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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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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

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

House of Lords

Wednesday 21 October 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of London.

Arrangement of Business

Announcement

12.07 pm

The Senior Deputy Speaker (Lord McFall of Alcluith): 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 begin. Please can those asking supplementary questions keep them to no longer than 30 seconds and confined to two points? I ask that Ministers' answers are also brief.

Network Rail's Enhancements Pipeline

Question

12.07 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what is the purpose of the review of rail schemes in Network Rail's enhancements pipeline; whether that review includes consideration of (1) the viability, and (2) the business case, of each scheme; when the review will be completed; whether the outcome will be published; and whether the High Speed 2 project will be subject to any such review.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, our flexible pipeline approach to funding rail infrastructure enhancements means that we continually review our portfolio of projects, including the impact of Covid, to ensure that they are making the best use of taxpayers' money. The High Speed 2 project was subject to a rigorous, independent review this year and was comprehensively reset with a revised budget and schedule.

Lord Berkeley (Lab) [V]: My Lords, I am grateful to the Minister for that Answer. However, it is now six months since the coronavirus lockdown started. Surely the Government have done some work on demand for travel given the continuing trend for working at home and the likely long-term effect that this might have on rail travel, whether it is commuter services or HS2. Is it not time for the Government to produce some initial thoughts on this?

Baroness Vere of Norbiton (Con): The noble Lord is quite right that there may well be long-term effects on the way that we travel in the future. However, at the moment, we are at the stage where there are many different forecasts and scenarios. As we continue through the pandemic, no single scenario is coming out as the most likely. However, we will consider the future demand requirements for rail on all the enhancement projects in the pipeline.

Lord Blencathra (Con) [V]: Will the Minister appoint me to run Network Rail? I will bring to bear exactly the same skill set: I will lie about the initial cost of projects by a factor of four, just to sucker the Government into approving them; I will deliver them five, 10 or 15 years late; I will let the costs rocket out of control and not care; and I will have a salary of half a million pounds please, which is a big cost saving. Am I suitably qualified?

Baroness Vere of Norbiton (Con): I am sure that my noble friend would like me to say that I will of course appoint him to lead Network Rail, but, unfortunately, he is going to be disappointed. He slightly underplays the huge developments in recent years as we established the RNEP. It was established only in 2018 and what it tried to do—and indeed does—is to put in one place, open for scrutiny, all the projects that we are considering, whether they are at the initiation, development, design or delivery stage. We provide updates every quarter; that is good transparency and provides for good scrutiny.

Lord Snape (Lab): The Minister's noble friend is quite right: Network Rail's costs are outrageous. Is she aware that, back in 1988, British Rail built a new station at Tutbury on the Derbyshire-Staffordshire border for £80,000? As recently as 1998, Railtrack built four new stations on the Robin Hood line, as well as a new platform and two overbridges, for £5.3 million. Yet Network Rail is now quoting £14 million for a single platform and £22 million for a double-platform station. This is outrageous. Will the Minister tell Network Rail so, and will she tell me how she gets on if she does?

Baroness Vere of Norbiton (Con): The noble Lord is right to raise the increasing costs of transport infrastructure projects. Noble Lords may know that I have a particular interest in Hammersmith Bridge at the moment. It was built for £10 million in today's money many, many years ago; you could not get it for that now. I take the noble Lord's point that we absolutely have to drive down costs. That is part of what we are doing with Network Rail. It is really important that we challenge the costs and make sure that they are as low as possible. If the noble Lord has any evidence that he wants to share with my department and the rail Minister, I would be happy to pass it on.

Lord Bradshaw (LD) [V]: My Lords, the industry and its suppliers want, most of all, a steady and consistent workload. Will the Minister stress to her department, and the Treasury, the need to plan ahead so that this might happen?

Baroness Vere of Norbiton (Con): The noble Lord is quite right, and that is one of the reasons why we have investment periods for both rail and roads. This makes sure that the supply chain knows what is coming down the track, so to speak, and is able to respond accordingly. It also gives it certainty that if a project goes through its stages then it will actually happen. One of the biggest challenges we have had previously has been a lack of certainty that projects will happen. The noble Lord will also know that the spending review has been

[Baroness Vere of Norbiton]
reduced to one year. However, for some of the long-term plans—for example, CP6 for rail—it will be a multi-year settlement.

Lord Rosser (Lab) [V]: The Government's HS2 six-monthly report to Parliament referred to £800 million of "cost pressures". I think that is a euphemism for extra costs which will have to be paid for out of the contingency provision, which at this rate will be used up fairly rapidly. Eight hundred million pounds over six months works out at additional costs of just under £4.5 million every day, or £3,000 every minute. We support HS2, but when do the Government intend to get a grip on its costs? Setting up a ministerial task force chaired by the Secretary of State does not sound like much of an answer to that question.

Baroness Vere of Norbiton (Con): The noble Lord is wrong to extrapolate quite as far as he did. We have a relentless focus on controlling costs. He is right that there are some cost pressures from the preparatory works, but we remain confident that HS2 phase 1 can be built within the target cost of £40.3 billion.

Baroness McIntosh of Pickering (Con) [V]: My Lords, I welcome the improvements being made to King's Cross Station, but does my noble friend accept that on any measure of cost-benefit analysis or impact assessment, HS3, now called Northern Powerhouse Rail, will deliver more in terms of economic benefits to the north of England and the levelling-up programme of this Government that I support? When will it be built?

Baroness Vere of Norbiton (Con): The project to which my noble friend refers will be considered as part of the integrated rail plan. That will look at the delivery of high-speed rail alongside all other rail investments in the north and the Midlands.

Baroness Jones of Moulsecoomb (GP) [V]: The Minister mentioned the assessment that happened for HS2, but in Jones Hill Wood there is a protected species of bat; the HS2 organisation does not have a licence and is threatening to cut down the trees anyway. I am sure that the Minister is extremely worried about this breaking of the law. Did all the law-breaking that HS2 is currently doing come into the assessment?

Baroness Vere of Norbiton (Con): I was not aware of this particular species of bat that lives in this tree. If the noble Baroness could forward information to me, I will make sure that the HS2 Minister receives it.

Lord Faulkner of Worcester (Lab) [V]: I refer the House to my railway interests declared in the register. Does the Minister agree that electrification has a central part to play in achieving the Government's value-for-money and decarbonisation agendas, as does the HS2 project? When will the go-ahead be given to completing paused projects, such as the lines to Bristol and Oxford and the Midland main line? What progress is being made in identifying discrete electrification projects on relatively short stretches of main line over hills, where journey times can be saved going uphill and batteries regenerated going downhill?

Baroness Vere of Norbiton (Con): To answer the first part of the noble Lord's question, any decision on new or expanded project scopes will be made after the spending review has concluded. On decarbonisation more generally, whether it is uphill or downhill, Network Rail is developing an overarching traction decarbonisation network strategy which will provide strategic advice about which technology—electrification, battery or hydrogen—would be best suited to each section of a decarbonised rail network. This would include individual decisions taking into consideration local conditions and topography, and they would be developed as needed.

Lord Greaves (LD) [V]: My Lords, I want to concentrate on one small scheme that after years of stop and start has reached stage 2, the development stage, of the pipeline: the reinstatement of 11 miles of track between the forlorn single platform and buffer stops at Colne and Skipton. Does this review mean that the Colne-Skipton project has gone back to stock and everything will again be thrown up in the air? When will we be told we can start again?

Baroness Vere of Norbiton (Con): As the noble Lord has mentioned, that particular project is at stage 2, which is the "develop" stage; it needs to go to "design" and then to "deliver" to be built or reopened. The pipeline is always very ambitious, and it is the case that a project getting into the pipeline does not necessarily mean that it will be delivered—it will depend on the value-for-money and various other considerations over that period. I cannot comment specifically on the Colne-Skipton railway, but it will be reviewed alongside all the other projects. That does not mean that it is going backwards in any process.

Lord Randall of Uxbridge (Con) [V]: My Lords, I declare my interest as a trustee of the Bat Conservation Trust and say to my noble friend on the Front Bench that if she wants more information about the barbastelle bat, I am happy to give it. Does she think, with the benefit of hindsight, that the first phase of HS2 would not have got the green light considering the huge increase in cost and environmental damage in any such review as we are now looking at? [*Interruption.*]

Baroness Vere of Norbiton (Con): I am not sure if my noble friend's dog was asking a question at the same time as him. The Government continually review the value-for-money case for HS2; indeed, it was reviewed fairly recently by Lord Oakervee. The Government are committed to delivering this project.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

Prisons: Remand

Question

12.18 pm

Asked by ***Lord German***

To ask Her Majesty's Government what assessment they have made of the impact on (1) prisons, (2) prisoners, and (3) those on remand, of increasing the maximum period of remand in custody by eight weeks.

Baroness Scott of Bybrook (Con): Pre-trial detention is never considered lightly, my Lords. Numerous safeguards exist to ensure that custody is used appropriately. These safeguards will be maintained and those on remand will still be able to apply for bail even with this extension in place. HMPPS closely monitors prison population forecasts and is committed to always having enough prison places to accommodate those remanded in custody by our courts.

Lord German (LD): My Lords, the Government tell me that they do not collect data on the number of people held in custody on remand. They now introduce regulations to extend remand to nearly eight months without knowing the numbers. Can the Minister explain how that squares with not knowing how many there are? A key group captured by the new extension is children. Given that about half of them will not get an immediate prison sentence, that 37% of all imprisoned children are on remand, that hardly any education is available to them and that they are in danger of falling into adult criminality, should not the Government make alternative arrangements for this vulnerable group?

Baroness Scott of Bybrook (Con): My Lords, the latest publicly available data on remand shows that on 30 June this year the remand population was 11,388. All children charged alone should be tried summarily unless the offence is sufficiently grave. Only the most serious youth cases are sent to a Crown Court and therefore involve remand. The department is undertaking a review of the use of custodial remand for children and will look into the drivers for custodial remand and the issues surrounding disproportionality.

The Lord Bishop of London: My Lords, is the Minister aware that many hundreds of remand prisoners in London prisons are now held for much longer periods than before Covid while waiting for a trial date? Her Majesty's Prison Pentonville alone has over 400 prisoners waiting for unprecedented periods—of over a year—for their cases to be heard. Can she assure your Lordships' House that action is being taken to relieve this? If so, what action can we expect?

Baroness Scott of Bybrook (Con): My Lords, Covid-19 has presented an unprecedented challenge to the criminal justice system. The relevant SI is there exactly to aid the criminal courts during their continued recovery from the pandemic and to help to manage demand while the Crown Court continues to recover.

Lord Garnier (Con): My Lords, I follow on from the right reverend Prelate's question. Will the Minister accept that, while aggravated by the Covid crisis, the failure to reduce the trial backlog long predates it? Right now, there are prisoners on remand in custody on serious charges of violence and drug dealing whose trials, which take priority over those on remand on bail, will not happen until late 2021, whereas the trials of those on bail, including on charges of rape, will not take place until late 2022. Rather than go on about the need for more severe sentences, why do we not concentrate on practical measures that get defendants before the courts now so that they can be tried and sentenced on the current law, thus ending the current injustice to both victims and accused?

Baroness Scott of Bybrook (Con): That is exactly what we are trying to do, and is part of our plan. Court recovery is ongoing. We have opened 200 rooms for jury trials since they were resumed in May, and by the end of October 250 rooms will be open. We have also opened 12 Nightingale courts, with a further four due to open any time now. So far as confidence in the system is concerned—having the right sentences and appeals and court procedures—the sentencing White Paper is looking into those issues.

Baroness Meacher (CB): Many prisoners affected by the increased remand period will be the pawns or modern slaves of drug barons, involved in low-level drug dealing. Will the Minister propose to her colleagues that they adopt the excellent policy of Durham Constabulary and a growing number of other police services which divert such vulnerable individuals to treatment, thus reducing pressure on the courts, saving taxpayers' money and rescuing lives?

Baroness Scott of Bybrook (Con): I absolutely agree with the noble Baroness. A lot of what she says is included in the sentencing White Paper. We also have to remember that CTLs are managed very well in magistrates' courts, which do not have the additional problem of accommodating juries under the current social distancing rules.

Baroness Warwick of Undercliffe (Lab): My Lords, inevitably, a period of remand is stressful. For some, it is highly stressful and can lead to self-harm. Part of the stress is caused by uncertainty. Many remand periods are already far too long, as other noble Lords have said, and extending remand further by eight weeks will make the uncertainty and mental stress even worse. What planning has been done to minimise self-harm by prisoners held for long periods on remand?

Baroness Scott of Bybrook (Con): The noble Baroness brings up an important point. I do not have all the details but I am very happy to write to her about what we are doing to alleviate that.

Lord Dholakia (LD): My Lords, the percentage of black youngsters in prison far exceeds their representation in the community. In fact, in some of our women's prisons it may be as high as 25%. Have the Government undertaken an impact assessment or research to understand how we have created this anomaly?

Baroness Scott of Bybrook (Con): The impact that the SI will have on the BAME groups—as the noble Lord said, they are disproportionately represented in the remand population—has been carefully considered. To this effect, an equalities impact statement has been undertaken to explore any potential disproportionate effects. This will ensure that the extension is a measured and necessary means of protecting the public and that justice continues to be served.

Lord Vaizey of Didcot (Con): My Lords, the National Criminal Justice Arts Alliance represents 900 arts organisations that do magnificent work in our prisons and with offenders and ex-offenders. Does my noble

[Lord Vaizey of Didcot]
friend agree that the pandemic is an opportunity for the Government to engage further with this arts alliance, considering that so many arts organisations are struggling to stay open, and that it could be engaged further to make an impact on some of the issues that noble Lords have already mentioned, such as education and mental health?

Baroness Scott of Bybrook (Con): My noble friend is absolutely right. I thank him for his work with the National Youth Theatre and Music Masters, which does a lot of work with disadvantaged young people. The alliance has 900 organisations as members, which undertake successful arts projects with both sentenced offenders and those on remand. Covid has curtailed some of its work but we hope that it will get back to working hard in our prisons very soon.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, all the questions that we have heard put to the Minister reflect the very serious situation that we are seeing in our courts. Both sentenced prisoners and those on remand are spending 23 hours a day in their cells, and noble Lords have drawn attention to an increase in self-harm in both the male and female estates. Does the Minister agree that there should be greater access to telephones and video contact arrangements for prisoners and their families? Of course such arrangements should be appropriately monitored so that no more abuse is perpetuated, but greater contact would help prisoners in their rehabilitation.

Baroness Scott of Bybrook (Con): I agree. We have done a lot in the Prison Service since the beginning of this pandemic to exactly that end. There is already a greater use of iPads and telephones.

Lord Hope of Craighead (CB) [V]: My Lords, extended time spent on remand is an inevitable consequence of the extended time in bringing cases to trial due to Covid, which I supported. However, it is a miserable existence, waiting in cells with nothing to do. It is damaging to prisoners' mental health, especially that of young offenders and, even more especially, young women, as the noble Baroness, Lady Warwick, pointed out. Again, I ask the Minister to say what extra steps are being taken to address their quality of life during these extended periods and to monitor and care for their mental health.

Baroness Scott of Bybrook (Con): My Lords, I think I have said before that these are very difficult times. We have to look after the health and well-being not only of the staff in our prisons but of the prisoners, whether sentenced or on remand, and we are doing everything we can to keep them safe. However, I absolutely agree that this extended time impacts on some of the extra work that we can do with them because of the need to keep them safe.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

EU: Visa-free Short-term Travel Mobility

Question

12.29 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government whether they are seeking a reciprocal agreement on visa-free short-term travel mobility in their negotiations for the United Kingdom's departure from the European Union.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, both sides have committed to providing visa-free arrangements for tourists and short-term business visitors. The EU will grant UK nationals visa-free access for short-term visits, subject to reciprocity. This means that UK business visitors and tourists would not need a visa when travelling to the Schengen area for short stays of up to 90 days in every 180-day period. We have announced that we will treat EU citizens as non-visa nationals for the purposes of tourism and holidays after the end of the transition period.

The Earl of Clancarty (CB): My Lords, this affects not only tourists but those working in the creative industries, including visual artists, writers and musicians who wish to spend informal extended periods abroad. Do the Government agree that it is deeply unfair that British citizens cannot spend a summer or winter in a European country visa-free—indeed, they cannot return for three months—while Europeans can stay in the UK for up to six months at a time? What plans do the Government have to seek a reciprocal agreement on this, considering that the phrase "at least 90 days" in the EU negotiating document is an open door to further negotiation?

Lord True (Con): My Lords, the noble Earl raises a very important point. The Government certainly recognise the importance of tourism and travel for the creative industries. We set out our position on mode 4 in the approach publication at the start of negotiations and we are committed to seeking protection for exactly the kind of persons the noble Earl refers to.

Baroness Hayter of Kentish Town (Lab): My Lords, the posted workers' directive particularly helped our travel business, and some 15,000 UK residents are employed in an EU member state. As the Government will not continue this agreement after December, which risks thousands of jobs, particularly those of young people, will they extend the reciprocal youth mobility scheme, which enables young workers to move between signatory countries to find work for up to two years, and might also help musicians?

Lord True (Con): My Lords, at the moment we are continuing discussions in this area. I promise to advise the noble Baroness opposite on the specific point that she raises very shortly.

Baroness Stuart of Edgbaston (Non-Afl): My Lords, Michel Barnier has labelled some of the United Kingdom's proposals as "freedom of movement for service suppliers".

Can the Minister confirm that we are seeking only to lock in, on a reciprocal basis, some arrangements that the United Kingdom already offers to third-country nationals, and that therefore this characterisation is simply wrong?

Lord True (Con): My Lords, I welcome the noble Baroness to her place. She is exactly right; the comment underlines my point that we are seeking to negotiate arrangements which run very much in the direction that the House is asking for. For example, we are seeking measures on contractual services suppliers who provide services to a client in another jurisdiction. I cannot go through all our mode 4 suggestions, but they are on the table and we very much hope that they will be picked up.

Lord Moynihan (Con): My noble friend the Minister will know that, currently, eligible applicants can work in most jobs under the simplified youth mobility scheme but cannot work as young professional sports coaches unless qualified in the UK. Will he look again at this prohibition so as to encourage young, recently retired international sports men and women to come to this country as coaches to support our elite development pathways after the transition period?

Lord True (Con): My Lords, again, that is another specific and important point which is covered under this heading for discussion. I undertake to keep the House and my noble friend informed, in particular in relation to sport, as he has asked.

Lord Paddick (LD): My Lords, according to the government website, UK citizens visiting EU countries from 1 January will have to have at least six months left on their passport, show a return or onward ticket, show they have enough money for their stay, use separate lanes from EU/EEA and Swiss nationals and limit their visit to 90 days in any 180 days. EU citizens travelling to the UK from 1 January do not need to worry about when their passport will expire, show a return or onward ticket, or prove they have enough money for their stay. They can continue to use the e-passport gates at UK airports, as before, and will be able to visit for six months and then come back the next day for another six. Who is really taking back control of our borders, the UK or the EU?

Lord True (Con): My Lords, I simply say to the noble Lord, who represents a party that has been very critical of this Government's attitude to European nationals, that the position he outlined demonstrates the openness of the future Britain.

Baroness Blackwood of North Oxford (Con) [V]: My Lords, conferences and short-term visits as part of international collaboration are engine rooms of scientific discovery. They are vital for exchanging ideas, forming relationships and building careers. I realise that Covid is temporarily suspending some of this activity, but our immigration system must be fit for the future and there is consensus on the long-term benefit of researcher mobility for the UK's science and innovation sector. So can the Minister please assure me that the Government will seek a light-touch, reciprocal arrangement, allowing researchers in innovations to travel for short, work-related visits, preferably visa free?

Lord True (Con): Yet again, as other noble Lords in this short exchange have done, my noble friend raises an important point. In negotiations, we are seeking a reciprocal agreement that would bind both parties to agree a list of business activities that could be performed in either party without a work permit on a short-term basis, as she asks. Unfortunately, we are unable to comment on the detail of these arrangements, as discussions are ongoing.

Viscount Waverley (CB) [V]: My Lords, the music industry should not be viewed within a silo, nor as a bolt-on afterthought, but as an integral part of traditional business with a Pandora's box of international engagement needing to be prised open. Given the multidisciplinary importance of performance skills to combine physical presence and future virtual technologies, might a partial approach lie in embracing an innovative online environment to ensure that sectoral infrastructure is developed for this new world in which we find ourselves?

Lord True (Con): My Lords, the noble Viscount raises an interesting suggestion. The Government recognise the importance of touring for UK musicians, and not only them. I have referred to some areas in which we are continuing efforts to negotiate a better solution, but I assure the noble Viscount and the noble Earl, Lord Clancarty, that musicians are very much in our mind.

Baroness Ludford (LD): My Lords, I am not clear why the Minister's initial reply was about tourists, because this Question is about people who want to work. The ONS has found that arts, entertainment and recreation, including music, has lost over half its revenue and nearly three in five of its jobs due to Covid. So the hit from Brexit is kicking a sector when it is very down. How are the Government fighting to achieve a multi-entry Schengen visa for people such as musicians, and less bureaucracy for musicians' instruments than they are set to face—whereas of course they have free movement under existing arrangements?

Lord True (Con): My Lords, the original Question was about visa-free and short-term travel; tourism is certainly germane to the Question and I am sorry if that was unsatisfactory to the noble Baroness. I have referred to our efforts on short-term visits in relation to business activities. Our offer on mode 4 is extremely generous and we continue to impress on EU negotiators that the agreement we are proposing is very much in their workers' interests as well as our own.

Lord McColl of Dulwich (Con) [V]: My Lords, what efforts are Her Majesty's Government making to ensure that the visa-free short-term travel arrangements will not be used by traffickers to get their victims into the UK, because it looks as though there will be no effective checks at the borders?

Lord True (Con): My Lords, I assure the noble Lord that the UK authorities will remain eternally vigilant against this bestial criminal activity.

Lord Wigley (PC) [V]: My Lords, I draw attention to my registered interests. Does the Minister accept that performing musicians need the facility to travel at short notice to work in other parts of our continent? We are repeatedly told that the soft power of cultural exchanges is the UK's strongest lever in today's international world. Why are the Government willing to contemplate a no-deal Brexit which will strangle that influence within the European setting?

Lord True (Con): My Lords, I have referred more than once to the Government's efforts to assist short-term activity in the course of the discussions we are having on mode 4. Obviously, movement and activity within different member states is an issue for them and for the EU. I repeat to the House that this is an important area. I believe that we have made generous, important and significant proposals and, as I say, discussions are ongoing.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

National Curriculum

Question

12.40 pm

Asked by ***Lord Woolley of Woodford***

To ask Her Majesty's Government what plans they have to ensure that the national curriculum reflects the diverse history of the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, as part of a broad and balanced curriculum, pupils should be taught about how different groups have contributed to the development of Britain. The flexibility within the history curriculum means that there is the opportunity to teach about the United Kingdom's diverse history across the themes and areas in the curriculum. Events such as Black History Month can support teaching all year round and help schools celebrate the contribution black Britons have made to society.

Lord Woolley of Woodford (CB) [V]: Does the Minister agree that we can have a truly inclusive 21st-century British patriotism built into our national curriculum, one that is honest about our history: the good—of which there is a lot—the bad and the very ugly? To prepare our children for the global stage and to ensure that they are comfortable with themselves, all students, including those from black, Asian, Roma, Traveller and white working-class communities need to read books with their experiences from our teeming diversity. More than half a million pupils will sit AQA GCSE English literature exams. Sadly, there are no African or Caribbean writers on the syllabus. In Black History Month, will the Minister commit to convening a series of meetings so that we can have an honest dialogue that will review and fantastically reform our national curriculum?

Baroness Berridge (Con): My Lords, I agree with the noble Lord that of course the history and English curricula should reflect the diversity of the population, with teachers being given flexibility in relation to how they teach the curriculum. Obviously, they should take into account the needs of all their pupils. In relation to AQA, for instance, the history curriculum currently includes an option on migration, empires and the people, so there is flexibility for teachers to include texts and periods in modules of history at their discretion.

Lord Griffiths of Burry Port (Lab): My Lords, I suspect that the noble Lord, Lord Woolley, was offering something far more radical than the reply we have just received. However, this whole question is like peeling an onion. What plans do the Government have to ensure that those who deliver the national curriculum accurately reflect the diverse population of the land? Secondly, what plans do the Government have to ensure that the training of teachers—taking the noble Lord's suggestions into the discussion, perhaps—equips them to deliver a properly balanced national curriculum of the kind described by the noble Lord?

Baroness Berridge (Con): My Lords, the requirement is for all schools to deliver a broad and balanced curriculum, and that is what Ofsted inspects against. In order to qualify as a teacher, the person must have satisfied the teaching standard, and the minimum requirement is, obviously, that they understand the needs of the children who they are teaching. However, the noble Lord is correct that the teaching population should reflect the population, and we are pleased that BAME staff increased from 7% to 10% within the teaching staff between 2010 and 2019, but we recognise there is further to go, as, currently, 26% of our students are from black and minority ethnic backgrounds.

Lord Storey (LD) [V]: For black lives to matter, they need to be reflected in our school curriculum. In the whole of our school history curriculum, there is only one mention of a black person, and that is Mary Seacole in a key stage 2, non-statutory section, where either Mary Seacole and/or Florence Nightingale can be chosen. Can the Minister give an assurance that she will look again at our school syllabus so that it can truly reflect our multicultural country?

Baroness Berridge (Con): My Lords, the suggestions made in the national curriculum are the minimum for schools, and, obviously, we expect them to go beyond that. In relation to key stage 2, it is also suggested that pupils study the experience of Rosa Parks, and, at key stage 3, it is suggested that they learn about the empire. However, of course, there is the flexibility for teachers in the classroom to include all kinds of different people within their teaching.

Baroness Hooper (Con): My Lords, I sympathise very much with what has been said so far, but I have a very specific issue that I wish to raise in the world context. I point to the failure of the national curriculum to include anything about the United Kingdom's historic links to, and support for, the independence movements throughout South America some 200 years ago. For example and among other things, few people are aware

that a British regiment followed Simón Bolívar across the Andes, and I think the name of George Canning, the then Foreign Secretary, is better known in Argentina and, indeed, the wider region, than it is over here. At the time, this led to a lot of British influence and trade and left a legacy of good will.

This becomes important today in the context of links with educational institutions in Latin America and providing a better background for new trade and investment opportunities there. Furthermore, there are now millions of people of Latin American origin living and working in this country, some working here in your Lordships' House, whose children could benefit from at least an option for Latin American studies, apart from more teaching of the Spanish and Portuguese languages. Can my noble friend give me some hope?

Baroness Berridge (Con): My Lords, I thank my noble friend for her tenacity in raising the profile of Latin America within your Lordships' House. The flexibility that I have outlined for teachers means that they can include matters surrounding our involvement with Latin America, but, in particular, the suggestion is made at key stage 2 that, when looking at a non-European civilisation, the 10th-century Maya empire should be looked at, so it is included to some extent in the suggestions for the curriculum.

Lord Berkeley of Knighton (CB) [V]: My Lords, if we really want to honour the diverse make-up of our nation, surely we should acknowledge the creative contribution to music, witness pop musicians, rap artists, the Chineke! Orchestra and the Kanneh-Mason family? Most of them could not afford private music lessons and attribute their success to music lessons in schools. Yes, the hubs have done fine work, but they are not a substitute for the ethos of everyday music in schools. Please will the Government consider putting music back on the national curriculum?

Baroness Berridge (Con): My Lords, music is indeed on the national curriculum and is compulsory in maintained schools for children between the ages of five and 14, and they should be offered one subject at GCSE beyond that. However, £500 million has been invested in hubs and other schemes to ensure that young people, particularly from disadvantaged backgrounds, have access to music.

Lord Bassam of Brighton (Lab) [V]: My Lords, is the Minister as shocked as I was that research from Teach First shows that a child can still get through their entire GCSEs without studying a single book by a black author? What is she going to do to change that? Will she consider encouraging a scheme whereby schools get pupils more engaged in selecting books by black authors and topics that reflect black British history?

Baroness Berridge (Con): My Lords, as I have outlined, it is open to teachers, whether they are teaching the national curriculum in maintained schools or in academies, to include literature from a variety of authors. There are suggestions in the national curriculum that they choose authors from black and minority ethnic backgrounds.

Baroness Benjamin (LD): My Lords, Black History Month was established 33 years ago, and this year there has been a real desire to find out more about our diverse British history. The year 2020 seems like the beginning of the age of enlightenment, when the shackles were broken and eyes were opened. So how do the Government plan to further that interest? Will they consider broadening exam specification choices to include a wider range of topics that cover our untold history and for exam boards to facilitate this through high-quality resources?

Baroness Berridge (Con): My Lords, yes, as I have outlined, teachers are encouraged to use their flexibility to meet the needs of all the pupils in their classroom and to choose from a diverse range of sources to educate those children in accordance with the context they are living in and the history of this country.

Baroness Bennett of Manor Castle (GP) [V]: Does the Minister agree that it is essential to understand the genocidal and ecocidal impacts of the British Empire, from the late-Victorian famines, and many others, on the subcontinent, to the destruction of the Australian natural environment and aboriginal societies, recently set out in books such as *Dark Emu*, if you are to have an understanding of modern economics, ecosystems, societies, international relations—in fact, almost any subject?

Baroness Berridge (Con): My Lords, the value of history in helping us to understand today and to learn from the past is one of the purposes of educating children. The only compulsory element on the national curriculum is the study of the Holocaust but, of course, that leads to teachers being able to talk about wider discrimination and prejudice to avoid such events happening again.

Lord Caine (Con): My Lords, I strongly support a curriculum that reflects our diverse history and teaches children our national story, warts and all. But does my noble friend agree that it is profoundly unhistorical to teach and interpret the past entirely through the prism of today's values, and it is wrong to demonise figures from history simply because they held views which, at the time, were the norm in society?

Baroness Berridge (Con): My Lords, history, of course, is not just events—history can be that of values, principles and mores. I agree with the noble Lord, who I am sure will be reassured that the guidance sent out by DCMS on the controversial issue of statues is to consider those figures in their context and contextualise the involvement of that person in our history.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

12.51 pm

Sitting suspended.

EU Exit: Negotiations and the Joint Committee

Statement

The following Statement was made in the House of Commons on Monday 19 October.

"With your permission, Mr Speaker, I would like to update the House on the Government's negotiations with the European Union on our future trading relationship and also the work of the UK/EU joint committee established under the withdrawal agreement.

First, on the talks on the new trade agreement, we had hoped to conclude a Canada-style free trade agreement before the transition period ends on 31 December this year but, as things stand, that will not now happen. We remain absolutely committed to securing a Canada-style FTA, but there does need to be a fundamental change in approach from the EU if the process is to get back on track. I have come to the House at the first available opportunity to explain why and how we have reached this point.

We have been clear since the summer that we saw 15 October—last Thursday—as the target date for reaching an agreement with the EU. The Prime Minister and the Commission President Ursula von der Leyen agreed on 3 October that our negotiating team should work intensively to bridge the remaining gaps between us, and we made it clear that we were willing to talk every day. But I have to report to the House that this intensification was not forthcoming. The EU was willing to conduct negotiations only on fewer than half the days available and would not engage on all of the outstanding issues. Moreover, the EU refused to discuss legal texts in any area, as it has done since the summer. Indeed, it is almost incredible to our negotiators that we have reached this point in the negotiations without any common legal texts of any kind.

On 15 October, the EU Heads of State and Government gathered for the European Council. The conclusions of that Council reaffirmed the EU's original negotiating mandate. They dropped a reference to intensive talks that had been in the draft and they declared that all—all—future moves in the negotiation had to be made by the UK. Although some attempts were made to soften that message by some EU leaders, the European Council reaffirmed those conclusions as authoritative on Friday. That unfortunate sequence of events has, in effect, ended the trade negotiations because it leaves no basis on which we can actually find agreement. There is no point in negotiations proceeding as long as the EU sticks with that position. Such talks would be meaningless and would take us no nearer to finding a workable solution.

That is the situation we now face, and that is why the Prime Minister had to make it clear on 16 October that the EU had refused to negotiate seriously for much of the past month or so. The EU had now, at the European Council, explicitly ruled out a free trade agreement with us, like the one that it has with Canada, and therefore this country should get ready for 1 January 2021 with arrangements that are more like Australia's, based on simple principles of global free trade.

Now, if the EU wants to change that situation—and I devoutly hope it will—it needs to make a fundamental change in its approach and make clear it has done so. It has to be serious about talking intensively on all issues and trying to reach a conclusion, and I hope it will. But it also needs to accept that it is dealing with an independent and sovereign country now. We have tried to be clear from the start that we would not be able to reach an agreement inconsistent with that status. I do not think that we could be accused of keeping that a secret. Yet the proposals that the EU has discussed with us in recent weeks, which it presents as compromises, are simply not consistent with our new sovereign status—certainly not yet.

While I do not doubt that many on the EU side are well intentioned, we cannot accept the negotiators' proposals that would require us to provide full, permanent access to our fishing waters, with quotas substantially unchanged to those that were imposed by EU membership. We cannot operate a state aid system which is essentially the same as the EU's, with great discretion given to the EU to retaliate against us if it thought that we were deviating from it. More broadly, we cannot accept an arrangement that means that we stay in step with laws that have been proposed and adopted by the EU across areas of critical national importance.

In a nutshell, we have been asking for no more than what has been offered in trade agreements to other global trading countries, such as Canada—terms that, of course, the EU said last year it had no difficulty offering to us. We are not even asking for special favours reflecting our 45 years as a member state—during which we paid in every day more than we took out—quite the reverse. But even if this new arrangement is impossible for the EU, I must inform the House that we will be leaving on 31 December on Australian-style terms and trading on the basis of WTO rules.

With just 10 weeks left until the end of the transition period, I have to emphasise that that is not my preferred outcome and nor is it the Prime Minister's. We recognise that there will be some turbulence, but we have not come so far to falter now, when we are so close to reclaiming our sovereignty. We have to be in control of our own borders and our fishing grounds. We have to set our own laws. We have to be free to thrive as an independent free trading nation, embracing the freedoms that flow as a result. So, it is important that I turn to the preparations that we are now intensifying for the end of the transition period. These apply whether we have a free trade agreement or otherwise, of course.

I am not blithe or blasé about the challenges ahead, particularly given the additional problems that we have dealing with the Covid-19 pandemic. However, leaving the EU on Australian terms is an outcome for which we are increasingly well prepared. Ever since the UK decided it would leave the single market and the customs union on 31 December, Government and businesses alike have been working hard to prepare for the new procedures that were the inevitable result. I congratulate businesses on the resourcefulness they have shown so far. We want to work with them so that they continue responding as energetically, flexibly and imaginatively as possible to the challenges of change. We also want to work with them to prepare for the

opportunities ahead, including those stemming from our new free trade deals, such as the agreement with Japan struck by the Secretary of State for International Trade, which, of course, grants us far more favourable access to the world's third biggest economy than we had as an EU member.

I would like to put on record my particular thanks to the road haulage industry, customs intermediaries and others for their constructive engagement with government, including at our extensive round table last week.

This week, the Prime Minister and I will be speaking again to business leaders to discuss preparations for life outside the EU. We will continue to listen to their concerns, and we will redouble our efforts to help them to adjust and prosper. The XO Cabinet Committee—the EU Exit Operations Committee—meets daily and will intensify its operational focus on business readiness. We continue to work closely with our partners in the devolved Administrations because we want to ensure that every part of the UK is ready for the end of the transition period.

In these final 10 weeks, we are intensifying our public information campaign. Every firm will find the information it needs on new rules which govern trade between Britain and the EU at GOV.UK/transition. Today, HMRC is writing to 200,000 traders that do business with the EU to reinforce their understanding of the new customs and tax rules. We are also putting in place IT systems to help goods flow across borders. We are giving business access to customs professionals to help with new ways of working and we have also planned how to fast-track vital goods in the first few weeks to get around EU bureaucracies. We have already published and indeed updated our border operating model. We have announced £705 million-worth of investment in jobs, infrastructure and technology at the border. We have also strengthened our maritime security to protect our fishing fleets and safeguard our seas.

In addition to the steps we are taking, we are also continuing our work with the EU in the withdrawal agreement joint committee. I would like to update the House on its latest meeting, which took place earlier this morning. Coming only three weeks after the last meeting, I am pleased to report that in this forum the approach from the EU is very constructive. There is a clear imperative on both sides to find solutions and we remain committed to working collaboratively with the EU through the joint committee process.

At our last meeting in Brussels I agreed with my co-chair, Vice-President Šefčovič, that we would intensify discussions to implement the withdrawal agreement, primarily around citizens' rights and the Northern Ireland protocol. Our officials have since held numerous sessions and today in London I reiterated the UK's commitment to upholding all our obligations under both the withdrawal agreement and the Belfast agreement. We agreed that we will publish a joint update on citizens' rights and I am pleased to confirm that almost 4 million EU citizens in the UK have now received status under our scheme. We have also discussed our work to implement the Northern Ireland protocol. We are taking steps to implement new agri-food arrangements. We also acknowledge the EU's concerns about appropriate monitoring of implementation. We now have a better understanding of its requests and the reasoning behind them. We have confirmed that the specialised committee will work intensively to ensure that we can make progress in this area, and with respect to Gibraltar and the sovereign base issues.

A lot remains to be resolved before the end of December, but we have made substantial progress on implementation. I look forward to further engagement with Vice-President Šefčovič in the weeks ahead. I want to put on record my personal appreciation for the constructive tone and the pragmatic spirit with which he and his team have approached our discussions.

In his statement on Friday, the Prime Minister looked ahead to 2021 as a year of recovery and renewal when this Government will be focused on tackling Covid-19 and building back better. We are getting ready to do now what the British people asked of us: to forge our own path and not to acquiesce to anyone else's agenda. On the negotiations, our door is not closed. It remains ajar, and I very much hope that the EU will fundamentally change its position, but, come what may, on 31 December, we will take back control. I commend this statement to the House."

1 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for returning to the Dispatch Box—apparently unbruised by the government defeat of 226—to defend the Statement and Mr Gove's words in the other place: that, in any negotiation, both sides have to honour their commitments. Had the Prime Minister done so in respect of the withdrawal agreement, he may not have had to face that defeat.

Yesterday's headlines were, "Talks break down". As my right honourable friend Keir Starmer said:

"The collapse of these talks is a sign of Government failure."

He was in fact responding to the Manchester talks, but it is the story of this Government, who could not negotiate their way out of a paper bag. They boast, threaten and bluster, but fail to reach a consensus with their counterparts. They set deadlines: a deal by July, then September, then mid-October—all missed. They criticise the EU for sticking to its negotiating mandate, but meanwhile boast that they will not move from their own negotiating objectives. It seems it is only the other side, and not ours, that has to move. They criticise the other side for not discussing legal texts, despite the fact that the EU published its 441-page legal text in March but it took until mid-May for us to do the same. Even then, the UK blocked early talks on security co-operation—security: the most important issue on which citizens rely on their Government.

The former Home Secretary and Prime Minister hit the nail on the head on Monday, pointing out that security was not even in the Statement and that, without a deal, law enforcement agencies would have no access to vital databases. I cannot re-enact her mocking response to the extraordinary answer that Mr Gove gave, but I will repeat his words and leave it to your Lordships' imagination. He claimed that

"we can co-operate more effectively to safeguard our borders outside the European Union than we ever could inside."—[*Official Report*, Commons, 19/10/20; col. 761.]

[Baroness Hayter of Kentish Town]

That hardly tallies with the words of the noble Lord, Lord Anderson, who knows a thing or two about security:

"Without the ability to exchange data and intelligence across frontiers, law enforcement will be increasingly unable to cope … Everything from extradition to notification of alerts, crime scene matches and criminal record searches will be much slower, at best."

Closer to home, Naomi Long, the Northern Ireland Security Minister, stressed the importance of a security partnership with the EU to stop the politicisation of extradition in Northern Ireland, as was the case before the EU arrest warrant.

Mr Gove's view that we could not possibly, as the price for using EU security systems, also accept its court on the issue of how we use that data seems remarkable for its short-sightedness. Perhaps the Minister can update the House on progress towards a security and data-sharing agreement.

The Government have taken to saying that we had been offered a Canada-style agreement but it is no longer available. In fact, that was never going to happen. The Commission's February slide on "Geography and trade intensity" never suggested that a carbon copy of CETA was on offer, simply that the same legal form as the FTAs with Canada and South Korea could be used. What is more, the Canada deal contains level playing field measures of the sort the Government now say they will never accept. If they are now willing to go the Canada way, will they also honour the political declaration that the Prime Minister signed and accept a level playing field?

This trade and security deal is too serious for playing games. Last week, 70 business groups, with more than 7 million employees, urged the Government to return to the table to strike a deal. These industries—automotive, aviation, chemicals, farming, pharmaceuticals, tech and financial services—are desperate for their futures and urge a compromise, as this matters greatly for jobs and livelihoods. As they say:

"With compromise and tenacity, a deal can be done."

Sadly, yesterday's perfunctory call with Boris Johnson left them disappointed. Some described it as unbelievably disrespectful to the concerns of business. The Prime Minister apparently asked companies to "end the apathy" and get ready, while Mr Gove described our departure as like moving house—a bit of disruption. Of course, it will not be Mr Gove or other Government Ministers who have to cope with a bit of disruption. There will be people losing jobs, consumers paying more for their food, Kent and Anglesey residents finding their roads blocked by lorries and their verges taken up by portaloos, and citizens' rights at risk. Small business groups have pressed for transition vouchers to pay for extra preparation. I gather that Mr Gove said he would take that back to the Treasury, so perhaps we could know the outcome of that request.

At least they got a meeting. The SMMT did not even get its letter answered. On Monday, there had been no response to its 1 October letter, so perhaps we could be told whether it has now been answered. Meanwhile, the country's leading transporter of diesel and petrol faces a 4% tariff on the fuel it imports if we do not get a deal. This will affect the industry itself, but it could also mean increased prices at the pumps, possibly up to 3p a litre. The knock-on effects on industry are evident.

Mr Gove was asked by my honourable friend in the other place how much of the £50 million for customs intermediaries had now been drawn down and how many customs agents had been trained. Unfortunately, she got no reply. So, we ask again: how many of the 50,000 will be in place on 1 January?

Finally, what is the status of the Goods Vehicle Movement Service, given that work on its IT system had not even started a few short months ago? The Government stress that businesses need to prepare, but seem unable to demonstrate that they have done their own work. Perhaps we can have an update on that as well.

Baroness Ludford (LD): My Lords, the Chancellor of the Duchy of Lancaster claimed that the UK was "increasingly well prepared" for what he called

"leaving the EU on Australian terms".—[*Official Report*, Commons, 19/10/20; col. 756.]

Putting aside the fact that "Australian terms" is just a euphemism for no deal, whereby the UK trades on WTO terms and our exports face tariffs and quotas, the cries of pain from business are audible for all to hear. They are far from having the "high hearts and complete confidence" at the prospect of no deal that the Prime Minister expressed—or indeed at the prospect of the skinny deal that represents the height of government ambition.

The Government have launched a "Time is running out" campaign urging businesses to get ready. But get ready for what? The Government must acknowledge that they are the ones keeping businesses in the dark.

The Road Haulage Association described a meeting with Michael Gove about post-Brexit arrangements last month as "a washout" in which they got "no clarity" on how border checks will operate when the transition period ends. In an interview on Monday, its managing director of policy and public affairs, Rod McKenzie, responding to Mr Gove's claims, in a Statement, of

"putting in place new IT systems to help goods flow across borders"

and

"giving business access to customs professionals,"—[*Official Report*, Commons, 19/10/20; col. 757.]

said:

"It's a bit of a cheek to say that ... It would be fine to accuse people of having their head in the sand and not having done anything if we knew what we had to do. The problem is the Government has spent not just months, but years, failing to tell the businesses that need to make this work what exactly they have to do…they haven't prepared the IT systems that will make this work … and they haven't hired enough customs agents to plough through the mountain of red tape that will be created by this new system.'

Then there is business as a whole. The BBC's business editor, Simon Jack, tweeted yesterday about how business leaders had described a call with the Prime Minister and Mr Gove as "terrible,"

"unbelievably disrespectful to the concerns of business"

and "more of a lecture", with the Prime Minister accusing them of "too much apathy".

There is still no clarity as to what the trading relationship will be. The Government need to acknowledge that business does not have the certainty that it needs. Will

the Minster retract the absurd claims that businesses have their head in the sand or are displaying apathy in preparing for Brexit? Will he accept that the Government's current plan is very far from being "oven ready", as claimed?

Attentive listeners will detect a bit of a pattern here. It is not just the EU that is getting accused by this Government or their acolytes of being in the wrong. It is business, experts, devolved Governments, mayors, judges, lawyers, the Church, the Civil Service and Parliament—especially, of course, the House of Lords. Gibraltar, Jersey and the Falklands are not exactly brimming with happiness and contentment, either. Perhaps, the Government should examine the mote in their own eye, rather than try to bully, bamboozle and blame everyone else. Their negotiating style has the effect of alienating almost every group they encounter, except, perhaps, rich Tory donors, including Russian ones.

On security, Mr Gove made the truly astonishing claim to the other place on Monday in response to former Prime Minister Theresa May that security would be better outside the EU. Mrs May was seen to mouth "What?" in response to that astonishing and hopelessly untrue claim. The noble Lord, Lord Ricketts, tweeted yesterday:

"If UK loses all access to EU systems from 1 Jan, as looks likely, there is no good Plan B."

The noble Lord, Lord Anderson of Ipswich, said:

"Without the ability to exchange data and intelligence across frontiers, law enforcement will be increasingly unable to cope. Everything from extradition to notification of alerts, crime scene matches and criminal record searches will be much slower, at best."

I remind the Minister that these people are experts. Mrs May was the Home Secretary for several years who masterminded the process in 2014 whereby the UK opted to stay in all the important EU law enforcement measures. The noble Lord, Lord Ricketts, is a former National Security Adviser; and the noble Lord, Lord Anderson, is a former independent reviewer of terrorism legislation.

If the Minister wants to tell me now what precisely is the

"variety of methods and arrangements"

whereby the UK

"can co-operate more effectively to safeguard our borders outside the European Union than we ever could inside,"

and which

"can intensify the security that we give to the British people,"—[*Official Report*, Commons, 19/10/20; col. 761.]

then I am all agog to hear what those measures are. Otherwise, I shall continue to think it is the fantasy it appears to be. The Government need to get real, stop blaming everyone but themselves, stop talking pie in the sky and get on with the negotiations like an adult, not a tiresome toddler.

How does Mr Gove's claim, in the Statement, of

"the UK's commitment to upholding all our obligations under both the withdrawal agreement and the Belfast agreement"—[*Official Report*, Commons, 19/10/20; col. 757.]

sit with the Government's efforts to get the power to abjure them in the Internal Market Bill, with which this House expressed its severe displeasure yesterday?

The Minister of State, Cabinet Office (Lord True) (Con): Well, My Lords, after listening to the submissions from the noble Baronesses opposite, I must say I warm to the smooth, diplomatic talk of Monsieur Barnier.

I have always respected the Liberal Democrat Party's consistency and determination to keep, then get back, the UK in the European Union of which they are so fond. But I listened—I strained my ears—to hear some acceptance in the submission from the noble Baroness, Lady Hayter, that the British people had set an objective. She asked what the objective is; it is that set by the British people that the United Kingdom shall be an independent nation, free to set its own laws and proceed with mutual respect alongside our European partners. Not one word in the speeches from the parties opposite recognised that. Instead, I heard a litany of criticism of the stance this Government are taking on behalf of the British people. It was not Project Fear—it was, frankly, project invention. I was immensely disappointed by the tone. I think everybody outside this House should take note of the position of the Labour Party: it supports, in no respect, the efforts of the United Kingdom to secure a good deal, and in every respect, parrots the criticisms that come from the European Union.

This Government are intent on securing a good outcome for the United Kingdom. That outcome is the one I have described. I regret the delays and difficulties that have taken place, which were ascribed by the parties opposite entirely to the United Kingdom. In fact, the European Union was willing to undertake negotiations on fewer than half of the days available, it would not engage on all the outstanding issues and, despite what the noble Baroness, Lady Hayter, said, it has refused to discuss legal text in any area since the summer. It is almost incredible to me that we have reached this point in negotiations without any legal text of any kind. Then, on 15 October, the EU heads of state gathered for the European Council and made the statement they did, and the response from the Prime Minister to that statement was entirely reasonable and predictable in the circumstances.

As my noble friend the Chancellor of the Duchy of Lancaster and others have made clear, this Government are always ready listen to serious approaches, but they have to be serious. This Government will continue to make preparations, as they have done for months, for whichever eventuality arises, whether it is the Australian outcome or, as we would have preferred, the Canada outcome. That work is ongoing. There is engagement with business, as was referred to in the speech of the noble Baroness, Lady Ludford. The Prime Minister and the Chancellor of the Duchy of Lancaster spoke to representatives of business yesterday. Across the board, there are ongoing discussions.

I was asked about the goods vehicle IT; we have discussed that in this House before. We are confident that it is proceeding well. The arrangements for border management have been published and updated.

On security, in the last round, there was discussion of law enforcement, which covered a number of capabilities, including Prüm and mutual legal assistance. Security is of course important, but the whole gamut of relations between us and the European Union is

[LORD TRUE]
important, and people on both sides have to reflect on how they want to see things go forward. The United Kingdom will adjust to any eventuality.

We note, with interest, that the EU's negotiator, speaking to the European Parliament this morning, has commented in a significant way on the issues behind the current difficulties in our talks. We are carefully studying what was said, and I can tell the House that my noble friend Lord Frost will discuss the situation when he speaks to Monsieur Barnier later today.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, we now come to the 20 minutes allocated for Back-Bench questions. I ask that questions and answers be brief, so that I can call the maximum number of speakers.

1.20 pm

The Earl of Kinnoull (Non-Afl): My Lords, there is a stark difference between the level of information contained in the statements made by the two sides following the joint committee meeting on Monday. Why is it that this sovereign Parliament gets so much less information than the EU 27 Parliaments and the European Parliament? Will the Minister commit that, going forward, a much greater level of information will be given on meetings of the joint committee and its sub-committees?

Lord True (Con): My Lords, a Written Ministerial Statement was issued. I am sorry if the noble Earl feels that more could and should be said. I always enjoy my engagements with him. The Statement referred to a number of matters discussed in the joint committee on 19 October. In addition to that, if he wants, I can be more helpful: the committee discussed work on the establishment of a list of individuals to sit on an arbitration panel, as required under the WA. Both parties are progressing work to establish a list of suitable arbitrators. As the noble Earl knows, it was agreed to have a further meeting of the committee in November, and other work will continue in the interim. The discussions are obviously ongoing, and I know that he understands, and I respect that, that there are some constraints on what one can share at a time of active talks.

Baroness Noakes (Con): My Lords, following last week's EU Council meeting, Angela Merkel said:

"We also acknowledge that the UK would like to have a certain amount of independence".

I emphasise "a certain amount". Does the Minister agree that until the EU fully understands and respects the fact that we will have 100% independence, the EU alone will be responsible for the lack of a free trade deal, along with the damage that will do to the economies of many of its member states?

Lord True (Con): My Lords, of course it is essential that that point is recognised. I have made a practice, since I had the honour of taking on this brief, of not criticising the actions of any EU member state or anybody within the EU, and I shall forbear to comment on what any individual European leader may or may not have said. However, my noble friend is absolutely right that our independence, our right to set our laws, to control our own waters, and all the well-known expectations—not requests or demands—of an independent state need to be recognised by the other party.

Lord Bilimoria (CB) [V]: My Lords, the Statement very clearly says that this country should get ready for 1 January 2021 on arrangements that are more like Australia's—in other words, WTO rules. Does the Minister agree with the 71 trade associations and professional bodies—along with the CBI, of which I am president—representing 190,000 businesses and 7 million employees, calling on politicians on both sides to carve a path towards a deal, followed by the European business groups from France, Germany and Italy also calling for smooth trading conditions and a solution? Does he agree that now is the time for compromise and tenacity and that a deal can be done? If there is a deal, there will be a platform on which to build, for security, movement of people and all other parts of our relationship.

The Deputy Speaker (Baroness Garden of Frognal) (LD): Questions and answers should be as brief as possible, please, so that we can get through more people.

Lord True (Con): My Lords, I apologise to the House if I have infringed. I say then to the noble Lord that, whatever the outcome of the negotiations, the UK is leaving the single market and the customs territory, and everybody will have to make arrangements to act in those circumstances.

Lord Liddle (Lab) [V]: My Lords, what a mess we are in. Do the Government accept that they won a large parliamentary majority last December on the basis of an "oven-ready deal" that had two elements? A withdrawal agreement that ditched the Northern Ireland backstop and substituted a customs border in the Irish Sea was the proposal of the British Prime Minister, not the European Union. The second element was a political declaration that set out the terms of the future EU relationship, including clear commitments to a level playing field on state aid, workers' rights and environmental standards. These inevitably represent constraints on independence. Is it not the case that if we end up with no deal, it is because the Government have gone back on those commitments made in December and put a price on sovereignty that will result in grave economic damage and increased political insecurity for the British people?

Lord True (Con): No, my Lords, I do not accept the one-sided strictures being heard once again in this House. The Government have proposed arrangements with the European Union that have precedents in agreements that that Union has reached with other countries of the world. The Government have asked for nothing unreasonable.

Lord Wallace of Saltaire (LD) [V]: My Lords, the Government are set on a Canada-style agreement. Have they studied the Canadian network of agreements with the United States, its close neighbour, which

cover border controls, aviation, energy, police co-operation, common standards, road haulage and even fishing in the waters along their border? That is because it is a close neighbour. Do the Government have a strategy for somehow increasing the distance between the UK and the European continent? Or do they accept that after 1 January, we will have to start to negotiate on all these other matters as well with our new neighbours?

Lord True (Con): My Lords, the United Kingdom is a sovereign nation and has relations with every other country in the world. Of course, our relationship with our European neighbours is important and we will continue to negotiate with them, whether in this process or in whatever circumstances we find in the future.

Lord Lilley (Con): Can my noble friend confirm that EU negotiators have been gently reminded that, if there is no free trade agreement and, regrettably, tariffs are applied to trade in both directions across the channel, the cost to EU exporters will be getting on for three times the cost to UK exporters, because they largely export highly protected goods to us, which we will be able to obtain far more cheaply elsewhere once we are outside the customs union?

Lord True (Con): My Lords, we were told by the Front Bench opposite yesterday that the House was sending a signal to the European Union, so I infer that our proceedings are followed closely in Brussels, and I am sure my noble friend's remarks will have been noted.

Viscount Waverley (CB) [V]: [*Inaudible.*] So can the Minister offer a synopsis of the digital trade outcomes we should expect from negotiations, and confirmation that these are aligned with those in the Japan deal and US negotiations? Can concerns be allayed that many of the just-announced list of trade advisers to the Secretary of State and the DIT are recognised arch-Brexiteers, given the importance of bridge-building to allow continuity in trade with the EU, which is what is urgently required now.

Lord True (Con): My Lords, I regret that I am not advised on the advisers to DIT; I apologise to the House for that, I was not anticipating that question. I cannot comment on whether they are so-called arch-Brexiteers, but I will respond to the noble Viscount's question in writing.

Lord Caine (Con): My Lords, will my noble friend update the House on what progress has been made in determining who will negotiate with the EU for Northern Ireland, and in what forum, in those circumstances in which the EU proposes changes to the rules of the single market and Northern Ireland is obliged to diverge from the rest of the United Kingdom?

Lord True (Con): My noble friend asks an important question. Article 15 of the Northern Ireland protocol establishes a joint consultative working group on implementation of the protocol to serve as a forum for the exchange of information and mutual consultation, including the EU informing the UK about planned Union Acts covered by the protocol. The United Kingdom has committed, and I repeat this commitment to my noble friend, to including representatives of the Northern Ireland Executive as part of the UK delegation to that working group.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, we in this House are trying to help the Government meet their promises to the electorate. In fact, we are doing a "reverse Salisbury"—I thank George Peretz QC for that phrase. I do not understand how a single Tory on the Government Benches can possibly vote against the election manifesto of last year. Can the Minister give details on the issues of environment, animal welfare and workers' rights? Are we in agreement or disagreement with the EU on them? What are our Government asking for? What is the EU asking for? What blockages are coming from disagreements in the Cabinet?

Lord True (Con): My Lords, I regret that I found it very difficult to follow the noble Baroness's question because of the quality of the microphone. I think that at some point she asked about details of the state of play in certain aspects of negotiations, on which I would have to reserve the Government's position in the normal way. I will examine *Hansard*, and if there is a way in which I can say anything, I will. I repeat that the Government have been involved in a delicate negotiation; as I told the House, there has been an interesting statement this morning, which we are examining. I reserve the Government's position.

Lord Robathan (Con): My Lords, I turn to fishing rights and the rather fraught negotiations surrounding them, where we see President Macron and the French apparently refusing to compromise or give way in any shape or form. Does my noble friend regret, as I do, that some in the media, such as the BBC, and, I regret to say, many politicians who have never reconciled themselves to the vote taken in 2016, are always prepared to side with Monsieur Barnier and the French negotiators on issues such as fishing and are not willing to stand up in any way for British interests as expressed by our negotiators?

Lord True (Con): My Lords, I agree with my noble friend. I said to the House earlier that I rather heard that in the opening statements from the side opposite. Our position on fishing has been very clear: the waters are the waters of an independent state. We have put propositions on fishing, but the EU has not been prepared to negotiate. Its ask from the start was that life should continue as it was. We are an independent coastal state and whoever it may be—I do not name the BBC—has to recognise that.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, yesterday's statement from the Government clearly indicated that it is the intention of the UK and the EU to intensify discussions around the implementation of the withdrawal agreement, particularly around citizens' rights and the Northern Ireland protocol. How will that happen when it is the Government's intention to subvert the Northern Ireland protocol through Part 5 of the internal market Bill?

Lord True (Con): My Lords, that is a false characterisation of Part 5 of the internal market Bill. The Government are not subverting the Northern

[LORD TRUE]
Ireland protocol; we are acting to implement it. The Government's proposal, which your Lordships will have to discuss—I do not want to repeat the discussions we had yesterday—is that in certain circumstances we might have to protect our union against interference with free movement in the customs territory. On the joint committee proposals, the statement referred to the meeting that took place recently and the fact that another meeting will take place in November. The record of this Government on citizens' rights for EU nationals has been outstanding and generous; we and, I understand, the Commission are pressing all member states to reciprocate. I hope very much that that will be the case.

Lord Polak (Con): My Lords, as I mentioned at Second Reading of the internal market Bill, people across this country know that we voted to leave and tried to negotiate a mutual and sensible exit in good faith. It seems that the good faith has not been reciprocated. In that regard, does my noble friend share my profound disappointment with the flavour of the EU's communiqué after last week's European Council?

Lord True (Con): My Lords, I stand by the words of the Prime Minister in reaction to that. It was disappointing. I referred to it in my speech yesterday. It seemed to restate the opening position. As we understand it, the communiqué was hardened from the text that was before the Council, which was disappointing. We have expressed our disappointment and set out our position and feelings on the matter. I repeat to the House, because I do not want to make an entirely negative point, that we will carefully study everything that is said by EU representatives. As I have said, there will be further conversations.

Baroness McIntosh of Pickering (Con): My Lords, I turn to customs and tariffs. The definition of goods at risk of onward movement into the EU is a sensitive decision for the joint committee to take. When does my noble friend think it will take that decision? As regards the UK's listing as an authorised third country for agri-food exports into the EU, what assurances is the EU asking for to proceed with third-country listing of the UK and what assurances have we offered?

Lord True (Con): My Lords, we are more hopeful. The position on third-country listing was extraordinarily disappointing. The statements and threats made in that respect were unacceptable. Goods at risk is an area of discussion in the appropriate committee. I will not foresee the outcome of those discussions.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, I congratulate the Minister and noble Lords on all supplementary questions having been asked and answered.

1.38 pm

Sitting suspended.

Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment and Revocation) Regulations 2020

Motion to Approve

1.41 pm

Moved by ***Baroness Stedman-Scott***

That the Regulations laid before the House on 15 September be approved.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, I am pleased to introduce the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment and Revocation) Regulations 2020 that were laid before the House on 15 September. I am satisfied that the provisions in the regulations are compatible with the European Convention on Human Rights and therefore ask the House to consider these regulations.

The Corporate Insolvency and Governance Act 2020 introduces some important measures, such as a moratorium on creditor action and restructuring tools to give specified corporate entities in financial difficulty the best chance of survival. This is part of a suite of measures to help business weather periods of economic uncertainty. The regulations debated on 14 September ensured that when certain corporate entities obtain a moratorium on creditor action, and the pension scheme trustees or managers are a creditor, the board of the Pension Protection Fund can exercise those creditors' rights in relation to the moratorium as set out in the regulations, in specified circumstances. The regulations also ensure that when a restructuring is proposed under new measures, in respect of certain corporate entities, and the trustees or managers are a creditor to whom the restructuring is proposed, the board of the Pension Protection Fund can exercise the trustees' creditors' rights under the new restructuring measures, that way ensuring that pension schemes are not left without the appropriate protections in the legislation.

The regulations being debated today simply extend the Pension Protection Fund's creditors' rights to certain other corporate entities: relevant co-operative and community benefit schemes in the case of the moratorium, and relevant societies in the case of the restructuring provisions. The regulations also revoke a previous set of regulations because of a legal defect caused by an omission in a related statutory instrument. We have expedited the making and laying of these regulations in order to rectify the situation. The "made affirmative" procedure has enabled these regulations to come into force soon after they were laid.

These regulations form part of the corporate insolvency and governance legislative regime. If a relevant co-operative and community benefit society obtains a moratorium from its creditors, or a restructuring is proposed in respect of a relevant society as applicable, the Pension Protection Fund is able to intervene as a creditor to protect its interest in the relevant specified circumstances.

Moratoriums give companies and other relevant corporate entities respite from action that could otherwise cause them to close. During a moratorium, businesses will be more able to plan a beneficial restructure; this will reduce unnecessary business failures, thereby preserving jobs and value in the economy. Restructuring plans enable companies with viable businesses but significant debts to restructure with limited disruption. This will facilitate corporate rescue and reduce formal, value-destructive insolvencies, thereby preserving businesses and saving jobs.

Given the importance of the Pension Protection Fund as the statutory compensation scheme, it is crucial for the Pension Protection Fund to have access to and influence over certain decisions relating to moratoriums and recovery plans in the relevant circumstances. Should a rescue attempt fail, it is the Pension Protection Fund that steps in to pay compensation to eligible pension scheme members. Protecting the fund's interest should help maintain confidence that the Pension Protection Fund will be able to continue to make compensation payments for as long as they are needed.

I would like to put on record something about the previous PPF regulations that we debated on 14 September: they have no impact, or no effect, on the regulations we are debating today. I am aware that there has been some concern about the legal status of the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020, which were debated on 14 September, in so far as they relate to charitable incorporated organisations. The current legal position in respect of charitable incorporated organisations has been complicated by the making of a separate statutory instrument, the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020, by the Department for Digital, Culture, Media and Sport. Those regulations disapplied some of the new provisions of the Insolvency Act 1986 in relation to charitable incorporated organisations. One of these provisions, Section A51 of the Corporate Insolvency and Governance Act 2020, was used to make my department's regulations, the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020, in so far as they applied to charitable incorporated organisations. As a result, the provisions in my department's regulations have not applied to charitable incorporated organisations since 13 August 2020, that being the date the Department for Digital, Culture, Media and Sport regulations came into force.

The legal position, which is clear from reading both sets of regulations together, is that the Department for Digital, Culture, Media and Sport regulations repeal impliedly those aspects of my department's regulations, in so far as they apply to charitable incorporated organisations. The Department for Digital, Culture, Media and Sport will restore the position as set out in my department's regulations at the next available opportunity. The Department for Digital, Culture, Media and Sport regulations do not otherwise affect the validity of my department's regulations, or the powers that we use to make those regulations. I commend these regulations to the House.

1.48 pm

Baroness Drake (Lab) [V]: My Lords, I welcome these regulations, because they give the PPF the ability to exercise creditor rights across the full range of employers in moratoriums and restructuring plans where there is a PPF-eligible DB pension scheme.

There have not yet been any cases where a moratorium has been implemented for a business with an eligible scheme, so we have no case studies to judge how these measures are working in practice, including the potential for gaming that the new system introduced under the Corporate Insolvency and Governance Act. The Government did amend the Act to give the Secretary of State powers to amend the regulations in response to the emergence of perverse behaviours, but I want to pursue an issue which I raised at the time and which was never really answered.

The Corporate Insolvency and Governance Act and these regulations sit alongside the Pension Schemes Bill, which is currently in the Commons. Clause 107 of that Bill introduces new criminal offences if the conduct of employers and other persons, and entities such as banks, trustees and advisers, has a detrimental effect on the schemes such as the avoidance of the recovery of the whole or any part of the employer's debt. That opens up the possibility that what may be considered lawful actions under the Corporate Insolvency and Governance Act could subsequently be considered offences under the Pension Schemes Bill. If a moratorium takes place and a restructuring plan or insolvency follows, the pension scheme's positions will be weakened relative to some other creditors because the scheme's full Section 75 debt is not triggered, and unsecured finance debt has super-priority status, outranking the pension fund debt and outranking pension liabilities in subsequent insolvency. That finance debt includes shareholder loans, inter-company loans—including from a director or parent company—as well as arm's-length regulated activities and bank debts. During a moratorium, those financial debts continue to be payable, but pension deficit contributions do not. Therefore there remains a real risk of novel forms of moral hazard including, as the noble Baroness, Lady Bowles of Berkhamsted, observed in this House on 23 June, when commenting on the poor behaviours that could occur,

"behaviour that is reprehensible but not, in the end, prohibited or even limited to reasonable amounts."—[*Official Report*, 23/6/20; col. 138.]

A moratorium will become the point at which discussions about a restructuring deal begin, and will involve trade-offs. If the PPF or the Pensions Regulator considers either at the time or subsequently that an aim of an employer, parent company or other parties in seeking a moratorium and subsequent insolvency or restructuring plan was the avoidance of the employer's debt, which legislation takes precedence, the Corporate Insolvency and Governance Act or the new Pension Schemes Bill? Would the regulator be able to use its enhanced powers to acquire information over and above that sent out to creditors during a moratorium? What would be the implications for any super-priority status granted or restructuring plan agreed or proposed where such a challenge by the regulator was made? Any clarity the Minister can provide will be helpful.

1.52 pm

Baroness Altmann (Con): My Lords, I welcome the new regulations to ensure that the Pension Protection Fund can better protect its interests and those of pension scheme members whose supporting employers unfortunately need to enter a moratorium period or restructuring due to the current crisis. These cover the entities, including charitable organisations, friendly societies, credit unions and so on, which may be particularly vulnerable in the current circumstances.

The Pension Protection Fund is one of our flagship organisations, which has done marvellous work to protect the pensions of millions in this country and has compensated those who would otherwise have faced the potential of losing their pension rights if the employer failed, and possibly of losing their jobs too. It is vital that employers and corporate directors are not allowed to game the PPF or take advantage of financial turmoil to walk away from liabilities on which so many ordinary workers rely, as the noble Baroness, Lady Drake, just said. I congratulate the PPF and put on record that I believe its staff have done brilliant work. I am sure that they will continue to do so with efficient administration and careful stewardship.

These regulations result from new measures passed in the Corporate Insolvency and Governance Act, which potentially weaken the rights of DB scheme members, trustees and managers to funds and assets belonging to the sponsoring employer during a moratorium or restructuring. I thank my noble friend and congratulate her on the way in which she introduced the regulations.

To allow the Pension Protection Fund to represent the trustees and managers in negotiations is an important measure, since it has to safeguard the interests not only of each pension scheme but of all other schemes too, and a moratorium does not trigger a PPF assessment period. If pension sponsors can more easily find ways to walk away from their liabilities without putting extra funds into the schemes in the current crisis, because it ranks only as an ordinary unsecured creditor without super-priority, and financial firms have leap-frogged up the priority order, the Pension Protection Fund could be forced to take on extra liabilities, which will ultimately fall on other sponsors via higher levy payments. As I expressed during the passage of the Act, I am particularly concerned at the ability of the sponsor or its other creditors to ask the courts to release assets that were supposed to have been pledged to the pension scheme as part of previous scheme-specific funding arrangements, leaving the scheme far more underfunded than was ever intended. I understand that the legislation ensures that any restructuring plan must not put creditors in a worse position than on insolvency, but can my noble friend confirm that this also definitely applies to the Pension Protection Fund? If she would like to write to me on my point, that will be fine. In addition, which parts of the previous regulations that she mentioned in her introduction have been revoked by this instrument?

Finally, I will ask a few other questions of which I have given my noble friend prior notice. I note that the Pension Protection Fund will produce guidance for monitors and directors on what information it will need to receive and its general approach to a moratorium or restructuring. When will that happen? Can she confirm the assessment of the noble Baroness, Lady Drake, that no companies have yet gone into moratorium since this legislation was passed, and if any have, how many have done so and how many have a DB scheme attached?

The Deputy Speaker (Baroness Garden of Frognal) (LD): The noble Baroness, Lady Greengross, and the noble Lord, Lord McColl, have withdrawn, so I call the noble Lord, Lord Hain.

1.57 pm

Lord Hain (Lab) [V]: My Lords, it is a real pleasure to follow my noble friend Lady Drake and the noble Baroness, Lady Altmann, who speak with tremendous authority on these pensions-related questions.

The Government's insolvency reforms initially applied only to companies. They have now been extended to cover co-operative societies and community benefit societies such as credit unions, following lobbying, in particular by Co-operatives UK. So far, so good. Co-op retail societies have been doing well, with sales booming and market share rising, but some other smaller co-operatives have had to close for a few months or furlough staff.

In its efforts to modify measures originally designed for companies, Co-operatives UK gave priority to preserving co-operative and community purpose and to retaining democratic member control. I strongly applaud those efforts. I acknowledge too its September 2020 guidance to co-op societies facing financial strife, a 10-page brief on insolvency and financial liquidity that offers advice on how to respond to a crisis and how, in the worst case, to face up to a possible insolvency. However, I fear that those 10 pages of well-intended advice to co-op societies facing financial distress illustrate the shocking way in which workers' rights are overlooked when businesses in Britain face going bust.

The opening paragraphs on page 1 of the guidance acknowledge that directors of co-op societies facing insolvency have a duty of care to the society's creditors. When businesses face insolvency, the interests of creditors, especially those with secured debts, often and maybe always override those of employees. Witness what happens when companies in financial distress stay in business but use a "compromise agreement" to avoid meeting their obligations to the firm's pension scheme. Only later does the Co-operatives UK brief say that only if there is no imminent threat of insolvency should directors

"Put employees and volunteers first".

Sadly, even then the brief does not suggest consulting employees about the choice between furlough or redundancy. It recommends talking to workers about other options such as reducing pay and working hours only after big decisions have been taken.

The very last point at the foot of the final page of the brief covers good practice with employees. It says that

"looking after employees at a time of crisis is crucial",

and refers to four pages of further advice, none of which covers possible insolvency. So there is no discussion of the possible threat to employees' pension rights

when businesses face insolvency, no mention of underfunded pension schemes, nothing about redundancy rights or unpaid wages, and nothing about unmet tax and national insurance obligations. That is a perfect illustration, sadly, of where workers stand when businesses face going bust: little more than an afterthought. But I do not blame Co-operatives UK: its brief simply reflects the sad reality of workers' rights and the unfairnesses of Britain's insolvency law.

Millions of jobs are in jeopardy today, in every sector of the economy, and it remains all too easy for directors of businesses facing financial distress to sacrifice the interests of the workforce by sidestepping their responsibilities for pay, redundancy, tax, national insurance and pensions. Despite the warm words we had during the passage of the insolvency Bill in the summer, the Government's reforms have yet to address that fundamental flaw. Can the Minister give me any assurances about that, please?

2 pm

Viscount Trenchard (Con): My Lords, I thank my noble friend for introducing this debate on this corrected statutory instrument, which puts right a defect in its predecessor. It is important that there should be no risk that the Pension Protection Fund might be unable to intervene and protect its rights as a creditor in the event of a co-operative and community benefit society obtaining a moratorium under the Corporate Insolvency and Governance Act.

Since we started to debate the new measures introduced by the CIGA, my noble friend Lady Altmann and others have been assiduous in arguing for the strengthening of the powers and rights of the PPF. I agree that this is highly desirable, so I welcome the Government's action in closing this loophole. Since entering into a moratorium under the Act is not in itself an insolvency event, without these regulations the PPF would be unable to exercise its rights as a creditor of a defined benefit pension scheme. The trustees might be placed under pressure to agree to the sale of an asset pledged to the pension fund in the knowledge that the PPF would be required to step in without taking account of the wider interests of the members of the scheme or, indeed, the payers of the levy which funds the PPF.

These regulations have been introduced without consultation in the context of the Covid-19 pandemic, so it is welcome that we have the opportunity to discuss them today. While it is not directly the subject of today's debate, I think it would be appropriate to hear a little more from the Minister on how the new provisions of CIGA are bedding down. My noble friend Lord Leigh of Hurley and others were concerned that a moratorium under the Act could not be applied for in order to rescue a company's business, rather than the company itself. Further, I think it was unduly restrictive to exclude companies that have issued bonds in the amount of £10 million or more. As of 29 July, my noble friend Lord Callanan told your Lordships' House that only one company had successfully entered into a moratorium. How many companies and other entities have now used the new moratorium process? I look forward to the contributions of other noble Lords and to the Minister's reply to the debate.

2.04 pm

Lord Loomba (CB) [V]: My Lords, these regulations are necessary to ensure that the Payment Protection Fund can engage fully in a proactive and meaningful way in the conversations and decision-making processes when a company finds itself in difficulty. It is paramount that the PPF has this ability so that hard-earned pensions are safeguarded for their future security, and I fully endorse these regulations.

Turning to the PPF itself, I wish to raise two points. First, concerns were recently raised in the other place about the robustness of the fund at present, given the sadly expected rise in companies needing help and unable to support their pension funds. The fund had a healthy ratio of 118.6% as of March 2019, with 18.6% more in its funds than its obligations to pay out and an actuarial surplus of £6.1 billion. This year, while it is less than in 2019, March 2020 saw a healthy 113.4% ratio, with 13.4% more in its funds than its obligation to pay out. The PPF says:

> "Market volatility forces us to remain vigilant and responsive to changes in our external environment which may also require changes in our strategy."

We are now in uncharted waters as we head into winter, with the daily death toll from the virus rising. More and more restrictions are being placed around the country, and this will inevitably mean more and more businesses struggling to survive. In the current climate, what assurances can the Minister give us that everything is being done to ensure that the PPF is fit for purpose and able to sustain itself in order to support people and their pensions?

My second point concerns the actual amount of pension received. This is set to rise in line with the consumer prices index and capped at either 2.5% or 5%, whichever is the greater. Is this something that needs to be looked into in the light of the pandemic, in the same way that the Government have just done with the state pension uprating Bill?

2.07 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Loomba, and I thank him very much for his analytical review, which I found very helpful. I thank my noble friend for setting out the background to these regulations so clearly. I welcome the regulations, which I understand are needed because of an oversight.

My noble friend Lord Trenchard is quite right that a moratorium or restructuring against creditor enforcement is not an insolvency proceeding, which is the reason we need these regulations to facilitate pension protection, and I strongly support that. I have several questions for my noble friend the Minister, of which I have given her some notice, but I understand that she may want to correspond in writing on some of the points and will copy answers to the Library if that is necessary.

First, what is comprehended by "co-operative and community benefit societies"? I strongly agree about the protection for them, and I understand that the term includes credit unions. Do we also need to take special measures to protect the pension schemes of friendly societies, building societies and other mutual

[Lord Bourne of Aberystwyth]
societies—and, indeed, trade unions? Are they also covered? Perhaps my noble friend can answer that point.

Paragraph 3.9 of the Explanatory Memorandum talks of an ongoing risk that, during any break in the application of the provisions, a relevant co-operative and community benefit society could obtain a moratorium from its creditors, or a relevant society could propose a plan to restructure its business, without the Pension Protection Fund being able to intervene as a creditor to protect its interests. How real is that break and how much of a danger is there of that eventuality?

How healthy is the position of the Pension Protection Fund? I know that the Minister for Pensions spoke to the chair and chief executive of the fund over the summer and was reassured about its resilience. Indeed, my noble friend also gave us reassurance in September. However, when did a Minister from the department last speak to the chair and chief executive about the standing and resilience of the fund? It would be good to hear about that.

More generally, can my noble friend give an update on the institution of the moratorium, a point that several noble Lords have raised? I believe that it has not been used much since its inception, although there is clearly a difference of opinion between the noble Lord, Lord Callanan, and the noble Baroness, Lady Drake, on whether it has been used at all. Is the Minister in a position to shed some light on this and whether the moratorium is likely to be used much, if it has not yet been used?

Finally, has there been any contact with the Insolvency Practitioners Association to obtain its views on the regulations, regarding the need for more protection for bodies other than those covered? Is there an ongoing dialogue with the association, which would be desirable because it is expert in these areas and steeped in insolvency and related restructuring proceedings? Subject to those considerations, I strongly support the regulations.

2.11 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, I welcome the regulations and thank the noble Baroness for introducing them. It is right that they are now extended to cover co-operatives, friendly societies and other community purpose efforts. There will be many more occasions on which we need these regulations. I share the concerns of the noble Lord, Lord Loomba, that the PPF, which is doing a brilliant job so far, will come under increasing strain. As others have said, I would appreciate a reassurance that the PPF has not only the funds but the staffing to cope with the increased demands that are bound to be made on it as more and more companies, community organisations and co-operatives are hit by the difficulties and effects caused by Covid.

More broadly, when companies and organisations start to negotiate a moratorium and then a restructuring, there is always a need for trade-offs, as the noble Baroness, Lady Drake, suggested. My concern is that the trustees in many of those organisations are not sufficiently of a calibre to properly negotiate holding the line against owners and directors of businesses, who tend to drive for a solution that will benefit them and not the pension fund. I should therefore be grateful if the Minister reassured me on what we were doing to enhance the calibre of such trustees. Their responsibilities are great but their training is not.

2.13 pm

Lord Flight (Con): My Lords, I welcome and support this legislation. I should first refer to my declarations in the register. The speeches so far have been really useful and picked up elements that need attention.

This matter is indirectly about how many SMEs fail to survive the Covid crisis. That will drive the volume of financial support required from the PPF when pension schemes are inadequately financed. I anticipate that there will be sufficient funds to cover the first wave of SME pension deficits. A major wave could require government financial support via the PPF. There is also the issue referred to by others, of levy payers being required to contribute more than they see as fit and fair. The regulations extend the scope of the PPF's rights as a creditor when moratoriums are in place for relevant community benefit organisations.

The Treasury has widened the cover of the PPF, adding charities, LLPs and virtually all community benefit schemes. The questions here relate to the volume and financial adequacy of their accompanying pension funds and whether these new institutions' pension schemes are adequately funded long term. We have already had a detailed set of regulations from PPF boards with creditor rights, which have been widened and extended. The PPF is now able to intervene and help with restructuring plans.

The second Covid wave of SME failures could be larger than the first and is likely to be accompanied by high volumes of inadequately financed pension schemes needing to be restructured. I am interested to know the total value of pension fund assets covered by the PPF. The pension situation may require the Government to bring in further support for SMEs to save many from failing.

Down the road, there is the risk of excess investment in gilts, with large losses when inflation and interest rates rise. I am aware of private sector pre-packs that provide speedy and successful reorganisation of SMEs that have failed. The PPF might usefully have its pre-pack investment formula ready to be rolled out for different situations. The question that this raises is on whether the PPF has the necessary skills to organise and manage restructuring of pension assets and schemes, and to help with company restructuring. The reason for the PPF being established in 2005 was to be able to pay compensation to members of defined benefits schemes where the employer had failed and the pension scheme had insufficient assets to cover its liabilities.

It is noteworthy that Karen Buck MP and the previous Minister for Social Security pointed out that the measures in the regulations do not entirely restore the PPF's powers re corporate insolvency and the Corporate Insolvency and Governance Act; and the position occupied in restoring situations before the Act.

2.17 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank the Minister for the explanation of the regulations. My understanding is that they extend the Pension Protection Fund's rights as a creditor when co-operative and community benefit societies have a moratorium in place to protect them from creditor action.

My first question for the Minister relates to community benefit societies. The Pension Protection Fund is UK-wide and therefore applies to Northern Ireland, credit unions being a type of community benefit society operating there. There are two types of credit unions but the one that is widespread and of which I am most aware is the Irish League of Credit Unions, which operates in two jurisdictions. Given that it is headquartered in Dublin, would it benefit from the rights outlined in the regulations? Maybe the Minister could write to me if she did not have the answer to hand.

I take note of the remarks of the noble Baroness, Lady Altmann, when she said that the Pension Protection Fund, set up by statute in 2004, exist to protect people and provide compensation when required. As a former Minister for Benefits and Welfare in Northern Ireland, I am fully aware that we have a system there of parity with London, particularly on social security and pension issues.

The Northern Ireland Assembly and the Executive bring forward their own legislation which is exactly the same as that which exists in London. In fact, these regulations were enacted back in August. Can the Minister say what discussions have taken place with the Northern Ireland Executive on the potential impact of these regulations, taking into consideration that the pandemic will perhaps result in some insolvencies? Many people have already lost their jobs, so this is really about the ability of the Pension Protection Fund to discharge its responsibilities, particularly in a place such as Northern Ireland which does not have the inbuilt financial capacity and resilience to do that. That is particularly the case when confronted with an issue such as the pandemic, which brings its own financial pressures.

The issue of financial resilience was raised in the other place, so on a more general basis, I will ask the Minister this: is the Pension Protection Fund resilient enough? Other noble Lords who have already spoken have referred to that. Does it have the necessary resources to address the extraordinary potential problems that could ensue around insolvencies as a result of the pandemic? What measures will be taken to ensure that the fund is ready and capable of absorbing what could be potentially thousands more pension scheme members who will require security over the coming year? Perhaps the Minister could advise me in writing about what meetings have taken place between the Department for Work and Pensions and the Pension Protection Fund to review its performance.

2.22 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I thank my noble friend for bringing forward this statutory instrument. I also congratulate her and the Secretary of State on the quiet way in which they have handled the Covid virus fallout, in particular by adding thousands of those who have lost their jobs on to universal credit. I pay tribute to her and her team in that regard.

I join with my noble friend Lady Altmann in recognising the work and the contribution of the Pension Protection Fund, particularly at this very difficult time. I want very much to lend my support to the regulations before us, extending as they do the provisions to co-operative societies and benefit societies. Perhaps I may put a couple of questions to my noble friend.

I notice that it has not been deemed necessary to prepare an impact assessment when bringing forward these regulations, but as was noted in the House of Commons and as others have mentioned today, there is increasing concern about the resources that will be at the disposal of the PPF. Can my noble friend say what the take-up has been, to date, since these regulations came into effect?

I turn now to the Explanatory Memorandum, in particular Paragraph 7.5. It states:

> "Whilst a moratorium is not in itself a procedure for a business to shed its liabilities, it will become the point at which discussions about a restructuring deal begin."

In my noble friend's view, who will be best placed to advise co-operative and community benefit societies if they wish to exercise their right to restructure under the provisions of the regulations? Does she share my concern, as well as the increasing unhappiness in the country, about something that perhaps might not occur in this instance but would do so in other cases where restructuring has taken place to try, as she put it, to prevent the unnecessary closure of firms in these circumstances? The big accountancy firms—I shall call them the "Group of Four"—while no doubt playing a great role, are charging huge fees for the privilege of advising these firms, and that very process may actually tip some firms over the edge into administration and closure.

Those are my two questions, but I broadly welcome the chance to debate and support these regulations. I echo how much we owe the Pension Protection Fund for the work that it is doing at this very difficult time. I also pay tribute to my noble friend, her team and the department.

2.24 pm

Lord Bhatia (Non-Afl) [V]: My Lords, these regulations are connected to powers recently introduced by the Corporate Insolvency and Governance Act 2020 to aid certain co-operative entities that are in financial difficulty. They will enable them to obtain a moratorium and thus give them respite from their creditors, or to be able to propose restructuring plans, including compromise arrangements to facilitate the rescue of their businesses. The regulations have been welcomed by the Labour shadow Minister for social security, who stressed the importance of the PPF.

As we know, the country is facing a dire economic outlook, with severe shocks being inflicted on many employers and on many pension schemes. The department responsible for social security must ensure that the PPF is ready and capable when it comes to absorbing the potentially thousands more pension scheme members who will require security over the coming

[LORD BHATIA]
year. It is imperative that the fund is in a good position to continue to provide compensation to those who need it.

The country is currently living with the health issues caused by the coronavirus. Under the three-tier scheme, thousands of businesses are going bankrupt, causing unprecedented levels of redundancies. Families are suffering due to a lack of income and are becoming increasingly dependent on food banks and charities. It is therefore vital that their pensions are protected.

It is pleasing to know that the Opposition has not objected to these regulations, but at the same time they have rightly raised questions in order to get the right levels of protection for employees.

2.27 pm

Lord Naseby (Con) [V]: My Lords, I declare my interest as a trustee, for more than a decade now, of the Parliamentary Contributory Pension Fund, and as having previously been the chairman of the Tunbridge Wells Equitable Friendly Society, again for about 10 years.

Like my noble friend Lord Bourne, I notice that no mention is made of friendly societies or mutual building societies. Indeed, I am slightly confused about the terminology of "community benefit society" being used, other than in relation only to Northern Ireland. Is that phrase now in common use for all mutuals? Bearing in mind that in today's world, with the blessing of our Government, the number of mutuals is increasing across a whole spectrum of activities, I wonder whether they are being treated any differently from plcs as far as the PPF is concerned.

My second point arises from the High Court ruling on 22 June of this year about the compensation cap amazingly being unlawful. From a note I have received, I understand that the court is comfortable with the PPF's approach to making a one-off calculation, saying that it is permissible

"provided it made sure that each individual, and separately each survivor, over the course of their lifetime received at least 50% on a cumulative basis of the actual value of the benefits that their scheme would have provided."

I ask my noble friend on the Front Bench this: is everybody happy with that as a workable solution for the rather strange ruling that it is unlawful on the grounds of age discrimination?

Several of my colleagues have rightly raised the impending problems that are likely to arise from the pandemic. The PPF's budget this year is based on raising £620 million. Can I assume that that figure is still the current levy? Will the PPF review its requirements against the target of being self-sufficient by 2030, because of the anticipated corporate failures arising from the pandemic?

I will raise one final point. I accept it is tangential to the SI, but my noble friend will probably be aware that the Local Authority Pension Fund Forum, commonly known as LAPFF, which is an association of 87 local authority pension funds, has accused the Financial Reporting Council of supporting the revised international accounting standards, claiming that they are less than those required by UK law. Will this have an impact on the Pension Protection Fund? I quite understand that, while I informed my noble friend of some of my earlier questions, I did not inform her of that one, so I am more than happy to have an answer in writing.

2.31 pm

Baroness Janke (LD) [V]: My Lords, I thank the Minister for her clear presentation of complex material and her willingness to provide us with information about these regulations. We support this important measure, which gives powers to the Pension Protection Fund in the event of certain community companies being in financial difficulty under the new provisions brought in under the Corporate Insolvency and Governance Act 2020. As other noble Lords have said, it would be helpful to know just how far this extends and what other types of community companies might be included.

As the Minister explained, these regulations give the board of the Pension Protection Fund rights normally exercised by pension schemes' trustees and managers. Under the new provisions, the Pension Protection Fund can end up picking up liabilities—for example, if the pension is underfunded. It is therefore reasonable that it should have a seat at the table, as it does for insolvencies. Given that these regulations will give the board of the PPF rights normally exercised by pension schemes' trustees or managers, it is good to know that the PPF is required to consult with the trustees and managers who will lose their rights as a result.

The regulations give the PPF new rights relating to other community businesses, in addition to the limited liability partnerships and charitable incorporated organisations dealt with in the original measure. The new arrangements are welcome and timely, particularly in the light of the predicted economic impact of the pandemic and the further economic impact of Brexit on UK companies. However, there are still some outstanding questions that I hope the Minister will be able to answer. I apologise for not giving her notice of them. Obviously, if she would prefer to write that is perfectly acceptable too.

What specific powers are given to the PPF? Can these override the views of the trustees should, for example, a course of action proposed by them seem unduly risky? What arrangements are in place to monitor the implications of the moratorium restructuring arrangements? When this issue was raised before, the Minister said that as yet, there were no occasions when the new arrangements had been used. Other noble Lords asked whether this is still the case. Nevertheless, if it is not, I am sure it will be very important to monitor the impact and effectiveness of the new arrangements.

Have the Government also assessed the capacity and sustainability of the PPF, particularly in terms of its expected future workload? Other noble Lords raised this issue as well. As other noble Lords have also asked, what protection will the Government provide the PPF in the event of high additional financial demands that might suggest increased levy payments or potential reductions in pension compensation? I hope the Minister will be able to answer these questions but, as I said, I am more than happy to have a written response.

2.34 pm

Baroness Sherlock (Lab) [V]: My Lords, I thank the Minister for her explanation of these regulations, and all noble Lords for their interesting contributions. I was also pleased to hear the Minister clarify the situation regarding the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) Regulations 2020—I will call them PPF No. 1, if that is okay—which we debated on 14 September. I understood from the Minister that the problem was that DCMS made regulations in August that, in effect, meant that the PPF No. 1 regulations no longer applied to charitable incorporated organisations.

I have just gone back to the proceedings of 9 October, when we debated the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020. When she introduced them, the noble Baroness, Lady Barran, explained that her department had decided that it would simplify the moratorium regime, so it disapplied provisions that it felt were unnecessary, including Section A51 of the Insolvency Act 1986, which gives the power to make provision for regulations relating to pension schemes. Unfortunately, those were the very powers that the DWP had used to extend the PPF moratorium provisions to CIOs.

The noble Baroness, Lady Barran, went on to say that

"DCMS will bring forward legislation, when parliamentary time allows, to enable these provisions to apply to CIOs. In the meantime, we do not anticipate there being any practical impacts on stakeholders whatever."—[*Official Report*, 9/10/20; col. 847.]

Were those the regulations that had the effect of excluding CIOs from some of the provisions of the PPF No. 1 regulations? If so, why did DCMS press on and let Parliament debate them 12 days ago, rather than repealing and replacing them? After all, the noble Baroness, Lady Barran, said that it already had to reissue them once, owing to a mistake in the version that was laid, so it presumably could have done so again. I realise the Minister might need to ask DCMS, but I would be grateful if she did. Could she then write to me? Also, where are we now? Is it the case that, right now, the provisions of PPF No. 1 do not apply to CIOs? How long will that last? What are the consequences of that gap?

However, we are debating the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment and Revocation) Regulations 2020—or PPF No. 2 for my purposes. I understand that the PPF No. 2 regs are needed not because of that earlier difficulty, but because the Treasury has extended the remit of the Corporate Insolvency and Governance Act to apply to most co-operative and community benefit societies, and to credit unions, so the regulations ensure that the PPF covers those bodies that are now within the scope of the moratorium provisions of the Insolvency Act. This is complicated further by the fact that the original version of the PPF No. 2 regulations contained an error due to an omission in the Treasury regulations, so this is now in fact PPF No. 2, version two.

I am grateful that I got to the bottom of these complications. I will not make an issue of it, but I wanted to get it on the record because it feels important to have an audit trail of how we ended up here. However, these episodes reveal, first, three steps of drafting problems, and secondly, a failure in interdepartmental communication. What steps can be taken to ensure that DWP, or indeed other departments, find out in good time if another department is laying legislation that impacts on their own powers or provisions? Have the Government reflected on whether they are investing adequately in ensuring that departments have the resources needed for the process of drafting and cross-checking secondary legislation, or indeed primary legislation?

However, we are happy to support these regulations, since it is of course important that the PPF can step in and use its powers in the interests of the pension schemes of co-ops, community benefit societies and credit unions. But I will ask a couple of questions, including on an issue that I think other noble Lords have touched on. The moratorium provisions and, therefore, the scope of the PPF, will apply to co-op and community benefit societies, with some exceptions. Could the Minister clarify what the exceptions are? How confident is she that all the bodies to which the moratorium provisions of the Insolvency Act apply are now definitely within the PPF's scope? If any are not, or are found later not to be, what is their legal status?

Turning to broader questions, I will be very interested to hear the answer to the question raised by my noble friend Lady Drake. This is potentially a very serious issue. We need clarity as to how the regulator could act and which legislation takes precedence in the circumstances she described. It is essential that pension funds and pensioners can always benefit from the protection that Parliament thought it had afforded them.

The PPF's position was raised by several noble Lords, including the noble Baronesses, Lady Ritchie and Lady McIntosh. Given the state of the economy and the risks to so many employers, what assessment has the department made of the strength and stability of the PPF and its ability to deal with what is coming down the track? What mechanisms are there for keeping that under careful and constant review? How will Parliament be kept informed? Noble Lords have asked about this whenever we have had the opportunity. Can the Minister think about how best she can give Parliament the ongoing assurance needed that the PPF will be able to do its job? It is incredibly important to pension funds and pensioners across the land that this agency works, and Parliament needs some assurance on that. I look forward to her reply.

2.40 pm

Baroness Stedman-Scott (Con): My Lords, I am grateful to noble Lords for this helpful debate and their interventions. I hope that I have been able to establish why these amending regulations are required. Extending the Pension Protection Fund rights as creditor to relevant co-operative and community benefit societies and relevant societies, as applicable, will help to ensure, if those entities are also sponsoring employers of a Pension Protection Fund eligible pension scheme, that the interests of the scheme and the Pension Protection Fund are protected during a moratorium, or where a restructure of the business is proposed under the new corporate insolvency and governance legislation, as applicable.

[Baroness Stedman-Scott]

I will do my very best to answer all questions; where that is not possible, I will write to the noble Lords concerned and place a copy of the letter in the Library. The noble Baroness, Lady Drake, asked whether trustees agreeing to a corporate rescue will be within the scope of the new criminal sanctions in the Pension Schemes Bill, and which has precedence. We do not think that there is a conflict between the provisions in the Corporate Insolvency and Governance Act 2020 and measures in the Pension Schemes Bill. The new criminal offences proposed in the Bill make it clear that an offence is committed only if the person did not have a reasonable excuse for committing the act or engaging in a course of action. The aim of the powers in the Pension Schemes Bill is to target individuals who intentionally or knowingly mishandle pension schemes or put workers' pensions at risk by behaviour such as chronic mismanagement of a business or avoiding pension liabilities. There is no intention to frustrate the legitimate business activities where they are conducted in good faith.

The noble Baroness, Lady Drake, also asked whether the Pension Protection Fund has the power to demand detailed information or conduct its own investigation into the financial position of the company. There are requirements in the Corporate Insolvency and Governance Act to provide information to the board of the PPF in relevant specified circumstances in respect of the moratorium and the restructuring measure. The Pension Protection Fund may also be able to use existing powers to request information from the company when it is relevant to the exercise of its functions in relation to an occupational pension scheme—in this case, the exercise of creditor rights. If the company refuses or neglects to provide the information without reasonable excuse, the company would then be guilty of an offence. However, a company could argue that the standard information provided to all creditors is enough to enable the board of the Pension Protection Fund to exercise its creditor rights, so it does not require any further information to exercise those rights above and beyond what other creditors get.

My noble friend Lady Altmann asked why these regulations revoke a previous set of regulations, and which parts were revoked. An omission in HMT's order meant that there was no power to make provision for the Pension Protection Fund to exercise creditor rights in relation to relevant societies in my department's regulations. As a result, certain provisions of those regulations were ultra vires. The entirety of our further set of regulations has been revoked and replaced with the regulations being debated today.

My noble friends Lord Trenchard, Lady Altmann and Lord Bourne, asked how many entities have gone into a moratorium since the legislation was passed. The Insolvency Act publishes insolvency statistics monthly, and the 14 October publication included the new moratorium for the first time. Two moratoriums have been entered into since the Act came into force on 30 September.

The noble Lord, Lord Loomba, the noble Baronesses, Lady Wheatcroft and Lady Janke, and my noble friend Lord Bourne, raised the issue of the sustainability of the PPF's funds as a result of Covid-19. The Pension Protection Fund is confident that its long-term funding strategy and diverse investment approach position it well to weather the current market volatility and future challenges. The Pension Protection Fund's latest modelling shows that the fund is well placed to achieve its self-sufficiency target: the ability to pay Pension Protection Fund compensation in full, with a 10% buffer.

The noble Baroness, Lady Janke, and my noble friends Lord Naseby and Lord Bourne, raised the issue of why our co-operative and community benefit societies need to be included. Mutuals are organisations owned and controlled by their members rather than by shareholders. They operate on a "one member one vote" structure, and include co-operatives, community benefit societies and financial services providers, such as building societies, credit unions and friendly societies.

The noble Baronesses, Lady Wheatcroft and Lady Ritchie, asked about the Pension Protection Fund's resources to intervene in moratoriums and restructuring in the current economic climate. The Pension Protection Fund has an in-house restructuring and insolvency team, and the ability to call on third-party advisers to support its work. The PPF keeps its level of resourcing under review, but at present is confident that it can engage in moratoriums and restructuring plans as necessary. The noble Baroness, Lady Wheatcroft, asked what we were doing to enhance the ability of trustees. The Pensions Regulator has guidance on its website for trustees.

My noble friend Lord Flight, the noble Baroness, Lady Wheatcroft, and other noble Lords, raised the question of the skills of PPF in restructuring arrangements. The PPF has a dedicated in-house insolvency and restructuring team, and, as I have said, can also draw on a large range of third-party advisers. It is important to recognise that the PPF has been involved in restructuring arrangements since its launch in 2005. My noble friend Lord Flight also asked about the value of PPF pension schemes assets. The total assets in the October 2020 *PPF 7800 Index* were £1771.4 billion.

The noble Baroness, Lady Ritchie, quite rightly and understandably, asked what engagement there has been with the devolved Administrations. We have worked with Northern Ireland on some of the detail of the policy and helped Northern Ireland in the preparation of its regulations, which have now been published. There was engagement with the devolved Administrations during the development of the measures included in the Corporate Insolvency and Governance Act. Northern Ireland has introduced its own regulations to ensure parity, as relevant. The noble Baroness also raised the issue of the credit union in Northern Ireland. I will write to her about that, as I will on the question about meetings between the DWP and the PPF regarding their performance.

My noble friend Lord Naseby asked what we are doing now that the courts have declared the PPF compensation cap as unlawful. The PPF compensation cap is still a live issue before the courts, and therefore I cannot comment further on it.

My noble friend Lady McIntosh raised the issue of an impact assessment. One has not been prepared for these regulations because the measures do not impose any regulations on business or lift any regulations from it so there is no direct regulatory impact.

My noble friend also asked whether we can seek to reduce reliance on the big four accountancy firms. The Competition and Markets Authority market study on the statutory audit market was published on 18 April 2019. The report made a series of wide-reaching and ambitious recommendations, including proposals for the joint audit and an operational split between audit and non-audit services.

The noble Lord, Lord Hain, rightly mentioned workers, how they are looked after and their rights in relation to both these regulations and pension schemes. I am interested in the book that he referred to; if it is acceptable to the noble Lord, I will write to him with a more specific response to his questions.

The noble Baroness, Lady Janke, asked what happens if scheme trustees or managers and the Pension Protection Fund do not agree on a course of action. We expect PPF and scheme trustees or managers to work together in the common interest of the pension scheme. For example, when a restructuring plan is proposed, in the circumstances specified in the regulations, both the scheme trustees and managers will be able to make an application to the court and participate in meetings ordered by the court.

My noble friend Lord Naseby asked in what circumstances the Pension Protection Fund would increase its levy. The PPF entered the pandemic in a strong financial position, as I said. Its latest annual report showed that it has significant reserves and it was clear that it monitors the position regularly.

My noble friend Lady McIntosh asked who will advise community and mutual organisations. Again, I will need to write to her on that.

The noble Baroness, Lady Sherlock, asked why DCMS still brought forward its regulations when they affected ours. I will write to consult my DCMS colleagues on her questions. I can confirm that CIOs are currently not covered by our regulations; DCMS will resolve this at the next possible opportunity.

I hope that I have answered the majority of noble Lords' questions. As I have committed before, if I have not done so, I will write to noble Lords and place a copy in the Library. I commend the regulations to the House.

Motion agreed.

2.52 pm

Sitting suspended.

Arrangement of Business

Announcement

3.10 pm

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, the hybrid proceeding will now resume. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Proceedings on the consideration of Commons Reasons on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill will follow guidance issued by the Procedure and Privileges Committee. When there are counterpropositions, any Member in the Chamber may speak, subject to the usual seating arrangements and the capacity of the Chamber. Anyone intending to do so should catch my eye or email the clerk—it is probably better to email the clerk. Members not intending to speak on a group should make room for Members who do. All speakers will be called by the Chair.

Short questions of elucidation after the Minister's response are permitted but discouraged. A Member wishing to ask such a question, including Members in the Chamber, must email the clerk. The groupings are binding. Leave should be given to withdraw.

When putting the Question, I will collect voices in the Chamber only. Where there is no counterproposition, the Minister's Motion may not be opposed. If a Member speaking remotely intends to trigger a Division, they should make this clear when speaking on the group. Noble Lords following proceedings remotely but not speaking may submit their voice, Content or Not-Content, to the collection of the voices by emailing the clerk during the debate. Members cannot vote by email; the way to vote will be via the remote voting system.

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

Commons Reasons

3.11 pm

Motion A

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 1, to which the Commons have disagreed for their Reason 1A.

1A: Because Skills for Care and the Migration Advisory Committee already have the remit to report on matters relating to social care and the immigration system.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I call the noble Lord, Lord Rosser, to move Motion A1.

Lord Rosser (Lab) [V]: In the Commons on Monday, the Government chose to describe your Lordships' amendment calling for an independent report on the impact of the end of free movement on the social care sector as "well intentioned", but went on to claim that it was "unnecessary"—

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, if I may intervene, I was going to give a speech. Would the noble Lord bear with me while I speak?

Lord Rosser (Lab) [V]: Yes. I thought I had been called.

The Deputy Speaker (Baroness Garden of Frognal) (LD): I did call the Minister, but she sat down, so I presumed she had finished. No? Baroness Williams of Trafford.

Baroness Williams of Trafford (Con): I was very politely waiting to be asked, then the noble Lord, Lord Rosser, came in. Shall we start again?

My Lords, with the leave of the House, I will turn to Motion A, Amendment 1, and Amendment 1B in lieu, proposed by the noble Lord, Lord Rosser, which would require the Secretary of State to publish an independent report on the impacts of ending free movement on the social care sector. I start by acknowledging the work of noble Lords in the scrutiny of this important Bill, which ends free movement between the EU and the UK, and the passion and commitment with which your Lordships have spoken on a number of issues. We have debated many issues, and although there are some areas on which we may still disagree, I always come back to the focus of this Bill: ending free movement and delivering on the Government's manifesto commitment to introduce a firmer, fairer points-based immigration system.

Amendment 1B requires the Secretary of State to publish the response to the independent assessment within two months of publication and make a statement to Parliament within seven sitting days of publishing the response. I recognise the good intentions behind Amendment 1, but the other place disagreed to it because independent reporting already exists in this area through Skills for Care and the Migration Advisory Committee. The Government remain committed to improving social care, focusing on increased funding and training opportunities and improved recruitment practices. I will reflect further on a few related points.

3.15 pm

The Department of Health and Social Care funds Skills for Care to deliver a wide range of activity to support the Government's priorities for the social care sector. This includes programmes to support employers and the workforce with skills development, promote and support recruitment into the sector and support leadership development. The DHSC's funding also supports the development of Skills for Care's adult social care workforce data system, which forms the national minimum dataset for social care. Skills for Care publishes two annual reports: on the size and structure of the adult social care sector and workforce in England, and the state of the adult social care sector and workforce in England. In addition, Skills for Care makes available national and regional data through its website. The DHSC uses the data produced by Skills for Care, and the trends identified, to inform its policy development to support the adult social care sector to recruit, train and develop its workforce.

As I have said, the independent Migration Advisory Committee now has an expanded remit to examine any aspect of the immigration system and provide annual reports. The Government continue to reiterate their continued commitment to keeping all policies, including the skilled worker route, under review. The MAC is a world-class independent body and has the means and the will to ensure that the views of interested stakeholders and users of the system are fully considered. In doing so, the MAC's consideration always goes beyond its core economic expertise.

Noble Lords will have heard me say a number of times during the passage of this Bill that the immigration system is not the solution to all issues in the social care sector and we must not continue to rely on migrants coming to the UK when the domestic workforce can help to address shortages. Training, recruitment, and retention of staff are the key; we must ensure that these essential workers feel valued. That is why the Government are focused on working alongside the sector, including through Skills for Care, to develop new career pathways within the sector and ensure that the workforce can meet the increasing demands and continue to deliver quality compassionate care. It is also why the Government are committing record funding and investment.

Under the UK's new points-based system, as is now the case, there will be routes for people with general work rights, such as dependants, those joining family or those on youth mobility visas, who may choose to work in the social care sector. I have made this point before, but even with free movement between the EU and the UK, the majority of workers in the social care sector are British citizens, which we must continue to encourage, and non-EEA citizens outnumber EEA citizens, without a specific immigration route. We also intend to review which occupations are eligible for the health and care visa, expanding its remit and benefiting more main applicants and their family members.

Noble Lords will see from what I have said that there is already independent reporting on social care. However, I am prepared to go further and commit today that we will agree to publish an independent assessment of the impact of ending free movement, which will comprehensively cover the impact on the social care sector, within six months of this Bill being passed. We therefore believe that Amendment 1B is unnecessary, although it is very well intentioned. However, I would like to discuss with the noble Lord, Lord Rosser, how we take this forward to ensure that we get the detail right, strike the correct level of scrutiny and clarify some of the definitions that he uses. As the noble Lord has requested, I am happy to give a commitment to carry out the terms of his amendment. I hope that, on that basis, the noble Lord will not insist on his amendment or divide the House on Motion A1.

Motion A1 (as an amendment to Motion A)

Moved by ***Lord Rosser***

At end insert "but do propose Amendment 1B in lieu—

1B: Insert the following new Clause—

"Impact of section 1 on the social care sector

(1) The Secretary of State must commission and publish an independent assessment of the impact of section 1, and Schedule 1, on the social care sector within six months of this Act being passed.

(2) The Secretary of State must appoint an independent Chair to conduct the assessment.

(3) The assessment must consider the impact of provisions in section 1, and Schedule 1, on—

(a) the social care workforce

(b) available visa routes for social care workers;

(c) long-term consequences for workforce recruitment, training and employee terms and conditions; and

(d) such other relevant matters as the independent Chair deems appropri-ate.

(4) A copy of the independent assessment must be laid before both Houses of Parliament within fourteen days of its publishing date.

(5) The Secretary of State must publish a response to the independent assessment within two months of its publishing date.

(6) The Secretary of State must make a statement to Parliament within seven sitting days of publishing the response under subsection (5).""

Lord Rosser (Lab) [V]: I thank the Minister for what she has just said about my amendment, which started off life in Committee, being moved by my noble friend Lord Hunt of Kings Heath, albeit not with exactly the same words. As I understand it from what the Minister has just said, the Government are not prepared to accept the amendment to the Bill but are giving a commitment to carry out the terms of the amendment in full, and that must, therefore, include the timescales laid down in it. If that is the case—and the Minister gave a commitment to carry out the terms of my amendment—then I will not seek pursue my Motion to a vote.

I note that the Minister said that she wished to discuss with me how we ensure—I I think that was what she said—that we get the detail right, and, of course, I am happy to do that within the context of the Government having committed to carry out the terms of my amendment in full, including the timescales laid down in it. I do not think I misheard what the Minister said: I certainly heard the phrase "give a commitment to carry out the terms of his amendment" being used with no caveats added. Therefore, on the basis that the Government are committing themselves to carry out the terms of my amendment in full, then I would be prepared to withdraw my Motion when the time comes.

However, I would like to add one further comment. Within the terms of the amendment, it is, of course, left to the Government to decide who will undertake the "independent assessment of the impact of section 1, and Schedule 1, on the social care sector". These relate to the ending of free movement. From what the Minister has said, I suspect that a candidate will be the Migration Advisory Committee, whose views on even the single issue of funding social care for higher wages have been ignored "for some years", to use the MAC's words. That does not suggest that it is a body whose views on that issue carry much weight with the Government. It will be vital for the independent assessment to have a significant and meaningful input from people of influence who understand fully the way in which the social care sector functions and the constraints under which it operates. Although it is a matter for the Government, I hope they will ensure that that vital, significant and meaningful input occurs.

On the basis that I have understood clearly what the Minister has said on behalf of the Government—namely, that she has made a commitment to carry out the terms of my amendment, and that this must be in full because there were no caveats added—then I would be prepared not seek to pursue the matter to get it written into the Bill. I beg to move.

The Deputy Speaker (Baroness Garden of Frognal) (LD): The following Member in the Chamber has indicated that he wishes to speak: the noble Lord, Lord Hunt of Kings Heath.

Lord Hunt of Kings Heath (Lab): I thank the Minister for her response this afternoon and her agreement that an independent assessment would be undertaken. I endorse the remarks of my noble friend Lord Rosser. At the end of the day, whatever the worthy work of Skills for Care has been and whatever the recommendations made by the Migration Advisory Committee, we have a big problem with the social care sector in relation to the workforce challenges. The intention that, basically, most care workers cannot meet the criteria in the new health and care visa means that, from the beginning of next year, further pressure will be leant upon the sector.

Given that the sector is almost totally dependent either on government funding or on self-funders—who are already hugely overstretched because they sometimes pay more than £1,000 a week for their care—this will not be solved simply by saying that we can rely on the UK population. There will have to be an injection of resources; this is inescapable. In thanking the Minister, which I do very much, for her response this afternoon, I remind the House that the social care sector faces many huge challenges, and, in the end, the Government are going to have to come up with the necessary if we are going to get it out of the problems that it now faces.

The Deputy Speaker (Baroness Garden of Frognal) (LD): Does anyone in the Chamber wish to speak? We have not received any requests as yet. Does the Minister wish to reply to the noble Lord, Lord Hunt? No? Then I call the noble Baroness, Lady Hamwee.

Baroness Hamwee (LD) [V]: I am, of course, pleased to hear the Government's decision on this. From and on behalf of our Benches, I added my name to the previous versions of this amendment. The point has been made throughout the Bill that the amendment is unnecessary, but, given that its proposers have kept on pressing, clearly they have not been satisfied. This is good news, but one always has to think around the subject, and I wonder what the correct level of scrutiny is. To me, it involves stakeholders very widely and the context for consideration of a proposal, which, in this case has to be more than just the immigration provisions which may apply. One thing on which I agreed with the Commons and with others who have spoken is that the social care crisis cannot be solved through immigration alone: it is much wider than that.

The correct level of scrutiny involves the organisation being scrutinised—in this case, the Government and their proposals—not being committed to its initial proposition but being prepared to listen to the responses. We are always faced with statutory instruments where there is no possibility of making a change. It would be tragic—I do not think that is putting it too highly—if the opportunity is not taken on this occasion to adopt a much more open-minded practice. Having said that, I welcome what the Minister has said.

Baroness Williams of Trafford (Con): I apologise to noble Lords; I keep wanting to pop up at the wrong time during this debate. However, I thank all noble Lords who have spoken in this part. First, I come to the noble Lord, Lord Rosser, and absolutely commit to the timescales set out in his amendment. He asked,

[Baroness Williams of Trafford]
with a certain degree of cynicism, I think, who will carry it out and suggested the Migration Advisory Committee. It must be a hot contender for it, but I take his point about the skills of the people who carry it out.

When settling on the proposals for the new points-based system, we did not do it in isolation; we conducted an extensive programme of engagement with stakeholders—as the noble Baroness, Lady Hamwee, and the noble Lord, Lord Hunt of Kings Heath, alluded to—across the whole of the UK, including in the social care sector, listening to people's concerns and hearing about the unique challenges they face.

Both the noble Lord, Lord Hunt of Kings Heath, and the noble Baroness, Lady Hamwee, have in different ways pinpointed that the workforce challenges are not single silver-bullet issues—they will not be solved by continuing along the trajectory of low pay. It is incumbent on employers in what has been, throughout the last few months and years, a very valued occupation not to continue to rely on low-paid workers. As the noble Baroness, Lady Hamwee, said, social care cannot be solved just by immigration; progress needs to be made with a whole plethora of interventions in this area of a much-needed, well-respected and very much appreciated workforce.

3.30 pm

Lord Rosser (Lab) [V]: In the light of what the Minister has said, which I appreciate and welcome, I shall withdraw my Motion. Obviously, I do so on the basis of the Government having given a commitment to carry out the terms of my Amendment 1B in full. I am happy to participate in the further discussions which the Minister has said she wishes to have with me, and I therefore beg leave to withdraw the Motion.

Motion A1 (as an amendment to Motion A) withdrawn.

Motion A agreed.

Motion B

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 2, to which the Commons have disagreed for their Reason 2A.

2A: Because the Commons consider it appropriate to ensure equal treatment of family members of all UK nationals under the immigration system.

Baroness Williams of Trafford (Con): My Lords, Amendment 2, in its previous form, was also disagreed to in the other place. It seeks to continue certain family reunion arrangements provided by EU law—the so-called Surinder Singh route.

Amendment 2B, tabled in lieu by the noble Baroness, Lady Hamwee, would require the Government to provide the right for British citizens resident in the EEA or Switzerland by the end of the transition period to return to the UK accompanied, or joined, by their non-British close family members on current EU free movement law terms until 31 December 2040—that is, for a period of 20 years from the end of the transition period. They would retain preferential family reunion rights for that period. For the next 20 years, family members of British citizens living in the EEA or Switzerland would continue not to be subject to the same Immigration Rules as family members of other British citizens. This would perpetuate a lack of parity, which the Government cannot accept.

Family members of British citizens resident in the EEA or Switzerland at the end of the transition period are not protected by the withdrawal agreements in terms of returning to the UK, but we have made reasonable transitional arrangements for them. British citizens living in the EEA or Switzerland will have until 29 March 2022 to bring their existing close family members—a spouse, civil partner, unmarried partner in a long-term relationship, child or dependent parent—to the UK on EU law terms. The family relationship must have existed before the UK left the EU on 31 January 2020, unless the child was born or adopted after that date, and must continue to exist when the family member seeks to come to the UK. Those family members will also then be eligible to apply to remain in the UK under the EU settlement scheme.

Family members will be able to come to the UK after 29 March 2022 but will then need to meet the requirements of the family Immigration Rules. Those rules apply to the family members of other British citizens, irrespective of where they come from, and reflect the public interest in preventing burdens on the taxpayer and promoting integration. This is a fair and balanced policy. It was announced on 4 April 2019, so those affected will have had almost three years to decide whether they wish to return to the UK by 29 March 2022 on current EU law terms and, if they do, to make plans to do so.

The Government's approach strikes the right balance between providing sufficient time for British citizens and their family members living in the EEA or Switzerland to make decisions and plans for returning to the UK, and ensuring equal treatment of the family members of British citizens under the Immigration Rules as soon as is reasonably possible once free movement has ended. We must be fair to other British citizens, whether they are living overseas or in the UK. The same rules should apply to all, not continue for the next 20 years to give preferential treatment to those relying on past free movement rights, which will have been abolished. That is what a fair global immigration system means.

I hope that noble Lords will not insist on their Amendment 2 or agree to Amendment 2B in lieu. I beg to move.

Motion B1 (as an amendment to Motion B)

Moved by ***Baroness Hamwee***

At end insert "but do propose Amendment 2B in lieu—

2B: Page 3, line 8, at end insert—

"(5A) Regulations made under subsection (1) must make provision to enable UK citizens falling within the personal scope of—

(a) the Withdrawal Agreement,

(b) the EEA EFTA separation agreement, or

(c) the Swiss citizens' rights agreement,

to return to the United Kingdom before 31 December 2040 accompanied by, or to be joined in the United Kingdom before 31 December 2040 by, close family members.

(5B) Regulations under subsection (1) may not impose any conditions on the entry or residence of close family members of UK citizens which could not have been imposed under EU law relating to free movement, as on the day on which this Act comes into force.

(5C) For the purposes of subsection (5A)—"close family members" means—

(a) children (including adopted children), and

(b) other close family members where that relation subsisted on or before 31 January 2020 and has continued to subsist;

"Withdrawal Agreement", "EEA EFTA separation agreement" and "Swiss citizens' rights agreement" have the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020 (interpretation).""

Baroness Hamwee (LD) [V]: My Lords, I am moving an amendment similar to that moved at a previous stage but with a change to meet one of the points made against it.

It came as a shock to me to learn that there will be restrictions on, and conditions applying to, a UK citizen wishing to return to the UK with a non-British family. In Committee, I asked what the Minister would advise a couple with elderly parents in both countries, for both of whom they wanted to care. This rather follows on from the previous amendment. Following that, I received many emails describing many, varied families affected. They all explained the anxiety they felt.

The minimum income requirement will apply, as the noble Baroness said, after March 2022 as it applies now to a UK citizen wishing to bring a non-UK—currently non-EEA—family to this country. I have always felt that the MIR is very harsh. It presents real difficulties, including as regards the spouse's contribution to the household income. In the 21st century, most households are necessarily two-income households. In response to the point that these families should be treated the same as families that include non-EEA citizens, I say that it should not apply to them either, but that would not be within the scope of this Bill—although I would have liked to have taken that opportunity. Those families will, in very many cases, have been aware of the situation when the family unit was created.

I understand the Government's concern that EEA citizens should be treated the same as citizens in the rest of the world after the end of free movement, but the situations are not exactly the same. When marriages were made and families created after we had acquired rights of free movement, who would have given a thought to what might happen if those rights ended, or indeed given thought to whether those rights might end? And who in the British military who met their spouse when they were serving abroad would have contemplated this situation? I do hope that the Secretary of State has read their letters.

The provision may not be retrospective in a technical sense, but in an everyday sense it is. This is not something that is widely understood, even now. The Government's original proposal in June 2017 did not deal with the issue. As the noble Baroness said, the public announcement of the 2022 date came out in a paper in April 2019 and was presented as a concession. The paper said that the Government recognised that UK nationals needed certainty—this was after we were supposed to have left the EU.

I wondered whether I had missed something here, so I checked on what had been done, and when, to make people aware of the position. Had the Foreign and Commonwealth Office attempted to draw this to people's attention? Had our embassies raised it in local town hall meetings abroad? One, rather dry, comment made to me was that, if these citizens had voting rights, the embassies would have been able to make direct contact with them. I understand that the targeted FCO campaigns have focused largely on rights in the host country, advising people to register and to change their driving licence, for instance.

On the "Living in France" and "Living in Italy" pages on GOV.UK, I clicked on "Ending your time living abroad" and, after a couple more clicks, found—because I was looking for it—"bringing your family", which told me that a visa would be needed for them. One might easily stop there. Immigration rules required further clicks, and so on. I understand that all this is still coming as a surprise, and of course a shock, to those who happen to trip over it.

An EU citizen here now or by the end of this year can bring in family members—and quite right too. But is it not right for our own compatriots? This is discrimination against UK citizens. It is not as if what we propose would open any floodgates. It is self-limiting: no-one would qualify after free movement had ended; it is not a "perpetual" or "for ever" right, as it has been badged.

Criticism was made on Report that there was no cut-off date by which a UK national must return to the UK. Ministers say that three years gives a reasonable period to plan. This version of the amendment includes a cut-off date—deliberately long—of 20 years after the end of the transition period. By then, most of those affected, who will have formed settled relationships and families, are likely to be over 50 with parents of 70 or 80, so their families would be in a better position to know whether returning to the UK was likely to be necessary. The Minister in the Commons presented the 2022 date as reflecting a need

"to be fair to other British citizens"—[*Official Report*, Commons, 19/10/20; col. 804.]

as if there is something "other" about UK people who have married people from the EEA. He also said that the Government would keep the policy "under review", so I would be grateful if the noble Baroness the Minister could expand on that today: when, how, with whom? She has described the policy as simple fairness. We disagree. What we are proposing is what I would describe as fair, and I will wish to test opinion of the House.

The Deputy Speaker (Baroness Garden of Frognal) (LD): The following Members in the Chamber have indicated a wish to speak: the noble Baroness, Lady Ludford, and the noble Lord, Lord Oates. I now call the noble Baroness, Lady Ludford.

Baroness Ludford (LD): My Lords, I agree with everything that my noble friend Lady Hamwee has said. The Minister said that the arrangements that the

[Baroness Ludford]
Government have made are "reasonable", but one has also to think of the reasonable expectation of British citizens who may have moved abroad, married, set up partnerships and had families with citizens from elsewhere in the EEA. They would have had no reason to suppose that the conditions and rules under which they did that would change—after all, the promise of a referendum in 2015 came somewhat out of the blue; it really was not expected. My noble friend's amendment would accommodate fairly those reasonable expectations while meeting the Government's apparent objection that they do not want a period which is unlimited.

The Conservative manifesto for the 2017 general election promised to legislate for "votes for life" for Britons living abroad. That has not happened, but, at the time, the Conservatives rejoiced at scrapping what they called the previous Labour Government's "arbitrary" 15-year rule. I think that one could also describe the Government's three-year rule in this scenario for UK citizens living in the EU as arbitrary.

Mr Chris Skidmore, who at the time was Minister for the Constitution, said:

"British citizens who move abroad remain a part of our democracy and it is important they have the ability to participate … Our expat community has an important role to play."

One can deploy that statement in this context. These were valuable sentiments about Britons living abroad. I would transfer them to say that British citizens residing elsewhere in the EEA should have the right to participate not only politically but economically and socially in this country. To put them now in a quandary of having to decide by March 2022 what their family circumstances with parents and children could be in the decades ahead is an unnecessary, arbitrary and unreasonable imposition. Twenty years is a highly reasonable proposition.

3.45 pm

The Conservative Party has long claimed to be the party of the family. Please can it demonstrate that it is the party of families of UK citizens who chose, in reasonable expectation of free movement rights continuing, to live and set up home and families with citizens from the rest of the EEA. They are now placed in extremely difficult and worrying circumstances. It is not fair play to them to do that. My noble friend has given the Government an opportunity to find a way a through this which preserves honour and fairness all round.

Lord Oates (LD): My Lords, I shall speak only briefly because my noble friends Lady Hamwee and Lady Ludford have comprehensively set out the injustices that will be visited on thousands of British citizens and their families if the Government's policy stands. I shall make just two points.

First, the argument that to retain the existing rights of UK citizens with EEA spouses or families is somehow discriminatory or unfair as against UK citizens with non-EEA spouses has no merit. I speak as a UK citizen with a non-EEA spouse. When we made decisions about our lives, we did so in the knowledge and understanding of the rules at the time, just as UK citizens with EEA spouses made decisions about their lives on the basis of the rules at the time, which they could have had no reasonable expectation would change. The only way in which one could say that discrimination would occur would be if this amendment suggested that UK citizens forming relationships with EEA citizens going forward should be afforded different rights, but that is not what it says.

Secondly, yesterday, your Lordships' House passed two amendments in lieu on agri-food standards. They were important and I was pleased to support them, but this amendment, I venture, is much more important, because it is about people's lives. If it is not passed, huge misery will be inflicted on a large number of people. I do not think that we have really understood the level of suffering that will be inflicted. Frankly, it is wrong and heartless, and we should not allow it to stand.

Lord Rosser (Lab) [V]: We do not minimise the importance of this issue any more than we minimise the importance of any of the amendments and the issues they covered which this House sent to the Commons and which the Commons rejected. As has been said, British citizens who moved to other EU countries will lose the right they had to return to this country of birth with a non-British partner or child, perhaps to look after an ageing parent, unless they can meet financial conditions that will be beyond the reach of many. While British citizens who have moved to the EU or EEA before the end of 2020 will face these restrictions, EU citizens who have moved to the UK before the end of 2020 will not.

However, while this issue of the right for UK citizens to return with their family was referred to by some speakers during the Commons proceedings on Monday, it was not taken to a Division. This rather indicates that we have now taken this matter as far as we can at present, having sent it to the Commons once. For that reason we will abstain if Amendment 2B in lieu is taken to a vote. In the Commons on Monday, the Government said they would

"continue to keep this area under review".—[*Official Report*, Commons, 19/10/20; col. 804.]

We call on it to continue to look further at this issue, in which I declare a personal family interest, outside the Bill and well before the deadline date of 29 March 2022 for bringing existing close family members to the UK on current EU law terms.

Baroness Williams of Trafford (Con): I thank all noble Lords who have spoken. I start with the noble Lord, Lord Rosser, who rightly points out that the Commons did not divide on this matter on Monday. We should remind ourselves that the British people voted to leave the EU in 2016; we are now four years on from that point.

I will answer the noble Baroness, Lady Hamwee: of course we keep all legislation and policy under review, and we are assisted by MAC in that endeavour. We recognise that UK nationals who moved to the EU expected free movement rights to continue. That is why we have provided for these transitional arrangements, but we have to be fair to other UK nationals whether they live overseas, beyond the EU, or in the UK. The UK family Immigration Rules reflect the public interest in preventing burdens on the taxpayer and promoting

integration. UK nationals protected by the withdrawal agreement because they are living in the EEA before the end of the transition period do, of course, have lifetime rights to be joined in their host state by existing close family members. This mirrors the rights of EEA citizens living in the UK by then.

The noble Baroness, Lady Ludford, challenged me about the date of 29 March 2022 being arbitrary. It represents three years after the date when the UK was originally supposed to leave the EU. For me, it strikes the right balance between providing sufficient time for UK nationals and their family members living in the EEA or Switzerland to make decisions and plans for returning to the UK, and ensuring equal treatment of the family members of UK nationals under the Immigration Rules as soon as reasonably possible, once free movement to the UK has ended.

Baroness Hamwee (LD) [V]: I am of course grateful to my noble friends who supported this amendment. I hope that I never give my noble friend Lady Ludford cause to look up what I have said in the past. I am particularly grateful to my noble friend Lord Oates, who—if you will—embodies the point I was making about the differences between those who married EU citizens, not knowing what was coming down the road, and those in his position.

I am disappointed in Labour's response to this because it is a legislative opportunity to get this sorted quickly. The noble Lord, Lord Rosser, and I asked about keeping the policy under review, but it sounds from the Minister as if this is no more than the normal keeping of a policy under review: no detail, no particular plan, no timetable. What she said is not a reason not to pursue this amendment. As my noble friend says, this is not fair and I beg to test the opinion of the House.

3.55 pm

Division conducted remotely on Motion B1

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4.07 pm

Motion B agreed.

Motion C

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 3, to which the Commons have disagreed for their Reason 3A.

3A: Because local authorities are supporting children in care and those entitled to care leaving support to obtain UK immigration status under the EU Settlement Scheme.

Baroness Williams of Trafford (Con): I ask that this House do not insist on its Amendments 3, 6, 7, 8 and 10, as set out in Motions C, F, G, H and K respectively, to which the Commons have disagreed for their Reasons 3A, 6A, 7A, 8A and 10A.

I will speak to Motion C on Lords Amendment 3, which provides for children in care and care leavers who lose their free movement rights under the Bill to obtain indefinite leave to remain—or settled status—under the EU settlement scheme where they apply to the scheme or a local authority does so on their behalf.

This would be regardless of how long the child or young person had been in the UK. I will also address Motions F, G, H and K, covering Lords Amendments 6, 7, 8 and 10, which cover a time limit on detention.

I know that the noble Lord, Lord Dubs, will be disappointed with me on the position taken by the other place on Lords Amendment 3, but I reassure him that the Government agree as to the importance of protecting the rights of children in care and care leavers and other vulnerable groups as we end free movement. The Home Office continues to provide extensive support to local authorities, which have relevant statutory responsibilities for this cohort, to ensure that these children and young people, like other vulnerable groups, get UK immigration status under the EU settlement scheme. This includes the Settlement Resolution Centre, which is open seven days a week to assist local authorities with this work. It also includes grant funding over last year and this year of up to £17 million to organisations across the UK to support vulnerable groups in applying to the scheme. The number of organisations funded for this work has now been increased from 57 to 72.

A recent survey of local authorities by the Home Office has so far identified fewer than 4,000 children in care and care leavers eligible for the EU settlement scheme, with over 40% of these having already applied for status under the scheme. Most of those who have applied have already received an outcome of settled status. Local authorities are making good progress to identify and support relevant cases.

The Government have made it clear that, in line with the withdrawal agreements, where a person eligible for status under the EU settlement scheme has reasonable grounds for missing the 30 June 2021 deadline, they will be given a further opportunity to apply. We have also made it clear that those reasonable grounds will include where a parent, guardian or local authority does not apply on behalf of a child. Therefore, if a child in care or a care leaver misses the deadline, they will still be able to obtain lawful status in the UK.

The Government are not therefore persuaded of the need for this amendment, which also presents some technical problems that the Government cannot accept. It effectively exempts this cohort from the suitability requirements of the scheme when there is absolutely no reason to do so. It also seeks to backdate the settled status granted following an application made after the 30 June 2021 deadline. This runs completely counter to the general operation of the Immigration Rules made under the Immigration Act 1971, under which status has effect from the date on which it is granted.

I hope noble Lords will agree that, while understanding and supporting the motivation behind this amendment, the House should not insist on this amendment.

I shall now address Motions F, G, H and K on Lords Amendments 6, 7, 8 and 10, which relate to introducing a detention time limit on EEA and Swiss citizens. Detention is a very important issue that merits debate, but it is not directly relevant to the purpose of this Bill, which is to end free movement. The central point of the Bill is a commitment to a global immigration system, and equal treatment of immigrants from all nationalities as we exit the transition period. These amendments seek to impose a time limit on detention only for EEA and Swiss citizens, which would lead to a discriminatory position for those who are not. It is important to acknowledge that the other place disagreed to the amendment for these reasons.

On the substance of the amendment, to impose a 28-day time limit on detention is not practical and would encourage and reward abuse. No European country has adopted anything close to a time limit as short as that which is proposed in these amendments, and countries such as Australia and Canada have not gone down this route at all. We need an immigration system which encourages compliance but, where people refuse to leave voluntarily, we must have the ability to enforce that removal. We do not detain indefinitely; there must always be a realistic prospect of removal within a reasonable timescale, and this is a complex process that requires a case-specific assessment to be made for every single person for whom detention is considered.

A time limit would allow those who wish to frustrate the removal process to deliberately run down the clock until the time limit is reached and release is guaranteed. Under these amendments, any person in scope who is detained for 28 days will automatically be released, regardless of the facts of their case, including some foreign national offenders who present a genuine threat to public safety.

The Home Office operates a number of safeguards to review detention and prevent anyone entering detention who would otherwise comply with a removal from the community. Some 95% of people who are liable for removal from the UK are managed in the community while their cases are progressed. The detention gatekeeper and case progression panels are key operational safeguards. Where detention is deemed necessary, there is judicial oversight through bail applications to the tribunal, and the continuing detention of any individual remains under regular review by the Home Office.

Everyone in immigration detention is protected by these safeguards, which entitle them to apply for bail hearings at any point, to appeal against any refusal of asylum and to have access to legal representation. If we accept a 28-day time limit, it will enable these people to exploit the immigration system, making unmeritorious claims to avoid their removal. In the current immigration system, it is only in the most complex cases that detention exceeds 29 days. A time limit would cripple the function of the detention system, exposing it to abuse, undermining our capacity to enforce removals and potentially endangering public safety. I hope that noble Lords will agree that this amendment is not only unconnected with the main purpose of this Bill but unsupportable, and I urge them not to insist on this amendment, which would lead to unfair treatment between EEA and non-EEA citizens. I beg to move.

4.15 pm

Baroness Hamwee (LD) [V]: My Lords, I very much regret the rejection of the clause to which your Lordships had agreed regarding children in care. The Minister said on a previous occasion that we were united on children in local authority care needing a secure status.

[Baroness Hamwee]
But insisting on this being achieved for this cohort—and we all understand the difficulties—through the EU settled status scheme rather than on a declaratory basis seems to indicate that the Government are more concerned not to acknowledge that the scheme cannot perfectly deal with every situation rather than to acknowledge the special situation of these children and young people.

The Commons formal reason is that local authorities are supporting this cohort, and the Government are funding support. Well, good—but what do the Government have to lose? The Minister in the Commons said that the idea of applying such a provision retrospectively runs counter to the general operation of the Immigration Rules. But when it is not a tightening of the rules, I do not understand the comment—but there it is.

I also of course regret the rejection of applying a time limit to the detention of asylum seekers and others. The suite of amendments applies clear criteria for detention, and national security would disqualify a detainee from the time-limit provisions. I do not think that it is right to use the position of foreign national offenders as if all detainees were offenders. The amendments would also prevent cat-and-mouse redetention.

The great majority of detainees are released eventually into the community, but they do not know when this will be. Again, the Commons Minister said that it was not possible just to detain someone indefinitely "as such". That misses the point that there is no time limit, and that means a loss of hope. For months, people in the UK whose lives are restricted to some extent have been saying that they need to know when all this will end, which is understandable—and there is something of a read-across.

The Commons formal reason is that there are already procedural safeguards to ensure the lawfulness of the period of detention. They work so well that, as my right honourable friend Alistair Carmichael observed, £7 million in compensation was paid out last year for 272 cases of wrongful detention.

But I can at least use this opportunity to say how much we welcome the Court of Appeal's judgment today quashing the judicial review and injunctions policy on the application of medical justice, with the intervention of the Equality and Human Rights Commission and the good work of the Public Law Project—not, if I have the Minister's word correctly, an "unmeritorious" application.

We shall not pursue this matter today, but we will be back soon on the issue, because it is a matter of fairness and humanity.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the decisions taken by the other place on all these issues are most disappointing. I thought my noble friend Lord Dubs made a convincing case, but sadly it was not listened to in the other place, as is so often the case now. I hope the Government will take a constructive attitude in working with local authorities to protect vulnerable children. Many local authorities have considerable pressures on them in terms of looking after children in care, and I hope the noble Baroness will confirm that there is a positive attitude from the Government to address these concerns, even if they are not prepared to accept my noble friend's amendment today.

I note the comment—the noble Baroness, Lady Hamwee, also made the point—that the other Motions in this group make reference to all these dangerous criminals who would potentially be released into the public. I think we have to accept that the people we are talking about here are vulnerable people, and that if there are people who are dangerous criminals, there are other procedures to deal with them. We should not be wrapping people up like that: these are vulnerable people who need our help and support. There is an issue about people being locked up in detention when they have done nothing wrong and not knowing when they will get their release date.

The noble Baroness may well say that they are normally released into the community. That is obviously really good news, but if you are locked up in a cell or in a detention centre and you do not know when you will be released, the fact that you will be released at some point in the future may not be a huge comfort to you. Again, we are not going to pursue these issues any further today, but the fact that the Government rely on those arguments underlines the weakness of their case in this respect. The noble Baroness, Lady Hamwee, said that we will return to these issues at a later date, but we will not be pressing any of them today.

Baroness Williams of Trafford (Con): I thank noble Lords for their comments. The noble Baroness, Lady Hamwee, initially challenged me on what the Government have to lose. It is not really about what the Government have to lose; it is a demonstration that, throughout this process, we have constantly articulated just what the Government are doing to ensure that children in care, or other vulnerable people, are able to register for the EU settlement scheme. We have put in quite a lot of resource to ensure that that happens. We have increased the number of organisations helping in this regard from 57 to 72 and we will put significant funding in place to ensure that people eligible to apply do so.

The noble Baroness, Lady Hamwee, said that we are acting as though all detainees are offenders, and the noble Lord, Lord Kennedy, talked about the number of people detained who are vulnerable. In fact, a snapshot of offenders from the EU detained at the end of March 2020 found that if a 28-day time limit were in place, we would have been required to release into the community 166 foreign national offenders being held under immigration powers to effect their deportation. Of these offenders, 35 had committed very serious crimes, including murder, rape, offences against children and other serious sexual or violent offences. There is no indefinite detention, but it is necessary sometimes to keep people detained, particularly serious offenders and those frustrating their removal.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I have received no requests to speak after the Minister, so I shall put the question.

Motion C agreed.

Motion D

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 4, to which the Commons have disagreed for their Reason 4A.

4A: Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Baroness Williams of Trafford (Con): My Lords, Lords Amendment 4 and Amendment 4B in lieu, tabled by the noble Lord, Lord Dubs, relate to family reunion and unaccompanied asylum-seeking children. I ask noble Lords to note that the other place highlighted that Lords Amendment 4 would engage financial privilege. Amendment 4B in lieu would remove the previous restriction on charging a fee for applications for leave to enter under the proposed new route; however, there remain a number of costs with this amendment. These relate to family reunion applications—not just the cost of processing the application but the cost of providing asylum support and accommodation for asylum seekers awaiting a decision on their claim. Clearly those costs could not and should not be recouped via an application fee.

Turning to the substance of the amendment, we had many interventions on this issue on Report and I confirm the Government's commitment to the principle of family unity and to supporting vulnerable children—we take their well-being very seriously. We have a proud record of providing safety to those who need it, through our asylum system and world-leading resettlement schemes. We have granted protection and other leave to more than 44,000 children seeking protection since 2010. The UK continues to be one of the highest recipients of asylum claims from unaccompanied children across Europe: we received more claims than any EU member state in 2019, and 20% of all claims made in the EU and UK.

We have made a credible and serious offer to the EU on new arrangements for the family reunion of unaccompanied asylum-seeking children. It remains our goal to negotiate such an arrangement. I reaffirm my commitment to further constructive engagement to identify ways to level up access to safe and legal work pathways for talented displaced persons. I once again thank the right reverend Prelate the Bishop of Durham and Talent Beyond Borders for discussing this with us and I look forward to continuing to work together to attract the best and brightest talent to the UK, regardless of background. Furthermore, as the Home Secretary made clear in her speech at the Conservative Party conference, safe and legal routes are a core part of our proposed reforms to the asylum system to ensure that it is both fair and firm.

I therefore ask the noble Lord, Lord Dubs, not to insist on his amendment, or to divide the House on Amendment 4B in lieu. I beg to move.

Motion D1 (as an amendment to Motion D)

Moved by ***Lord Dubs***

At end insert "but do propose Amendment 4B in lieu—

4B: Insert the following new Clause—

"Leave to enter: family unity and claims for asylum

(1) For at least such time as a relevant agreement has not been concluded and implemented, a person to whom this section applies must be granted leave to enter the United Kingdom for the purpose of making a claim for asylum.

(2) This section applies to a person who—

(a) is on the territory of any relevant Member State;

(b) makes an application for leave to enter for the purpose of making a claim for asylum; and

(c) would, had that person made an application for international protection in that Member State, have been eligible for transfer to the United Kingdom under Regulation (EU) No. 604/2013 by reason of a relevant provision if the United Kingdom remained a party to that Regulation.

(3) The Secretary of State shall make arrangements to ensure that applicants receive a decision regarding their application under subsection (2)(b) no later than two months from the date of submission of the application.

(4) A claim for asylum made under subsection (2)(b) must remain pending throughout such time as no decision has been made on it or during which an appeal could be brought within such time as may be prescribed for the bringing of any appeal against a decision made on a claim or during which any such appeal remains pending for the purposes of section 104 of the Nationality, Immigration and Asylum Act 2002 (pending appeal); and a claim for asylum remains one on which no decision has been made during such time as the claim has been made to the Secretary of State and has not been granted, refused, abandoned or withdrawn.

(5) The Secretary of State must, within six months of the day on which this Act is passed, lay before both Houses of Parliament a strategy for ensuring that unaccompanied children on the territory of a relevant Member State continue to be relocated to the United Kingdom, if it is in the child's best interests.

(6) For the purposes of this section—

"applicant" means a person who makes an application for leave to enter under this section;

"claim for asylum" means a claim for leave to enter or remain as a refugee or as a person eligible for a grant of humanitarian protection;

"Regulation (EU) No. 604/2013" means Regulation (EU) No. 604/2013 of the European Parliament and of the Council including the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast);

"relevant agreement" means an agreement negotiated by a Minister of the Crown, on behalf of the United Kingdom, with the European Union in accordance with which there is provision for the transfer of a person who has made an application for asylum in a Member State of the European Union to the United Kingdom which is no less extensive than Regulation (EU) No. 604/2013 insofar as that regulation operated to enable the transfer of a person to join a child, sibling, parent or other family member or relative in the United Kingdom before exit day;

"relevant Member State" means a Member State for the purposes of Regulation (EU) No. 604/2013;

"relevant provision" means any of the following articles of Regulation (EU) No. 604/2013—

(a) Article 8;

(b) Article 9;

(c) Article 10;

(d) Article 16;

(e) Article 17.""

Lord Dubs (Lab) [V]: My Lords, in moving the amendment in my name, I shall comment on the Commons reason for rejecting an amendment from this House, which states:

"Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient."

Given the time we spent on the issue and its importance, to say that the technicality of financial privilege is sufficient to dispose of it in the eyes of the Commons, I think falls short of being humanitarian and falls short of respecting the opinions of this House.

When I was in the Commons, there were some colleagues who made themselves experts on parliamentary procedure and were virtually walking Erskine Mays. I have no wish to follow them down that path, but I note the issue of financial privilege seems to occur only when the Government do not like something to do with child refugees. If I can take the House back to 2016, we passed an amendment to the then Immigration Bill; when it got to the Commons the Government used financial privilege as a technical reason, so when it came back to this House we changed the wording and eventually it passed again and the Government accepted it.

4.30 pm

Financial privilege, as defined in relation to this amendment, is merely a footnote to *Erskine May*. Still, it may be important to the Government. However, normally when an amendment involves some financial expenditure, a charge on public funds, the Government waive the issue of financial privilege. But they did not do so for this amendment or the one in 2016. I would contend that the majority of amendments passed by this House are inevitably bound to involve some charge on public funds. As I said, the Government normally waive this argument, but have not done so in this case.

However, with colleagues from Safe Passage and other NGOs who have been helping me with this, we looked at the amendment that the Government took exception to on the grounds of charge to public funds and removed from it the reference that there should be no fee for the making of a particular application. That has been removed, so there will be a fee.

Furthermore, the Government have said that they put forward a proposal—which we considered very weak and would exclude most of the children who ought to be eligible—which would itself involve some recourse to public funds. The Government must have been prepared for this. Frankly, I am not persuaded by this argument. The merits of the case are much too important to be sidelined on what I regard as a bit of a technicality.

I turn very briefly to the substance of the amendment, as a lot of the arguments have already been well rehearsed in this House in Committee and on Report. The Government are keen to say that the Immigration Rules might be sufficient. I contend that that will not do. The Immigration Rules are a blunt instrument; they are not susceptible to amendment by this House, and when changes are put forward again, they are on a "take it or leave it" basis. The Immigration Rules are not a sufficient excuse for saying this amendment is unnecessary.

It is also possible to apply for family reunion outside the Immigration Rules. This is a highly exceptional procedure that does not often happen. It is not a reason for rejecting the rights of a number of children who are desperate for safety.

We have only 10 weeks to go before the end of the transition period, and it does not look as if there will be any agreement on child refugees, even on the basis of the Government's rather weak proposals, which I understand are not under discussion. The last chance we have before 1 January next year is to pass this amendment. We have seen and know of the difficulties facing young people who are sleeping rough under the trees in Calais or in the camps on the Greek islands. We have seen the terrible tragedy that befell the Moria camp when it was burned down. What will happen to the children and other people there? It seems to me that when other EU countries are willing to offer safety to some of the children in the camps on the Greek islands, the least we can do is to do likewise.

We are talking about a small number of young people, many of whom in the end make their way here across the dangers of the channel, either on the back of a lorry or in rubber dinghies. For some, there are tragic consequences—maybe they drown in the channel—but others manage to make it here. If we keep safe and legal routes open, there is at least a chance of having an orderly process which is fair to the young people involved—and to this country as well, because it means the process can be managed and they do not all arrive in Kent, putting a lot of pressure on the local authority there.

This is a really important issue. How we deal with family reunion for unaccompanied child refugees is crucial to whether we are a humanitarian country or not. I believe we are. I also believe, although not all people in this country will agree, that if the argument is put the majority will still say, "Yes, we should do the right thing by unaccompanied child refugees." If passed, this amendment will give hope to a small number of very vulnerable children. I beg to move, and will wish to test the opinion of the House unless the Government agree to the amendment.

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): My Lords, I have not received any indication that any Member wishes to speak who is not listed. Does any noble Lord in the Chamber wish to speak at this point before I move on? In that case, I call the next speaker, the noble Baroness, Lady Meacher.

Baroness Meacher (CB) [V]: My Lords, I support most strongly the amendment of the noble Lord, Lord Dubs, which provides for refugee children to come to the UK from EU countries if they have family here with whom they can reunite.

The Government say they have proposals to deal with family reunion, but as the noble Lord has pointed out—I will not repeat his explanation—those proposals would not provide a secure route for child refugees to join their families here in the UK. Why is this country so much less willing than our neighbours in Europe to accept these vulnerable children? Germany stands out as the most generous and morally correct European country on this issue, having taken 71,000 children

in 2019, but we do not even measure up to France, Greece or Spain—and two of those countries are a great deal less well off than we are.

It is important to note that local authorities, if adequately funded, are willing to welcome refugee children from Europe and, as my noble friend Lord Kerr pointed out on Report, the Government will have public support if they accept the amendment of the noble Lord, Lord Dubs. Surely the Government want some public support, do they not? They have enough problems on other issues at the moment. The British public understand the importance of refugee children being able to join their families, whatever the reason they became separated in the first place.

In her introductory remarks, the Minister referred to the costs of housing asylum seekers. Will she clarify that the Government would not have to fund the housing of unaccompanied children who come over here to live with their relatives? It is quite important that there is not that financial hit for the Government.

If the Government reject this amendment and children are not able to join their families under the Government's proposals, many will inevitably resort to the traffickers and the rubber dinghies, with inevitable loss of life. Surely, it is only a matter of time before the Government are challenged under the Human Rights Act, in particular Article 8, on the right to respect for your family life. I would be grateful if the Minister responded to that point.

As the Minister will recognise, this amendment has huge cross-party support and public support across the country. I hope she can persuade her colleagues to accept it.

Baroness Hamwee (LD) [V]: My Lords, at every stage, tributes have been paid to the noble Lord, Lord Dubs—rightly so, but I imagine he must sometimes be shouting at his screen, while on mute, "Forget the tributes, just accept the amendment."

The Commons reason is that leave to enter to make an asylum claim, and a strategy to ensure that an unaccompanied child can be relocated in the UK if it is in the child's best interests, would be, in their words, as the noble Lord said, a "charge on public funds". Like him, I appreciate that this is a standard response, but it in no way reflects the debate. They trust that we will regard it as sufficient; it is not a sufficient reason.

We were told that it would not be right to undermine negotiations with the EU, with which, it must be said, agreement on this issue shows no sign of life at all. Domestic legislation must be the least threat in this context. It is still not too late to do the right thing.

Our Immigration Rules are inadequate, and applications outside them rarely successful. The Government have announced that they are looking at safe and legal routes for those seeking sanctuary next year. We on these Benches will not subscribe to the notion that this is an issue for next year. The routes are unsafe now, and we could make them considerably safer. We support the amendment.

Lord Rosser (Lab) [V]: Currently, the only legal way to reach this country from the EU in order to claim asylum, including for unaccompanied children, is through the Dublin III regulation on family reunion. That route, as we know, will cease to be available at the end of the transition period in a few weeks' time. The Government have no comparable proposals to replace Dublin III, since their alternative removes the mandatory requirement to facilitate family reunion, removes a child's right to appeal against refusal and further narrows the definition of "family", since a child or teenager would no longer be able to join, for example, an aunt, an older sister or someone who could look after them when they have been separated from their parents

Safe Passage, to which reference has already been made, which supports child refugees, has said, I believe, that more than 90% of the young people and children it has supported through the Dublin III legal pathway would be unlikely to qualify under the Government's alternative system. The numbers involved are not large and are very small indeed compared with the numbers of those from outside the EU whom the Government, by choice, each year, have enabled to come to this country. Before the mandatory Dublin III provisions came into effect, about 10 or 11 children per year came to this country under the scheme. Since 2016, when it became mandatory, the average number of children per year has been just over 500.

We support the amendment in lieu, Amendment D1, moved by my indefatigable noble friend Lord Dubs, which represents the guaranteed continuation of a decent and humane approach, particularly to children and young people in real need, including in real need of a safe and legal route to safety.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken in this debate and particularly the noble Lord, Lord Dubs, who makes this plea so genuinely and passionately. I hope, at this late stage, he might consider withdrawing his amendment to the Motion when he hears what I am going to say. First of all, we do not just use financial privilege for child refugees. That is not the case at all, but I think he knows that. The wording—

"trusting that this Reason may be deemed sufficient"—

is standard parlance.

I say to the noble Baroness, Lady Meacher, in response to her question, that it is true that the state does not have to fund children who are living with relatives, although, of course, it is different for children who are living in local authority care. I go back to the point I made earlier, which is that the Home Secretary made it absolutely clear in her speech at the Conservative Party Conference that safe and legal routes are a core part of our proposed reforms to the asylum system to ensure it is both firm and fair. In fact, the noble Lord, Lord Dubs, said that very thing today in his speech. I can confirm that, as an integral part of that work, the Government will conduct a review of safe and legal routes to the UK for asylum seekers, refugees and their families, which will include reviewing routes for unaccompanied asylum-seeking children to reunite with their family members in the UK. As noble Lords will recollect, we intend to bring legislation next year that will deliver those reforms.

Both the noble Lord, Lord Dubs, and the noble Baroness, Lady Hamwee, talked about bilateral negotiations. I understand noble Lords' concerns about

[Baroness Williams of Trafford]
the risk of a non-negotiated outcome on asylum and illegal migration, and I can, today, make a commitment to the House that in the event of a non-negotiated outcome, this Government will pursue bilateral negotiations on post-transition migration issues with key countries with which we share a mutual interest. This will include new arrangements for the family reunion of unaccompanied asylum-seeking children. I hope noble Lords listened carefully to what I have just said.

4.45 pm

As I was leaving the Home Office today, the Greek Minister for Immigration and Asylum was in the Home Secretary's office, and I hope that is a clear demonstration of our commitment to these issues. I will also commit, on the back of that, to report back to the House in good time regarding our intentions to make progress in this area. I hope the noble Lord, Lord Dubs, and other noble Lords who have heard my words just now will feel that, at this point, he can withdraw his amendment.

Lord Dubs (Lab) [V]: My Lords, I am grateful to the Minister for her explanation and to other noble Lords who supported the amendment.

The Minister referred to the Home Secretary's commitment that she wants safe and legal routes for family reunion of children. Of course, that is an aspiration, but it has to be made effective, and I am not convinced that anything the Government are doing will actually give effect to the Home Secretary's commitment. The Minister also said that even after 31 December, the Government will continue to talk to achieve bilateral arrangements. That is well and good, but that is a long way ahead, and the Government have, in the past, given undertakings, and, frankly, nothing much has come of them.

This issue tests our humanity; it tests whether we are willing to do something now, not at some point in the future. It is a test of whether we are a decent, humanitarian country. We are talking about a small number of highly vulnerable people, the majority of whom are children who want to join family here. What could be more humanitarian or more in our traditions than allowing young people to join members of their family who are here and find safety down that path. I beg to test the opinion of the House.

4.48 pm

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Motion D1 agreed.

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5.01 pm

Motion E

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 5, to which the Commons have disagreed for their Reason 5A.

5A: Because it would involve a charge on public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Baroness Williams of Trafford (Con): My Lords, Amendment 5 and Amendment 5B, tabled in lieu and proposed by the noble Lord, Lord Oates, require a physical document to be offered to any EEA citizen who applies for it and who has been granted leave under the EU settlement scheme. The other place has rejected the previous amendment submitted by the noble Lord, Lord Oates, as they considered it would incur significant costs. The amendment in lieu removes the provision prohibiting charging a fee for the physical document. However, this does not fully address our concerns about the cost of this proposal.

To allow the now nearly 4 million people who have been granted status under the EU settlement scheme to apply for physical documents, we would have to incur significant up-front costs. These costs would include setting up and designing the application process to issue a secure biometric document, some caseworking resource and significant communications costs; much of this cost would be incurred regardless of how many people applied for a physical document.

As we would not know how many people will apply, we would not be able to set an individual application fee that covered these costs without that being beyond the reach of most applicants. Much of the concern expressed in this House relates to the most vulnerable, and I really do not think we would want to pass on to them the costs of setting up this process. The cost of producing a biometric immigration document is about £75, but that fee does not cover the costs that would be incurred in setting up the process and communicating it. Therefore, being able to charge a fee does not in and of itself fully address the reasons given in the other place for rejecting the previous amendment.

We cannot accept the amendment, but that does not mean that the Government do not understand the concerns raised. We are committed to working with this House and with stakeholders to ensure that measures are in place to support those who may find the transition to digital services difficult. We will run a campaign to ensure that third parties understand how to check a person's immigration status and the need not to discriminate when doing so. In some cases, the check will be directly with the Home Office, and we are confident that this system will reduce the scope for error and better ensure that people have access to the services they are entitled to.

The Government have clearly set out their ambition to move to a system which is digital by default. That will produce a better system for migrants and will make it easier for them to prove their status where all migrants, not just EEA citizens, will have online access to their immigration status. Other countries, such as Australia, have had a system like this in place for some time, so we know that it works.

This amendment is well intentioned, but it will have an adverse impact on our plans for modernisation and digitisation of our immigration system. These plans include the support services we need to provide to migrants for the future. It will also adversely impact employers and landlords, who would still need to conduct manual checks to authenticate a document and go through the process of photocopying it, signing and dating it and then filing it away in a cabinet.

The Government recognise that digital processes represent a major change for some people. However, as I have outlined in this House, we will provide a physical document in the form of a written notification of their permission to stay in the UK, which they can print off and store as a record. We will require EEA citizens to use the online system to prove their immigration status to employers and landlords only after 30 June 2021, to give them time to adjust, and we will continue

to provide information and support to enable them to do so. Many thousands are already successfully using the service now to evidence their status in the UK, as I pointed out during the passage of this Bill.

I am aware that many noble Lords are worried about the impact of digital by default on the elderly and the vulnerable, but I reassure them that we are taking steps to ensure that those individuals are not disadvantaged by the move to digital services, particularly in accessing public services. System-to-system checks with other government departments and the NHS will mean service providers, such as healthcare and benefits, will check status directly with the Home Office at the point at which the person seeks to access them. This will reduce the number of occasions where individuals need to prove their rights, where such information can be made available directly to the service provider on their behalf.

In moving to a digital system, we recognise that there are people who cannot access online services and will need additional support. We are committed to delivering a service that reflects the diverse needs of all users. Help on how to use the online service and share status information is already available through our telephone contact centre, and we provide a free-to-use assisted digital service where those applying to the EU settlement scheme, or others making online applications in the UK, are able to get support. We continue to improve the support services to ensure that they are inclusive and available to all who need them, and we would welcome continued discussions on what additional support we would need to provide to address the concerns that many noble Lords have raised.

We want a robust and secure system that is efficient as well as convenient. Migrants will be able to access details of their immigration status online at any time and from anywhere, with a variety of devices, such as a smartphone or laptop. The Government want a better immigration system, and we believe that the move to a digital service is an important part of that. The amendment would prevent our moving in that direction and would require significant expenditure, which would be better used in supporting those using the services. I hope noble Lords will not insist on this amendment. I beg to move.

Motion E1 (as an amendment to Motion E)

Moved by ***Lord Oates***

At end insert "but do propose Amendment 5B in lieu—

5B: Insert the following new Clause—

"EU Settlement Scheme: physical documented proof

The Secretary of State must issue physical proof confirming pre-settled status or settled status to all EEA and Swiss nationals and their families who have been granted such status under the EU Settlement Scheme and who request such proof.""

Lord Oates (LD): My Lords, in moving Motion E1, which includes Amendment 5B, I give notice of my intention to test the opinion of the House, unless the Government are willing to change their position on this issue. I express my thanks to all noble Lords on all sides of the House who have so steadfastly and consistently supported this cause, in particular the original signatories to the amendment: the noble Lords, Lord Polak, Lord Kerslake and Lord McNicol of West Kilbride.

We have discussed this issue frequently over a number of years, but it appears that the Government have not been listening. Either that or perhaps I have not been listening properly, because I am still at a loss to understand the arguments that they have put forward to justify their decision to deny EEA nationals alone, among all the people residing in the United Kingdom, physical proof of their right to do so.

This issue, as we have said before, has no partisan flavour. It has been supported by Peers across the House of all parties and of none, commanding one of the largest majorities in your Lordships' House of any amendment on this Bill. It involves no Brexit arguments; it may be happily supported by any Member, whatever their position on those past arguments. It is, quite simply, the right thing to do to alleviate the anxieties and hardship that will otherwise be visited on millions of people who have made their home with us in the United Kingdom.

In Committee, the Government appeared to advance three principal arguments against our amendment: that a system with both digital proof and physical proof would be confusing; that a digital proof is better than a physical proof because a digital proof cannot be lost; and, lastly, that the Government intend to move to a digital-by-default system in future and therefore that it makes sense for the new settled status scheme to adopt a digital-only model from the outset.

On Report, a new argument was raised—or at least advanced more vigorously—and that was of cost. As noble Lords will be aware, the Government, in rejecting our amendment, have claimed financial privilege, advancing no other argument against it. Therefore, to address the issue of financial privilege and to tackle the Government's concerns over cost, we have removed the requirement that physical proof must be provided free of charge, which was in the original amendment. It should be noted, therefore, that this amendment in lieu requires only that the Government offer physical proof of status to those who request it; that it allows the Exchequer to charge for such a document; and that the charge is permitted under the terms of the withdrawal agreement.

The Minister told us on Report that if 89% of those with settled status sought a physical document, it would cost £100 million—I think that was at col. 472—which, by my calculation, would mean, in order to cover costs, a charge of £28.09. I therefore question the Minister's statement just now that the cost would be £75, and I wonder how she marries that up with the figure she gave us before. Perhaps she will say, "We would have to take into account the setting up of a whole new process"—but I do not understand that. There is a process for issuing biometric residence permits, so there is no need to set up a new process. Indeed, non-EEA citizens who are granted settled status via their spousal relationship are given biometric residence permits—so I do not understand that at all.

I would much prefer that there was no charge for a physical document—not least because our citizens abroad are being issued physical proof of status without charge,

[Lord Oates]
as I understand it. Nevertheless, if this is the only way that EEA citizens who have made their homes here can be given the surety and confidence that they seek, I suspect that they would probably regard the fee of £28.09 as money well spent. I hope, therefore, that this addresses the issue of costs and privilege.

As to the response to the Government's other arguments, I shall try to be brief, both because they have already been well rehearsed in this House and because even the Government do not seem to have the heart to argue them convincingly. First, on the argument that it would be confusing to people to operate a digital system as well as physical proof of status, it remains unclear to me why the Government make this claim. It is exactly the system that exists for non-EEA citizens with indefinite leave to remain, who can access a digital proof of status and can apply for a physical document. Landlords, employers and others who are expected to check for immigration status already operate under such a system, so I fail to understand who the Government think will be confused. What is likely to be confusing, therefore, is not the presence of a physical document but its absence.

5.15 pm

Secondly, the Government claim that digital proof is better than physical proof because digital proof cannot be lost. The answer to this is the same one we have given every time the matter has been debated. We are not suggesting the removal of digital proof or digital records; we are simply arguing that physical proof should complement digital status. None the less, on Report I questioned the Government's repeated claims about the resilience of the digital system. I will not list all the examples that I and many other noble Lords gave of allegedly infallible systems failing, but I will simply say that almost every occasion of a failure of a major system has been preceded by claims about its robustness and the impossibility of what subsequently happened happening. Even temporary failures, however short lived, are very likely to give rise to permanent effects, because employers or landlords unable to access the system at the point when they have to decide between potential employees or tenants are very likely to give the job or rent the home to someone who can provide physical proof.

The last of the Government's arguments was that they intend to move to a wholly digital system in future, and therefore that it makes sense for this new settled status scheme to adopt a digital-only model—except that it does not. If a digital system is to be adopted—and I have no objection to that—it should be extensively trialled in advance with widespread pilot schemes. Australia seems to be a popular country for the Government to compare itself with at the moment. Australia is, as the Minister said, just about the only country in the world to go entirely digital. It did so over a number of years. Indeed, it trialled the system over nearly two decades. So I repeat, as I have every time we have discussed this matter, that we should not conduct an experiment with the lives of millions of people who are in receipt of an entirely new status and who are understandably nervous, given the Government's declared intention to violate the very treaty on which their status is based.

The one trial that the Government have undertaken which involved non-EU citizens who had the back-up of a physical residence card found:

> "There is a clearly identified user need for the physical card at present, and without strong evidence that this need can be mitigated for vulnerable low-digital skilled users, it should be retained."

The trial also made clear that "digital by default" does not mean "digital only".

I asked the Minister in Committee and on Report to explain to the House what had changed since the Government made that assessment in 2018. She either could not or would not—but certainly she did not. Nor could she tell us on either occasion when the policy equality statement, which the Government have confirmed exists, will be published, beyond the entirely unsatisfactory "shortly". I highlight again how unacceptable it is that we are being asked to decide on legislation that will affect millions of lives when the Government withhold such vital evidence.

As I said on the previous amendment in the name of my noble friend Lady Hamwee, yesterday we agreed two amendments in lieu on the issue of agri-food standards, and I was pleased to support them—but this amendment, like that of my noble friend before, deals with people's lives. As I said on Report, ultimately the argument is not about technology, documents or computer systems but about people's lives and whether they can feel secure in their status. This amendment would alleviate the huge anxiety which the Government's refusal to listen and make this minor change is causing to EEA nationals, particularly the elderly, the vulnerable and those who lack technology.

In conclusion, the noble Lord, Lord Rosser, stated that the Labour Front Bench could not support my noble friend Lady Hamwee's earlier amendment on the grounds that the matter had not been divided on in the Commons. I will draw the attention of noble Lords to the fact, which they will be aware of, that this issue was divided on in the House of Commons, and in this House received, if not the largest then one of the largest majorities of any amendment on the Bill. So I hope that my friends in the Labour Party and, indeed, my friends across all the parties in this House, and no party, will continue to support EU citizens in the virtual Lobbies tonight.

The *Windrush Lessons Learned Review* made it clear that a huge part of the problem was the Home Office's refusal to listen to outside voices. Those outside voices are speaking loud and clear. I hope that this time the Government will learn the lesson and open their ears. I beg to move.

The Deputy Speaker (Lord Duncan of Springbank) (Con): Five Members have indicated that they wish to speak at this point: the noble Lord, Lord Polak, the noble Baroness, Lady Ludford, the noble Lord, Lord Cormack, and the noble Baronesses, Lady Neville-Rolfe and Lady McIntosh of Pickering. I call the first of those speakers, the noble Lord, Lord Polak.

Lord Polak (Con): My Lords, I have no intention of delaying the House as I have made my views on this pretty clear. The noble Lord, Lord Oates, has been very clear and precise. I believe that the Government are sticking their heels in for no good reason.

I should make it known that this morning there was a power outage at the police national computer centre in Hendon—run, of course, by the Home Office. As a result, police forces across the country were not able to access the police national computer. I do not need to explain to noble Lords that power outages of this sort have a serious effect on police operations. Following the technical issue that affected our voting on 30 September and this issue today, surely those EU citizens who request physical proof should be able to receive it like any other citizen.

The noble Lord, Lord Oates, tabled the amendment in lieu to deal with the cost element that the Minister brought up on Report. I agree with him, because non-EEA citizens now receive physical proof, so I really fail to understand what the up-front costs that the Minister referred to are. It is an existing scheme. EU citizens deserve to be treated equally and the amendment deserves to be accepted. This is a matter not of policy, but of process. Non-EU citizens can obtain physical proof of settled status, so EU citizens will be the only group without that physical proof. I fail to understand why the Government are unable to accept the compromise amendment that now deals with the financial question.

Baroness Ludford (LD): My Lords, I am pleased to follow my noble friend Lord Oates's excellent speech, and that of the noble Lord, Lord Polak, with whom I worked on the EU Justice Sub-Committee. The Minister referred to people being able to use their smartphones for this purpose. A friend of mine could not open the link in the email she received confirming her settled status. She had to go to an internet café to do so. I am not quite sure what went wrong there.

I will refer to a report published yesterday by the Committee on the Future Relationship with the European Union in the other place called *Implementing the Withdrawal Agreement: Citizens' Rights*. I do not know whether the Minister has had a chance to look at it, but it backs the amendment so that EU citizens should have

"the option of … a physical document to evidence their residency status … in addition to their digital status."

I am very pleased indeed that it has given that support. It refers to a number of reasons why this should be accepted. It talks about

"examples of people getting assistance from unregulated immigration advisers to make their application, then the third party retain the log-in details necessary to access the platform"

and make a

"charge to send on details to employers."

I hope that is something the Home Office might look into.

The committee also talks about how, because the online product

"remains linked to the physical document, such as a passport, used by the individual in their application … If the passport is changed, then the applicant has to update the online system."

That is an issue that will recur. The committee also says that

"accessing the online profile is not straightforward for people not fluent in IT"—

something we have discussed a lot on this subject—so they

"end up relying on the pdf document they receive informing them that a status has been granted".

The Minister referred to that being put in the desk drawer. It is, of course,

"not a substitute for actual evidence of status",

but unfortunately it might be used by some people who are confused by the online environment, which is a recipe for some difficulty.

Then, of course, the person asking the EU citizen to demonstrate their status has to understand it. The Minister referred to support for the holders of settled status. I am not sure whether she plans to give lots of tuition to prospective landlords, employers and so on. She talked about the NHS. It was not quite clear what that system will be. The Public Law Project has listed nine steps that a third party such as an employer would have to take to check the status of an EU citizen. It is worth quickly mentioning them:

"Request the code from the applicant … Wait for an email with a link to arrive … Open and read the email … Search, identify, and open the correct website",

because apparently there is no link in the email,

"Start the checking process … Enter the share code from the email … Enter the applicant's date of birth … Enter their company name"—

I am not sure what happens for an individual landlord—and, lastly,

"Check that the photo on their screen looks like the person applying for the job and keep a secure copy of the online check, either electronically or in hard copy."

All this requires reliable access to the internet. If you do not have access to wi-fi, which you might not in an empty flat that you are showing it to a prospective tenant, a person would have to rely on mobile signal, which is honestly not great, even in London.

Also, the committee's report says that apparently

"the lack of a physical document has contributed to the confusion over eligibility for benefits, because claimants have been unable to show a photo ID card showing their status … it was unclear how some decisions have been made by the DWP in terms of using settled status as a proof of eligibility."

It is quite a serious point that even the DWP does not seem to have got this right.

The report says that

"the option of a physical card would give an additional layer of safety against criminal attempts to 'hijack' someone's status."

We are being warned all the time about cybersecurity, and the dangers of malware, hacking and so on. The report says that, in a recent survey of 3,000 EU citizens, apparently more than 10% had been asked

"to provide proof of settled status, and that the digital only status was deterring some from applying."

It was actually putting them off. The report continues,

"physical proof came right at the top of concerns of EU citizens: 89% said that they would like an option, not compulsory, of physical proof."

Having gone through all that evidence, it is hardly any wonder that the committee in the other place backed this sincere, reasoned request for EU citizens to have the option of a physical document. I know the noble Baroness cares about people and people's lives, but it really seems the Government ought to find a way to accede to this request.

5.30 pm

Lord Cormack (Con): My Lords, here we go again on this one. I have not been persuaded any more by my noble friend—whom I hold in very high regard—this evening. She regurgitated the brief from last time, with a few little gildings, and did not convince me at all.

We are dealing with EU citizens. As my noble friend Lord Polak said very forcefully, they are being discriminated against in comparison with other foreign citizens resident in this country. This amendment asks for an option. If there was a weak point in the argument of the noble Lord, Lord Oates, in the previous debate and a strong one from my noble friend on the Front Bench, it was over the issue of cost. The noble Lord has dropped that, and he is wise to do so. Frankly, people who want this physical proof will, I am sure, be glad to pay for it, whether it is £28 or, to take my noble friend's figure, £75. There are ways and means of ensuring that those who cannot afford £75 are able to do it.

We must not stumble on this particularly weak, faulty argument of the Government. I say "of the Government" because I like to think that my noble friend the Minister, who is held in genuine high regard in this House, is, as the noble Baroness, Lady Ludford, said a few moments ago, a woman who has demonstrated that she does care. She has not been given a kind brief. She is acting as a mouthpiece for a government department that does not have a history of great humanity.

Windrush was mentioned. If many of those people who suffered as a result of maladministration—and that is what it was—had had this sort of physical proof, we would not have gone through those agonising moments, and months, and years. This is common sense.

As far as the fallibility of the technology is concerned, my noble friend Lord Polak gave an up-to-the-minute example. We have heard many examples in your Lordships' House since our last debate. One day last week, we had to adjourn for albeit not a long period, because the system had malfunctioned in some way.

We also must bear in mind that many of those about whom we are talking are of the generation that many of us in this House belong to. We are behaving in a rather arrogant way towards people who are not used to these systems. It is not a crime to be not particularly technological; if it were, I should be locked up for life. One sees the same sort of arrogance creeping in with those who say that we should have no more cash or cheques with which to pay our bills. We need to recognise that the whole of our society should be treated in a fair and equal way. What is being suggested this evening by the Government is that they should not be treated in a fair and equal way.

I appeal to my noble friend, who cannot—and does not, I know—believe in discrimination and who believes in fairness and equity, to do as I urged her to do last time: for goodness' sake, tear up the brief and accept the argument. I know that these things are formulaic—I sat in the other place for 40 years—but the only reason the Government can dredge up is cost. Well, we have dealt with that one through the revised amendment.

Let us move forward. I will certainly vote for the revised amendment in the name of the noble Lord, Lord Oates, as I voted for his last one. I hope that I will not need to; I hope that none of us will need to. I hope that, if we do need to and it goes back to the other place, the other place will have the guts and the gumption to realise that we are not driving a coach and horses through any party-political policy and that we are not doing anything against the Government because they are a Conservative Government—a slightly odd one, but that is another matter. We are making a plea for people who, in many cases, are extremely vulnerable; who have made a real contribution to our society; who have lived in our country and made it their own in many ways; who love the place and who have served it, many of them with great distinction.

Please, let us be sensible. Let the Government be sensible. If it is necessary, let us give the noble Lord, Lord Oates, another thumping majority tonight.

Baroness Neville-Rolfe (Con): My Lords, there are three strong arguments that support my noble friend the Minister's position and the Government's decision to seek to reverse the Lords amendment.

The first is the cost, which, as we heard on Report, might be more than £100 million. I know that £100 million seems like tuppence ha'penny after discussions about Covid but it is a very large sum. The movers have brought the cost down by proposing a charge, which the Minister says will be £75 on that basis. We must accept the Government's figure; I know that the noble Lord, Lord Oates, argued that the cost is less but I am sad to say that, in my experience, government estimates are usually under-estimates rather than the reverse.

The second argument—this is the one that I feel most strongly about—is that there is always a risk of error and enhanced fraud with two versions of the truth, with one online version and one paper version. I do not think that that issue has been addressed properly in our debates.

The third argument, which this House may not like, is that digital is the way of the future; in my experience, everyone emphasises that unless they are pleading for a special case. In the words of my noble friend the Minister, digital by default is what we need because it gives access from anywhere from lots of different digital devices. It is precedented: as we have heard, digital ID has been used in Australia. Moreover, none of us worry about US ESTAs, which have the merit of providing one version of the truth. My noble friend also committed the Government to giving extra support to those who need help coping with the system; I am sure that DWP will also help.

I am afraid that I must disagree with the other noble Lords who have spoken. We should look forward, not back, and reject this proposal.

Baroness McIntosh of Pickering (Con): My Lords, I am tempted to support this amendment, moved by the noble Lord, Lord Oates, as we both approach the anniversary of our entry into this House, five years ago. I urge my noble friend the Minister to keep an open mind on this amendment and to agree to it.

As I reminded my noble friend, in 2014-15, the Government—at that time, it was the Defra department—tried to introduce a digital-only farm payments scheme. It was scrapped because it simply could not be

delivered and the department reverted to paper-only applications. I remind the House that many of the applicants will live in rural areas—they will not all live in inner-city areas and major towns—where broadband is woeful. Many existing not-spots do not have the capability to carry this scheme. The Government acknowledged this recently and are backing down from their commitment to universal coverage by 2025, so they recognise the limitations of their digital by default-only policy.

I remind the House that on 16 October, the National Audit Office reported that broadband users in rural areas are being left behind in major network upgrades. The Home Office should recognise that there is not universal coverage of the broadband and internet technology that will be required to deliver the digital service by default. While I have the greatest regard for both my noble friends Lady Neville-Rolfe and the Minister, we have to accept that some 5% of people are living in the hardest-to-reach areas. In my view, this digital-by-default policy is being driven by an unelected adviser whose respect for the rules and the law is less than exemplary, and I think that he should join the real world with regard to some of the policies being brought forward.

The other difficulty I have with this policy is a very real one. I remind the House that my mother became a naturalised Brit, having come over to Britain from Denmark via Germany in 1948. What grieves me most about the policy that we will end up with without the amendment in the name of the noble Lord, Lord Oates, is that most of the applicants do not have English as their first language; it is not their mother tongue. In the words of my noble friend Lord Cormack, why are we seeking to discriminate against people in this way? I therefore urge my noble friend to show the big heart and affection that she has for these people and make sure either that we adopt the amendment in the name of the noble Lord, Lord Oates, in lieu of his earlier amendment for the reasons he has given, or that the Government should come forward with an amendment of their own. Digital by default in these circumstances is not going to work.

The Deputy Speaker (Lord Duncan of Springbank) (Con): I know that almost everyone in the Chamber has spoken to the Motion, but I have to ask whether anyone else wishes to contribute at this point. Silence being the case, I shall move on to the next speaker, the noble Baroness, Lady Meacher.

Baroness Meacher (CB) [V]: My Lords, I shall speak in support of the amendment tabled by the noble Lord, Lord Oates. He has removed the only apparent government objection to his original amendment —that no fee could be charged—and, in her opening remarks, the Minister produced a few rather more minor costs. However, he undermined that argument, so perhaps she can clarify that point in her summing up.

As I understand it, this amendment will do no more than bring EEA nationals into line with all other immigrants residing in the UK. The Government have argued in relation to many amendments to this Bill that they are determined to treat EEA nationals in exactly the same way as other people who are resident in this country. Surely the Minister cannot then argue in relation to this amendment that EEA nationals should be treated differently when compared with immigrants from other countries. If she does not accept this amendment, can she explain this apparent inconsistency of approach?

The noble Lord, Lord Oates, has cogently set out the case for this amendment and his arguments need no repetition. For me, the two most powerful are first, that, as others have mentioned, IT system failures and technical faults are all too frequent, while the second is that large numbers of people have limited IT skills. The Minister responded to that point by saying, "That will not be a problem because there will be department-to-department communication." Let us suppose that someone goes to a doctor needing medical help, but the Home Office system has gone down or some other technical problem has arisen; the doctor cannot treat them. I do not think that it is good enough to say, "Oh, do not worry, it will all be fine on the night."

Just imagine, as an example, that we no longer had physical passports, merely an entry online to prove our UK citizenship. We could arrive at an airport and not be entirely confident that our details would be found to enable us to board an aircraft. How many of us would be comfortable with that? I certainly would not be. I wonder, when the Government talk about these things, whether they are actually planning to abandon physical passports, because that would be the logic of this situation. I will support this amendment if it is put to the vote.

Baroness Hamwee (LD) [V]: My Lords, it is rare for a campaign to take off in the way that the call for physical proof has done. The Government have made their arguments over a number of stages and those who have been calling for this have not been satisfied—they certainly have been following what is going on. I regret that the Minister in the Commons did not address the issue but, apart from the standard financial privilege response, said that the issue had been debated many times. Yes, it has, but no one seems to have changed their position.

5.45 pm

The Government again seem more concerned about not appearing to draw back from their policy of digital by default. Accepting the amendment tabled by my noble friend would not be a failure on the part of the Government because it would not be a failure to acknowledge that changes like this to the system take time, as the Australians have found. It would actually be a success to respond to public feeling and not to treat our EU friends in the UK as a convenient test phase for all-out digital. I hope that the House will support my noble friend.

Lord Kennedy of Southwark (Lab Co-op): My Lords, we may all have different views of this Government. While some might think that they are useless and incompetent, others might take a different view. However, I think that we would all agree that they certainly make many strange decisions—often ludicrous, inconsistent, contradictory and largely disappointing. This is one example. As the noble Baroness, Lady Hamwee, said,

[Lord Kennedy of Southwark]
a consistent argument has been made about this issue, but the Government are just not listening. That is much to be regretted on the part of the Government because they should have given way on this point, but it is quite clear that they are not going to do so. I do not know if that is down to unelected advisers, the Home Secretary, or the general attitude of the Government as a whole. However, it is clear that they are not going to give way and that is most disappointing. For that reason, we are not going to support sending this issue back to the other place again because I do not think that the Government will change their position.

However, I have a few other comments to make. A few days ago, we had a debate about the costs to enable British children in care to get their British citizenship. The Government were happy to charge over £1,000; there was no issue about that at all. That is many hundreds of pounds more than the cost, so apparently there is no issue there at all. Here, of course, the Government have raised the issue of cost, saying that they are not sure and that it could be too much for people. I have equally made the point by asking for years why we cannot stop council tax payers having to subsidise planning applications. But no, the Government say that we have to continue letting those taxpayers subsidise such applications. That is completely ludicrous, contradictory and inconsistent, but that is what we have before us again today.

In all of these debates, I have never had an answer to this question. The point is made about how we cannot have certificates because they are not needed, everything is now digital, and we should not be worried about it. Yet, at the same time, we are handing out certificates to people who become British citizens. This is done in ceremonies in town halls up and down the country. You have to hand them out, they are signed by the Home Secretary of the day, and you tell the person that the certificate is really important. You hand it to them, a photograph is taken, and off they go with a document that at the moment is signed by Priti Patel. I have handed out hundreds of these things over the years, but I do not believe that those certificates are biometric. I think that they are a piece of paper. I might be wrong about that; perhaps they are biometric now and I do not know. Again, this is from the same department, so it is inconsistent and completely ludicrous. It is a real shame that the Government have not listened and that they are not going to do so. I think that that is much to the regret and shame of the Government.

Baroness Williams of Trafford (Con): My Lords, I thank all noble Lords who have spoken on this amendment—in particular, the noble Lord, Lord Oates, who moved it.

One of the first areas of disagreement that he raised was on costs. We have used published costs for enrolling biometrics and issuing a BRP, which are £19.20 and £56 respectively. They cover only the casework in the applications and not the significant set-up costs. There are costs of issuing and replacement, and one-off costs of upgrading pre-settled status cards. There is a cost of communication of the change and, of course, of facial technology.

The noble Lord, Lord Oates, suggested that the system should be trialled. The fact is that people are using it now. It is not going live on 1 January; people are already using it to prove status. That is proof of the success of the "trial", as he puts it. Surely the fact that 4 million applications have already been made suggests that the system is working. This takes me to the point made by the noble Baroness, Lady Ludford, regarding the difficulties of the system. I have seen how the application process works. It is very easy; I have suggested previously in this place that noble Lords take time to look at just how easy it is to set up.

The noble Lord, Lord Oates, also stated his dismay that the PSED has not been published. I do not have any update on my previous statement that we intend to publish it.

On discrimination, the BNO route will be launched in January. Applicants will receive digital status using the technology based on the EU settlement scheme. People receiving that status will be required to use it from January, so the system relates not just to people from EU member states but to our BNO friends who we expect to come here from then. The system is therefore not discriminatory in the sense that our BNO friends will use it from January as well.

My noble friend Lady Neville-Rolfe is absolutely right: although it might not be the way forward for older people, digital by default is the way forward. It is completely retrograde to talk about physical documents when in fact, to date, the system appears to be working well. The noble Baroness, Lady Ludford, talked about physical documents being less open to abuse. They are more open to abuse and far easier to forge than a digital status that an employer or landlord can access.

Finally, regarding a power outage at the PNC, I should tell my noble friend Lord Polack that our back-up systems are very robust, as I have previously explained.

I do not think that I will convince some noble Lords—indeed, I think that the noble Lord, Lord Oates, intends to divide the House—but it is a retrograde step to talk about returning to physical documents. I remember my noble friend, joined by the noble Lord, Lord Clement-Jones, talking about the importance of physical identity, which we fully intend to take forward. I hope that the noble Lord, Lord Oates, will withdraw his amendment but I do not think that he will.

Lord Oates (LD): My Lords, I thank the noble Baroness for her response. I do not understand the issue with set-up costs; a system exists. I also do not understand the point about casework costs for people who already have settled status.

All the arguments have been aired extensively. I very much regret that the Labour Front Bench is unable to come with us, not least because of the strong arguments made by the noble Lord, Lord Kennedy, for exactly my position. However, I hope that, despite the view of the Front Bench, my friends on the Labour Benches will support us, just as my friends on the Conservative Benches will do. I thank noble Lords on all sides of the House for their support and I appeal for their support again. I wish to test the opinion of the House.

5.55 pm

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Crathorne, L.
Cumberlege, B.
Davies of Gower, L.
De Mauley, L.
Deighton, L.
Dobbs, L.
Duncan of Springbank, L.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Empey, L.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Fall, B.
Farmer, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Freud, L.
Fullbrook, B.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garnier, L.
Geddes, L.
Glenarthur, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goldsmith of Richmond Park, L.
Goodlad, L.
Grabiner, L.
Grade of Yarmouth, L.
Green of Hurstpierpoint, L.
Greenhalgh, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hague of Richmond, L.
Hailsham, V.
Hamilton of Epsom, L.
Haselhurst, L.
Hayward, L.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogg, B.
Holmes of Richmond, L.

Hooper, B.
Horam, L.
Howard of Lympne, L.
Howell of Guildford, L.
Hunt of Wirral, L.
Jenkin of Kennington, B.
Jopling, L.
Kakkar, L.
Keen of Elie, L.
Kilclooney, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Laming, L.
Lamont of Lerwick, L.
Lancaster of Kimbolton, L.
Lang of Monkton, L.
Lansley, L.
Leigh of Hurley, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lothian, M.
Lucas, L.
Lytton, E.
Mackay of Clashfern, L.
Maginnis of Drumglass, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Maude of Horsham, L.
Mawson, L.
McColl of Dulwich, L.
McGregor-Smith, B.
McLoughlin, L.
Meyer, B.
Mone, B.
Moore of Etchingham , L.
Morgan of Cotes, B.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Nash, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
O'Loan, B.
O'Shaughnessy, L.
Parkinson of Whitley Bay , L.
Patten, L.
Pearson of Rannoch, L.
Penn, B.
Pickles, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Rana, L.
Rawlings, B.
Reay, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rotherwick, L.
Sanderson of Welton, B.
Sarfraz, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selkirk of Douglas, L.
Sharpe of Epsom, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stirrup, L.
Stowell of Beeston, B.
Stroud, B.
Stuart of Edgbaston, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
True, L.
Tugendhat, L.
Tyrie, L.
Ullswater, V.
Vaizey of Didcot, L.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Walker of Aldringham, L.
Warsi, B.
Watkins of Tavistock, B.
Wei, L.
Wharton of Yarm, L.
Whitby, L.
Willetts, L.
Williams of Trafford, B.
Willoughby de Broke, L.
Wolfson of Aspley Guise, L.
Wyld, B.
Young of Cookham, L.
Young of Graffham, L.
Younger of Leckie, V.

Motion E agreed.

6.07 pm

Motion F

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 6, to which the Commons have disagreed for their Reason 6A.

6A: Because procedural safeguards already exist to ensure the lawfulness of the period of any detention.

Motion F agreed.

Motion G

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 7, to which the Commons have disagreed for their Reason 7A.

7A: Because procedural safeguards already exist to ensure the lawfulness of the period of any detention.

Motion G agreed.

Motion H

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 8, to which the Commons have disagreed for their Reason 8A.

8A: Because a detained person can apply for immigration bail at any time.

Motion H agreed.

Motion J

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 9, to which the Commons have disagreed for their Reason 9A.

9A: Because the Commons consider it appropriate, once free movement ends, for EEA or Swiss nationals who are confirmed victims of modern slavery to be considered for a grant of leave in the same way as such victims who are not EEA or Swiss nationals are considered currently.

Baroness Williams of Trafford (Con): My Lords, this Government are committed to tackling the heinous crime of modern slavery, which has no place in our society. We are now identifying more victims of modern slavery and doing more to bring perpetrators to justice than ever before, and we are committed to supporting victims and helping them to rebuild their lives.

Lords Amendment 9, tabled by my noble friend Lord McColl, would require arrangements to be made in the Immigration Rules for the grant of leave to remain for confirmed victims of modern slavery who are EEA citizens in specified circumstances. I am therefore pleased to see that he has tabled Amendment 9B in lieu, which reiterates the Government's commitment to him in this area.

The original Amendment 9 is unnecessary and should not be insisted upon for the following reasons. Currently, confirmed victims of modern slavery who are foreign nationals from non-EEA countries and who do not already have immigration status are automatically considered for discretionary leave to remain. By "automatic", I mean that they do not need to apply for it. Our national referral mechanism arranges for that consideration after a decision has been reached that there are conclusive grounds to believe they are a victim of modern slavery. EEA citizens are currently not automatically considered in this way.

However, in line with assurances given in the other place, following the end of free movement, EEA confirmed victims who do not already have permission to stay in the UK, for example through our EU settlement scheme, will be treated in the same way as other foreign national victims and therefore receive automatic consideration for a grant of discretionary leave. The published policy will be amended to make this clear.

The published policy already provides for a grant of leave in cases where the victim is supporting the police in an investigation; is to be a witness in court; is pursuing compensation for the exploitation that they have suffered; requires medical treatment that needs to be provided in the UK; or because there is a risk they may be retrafficked if they are required to return to their country of origin. This is substantially the same as the qualifying criteria set out in the original amendment.

I hope that, in the light of the assurances I have given, the House will agree that Amendment 9 and Amendment 9B in lieu should not be insisted on. There are further issues to take forward about how we can best identify and support victims of modern slavery and I have undertaken to discuss these matters in further detail with the noble Lord, Lord McColl. However, it is important that, for immigration purposes, EEA victims are treated in the same way as other victims from abroad once free movement ends. I beg to move.

Motion J1 (as an amendment to Motion J)

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

At end insert "but do propose Amendment 9B in lieu—

9B: Insert the following new Clause—

"Consideration of discretionary leave to remain for confirmed adult victims of modern slavery who are EEA nationals

(1) The Secretary of State must ensure that a person aged 18 years or over is automatically considered for discretionary leave to remain when—

(a) the person is either a Swiss national or an EEA national who is not also an Irish Citizen; and

(b) there has been a conclusive determination that the person is a victim of slavery or human trafficking.

(2) The Secretary of State must ensure that persons granted leave to remain in accordance with this section have recourse to public funds for the duration of the period of leave.

(3) The Secretary of State must ensure that the person is considered for the grant of leave to remain immediately once a conclusive determination is made that they are a victim of slavery or human trafficking.

(4) In this section—

"competent authority" means a person who is a competent authority of the United Kingdom for the purposes of the Council of Europe Convention on Action against Trafficking in Human Beings;

"conclusive determination" means a determination that a person is, or is not, a victim of slavery or human trafficking when the identification process conducted by a competent authority concludes that the person is, or is not, such a victim;

"EEA national" means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at

Oporto on 2 May 1992 (as it has effect from time to time);

"victim of slavery" and "victim of human trafficking" mean a person falling within the definition of a "victim of slavery" or "victim of human trafficking" in section 56 of the Modern Slavery Act 2015 (section 56: interpretation).""

Lord McColl of Dulwich (Con) [V]: My Lords, I should make it clear from the outset that I will not be pressing the amendment in lieu to a vote. I am very grateful to the clerks who have advised me through the intricacies of ping-pong procedure, enabling me to speak today to thank those noble Lords who supported my amendment on 6 October, and to put on the record my response to events in another place on Monday and various undertakings that have been given by the Government.

I have decided not to move a Motion today to insist that what was Clause 12 be reinstated into the Bill for two reasons. In the first instance, I am very grateful for the Minister's assurance that the Government will amend the guidance on discretionary leave to remain for victims of modern slavery to make it clear that, from 1 January, all confirmed victims who are EEA nationals should be automatically considered for DLR. This is very welcome. While it will not address the fact that many non-EEA confirmed victims of modern slavery will be able to access additional recovery routes, including asylum and humanitarian protection, it means that, as far as DLR is concerned, EEA and non-EEA confirmed victims of modern slavery will be treated in the same way. I thank the Government for this clear commitment.

My amendment in lieu effectively demonstrates what the Government have committed to doing in relation to automatic consideration and, for this reason, I will not be pressing it to a Division. I very much hope that, under this new arrangement, the Government will publish statistics on the immigration outcomes for all confirmed victims of modern slavery following their automatic assessment for DLR. I also welcome the assurance of the Minister in the other place that being a confirmed victim of modern slavery will be considered an acceptable reason for late application for settled status; that again is very positive.

The second reason I have decided not to move an amendment to reinstate Clause 12 is that the Government have agreed to a series of meetings with the right honourable Member for Chingford and Woodford Green, Sir Iain Duncan Smith, and me on our Modern Slavery (Victim Support) Bill to work through the issues with the objective of trying to identify common ground around victim support. I particularly welcome this.

6.15 pm

The commitment to further talks is vital because, although I welcome the Government's commitment to consider EEA nationals automatically for discretionary leave, I remain concerned that EEA victims will be left with a discretionary system as their one and only route to remaining in the UK. This is particularly concerning when one has regard for the fact that a previous Minister described granting DLR as possible only when there are

"exceptional or compelling reasons to justify a grant"

and when FoI data suggests that the proportion of confirmed victims getting DLR is just 8% to 9%.

As a firm supporter of Brexit, I believe it is absolutely right that we are ending free movement based on treaty rights, which grant all EEA nationals residency, immigration status and recourse to public funds. It does not follow from that, however, that we cannot provide

recourse to public funds, ongoing support and immigration status for a limited recovery period to those confirmed victims of modern slavery who need it.

The truth is that our modern slavery legislation needs to be updated to take proper account of Brexit, which, even with automatic consideration, will leave confirmed victims of modern slavery who are EEA nationals worse off than they are today and with fewer recovery options than confirmed victims who are non-EEA nationals.

The people of this country are endowed with a keen sense of fair play. Many find it strange that, while someone who is confirmed to be a refugee gets with that status five years leave to remain, a confirmed victim of modern slavery gets no leave to remain at all. Our approach to recognised refugees in this regard should not change, but our approach to confirmed victims of modern slavery should, and this is a particularly important message in the week in which we mark Anti-Slavery Day.

I conclude by thanking the Home Secretary for the following commitment in her foreword to the *2020 UK Annual Report on Modern Slavery*, published on Monday. She says:

"My message is clear: I will not tolerate the despicable exploitation and abuse of innocent people through modern slavery, and I will not stop until this terrible crime is finally consigned to the history books."

I also thank the noble Baroness, Lady Hamwee, the noble Lords, Lord Kennedy of Southwark and Lord Alton, and Sir Iain Duncan Smith for all their help in this work. I am most grateful.

Given the commitments of the Government that I have set out, and with thanks to them for those commitments, I beg to move.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, I have received no notice of unlisted speakers. Does anyone in the Chamber wish to speak? No. In that case, I now call the noble Baroness, Lady Hamwee, and hope that she has been unmuted.

Baroness Hamwee (LD) [V]: This stage does not need a long speech, so I will say only that I understand why the noble Lord, Lord McColl, is not pursuing matters today. I know that he will continue to press for all the things his Bill covers with regard to victims of trafficking and exploitation, and no doubt many other things as well. Of course, we support him. We, too, are concerned about this dreadful crime and the importance of supporting all those who have been victims of it.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I was pleased to hear that the noble Lord, Lord McColl of Dulwich, has received assurances. I am particularly pleased that the noble Baroness, Lady Williams of Trafford, has given him assurances regarding what she will do to help progress this, and it was also good to hear that he has accepted them.

We all know that the noble Lord, Lord McColl of Dulwich, is highly respected, not only by me but by the whole House. He is a wonderful Member of this House, both in his previous professional career as a surgeon and in his work on the Mercy Ships. While I have been in this House for the past 10 years, he has consistently campaigned on violence against women and violence against people in general and on modern slavery. As I have said before, it is high time that the Government agreed with the noble Lord and moved things forward. The noble Lord's Bill, which he referred to, which he and Iain Duncan Smith are promoting in the other place, is reasonable, sensible and practical, and the Government should be proud to support it. I hope that, in the not too distant future, we will see the Government give active support to the Bill because, sadly, it has left this House twice only to be wrecked in the other place by a group of people who seemed to get pleasure out of wrecking good Private Members' Bills, so I hope that will stop and that we will get the Bill through. In his Private Member's Bill he asks only that people are treated with dignity and respect and that if you are accepted as a victim of modern slavery in England and Wales, you should be treated exactly the same as you are treated in Northern Ireland and in Scotland, because their legislation is superior to ours, and we want it all the same.

I am therefore delighted that there will be a discussion and that the Minister and the noble Lord will be involved in that, and I hope that we will have some good news in the weeks and months ahead.

Lord McColl of Dulwich (Con) [V]: I thank everyone for their support, and I particularly thank the Minister, who is a real star and who has been so helpful in this whole business. Without further ado, I beg leave to withdraw my amendment.

Motion J1 withdrawn.

Motion J agreed.

Motion K

Moved by ***Baroness Williams of Trafford***

That this House do not insist on its Amendment 10, to which the Commons have disagreed for their Reason 10A.

10A: Because it is consequential on Lords Amendments 6 to 8 to which the Commons disagree.

Motion K agreed.

Non-Domestic Rating (Lists) (No. 2) Bill

First Reading

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

House adjourned at 6.24 pm.