers, Sir Jonathan Jones and the noble and learned Lord, Lord Keen, who carry the highest degree of respect in the profession and have so expertly advised and helped the Government throughout this period. In following what is required, you uphold the rule of law and you comply with the law. As the Civil Service Code reminds us, complying with the law is an essential aspect of integrity. What you do not do is deliberately break an agreement or threaten it. Many have spoken powerfully about that, and I need say no more about it or about the consequences, but there are due consequences for the areas about which I have spoken.

First, the rule of law, our adherence to it and respect for it, is central to our position in the world and our leadership in the development of the law and those other areas of commerce and trade underpinned by the law: financial and professional services and the digital and data economies. That is central to our future, and we do ourselves enormous damage by pursuing the current course. Secondly, we need agreements with the EU and others for the future. Who wants to deal, or at least deal on good terms, with those who break or threaten to break agreements rather than have recourse to dispute resolution? I very much hope that the Minister will be able to explain, as the noble Earl, Lord Kinnoull, has already asked, why we are not pursuing that course.

4.02 pm

Lord Shinkwin (Con): My Lords, Germany's Europe Minister, Michael Roth, is reported this morning as saying:

"We are really really disappointed about the results of the negotiations so far ... Please dear friends in London stop the games. Time is running out."

Well, Herr Roth is, of course, right in this respect: the clock is ticking in the countdown to our freedom, but he is wide of the mark if he thinks the Government's tenacity and resolve amount to games. They do not. Thankfully, the Government's commendable approach is serious and earnest precisely because, as Herr Roth will be acutely aware, the stakes are so high.

His remarks took me back to when I was in Berlin with a parliamentary delegation shortly after the referendum. Two memories in particular stay with me. One is of a member of the UK delegation, with tears in their eyes, telling our opposite numbers in the Bundestag, "I hope you give us a good kicking, so we realise our mistake." The other memory was of being berated by our German hosts, who said, "How could you do this to us? We thought you were our friends. How could you leave us to foot the bill?" Those are my

abiding memories, and I for one am not at all surprised that Herr Roth should be so disappointed or that Germany should be so keen to punish us, as my noble friend Lady Noakes pointed out in her excellent speech. No wonder we are on the naughty step.

For Germany will pay far more. For them, and for the EU, this only underlines why it is so crucial that there must be no reward for daring to step out of line. As I said before, the stakes could not be higher. We are on the threshold of liberty, of growth and of a brighter future outside of the EU, but in co-operation with the EU, Europe and the world and they know it. They are desperate that our freedom is seen to come at a price that deters any other member state from following the courageous example of the UK.

But the EU is not Europe, and Europe is not the EU. The EU will come and go, as all empires do. Europe will remain. While the EU, as an empire that is overreaching itself, cannot afford for Brexit to succeed, Europe cannot afford for it to fail. For though I do not wish for this to happen, if the eurozone implodes, as some commentators predict, if the EU disintegrates under the weight of its own anti-democratic contradictions and if Europe breaks free from the shackles, it is vital that the UK is able to reach out and offer the steadying hand of friendship, stability and economic security that will underpin our future relationship and peace and prosperity in Europe and the wider world.

So I thank the Minister, my noble friend Lord Frost, whom I was so proud to introduce, along with my noble friend Lord Ahmad, to your Lordships' House only recently and, above all, our brave Prime Minister for their admirable restraint and resolve. To them I say: hold firm, and the best of luck in fighting Britain's corner in these crucial negotiations.

4.08 pm

Lord Anderson of Swansea (Lab): My Lords, certainly the noble Lord, Lord Shinkwin, has held firm to his own particular views.

It takes two to negotiate and, of course, the EU is not the easiest of negotiating partners. It is excessively legalistic because of the treaties and continental traditions—plus, of course, there is the need to build consensus among 27 countries, which leads to rigidity and delays, as we saw for example with the seven years of negotiations with Canada over a trade deal—but the EU can be relied upon to honour agreements once reached, as used to be the case with us.

We in the UK prided ourselves on our pragmatism. That has now been replaced by dogma and ideology, impaling us on the altar of sovereignty, autonomy and a clean break. No wonder then that any objective observer will readily conclude that there is little to show so far on our negotiations. Is this just yet another example of the gap between promise and delivery so much a feature of the Prime Minister?

Understandably, the emphasis on a trade agreement—plus Covid, of course—has pushed other areas of policy into the shade because of the immediacy, hence the trumpeting of the deal with Japan as a triumph. Yet it is only marginally different to the current position and is relatively small compared with the big prizes of the European Union and United States. It is very clear

that negotiations with both the US and the EU have been soured by the Government's threat to breach international law in the internal market Bill. Is it just posturing? If so, it is very dangerous posturing.

I remind noble Lords of Article 26 of the 1969 Vienna Convention on the Law of Treaties, which is entitled "Pacta sunt servanda" and which states:

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Further, Article 27 states that no domestic legal provision can protect a party if it breaches the terms of an international agreement, which is surely very germane, and the right response, to the internal market Bill.

On 16 September, in her state of the union address, Frau Ursula von der Leyen, President of the European Union, quoted Mrs Thatcher, saying that breaking a treaty

"would be bad for Britain, bad for our relations with the rest of the world and bad for any future treaty on trade".

Mrs May spoke in similar terms on Monday.

Surely a stated willingness, readiness or threat to break international law is almost as bad as the act itself. Further, any parliamentary endorsement of the illegality is irrelevant—illegality will remain illegality. I have enormous respect for Bob Neill, in the other place, but I believe he sold himself and his own position too cheaply. Apparently, the Attorney-General, a leading member of the European Research Group, did not seek the advice of leading Treasury counsel but that of three outside lawyers who are all prominent Brexiteers: two law professors and, wait for it, Richard Howell, a barrister who is just out of pupillage. None of the three is on the Attorney-General's panel. Having put politics before objective legal advice, she deserved her scorching at the recent meeting of the Bar Council and should surely consider her position.

In the early 1970s, I was Parliamentary Private Secretary to Sam Silkin, then Attorney-General. I was also deputy to the noble and learned Lord, Lord Morris. Neither of them would have taken that position, I am sure. Neither would have put a political position before their commitment to the law.

The relevance of this to the negotiations is clear. For the European Union, it will raise questions about our trustworthiness in future deals, as my noble friend Lady Hayter said. For any prospective deal with the US, the position is clear: the Irish lobby is powerful and the US Congress, with its key constitutional role in trade negotiations, has responded with outrage. Surely the Government, who were advised by our embassy, should have anticipated this response.

As a member of your Lordships' Sub-Committee on Security and Justice, I have witnessed similar neglect adversely affecting our citizens in areas such as consumer protection and criminal and civil justice, including the dangers of losing the European arrest warrant and the damage to family law co-operation. The UK's new proposal on unaccompanied migrant children has been met with the EU response that their negotiators have no mandate. Surely the Government should have been aware of that.

I conclude with a few observations on foreign and security policy. The EU has shown itself ready to

negotiate by publishing a draft agreement on future co-operation in this field on 18 March. Why have the Government chosen not to respond? We have led missions in the past and acted as a bridge between the US and the EU. We have lost EU solidarity, as shown by the Chagos Islands vote, and are largely irrelevant in key issues, such as Nagorno-Karabakh, Ukraine and Belarus. Yet the EU has shown some good will and a willingness to co-operate by bringing us into discussions on sanctions at a pre-adoption stage. Our strategic interests are broadly the same as those of the EU, faced with the Russian threat under "Putin the Indefinite" and with China's new assertiveness. Do we wish to work together? Have we ruled out foreign policy co-operation?

Finally, Liam Fox used to tell us that trade deals would be easy. After all, we could simply transpose existing EU deals. The reality has proved very different. Ideology rules okay—and we have not missed an opportunity to miss an opportunity.

4.16 pm

Lord Bilimoria (CB) [V]: My Lords, as far back as February 2020, the European Commission laid out its negotiating position, covering general arrangements, values, principles and governance, economic arrangements, trade, level playing field guarantees, fisheries, security arrangements, law enforcement, judicial co-operation in criminal matters, foreign policy, security and defence. Then, in May, the UK published a draft free trade agreement in a series of separate draft agreements covering fisheries, air transport, civil aviation safety, energy, social security co-ordination, civil nuclear, law enforcement and judicial co-operation in criminal matters, the transfer of unaccompanied asylum-seeking children, and readmission of people residing without authorisation.

Between March and September, we have had eight rounds of negotiations. At the end of the eighth round, the EU's chief negotiator, Michel Barnier, accused the UK of refusing to include indispensable guarantees of fair competition in our future agreement, while requesting access to our market and said that

"the UK has not engaged in a reciprocal way on fundamental EU principles and interests."

The noble Lord, Lord Frost, the UK's negotiator, said that the UK had

"consistently made proposals which provide for open and fair competition, on the basis of high standards, in a way which is appropriate to a modern free trade agreement between sovereign and autonomous equals."

So what if there is no agreement? What if there is a so-called Australia-style agreement whereby we will trade with the EU on WTO terms? The Prime Minister said in early September that a trading agreement like Australia's

"would be a good outcome for the UK."

Can the Minister confirm that this is the case? We have of course also had the whole issue of the internal market. In his statement after round eight, Michel Barnier said that:

"The EU remains committed to an ambitious future partnership with the UK. This would clearly be to the benefit of both sides. Nobody should underestimate the practical, economic and social consequences of a 'no deal' scenario."

[LORD BILIMORIA]

I speak as president of the CBI, which has been urging both the UK and EU to renew efforts to get a deal. This is essential in order to protect people's jobs and living standards amid one of the worst recessions in living memory. Time is running out. We have to avoid a cliff edge. This must be the utmost priority for both sides; the UK and the EU cannot afford a no-deal scenario, which would weaken the economies already impaired by the Covid-19 crisis. Business preparations on both sides have not only stalled but have gone backwards. Firms have had to use their stockpiles and reserves—previously built up in the run-up to the threat of no deal last year—to survive the pandemic. There is now next to no capacity to rebuild reserves while directing resources and attention to dealing with the impact of Covid-19 and now a potential second wave of the virus.

Over the last six months we have seen extraordinary levels of ambition, determination and collaboration between businesses and Governments across Europe. These efforts have helped weather the immediate impacts of the Covid-19 pandemic and must be redoubled for the challenges that lie ahead. This same level of determination and creativity is now needed by both the EU and the UK to deliver a Brexit deal for growth.

A deal will have tangible, positive benefits for firms employing thousands of people across Europe in industries such as advanced engineering, manufacturing, green technology and digital and cyber technologies—I could go on. It will also underpin economic recovery on both sides, protecting our younger generation and the future of our public services. Does the Minister agree?

A deal will form a foundation for a strong, growing relationship between the UK and the EU in the future. It will create space for both sides to focus on shared challenges, such as creating jobs, rather than needlessly adding red tape, extra costs and paperwork.

A deal will also be a catalyst to address the global challenges of our time, from tackling climate change at next year's COP26, which we are going to be privileged to host, to strengthening international institutions, including the WTO, and global co-operation during the UK's presidency of the G7. It will be crucial for the UK and the EU to work hand in hand to be at the forefront of these issues.

The CBI is committed to working closely with BusinessEurope—which we will continue to be a member of although we have left the European Union—and its sister federations to champion a strong and open Europe on the global stage. In short, the size of the prize is real. Ending years of division and delay by securing an agreement between the EU and the UK will help our economies during the biggest challenge of our generation.

This has been such a turbulent period, not least because of Brexit, but talks are on and the efforts to get a good deal must continue. Business cannot afford anything else. Amid all the noise of the negotiation, businesses in the UK and the EU remain clear that a good deal is essential. Let us not forget that a negotiated outcome is the official position of the UK Government. Can the Minister reassure us about this once again?

An agreement will be the foundation for post-Covid recovery across the continent. It will protect jobs under pressure from the pandemic by duty and quota-free trade, closer customs co-operation and easing the implementation of the Northern Ireland protocol. We must remember that the protocol was the compromise needed to avoid a hard border in Ireland. For Northern Ireland's businesses and communities it must be implemented in an effective and sustainable way. For that, we need a deal.

A deal will provide a platform on which the UK's world-beating services industry can continue to trade with its biggest market and stay competitive. It will also be a great fillip for UK exporters, allowing them to focus on R&D, not red tape. Getting a deal requires political leadership and compromise from both sides and is needed urgently in the coming weeks.

As I have said, the reality is that many businesses are still struggling to deal with the fallout from Covid. That is why getting the deal over the line is so important. It means a greater choice for consumers. It means prices of groceries do not rise during a recession. This is vital to help people who are struggling. It will allow businesses to concentrate on helping the Government's levelling-up agenda. It means building more schools and hospitals, better-quality housing, and growing our economy through the creation of green jobs, and it will be a catalyst for the global challenges of our time. Ultimately, a deal with our biggest trading partner provides a platform on which future trade agreements can be built.

Businesses have shown extraordinary resilience over the previous four years—and over the past six months. We need this deal urgently in the interests of everyone, both in the UK and Europe.

The Deputy Chairman of Committees (Baroness Barker) (LD): The noble Baroness, Lady Meyer, is not contributing, so I call the noble Lord, Lord Berkeley.

4.24 pm

Lord Berkeley (Lab) [V]: My Lords, I address my remarks this afternoon to the frontier controls and customs arrangements because we have three months to the end of the transition. Many noble Lords have spoken about whether we are going to get a deal but many of the frontier issues will be similar, if not the same, whether we have a deal or not. Businesses should still be ready and still expect the Government in their dealings with them to be open, transparent and inclusive with information and with what has to be done.

As is so often the case in this sphere, we have heard lots of good words from the Government which are mostly, sadly, motherhood and apple pie. We seem to be getting into a big blame game, with the Government seeking to blame business, the EU and the electorate for their own failings. I know that the electorate voted in favour of Brexit, but I do not think they voted in favour of the chaos that we are seeing. As many noble Lords know, the devil is in the detail. It can have a massive adverse effect on business, as many noble Lords have already mentioned. We are not told the detail at the moment, nor even the options. In some of the discussions I have heard, I question whether Ministers themselves actually understand what is needed or listen to their officials who clearly do know.

In the *Guardian* today there is a report of a letter that the Chancellor of the Duchy of Lancaster wrote to the haulage industry and customers earlier this month—I have a copy of it—saying that we face some 7,000 trucks in a queue in Kent. Mr Gove claims that the cause of the delay is the traders not being ready. That is blaming the traders again. The Secretary of State for the Environment, George Eustice, similarly blamed other people for the delays. After Mr Gove wrote the letter, industry representatives had a meeting last week with him, the Secretary of State for Transport and the noble Lord, Lord Agnew, from the Treasury. They discussed three separate issues: the need for intermediaries, the readiness of systems, and the physical infrastructure. All these are needed, whatever the outcome of the negotiations. I think about 40 people were at the meeting. A report of the meeting said that there was “frustration over the lack of clarity and too many unanswered questions.”

On intermediaries, questions were asked about

“how the cap on state aid could be lifted and potential use of government loans”.

It was questioned how systems

“could be made ready earlier to allow training and familiarisation to take place”.

Of course, this should have happened many months ago. The Government are blaming the industry for not having 50,000 intermediaries to do it for them. We do not know who is going to pay for it. It is a serious issue. At the port there are quite a few structures required and arrangements. Who is going to pay for them and when are they going to be in position?

Then at the meeting we heard more motherhood and apple pie when the Chancellor of the Duchy of Lancaster was quoted as saying that

“he hoped that the EU would not take a rigid interpretation on all legislation”.

Well, isn't that lovely? Why should the EU give way on this when we are digging our heels in as hard as we possibly can?

In the end, the Chancellor of the Duchy of Lancaster said, in summing up,

“if businesses haven't prepared they will suffer against what is a known change”.

Does the Minister know what the “known change” is? Has he told anybody? Has the Chancellor of the Duchy of Lancaster told anybody? It is clearly still a secret.

All the Government talk about now is in the export direction. We have heard very little about what might happen on the French or the continental side apart from the fact that the Government have decided that they will not require all the paperwork to be complete on the incoming direction for six months—but only for certain cargoes. We know that cargoes will not be allowed on to the ferries unless they have all the right paperwork.

It is really wrong that the Government are allowing this to carry on, with George Eustice saying that the queues are down to “slipshod” EU lack of planning. That is not a good way—indeed, it is a very bad

way—to conduct negotiations. It is no way to undertake a trade negotiation with our major trading partner. As many noble Lords have said, something like 40% of our exports go to the EU.

I believe that Ministers should know most of the detailed changes that will be required, whatever the outcome, but the Government are failing miserably to share this with businesses so that their systems and their staff can be ready for the changes. Do they really know what has to be done? Should they not be proactive and positive in helping? I am afraid that, if they are not, many businesses will give up and, after a few weeks or months, settle fully on the continent. I hope I am wrong. But I wish the Minister would confirm that the Government will stop blaming businesses, the EU or the coronavirus crisis. It is down to the Government to sort this out.

The Deputy Chairman of Committees (Baroness Barker) (LD): My Lords, I remind the Committee that the time limit for contributions is a maximum of seven minutes. I call the noble Baroness, Lady D'Souza.

4.31 pm

Baroness D'Souza (CB) [V]: My Lords, despite ministerial denials, we appear to be marching inexorably towards a no-deal Brexit and a consequent reliance on WTO trading rules. There are two issues I wish to put to the Minister. One concerns the potential impact of a reversion to WTO terms of trade, and the other is about reaching a decision on continued participation in the EU Erasmus+ programme.

From the start of the legal process at the end of last year, there was a disconnect between the EU's mandate to uphold common high standards in areas of state aid, social and employment standards, environmental standards, climate change, relevant tax matters and other regulatory measures and practices, set against the UK's statement that its

“primary objective ... is to ensure we restore our economic and political independence”.

No wonder the negotiations have run into trouble. Apart from the major issues taken up by your Lordships so far—the Irish border, fisheries and state aid—I would like to revisit some of the other consequences of a no-deal departure, which would kick in on 1 January 2021.

The expressed hope that the UK might achieve a Canada-type relationship would not go even half way to resolving the current negotiation sticking points. For a start, the CETA is not, as yet, fully implemented, despite being agreed in 2014 and provisionally in force from 2017. Tariffs on certain food items would remain, requiring lengthy examinations at ports. Furthermore, 53% of all UK imports are from the EU, and 45% of all UK exports go to the EU. Those figures do not compare well with the equivalent Canadian figures of 10.5% and 7.9% respectively.

The Australia-style deal—another “solution” championed by the Government—is essentially a WTO agreement, and would allow the EU to impose punishing tariffs on some goods, such as dairy produce, which in turn would impact badly on British farmers. There is no FTA between the EU and Australia, so it is difficult to understand why the UK Government ever thought this might be a useful model.

[BARONESS D'SOUZA]

The recent removal of some existing EU tariffs by about 20% was, and is, welcome, until it emerges that these concessions refer to items such as pistachios in shells, sewing thread and vacuum flasks—not necessarily key trade items. Nor will WTO rules allow most favoured nation status: any UK trade concessions would have to apply to the rest of the world as well. The 20 or so additional agreements via the EU with countries around the world have not yet been rolled over, further restricting UK trade transactions. Most importantly, in the absence of a trade deal the non-tariff barriers will require all produce standards and safety regulations to be checked at borders.

An exit based on WTO rules would present a huge challenge for the service industries, in that there would be a loss of guaranteed access for bankers, lawyers, musicians and chefs, among other trades. The financial services sector is a huge contributor to national income, estimated at approximately 10% of all tax receipts. Preserving the integrity and reputation of the sector should be an absolute priority, yet there is still no agreement on the legal status of contractual relationships, which in turn affects a whole tranche of SMEs and the job security of up to 2.3 million people who work in the financial services industry. The City of London Corporation has said that even a deal with limited coverage of financial and professional services would be preferable to no deal.

Above all, the current acrimonious nature of negotiations will do nothing to generate a positive future relationship with the EU, which is surely in the interests of each and every household and business in the UK. It is difficult to understand why the Government have remained tranquil about a possible no deal, and are apparently satisfied to engage on WTO terms. The cost of achieving, by 31 December, political and economic freedom from the EU could be very high.

In the political declaration of October 2019, both sides agreed to establish general principles, terms and conditions for the UK's future participation in EU programmes, including youth, culture and education, and further agreed that this would be subject to the conditions set out in the EU's own legal instruments establishing such programmes. In February, the UK set out its overall approach, saying it was ready to consider third-country participation in certain EU programmes, and on Erasmus+—the most successful EU exchange programme—that it would consider options on elements of the programme on a time-limited basis. None of the papers or draft legal texts published so far refers to UK participation in Erasmus. As we have heard, the EU published a draft new partnership agreement on Erasmus with the UK in March. However, no detailed information on negotiations is available.

The Government are now apparently considering the option for a domestic alternative to Erasmus. This is despite widespread praise, both within and without the Government, for the programme and its investment in forging international friendships and co-operation. Universities UK calculates that leaving Erasmus could cost the UK up to £243 million a year.

In an Oral Question in June, the noble Baroness, Lady Coussins, questioned the Government's plan for continued participation. The Minister repeated that while the matter was being discussed no further details would be given. Nor was any leeway allowed to the devolved nations to negotiate their own participation deals. In answer to the question about what possible advantage the UK would gain by leaving Erasmus, the Minister, rather lamely, stated that the Government wished to encourage mobility beyond the 27 EU member states. Continued participation in Erasmus would in no way impede this.

Overall, the lack of transparency and willingness to consult with the many sectors affected is a severe failure. The Government's overriding priority of escaping any EU controls on any aspect of political, economic and cultural life is not based on sound economic impact assessment. Thus it does not serve the British public now, and it certainly will not serve them in future.

The Deputy Chairman of Committees (Baroness Barker) (LD): Since the noble Lord, Lord Vaizey of Didcot, will not be contributing to our proceedings this afternoon, I now call the next speaker, the noble Lord, Lord Judd.

4.39 pm

Lord Judd (Lab) [V]: My Lords, there are sinister and ugly forces at work in Europe. They evoke too many reminiscences of what happened in the 1930s. One of the reasons why I shall always be sad that we are no longer a member of the European Union is that I believe we should be at the heart of the European community, with those who stand firm for democracy, justice and human rights. We should be strengthening the resolve of Europe, and the people of Europe, to see off these new tendencies.

Not for the first time in this debate, I was greatly cheered by the thoughts of the noble Lord, Lord Bilimoria, who seemed to get it absolutely right. He certainly seemed, if I may say so, to live in the same world that I live in. The first reality of life and politics is the total interdependence of human society. It is there in migration, climate change, health and the virus with which we are now contending. There is no way we can look to the interests of the British people and their well-being without full co-operation with others across the world. What is called for at this stage in our history is statesmanship, wisdom and leadership of that calibre, leading a Britain of which we can all be proud to be a part because of the respect with which it is held in the world because of what it is contributing to the solutions that are necessary.

On the immediate front of our preoccupations this afternoon, we should not in any way allow the importance of Northern Ireland to slip from our priorities. The people and institutions of Northern Ireland have taken the Good Friday agreement and all that followed from it as an opportunity to start building stability and hope for the future. Many people in Northern Ireland—this came out in the referendum—as they determined to try to build a new reality in that part of our country, felt reassured by our membership of the European Union and the other institutions that were there. That is no longer there, so what is terribly important—more

than ever—is certainty and trust. I simply do not understand how the present state of uncertainty and double talk can possibly be helpful as the people of Northern Ireland struggle and work to build their future. That is why that issue is crucial, together with the deal.

I conclude with the point that I made earlier. Vocabulary and demeanour are terribly important in leadership and in weighing the place we want to have in influencing world affairs. We want to be seen as a nation that is wise and statesmanlike, not as one that is selfishly and opportunistically playing all sorts of unpredictable games. It is a serious time—this debate re-emphasises that—but I believe that at the centre of our concern for the future is the character and calibre of leadership in this country. It certainly must not fall into the hands of unelected people in No. 10 who have a very unfortunate view—to put it mildly—of what kind of Britain they want.

4.45 pm

Lord Bowness (Con) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Judd, who has reminded us in a timely fashion that the whole idea of the European Union is about more than trade and visiting the continent. His words need to be listened to.

I thank the Government for providing this debate, even if it is overdue. I know and understand that they do not wish to give a running commentary on negotiations, but our citizens and Parliament are entitled to know where we are headed, particularly since there is such a short time until 31 December, and an even shorter time until the Prime Minister's October deadline.

We started this Parliament with the famous oven-ready deal, which was negotiated, at least to a small extent, by the Prime Minister. That agreement is now enshrined in the withdrawal Act and was accompanied by the political declaration, which was also changed from that negotiated by Mrs May. However, the Prime Minister's declaration nevertheless contains ambitious aspirations for our future relationship with the EU. The Government should tell us openly and honestly how many of the hopes expressed in the political declaration have now been abandoned. It appears that the security partnership has been set to one side for now, and obviously the concept of a level playing field envisaged for trade agreement has vanished. What else are we not pursuing?

For those who have always wanted no deal or who have been relaxed about its prospect, this may be of no great concern. However, for others, who may have been supportive of Brexit or who, like me, have had to accept the reality of Brexit, the dash for the door and the apparent desire to cut as many of our ties with the EU because it is the EU is unnecessary and undesirable. There is a temptation, to which the Government seem willing to succumb, to blame everything on the EU negotiators. Perhaps we have never understood that the EU is a law and rule-based union, so the negotiator has to stay within his mandate until it is changed by the other 27. Nor do we seem to acknowledge the special position we occupy by geography and more than 40 years of membership. We are not just an ordinary third country. The withdrawal agreement especially

and the political declaration are assumed to be settled and binding upon the parties, and there is a presumption that we will see them in the same way. That we do not is evidenced by the Internal Market Bill. Indeed, I say no more than has been said by Sir John Major and Theresa May, who both brought to the office of Prime Minister the dignity and integrity that we expect. They have been supported by other eminent Conservatives from both sides of the Brexit/remain debate.

Although we understand that nothing is agreed until everything is agreed, I urge the Minister to persuade his colleagues in government to let us have some kind of statement setting out what has been discussed to date, what has been agreed in principle and what in the political declaration is no longer an aspiration. Many of the issues are of importance to individuals. If you visit the Government's website on visiting Europe from 1 January 2021, it tells you, as set out by the noble Lord, Lord Hain—I will not repeat what he said—all the possible problems that you will face as a traveller to Europe post 31 December. I will take one example only, which is the problem you will have trying to take your dog with you. The site advises you that it may take four months to make the arrangements, but we will be out by then. Four months has long since gone. I am told that some matters in the list are for bilateral agreements, but where are we with the 27 on drivers' licences and disabled people's blue badges? Which member states have been able to agree the same arrangements? Almost every aspect of the negotiation process gives cause for concern.

We were assured during the passage of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill that EU citizens with settled status and social security rights are safeguarded by the withdrawal agreement and the Act passed by this Parliament, and I have been assured that Clause 5 of that Bill could not be used to change their benefit entitlement unfavourably with EU citizens. I read the Government's *Factsheet 4* on that Bill; it is not easy to read and seems to have a number of perhaps unintended ambiguities. It says that the Bill contains a power to

“amend the retained EU social security co-ordination rules and deliver policy changes at the end of the transition period.”

It says that the SSC regulations may be changed and modified by “an appropriate authority”, and that

“The EU (Withdrawal Agreement) Act 2020 establishes a cohort of citizens to whom the EU's current social security co-ordination rules will continue to apply after the end of the transition period, whether or not a future relationship ... is agreed”.

However, it says that changes to these rules will be made only under the Bill and

“will not be applied to this group for as long as they remain in scope of the Withdrawal Agreement.”

What, in the view of the Government, does that mean? We have already seen that they have read certain agreements in their own way when it did not actually suit. The factsheet says:

“The government would require clause 5 to repeal those areas of the retained regulations not covered in a reciprocal agreement with the EU.”

So where are we on no deal? These are all matters where clarity, openness and honesty are needed. I pose the question again: can Clause 5 of that Bill, in any

[LORD BOWNESS]

circumstances at all, be used to leave EU citizens with settled status in a less-favourable situation than UK citizens?

It is not easy to have trust in the Government in the light of their abandonment of the aspirations of the political declaration signed by the Prime Minister, either in ignorance or with the notion that “Well, it’ll all be all right, and we can change it if we desire it.” I wish that we had stayed with the words of the political declaration, where we were

“determined to work together to safeguard the rules-based international order, the rule of law and promotion of democracy, and high standards of free and fair trade and workers’ rights”, and many other things. In that position we would have established a broad, deep and flexible partnership. That is what we should have with our near neighbours and friends.

4.52 pm

Lord Jay of Ewelme (CB) [V]: My Lords, it is always a pleasure to follow the noble Lord, Lord Bowness.

I hope that the negotiations succeed and I am glad that Michel Barnier is in London today to push them along. I cannot believe that either side would willingly allow them to fail. For the Government to do so, and to heap more difficulties on an economy already reeling from Covid-19, would be the height of folly. After the ferocious blame game that would surely follow, the more sober commentators and historians would blame both sides for a massive failure of statesmanship—surely not the legacy that any Prime Minister would seek.

There are of course difficulties still to be overcome, particularly, though of course not exclusively, Ireland. For many of us, even before the referendum, Ireland has always seemed the most difficult issue of all. That is why the EU Committee’s first report after the referendum, which I launched at a press conference in Dublin, was about Ireland. The dilemma is simple: you can have a border between the north and the south, risking violence and intimidation with which a depleted Northern Ireland police force would have difficulty dealing—for which, let there be no doubt about this, both sides would be blamed—or you can have a border between Great Britain and Northern Ireland, which would damage the integrity of the United Kingdom. Let us hope that the keenest minds in Whitehall are working with their Irish counterparts and the EU to find a way through. I confess that I cannot easily see it. However, to do anything to jeopardise the Good Friday agreement would be folly.

The worst possible course would be to go back on a treaty that the Government signed with much aplomb less than a year ago and, in doing so, to break international law. That would not solve the problem of the Irish border, but threatening to break international law, and saying quite openly in the House of Commons that that is the Government’s intention, raises an issue far larger than Brexit, and no midnight compromise would make any difference to that. It is the threat to break international law because it happens to suit us that puts us on the same level as countries that we have sought and will seek to influence. Such influence relies on trust, and it is trust that is vanishing. Threatening to break international law does nothing to advance

Brexit but it seriously damages our pretensions to branch out beyond Brexit and find an influential role as global Britain—a real and depressing double whammy.

4.55 pm

Lord Rooker (Lab) [V]: My Lords, on the basis that it is never too late to avoid making a bad decision, I want to set out what I think should be the Prime Minister’s guest speech to the European Council in mid-October:

“As leader of the UK, I have been having a think about the future. I have not so much changed my mind as reverted to my original views when I said:

‘We are, and we will remain, a paid-up, valued, participating member of the single market. Under no circumstances, in my view, will a British Government adjust that position.’

As I said before the referendum:

‘I would vote to stay in the single market. I’m in favour of the single market.’

It is not true that only in 2019 I understood the meaning of the single market. I now have the knowledge and experience that leads me to want to avoid damage to my country, its stability, economy and culture, by simply allowing the current negotiations to linger on into no deal. There are a host of issues that are very damaging, and I am going to refer to a few of them.

“Our energy security will be put at risk. I cannot possibly preside over power cuts to gas and electricity while leaving the EU’s internal energy market. If the UK were a member of EFTA or the EEA then we could have had a Norway-type energy arrangement, but my predecessor ruled out such membership.

“I have only recently been made aware of the importance of the chemical industry. I had no idea that the UK uses over 21,000 substances that are registered for safety under the EU-wide chemical regulation system. Only around 5,000 of those are registered in the UK; the others, the great majority, are under the control of the EU. The market is huge in terms of exports from the UK to the EU. I do not think we can take the risk of less safe chemicals being dumped on the UK.

“Furthermore, I had never heard of ADNS, RASFF, EASIN NOTSYS or EUROPHYT. I have asked my advisers why not, since these are so valuable to UK citizens and the economy. ADNS is the Animal Disease Notification System, which registers and documents the development of infectious animal diseases. RASFF is the Rapid Alert System for Food and Feed, which enables swift and timely exchanges of information on health risks. Only EU members, along with EFTA and Switzerland, can be members. Approximately 10 alerts per day are issued. RASFF came into being only in our time as an EU member so there is no previous system for us to fall back on. The other two systems involve alien species and plant health notifications, which are both highly important. Witnesses to Select Committees in the UK Parliament such as vets and the Agriculture and Horticulture Development Board said that they were in favour of the UK remaining a member of these systems, which give instant access to information. We cannot do that with no deal, thereby putting the UK at risk.

“I have woken up to the fact that no deal will lead to some real problems, such as a prolonged period of uncertainty, which we have had far too much of already. Half of UK export goods will face disruption, and there will be a reduction in the safety of UK citizens by leaving the EU arrest warrant system. No one explained to me that leaving with no deal means that future negotiations with the EU will be outside the Article 50 framework, meaning they will be much more difficult. If the disruption were prolonged, it is likely that in January and February next year there would be shortages of food in the UK. While residency rights are to be protected—and we have all agreed that—UK expats will lose their right to have bank accounts in the UK. This is a disaster.

“No deal will not bring Brexit to an end. It could go on for a decade, as warned in the UK Government Command Paper 9216 on the process of withdrawing from the EU, which I had not seen until now. The holy grail of the world trade terms would mean the UK economy growing more slowly. After Covid, I cannot possibly countenance this. Therefore, I say to my colleagues—still colleagues, EU Council members—that I will not put the unity of the UK union at risk or the safety of the population and the economy in a danger zone. Therefore, I request a further extension of the transition period of two years for the United Kingdom to enter into meaningful arrangements to continue membership of the single market and the customs union. If that requires rejoining EFTA, we will willingly come to a mutual agreement.”

That is the substance of the speech that the Prime Minister should make.

The Deputy Chairman of Committees (Baroness Barker) (LD): The noble Baroness, Lady McIntosh of Pickering, is not with us this afternoon. I therefore call the noble Viscount, Lord Waverley.

5.01 pm

Viscount Waverley (CB) [V]: The noble Lord, Lord Rooker, is always a hard act to follow. The Minister saying that life is “better understood backwards” reminds me of the Irishman who, when asked for directions, replied, “If I were you, I would not be starting from here.”

We should have exercised our minds on EU negotiating strategy four years ago. Positions appear, regrettably—from afar anyway—to be well entrenched, with now limited manoeuvrability. Fighting one’s corner on a principle is coming to an end, with the direction of travel and endgame becoming clear. It seems probable that we know where we are going to end up; doomsday scenarios will have to be replaced with innovative solutions in the national interest. That does not mean that much does not remain to be done.

I wish to address two specifics: trade policy and relationship building. I start at the outset with a question to the Government, and I would be grateful if the Minister would undertake to write with a considered response and place a copy in the Library. Simply, what is the UK’s trade policy? Many around our country are deeply concerned on that lack of clarity. I would welcome a considered response. My remarks should be perceived not as negative but rather, I hope, as

attempting to be constructive. This applies equally to a newly formed APPG this week for trade and export promotion, which I have the honour to co-chair. The first three buckets under consideration are veering towards trade policy, trade finance and trade export promotion, addressing—as an example—SME export strategy for new FTAs. We look forward to the opportunity to engage with government in all these matters. Endeavour was made to ensure that representatives from all quarters of the union are serving officers.

It appears that we have launched into negotiations with some of our largest trading partners, the EU, the United States and Japan, without a clear position on what is wanted to be achieved—and, specifically, what people wish for, for or from across the European Union. It should be acknowledged also that, within the private sector, unions, consumers and civil society are all equal stakeholders in the UK’s future. That the mantra is to deliver and get Brexit done is clear, but at what cost? I advocate a retrenching exercise, bringing together all the disparate bubbles that exist in our country—industry representatives and multipliers—to sort ourselves out in advance, knowing all that all hearts and minds are behind an implementation strategy. That should include government looking closely at what its principal functions are and focus on delivery of them, recognising the strengths of the private sector as paramount, and have that firmly at the policy table. Government should focus on where it adds value, not competing and undermining the private sector. In a word, we need a more inclusive process in the decision-making process.

The time has come to review what the role of government is in providing trade support. The private sector has long been undermined by heavily subsidised services when it can in many cases deliver the job better. We are also now faced with Henry VIII powers in the Trade Bill with clauses that would feel more at home somewhere between Russia and China. No serious independent trading nation delivers trade policy and support in this way.

To date, beyond the two substantive deals with Switzerland and Japan, the remainder are continuity deals to avoid disruption. They will all need to be negotiated as proper deals at some point. We need a strategy on trade in services through every trade negotiation, whether bilateral or multilateral. We need a trade strategy that reflects our obligations to climate and sustainable development goals. We need a legal reform programme that unlocks growth and removes barriers to digital trade. We need action to tackle the growing trade finance gap, which has doubled during Covid to \$5 trillion. We need a strategy that invests in our Commonwealth relations and bridges the gap between developed and developing economies, while articulating what we want in trade in services, which accounts for 80% of our economy. A plan for what we want at multilateral level and how to use bilateral negotiations to achieve that is also urgently required. It is not as though our future is about just doing trade deals. It is about having a more inclusive decision-making process so that deals that are done succeed and have better long-term outcomes for everyone.

[VISCOUNT WAVERLEY]

Public trust must be the centre of rebuilding in trade, and Parliament must play a critical role in scrutinising the process and ensuring that everyone's voices are heard. We must come to terms with the fact that we are no longer part of the three big trading blocs, but we can play to that as a strength by being an influencer in the next tier with the likes of Japan, Australia and Singapore and a broker between developed and developing nations and between the large blocs advocating for pragmatic process on trade liberalisation, as a country that stands for the rule of law, best practice and high standards. We can no longer be woolly about these things. We need to regroup, get the right strategy in place that upholds the values for which we stand, and from that point execute a clear negotiating position.

5.07 pm

Lord Liddle (Lab) [V]: My Lords, I agree with so much of what colleagues have said today that I do not want to repeat it. I shall just emphasise that I accept the reality of Brexit and want to see the best possible deal negotiated with our European friends. However, overarching this, we have to ask ourselves a much bigger question, and this is what I would like the noble Lord, Lord True, to address in his conclusions. What do we envisage as the relationship between the EU and the UK in 10 years' time? Where are we going?

At the moment it seems to me that the Prime Minister has to resolve in his mind where he is. He seems torn between a Churchillian sense of Britain's role in the world and a desire to make populist, semi-Trumpian appeals to his electoral base. He has got to resolve that in his mind. I was very interested that it was said that Mr Johnson took as some of his holiday reading Brendan Simms' book on Europe. As I understand Professor Simms' argument, it is that Britain has for centuries been inextricably bound up with the future of Europe. He is supportive of Europe's efforts to unite to heal its century-long divisions but he argues that it is legitimate for Britain not to want to be part of that because of the unique circumstances of our history.

I do not believe that argument, but there are two propositions there that I would like to hear the Government accept fully. The first is that our future is inextricably bound up with the European continent, both in economics and security, and in our attitudes to the rest of the world, our values and our interests. The second is that we actually want the European Union to be a success. The Government should say that. They should reject the view that Michael Gove put forward in the referendum campaign, that Brexit would somehow be the prelude to the breakup of the European Union. The Government should also support further steps towards European integration. The success of Europe—[Inaudible]—to accept that point of view.

It seems to me that on many of the big questions we take a much more European than American view of the world. Take, for example, climate change, Iran, our attitude to Israeli annexation of the Occupied Territories, sanctions against autocrats, and even a reset of the Chinese relationship that does not result in the creation of a new cold war. Many of us, of course, hope that Mr Trump will be defeated in November. But my forecast is that if we have a President Biden, his first

instinct in relation to Europe will be to repair relations with Germany. Instead of feeling left out of our special relationship, the UK should welcome that, because it is what Europe needs.

We must have a constructive attitude towards Europe, and we must demonstrate it in everything we do. That is true of the security relationship. The Government will not tell us where the negotiations are going on that. I do not think that that bodes well for them. But if, after a couple of years, we discover that where we are on security represents a significant detriment compared with where we are today, will the Government commit to have a rethink, and think about a new security treaty with the European Union in which we are prepared to recognise the need for some common judicial order, if we are to have deep security co-operation?

Similarly, on the economy, one of the great puzzles about the present rows is that, yes, we are having this enormous row about state aid—but for what purpose? Is it seriously suggested that having freedom on state aid is a bigger benefit to Brexit Britain than the avoidance of tariffs and quotas at our borders? That is a ludicrous proposition. What is even more ludicrous is that the Government cannot even tell the EU what they want that state aid freedom for. We talk about divergence but there is no analysis to underpin where we want to diverge, so the EU is bound to be suspicious of our motives.

In the present situation we must put effort into avoiding a catastrophic breakdown and try to rebuild a positive relationship with our partners step by step. We should welcome the future track of deeper European integration, and recognise that what happens in Europe is as decisive for the UK's future when we are outside the EU as it was when we were inside.

5.15 pm

Lord James of Blackheath (Con): My Lords, I was delighted to hear the noble Lord, Lord Anderson, refer to the 1969 Vienna Convention on the Law of Treaties because I believe it will have a profound effect on the final resolution of our recovery of sovereignty on a number of issues. I would like to read an extract from Article 53 of the convention. It states:

"A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law ... from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

I suggest that that is a convenient way out for us. It avoids the confrontation of having to argue to take back areas of our sovereignty which are not lawfully given by Europe. We can effectively just wait for the European partner to initiate its own action—under what it sees is available to it under that convention—to try to force it on us. In that case it will have to revert to a plea to the bar of world opinion by going to the United Nations. Good luck to it. I do not think it will succeed on much. I think we have a soft way out that we should not overlook.

Everything else I want to say is about sovereignty issues. The principal concern when the vote was taken was the recovery of sovereignty. Of course, the European Union's *acquis communautaire*—or ratchet mechanism—is steered towards ever-closer union. It has

directly encroached on our sovereignty on so many issues in a manner not necessarily understood and foreseen at the completion of the treaty of Lisbon.

I have 13 sovereignty concerns that I wish to see resolved. That is too many to cover this afternoon, but I will try to go through eight of the most important ones. On 28 January, I obtained an Answer to a Written Question which assured me that there was no intention whatever for Britain to enter into the European defence union nor to forsake any of our Five Eyes capability to Europe. I was very pleased to get the answer saying, “You are right. Nothing is intended.”

Since that time, an eight-minute film has been put out by the European Union. It is easily available on a video link. It shows what the EU considers to be the celebration in Bosnia-Herzegovina of the first meeting of the armed forces of the European defence union. It starts with the downloading of an RAF jet containing 200 members of the Parachute Regiment. The commentary says they are accompanied by 30 members of Special Forces, who I take to be the SAS. There is then a march past, behind the European flag, in front of a saluting base, and a Jeep is pulling a platform on which are the 27 flags of the European defence union, including the union jack. I want further reassurance that we are not part of the European defence union. That is hugely important.

That leads to my second point. All our defence forces have to be under direct oath of loyalty to our sovereign. The European defence union requires a direct line of commitment to Brussels. We cannot have that situation. It would get us straight into the issue of whether we are participating in a standing army, which has been strictly prohibited since the trial of Charles I. We cannot possibly encumber our sovereign with the burden and embarrassment of having to contend with that in the latter stages of her reign. This is a disgrace. Those issues are paramount and we must have a definitive statement on them.

Throughout the past three or four months, we have been frozen as to the defence contracts we can engage in as Europe is still insisting that, as part of the go-forward arrangements, we will use only the authorised European defence production capability, which includes its boatyards, its tank capacity and everything else. It has already allocated to Krups the order for the first 50 of the new key Type 51 frigates, which are very important to us for our own coastal defences, and we are therefore prohibited from placing the order for the remaining 30 or so which we need for ourselves.

Similarly, the most important vessel required for the British Navy at this time is the replacement for the fleet auxiliary. The original one has been sold off to the Far East to be turned into razor blades—I am sure it was a good price—and we now have a situation where we cannot put out an order for the new form of fleet auxiliary, without which our carriers are effectively port-bound. These issues really need to be resolved, and we need clear direction on them.

The fisheries have been talked of much, and they are a major issue, but I wonder if your Lordships know just how bad the situation is in certain places. I have a direct and particular interest in Bridport bay, and the situation there is rather like a war zone. The trawlers

going in are of what is called the wedge variety, which means they are flat-bottomed, and they are used to scrape up the bottom of the sea. As a result, they have destroyed the entire spawning and breeding capability of the Bridport area for the future. They have encroached so far upon the beach that they have undermined the sands adjacent to the cliffs, so the cliffs are crumbling, and this is now the worst area of crumbling in the country. It is like a war zone, and it is quite unfair on the local community. This is not fishing rights; this is absolute aggressive intrusion.

If the exercise is correct, that we sent 200 paratroopers to participate in the jollification in Bosnia about the creation of the EDU, it was also significant that it was said in the commentary all to be under the direct command and control of the European development union, at the head office of the EU. I have been sent fortuitously, by an anonymous person, a complete set of the command and control procedures for the European defence union, and it is fascinating. If you are a corps of armed soldiers and you have occasion to take a defensive situation, or even fire a round, you are then not allowed to reload or fire another round until you have been through 16 levels of consent, up to Ms von der Leyen herself, for consent to reload and shoot—

The Deputy Speaker (Baroness Barker) (LD): Could the noble Lord bring his remarks to a close, please.

Lord James of Blackheath (Con): Sorry. I have said my peace, and I hope you will understand it has come from the heart.

5.22 pm

Baroness Ritchie of Downpatrick (Non-Aff) [V]: My Lords, I have to confess that when I first had sight of this Motion coming from the Government, I wondered why as it clearly focuses attention on an aspect of the Government’s performance that leaves so much to be desired. I thank the Minister for his explanation today, but I think lots of questions need to be put, and answers need to be given.

I regard Brexit as a social and economic disaster for the UK, and in particular for Northern Ireland, but I accept that the UK has left and that the exit, however shambolic, will be completed by the end of the year, so the remarks I make here are not rerunning the Brexit debate. They are about the Government’s approach to the negotiations, which has been dreadful from the very start.

We set out with former Prime Minister May’s assertion that “Brexit means Brexit”, without any further elucidation. Contrastingly, the EU made its three requirements clear and patiently asked the UK Government to outline the kind of Brexit they wanted to negotiate, but it got no clear answer. Instead we have had the chaos of hard Brexit or soft Brexit, in the customs union or not in the customs union, backstop or no backstop, ERG and even a general election. We had a Brexit Secretary who did not like going to meetings and a Foreign Secretary who likened our negotiating partners to the Soviet Union.

Then we had a year of farce in the other place while the EU waited patiently, allowing more time for the UK Government to get their act together. Eventually

[BARONESS RITCHIE OF DOWNPATRICK]
we reached a withdrawal agreement which, along with the Northern Ireland protocol, settled the most vexed matter of all: the future of the EU-UK customs border. Then only in February this year, as the pandemic was starting to break around Europe, the UK Government finally said that they wanted a Canada-type trade deal.

Since that time, the UK Government's approach to negotiating the future relationship with the EU has been characterised by bluster, brinkmanship and, I am sad to say, bad faith. There is a refusal to accept that along with the obvious benefits of the free trade agreement, which the EU actually wants to give us, we have to accept some responsibilities. Instead the Government want all of the freedoms and none of the obligations.

The negotiating strategy is based on "They need us as much as we need them"—surely one of the greatest untruths ever peddled in this country. With the introduction of the United Kingdom Internal Market Bill and some of the Prime Minister's own recent utterances, the Government have taken that bluster, brinkmanship and bad-faith approach to a new level. Imagine legislating to disapply the withdrawal agreement while breaking international law in the process; ridiculously accusing the EU of bad faith when it is the other way around; ludicrously claiming that the purpose of the Bill is to defend the Good Friday agreement, when it threatens to do the exact opposite; and simultaneously grabbing power back from the devolved Administrations without their consent.

That is not all: while the Government's approach has seriously damaged the prospects of a deal with the EU, we should remember that any deal with Mr Barnier has to get through an increasingly agitated European Parliament and EU 27, not to mention the warnings from Joe Biden and Nancy Pelosi about a US trade deal and the unnecessary damage to the UK's relationship with Dublin.

This is doing real damage. Businesses in Northern Ireland, including hauliers, while apprehensive about new customs impositions, were satisfied that with the Northern Ireland protocol they could at last plan ahead. That has now been thrown into doubt. Only yesterday the Northern Ireland Assembly backed a Motion brought by my colleagues that roundly condemned the Government's approach to the EU negotiations. Maybe the Minister could indicate what progress has been made on the deal relating to hauliers and indeed to fisheries? I think of both the Irish Government and the UK Government having jurisdiction in the Irish Sea. Will they be concluded soon? How will the Government protect our economy and society if there is no deal? How will they protect our devolution settlements?

Perhaps most ridiculous of all was the scene of Boris Johnson in the other place conjuring up fantastical images of the completely fictional threat of an EU blockade of UK food supplies, a nonsense that was brilliantly exposed by the colleague of the noble Baroness, Lady Hayter, Ed Miliband. Unfortunately, the PM still has to clown around with jokey notions of exports of Devon clotted cream being blockaded by the EU.

I am afraid for me and for the people of Northern Ireland. This has gone too far. We want to see a deal. We want to see those intricate sets of relationships that we have on the island of Ireland between north and south, within the north and between Ireland and Britain, as captured in the Good Friday agreement, protected and enhanced. We want no further nonsense such as we have seen espoused by the British Government. I hope the Minister can provide some answers today to those vexing questions on that vexing issue, because there was no doubt that the protocol provided an answer to that most vexed question of the border.

The Deputy Chairman of Committees (Baroness Barker) (LD): Since the noble Lord, Lord Loomba, is not contributing this afternoon, I call the next speaker, the noble Lord, Lord Wei.

5.29 pm

Lord Wei (Con) [V]: My Lords, I want to say thanks to many of those who have contributed to this debate. I declare my interest as in the register.

There have been many speakers already, so I hope I do not have to take up all my time. I definitely do not want to repeat many of the excellent statements and comments that have been made so far. I am probably in a minority in this debate by wanting to actually congratulate the Government on the negotiations in a very tough situation, not least with Covid, the lockdown and all that is going on in the world, especially given all the activity of the last few years and the difficulties that we have had.

Ultimately, as other speakers and my noble friend the Minister have said, we have to negotiate from a position of safeguarding Britain's sovereignty. That is the reason we are leaving the European Union. There has been a perception and perhaps a reality—sometimes it is both—that we have not always had full sovereignty over our own affairs. If you look at it through that lens rather than just requiring stability at all costs as we move into the next year, whether politically in terms of Northern Ireland or for economic reasons for our businesses and so on, we can see that there are many people in this country who voted to leave and who are willing to accept whatever pain may take place as we exit. That is because the issue of sovereignty is important.

I wish that I did not have to say this, but having listened to some of the remarks from other Peers, I thought that as a Parliament, we have made a vow to the Queen and to this country. I am therefore disappointed, quite frankly. Sometimes I feel like we are listening to opinions that sound so pro-European that they ought to be coming from the other side of the negotiating table rather than thinking about what we as a country really need. I accept that we need to have positive relations with Europe, but I feel that the Government have been doing their best against a very belligerent negotiating partner who, in my view, has not always played fairly.

Some have argued, and I would not disagree with them, that we have grounds to say that the withdrawal agreement has been violated even because of the way that we have sequenced the negotiations in Europe's favour over the past few years. The discussion about fisheries has been made more important than other

matters that are critical to the future of our relations with Europe. Again, in my view, that shows a high degree of bad faith, so I do not agree that the Government are necessarily the villain here. I do not think that that is generally the case because there is much to say about Europe's behaviour.

On that note, I would like to ask my noble friend the Minister whether, when it comes to the negotiations, we are looking at other alternatives to just hoping that we are going to get a reasonable agreement or no deal. As we look forward to the future relationship with Europe, is it better, as other Ministers have mentioned, to work on other agreements, even in an Australian scenario such as the CPTPP, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, so that at some point we can come back to these negotiations as a more equal partner with a sizeable bloc to negotiate with rather than being treated like a minor counterpart?

I have another question, having observed the behaviour of the European negotiators. Do we need to build an economy that is more resilient because there is no guarantee that, at a future date, Europe might not seek to place demands on us that might affect our sovereignty again? For example, as a country we are strong in areas such as intellectual property, licensing and so on. These are things that are less impacted by tariffs and perhaps by certain regulations. If we can build a set of industries in the future that are all about spreading our knowledge with partners in other countries, maybe we will be less impacted by the rising protectionism that we are seeing both in Europe and around the world. Even our exporting expertise has value across the world in terms of raising the knowledge base in other countries. Could Britain be not just global but also a source of knowledge by building an even greater knowledge economy in the future?

Finally, I want to ask the Minister about what we are doing in terms of taking this opportunity. Sometimes, when you are up against a wall, whether in terms of these negotiations and we could say the same about the Covid situation, that can drive innovation. You can say, "We have these limitations." Northern Ireland is the classic example. We have to try to fit the regulations of multiple jurisdictions.

We have talked before about the power of technology, and blockchain especially, to rewire our supply chains, so that with free ports and more generally in our relationships—not only with Europe but with multiple FTA partners—we can find ways in which to actually thrive in this world and benefit from being able to sit between different jurisdictions, rather than being dictated to, whether by the US, China or Europe, in what we do. It is about trying to find a way to work with multiple systems, to be what we have always been: a trading nation that has a powerful and seemingly neutral legal and regulatory framework that allows us to work with the best of those who want to work with us around the world.

What thinking has been done on this? From what I can see, as much as I and others would hope that we can get a deal—and the chances of going into an Australian WTO situation are high—what are we going to do as we come out of that? Negotiation with Europe will not stop there: we still have this set of

partners that we have to work with. If they continue to show bad faith, even in that situation, do we need to build a set of negotiating positions—in our economy, our regulations and our technology—in such a way that we can be in a strong position to be an equal partner in future negotiations?

5.35 pm

Viscount Trenchard (Con): My Lords, I thank my noble friend the Minister for giving your Lordships a chance to discuss the Government's approach to the negotiations with the EU, of which the eighth round has recently completed. Like my noble friend Lord Wei, I believe that the House should offer its strong support to the Government at this delicate stage in negotiations. In spite of the hype and noise made by certain newspapers, especially those of a remain disposition, I believe that the negotiations are being conducted in a more constructive mode than some would have us believe.

My noble friend Lord Frost stated after the last round of negotiations that he and his team have been consistently clear that they want to find a modern free trade agreement between sovereign and autonomous equals that provides for open and fair competition. This does not mean, as Monsieur Barnier still insists, that we must commit to EU standards on social, environmental, labour and climate regulations. He complains that there are too many uncertainties about the UK's SPS regime, which we debated yesterday in your Lordships' House. It is unfortunate that noble Lords opposite decided to reinstate amendments previously rejected in another place to commit to retain our existing rules on animal welfare and food production standards. Your Lordships also approved another amendment which, as my noble friend Lord Taylor of Holbeach, who speaks with enormous experience in these matters, said, would make it impossible for farmers to control noxious and persistent weeds and fungal infections on his farm.

Monsieur Barnier wants us to commit to maintain the EU ban on the import of hormone-treated beef. To read the *Daily Mail*, you would not know that the reason the WTO found that the EU ban on this violates its SPS rules is that it is not based on sound science and that levels of hormones as a result of the treatment are inconsequential. A 3 gram serving of hormone-treated beef produced 0.85 units of oestradiol, whereas the same serving of eggs produced 0.94 units.

During my banking career, I established many relationships with Japanese companies, including a life sciences company that is a major investor in this country and in several EU states. The chief executive of that company told me that he was not best pleased when Brexit came along because he had to spend \$7 million on duplicating licences and strengthening his network of companies in Europe. He has now told me that he expects an upside of Brexit: that we should abandon the very prescriptive and cumbersome style of EU regulation and revert to a style which we used to apply, and which is still applied in common-law countries such as the United States and Australia. If we do that, he thinks that the United Kingdom will remain the best country in the world in which a life sciences company like his can research, innovate and develop new products.

[VISCOUNT TRENCHARD]

That inevitably means that we should diverge from EU regulation, as we must no longer allow the precautionary principle to be applied to a disproportionate extent. Its effects are counterproductive and, over time, increase the risks to people's health and the environment by delaying or preventing the development and use of beneficial new products. Can my noble friend the Minister confirm that the statements often made by government spokesmen that we will retain our high standards in agricultural and environmental matters do not mean that we will maintain EU-style cumbersome rules in doing so?

I was surprised to hear the noble Lord, Lord Liddle, argue that we are more like our European friends than our American cousins—I do in fact have American cousins. Our strength has been, and is, that we understand both well.

We will soon be debating the internal market Bill in your Lordships' House. I welcome the Government's agreement to provide a parliamentary lock on the use of powers which are held to conflict with the Irish protocol to the withdrawal agreement. However, there are ambiguities in the withdrawal agreement that need clarification. The EU's interpretation would also be in breach of the treaty of union between Great Britain and Ireland of 1800. The Irish protocol also sets out the clear principle that Northern Ireland is part of the customs territory of the UK, so goods should be allowed to flow from Great Britain to Northern Ireland without tariffs. Joint agreement with the EU on goods that are at risk of crossing the Irish border is clearly necessary. It was unhelpful of Mr Šefčovič to react so strongly. How can he argue that the proposal has damaged the Belfast or Good Friday agreement? The introduction of border formalities such as the EU wants to see would clearly cause huge damage to the agreement, and it is disingenuous of the EU to fail to recognise that.

Further, does my noble friend the Minister know why the EU did not punish Germany over its dispute over the legality of the European Central Bank's bond-buying programme? In fact, the EU has been quite silent over this issue, which contrasts with its feigned outrage over the internal market Bill. Everybody knows that we are negotiating to leave the EU and enter into a free trade agreement as a sovereign nation. The Prime Minister has been consistent from the time he signed the withdrawal agreement that we will not have a substantive border in the Irish Sea, so who could be surprised at this? I do not believe that this matter will lead our present and prospective trading partners to consider the UK to be a dishonest and unreliable partner.

Of course, it may have been a mistake to agree to the EU's insistence that we should negotiate the terms of withdrawal before our future relationship. Does my noble friend not agree that this was also a breach of international law, because Article 50 of the Lisbon treaty clearly states that the terms of withdrawal shall be negotiated against the background of the future relationship? It is now so clear that it was quite wrong not to agree both the terms of withdrawal and our future relationship at the same time. Perhaps we might not have needed to agree to give to the EU the whole

of our share of the retained earnings of the European Investment Bank, to mention but one of the several points where we have yielded to unreasonable EU requests.

I look forward to the Minister's winding-up speech.

5.43 pm

Baroness Wheatcroft (Non-Aff) [V]: My Lords, when he was electioneering back in December last year, the Prime Minister promised that:

“We have an oven ready deal, put it in the microwave as soon as we get back after the election on Friday 12th December and get it done.”

I know that rash promises are sometimes made before elections—indeed, they are sometimes made after elections; the “world-beating” test and trace system comes to mind—but today, we are discussing the UK's approach to negotiations with the EU. Can the Minister say what the Government's approach to that oven-ready deal has been? Did it ever exist? The withdrawal agreement was a framework, though not a perfect one, that is now being torn up, but the oven-ready deal that electioneering led people to expect is not in sight. The Government's preparations for leaving the EU are about as close to oven-ready as the turkey that has just been hatched.

Others, most notably the noble Lord, Lord Judd, reminded us that the EU is about far more than trade. I accept that we have left the EU; now what we need is a good deal. Trade deals are never easy to negotiate but it is clear that a deal with the EU is what we need most. In 2018, 49% of our trade was with the EU. It is potentially great news that we have concluded a trade deal with Japan, but Japan accounts for just 2% of our trade and we do not yet know the details of that deal. There are questions over quite what we have given up, particularly on state aid. I find it incomprehensible that a Conservative Government should be prepared to risk our future relationship with our major trading partner over the issue of state aid. I would be grateful if the Minister could tell the House what state aid the Government are so desperate to provide that they are prepared to sacrifice such a crucial relationship.

As the noble Lord, Lord Berkeley, pointed out earlier, we learned this week that if we leave without a deal there could be 7,000 trucks piling up outside Dover, causing chaos and delaying deliveries by up to two days. It seems now that there is even to be a border around Kent. Michael Gove said this afternoon in the Commons that there would be a “Kent permit” for all lorries that needed to enter the county and without such a permit they would not be allowed in. Last week we learned that Logistics UK—formerly the Freight Transport Association—was told that the Government's smart freight system, designed to reduce the risk of cargo delays, would still be in “testing mode” in January. Well, at least it has been traced.

It turns out that life outside the EU is harder to organise than this Government appear to have imagined. Their gung-ho talk is just that—delivery is the problem. Being a member of the EU brought numerous benefits beyond the smoothly flowing travel of goods and people. Take GPS, now such a crucial part of modern life. The Galileo system, of which we were beneficiaries through our EU membership, worked efficiently but the Government did not want any part of Galileo.

We would go it alone. Earlier this year, this gung-ho Government spent £900 million on buying 45% of OneWeb, a bankrupt US tech company, which had attempted to build a constellation of 650 satellites. This was to be the basis for our very own GPS system. Just months later, that project is being abandoned.

Tobias Ellwood, the chairman of the House of Commons Defence Committee, dismissed the scheme as a “vanity project”. It takes vanity on a monstrous scale to blow what adds up to more than £1 billion on feeding it. However, it is not merely the waste of public money that is appalling, it is the risks that a lack of such a system causes. According to Mr Ellwood, if we do not have the back-up of Galileo we are going to have problems. We will be extremely vulnerable from a security point of view. In the continuing negotiations with the EU, will access to Galileo be included?

This afternoon, the president of the CBI, the noble Lord, Lord Bilimoria, spoke eloquently of the need for business to have a deal. He explained that Covid had wrought havoc on our companies. It has eaten into their cash resources, if they had any, and into their material stockpiles. Companies have struggled to get through the last six months, but this week brought the news that restrictions could last another six months. An avalanche of redundancies looms. Is this the time to embark on what even the noble Baroness, Lady Noakes, accepts will be an uncomfortable process?

This afternoon Michael Gove told the Commons that there might be a few bumps in the road. I was delighted to see the noble Lord, Lord Rooker, back in fighting form and even more pleased to have listened to what he had to say. If only our Prime Minister would read that speech in Brussels next month. Extending the transition period is the sensible thing to do, but this gung-ho Government do not do sensible. Michael Gove stated this afternoon that 24% of businesses believe that they are ready for 31 December, and acknowledged that flows across the critical short strait crossings could be reduced by 60% to 80%. Nevertheless, an extension of the transition period will not be contemplated. In a pre-Covid era, it would be mad to press on in such circumstances. As the country struggles to cope with Covid, it is simply incomprehensible.

5.50 pm

Lord Lilley (Con): My Lords, ever since the referendum, my advice to businesses has been “prepare for no deal”. It has always been far more likely than is generally assumed. However, partly because of the controversial internal market Bill, I am inclined to think that the chances of a deal have now risen. I will explain why.

There are two unusual features about the negotiations between Britain and the EU. One makes them simpler than other free trade negotiations; the other makes them harder. They are simpler because we start where most free trade agreements and negotiations end up after years of haggling. We have zero tariffs and we want zero tariffs; it cannot take more than 10 minutes to negotiate. We have identical or equivalent rules and regulations, and we need to agree only a divergence mechanism: what happens when one side or the other changes their rules from the starting point. Such arrangements exist in most free trade deals and are comparatively straightforward to negotiate.

Why, then, are these negotiations harder than normal free trade agreements? Normal agreements and negotiations are win-win affairs: each side tries to offer concessions that cost it the least but will be of greatest value to the other side. Therefore, a mutually beneficial win-win outcome usually emerges. However, the European Union has an overriding political imperative, which is to discourage other member states from following our example. The EU believes that this means that Britain must be seen to get a bad outcome even if that means that the EU gets a less good result, economically, than was possible.

When one side is more interested in the other side losing than itself gaining, that creates a very unstable negotiating dynamic, which is why no deal has always been a significant possibility and even been used as a threat. However, as we have approached the endgame, it has become clearer to both sides that, although no deal would be a suboptimal outcome, it would not be as painful to the UK as the EU and many in the UK—and, indeed, in this debate—have supposed and that it would be more painful to the EU itself than they or others had initially assumed.

If there is no deal, each side will apply its tariffs to the other. That will cost British exporters to the EU about £5 billion a year. That is half the £10 billion saving from not making a net contribution to the EU any more. Therefore, UK plc will be a net £5 billion better off: small beer, but not negative. By contrast, losing tariff-free entry to the UK market would cost EU exporters £13 billion a year and, of course, the EU will also lose the £10 billion a year that we pay it. Therefore, the EU will be a net £23 billion worse off; again, that is not huge compared with the size of the European economy, but it is more difficult to cope with in these difficult times.

Why do EU exporters stand to lose nearly three times as much from tariffs as British exporters to the EU? It is partly because the EU exports far more to us than we do to it, but the main reason is that the goods that it exports to us are highly protected goods, which it can sell to us only because we are currently prevented by the EU external tariff from buying them more cheaply elsewhere. Therefore, it is the realisation on both sides that no deal, though not the best outcome, is not a disaster for the UK but would be a problem—or a cost—for the EU that has made the latter look to the Northern Ireland protocol for other negotiating levers.

The withdrawal agreement has even more loose ends and internal contradictions than most international agreements. That is not surprising, given that Boris was given only 100 days to renegotiate it, during which Parliament did its best to shackle his negotiating powers, but we signed it and accepted it because it has a mechanism to resolve those internal contradictions: the joint committee, within which both sides are treaty-bound to negotiate in good faith to resolve outstanding problems by the end of the transition period.

However, recently the EU has been pointing out—doubtless as a negotiating lever—that if it simply refuses to reach agreement in the Joint Committee then, arguably, all goods going from Great Britain to Northern Ireland will have to pay the EU tariff, and all goods coming from Northern Ireland to Britain

[LORD LILLEY]
will have to fill in EU export declarations, and if the EU refuses to list the UK as a third country from which it will accept food imports, not only will we be unable to export food to the continent, but it would be illegal, as the EU has threatened, to take a single kilo of butter from Great Britain to Northern Ireland. As far as I am aware, the EU has not seriously denied making those implicit threats.

Those outcomes would be economically damaging to Northern Ireland, flagrantly in conflict with the Belfast agreement and contrary to the Acts of Union with Ireland and Scotland. They would inflame unionist opinion, demonstrate manifest bad faith and breach the clear intention of the withdrawal agreement itself, so the UK Government had no option but to introduce legislation enabling them to override those potential interpretations of the withdrawal agreement, should they emerge.

In doing so, the UK Government adopted the EU's own approach to international law, clearly set out by the Advocate-General in the European Court of Justice in the Kadi case. He said that

“it would be wrong to conclude that, once the Community is bound by a rule of international law, the Community Courts must bow to that rule with complete acquiescence and apply it unconditionally in the Community legal order. The relationship between international law and the Community legal order is governed by the Community legal order itself, and international law can permeate that legal order only under the conditions set by the constitutional principles of the Community.”

I cannot see that we are doing anything different from what the EU would, very sensibly, do if there were a conflict between international law and its internal legal order. I invite the noble Baroness, Lady Ludford, as the last remainder of note due to speak in this debate, to be as critical of the EU doctrine as I have no doubt she will be of the Government's behaviour. However, because we have effectively called the EU's bluff, there is every reason to suppose that it will in practice resume negotiating sensibly and help us to resolve those issues, and there will be an agreement at the end of the day.

The Deputy Chairman of Committees (Baroness Fookes) (Con): My understanding is that the noble Baroness, Lady Ludford, is not participating in the debate this afternoon, so I now call the Minister to reply.

5.58 pm

Lord True (Con): My Lords, as expected, this has been a robust debate; I think that is the word often used in your Lordships' House, which is why it is such a splendid House. I am grateful to all noble Lords for their insightful and at times impassioned contributions.

I am fond of the game of cricket: I used to play it and I love watching it. One of the pleasing conventions of the game is that the umpire always gives the batsman the benefit of the doubt. Actually, that never seemed to happen much when there was an lbw shout against me—but that is the convention. I have tended to notice in some debates in your Lordships' House, when EU matters and negotiations are discussed and when your Lordships are the umpire, the EU is always the batsman and the poor old British Government the bowler who never gets the benefit of any doubt. The EU

is always entirely innocent, honourable and above board, and the UK Government always guilty as charged. It is not always that easy, although I think that the umpires would have differed today. The EU obviously would not accept my noble friend Lady Noakes as an umpire in this age of neutrality, and I suspect that the UK Government would not welcome the noble Lord, Lord Hain.

The noble Lord, Lord Hain, in a typically brilliant and well-argued speech, with which I profoundly disagreed, was really the trombone or perhaps even the tuba of the arguments of doom and gloom and futurology that we heard in the course of the debate. But the rest of the brass section and the woodwind were quite well developed in the debate. Richard Wagner or Richard Strauss would have been well pleased with the blasts of doubt that were piped out.

As many have said, we are where we are. As I said at the beginning, the mandate has not been given by some sort of sinister, unelected figures, whoever they might be—as was said by the noble Lord, Lord Judd. We are actually marching to a mandate given by the electors, the British people, more than once. That is what the British Government conceive as their duty—to accomplish what the British people have asked for—and that is what we will do, we hope with engagement and agreement with the European Union but, if that is not forthcoming, without it.

The noble Lord, Lord Rooker, made a delightful speech, as ever, with an imagined speech. I think that the chances of my right honourable friend Mr Johnson picking that one up are about as likely as a previous Prime Minister picking up the draft speech that I sent into No. 10 on this subject a few years ago. The reality is that there is no chance of the Government extending the transition period—and I must say that to the noble Lord, Lord Rooker, and the noble Baroness, Lady Wheatcroft. That is the law of the land.

A number of questions were asked, and I shall try to answer them in the time available. I am not going to talk out all the original time, noble Lords will be pleased to hear.

The noble Earl, Lord Kinnoull, in a typically balanced speech—and I do not want to give the impression that there were none; there were a large number of very balanced and thoughtful speeches—reminded us of the importance of the work of your Lordships' European Committee and its balanced and thoughtful contributions to our debates. I thank him and all members of the Select Committee for that and for the kind things that he said personally, which I gladly reciprocate.

The noble Earl mentioned the recitals. The position is that we remain fully committed to implementing the withdrawal agreement and the Northern Ireland protocol, and I shall come back to that in a moment. We have taken many practical steps on that. On the dispute mechanism, it does exist. The noble Earl asked why we would now legislate. The answer is that this is our last chance to introduce legislation, rightly or wrongly—and we will have great opportunities in your Lordships' House to debate it in the weeks ahead—which would become law before 1 January. It is our last chance to put in place a safety net in case issues are not resolved, as we hope they are, in the joint committee.

Of course, the Government respect the rule of law. We have discussed this on several occasions in the House, and we will discuss it again on the Bill. In response to a number of noble Lords who spoke, understandably, on this subject, I repeat that we are fully committed to implementing the withdrawal agreement and Northern Ireland protocol. That is seen in the many practical steps that the Government have put in place to put those agreements into physical being. It is absolutely not the case in any circumstances that this Government would wish to undermine the Belfast agreement. Indeed, with regard to motivation, as I discussed when I answered the question in the House, the Government are very mindful that the Northern Ireland settlement, which we all wish profoundly to preserve, has an east-west dimension as well as a north-south one. It behoves the European Union to recognise that. It is just in these very tightly defined potential circumstances that Parliament is considering—and the House of Commons approved in Committee—the possibility of giving the powers that might disapply the EU law concept of direct effect.

I do not want to pursue that at the greatest length today, not because I demur from the question—I anticipate many hours of discussion on it—but the protocol had to solve very complicated issues and certain elements were left for ongoing discussion, as all noble Lords know, after the UK left the EU. They were drafted in a broad-brush way, and what is before us now is a safety net that ensures that Ministers can always deliver on the obligations to secure unfettered access to the rest of the UK for Northern Ireland. These are necessary steps in case agreement cannot be reached in the joint committee, but our objective is to reach agreement through the joint committee. We do not accept that, if people keep level and sensible heads, there is any reason why this need risk, as was put by someone in the debate, blowing up the talks altogether.

I was asked about citizens' rights by the noble Baroness, Lady Hayter, who made what I thought was a very well-argued opening speech, although again I did not agree with all of it. She asked a number of questions that I will endeavour to answer. UK citizens' rights are of course of profound importance. I believe that we have done well in the United Kingdom in seeking to confer rights on the European citizens living in this country, and we are working constructively and continually with the EU member states on the implementation of rights in member state countries, as well as providing advice to UK nationals via our "living in" guides, which are on GOV.UK. However, we continue to call on EU member states to provide equal certainty to UK nationals. We want faster implementation, longer application windows and clear communication.

I was asked about Erasmus. The noble Baroness, Lady D'Souza, is right that we are considering participating on a time-limited basis, provided that it is in line with UK interests and we can agree on a fair financial contribution. Her Majesty's Government are considering a wide range of options on student exchange, including, if needed, a domestic alternative.

On Galileo, however, I must repeat what I have said to the House before: the UK and the EU discussed the Galileo programme during the withdrawal agreement negotiation but the EU's offer on Galileo did not meet the UK's defence and industrial requirements.

The noble Baroness, Lady Hayter, and many other Peers, including the noble Lords, Lord Wallace of Saltair and Lord Kerr, who made an interesting and balanced speech, asked about state aid. As I set out in the opening speech, there is a problem with state aid. The EU is asking to see the design of our state aid regime, which in any typical free trade agreement would not be within the scope of negotiations. As I said in my opening remarks, the EU state aid rules are unique and were developed specifically for the single market. We are being clear that we are not going to become a high-subsidy regime at the end of the transition period but also, as an independent nation, we are not going to allow the EU a say over a UK domestic regime. As I have explained before, we will make clear our approach to subsidy policy at the end of the transition period in due course but we will do so on our timetable, not the EU's. After the transition period the UK will have its own regime of subsidy control and will not be subject to the EU state aid regime. Again, as I said in my opening remarks, there are other well-established ways to regulate subsidies. The World Trade Organization rules are an internationally recognised common standard and many major economies do not regulate subsidies beyond those rules. I agree with the noble Lord, Lord Kerr, in welcoming the fact that the EU has rowed back from some of its demands in this area.

As I set out before, all we would need to agree is a mechanism to resolve any disputes with the EU, as is the case between countries which trade under a free trade agreement on WTO terms. For our future arrangements, we have proposed appropriate dispute settlement procedures, including arbitration where it is precedent. We have heard the EU's concerns about a complex, Switzerland-style set of agreements, and we are ready to consider simpler structures, provided satisfactory terms can be found for dispute settlement and governance. The UK's offer to the EU on subsidy control goes further than WTO rules, and we continue our negotiations on that matter.

On trade more widely, I will have to leave it to my right honourable friend Liz Truss to set out a broad statement on trade, but I say to the noble Viscount, Lord Waverley, that my noble friend Lord Wei made some very strong and important points in this area. Trade deals with other nations are not to be derided. One of the benefits of leaving the EU is to deliver an independent trade policy for the UK that works in the interests of our businesses and our consumers. We want to start negotiating with new trading partners as soon as possible to take the new opportunities they offer, of which my noble friends Lord Wei and Lord Lilley and other noble Lords spoke. Noble Lords will know that the UK Government have announced their aim to secure free trade agreements with countries covering 80% of UK trade within the next three years—including, we hope, with the European Union—and negotiations with priority partners on free trade agreements are currently taking place.

[LORD TRUE]

The position of the Government remains that at a time of growing protectionism, free trade agreements provide economic security at home and opportunities abroad. They help improve the resilience of supply chains through diversity and opening new markets for business, bringing investment, better jobs, higher wages and lower prices when we need them most. I agree with what my noble friend Lord Wei said on that.

I was asked about engagement with the devolved Administrations, to which we attach great importance. We are committed to working closely with the devolved Administrations throughout negotiations with the EU to ensure a future relationship that works in the interests of the whole UK. The UK Government have been working closely and having constructive discussions with the devolved Administrations during those negotiations, and I do not agree with some of the remarks that were made on that score. We will continue to engage at both ministerial and official level.

As noble Lords will know, at ministerial level, the Joint Ministerial Committee (EU Negotiations), or JMC(EN) in the jargon, is a forum for the devolved Administrations and the UK Government to engage and discuss the UK's approach to negotiations with the EU. It is the principal route for Ministers in the devolved Administrations to input collectively into the UK Government's negotiating approach. This is supported by frequent official and ministerial bilateral engagement. Attended by delegates from the UK Government, the Welsh Government, the Scottish Government and the Northern Ireland Executive, the 25th Joint Ministerial Committee met on 3 September via video conference chaired by the Chancellor of the Duchy of Lancaster. It was a constructive meeting which discussed ongoing negotiations relating to the future UK-EU free trade agreement and the wider relationship, preparedness for the end of the transition period on 31 December, and an update on common frameworks. In answer to the noble Baroness opposite, I underline that we recognise the significant interests of the devolved institutions in our negotiations and we have been clear that they should be fully consulted in preparations.

A number of noble Lords asked about security. There is a good deal of convergence in what the EU and UK are seeking to negotiate in terms of operational capability. We will keep working to bridge the gaps where differences remain.

The EU has listened to the UK on some of the issues most important to us and we welcome that more pragmatic approach. There is, in our judgment, still an agreement to be had, and we will continue to work hard to achieve it, but we must also continue preparing for all possible scenarios at the end of the transition period.

The safety and security of our citizens is the Government's top priority. We continue to discuss with the European Union an agreement on law enforcement and criminal justice co-operation in criminal matters. The agreement should equip operational partners on both sides with the capabilities that help to protect citizens and bring criminals to justice, promoting the security of all our citizens. The UK will continue to be a global leader and good partner on security and, I hope and pray, one of the safest countries in the world.

I was asked about financial services in negotiations, which is obviously a crucially important area. We are seeking to provide a predictable, transparent and business-friendly environment for firms to undertake cross-border financial services business. An FTA chapter would sit alongside our respective equivalence assessments, which are progressing in parallel to the FTA negotiations. As we have always said, however, co-operation mechanisms should be proportionate to the level of market access agreed. It therefore makes sense to return to co-operation once the FTA negotiations are more advanced. However, it is disappointing that the EU did not wish to engage with our proposal for regulatory co-operation within the framework of the FTA. After all, this was something it had previously agreed with Japan, but we must proceed with the art of the possible. I am pleased to note—and I underline—what my right honourable friend the Chancellor of the Duchy of Lancaster said in the House of Commons earlier, that he is confident of securing a good deal on financial services.

I was asked about fisheries. As we have set out many times, and as I said at the start, we will not accept proposals that compromise UK sovereignty over our own fishing waters. We are looking for a relationship based on the EU's existing bilateral arrangement with Norway. Our position on fish is, we contend, reasonable and straightforward. We want a simple, separate fisheries framework agreement that reflects our rights under law and provides for annual negotiations over access and sharing opportunities based on the scientific principle of zonal attachment. That is squarely in line with existing precedent.

We contend and believe that the scientific principle of zonal attachment better reflects where the fish live; in practice, it means the share of a stock of fish residing within a particular country's economic zone. That is, as I say, the basis for the EU's existing fisheries agreement with Norway. However, the EU wants to maintain the current access provisions that it enjoys under the relative stability mechanism, which is based on historical fishing activity from the 1970s, and rejects zonal attachment as a principle on which to base future sharing arrangements. Until the EU is willing to accept reality and to have a science-based discussion about the future, it will be difficult to move forward. In order to make progress, the EU must accept our position as an independent coastal state, and any agreement on quotas must reflect that reality.

I was asked about readiness for the end of the transition period and borders; with the permission of the House, I will be making—or repeating—a Statement on that tomorrow, so I will not go into the full details. I was told that I was “opaque” and “motherhood and apple pie” on this subject. Unfortunately, my dear beloved late mother used to give me a lot of very good Bramley apple pie when I was young, and that is probably why I have grown up being rather chubby and opaque. However, I will try to please the House better on this subject.

We are taking a practical, pragmatic and flexible approach to using some of our regained powers as a sovereign nation, and we are pragmatic in the sense of trying to help all practitioners and users of the borders by deciding to introduce new border controls in three stages up until 1 July 2021. This should help business and

industry benefit from extra time to adjust. We published the border operating model in July, announced a new £50 million support package to boost the capacity of the customs intermediary sector, and are committed to building new border facilities in Great Britain for carrying out customs checks.

Additionally—as I said earlier—we have announced an unprecedented £705 million package of investment for border infrastructure, staff and technology to ensure that our border systems are fully operational after the end of the transition period. Of course, we are committed to working closely with businesses as we implement the system; they are at the heart of our approach. However, it is not criticising or blaming business to say that it is critical that businesses across the country should continue with preparations for the end of the transition period. Today does mark a key milestone for citizens and businesses because there are now just 100 days to go until we regain our political and economic independence on 1 January, when the UK will have left the single market and customs union, and there will be change—whether there is a free trade agreement or not. I say again: for our country, this should be a moment of great opportunity as well as significant change. All of us can and should make sure that we are prepared, and I am sure we will return to that tomorrow.

I was asked about social security. We are discussing these matters and had a most useful discussion on social security in the most recent round. We expect to discuss the matters further.

I must conclude in two minutes, so I will wrap up. I could not resist referring to the “oven-ready” charge. I

must say that, for the electric oven I know and use, you need two buttons or dials to turn it on to cook the turkey. Unfortunately, in the course of these negotiations, the EU has sometimes not been ready to turn the dial with regard to picking up texts and other issues. Let us hope that that now ends. It is a characteristic of our beloved friends in Europe—and they are our friends—that, sometimes, negotiations are allowed to run long. We cannot let them run on indefinitely—precisely for the reasons of certainty and clarity that others referred to.

The noble Lord, Lord Liddle, asked where we were going. We are going—I hope—towards a future of friendship and co-operation with the nations of Europe and, as my noble friend Lord Shinkwin said, Europe is not only the European Union; it is something wider. We did leave the European Union in January this year, and we want a relationship with it that is based on friendly co-operation between sovereign equals and centred on free trade. We will have a relationship with our European friends inspired by our shared history and values. We want to reach an agreement, but we cannot compromise on the fundamentals of what it means to be an independent country to get that deal.

Motion agreed.

The Deputy Chairman of Committees (Baroness Fookes) (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. The Committee stands adjourned.

Committee adjourned at 6.23 pm.