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PARLIAMENTARY DEBATES
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OFFICIAL REPORT

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

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

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Tuesday 25 October 2022

2.30 pm

Prayers—read by the Lord Bishop of Exeter.

Oaths and Affirmations

2.35 pm

Lord Thurlow took the oath and Lord Soley made the solemn affirmation.

Growth Plan 2022

Question

2.36 pm

Asked by ***Lord Rooker***

To ask His Majesty's Government what assessment they have made of the effects on (1) food production, and (2) environmental protection, of the Growth Plan 2022.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, I declare my farming interests as set out in the register. A strong environment and a strong economy go hand in hand. To deliver our plan for growth, the Government will be looking closely at the frameworks for regulation, innovation and spending relevant to farming and land management to ensure that our policies are best placed both to boost food production and to protect the environment.

Lord Rooker (Lab): My Lords, I apologise for my naivety in tabling this Question 28 days ago, as I thought that the growth plan would still be zinging along. I ask the Minister—who I hope will be promoted later today—if he could give us one example in terms of food production that would be beneficial to, and supportive of, the National Farmers' Union, and one example that members of the National Trust could support on environmental protection? Just one of each will do.

Lord Benyon (Con): On food protection, members of the National Farmers' Union will be pleased that the Government are looking to make farming more productive. Members of the National Trust can also support this because it will be done sustainably. National Trust members are members because they want to support our natural and built heritage, and hardwired into our environmental land management schemes and other environmental benefits is the need to manage our land for future generations.

Viscount Hailsham (Con): My Lords, I say to my noble friend the Minister that, while it is obviously very important that we should promote policies to protect the environment, it is also very important that we should do nothing to prejudice domestic food production. Of the two, I suggest that the latter is more important.

Lord Benyon (Con): I firmly believe that the two are not mutually exclusive. I was talking to an organisation called the Nature Friendly Farming Network, which, on one farm, is producing more food on 11% less land. All of us who are farmers know about those corners of fields that are farmed only because of the dishonest form of area payment that we have been living under for decades. There are schemes enabling farmers to be more productive off the land that should be farmed, thereby allowing us to continue to feed our hungry world sustainably.

Lord Krebs (CB): My Lords, the Minister will no doubt remember that the biggest crisis in living memory to hit the UK farming sector was caused by deregulation. The BSE crisis arose because the regulations governing the processing of meat and bone meal were relaxed. In light of that, can he reassure us that there will not be further examples of deregulation in future that will threaten not only food safety but the future of the farming industry?

Lord Benyon (Con): The noble Lord is absolutely correct. Reputable businesses—whether they are in farming, food production or any other sector—like good regulation because it means that they are not undercut by bad producers who produce poor-quality food unsustainably. We absolutely want to ensure that our regulations not only protect the environment but allow competent and decent producers to produce food that is much needed in society.

Lord Roberts of Llandudno (LD): My Lords, I just add that because of Brexit, largely, we have an imported food crisis. Of course, such food costs so much more than it used to before Brexit. To suggest, as the Government do, that we should import more food will only add to the difficult situation ordinary people are in. Can the Minister give me an assurance that enough affordable food will be available to all the people here in the United Kingdom?

Lord Benyon (Con): The greatest crisis in the food industry, indeed in the economy, in recent years has been Covid. What we managed to prove through that was that the supply chain of food to people who need it has been resilient. We want that to continue, but we also want food producers to produce the quality that is needed not only in these islands, but that can be exported abroad, so trade is fundamental to the growth we want to see.

Lord Randall of Uxbridge (Con): My Lords, I draw attention to my conservation interests as listed in the register. Can the Government reassure conservation bodies—I know he is a great conservationist himself—that we are not going to water down environmental protections but, if anything, increase them?

Lord Benyon (Con): The Government have to be absolutely clear about this because it is hard-wired into legislation, whether it is our net-zero commitments under the Climate Change Act or our protections under the Environment Act—world-leading legislation that will put into law such things as biodiversity net gain and the ambitions in the 25-year environment plan.

[Lord Benyon]
This leaves precious little room for any Government of any persuasion to be foolish enough to damage our environment, which would mean that we could not achieve those objectives, which are written in law.

Baroness Hayman of Ullock (Lab): My Lords, the Minister mentioned the environmental land management schemes. The Secretary of State—or is he now the previous Secretary of State?—had to deny plans that the new schemes were going to be ditched, but of course, that was before the Conservative Party crashed the economy. So can the Minister guarantee not only that ELMS is here to stay and that incentives will remain at current levels, but that our farmers will be protected from any trade agreements that would undermine our high standards?

Lord Benyon (Con): Environmental land management schemes are here to stay. They will continue to be rolled out as we taper out area payments, which saw 55% of the money going to just 10% of the largest farmers. That was very unfair for small farmers. We will be helping smaller farmers to get a fairer share of the cake and we will continue to make sure that our trade agreements, in accordance with what has already been said, will not see a diminution of our animal welfare or environmental standards.

The Lord Bishop of Exeter: My Lords, I thank the Minister for his answers, but how will the investment zones in His Majesty's Government's growth plan dovetail with local and neighbourhood plans to protect their green spaces?

Lord Benyon (Con): Investment zones will happen only where they are wanted by the local authority. The local authority might in some cases be a national park, and national parks do not want them. There are certain areas where they can be, but the Government are committed to green open spaces, the green belt and designated landscapes being maintained. We want to make sure that where there is a need for growth and jobs, which help the economy and help families and households keep a roof over their head and their pensions secured, this is not being done at a risk to the environment.

Baroness Boycott (CB): My Lords, recent data from the Food Foundation, of which I am proud to be a trustee, points out that, this September, 18% of households —over 10 million adults—had food insecurity. Some 58% of those households had cut down on buying fruit and 48% had cut down on buying vegetables, because they are too expensive. Where in the growth and future farming plans will we make vegetables and fruit more available to hungry people at reasonable prices?

Lord Benyon (Con): First, we want to see more of our fruit and vegetables grown in this country and shorten the food miles to get them to the people who need them. We are supporting families as never before in a variety of ways, and food is a vital part of household expenditure, but it is far from the largest. The Government have to act holistically to make sure that, in these difficult times, we help families with energy and other household costs as well as food.

The Earl of Leicester (Con): My Lords—

Lord Winston (Lab): My Lords—

Baroness Williams of Trafford (Con): My Lords, if we are swift, we will have enough time for both noble Lords. We will hear from the noble Earl, Lord Leicester, and then the noble Lord, Lord Winston.

The Earl of Leicester (Con): My Lords, I refer to my farming interests as listed in the register. Can my noble friend outline what this Government are doing to encourage more young people into the farming industry and to improve our food production?

Lord Benyon (Con): My Lords, this is absolutely vital, as was brought home to me yesterday at the reception organised by TIAH and the noble Lord, Lord Curry. Teaching people the necessary skills is vital if we are to see the average age of farmers—which is my age, 62—come right down, and we can achieve that only if they have them.

Lord Winston (Lab): My Lords, the Government say they want to protect families. Is the noble Lord fully aware of the epigenetic effects of a poor diet on literally thousands of children in hunger poverty? The Dutch winter disease, for example, showed very clearly that the long-term effects on cognitive ability and general health go right through to middle and old age. Can we be absolutely certain that the Government will do all they can to secure food, rather than worrying about some of the other aspects of the environment?

Lord Benyon (Con): The noble Lord is absolutely right. There is ever-increasing evidence that poor diet makes individuals, particularly young people, susceptible to diseases not just while they are young but right through their lives. That is why our food strategy is not just a Defra strategy but must be across government; it relies on the expertise of people such as the noble Lord.

Direct Tax and National Insurance Contributions

Question

2.47 pm

Asked by ***Lord Sikka***

To ask His Majesty's Government what plans they have, if any, to ensure that an individual with an annual earned income of £30,000 will not pay more in direct tax and national insurance contributions than an individual with an annual unearned income of £30,000.

Viscount Younger of Leckie (Con): My Lords, different forms of income are subject to different tax treatments. For example, national insurance contributions are charged only on earned income, reflecting their historic basis as a social security contribution. The Government have acted to reduce the generous tax treatment of unearned income, including reducing the generosity of the dividends tax allowance in 2018. However, the Government keep all taxes under review.

Lord Sikka (Lab): My Lords, I thank the Minister for his reply. A worker on £30,000 a year currently pays £3,486 in income tax and £2,092 in national insurance—a total of £5,578. A speculator with £30,000 of capital gains pays no national insurance, even though he uses the NHS and social care, and pays only £1,770 in capital gains tax. This means that the worker pays £4,000 a year more in taxes than a speculator. Can the Minister explain why the tax system hits the workers the hardest?

Viscount Younger of Leckie (Con): The noble Lord gives one example. As he knows, individuals can be subject to different tax treatments depending on the type of income they receive and whether they are employed or self-employed or working through a company structure. I reassure him that the Government have taken action to reduce this disparity in tax treatment, for example by reforming the taxation of dividend income, reforming the main rates of dividend tax in 2016 and reducing the tax-free dividend allowance from £5,000 to £2,000 from 2018.

Lord Leigh of Hurley (Con): Will my noble friend join me in resisting any attempts to treat gains from capital at the same rate as income? People like me, called speculators by some, started up a new business with risk capital, which is easily lost, whereas others bank an income entirely risk-free; they should not be equated. It is worth reminding the House that a mobile 1% of taxpayers account for 30% of revenues.

Viscount Younger of Leckie (Con): My noble friend makes a good point. The Government are committed to a fair tax system in which those with the most contribute the most, but one which also has to encourage saving. The income tax system, we believe, is highly progressive: the top 5% are projected to pay half of all income tax in 2022-23. My noble friend also cited the other statistic: the top 1% are projected to pay over—he said 30%—actually 28% of all income tax. Crucially, the top 10% of the income distribution are estimated to receive 35% of all income but pay over 60% of all income tax liabilities.

Lord Woodley (Lab): My Lords, according to HMRC, most of the benefits of the lower rate of capital gains tax accrue to individuals resident in London and the south-east of England, and very little to less wealthy regions in the UK. Could the Minister please explain what assessment the Government have made of the impact of the capital gains tax regime upon regional incomes, and more importantly, wealth inequalities?

Viscount Younger of Leckie (Con): The noble Lord may be aware that at Spring Budget 2021 the Government froze the capital gains tax annual exempt amount—the so-called AEA—at £12,300 until 2026. However, the Government keep the UK tax system under constant review, as I alluded to earlier, to ensure that it is fair and simple for all taxpayers.

Lord Tunnicliffe (Lab): My Lords, next week's fiscal event will, in the words of Jeremy Hunt, involve painful cuts to public spending. However, as part of his attempt to avoid calling a general election, the new Prime Minister has said that he is fully committed to delivering the 2019 Conservative Party manifesto. Does the Minister believe that these two positions can be reconciled, or are we about to see new tensions between 10 and 11 Downing Street?

Viscount Younger of Leckie (Con): We all wish the new Prime Minister well. I personally congratulate him on his victory and, as he said himself, he has a hard task—and more. But to answer the noble Lord's question, certainly on the non-dom side, they play a very important role in funding our public services, and the rules were changed on non-doms, to bring an end to permanent non-dom status.

Baroness Janke (LD): My Lords, do the Government believe that taxation should not only be fair but be seen to be fair? If so, are the Government still planning to scrap the cap on bankers' bonuses? Does the Minister agree that this is not only unjust and unfair but an insult to so many people who are paying soaring mortgages, food and energy costs and struggling to feed their families?

Viscount Younger of Leckie (Con): I do not know of any plans to change the current position, which is that the cap was raised on bankers' bonuses, and I may say, having had a long career in the city, that I think it is a very good thing. The reason for that is that we are in a position in London to recruit the very best bankers from around the world who generate income for the UK, and they pay more tax into the Treasury, so it is a very good thing.

Baroness Taylor of Bolton (Lab): The Minister did not dispute the figures from my noble friend Lord Sikka. Will he confirm that the figures were correct, and if they are correct, how does that fit in with the Government's levelling-up agenda? Or has that been ditched?

Viscount Younger of Leckie (Con): The Prime Minister mentioned the levelling-up agenda today, and it is very much on course—as you probably heard, he cited the fact that we wish to revert back, which is quite right, to the 2019 manifesto. In terms of the noble Lord's figures, I will need to look at *Hansard* to see what precisely he said, because it was a very specific issue that he raised.

Lord Forsyth of Drumlean (Con): My Lords, could my noble friend take these questions from the Labour Benches as a strong recommendation for the Government for simplifying the tax system and indeed, in time, for reducing the burden of tax by cutting the basic rate of income tax, as the Prime Minister has indicated he will do in the long term?

Viscount Younger of Leckie (Con): My noble friend is right: the Prime Minister has said, over a long period of time, that he is a tax-cutting individual—now a tax-cutting PM—but when the economic conditions allow. It is the right way forward, but there is a lot to do before we get to that point.

Baroness Bennett of Manor Castle (GP): My Lords, the Minister referred to the percentage of tax coming from richer earners. I am sure he is aware of the figures

[Baroness Bennett of Manor Castle]
showing that, in the last five years, median income has risen by 2.2% on average, but for the richest fifth of people it has risen by 4.7%, while the poorest fifth of people have seen a real fall of 1.6%. Does the Minister agree that this rising inequality of income is a problem?

Viscount Younger of Leckie (Con): First, on a serious note, we are very aware of the issues that many people are having to deal with at the moment, with the rising cost of energy and so on. The House is very aware of that. However, I do not agree with the noble Baroness, because the UK fares very well on an international basis. The UK's taxes on wealth are on a par with those of other G7 countries, including inheritance, estate and gift taxes.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, could the Minister tell us what specifically is being done to stop people taking up residence or setting up companies in the overseas territories and Crown dependencies?

Viscount Younger of Leckie (Con): We are very aware of these sensitive matters. I alluded to what we are doing about these matters, including the non-dom status, earlier in response to a question from the noble Lord, Lord Tunnicliffe.

Lord Teverson (LD): My Lords, could the Minister explain how we have become a high-tax but low-service-level—in terms of public services—economy? It is the worst of both worlds.

Viscount Younger of Leckie (Con): As I alluded to earlier, the aim is to lower taxes, but we have a lot to contend with as a result of Putin's appalling war in Ukraine and ongoing energy costs. At the end of the day, we aspire to be a low-tax country.

Baroness Chakrabarti (Lab): My Lords, in October 2019, the well-respected Institute for Fiscal Studies said:

"We do not find any evidence that tax-motivated retention of profits translates into more investment in business capital."

Does the Minister have alternative evidence? If not, how does the present system of taxing the poorest more than the wealthiest match the Government's conscience?

Viscount Younger of Leckie (Con): I think there are two matters to raise here. It is very important to keep taxes as low as possible to help working people, so that the amount they earn goes further. Equally, it is very important to have policies in place to incentivise businesses—not just those within the UK but those which want to come and invest in the UK.

Environment Act 2021: Targets

Question

2.57 pm

Asked by ***Baroness Jones of Whitchurch***

To ask His Majesty's Government whether they will meet the requirement of the Environment Act 2021 to set targets by 31 October on air and water quality, biodiversity and resource efficiency and waste reduction.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Benyon) (Con): My Lords, we are committed to halting the decline of nature by 2030 and will not undermine our obligations to the environment in pursuit of growth. A strong environment and a strong economy go hand in hand. We have legislated through the Environment Act and will continue to improve our regulations and wildlife laws in line with our ambitious vision. His Majesty's Government remain committed to the Environment Act and will publish ambitious, achievable and robust targets soon.

Baroness Jones of Whitchurch (Lab): My Lords, the Minister will know that failure to set those targets before 31 October is unlawful and risks the Government being taken to court. It also makes a mockery of all those months of hard work we put into debating the then Environment Bill, because without the targets we have no way of measuring the progress the Government are making on the Act's implementation. Is this another sign that the Government are backtracking on their environmental commitments, as—quite frankly—was becoming all too clear under the previous Prime Minister, who sneered at the broad coalition of environmentalists?

Lord Benyon (Con): I will not sneer at any environmentalists. I sat on the board of several NGOs before I took on this role, and I mind desperately that we continue to be a leading country in how we protect the environment. We have consulted on those targets and had 180,000 responses, which are taking some time to go through. We will produce targets that are science-based, evidence-based and cover a range of issues which were of great concern to noble Lords as we took through the Environment Act. We will honour those commitments.

Baroness Willis of Summertown (CB): My Lords, can the Minister confirm that the biodiversity targets are not just for the abundance of above-ground species but for biodiversity in the soil? Soils are a critical part of the ecosystem. They are essential for farming and for wildlife to thrive, as we heard in the previous Question. They are mentioned multiple times in the Environment Act, yet I currently see no targets for soils in the targets set by the Government.

Lord Benyon (Con): Soils are a fundamental part of our environmental land management schemes. The soil standard in the sustainable farming incentive is key to getting those ecological systems functioning properly and to their not being viewed, as they have too often been in recent decades, as just a medium into which you can add synthetic products to produce crops or grow stock. Soils are absolutely fundamental, as is our peat standard. There will be targets to restore peatland and ensure that soils are properly functioning ecosystems. The noble Baroness is absolutely right to raise this issue.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend the Minister agree that improving water quality is vital? Can he tell us where we are with storm water overflows and ending the automatic right to connect?

Lord Benyon (Con): The Environment Act places several duties on government and water companies to reduce sewage discharges from storm overflows. The Government have now launched the most ambitious plan to reduce sewage discharges from storm overflows in water company history. Our new, strict targets will see the toughest crackdown ever on sewage spills and will require water companies to secure the largest infrastructure programme in their history.

Lord Wigley (PC): My Lords, may I press the Minister further on the quality of our rivers? Does he accept that, in order to get action taken effectively, targets have to be not only set but monitored; that those targets must then trigger action to ensure that there is improvement; and that this must be done by not only the UK Government in England but the other Governments in these islands, because many rivers cross borders? Will he give priority to this issue?

Lord Benyon (Con): Absolutely. We had the water framework directive when we were part of the European Union. We have transposed it into UK law. We want to make sure that it is right for the United Kingdom's environment. However, that directive had very clear markers, which, to be honest, we failed to hit over many decades. Now, with this investment and the huge drive towards different farming techniques, we should see much clearer evidence about how we will hit those targets to get our water courses flowing and functioning properly; that will be available to everyone.

The Earl of Devon (CB): My Lords, we have a biodiversity crisis but also a well-recognised housing crisis in rural areas. How do the Government seek to avoid the introduction of biodiversity net gain and the off-setting of 10% of biodiversity loss exacerbating the housing crisis, particularly in rural areas?

Lord Benyon (Con): The noble Earl is absolutely right. We need to see more houses built. We want them built in the right place. Biodiversity net gain is a welcome addition to ensure that we not only protect habitats from damage but replace them—and some—in future. Small housing schemes in rural areas are, I am absolutely convinced, the right way forward because they have the almost unique element of being popular. We need to find housing particularly for younger families in rural areas, where they are finding it much too expensive. Exception site housing, which has been unbelievably helpful in that direction, needs to be stepped up a gear. I hope that my fellow Ministers in the new Administration will understand that this is a popular way of delivering housing.

Baroness Jolly (LD): My Lords, only 3% of our land and 8% of our seas are currently protected and managed, with a target of 30% by 2030. What further steps are the Government planning to take to meet legally binding biodiversity targets in the Environment Act 2021?

Lord Benyon (Con): I have a graph in my office of "30x30". We have to hit this target, otherwise we will have no credibility in international fora when we try to encourage countries right across the world to adopt our "30x30" ambitions; for example, in the COP in Montreal in December. We need to set out quite clearly how we are going to do this. The NGOs are a little pessimistic—I think the figures are higher than that—but we can achieve it. I shall have meetings with officials and other Ministers on this issue in the next few days. We will be turning up the heat to make sure that we not only hit but explain how we are going to hit that target.

Baroness Hayman of Ullock (Lab): My Lords, despite compelling evidence of the harm caused by toxic air, the Government repeatedly resisted attempts to put World Health Organization targets into the Environment Act. As there is no sign of those targets, does the Minister understand why so many people doubt the Government's commitment to clean air? What assessment have they made of the costs to human health of their inaction over recent years, and when a target is eventually enshrined in law, will it be consistent with WHO guidelines?

Lord Benyon (Con): One area that we consulted on as part of the huge consultation on our targets was reducing exposure to PM2.5, thereby benefiting public health through decreasing cases of heart disease and cancer. There were very moving speeches in a recent debate here about the impact that this can have on children. There are certain hotspots in what local authorities need to do. This is very much part of our environmental targets and one of our commitments given not only at the Dispatch Box during the progress of the Environment Bill but in other forms as well.

Lord Cunningham of Felling (Lab): My Lords, what is the Minister's reflection on the recent reports that only one river in England, the Tyne, met water quality standards to be able to sustain migratory fish? We cannot go on like this.

For most of my life, I have been an angler, a fly fisherman. In some respects, I suppose that I have depleted the stocks in rivers too, but not to the extent that pollution is now doing throughout England. I cannot speak for Scotland or Wales—theirs are different circumstances—but the reality is that we are not meeting our obligations.

Lord Benyon (Con): The noble Lord has a passion that I share, and a passion for restoring the quality of our rivers. I spoke earlier about our commitments under European treaties and the water framework directive, and how we are transposing those into our ambitions for water quality across England. We want to ensure that we are hitting those targets. This is an absolute priority for my department. Whoever is my new Secretary of State, I am sure it will be his or hers as well.

Baroness Fox of Buckley (Non-Afl): My Lords—

Baroness Jones of Moulsecoomb (GP): My Lords—

Baroness Williams of Trafford (Con): My Lords, I suggest that we hear from the noble Baroness, Lady Fox.

Baroness Fox of Buckley (Non-Afl): My Lords, as we face a particularly challenging economic period, might the Government consider not sticking to environmental targets if they clash with economic development, growth and levelling up? In an earlier answer, the Minister fudged the hard choices that the Government face. Surely, paying farmers not to produce food will clash with the priorities of reaching environmental targets. Sometimes, you have to choose. I would suggest people and not environment.

Lord Benyon (Con): I think that is a very simplistic argument. I think that we can continue to produce the food that we do and do it sustainably. I can tell the noble Baroness that there are areas of most farms that I have even been to—as a farmer or a consultant—that are farmed only because of the subsidies that those farmers received. They were uneconomic. If those farmers can concentrate, with new technologies and the new support that the Government will give them, on producing more off the rest of the farm, they will be able to support the needs of a growing population, the demands that people have as well as the demands of our economy.

Maternity and Neonatal Services

Question

3.09 pm

Asked by ***Baroness Cumberlege***

To ask His Majesty's Government what steps they intend to take to implement the recommendations of the report by Dr Bill Kirkup *Maternity and neonatal services in East Kent: "Reading the signals"*, published on 19 October.

Baroness Cumberlege (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and, in so doing, I declare that I am remunerated for chairing the independent maternity review.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): I am grateful to Dr Kirkup for this report. Our intention is to review the recommendations alongside existing work to improve maternity outcomes, including the recommendations from Donna Ockenden's final report. With NHS England, we have established an independent working group chaired by the Royal College of Midwives and the Royal College of Obstetricians and Gynaecologists that we will use to support our considerations.

Baroness Cumberlege (Con): My Lords, I thank my noble friend for that reply. Does he agree that as this has been a series of maternity tragedies across England, we must do all we can to prevent further disasters? Will he, with NHS England, introduce a maternity signalling system that identifies units providing poor care before they cause widespread harm?

Lord Markham (Con): I thank my noble friend. I agree. This was captured in recommendation 1 by Dr Kirkup about having early warning indicators in place. That is what we have set up in the maternity quality surveillance framework, which has the oversight in this area and can escalate concerns and effectively report to the national maternity safety surveillance and concerns group, which can then put the trust into special measures.

Baroness Blackstone (Lab): My Lords, I declare an interest as the chair of the trustees of the Royal College of Obstetricians and Gynaecologists. I am aware that the Government have allocated an extra £200 million for maternity services over the last couple of years, but according to the Health and Social Care Select Committee this is not nearly enough. It recommends up to £350 million for staffing alone. Do the Government accept that, above all, more funding is needed now for multi-professional training and to support programmes to improve clinical practice? If so, can the Minister say how much funding the Government are prepared to allocate and when?

Lord Markham (Con): I agree. We are putting the money into the training programmes. We have actually put £95 million on top of the £127 million investment into this area. As ever though, what is most important is outcomes not investment. Alongside the tragic instances we have seen, we have seen a reduction in stillbirth of 19% since 2010, a reduction in neonatal mortality over 24 weeks of 36%, and a reduction in maternal mortality of 17%. Alongside these tragic findings of individual trusts, we have an improving picture of maternity care overall.

Baroness Brinton (LD): My Lords, in yesterday's Statement on Dr Kirkup's report, the Minister told us that 23 hospitals are in maternity safety support programmes—special measures—and that, while four are coming out, another 10 are due to go in. Can he assure the House that extra resources, including extra supervision, will be there to ensure that mothers and babies in those hospitals are absolutely safe?

Lord Markham (Con): Yes. Resourcing the special measures programme—for want of a better name—is vital to all of us. I am pleased to see in the case of East Kent that, of the 67 special measures recommended, it has now passed 65 and the two remaining ones will be completed by the end of November.

Lord Patel (CB): My Lords, this is the most recent of several reports identifying failures of maternity units in England. The CQC identified 40 maternity units that had failing safety standards. Bill Kirkup has not only produced a brilliant report but identified the way forward, by developing a matrix of standards of safety and outcomes that would apply to all maternity units to make them all high calibre, high standard and safe. Will the Minister agree that, by meeting Bill Kirkup, Ministers could ask him to identify the areas to draw up these standards? Because time is short, if the Minister agrees I will be happy to meet him to enlarge further.

Lord Markham (Con): I agree about wanting to implement the recommendations. My colleague Dr Johnson, the Minister in the other House, already met with Dr Kirkup this week. We also undertook to

come back in the next four to six months with where we are on each of the recommendations. I will bring that back to the House then.

Lord Lansley (Con): My noble friend referred to the first recommendation for the prompt establishment of a taskforce to develop maternity and neonatal outcome measures. It is over a decade since we introduced the NHS outcomes framework but, far too often, it is not used as the basis for accountability inside the National Health Service. Will he say whether that first recommendation will be acted on immediately?

Lord Markham (Con): As I mentioned before, we have already put this in place with the maternity quality surveillance framework. At the same time, if we feel that more needs to be done, it will be included in my review of the recommendations and report back to the House in four to six months.

Baroness Andrews (Lab): My Lords, one of the significant things about this devastating report is that it does not deal with a list of one-off recommendations, as previous reports have. It deals with systemic issues that mean that the whole service is challenged. One of those, as we have already heard, is the difficulty in identifying risks. The other is why we do not hear what families are saying, which is clearly an issue in preventable deaths. One of the specific recommendations is that the Government should now bring forward a Bill that would place a duty on public bodies not to deny or deflect or conceal information from families. That should be a priority. Will the noble Lord take that back to his senior Ministers and get them to acknowledge it?

Lord Markham (Con): We all acknowledge a duty of candour. That should be fundamental to the leadership and to everyone in every trust. In this case, I was pleased to see the trust completely accept the findings and its failings and apologise unreservedly. That is something we need to make sure that all trusts do. We have the framework in place to do that but, if we do not, we will not hesitate to act further to ensure that it is.

Baroness Finlay of Llandaff (CB): My Lords, this alarmingly clear report flags up flawed teamworking as a major failing throughout. That also reflects previous reports. It also points out the unintended adverse consequences of using the phrase "normal births", which should perhaps be replaced by "safe births". Will the Government consider the problem of teamworking? Although there already is a joint group between the Royal College of Midwives and the Royal College of Obstetricians and Gynaecologists, there also needs to be commissioning guidance to make sure that services are commissioned only when there is joint education and training, audit, and co-production of guidance with parents who have experience of the unit.

Lord Markham (Con): Again, we agree with Dr Kirkup's third recommendation that teamwork is vital in all this. Some £26 million has been invested in maternity teamwork training, and a core curriculum has been set up for professionals in this area. Strong leadership has been established, with two national maternity safety champions and a number of regional and local maternity safety champions. We believe that we have the framework in place for these independent working groups but, as we review these recommendations, if we find they are inadequate we will not hesitate to act further. We will bring this back to you in the four-to-six-month timeframe when we report on the recommendations.

Baroness Hussein-Ece (LD): My Lords, the duty of candour has been in place for some years now, but there still seems an ingrained culture of denial and blame deep-rooted within these services. This is the third such report since 2015 and one of its central tenets is that women are just not listened to and are ignored, resulting in terrible deaths and disabilities for so many children. Can the Minister give us his assurance that the duty of candour and listening to women will be at the heart of the Government's response?

Lord Markham (Con): Yes.

Baroness Merron (Lab): My Lords, Dr Kirkup's extraordinary report cites a lack of junior staff and, critically, a shortage of midwifery leadership as contributing to the tragedies at East Kent. In the absence of a comprehensive workforce strategy from the Government, and more midwives leaving than joining, what is being done right now to tackle the considerable number of midwifery vacancies that the NHS is suffering? It currently stands at well over 2,000.

Lord Markham (Con): The number of midwives has been stable over the last four years. We have seen a slight decline over the last year, which is why we have a training and recruitment programme to recruit 1,200 more midwives. In my main point, I echo the comments that Dr Kirkup made: working under pressure is no excuse for staff being rude and aggressive. While we want to recruit the extra numbers, I think that the whole House agrees that there is no excuse for what happened at East Kent.

Great British Railways

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 24 October.

"The case for rail modernisation is now stronger than when Keith Williams set out the plan for rail in 2021. Covid-19, recent macroeconomic events, industrial relations and financial challenges have increased the need for it. The railways are not meeting customers' needs, with delays, unreliability and uncertainty exacerbated by the rail strikes. When people look at the rail sector, we need them to see a system that stands for reliability and sustainability, so it is clear that we have to change.

This Government will therefore deliver the most ambitious changes to our railways in a generation, and will deliver for the people who matter: our passengers, customers and taxpayers. Although we will not be introducing rail reform legislation during the current Session, due to limits on parliamentary time, we are

[Lord Markham]
committed to introducing the legislation necessary to create a guiding mind, Great British Railways, as soon as possible.

As many Members are aware, a competition was run to identify the location for the Great British Railways headquarters. I welcome the support of colleagues for the six shortlisted towns and cities, and I note that the honourable Member for York Central, Rachael Maskell, has been vocal in her support for York to be the winner. I hope to be able to announce the successful location shortly—subject to other events outside the Chamber. Ahead of the legislation, we will continue to work with the Great British Railways transition team and the wider sector to push ahead with our ambitious modernisation programme to deliver real benefits for customers.

Reforming our railways means more reliable trains, faster journey times—in all, a modern, future-facing rail industry; a sector with an unswerving focus on meeting the needs of its customers, creating a simpler, better railway for communities across Britain. There will be a GBR at the heart of our rail network, with its headquarters located in one of our great railway communities. The details will be confirmed shortly, but our commitment to deliver is unchanged."

3.20 pm

Lord Tunnicliffe (Lab): My Lords, we have universal agreement that the railways are in a chaotic mess. Great British Railways was supposed to be the answer. Why is it being delayed? Particularly, why has progress on the rail network enhancement pipeline been stalled, and when will the location of the Great British Railways headquarters be announced—or is this to be delayed indefinitely?

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the challenges facing our nation's railways were very clearly set out—some years ago now—in the *Plan for Rail*. These challenges have been exacerbated by subsequent events, namely Covid, macroeconomic headwinds, and some challenges with industrial relations.

The Government remain committed to modernising our railways and transforming the industry. At its heart will be a focus on passengers. The consultation on Great British Railways and other reforms closed on 4 August. We had 2,500 very good responses. We will be working through that feedback to help us shape the way forward with Great British Railways.

The Government have invested and will continue to invest billions of pounds. On the RNEP specifically, we know that the use of the railways has changed. There has been a shift away from commuting and towards leisure. Where we invest taxpayers' money must reflect that. We are looking at the RNEP and will have it published shortly.

Finally, I am hoping that there will be an announcement shortly on the location of the Great British Railways headquarters.

Baroness Randerson (LD): My Lords, the state of our railways is a national embarrassment. Yet the withdrawal of this Bill is evidence that the Government are not prioritising them. Meanwhile, the tables of the Royal Gallery are littered with Bills that reflect the extremes of Conservative ideology and are of no practical use or value to ordinary, hard-pressed citizens. Will the Minister take the opportunity presented by a new Prime Minister this week to press the case again for the inclusion of this Bill in his new list of priorities? While she has his ear, will she press him to ensure that railway fares do not go up in line with inflation next year, as this would be a bitter blow to commuters?

Baroness Vere of Norbiton (Con): My Lords, I cannot agree that those Bills are no good to anybody. I think that the Energy Prices Bill will be warmly welcomed by consumers across the country.

Some legislation is needed for rail reform. However, it should also be noted that we can deliver an enormous amount of what we have promised without legislation. These are things such as workforce reform, increasing competition within the system, improving the ticketing system, starting local partnerships, and, most importantly, the long-term strategy for rail. This will set out the 30-year vision that will be taken forward by Great British Railways. We are making good progress and will bring the legislation forward as parliamentary time allows.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, for years I have used the east coast main line, at present run by LNER. Will the Minister join me in congratulating LNER on improving services? It is very efficient now after the pandemic—which was a difficult period, obviously, but it is back to optimum efficiency. A lot of it is due to the pleasant nature of, and service provided by, the staff, and, of course, an improved menu. LNER is of course run by the Department for Transport. Does this not provide fairly solid evidence and clear proof that a railway can operate efficiently while publicly owned?

Baroness Vere of Norbiton (Con): I agree with the noble Lord that staff are absolutely key. We have some very hard-working staff across the system. We need to ensure that those staff are in place to serve passengers where they are absolutely needed. It is the case there are some very outdated workforce practices within the railway system, which need to be upgraded so that we can offer a modern, seven day a week service. However, I say to the noble Lord that it is about simplification of the system, not nationalisation.

Lord Palmer (CB): My Lords, I have been travelling up and down the east coast main line for 71 years, and I would like to place on record how incredibly helpful, polite and nice all the staff are, whether it be actually in Scotland or in England. They deserve a serious clap on the back.

Baroness Vere of Norbiton (Con): I completely agree with the noble Lord.

Lord Young of Cookham (Con): My Lords, further to my noble friend's reply, while understanding the reason for postponing the legislation, can she confirm

that it will not stop worthwhile reform, such as simplifying ticketing, introducing more e-tickets, replacing diesel trains on branch lines with battery electric trains and other steps such as providing more real-time information about trains?

Baroness Vere of Norbiton (Con): I can absolutely assure my noble friend that the Government are hard at work with the train operating companies, Network Rail and everybody in the railway industry to make sure that as much progress that can be made is being made. For example, the accessibility audit of all railway stations is now well under way and should yield really good results for accessibility in the future.

Lord Wigley (PC): My Lords, the Minister will be aware from previous questions of the considerable concern about the service between Euston and Holyhead. Members of all parties in another place have raised it on a number of occasions. Given the seriousness of the position, which is that what used to be eight through trains a day is now down to one, what is the Minister doing about this? She has recognised the problem. Has she taken any action?

Baroness Vere of Norbiton (Con): Yes, I do recognise the problem. We absolutely have taken action. We have daily meetings with the train operating company. It has put together a recovery plan, which has been reviewed by the ORR and Network Rail's programme management office. There will be a very significant step change in the timetable in December, because 100 newly trained train drivers are going to be fully deployed by December. So early December will be the next change in the timetable, and we expect significant improvements to services to Wales and elsewhere at that time.

Baroness Taylor of Bolton (Lab): Today there are 44 cancellations on the TransPennine Express. What do the Government intend to do about that?

Baroness Vere of Norbiton (Con): I am aware that the TransPennine Express is suffering a significant number of cancellations at the moment. The Government are working very closely with the train operating company. There are many factors which are contributing to those cancellations, but I agree that they are unacceptable. We are working closely with the train operating company to resolve them where we can.

Lord McLoughlin (Con): My Lords, I declare my interest as chairman of Transport for the North. A number of people find the announcement of the delay in the Bill very disappointing, as the Williams report was commissioned in 2018 and reported in 2021. Will my noble friend confirm that the work that is already being done at the department will carry on at pace? There is a guiding mind at the moment for the railways; it is the Treasury. Can we get away from the fact as soon as possible that the only guiding mind at the moment is the Treasury, not the Department for Transport?

Baroness Vere of Norbiton (Con): My noble friend will be aware that the guiding mind for the railways now is the Great British Railways transition team, which is focusing on all the reforms that we want to put in place. I accept that there will be some disappointment about the delay to the Bill. However, as I have previously outlined, it does not mean that work in the department has slowed down at all. We have a very energetic rail Minister, and I know that he will be taking forward these things at pace.

Baroness Brinton (LD): My Lords, the Minister referred two or three times to accessibility during her responses. While the new passenger assistance app is extremely helpful, it still does not have any functionality to buy tickets. When booking assistance, I have to actually book a seat that I cannot use when I buy my ticket elsewhere. When will this be resolved? All disabled groups ask for it to happen with the app.

Baroness Vere of Norbiton (Con): I am very grateful to the noble Baroness for raising that with me. I will take that back to the department. I know that there is a significant amount of work going on in relation to how online ticketing works. Clearly, it has to work with the accessibility app, and I will make sure that we take that up and see what we can do.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, the noble Lord, Lord Young, made some very good suggestions today—although he is one of the guilty men responsible for the privatisation of the railways, which has caused most of the trouble. The Minister gave replies today that were very similar to replies that she gave to the noble Lord, Lord Young, and others weeks ago and months ago, and yet nothing is happening. When are we going to get away from the position that she says something here, but nothing actually happens on the ground? Will she and her colleagues go out and actually travel on the trains for once?

Baroness Vere of Norbiton (Con): I will do that if the noble Lord stops pointing at me. The reality is that an enormous amount has actually happened. It takes time to put these things in place. There are two main issues when it comes to Avanti, for example. The first is the massive shortage of fully trained drivers, which was exacerbated by the need to stop training during the Covid period. As I mentioned, 100 drivers have now come through the system. However, the number one thing that would really help to restore services on Avanti is better co-operation from the trade unions.

Doncaster Sheffield Airport

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 24 October.

"Following the strategic review of the airport announced in July this year, the Government are incredibly disappointed that Peel Group has taken the difficult decision to announce the potential closure of Doncaster Sheffield Airport. While it was a commercial decision made by the owners of the airport, I fully appreciate the impact it has had not only on passengers who use the airport, including the constituents represented by

[Baroness Vere of Norbiton]
many honourable Members in the South Yorkshire region, but on those businesses, organisations and people who work at the airport and within the supply chain.

As I know from growing up underneath the flightpath of Manchester Airport, regional airports are key in serving our local communities, supporting thousands of jobs in the regions and acting as a key gateway to international opportunities. That is why during the pandemic the Government supported airports through schemes such as the airport and ground operations support scheme, through which Doncaster Sheffield Airport was able to access grant funding.

I need to be clear that, while the UK Government support airports, they do not own or operate them. However, devolved Administrations, local and combined authorities are frequently shareholders in airports that serve their communities, as is the case with Manchester Airports Group, Birmingham Airport, London Luton Airport and, most recently, Teesside International. The UK aviation market operates predominantly in the private sector. Airports invest in their infrastructure to attract airlines and passengers. We will continue to support all parties to seek a commercial or local solution.

Since the announcement by Peel Group on the airport's future on 13 July, the Government have been actively working with local stakeholders to encourage a future for aviation at the site. My honourable friend the Member for Don Valley, Nick Fletcher, and the Department for Transport have met Peel, and I understand that the South Yorkshire Mayoral Combined Authority and Doncaster Council have been working during the review to explore options for a locally led solution. The local authorities have now written to Peel Group to pass on the details of those who are interested in potential options to invest in the airport, and I understand that Peel has begun to engage with those parties.

The aviation Minister, Baroness Vere, met Peel on 19 October and strongly encouraged it to look seriously at any commercial interest. She has also been proactively encouraging Peel Group to strongly consider the local and combined authorities' offers of bridging support if it requires extra time to take forward any discussions with investors.

The Government remain engaged and we look forward to seeing further progress. The House has today highlighted the importance of Doncaster, and I will convey the strength of feeling among Members present to Baroness Vere as she continues her work. I call on Peel Group to continue to work with stakeholders to find a commercial solution or to minimise the impact of its review of the airport."

3.32 pm

Lord Tunnicliffe (Lab): My Lords, the Opposition have called for this UQ since I understand that it is the Minister's personal responsibility. Would she like to expand on the points made—or, indeed, not made—in the other place? In particular, why has the Secretary of State refused to meet local representatives? Further, is it not the Minister's responsibility to support a solution between the combined authority, Peel Holdings and potential buyers? Why have the Government refused to use the Civil Contingencies Act?

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): The Government have had several—actually 13—ministerial-level meetings since towards the end of July. The Transport Secretary, for example, met Mayor Oliver Coppard from SYMCA on 22 September and Mayor Jones from Doncaster County Council. She has also spoken to Peel Group twice. I have spoken to Peel Group, to 2Excel, to the noble and learned Lord, Lord Falconer, who I see is in his place, and to local MPs. The reality is that my officials are in constant contact with all the relevant parties. If I feel that I can help further, I certainly will. On using the Civil Contingencies Act, we looked very closely at it, and it has a very high bar. I should note to noble Lords that, despite all the emergencies we have had in this country since the Act was passed 20-odd years ago, Part 2 of that Act has never been used: no emergency has managed to reach that high bar. We did look at it and we have challenged ourselves to ensure that the contingency plan is in place. Those tenants who will be leaving DSA are robust, and therefore their contracts can continue.

Baroness Randerson (LD): My Lords, many local airports have been in trouble since Covid. However, this airport is of great strategic significance. It has one of the longest runways in the UK, it is the home of the national coastguard operations, and it is the base for the National Police Air Service. This is, therefore, of very great national significance, not a little local difficulty. Will the Minister therefore undertake to treat this as a problem of national significance, and does she agree that the Government need to provide tangible support—not just warm words—for local representatives?

Baroness Vere of Norbiton (Con): The Government do not own or operate airports; local authorities and devolved Administrations do—for example, Manchester, Birmingham, Luton and Teesside. We very much feel that, if there is a local solution to be had, it will come from local knowledge, from those local authorities. For reassurance, I have spoken to 2Excel about its contingency plans, which wrote to the former Prime Minister setting out that it would be able to continue with its work, and the Home Office is content that the NPAS will also be able to continue its work. While we are deeply disappointed by Peel's decision, I have strongly urged the group to engage with all interested parties should a commercial solution be available.

Lord Falconer of Thoroton (Lab): My Lords, the National Police Air Service's entire fixed-wing aircraft fleet is based at Doncaster Sheffield Airport. The fixed-wing element of the UK's life-saving search and rescue service is based at Doncaster Sheffield Airport. The Maritime and Coastguard Agency has aircraft on-call there 24 hours a day, seven days a week, 365 days a year. Peel will close the airport within two or three weeks from today. The consequence is that 2Excel will move all of these and the engineering facilities to what it describes as "boltholes" spread across the United Kingdom. What assessment has the Department for Transport made of the extent to which services will be disrupted or degraded permanently as a result? What effect will that have on the risk to life, particularly as we go into the winter? What steps is the Department for Transport taking to ensure that there is no danger to life in those circumstances?

Baroness Vere of Norbiton (Con): As the noble and learned Lord will know from when he encouraged me—fairly robustly, I might add—to look at the CCA regarding this issue, we have been in touch with 2Excel. I have spoken to the company myself, and it is fair to say that it feels quite aggrieved at the way it has been treated by Peel. I have to say that I have some sympathy with that. Peel has publicly stated that it will work to minimise disruption to its tenants; I very much hope that it will honour what it has said, rather than leaving it to the courts to wrangle over the leases, which will be brought to an end early. We have spoken to 2Excel and have had written confirmation that the contracts in place for search and rescue for the Maritime and Coastguard Agency will not be impacted. As I said previously, I have also had assurance from the Home Office that NPAS will also be able to function.

Baroness Bennett of Manor Castle (GP): My Lords, associated with Doncaster Sheffield Airport has been a huge amount of public funding of infrastructure such as roads. Are the Government going to make any attempt to recover some of those funds from the Peel Group? We went through the same cycle with what was Sheffield Airport, when a huge amount of public money went in and then Peel Group pulled out. Will the Government ensure that the future use of that infrastructure and, indeed, the airport will support small and medium-sized enterprises, co-operatives and genuine prosperity in the local community?

Baroness Vere of Norbiton (Con): Regarding the infrastructure that was put in around Doncaster Airport, such as roads, I have travelled along a road there, which was fairly new and of incredibly high quality. It was of course put there to support the airport and to enable passengers and workers to get to and from the airport, but it should be said that Peel Group invests for the long term. I do not know what its plans are for the longer-term site at Doncaster Airport, should it eventually no longer be used as an airport. However, it is a prime, very large site in an area with a significant number of people who would have the skills to develop various businesses there. I anticipate that any infrastructure that has been put in would be utilised by whatever takes place at the airport.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, as Members of this House may know, I very seldom, if ever, praise the Scottish Government. However, in the case of Prestwick Airport they have done the right thing and for the right reasons. It seems to be very similar to Doncaster Sheffield Airport. Prestwick has a very long runway, and it has a search and rescue facility—the parallels are amazing. Will the Minister therefore give one clear assurance today: that she and her colleagues will have a word with the Scottish Government and look at what they have done to keep Prestwick Airport? The father of the noble Viscount, Lord Younger, and I did a lot to protect it way back in the 1970s and 1980s. Will the Minister please talk to Ministers in Scotland and see if the United Kingdom Government can follow their example in respect of Doncaster Sheffield Airport?

Baroness Vere of Norbiton (Con): As I said at the outset, it is not unusual for the devolved Administrations or local authorities to take stakes in or have interests in airports, and some of them have been incredibly successful. It is pleasing to see that Prestwick is now successful; there was a time when it was not. Certainly, Manchester and Luton have recovered from the pandemic particularly well. As I said previously, the Government do not own or operate airports and will not be stepping in with UK taxpayers' money in these circumstances.

Baroness Pinnock (LD): My Lords, can the Minister explain how the closure of Doncaster Sheffield Airport, in an area that desperately needs investment, contributes to the Government's growth plan?

Baroness Vere of Norbiton (Con): The question is more relevant to regional connectivity, which is absolutely key for growth. As we set out in our 10-year strategic framework for aviation, we are very much focused on regional connectivity. Anybody who knows the geography of the area around Doncaster Sheffield Airport knows that it is not the only airport in the area. Other airports are easily accessible from many of the places around there, so it has quite a limited, unique catchment area, which may have contributed to Peel's decision that it was not viable in the medium term. I understand that other consultants have looked at it, potentially, for the local authorities and reached the same conclusion.

Lord Berkeley (Lab): My Lords, the Minister mentioned that Doncaster has a very long runway, and my noble friend said that it was like Prestwick's. Manston in Kent has an equally long runway, or maybe longer, and so does Newquay in Cornwall. Newquay is being used by Virgin to get the first rocket into space, I believe. Do the Government think that long runways are important, or are they quite happy for all these to be sold because we have short take-off and landing and do not need long runways any more?

Baroness Vere of Norbiton (Con): Of course, they do not get sold. These runways are in private hands or the hands of local authorities. I am grateful to the noble Lord for raising the issue of Newquay. It just goes to show what airports can do. By adding a spaceport to the airport, it is broadening its revenues and looking to the future. The Government very much hope that the launch of the Virgin Orbit rocket will take place as soon as possible.

Digital Government (Disclosure of Information) (Amendment) Regulations 2022

Public Sector Bodies (Websites and Mobile Applications) Accessibility (Amendment) (EU Exit) Regulations 2022

Motions to Approve

3.43 pm

Moved by ***Viscount Younger of Leckie***

That the draft Regulations laid before the House on 15 and 18 July be approved. Considered in Grand Committee on 18 October.

Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee

Motions agreed.

Supply and Appropriation (Adjustments) Bill

Second Reading (and remaining stages)

3.44 pm

Bill read a second time. Committee negatived. Standing Order 44 having been dispensed with, the Bill was read a third time and passed.

Energy Prices Bill

Third Reading

3.45 pm

Moved by ***Lord Callanan***

That the Bill be now read a third time.

The Lord Privy Seal (Lord True) (Con): My Lords, I have it in command from His Majesty the King to acquaint the House that His Majesty, having been informed of the purport of the Energy Prices Bill, has consented to place his interest, so far as it is affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Lord Berkeley (Lab): My Lords, in respect of the King's consent being signified, can the Leader of the House say exactly what that consent comprises? We have this in many Bills—I believe they are all sent to the palace, and the Duchy of Cornwall sometimes, for approval or comment. There is no transparency, so we do not actually know why the consent is needed here and whether it is for their private or their public interest. Is it to help them with electricity bills this winter in their many palaces, which might be private or public or both? Or is it because the Crown Estate—since a proportion of the income from it goes to the sovereign, and it is doing very well with offshore wind—is going to get an extra cut? Some transparency on this at the start of a new reign would be very welcome and interesting, so perhaps the Leader of the House can give me a little more explanation.

Lord True (Con): My Lords, it is a long custom in this House that we are extremely restrained in what we discuss which touches on the potential attitudes of the sovereign and the Royal Family. However, this is marginally tangential, and since the noble Lord was kind enough to give notice that he was going to rise at this point—and if I may humbly say so, it is a good courtesy of your Lordships' House to give notice, and a good way of getting a response—I will on this occasion give an answer, because I hope it gives an example of the carefulness with which these matters are considered.

I can explain that consent was requested in relation to Clauses 16 and 19. Counsel had advised that Clause 16 may impact the interests of the Crown, as it confers a power on the Secretary of State to require certain electricity generators to make payment to a payment administrator, by reference to the amount of electricity they generate in a particular period. Implementation of these powers could, in principle, capture a generating station that the King or Duchy might own or have an interest in, and thereby could require payments by the King in relation to the generation of electricity at that generating station in a period.

Counsel also advised that Clause 19 is capable of impacting the interests of the Crown. The Crown Estate, Duchy or the King, through his personal property, may be required by regulations under Clause 19 to pass on energy price support that they receive—for example, in respect of gas or electricity supplied to premises of which they are landlords—to end-users, including tenants to whom they supply heating, cooling or hot water produced using energy in respect of which price support has been received. Those tenants might acquire a cause of action against the Crown in the event that such support is not passed on. Regulations under Clause 19 may also impose on the Crown requirements relating to the provision of information.

I hope that we do not have to go through this process on each occasion and that your Lordships will understand that this is a consent which the Crown makes to put its interests at the disposal of your Lordships. I also hope that that detailed response, which the noble Lord, Lord Berkeley, asked for, will assure your Lordships as we go forward that extremely careful consideration is given to these matters.

3.49 pm

Motion

Moved by ***Lord Callanan***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, it is my great pleasure to thank all those who have supported the progress of the Bill so far. Let me first thank the Opposition—the noble Lords, Lord Lennie and Lord McNicol, and all their colleagues—for their co-operation in progressing this expedited Bill. I am extremely conscious of the fact—and the House should be aware—that we could not be doing this legislation as fast as we are without the consent of opposition parties. I am grateful to them for that. I also pay tribute to the noble Lord, Lord Teverson, for his invaluable work and contributions, and thank all other Members who contributed to our debates, helping ensure that the Bill is of most benefit to our nation.

I thank the Welsh and Scottish Governments for their support for the Bill. I very much welcome the Senedd's and Scottish Parliament's decision to provide legislative consent for the elements of the Bill that impact on devolved competence. We got very late notice of the Scottish Parliament granting it, so I am grateful for that.

I thank the Northern Ireland Executive's Department for the Economy and Department of Finance for their constructive engagement during the drafting of the Bill. In the absence of an Executive, a legislative consent Motion cannot be secured from the Northern Ireland Assembly. Given the urgent need for this Bill to give financial support to the people and businesses of Northern Ireland, the UK Government are legislating on behalf of the Northern Ireland Assembly. Ministers in Northern Ireland have been made aware of this,

and my department will continue to engage with the Northern Ireland Executive on devolved matters as the Bill is implemented.

Let me also thank the House of Lords Public Bill Office, the House clerks, and the Office of the Parliamentary Counsel for their extremely hard work in drafting the Bill at pace and ensuring that it could be expedited through this House. As always, Ayeesha Bhutta, the principal private secretary to the Leader and Chief Whip, has been a total star in keeping us all right on the procedure of the Bill.

My thanks go to all the policy, analytical and legal officials in BEIS for their expert advice, resilience and, above all, sheer hard work. Many of them worked round the clock and at weekends to deliver this package of support for our nation. They are a credit to the Civil Service, and I thank them for their work.

I would like to thank my private secretary, Matthew Sachak, and the senior responsible officer for the Bill, Jeremy Allen. I must also thank the Bill team: Jessica Lee, Safia Miyanji, Kirsten Horton, Nicholas Vail, Salisa Kaur, Abi Gambel, Luke Rawcliffe, James Banfield, Matthew Pugh, Laura Jackson, Phaedra Hartley and Nicholas Benjamin. I cannot forget the BEIS lawyers, who do their level best to keep me apprised of legal matters —and sometimes even succeed: Wei Lynn, Alex Bentley, Charles Grant, Stephanie Bisset, Matthew Orme, Genna King, Alex Ivett, Susie Squire, Giovanna Amodeo and Sylvia Campigotto.

Russia's illegal invasion of Ukraine has affected families and businesses up and down this country. This is the moment to be bold. The Government have acted immediately and dealt with the crisis hands on, ensuring people can keep their homes warm and businesses are kept open during the winter months.

The Bill includes powers to stop volatile and high gas prices dictating the cost of electricity produced by much cheaper renewables, which will be to the benefit of bill payers. The Bill puts energy bills support for people, businesses, charities and the public sector across the nation on a secure legislative footing. It is a vital step in delivering an unprecedented package of assistance for the whole of the UK. I thank noble Lords for their patience and commend this Bill to the House.

Lord Lennie (Lab): My Lords, briefly, I thank the Minister and his Whip, the noble Baroness, Lady Bloomfield, for their co-operation and hard work during the speedy passage of the Bill. I also thank both the noble Lord, Lord Teverson, on the Liberal Democrat Benches for his knowledge of these matters, and especially my noble friend Lord McNicol, who, while not in his place today, came in at the last minute to support me in the absence of my noble friend Lady Blake. Finally, I thank Milton Brown from the legislative team in the Labour office for keeping us up to date and on message throughout the process. The Bill will now be referred to the other place, and we wish it well in its speedy implementation.

Lord Teverson (LD): My Lords, we on these Benches very much support the Bill, although it might have a few Henry VIII powers and go a little further than it needs to. However, it is clearly absolutely essential for households getting through the winter to come. I very much thank the Minister and the noble Baroness, Lady Bloomfield, for their work from the Government Benches, and all his other officials who have been involved. On our side, I also thank Sarah Pughe from our Whips' Office. I also thank the Labour Front Bench, and particularly the noble Lord, Lord Lennie, for their co-operation and for the work we have done together. I make one least plea to the Minister, with which I am sure he will agree: it is very important that we manage to deliver the benefits that the Bill gives to those who are off-grid. I know that he and his officials will work hard to ensure that this is the case, although I understand that it will be difficult.

Lord Whitty (Lab): My Lords, while I have no wish to dissent from this unanimity, I think that we are owed an indication from the Minister as to where this fits in with the overall energy policy. We had an Energy Bill before us which is now in limbo and which in part overlaps with the Bill. From the new Secretary of State for BEIS—and indeed from the Minister himself, with the assumption, we hope, that he is still here—we need an early statement on the totality of energy policy, on which this is dealing only with the immediate emergency—profound though it is—facing so many families and businesses. We need to know the totality of the position from the new Administration, so can we have some indication from the Minister as to when we are likely to see that?

Lord Callanan (Con): I am sure that the new BEIS Secretary of State, when he or she is appointed, will wish to convey at the earliest possible opportunity the future of the Energy Bill to the noble Lord.

Bill passed.

Northern Ireland Protocol Bill

Committee (1st Day)

3.57 pm

Relevant documents: 12th Report from the Delegated Powers Committee, 6th Report from the Constitution Committee

Motion

Moved by ***Lord Ahmad of Wimbledon***

That the House do now resolve itself into Committee.

Amendment to the Motion

Moved by ***Baroness Chapman of Darlington***

At end insert "but that this House regrets the absence of (1) a response by His Majesty's Government to the 7th Report of the Delegated Powers and Regulatory Reform Committee, (2) the publication of an impact assessment outlining the likely consequences of the use of powers in this Bill on the Northern Ireland business community, (3) the publication of draft regulations which may be laid using the powers in this Bill, and (4) any formal report to Parliament on the status of negotiations with the European Union; and calls on His Majesty's Government to provide this information before the House considers the Bill at Report Stage."

Baroness Chapman of Darlington (Lab): My Lords, I begin by taking this opportunity to extend the condolences of these Benches—and I am sure of other noble Lords across the House—to the family of Baroness May Blood, who passed away late last week. May was the first woman from Northern Ireland to be elevated to this House, reflecting her long record of defending and advancing the rights of women, children and working people. I hope that her family will find some small comfort in the warm tributes from all communities and political parties in Northern Ireland, which must be a reflection of the peace process she did so much to advance.

In moving my amendment to the Motion, I express thanks to colleagues across your Lordships' House for the many hours of discussions that have taken place since Second Reading. The Second Reading debate highlighted near-unanimous opinion across the House that the Bill is neither wise in a political or diplomatic sense, nor constitutionally acceptable. I know that various colleagues have said at multiple points that they feel very strongly that the Bill should not have a Committee stage, and I sympathise greatly with those who hold that view. In an ideal world, the Government would have recognised this too by accepting the strength of feeling against the Bill and paused it. Perhaps that will still happen.

3.57 pm

In the face of seemingly never-ending political turmoil in Westminster, that step would have sent a helpful signal to businesses and communities in Northern Ireland, and to our negotiating partners in the EU. It would have provided reassurance that despite the recent ministerial merry-go-rounds—we are having another one today—there is a genuine commitment to a negotiated outcome. In failing to take that step, Liz Truss demonstrated poor political judgment. Perhaps it says a lot about her that the Bill remained a priority even as she prepared to depart Downing Street for the last time. According to comments we have seen on Twitter and that were made over the weekend, the new Prime Minister is apparently personally committed to the continuation of the Bill. Lots of things get said during internal election campaigns, promises are made and positions get exaggerated, but surely any incoming Prime Minister would want to demonstrate an ability to resolve problems rather than prolong them.

We are of course mindful that the role of your Lordships' House is to scrutinise the legislation put before us. That is the case no matter how offensive we may find the legislation, and the Bill does push the boundaries. As we move into Committee this afternoon, this House will consider the Bill in the usual way, clause by clause and line by line, and I believe this will show, yet again, just how reckless and unworkable this piece of legislation really is. I hope it will give the new Prime Minister all the evidence he needs that the Bill is not going to get through this House without serious difficulty.

The Government often cite their manifesto commitments when attempting to get Bills through Parliament, but in this case the legislation directly contradicts the 2019 manifesto: I refer noble Lords to page 7 if they want to look for themselves. Boris Johnson said he had solved the Northern Ireland Brexit questions, that he had got Brexit done, that the public had endorsed the deal, including the protocol, and that Parliament had duly implemented it. To now try to drive a coach and horses through the lot of it, in a way that asks this House to be satisfied that we can act outside of legal processes, makes it so much harder to achieve the negotiated outcome that everybody says they want.

The idea that the Bill is delivering on a commitment from the 2019 manifesto is just absurd, and I hope that the Minister will not attempt to rely on that argument this afternoon. The Bill runs counter to the objective of achieving a good negotiated outcome. If passed, it will not resolve the problem, but will simply lead to a political stand-off, a further deterioration in trade and more uncertainty for business. Only a negotiated agreement that all sides accept can provide a durable solution.

As I and many others have said for months, a deal is achievable, but where is the focus from Ministers? Where is the leadership and grip that will be needed to sort this out? It requires hard work, cool heads, and movement from both sides. Ministers should not be here attempting to shepherd this dreadful Bill through Parliament; they should get their shoulders to the wheel, determined to find solutions. That is the only way this ends. We very much hope that the Sunak Administration will reach a deal in good faith, and that the UK and the EU can show sufficient flexibility, where that is needed, to get an agreement over the line. I think everybody in this House, however they view the Bill, will agree with that. However, if the new Prime Minister does not take those steps, or if he insists that the Bill needs to remain in play, we will have to seriously consider whether it is appropriate to proceed to Report. He is being irresponsible if he thinks he can use the fragile political situation in Northern Ireland for internal Tory political management.

I do not intend to push my amendment to a vote this afternoon, despite much encouragement from all sides of the House to do so, but I hope the Government take note of the various conditions outlined in it. I also acknowledge the amendment to my amendment tabled by the noble Baroness, Lady Altmann, which is a very sensible and helpful addition. It shows the support across the House and the depth of concern about the way the Government are approaching these issues.

First, we are all familiar with the unprecedented ministerial powers proposed in the legislation. We have all read the scathing report of your Lordships' Delegated Powers and Regulatory Reform Committee. That report was published in early July, so we hope to see the committee's various recommendations taken seriously by the Government.

Secondly, despite the widespread disruption that unilaterally tearing up the protocol would entail for the Northern Ireland business community, the Government have not published an impact assessment, so we ask for one in our amendment. These documents ought to be a standard feature of the legislative process, enabling all sides to understand the likely real-world impact of proposals put forward by Ministers. There is clear guidance around this, as I know the Minister is aware,

and the Government must not disregard it, particularly as such an assessment would demonstrate material harm to Northern Ireland's economy. I hope that we will see that document soon and that it will be both detailed and credible.

Thirdly, both your Lordships' House and affected businesses deserve to see indicative regulations. It is bad enough that the Government propose tearing up the protocol unilaterally but, beyond a few vague pledges, nobody knows what future arrangements might look like or if they are feasible. The publication of indicative regulations, which occurred during the passage of the European Union (Withdrawal) Act 2018, would give Parliament and business greater clarity and could help ease concerns about the scope of the Bill's powers, which we would welcome.

Finally, Parliament should be provided with a formal update on negotiations with the EU. We warmly welcome the resumption of talks and have been closely following ministerial briefings to the media. However, that is not an appropriate substitute for the detail and accountability offered by Statements to Parliament. I hope the Government can commit today to an Oral Statement from the Foreign Secretary in another place. There is no reason why that could not happen tomorrow. Beyond that, Ministers should provide regular updates to Parliament, whether on their meetings with EU counterparts or progress made by officials in their technical discussions.

We are not being unreasonable. The Government should already have met at least two of the four things we ask for in our amendment. Taken together, they represent the bare minimum your Lordships' House should expect before proceeding to the amending stage of any major piece of legislation such as this. I hope the Minister will commit to meeting these asks in full a reasonable time ahead of Report. Colleagues will need sufficient time to consider the various documents; it will not be acceptable for them to arrive days or hours ahead of Report, as we have seen on other occasions.

We are trying to be helpful and reasonable, but the Government are making it very difficult for us. We are under pressure from all sides of the House to be unreasonable and attempt to block this legislation. We are resisting doing so today, but I cannot emphasise enough to Ministers just how seriously we take this. We see it as a breach of international law that should not be before this House. That is all I will say for now, but I hope the Minister can engage with this seriously and constructively, because that is the intent of the amendment to the Motion. I beg to move.

Amendment to the Amendment to the Motion

Moved by ***Baroness Altmann***

Leave out from "information" and insert "and to lay before Parliament (a) a comprehensive United Kingdom economic and sectoral impact assessment of the legislation, and (b) a report on their consultations with representatives of all the main Northern Ireland political parties and business sectors, before the House considers the Bill at Report Stage."

Baroness Altmann (Con): My Lords, I would like to add my support to the remarks of the noble Baroness, Lady Chapman, and to her amendment; my amendment simply adds extra requests for what I believe is vital information to be provided to Parliament before Report stage. I would also like to express my gratitude to colleagues across the House for their engagement with discussions on this Bill, and indeed I would like to thank my noble friend on the Front Bench, who has also been generous with his time in discussing these issues.

The problems with this Bill are far deeper, more fundamental, and indeed more important, than Brexit. This is about right and wrong, about protecting parliamentary democracy and about the values that our country believes in and holds dear—the importance of keeping our word, trustworthiness, honesty, integrity. This Bill drives a coach and horses through these things: it seeks to tear up an international agreement signed recently, supposedly in good faith.

Besides the issues of international law that other noble Lords are much better qualified than me to comment upon, there are also serious constitutional consequences of allowing Ministers untrammelled powers to bypass Parliament, changing laws at will. No parliamentary democracy should be asked to accept this. If noble Lords do not make a stand now, I believe we are failing in our duties. Slowly, slowly, the usual freedoms and democratic norms we have lived by are being chipped away; Parliament must not become inured to these power grabs. It is time to make a stand before it is too late, for continuing down this path is heading us toward an elected dictatorship, with a supine Parliament that can be bypassed at Ministers' whim.

Even aside from the legal and constitutional dangers, we have not been given, as the noble Baroness, Lady Chapman, explained, the necessary information on which to base proper assessment of how passing this legislation would impact the UK economy, important sectors of Northern Ireland and British business. Nor are we told the results of consultations that have taken place with all the main political parties and business sectors in Northern Ireland. My amendment calls for these to be provided as well.

The history of Ireland is full of turbulence created by one group overriding the wishes of others rather than working together to seek peace and a harmonious relationship. The Good Friday agreement achieved peace because we were part of the EU, but a hard Brexit has upended this. The idea that Britain can unilaterally force its own interests on the island of Ireland and still retain peaceful, fruitful trading and other relations is a fantasy. The Bill demands that the UK be the final arbiter of what constitutes a risk to the EU's single market, or that the ECJ cannot ultimately arbitrate matters of dispute. This cakeism is unsustainable.

This Bill also risks upsetting our trading relations with the EU, and indeed the US, at a time when we need them to boost growth. The new Prime Minister has a chance to reconsider this Bill and set it aside in the interests of growth, I hope that he will decide at the very least to put it on hold, so that proper negotiations

[Baroness Altmann]
can take place and trust can be restored. The EU has offered concessions, and I believe we have a chance to find resolutions.

To restore our international standing, we must end this unilateralist, bullying approach and start recognising reality: that Northern Ireland is attached to the EU; it is not physically attached to Britain; passage of this Bill will force a border on the island of Ireland, which runs directly counter to the Good Friday agreement. My amendment calls for the Government to present to Parliament their economic impact assessment on all main sectors in the UK, including in Northern Ireland, and to include how they will mitigate, for example, the damage to the dairy, agri-food, and potentially electricity sectors, and to tell us before Report stage what they believe are the views of all main political parties and business sectors in Northern Ireland. I beg to move.

4.15 pm

Lord Purvis of Tweed (LD): My Lords, it may assist the House to know that we from these Benches can confirm our support for the amendment in the name of the noble Baroness, Lady Chapman, and the amendment we have just heard.

If we are to scrutinise legislation properly in this House—which is our constitutional duty—there is also a duty on us to highlight areas where we are prevented from doing so because the Government have not presented sufficient information. There is clear precedent for this. We did so on the Professional Qualifications Bill, when the mood of the House was reflected to the Minister in very clear terms that accompanying information was devoid of sufficient information and that we would not progress discussion of it unless further information was provided. To his credit, the then Minister, the noble Lord, Lord Grimstone, provided that. We stated in clear terms when the Government presented more than 350 government amendments to the Subsidy Control Bill shortly after they introduced it that they needed to bring further information. To his credit, the noble Lord, Lord True—now the Leader of the House—indicated that the Government would change their position and allow for more debate.

The Government have not sufficiently responded to the desires expressed both at Second Reading and by the committees of this House for further information. They have not responded properly to the Delegated Powers and Regulatory Reform Committee report, which was excoriating in its condemnation of the use of regulation-making powers. As we have heard, the Government have failed to bring forward an impact assessment to show their own estimate of what impact policy options taken to present the Bill will have. The House will recall that I quoted from the original impact assessment of the protocol legislation, so it is fair to ask for the successor legislation, which will have equally profound implications, also to have impact assessment information. The Bill itself is extremely controversial, and it will have an impact on the business community, society, trade and the wider economy. Therefore, an impact assessment is vital.

This is not just a debating point. The Cabinet Office in its 2022 *Guide to Making Legislation* is very clear on what the requirements are on departments when they bring forward legislation. Section 13, on impact assessments, says:

"The Government has international obligations in free trade agreements to conduct impact assessments on regulation that has an impact on trade."

Clearly, this Bill has such an impact. It goes on:

"A development, options or consultation stage impact assessment must be submitted alongside any bids for legislation, and a final proposal stage impact assessment must accompany requests for collective agreement to the policy in a Bill."

The guide says clearly:

"The final impact assessment must be made available alongside bills published in draft for pre-legislative scrutiny or introduced to Parliament."

When the Advocate-General for Scotland replied to me at Second Reading, he said that the Bill did not have an impact assessment but that

"full details of the new regime will be set out in regulations". —[*Official Report*, 11/10/22; col. 767.]

That is just not good enough. We need to scrutinise these now.

On delegated powers, I remind the House that the Constitution Committee report concluded in paragraph 29:

"In examining clause 9, the Delegated Powers and Regulatory Reform Committee concluded: '[l]egislation has preceded policy development rather than vice versa'. We agree and recommend that clause 9 be removed from the Bill."

We will discuss this later, but the essential point is that legislation should follow policy development, not vice versa. The Advocate-General said in response to the Second Reading debate:

"Since the Bill was introduced, we have consulted extensively with businesses and other key shareholders on the underlying details of the regime … There have been over 100 bespoke sessions with over 250 businesses, business representative organisations and regulators."—[*Official Report*, 11/10/22; cols. 767-8.]

But on what? We do not have proposals in front of us. The Government's own code of conduct for consultations states that they should be based on public questions. I have not seen a consultation document. I have not been able to find any draft regulations on which the Government have consulted. I have not been able to see any details of how the new regime might operate in practice, and we have not been presented with an assessment of what the responses are in order to shape views of costs. There is no footnote to the Cabinet Office document from this year that says, "None of this applies when a Minister so decides for political purposes".

The Minister seemed confident that draft regulations will solve the problem, although he and the noble Lord, Lord Ahmad, did not spell out in detail what they will be; we will hear that later in Committee. I remind the House that we have been furnished with draft orders before, when we asserted our desire to receive them. However, at Second Reading, the Advocate-General contradicted himself. In defence of the Government's legal position, he said that

"the peril that has emerged was not inherent in the protocol's provision",

but, later, he said that

"the problem lies in the protocol and not in its application".—[*Official Report*, 11/10/22; cols. 764-68.]

I suspect that a witness contradicting himself in court might have been pounced on by a certain advocate, but we in this House need to see the draft regulations if they are the fix for the root causes, as the Minister said.

Finally, we need formal reporting. We need detail on where the negotiations stand and what the current areas of consideration are. In Committee in the Commons, the then Paymaster-General said:

"I am not sure how much more could be done in terms of negotiation … Good faith negotiations to resolve the issues with the protocol have already been exhausted."—[*Official Report*, Commons, 13/7/22; cols. 383-84.]

I think the whole House was encouraged by the comments from the noble Lord, Lord Ahmad, at the start of Second Reading, when he said that the talks have resumed and are of a positive nature. However, we need full updates with technical papers so that we can properly scrutinise this legislation and so carry out our constitutional duty.

Lord Judge (CB): My Lords, I apologise to the House for being unable to speak at Second Reading. I put my name down but realised that I could not be present at the end of the debate. If noble Lords will accept my apology, I assure them that I will not now make a Second Reading speech; I will simply summarise what I believe to be the case: that, as proposed legislation, this is a lamentable Bill.

If we want a careful, detailed analysis of the issues in and chronology of this case—I recommend that we do, if I may say so—the report from the House's Library is absolutely magnificent. I personally thank those who prepared it; I recommend it to your Lordships. Everybody wants to have a say, so I am not going to add to the long list of things that are required, but can I suggest three more?

First, the Constitution Committee has just reported. The power of its report is not merely in that it repeats the concerns expressed by the delegated legislation committee on the Henry VIII aspects of the Bill; it directly addresses the Government's contention that there is no problem with the lawfulness of the Bill. The Government have so far treated the report from the delegated legislation committee with scant respect. We have not had an answer to it. We should not proceed with this Bill until such time as there is an answer to the delegated legislation committee's report and to the Constitution Committee's report. These are our committees. They are cross-party, and the reports speak for the committees as a whole.

My second concern is that there is litigation afoot. A judicial review of the protocol has been taken and is due to be heard in the Supreme Court on 30 November. My question is this: has any attempt been made to expedite the hearings so that they can come on more quickly and we can have the Supreme Court's answers to the issues raised instead of saying, "Well, we're going to have to wait for that decision so we must act quickly because we're having to wait too long"?

Thirdly, a number of infringement processes have been taken against us by the EU. It would helpful if we could see our responses to those. We need to know where we stand in the formal proceedings taken by the EU that we are in contravention of our treaty obligations. They are not a matter of privacy. I understand that negotiations must be conducted privately and there is confidentiality attached to them, but surely not for our Government's response to the EU's requests for infringement processes to be looked at.

In the end, I am very glad that this issue will not be taken to a Division today. That is sensible, particularly because all sides of the House need to understand what the problems are with the Bill and why it is, in the word which I used at the time of Second Reading, which I did not take part in, a lamentable Bill.

Lord Howard of Lympne (Con): My Lords, the effect of these amendments, whether one agrees with their precise wording, is to give the new Administration time to pause, to reflect, and to consider the best way of dealing with the issues that arise from the protocol. The new Administration need that time. There is no doubt that the way that the protocol is being implemented causes considerable practical difficulties for Northern Ireland, particularly for trade between Northern Ireland and the rest of the United Kingdom. These difficulties, which would be exacerbated if the protocol were to be implemented in full, are real. A solution to them must be found.

There is agreement across the House that the best solution could be an agreement between the United Kingdom and the European Union. We are told that discussions are taking place. I hope that the new Administration will give fresh impetus to those discussions, and that it will not take what might be described as a theological approach to those negotiations. It appears to be the position of His Majesty's Government that changes to the text of the protocol are essential. However, it may be that a solution to the practical problems which exist can be provided by other means. The European Union has a long history of creative interpretation of the texts of agreements, which has often stood it in good stead in arriving at practical solutions in one field or another—and it should be encouraged to do so here.

We all hope that those negotiations succeed, but we must face up to the possibility that they may not succeed. If that turns out to be the case, I hope that the Government will look again at the possibility of dealing with the practical difficulties by invoking Article 16 of the protocol rather than through this Bill.

I think that my noble friends on the Front Bench will recognise on reflection that the explanations that they gave at Second Reading for not proceeding by Article 16 were—how can I put it?—rather less than convincing. Presumably it was precisely to deal with difficulties of this kind that Article 16 was inserted into the protocol. It is a perfectly legal route if the preconditions in the article can be satisfied. If they cannot be, there is certainly no justification for this Bill.

I do not need, or propose, to repeat the arguments against the application of the doctrine of necessity in these circumstances, which I and others advanced at Second Reading. I urge the Government to think again. I hope these amendments will prove to be unnecessary.

Lord Hain (Lab): My Lords, I hope that I will not embarrass the noble Lord, Lord Howard, by saying that I agree with virtually everything that he said.

First, however, I pay a brief tribute to May Blood, a stalwart warrior for peace who crunched fearlessly through all the political posturing, was dynamic, warm, passionate, blunt at times, and incredibly courageous on the front line of peace. I also apologise that, when the date was switched, I was unable to be present for Second Reading as I had intended. I speak in support of the amendment tabled by my noble friend Lady Chapman of Darlington, which I trust that she will re-table before Report and call a vote on if necessary.

4.30 pm

I also commend the noble Baroness, Lady Altmann, for her amendment and pay tribute to her. She has been absolutely consistent in speaking up fearlessly and speaking the truth about the impact on Northern Ireland. I do so as a former Secretary of State for Northern Ireland who between 2005 and 2007 under Tony Blair negotiated a settlement that brought those bitter old-blood enemies Ian Paisley Sr and Martin McGuinness to share power together. This led to relatively stable self-government for 10 years before Stormont self-suspended and has been more or less so ever since.

I am desperately worried that the Government's decisions over Northern Ireland following Brexit are reversing the progress made since the 1998 Good Friday agreement and this Bill is continuing that sad and disturbing pattern. Have all the main Northern Irish political parties and businesses been properly consulted and their views taken into account by the Government over this Bill? No. The policy is being driven by one party, and one party alone: the DUP. I do not attack it for that. It is entitled to press its view; I have many friends in the DUP and they speak up fearlessly for their cause and are entitled to do so. This is not an attack on them; it is a criticism of the Government because they are not right to give the DUP an effective veto among all the parties. Without majority support in Northern Ireland, this Bill risks being yet another thing this UK Government do to Northern Ireland, rather than with Northern Ireland.

As of June this year, 55% of Northern Irish people in an opinion poll supported the protocol as a means of managing the impact of Brexit. The same poll found that 57% of respondents did not think the UK Government would be justified in taking unilateral action on the protocol, as this Bill does. The last elections for the Northern Irish Assembly—and it looks like we will have a fresh set of elections sooner rather than later—also saw a majority of voters opt for parties which support the protocol: 53.5% of all first preference votes went to Sinn Féin, the Social Democratic and Labour Party, the Alliance and the Green Party.

But, of course, everybody—and this is the important point—in all those parties agrees that the protocol needs to be altered, or rather that its implementation needs to be altered, to borrow the word from the noble Lord, Lord Howard, "creatively". I think there is common agreement on that, and that is where the Government should be focusing. As the noble Baroness, Lady Suttie, pointed out at Second Reading, the Bill

"risks alienating the majority in the Northern Ireland Assembly who want to see a negotiated settlement."—[*Official Report*, 11/10/22; col. 693.]

This is the thrust of the amendment from my noble fried Lady Chapman and, indeed, the amendment to that from the noble Baroness, Lady Altmann.

Pushing ahead with the legislation could exacerbate social tensions in Northern Ireland and fuel further, damaging instability in that part of the UK. With negotiations under way with the EU and increased opportunities for a negotiated outcome, because I believe all the mood music suggests that that is the case, surely your Lordships' House would be right to delay the passage of a Bill which breaks international law, at least before Report stage.

The UK Government have themselves said that if a negotiated solution is reached, the Northern Ireland Protocol Bill will no longer be necessary, and I commend Ministers for that assurance. Given that the negotiations are under way, surely delaying the passage of the Bill while communities in Northern Ireland are properly consulted and an economic impact assessment is carried out is the most responsible course of action, rather than bulldozing ahead with the Bill.

The UK Government's legal justification for the Northern Ireland Protocol Bill under the doctrine of necessity has been widely rejected and the view of Treasury counsel on this specific matter has not been published. The view given so far was based on counsel being asked to assume that the Bill is legal, rather than advising on whether that is indeed the case. The Northern Ireland Protocol Bill is already damaging the UK's reputation, our diplomatic relationships and our economy at a time when unity in the face of Russia's illegal invasion of Ukraine is required. Delaying the passage of the Bill while the UK and EU negotiate allows more time to avoid causing further damage.

Again at the risk of embarrassing him, I quote the noble Lord, Lord Howard, who pointed out at Second Reading that government Ministers have condemned President Putin for his breaches of international law. He said:

"The thing about the law, whether it is domestic or international, is that you cannot pick and choose. You cannot pray it in aid in one context and have no regard for it in another".—[*Official Report*, 11/10/22; col. 697.]

That is an irrefutable argument from a noble Lord who is both a senior Conservative and a passionate Brexiteer—unlike me in either respect.

President Biden has refused to negotiate a US-UK trade deal while this protocol Bill is being pursued. Delaying its passage will enable time for the Government to consider concessions over the oppressively ubiquitous powers to Ministers that are more reflective, in my view, of an elective dictatorship than a proper parliamentary democracy.

The Bill contains 19 Henry VIII clauses, which would grant the UK Government unprecedented powers to breach international law and bypass Parliament. I mention in passing that the EU has signalled that, if this Bill is enacted, it will suspend the trade and

co-operation agreement, leading to huge uncertainty for UK and Northern Ireland businesses at a time when the financial markets have lost confidence in the UK's economic management. Only a few days ago, a former Governor of the Bank of England, the noble Lord, Lord King of Lothbury, gave a dire forecast of our economic prospects.

Before it passes, surely your Lordships' House is entitled to have a full economic impact assessment of the Bill, both on the UK economy, and whether it could worsen the UK's economic outlook at the height of the cost of living crisis, and on Northern Ireland's economy. The Government have not done that. But the most important reason to support this amendment is to give time and space for proper negotiations.

It is important to put on record that Brexit, in the form of the protocol, has created a crisis of identity for unionists and loyalists. That has to be acknowledged. Likewise, prior to the Good Friday agreement, there was a crisis of identity for nationalists and republicans. If something like the protocol had not been agreed, that crisis for nationalists and republicans would have been reignited, because the external frontier of the European Union had to be somewhere. The Government chose the Irish Sea, rather than the Irish border across the island, triggering deep resentment and insecurity among both loyalists and the majority of unionists. I quite understand that, but it need not be the case.

Is anyone seriously arguing that finding acceptable solutions to the problems triggered by the protocol is harder than finding the solutions that were found through the 1998 Good Friday agreement and the 2006 St Andrews agreement? Most thought neither of those agreements would ever happen, yet they did. This is easy compared to those two agreements, to be frank. The problem is eminently soluble by serious negotiation, give and take, and understanding of the different interests at stake. The EU should understand the interests of unionists, who feel threatened, and the British Government should understand and take into account the views of the majority of parties.

There are important issues to address. The democratic deficit, in which laws are passed in Brussels that affect Northern Ireland, can be addressed in representation through the joint committee and directly in Brussels on behalf of Northern Ireland government Ministers and the Northern Ireland Assembly. That would be easy to achieve if the UK Government were willing to propose and support it, and press the EU to grant it. I suspect it would agree to this.

If it is not elevated into some fundamentalist article of faith and dogma, a solution is possible around the European Court of Justice. The Liberal Democrat Peer, the noble Lord, Lord Thomas of Gresford, has suggested a solution and many fellow Members of the Protocol on Ireland/Northern Ireland Sub-Committee, on which I sit—this House's own committee—have heard his arguments. There are creative solutions such as that, without the ECJ being entirely removed from the situation. If it is, and this becomes an article of dogmatic faith for the Government, Northern Ireland would be ripped out of the single market and the customs union, because the ECJ polices the single market. That is one of its functions. It is hardly ever active on it, by the way; it is a backstop. Solutions could easily be found to this.

There have been proposals from the UK Government for red and green lanes, and the EU has indicated that it can do business on that. A creative solution is possible on the medicines issue, which has proven difficult, and for phytosanitary issues. There is already a border of sorts, and has been for a very long time, for plants and livestock moving from Great Britain to Northern Ireland.

This would not be some big dogmatic issue if creative solutions were sought and negotiations prioritised. There is a question of alignment: how do you align the fact that Northern Ireland is in the UK, the single market and the customs union? These things can be resolved if no dogmatism is applied.

I end by saying that negotiations require trust to be built and time; they require ministerial grip to find political solutions, as has been done time and again in Northern Ireland and other arenas. I have negotiated on behalf of the British Government in a number of different areas—the United Nations, the EU and Northern Ireland. We need less dogma and more flexibility. This Bill is getting in the way of that.

Viscount Hailsham (Con): My Lords, I express my support for the observations of the noble Baroness, Lady Chapman, and the amendment advanced by my noble friend Lady Altmann. I would very happily have supported either, were this matter to be put to the vote.

I am against the Bill. I expressed my reasons at Second Reading and will not repeat them today because I appreciate that we are concerned here with a very narrow issue: whether this matter should go into Committee. In expressing my opposition to it going into Committee, I want to focus on one issue only, namely our relations with the European Union.

We have a new Prime Minister. I wish him well. Mr Sunak supported Brexit, a policy that I deeply regret. However, I am sure that he will be the first to recognise the need to improve our relations with the European Union. We must do so: they are our nearest, biggest and most important trading partner, very important allies and neighbours. We need to give this Government, led by Mr Sunak, the opportunity to reset their policy towards the European Union. I believe that the Bill, if enacted, will aggravate our relations with the European Union. It is possible that it will trigger a trade war. Both of these things would be highly undesirable. What this Government need is time: time to negotiate sensibly with the European Union. If we agree to defer the Bill and not let it go into Committee at this stage, we will be giving the Government and the European Union time to come to a sensible agreement. I commend that to this House.

Lord Kerr of Kinlochard (CB): My Lords, I too will be brief. I have heard nothing in the preceding speeches with which I disagree, but I have one point that I would like to add.

I agree with the amendment put down by the noble Baroness, Lady Chapman, and with the amendment suggested by the noble Baroness, Lady Altmann. However,

[Lord Kerr of Kinlochard]
even in the unlikely event that the Government were to provide all six dossiers that have been requested, and in the even more unlikely event that these proved reassuring, I would still want to vote against this Bill. It is a matter of principle and honour.

You cannot make a silk purse out of a sow's ear, and this is a pig of a Bill. The powers it confers on government using these powers is simply not compatible with how this country views its commitments. We do not tear up treaties. That is the point of principle; that is the matter of honour. A deal is a deal is a deal: pacta sunt servanda. The noble and learned Lord the Advocate-General told us at Second Reading, in a rather labyrinthine reply:

"The assertion that the Government's position breaches international law is too bald and lacking in nuance."

When questioned by the noble Lord, Lord Howard, he said that

"it would be wrong … to engage in a deeper debate."—[*Official Report*, 11/10/22; cols. 765-66.]

He did not say why it would be wrong or when the moment would be, but I imagine he was waiting for the Constitution Committee's report. Now that we have it, we see that the Constitution Committee is clear that even enacting this Bill would

"clearly breach the UK's international obligations".

There is not a lot of nuance there.

4.45 pm

I am no lawyer and I do not want to get into enactment, but as a practitioner I can say that what seems plain as a pikestaff to a non-lawyer like me is that to exercise the powers the Bill confers would drive a coach and horses through a treaty—and that is not what we do. It would not just be self-defeating; it would be dishonourable. We, Parliament, must not empower our Government to act dishonourably, to condone, to purport or to legitimise. That would itself be dishonourable, so I do not see how this Bill can go through. It is a stain on my old department.

However, it dates back to the last Prime Minister but one, and today, as the noble Viscount, Lord Hailsham, said, we have a new Prime Minister and a new Administration, a chance to turn over a new leaf, to bring back honour, to make our word again our bond and to negotiate in good faith with the EU on the practical implementation of our mutual obligations under the protocol. I am sure that Mr Sunak is an honourable man—it would be tactless to say, "like Brutus". I hope he will now choose not to pursue this Bill. It would be the right thing to do, and it would also be the sensible thing to do, because negotiations cannot succeed while this blunderbuss is on the table and because I believe that this House will, if it has to, vote the Bill down.

Lord Cormack (Con): My Lords, I speak with a sense of something approaching elation from yesterday. We have a new Prime Minister, who appears to be a man of absolute honour—I take up the points made by the noble Lord who has just spoken. I have hope in him, and I hope he will justify that hope, which I believe is shared by many.

I do not want to make a long speech. I moved a regret amendment at Second Reading, and I was rather sorry in many ways that I was not able to put it to the vote, but clearly the House did not want that to happen at that time and it was right to listen to the House.

I would like to give one message above all others to the Prime Minister. What took Northern Ireland forward—the noble Lord, Lord Hain, with whom I worked in Northern Ireland when he was Secretary of State and I was chairman of the Northern Ireland Affairs Committee, knows this better than I—was prime ministerial involvement; that was the key to success.

Both John Major and Tony Blair devoted enormous time and attention to what led to be the Good Friday agreement. I remember being present in the Royal Gallery when the Taoiseach, Bertie Ahern, came, together with Tony Blair, to speak to both Houses of Parliament. Tony Blair was particularly careful to say that this was not just his achievement, and that without the building blocks laid by John Major this could not have happened. There has to be a cross-party accord; there has to be prime ministerial involvement.

Our present Prime Minister has inherited a herculean task. If he is going to devote time to the economy, he clearly cannot be devoting an equal amount of time to Northern Ireland at the moment. What he can do, however, is to encourage those who are negotiating on this country's behalf to negotiate. He can remove what I called in the Second Reading debate the sword of Damocles, which is this Bill. It is a bad Bill; it is a Bill that gives powers that no democratic Minister should ever seek in a plethora of Henry VIII clauses. Therefore, what I beg Mr Sunak to do is to just go carefully and then, as soon as it is possible, to go to Northern Ireland with the Secretary of State. I do not know who that will be, because the Prime Minister is reconstructing his Government even as we sit in this Chamber this afternoon. He has promised—and I was there when he promised it yesterday afternoon in Committee Room 14—a broadly based Administration, which we desperately need. We have had Administrations produced by Boris Johnson and Liz Truss which were by no means broadly based. They were merely gatherings of like-minded people and, in constructing their Governments, the two Prime Ministers did not really take sufficient account of variety and ability.

I hope that Mr Sunak is doing that as we speak. I hope that he will go to Northern Ireland soon; that he will talk to those who are negotiating on behalf of the Government with the European Union; that he will recognise that the very last thing that this country needs is a trade war, referred to earlier in this debate; and that he will pause. There is no great hurry and, even if the Government are in a hurry, your Lordships' House is not in a hurry. This could take hours and hours and days and days, but at the end of the day this Bill is unimprovable, because it trashes our international reputation and the things that we are most proud of.

My noble friend Lord Howard's reference to Putin, in his brilliant speech on Second Reading, was entirely apposite. We have to set an example; we have to show that we are indeed the guardians of one of the best democracies in the world. We have got to show that we

are not prepared to sanction a Bill that rides roughshod over our national reputation. Like my noble friend Lord Hailsham, I would support either of these amendments if they were put to the vote tonight. But I understand why those who have proposed them in very persuasive terms perhaps do not want to do that. However, there must be a day of reckoning in your Lordships' House because this Bill is bad for our country and bad for our future, and it must not go onto the statute books.

Baroness O'Loan (CB): My Lords, I speak as one who lives in Northern Ireland and experiences on a regular basis the impact of the bureaucracy associated with the operation of the protocol. I spoke at Second Reading of my concerns about the Bill and I want to support both amendments placed before your Lordships today, because we do not have the information that would underpin proper consideration of the necessity for the Bill. No doubt a solution has to be found to the various problems arising in the operation of the protocol but, as witnesses to the Northern Ireland protocol sub-committee of the European Affairs Committee told us—we heard evidence last Friday in the Northern Ireland Assembly—this Bill is like placing a gun on the table at the negotiations.

I hope that, even at this late stage, the Prime Minister and the usual channels will consider the matter further and withdraw the Bill—in light of your Lordships' interventions today, of the reports of the sub-committee on the protocol, those of the Delegated Powers and Regulatory Reform Committee and, most of all, in light of the report of the Constitution Committee, which says:

> "Legislation which puts the UK in breach of international law undermines the rule of law and trust in the UK in fulfilling future treaty commitments. The Government's reliance on the doctrine of necessity does not justify introducing this Bill. This raises the question of whether ministers might be thought to have contravened their obligation under the Ministerial Code to comply with the law, including international law."

This is the most serious of observations by the Constitution Committee. I will vote against the Bill when we get an opportunity to do so but, at present, I support the amendments.

Baroness Ritchie of Downpatrick (Lab): My Lords, I rise to support both these amendments and to pay tribute to our colleague Baroness May Blood, who sadly passed away last week. May was a fearless campaigner in Belfast for the rights of the underdog, for integrated education—believing that children should be educated together rather than apart—and, above all, for the rights of women in work and in factories.

I support the contents of these amendments. So far, we have not received from the Government any reports or any assessment from their perspective about the report from the Delegated Powers and Regulatory Reform Committee. Also, we now have the report from the Constitution Committee, as was referred to by the noble Baroness, Lady O'Loan.

No assessments have been carried out in respect of the economy, business and commercial developments in Northern Ireland. Only last week, as a member of your Lordships' committee on the protocol, I returned to Northern Ireland along with the noble Baronesses, Lady O'Loan and Lady Goudie, and our chair the noble Lord, Lord Jay. We paid a visit and took evidence—in Newry, which is along the Belfast-Dublin corridor, as well as in the Northern Ireland Assembly—from the leaders of all the political parties, and from the business, commercial and manufacturing sector. The general view of those people—apart from those in the haulage sector—was "Please remove this Bill". This comes back to the basic point that there have to be successful negotiations, a successful negotiated outcome between the EU and the UK. That is vital. Those negotiations cannot come to a positive conclusion as long as the Bill, which is like a gun on the table, exists. I urge the Government: please remove this Bill, as it is not helpful.

Like the noble Lord, Lord Cormack, I urge the Government and the new Prime Minister to come to Northern Ireland—above all, to come with Taoiseach Micheál Martin and show the joint approach that was portrayed in the Good Friday agreement. That bipartisan approach is urgently required because, unless there are negotiations to restore the political institutions, we are in a political backwater. I urge the Government please to do that.

5 pm

I believe that resolutions have to be found by negotiation and not through unilateral actions such as this Bill. The protection of the GFA in all its parts is a real and reliable standard for us. We have only to look at the North/South Ministerial Council, that was also stood down by the DUP's non-participation. It had certain solutions to deal with the protocol, because the solutions are of a technical nature that can be resolved through the protocol.

The people in Newry and Belfast told us they wanted a joint UK-EU negotiated solution. They want economic and political certainty. The uncertainty that currently exists does not lend itself to political progress, political development or good economic development. Many people we spoke to found benefits in the protocol in increased trade. They do not want a trade war, and they do not want any further political, economic or business difficulty. They want the new Prime Minister to act now and act jointly with the Taoiseach.

I support both amendments because they encapsulate the current issues for those of us who live in Northern Ireland, who want a successful implementation of the protocol with mitigations.

Lord Clarke of Nottingham (Con): My Lords, I spoke at Second Reading and made clear my opposition to Bill. I will not repeat any of that. I will try to avoid repeating the many views that have already been given, all of which I agree with. They have been put very eloquently and clearly. This is a quite despicable piece of legislation that shows total contempt for the rule of law. It is plainly in breach of our international obligations. It shows total contempt for parliamentary democracy by giving powers to the Government to legislate without having to bother with parliamentary scrutiny in the correct way in future. To say that I am opposed to the Bill is an understatement. I still sit here utterly astonished

[Lord Clarke of Nottingham]
that, after all my decades in politics, a British Government —worst of all, a Conservative Government—could dare to bring forward a piece of legislation of this kind, in a country that is supposed to be the mother of Parliaments and has always, in the past, been respected for our form of parliamentary democracy and what we contribute to the rule of law, democracy, liberty and liberal values in the world. I am already beginning to warm to my views on the whole thing.

I want to comment on the value of delaying proceeding with all this. We are proposing to move to negotiations with the European Union. It is our closest friend and ally in the world. Certainly, since the Americans have a certain propensity to elect a President such as President Trump in the not-too-distant future, we are particularly dependent on the closest possible relationships with our neighbours and friends, whose international interests almost entirely coincide with ours. What is the Government's answer, not on the merits of the Bill—no doubt the Minister will do his best to make an argument and keep a straight face, which I think he managed in our last debate—but about the delay? If they are genuinely opening negotiations with the European Union in good faith, and if the policy of the new Government is a genuine desire to reach a settlement of the practical problems—the stated policy of the old Government—it could, if addressed properly, improve the practical application of the Bill.

What they are doing is poisoning the whole relationship behind the negotiations before they have even started. To a lay audience, one would only have to ask: what would our reaction be if the Europeans came to the table and put a similar blunderbuss in front of us, saying, "We are already preparing, unless you agree to any terms we put forward, to now impose tariffs on all the products that you export to your most important markets in our territory—and we are going to do so, tearing up the agreements to the contrary and normal practice, in front of your eyes"?

You cannot negotiate on that basis. It is not just illegal; it is just bad negotiating tactics. We are positively inviting them to plunge us into a trade war, which is about the worst possible disaster I can imagine this country being plunged in given its economic circumstances at the moment, as we are already in a recession. We are going to have a severe recession and combine it with very high levels of inflation, unless the new Government produce some spectacular remedies for where we have already got to.

I have no doubt that something ingenious will have been prepared for the arguments on the merits, the law and parliamentary process and that undertakings will be given. What is the argument that makes it so absolutely urgent for the Government to insist that they must be seen to be proceeding to legislate in this way, before they have even sat down to start talks with our European neighbours? If anybody can think of an argument against that, I shall be absolutely astonished.

Finally, I have enjoyed this debate. I enjoy coming to the House of Lords and wish I was able to come more frequently. It is a splendid institution and I enjoy the debates. I always have a little difficulty as I still have not managed, after two years here, to take it terribly seriously and my friends criticise me for that. If I have a decent dinner in the evening, I am afraid it sometimes takes me away from debates which I am otherwise engaged in. The reason is because increasingly, over the years, the House has been totally disregarded by Governments of all kinds. It is rarely heeded by the public because it has such limitations on its powers. I entirely understand the overriding principle that the elected House must, in the end, prevail when it has a conflict with an appointed House. We do not have the legitimacy that we would need to block the express views of a majority of the House of Commons, but we concede to that convention in an extremely cautious way.

I came here convinced that, at the very least, I would go away feeling a little more satisfied because I had been able to cast a vote to give the chance of improving the climate of the negotiations by delaying progress on the Bill for a time, to see whether the negotiations could make some progress. Like my noble friends Lord Cormack and Lord Hailsham, I would have supported any vote put forward to that effect. So here we are; we are retreating. I must learn to understand and acquire more experience, realising that a Labour Government want to reserve the right to do similar things if they see the precedent being set for future and successive Governments. But I regret it, because the principles behind this debate are of huge and profound importance.

The quality of our democracy is deteriorating. The power of our Parliament is being eroded and we do not know where this process is going to be stopped. I still hope that we might find some pause in that development if the new Prime Minister thinks again and agrees to at least hold up any further parliamentary progress until he sees whether sensible negotiations with the Europeans are worth while. It is as much in the interests of the Europeans as ours to have successful negotiations and we might be able to return to a civilised way forward.

Lord Patten of Barnes (Con): I will not begin by following my noble friend with an autobiographical diversion, but I want to start with what he said at the beginning of his remarks. It is not outwith our experience in this Chamber or elsewhere to begin a speech by saying that everything one wanted to say has already been said, then to say it all over again rather less well than some others said it.

I wish to be very brief. I will not follow the arguments about the lack of wisdom of turning Henry VIII into our legislative guru in this House. I will not follow what has been said about the way in which the doctrine of necessity was tortured in a way the American constitution would surely regard as "cruel and unusual" treatment into providing whatever Ministers wanted it to say.

I want to borrow from a corruption of what Lord Alfred Douglas said and raise another issue which has not for some time dared to speak its name, and that is Brexit. We sometimes get the legislation and arguments about it the wrong way round. It was Brexit which was a threat to the Good Friday agreement and the relations between Northern Ireland and the Republic. The Northern Ireland protocol was meant to deal with that in an acceptable way.

The last Prime Minister—let me get this right—but two had her own proposals for dealing with the problem, which was to have the whole of the United Kingdom more or less inside the customs union and single market. That was opposed by the last Prime Minister but one and the European Research Group. They saw off Theresa May and produced the Northern Ireland protocol as their own answer to the problem. At the time, the then Prime Minister gave lots of assurances to the DUP and others that the Northern Ireland protocol would not have any effect on trade between Great Britain and Northern Ireland. I assume it was his usual habit of saying things he hoped would be true but turned out not to be, or maybe he just had not read what he had signed up to.

We are left with this debate about the Northern Ireland protocol. I think we are debating it with a Prime Minister who wants to unite the Conservative Party and the country, rescue the economy from Singapore-on-Thames-ism and do what he can to bring us all together in that very difficult fight. In doing so, I am sure he will be aware of the impact on the economy of having another row with the European Union, which remains—even though we are outside it—our largest trade market. It cannot make sense, as my noble friend said earlier, to do that. I very much agree with what both my noble friends Lord Hailsham and Lord Howard said on this. It makes sense to give Mr Sunak and the new Government a chance of looking at these issues again.

5.15 pm

Do we need what people have called a "shotgun under the arm" or a "pistol on the table" to encourage our friends in the European Union to do whatever we want them to do? I remember Enoch Powell suggesting that Iain Macleod should have a pistol on the table when he went into discussions with Mr Macmillan and Alec Douglas-Home, the then leadership of the Conservative Party. Confronted with the question that the pistol might go off, Enoch Powell said, "Yes, that's what pistols do; they have a trigger. When firing with a shotgun or a pistol, you are not firing doves; you are firing pellets, which kill doves". So if we are serious in our negotiations about really wanting a deal with the European Union, what is the point of still using this blunderbuss, shotgun or pistol and thinking that it is necessary to have it on the table? It surely adds to the confusion among those with whom we are negotiating and gives them perfectly valid reason to doubt whether we are really sincere in the whole enterprise. Some say that we have to do it because we cannot challenge the European Research Group's veto over policy, or because we have said things to the DUP leaders that we cannot go back on—but what about the things we have said to the majority of the community in Northern Ireland?

It would be a great help all round if the Prime Minister would simply encourage people to go slow on all this and listen to what has been said in this debate by my noble friend Lady Altmann and others, which would be the right and sensible way forward. It cannot make sense to proceed in this way with a rotten Bill, which may be regarded, at best, as a way of getting other people to the negotiating table. It is no way for a grown-up Government to behave. We now have a Government again with adult supervision, so I hope that we can see the Government behaving sensibly on this in relation to our European friends. I am grateful to both my noble friends Lady Williams and Lady Altmann for giving us the chance to talk about this this afternoon.

Baroness Fox of Buckley (Non-Afl): My Lords, the noble Baroness, Lady Altmann, has done such fantastic work on pensions and much more that I admire. However, inevitably, in this instance, I completely disagree with her and with the whole tenor of her remarks and the remarks made by many since then. When the noble Baroness, Lady Ritchie, was speaking, I thought that that was the kind of detail I would like to go through when scrutinising the Bill, and the kind of discussion I assumed we would be having here. In fact, the points of view have become much broader.

I will comment on a few things and will not drag this out for too long. The noble Baroness, Lady Altmann, said that the issues in this Bill go far deeper, and are more important and fundamental, than Brexit. I think that this is because so many in this House still do not really understand what Brexit was all about or the important and fundamental principles at its heart. They do not understand, even now, as we have heard, why millions of people voted for it. When the emphasis is constantly on trustworthiness and integrity, and restoring the trust of the UK Government internationally, maybe people ought to consider that that is always the external focus of this discussion—but there is an internal focus. Surely at this moment, of all times, when political parties on all sides have a very fragile relationship with the voting public—who, let us be honest, are pretty disillusioned—we need to consider how we can restore trustworthiness and integrity with UK voters here at home.

The key to this protocol Bill is that many people in the UK, when they voted in 2019 for that manifesto, wanted to see through the decision of 2016 to leave the European Union. The issue of Northern Ireland was one of the ways through which people were saying, "You can't have Brexit, because look at the Northern Irish issue". So people wanted to find a solution to it. I regret that they were overreassured by the Government when they were told, "Don't worry, we've dealt with the protocol issue"—I always had concerns about the protocol issue. However, the intention was not to allow the issue of Northern Ireland to undermine the decision of 2016, because—lest we forget—that 2016 decision was nearly undermined. Some here say, "Our word is our oath" and so on, but they did not think that then; everybody else voted for something, but some here said that it did not make any difference and then ignored it.

It seems that, even now, so much of the discussion we have had is disingenuous. I ask opponents of the Government and the Government this: when people say that surely we should spend a bit more time and pause, how long do they want? Is it any wonder that nothing gets done in this country, if people think that this is a speedy process? Since 2019 we have had this protocol Bill and it is going wrong. Something needs to be done. The idea that we can pause or stop it and reconsider is not because anybody thinks we should

[Baroness Fox of Buckley]
not rush it through. Really, the message is: can the Government pause it, slow down, change their mind and agree with me? That is not the same as saying that we should pause and rethink; it is saying, "Pause and do what I tell you to do".

The noble Baroness, Lady Altmann, suggested that the Bill creates a bullying approach to negotiations with the EU. I disagree. For me, what the debate so far has illustrated is the bullying approach within this House on this discussion. The noble Baroness, Lady Chapman of Darlington, says that the Bill is not going to get through this House unless it is changed beyond all recognition. Really? Do we not have votes? What does the noble Baroness mean when she says it is not getting through?

Baroness Chapman of Darlington (Lab): Just to correct what the noble Baroness said about my contribution, I did not say that the Bill will not get through; I said that it will not get an easy ride, and I think the discussion today has rather borne that out.

Baroness Fox of Buckley (Non-Afl): I wrote it down and I will check. It was said that if there were not substantial alterations to the Bill, this House will block it. I suggest that it might be a bit of an affront to democracy for people in this House to say that we should block the Bill. That is not our decision. When people here talk about how the Bill is an affront to democratic decision-making, I point out that threatening to block a Bill is an affront to democratic decision-making. When people say that they are worried that the Bill bypasses Parliament, and that they want to protect democratic norms and do not want the Government to become an elected dictatorship, they should note that blocking the Bill would imply bypassing Parliament, undermining democratic norms and turning this House into an unelected dictatorship.

Finally, why do I think the Bill is needed? This bit, I can go into. The problems of the operation of the protocol are well documented. Many people have greater experience of it than I do, but when we scrutinise the Bill and go through it, that is what we should talk about, and whether the Bill is fit for purpose to resolve some of those things. I agree with that. But the reason a Bill is needed is surely because the rule of law—and everybody here seems enthusiastic about the rule of law—will be applied differently to the people of Northern Ireland unless we do something about the way the protocol is being enacted. To be able to ensure that all citizens of the United Kingdom are treated equally under the law, we need to do something—it cannot be that all citizens are treated equally under the rule of law in the UK apart from a certain section of the UK who will be subject to decisions made by legislators that they have no control over.

As a civil libertarian, regardless of what you think of Brexit, if you believe in the rule of law, you cannot let things stand as they are. We need to urgently do something. While some have indicated that the real problem is Brexit, that ship has sailed. The British people spoke. Brexit is a reality and we have to live with that. We have to ensure that the people of Northern Ireland are not punished.

Baroness Ludford (LD): Has the noble Baroness seen the latest opinion poll, which shows that, when you exclude "Don't knows", 60% of British people want to rejoin the EU?

Baroness Fox of Buckley (Non-Afl): I am always delighted when people think that opinion polls and what is said on Twitter are democracy in real life. I do not know why we bother with the ballot box—we should just go to an opinion poll. I believe in democracy and the democratic right of the British and UK people to make their decisions without rushing off to Opinium Research, or whoever it may be.

Lord Campbell of Pittenweem (LD): My Lords, I am sure the House would not expect me to, or hope that I would, follow that contribution. I apologise for not being able to speak at Second Reading. I was travelling, as it happens, back from the United States and could not get here before the proper time and date to indicate a wish to speak in the debate. However, that travel to the United States prompts me to say this: we ignore at our peril the importance attached on both sides of the aisle, and in both Houses of Congress, to the Belfast agreement. To put it neutrally, this Bill puts a stress and strain on that settlement. For that reason, and for all the others eloquently put forward today, this Bill should at the very least be delayed.

I remind the House that, some time ago, we were presented with a Bill nominally in relation to internal markets. It contained a Part 5, the purpose of which was to create a law whereby the Government would be excused when it broke the law. The Government have form on this matter, and there is a sense in which the Bill we are discussing is simply part of the same kind of thinking. What has been said today has been said with great eloquence; what was said in this House on the internal markets Bill was said with great eloquence and eventually the Government had to abandon it.

Lord Bew (CB): My Lords, I rise to speak with some trepidation as, apart from the noble Baroness, Lady Fox, this has been a convention of like-minded people, as the noble Lord, Lord Cormack, put it.

I have just come hot-foot from a Committee A (Sovereign Matters) meeting at the British-Irish Parliamentary Assembly in Cavan. We were addressed by the Taoiseach at some length and by other Irish Ministers. There was much discussion of these matters during the day. However, no Irish Minister said, "Whatever you do, when you get back to London, make sure that this protocol Bill is stopped". It is simply not a contentious matter in these negotiations. That is a simple fact. A very large percentage of what has been said today about the need for good faith and how dropping this blunderbuss will strengthen our position is, with the kindest of respect, totally irrelevant.

The EU has decided, for its own perfectly good reasons—it is keen to reach this deal; I utterly believe in its good faith—that this Bill will not stop substantive negotiation. What it would do, if the majority opinion in this House were to prevail, is stop the Government's attempt to bring the DUP back into the Assembly. That will be its only real effect. Neither the Taoiseach nor the other Irish Ministers said a word about it yesterday at Committee A (Sovereign Matters), because

this Bill is not central to them. What is central to them is the ongoing negotiation, which is proceeding with good faith on both sides and from which I sincerely hope for a result. It is very important to say that.

A great part of what has been said is, I am sure, very well meant but, to put it bluntly, totally irrelevant. It is not the realpolitik of the moment. That is very important to understand. Dropping this Bill will not transform those negotiations into a better or worse state. They are going on now; they are facing some very difficult problems—I think there may be some progress—and we can certainly hope, as I am sure everybody in the House does, for an outcome on this. But it is simply pointless, bootless and, worst of all, deeply irrelevant to keep arguing and going on about the need to drop the Bill because it would lead to greater faith in negotiation. The negotiations are already in play, in good faith—end of story. However, it would have an effect on our ability to get the DUP back into government.

5.30 pm

Now, I said at Second Reading that I consider the DUP to be moving, bluntly, too slowly on this matter, and it does leave the Government's strategy in an exposed position—we must be clear about this.

However, the Government must follow international law, and international law in Article 1(5) of the Good Friday agreement is quite clear: where they are faced with the potential for long-term alienation of a particular community, the UK Government have to act. That is their responsibility under the international agreement in the United Nations not to allow the long-term alienation of one community. That is why the noble Lord, Lord Caine, in recent weeks, on a matter of concern to the nationalist community, has pushed through the Irish language legislation in this House, which is principally to address potential alienation in that community.

That is where we are with international law, I am afraid, and that is the prior international agreement, so the Government have to attempt, in a serious way, to end the alienation with the unionist community, which every poll—if we are talking about opinion polls—and every election result shows is total on this point. The Government have an absolute responsibility to act; they are acting under an international obligation.

Again, I am always amazed how little discussion there is in this House about the reality, because we cannot talk about the protocol Bill on its own without acknowledging the fact that the protocol itself—both in Theresa May's version and in Boris Johnson's version—commits in many places to the primacy of the Good Friday agreement being observed. The primacy of the Good Friday agreement is not a new doctrine produced by the last Government and supported still by this Government, as I understand it; it is actually there in the protocol.

Therefore, when you say, "This is illegal" and "That is illegal", you have to realise that you have to talk about the interaction of two texts. In March 2019, the then Attorney-General—supported from the Front Bench in this House—said that the Good Friday agreement was the prior agreement and that in certain circumstances the protocol could be resiled from. It was said in this House, and nobody objected. I remember when the importance of the primacy of the Good Friday agreement was asserted from the Front Bench; nobody said a word.

Now at that very time—and I look at the noble Lord, Lord Dodds—I was trying to persuade the noble Lord, Lord Dodds, to do a compromise deal with the May Government to get it through. What the noble Lord, Lord Dodds, said in effect was, "That is very interesting"—about the primacy of the Good Friday agreement—"and that could be the way forward, because it could be a way of protecting and balancing our rights, but I do not believe Parliament on this matter." The way you have all behaved in the last hour and a half shows that he was entirely right not to believe Parliament. He said, "We need more than that, though it is an interesting opening gambit." That is why it was said by the Attorney-General on that day on 12 March—the Attorney-General gave the Brexit Secretary the authority to say it—in an attempt to do a deal. But he said no. Why did he say no? Because he thought lots of people would not follow through, and you have just proven in spades that, unfortunately, I was wrong when I told him to compromise, and he was right, because that is exactly how you have functioned.

Baroness O'Loan (CB): Can I ask the noble Lord whether he thinks that the Government's intention to call a Northern Ireland Assembly election on Friday will assist matters?

Lord Bew (CB): I thank the noble Baroness, Lady O'Loan, very much for that question. The short answer is that I agree with her. We have a new Prime Minister, which begs the occasion for looking again at that question because, frankly, we need some more weeks to see how the negotiations go and so on and, frankly—

Lord Carlile of Berriew (CB): That is what noble Lords have been saying.

Lord Bew (CB): The negotiation with the European Union is proceeding apace anyway. This is of no relevance—I keep saying this—and nobody in the Irish Government even bothered to talk about the protocol Bill.

By the way, is there a majority of popular opinion in Northern Ireland against the protocol? I think that is probably right, although there is a large minority for it, but you all must appreciate we have long since left majority rule behind.

On the calls from the noble Baroness, Lady Chapman, for new information, I completely respect them, but, actually, the truth is extremely simple. We basically know where we are in terms of business. As the noble Lord, Lord Jay of Ewelme, who chairs the Sub-Committee on the Protocol on Ireland/Northern Ireland, said on Sunday, businesses with a north-south dimension like the protocol, and those with an east-west dimension do not like it. We already have a lot of information and, politically, we already know.

By the way, the passion for the full implementation or support for it in Northern Ireland, which was real at one point, is dead—completely dead. That having been said, I would totally accept that the majority of the parties and Members in the Assembly—

Baroness Ritchie of Downpatrick (Lab): I thank the noble Lord, Lord Bew, for giving way. While I was not at BIPA, my clear understanding—and I have just had it confirmed—is that the Irish Government's position is quite clear that they view this protocol Bill as an unnecessary, unilateral move that breaks international law. Of course, they want to see a successful outcome to negotiations between the UK and the EU.

Lord Bew (CB): I thank the noble Baroness for her intervention. Of course I take the point, but I was saying that nationalist Ireland basically does not like this Bill. That is not the point. The point is that it is not in any way stopping or infringing or slowing up the negotiations. The point is that the equality of esteem doctrine, which we are supposed to be following with the Northern Ireland protocol, means that the House is bound by international law to pay attention and to try and do something. On whether this Bill is precisely right, there are amendments starred in the normal way to be discussed, but we are not in the situation where we are talking about amendments.

I have great sympathy for the noble Lord, Lord Howard, who raised the issue of Article 16. However, when I look at the noble Lord, Lord Frost, who was in a critical position on this matter for quite long spells in recent times, I think that he is bound to be surprised by the sudden outbreak of support for the implementation of Article 16, because at any time when he voiced the same civilised opinion in this Chamber, noble Lords were totally against it and regarded it as outrageous—of course it never was.

There is even a case now for the implementation of Article 16, made by Professor Boyle, who was professor of international law at Edinburgh, to both the House of Commons Select Committee on this matter and our own Select Committee on this matter. He is actually open to the argument for the importance of the prior international agreement and the importance of protecting it. He is a very distinguished international lawyer. What I understand him to be saying is that, first, you must apply Article 16; that is a perfectly reasonable argument that I am open to. In addition—I look at the noble Lord, Lord Howard, in engaging on this point—the other point that I very much agree with him about is that there is no need to ask the EU to change its negotiating mandate; it has to live up to its commitment to the Good Friday agreement.

The context is one in which—Members of this House do not read the Irish media as I do, and Irish books, articles and so on—there is a fairly consistent admission on the part of the Irish Government's negotiating team that, when Theresa May was on her knees in November 2017, the advantage was pushed very hard in that agreement, and that they took sole ownership, or sole guardianship, of the Good Friday agreement. In many ways, what is happening here is an attempt by the British Government to say, "Well, actually, that is not really the Good Friday agreement. First of all, you do not have sole ownership. Secondly, we have responsibilities as a sovereign Government not held by the Irish Government and"—as I have tried to explain—"we are trying to move back to deal with this in some way."

This does not mean that every clause in this Bill is particularly wise, but it does mean that we should not take the attitude that in principle we should not be doing it, or that we must stop now because otherwise the EU will stop negotiating—that is clearly not true. I agree that the Irish Government do not like the Bill and that they believe that it infringes international law. I absolutely accept that point, but the point is that we have to follow our obligations under international law, which means that the long-term alienation of one community must be avoided. Unless the Government do something substantive such as this—

Lord Howard of Lympne (Con): Does not the noble Lord think that it is slightly odd that his justification in law for supporting the Bill is not the Government's?

Lord Bew (CB): The noble Lord has a point—but not as deep a point as he might imagine, because the Government have been consistent in saying that the primacy of the Good Friday agreement is the core of their position, in both the House of Commons and in this House. There are other details; there is phrasing. For example, as is well known, I am not as convinced of the need for language in this Bill about the Act of Union. I understand why it is there, but I am not convinced that it is relevant. There are other aspects that we will discuss, in the normal way, on amendments. There is detail that will come up later tonight, and there are things that need to be said, in the normal way. But this is not a normal discussion—

Lord Purvis of Tweed (LD): I am grateful to the noble Lord; he knows that I like and respect him. I am trying to follow the rationale of his argument with regards to us legislating here. Earlier, he made the case—he stressed it repeatedly—that the only purpose of the Bill as he can see it is for the DUP to return to the Northern Ireland Assembly. As far as legislators are concerned, does that mean that the DUP also has a veto on any regulations that come as a result of this Bill?

Lord Bew (CB): We are in political negotiations. Here is our problem; I have already explained it. When I tried to persuade the noble Lord, Lord Dodds, I said, "Just believe the British Government when they say that the Good Friday agreement is the dominant thing". We can see now what has happened here. You only have to read the Dublin newspapers, to be frank, to realise what has had happened.

We cannot undo a negotiation that we lost. It is not the officials' fault; the Prime Minister had lost an election and was desperate to get in and to make any kind of progress to justify her existence. You cannot undo this; I am not suggesting that it is possible. You lose, you lose—end of story, at one level. However, at another level, what it means is that the EU is committed to the Good Friday agreement, and it does not understand what it is committed to. You only have to read Michel Barnier's memoirs to see that he has no idea about the importance of the east-west dimension and that his description of the north-south dimension is literally fantasy, which has been derisorily commented on in all sections of the Irish media.

We are bound into this agreement, but we cannot be bound into a fantasy. We have to unhook. We must have a good-faith negotiation in which we have to acknowledge the things that have gone wrong on our side and the EU has to acknowledge that the version of the Good Friday agreement it thought it had is not the real agreement. There is a strand three, for example, which talks about the importance of the east-west arrangements and so on. You can see how the original misunderstanding runs through all the texts and leads to the difficulties we are now in. To go back again to why I agree with the noble Lord, Lord Howard, we do not need to ask the EU to change its mandate. We need to ask it to understand its mandate. Its mandate is the agreement. It does not take long to read it, by the way. There is a strand three about the importance of east-west relations, although you would not know it from Michel Barnier's memoirs. You would not know it, and you would not really know what the north-south relationship is either. So, that is one reason why this negotiation has some potential, because both sides have to come to terms with their errors in the past.

I conclude with one thing, because I have great respect for the noble Lord, Lord Hain, and what he said about Baroness Blood—as did the noble Baroness, Lady Ritchie. However, we also have to remember what other former distinguished Labour Secretaries of State said in acknowledging this difficulty. The noble Lord, Lord Mandelson—who was deeply involved in saving this process—said last week that he accepts that the Good Friday agreement and the protocol do not sit easy together; the tension is there. The noble Lord, Lord Murphy, talked about this in this Chamber as long ago as 6 December 2018. Distinguished Labour Secretaries of State know that there is a problem. The existence of the problem was not really acknowledged by the noble Baroness, Lady Chapman, earlier this afternoon.

Baroness Kennedy of The Shaws (Lab): My Lords, in all this discussion, not enough is said about the horror of what was experienced in the years leading up to the Good Friday agreement. We are forgetting that. In the language of decency in the House of Lords, we are allowing ourselves to somehow not remember the full horror of that period. That horror was rooted in inequality, a lack of rights for certain people in the community, and a strong sense that the only way towards peace was to somehow protect the rights and equalities of people in Northern Ireland. You would not have got people to the table if there had not been a very honest discussion about the pain, loss and suffering that came out of those inequalities. I can say this as somebody who did more trials involving those Troubles than probably anybody in this House.

5.45 pm

The noble Lord, Lord Bew, said that the primacy of the Good Friday agreement is there in the protocol. All I can say is, let us remind ourselves of that and what was at the heart of the Good Friday agreement: a recognition that the platform on which rights were being premised was the European Convention on Human Rights and the European Court of Justice's protection of rights. So, when it came to the protocol, a formula had to be found to protect rights. One of the things that was part of that commitment was that, in order to deal with the strong sense of injustice that had led to the Good Friday agreement, there should be no diminution of rights going forward, and that in the protocol we would be committing ourselves to making sure that rights would follow into Northern Ireland as they developed in Europe. Of course, that is one of the things that members of the DUP are not too happy about. They do not like the idea that there might ultimately be some place in which solutions are found when there is conflict over rights and the development of rights.

Noble Lords will remember that at the heart of the whole Brexit debate was the idea that we had to disentangle ourselves from European courts. There is still a whole section of the UKIP-driven Conservative Party that even wants to leave the European Convention on Human Rights. This House should not forget that rights and equality and the pursuit of them was part and parcel of the Good Friday agreement. That is why people are sensitive; it is not talked about sufficiently in this House.

If we are to have impact statements, and if we have some time to look at what the implications of the Bill might be, I would like us to look at its implications when it comes to that very carefully drawn set of protections for rights and equality in Northern Ireland which was at the basis of the Good Friday agreement, and which has to be still in our minds as we talk about the protocol. I am afraid that that is being lost in the whole business of whether there are going to be tariffs and so on. Of course, those matters are of vital importance, but there are other rights in here as well. That is why I am in favour of some delay, because I would like to see a proper assessment of the impact of the Bill, in a deep way, on that carefully wrought Good Friday agreement, which was about rights and equality as much as other things—actually, it was fundamentally about that.

I also want to know why we are not seeing the legal opinion which says what our position is with regard to international law. There is not a lawyer in this House who does not agree that this is an affront to international law, as I mentioned last time. On Monday of this week there was a meeting in this House about the treatment of Jimmy Lai in Hong Kong. He is a media owner being put on trial under the new national security law because of the erosion of the rule of law in Hong Kong. We want to say that that is an affront to international law because of the agreement made with China over Hong Kong's future, but how can we say that with any kind of respect in the world when we are doing this to another international treaty because it has become inconvenient to us? That really is wrong, and I would like an impact assessment on the human rights implications of this piece of legislation.

Lord Pannick (CB): My Lords, I pay tribute to the noble Lord, Lord Bew, because he has at least made the effort to present an argument as to why the Bill is not a breach of international law—something that the noble and learned Lord, Lord Stewart, the Advocate-General for Scotland, for whom I have great admiration in other circumstances, expressly declined to do at the end of Second Reading. As I understand it, the argument

[LORD PANNICK]
from the noble Lord, Lord Bew, is that international law includes the Good Friday agreement, which recognises the need to pay close attention to the views, interests and aspirations of all sections of the community—and here, most relevantly, the views of the unionist community, and in particular the DUP.

That argument deserves an answer so I will attempt briefly to explain why, in my respectful view, it is hopeless as a matter of international law. The reason why the argument is hopeless is that international law states that the doctrine of necessity simply cannot apply where the Government have caused or contributed to the problem that they now perceive and are seeking to address. The noble Lord, Lord Bew, cannot get away from the basic facts that the Government negotiated and signed the protocol. In international law, it is simply elementary that a state cannot sign a specific agreement and then seek to resile from it because it takes the view that it is neither convenient nor in the interests of particular sections of the community. Indeed, the Government signed the protocol—and said they did so—because they took the view that it was the best way of protecting the views of all sections of the community, including the DUP. It therefore follows that, if the Government take the view that this is unacceptable, inconvenient and does not meet the DUP's aspirations, international law demands that the Government negotiate with the EU and attempt to arrive at another solution. It is as simple as that.

Lord Bew (CB): It is a little more than just "a need to", which is definitely there. I can see perfectly clearly that the noble Lord is not familiar with Article 1(5), to which I referred, which is an international agreement held in the United States. The crucial thing is that this is also about the commitment to support the Good Friday agreement in all its parts. I am saying something slightly more complicated. We have both agreed to do this. The EU does not understand, for example, that "in all its parts" includes east-west, the totality of relations, a benign relationship and so on. It is impossible to fit the description of the east-west trading relations we now have from the protocol. This is very much a matter of decisions made by the EU, such as on how much intervention was required—or not. This is very much about its regulatory interventions going beyond what is necessary in anything that is actually in the protocol because the protocol itself says that the integrity of the UK single market will be upheld. Those are the words of the protocol—the important bit is in paragraph 25—but that is not what has happened.

My point is this: it is not just a question of the EU and the responsibility of one community, which is definitely there in paragraph 1 of the international agreement. This is about strand 3. At this point in the negotiation, we are simply saying, "We have both agreed to this. Your regulations most certainly break strand 3 at the moment". I cannot understand why that is such a terribly complicated point in international law. We have all signed up to this; it is an argument about the interpretation of it.

Lord Pannick (CB): I bow to the noble Lord, who has immeasurably more knowledge and experience of Northern Ireland than I could possibly have, but of course I have read the Northern Ireland agreement and understand that there are two documents in international law. The simple point is that, in the protocol, we agreed the means by which we take the view that the Good Friday agreement should be implemented in the context of the United Kingdom leaving the EU. That is what we agreed; we cannot now say that we are going to resile from it unilaterally. It is as simple as that.

Lord Dodds of Duncairn (DUP): My Lords, I had not intended to take part in this debate because I had not realised that it would range so far and wide and across so many general issues. We had a lengthy debate at Second Reading in which a number of these topics were discussed; nevertheless, I think it is worth addressing some of the points that have been made and putting some of the issues on record as far as we are concerned.

I begin by joining noble Lords and noble Baronesses in their tributes to the late Baroness May Blood, who passed away recently. She lived and was brought up in the same part of Northern Ireland that I had the honour of representing in another place for almost 20 years, so I knew her very well indeed. I pay tribute to her great resilience, hard work, dedication and tenacity in her pursuit of the issues in which she believed strongly, as well as her dedication to young people in the Shankill and integrated education, as has been mentioned.

It is not incompatible to support this Bill and seek a negotiated outcome. On the negotiated outcome, although there is not a great history of flourishing talks with the EU and the United Kingdom on the protocol issues thus far, we hope that any negotiations lead to an outcome that is compatible with the aims and objectives contained in this Bill. This is not a matter of just tinkering around the edges and finding practical solutions, as has been said; some of the issues are fundamentally contained in the protocol. You cannot address the democratic deficit issue satisfactorily unless you address some of the content of the protocol.

No matter how much consultation, prior notice, discussion or involvement you agree to give Northern Ireland politicians in relation to EU laws covering 300 areas such as the economy—as well as further issues such as state aid, VAT and so on—the fundamental fact is that no elected representative of Northern Ireland either here at Westminster or in the Northern Ireland Assembly has any vote or decision-making capacity on vast swathes of laws that apply in Northern Ireland. How will that be addressed? This Bill goes some way to addressing that, but nothing I have heard being suggested by the proponents of delay, who are against the Bill, has offered any solution to that point. The noble Lord, Lord Hain, acknowledged the problem.

Our Sub-Committee on the Protocol, of which I have the honour of being a member, has looked at this issue in considerable detail; I recommend that noble Lords and noble Baronesses read the report that we commissioned on the scrutiny of legislation now applicable to Northern Ireland. They will see the extent to which Northern Ireland has been removed from the normal processes of democratic lawmaking, which people in this House have spoken about with great eloquence but which does not apply anymore to United Kingdom citizens in the 21st century. That is entirely unacceptable

and is contrary to all the traditions of democracy that this mother of Parliaments has sought to uphold both here and abroad.

It has been asked what the problem is with delay. The noble Lord, Lord Bew, has dealt with one issue—

Lord Clarke of Nottingham (Con): My Lords—

Lord Dodds of Duncairn (DUP): The noble Lord, Lord Clarke, has already spoken. I want to get on and not delay the House any longer, but I will give way once.

Lord Clarke of Nottingham (Con): I am extremely grateful to the noble Lord. I have every respect for him; we have been together in Parliament for years. I want to understand clearly what he is saying. Is he saying that the Democratic Unionists will not withdraw their objections to the whole protocol unless Northern Ireland is allowed to leave the single market with the rest of the United Kingdom as the United Kingdom is otherwise developing? That would mean us telling the European Union that the single market has got to have a great hole in it, with no border controls at all so far as the Republic of Ireland and Ulster are concerned—because that is the Anglo-Irish agreement—no customs barriers in the Irish Sea and no application of single market law in Northern Ireland. Is that the proposition on which the DUP is saying that it is going to stop returning to a power-sharing agreement in Northern Ireland?

6 pm

Lord Dodds of Duncairn (DUP): I am grateful for the opportunity that the noble Lord gives me to clarify that point. If he looks in detail at the Bill, he will see that it does provide the opportunity for regulations to come forward. The Government have announced that they will produce regulations which allow for checks on goods destined for the European Union, and for the Irish Republic exclusively.

I agree with what the noble Baroness, Lady Chapman, said in her amendment about the publication of regulations. It is important that the regulations provided for in the clauses in the Bill are published, and as quickly as possible, so that we can all see exactly what is proposed to replace the current, unacceptable arrangement. However, my understanding is that those regulations have talked about a red and a green channel, and that checks will be applied only to goods coming into the Irish Republic, so there will not be that gap or hole that the noble Lord, Lord Clarke, talked about.

It is also clear from the Bill that access to the single market would be retained, but that it would be the choice of businesses in Northern Ireland whether they want to be subject to EU or UK regulation, therefore sorting out to a large extent the democratic deficit point, while providing a way forward economically which is in everybody's interests. When we come to sorting out the problems of the protocol, we have been told that no impact assessment has been carried out and that we need one for the Bill. There was no impact assessment carried out when the protocol itself was introduced, of course, concerning the negative impact that it has had on business.

I have a letter here from hauliers in Northern Ireland, who have written to a number of noble Lords saying that it is their contention that the economic costs of the protocol far outweigh the economic benefits. They say that if the protocol was implemented in full, it would crash Northern Ireland's chilled and frozen food supply chains within 48 hours, and that it is reasonable to anticipate that this would cause a socioeconomic crisis. They talk about the need for the Bill. These are businesspeople. These are people who carry goods into Northern Ireland from Britain, into the Irish Republic, and from the Irish Republic and Northern Ireland into Great Britain. They know what they are talking about, so we should not generalise here. We must take the evidence of the damage that has been done economically and constitutionally.

On international law, I bow to the superior knowledge of many very distinguished lawyers and practitioners in this House, but the noble Lord, Lord Bew, is right when he argues about the prior position of the Belfast agreement and that the protocol references the Belfast agreement in its wording—as amended by the St Andrews agreement, of course—and that cannot be ignored. We are told that upholding and keeping our word is vital to our international standing. However, I have in front of me the joint report, from the negotiators of the European Union and the United Kingdom Government, of 8 December 2017, when Theresa May was trying to make progress in her negotiations with the European Union. That agreement was hammered out over a number of days. If we are talking about people maintaining and upholding their word, I point out that it contains the following, in Article 50:

> "In the absence of agreed solutions… the United Kingdom will ensure that no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom",

which they now have,

> "unless, consistent with the 1998 Agreement"—

so the EU and the UK Government recognise that it is inconsistent with the Belfast agreement to have such regulatory difference—

> "the Northern Ireland Executive and Assembly agree that distinct arrangements are appropriate for Northern Ireland."

The Northern Ireland Executive and Assembly have never agreed to that. They were never even asked. This was the promise made to people in Northern Ireland by the EU and the UK. After that was agreed, the UK Government, never mind the EU, paid scant attention to that article when seeking the agreement of people in Northern Ireland to any regulatory divergence. If we are talking about upholding our word, people in Northern Ireland are entitled to ask, "What happened to that agreement? What happened to that commitment? Why was the protocol imposed without any say or consent by people in Northern Ireland?"

We talk about the blunderbuss—the threat that has been put on the table. I remind noble Lords that the EU has now launched infringement proceedings against the United Kingdom for its having unilaterally extended grace periods and other matters—without which, as the hauliers say in their letter, the supply chain to Northern Ireland would crash and burn within 48 hours. This is essential for the free flow of

[Lord Dodds of Duncairn]
goods to Northern Ireland, yet the EU has put on the table legal action against the UK Government, and that is not mentioned.

I will close; I am conscious of time, but it has been a wide-ranging debate thus far. The Bill is necessary because the protocol, as it stands, is incompatible with the Belfast/Good Friday agreement. At the heart of that agreement, as amended by the St Andrews agreement, is the principle of consent. It is not only the DUP that opposes the current arrangement. Every single unionist elected to the Northern Ireland Assembly, as late as five or six months ago, opposes the protocol. The foundation of power-sharing in Northern Ireland is not majority rule any more; we have not had majority rule for 50 years in Northern Ireland. It is the mutual agreement of unionists and nationalists, and not a single unionist of the Ulster Unionist Party, the Democratic Unionist Party, the Traditional Unionist Voice, or independents, of which there are a number, supports the current arrangements.

The protocol is incompatible not only with the Belfast agreement but with Northern Ireland's constitutional position. I am conscious of the point made by the noble Lord, Lord Bew, that it was not necessary to deal with that in this legislation, but the courts have ruled that Article 6 of the Act of Union has been subjugated by the protocol and that Great Britain is now a third country as regards "imports" from Great Britain into Northern Ireland.

As I have said, the protocol is incompatible with the upholding of proper British and UK democratic standards, for the reasons that I have already outlined, and it is damaging our prosperity. You cannot have VAT exemptions or derogations, which the UK Government have recently announced on energy products, applied to Northern Ireland, because we are subject to EU VAT rules. That cannot be right. It is also contrary to the *New Decade, New Approach* document, which was agreed by all the parties, the Dublin Government and the UK Government in January 2020. It says on page 47, annexe A:

> "The Government is absolutely committed to ensuring that Northern Ireland remains an integral part of the UK internal market",

As has been set out in the reasons given for the introduction of the Bill, this is to address the fact that Northern Ireland is no longer an integral part of the UK single market. That is indisputable.

To those who say it is unbelievable that a Conservative Government would be doing this and bringing forward this legislation, I say it is unbelievable that a Conservative and Unionist Party ever brought forward the protocol in the first place. That is the really telling point. We did not support it. What we are asking for is our democratic rights to be restored.

The Conservative Party can be criticised for many things, and we have criticised it very often. We have had our battles over the years. But if there is now an attempt to put right something that is fundamentally wrong, antidemocratic and runs counter to the Belfast agreement, runs counter to the agreement the basis of which was for the restoration of Stormont and the Assembly, that should be applauded. I hope negotiations can succeed, but they will have to deliver what is in the protocol, otherwise we will not get to a point where we will have stable government restored in Northern Ireland. That is a fundamental fact. Sinn Féin kept Stormont down for 1,044 days over the Irish language issue that the noble Lord, Lord Bew, referred to.

We do not want instability to continue for one day longer. In July 2021, the Government published a Command Paper saying that the conditions had been met then for the instigation of Article 16. As has been said, Article 16 is now very much flavour of the month, but at the time it was denounced by all the parties in Northern Ireland and most people here as being an outrageous infringement of democratic norms and a breach of good faith and of international law. All sorts of things were said about it. So there is urgency, and that is why I urge noble Lords to proceed with the Bill and move ahead. If negotiations do not end in a satisfactory outcome, we will have to return to this legislation, and it is better to proceed with it now than to have to start further down the road at a point when it would become absolutely essential.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, first I thank all noble Lords who have taken part in this debate. As I was rising, I looked at the clock and never in the Ahmad history in the House of Lords has something so innocuous as saying "I beg to move that the House do now resolve itself into a Committee on the Bill," resulted in such an intense debate. I shall remember for next time.

Secondly, my noble friend Lord Clarke mentioned that he looks towards the House of Lords and, as he comes here more often, I assure him, not that I agree with the substance of what he has said, but that his contributions and those of all noble Lords enrich the debate. One of the key components of the House of Lords is asking the Government to think again. I am sure I speak for my colleagues on the Front Bench as well in saying that we have certainly been in thinking mode.

There is a third element before I get into the detail. I was taken by the various descriptions of the Bill. The noble Lord, Lord Kerr, referred to it as a "pig". As a Minister who also is a practising Muslim, I thought for a moment that the stewardship and handling of the Bill would cause me a cultural challenge. But I soldier on with loyalty to King, country and Government.

In all honesty, this debate has been an important one. I think we are all agreed that it has again brought forward views on the importance of Northern Ireland as an integral part of what defines our very United Kingdom. Notwithstanding the different perspectives, I know all Members of your Lordships' House are at one on the principle that the integrity of the United Kingdom must be protected. The fact is that the Northern Ireland protocol must work for all communities in Northern Ireland and, of course, the wider United Kingdom. Of course, the noble Lord, Lord Pannick, is correct—we signed the Northern Ireland protocol. But any contract—I do not speak as a lawyer but I have done a few contracts in a previous life as a banker—is also signed in good faith. It has to work for all sides and all communities.

6.15 pm

There are good reasons why we are bringing forward this Bill. First, clearly the Northern Ireland protocol in itself is not working, as we heard from the noble Lords, Lord Bew and Lord Dodds, for all communities in Northern Ireland. There is clearly a problem when we talk of the east-west issue, particularly in terms of trade. The other thing is not so much a legal point and was one that I raised in briefings with noble Lords. The EU is aware of the Bill's existence and I am delighted, as I was sitting here—there is always a bit of trepidation for any Minister doing a debate in the middle of a reshuffle of the Cabinet and the wider ministerial team—that my right honourable friend the Foreign Secretary has been reappointed to his role, because continuity in negotiations is also important. I know for a fact that my right honourable friend has prioritised the importance of our discussions with our European Union colleagues and friends.

Again, the EU as well as our colleagues in the Republic of Ireland are very much—I hope that was appreciated, I am keen to get the pronunciations right here—aware that this Bill is going through your Lordships' House and it has not, as the noble Lord, Lord Bew, reminded us, hindered the discussions we are having. People will have different perspectives and of course I respect the point raised by several noble Lords about the position the Irish Government or indeed others within the EU may have on the Bill itself. But I can assure noble Lords that this has not prevented us from having constructive engagement with parties in Northern Ireland, as well as directly with the EU.

Therefore, I will move quickly, if I may, into the substance of the Motion and indeed the amendment from my noble friend. I will take both amendments together in the interests of time—the amendment in the name of the noble Baroness, Lady Chapman of Darlington, and the one in the name of my noble friend Lady Altmann. To address the point that the noble Baroness, Lady Chapman, made in introducing this, I say again that it is Her Majesty's Government's preference—I mean His Majesty's Government's preference; we must get that right as well—that we resolve this issue through negotiations and direct talks.

In this regard, I said I would update your Lordships' House. Last week again my right honourable friend the Foreign Secretary and Vice-President Maroš Šefčovič had very important discussions. They have spoken again, reiterated their shared commitment to potential solutions to this issue and remain directly in touch. The Government are engaging in constructive dialogue with the European Union to find solutions to these problems and the Government will—I have given that commitment before—update Parliament on talks with the EU as these progress.

I say to the noble Baroness, Lady Chapman, and the noble Lord, Lord Purvis, as representatives of the two Front Benches, as well as the noble and learned Lord, Lord Judge, that I will continue to engage with all Front-Benchers to ensure that we are fully updating your Lordships' House during the progress of this Bill.

I am also pleased to accept the assurances given by His Majesty's Opposition that they will not press this amendment. I am grateful for that. It is important that we had this lengthy debate, because the issues raised are important and a Government in presenting a Bill need to deal in responding to it. Those responses may not be satisfactory, but nevertheless it is important that we have a detailed discussion.

On the specific issues that were raised, I thank the Delegated Powers and Regulatory Reform Committee for its report on the Bill, which the Government are considering. Of course, I take due note of what the noble Baroness, Lady Chapman, and other noble Lords such as the noble Lord, Lord Purvis, and the Constitution Committee's report have said about the importance of the Government's response being published in good time to allow for due consideration of it in advance of the next stage of this Bill, particularly at Report stage. That point is very much noted.

Taking other elements raised in both amendments, I highlight that, since the Bill was introduced—I assure my noble friend Lady Altmann of this—the Government have continued to engage extensively with groups across business and civic society in Northern Ireland. My noble friend Lord Caine has been engaging directly in some of these discussions, which will continue. They are also important for the rest of the UK and internationally. I fully accept that Ministers remain accountable to Parliament for all this work and will be examined on it, in the usual way.

The Government are also receiving feedback on our various levels of engagement, and we will continue to develop the details of our approach. Of course, your Lordships' House will have the opportunity to scrutinise regulations. These are being worked out in the usual fashion, including through debates, and the Government will provide all usual accompanying material under normal parliamentary procedures.

The regulations were referred to by a number of noble Lords, including the noble Lord, Lord Dodds, in his closing remarks. They will be a product of the engagement with business to which I have already referred and will, importantly, ensure that the implementation of the new regime is as smooth and operable as possible.

Finally, I also stress that, while stakeholder views are of huge importance to the Government and will be given proper consideration, it is ultimately for Ministers to decide how to exercise these powers and for Parliament to scrutinise and hold Ministers to account, in the usual way.

I am sure that we will return to some of the points discussed in this opening debate during the discussions on the various amendments that have been tabled today, but I will pick up on a few of them now. The Government fully intend to respond to the Constitution Committee in due course. That was raised by the noble and learned Lord, Lord Judge, who also raised the infringement proceedings, to which the noble Lord, Lord Dodds, also alluded. We have written to the European Union stating that we intend to maintain the existing operational arrangements on the protocol. The noble and learned Lord will recognise that I cannot discuss current legal proceedings further.

In this respect, the noble and learned Lord also talked about expediting judicial review. JR raises technical points of constitutional law, on which the Government

[Lord Ahmad of Wimbledon]
have successfully made representations to date. We are concerned with points of law that are not of primary concern to this debate. However, again it would not be appropriate for me to comment further on a case that is soon to be before the Supreme Court.

Several issues have been raised consistently, as they were during Second Reading. At this juncture and in the interests of moving on to the specific amendments, I say that we are here—there are three Ministers on the Front Bench—because of the seriousness with which the Government take the important issues being raised in your Lordships' House. We will continue to reflect on your Lordships' important contributions—the points of principle, the points of law and the points about standing up for international law.

As someone who has been in government for a while—the last time I checked, I still was—I assure you to my core that the point about international law and the rights of citizens, wherever they are in the world, is very important, but no more important than the rights of our own citizens, including those in Northern Ireland. We will reflect on some of the specific questions that have been raised and those that will be raised while the Bill is in Committee and respond accordingly. I am sure we will return to many aspects of our discussion as the Bill progresses.

Baroness Royall of Blaisdon (Lab): My Lords, that the Government have said they will publish the draft regulations is very welcome, but I do not think the Minister mentioned when. This is a key issue, because noble Lords deserve to see the draft regulations before progressing.

Lord Ahmad of Wimbledon (Con): One of my introducing Peers was my noble friend Lord Howard. He often said to me, "Tariq, when noble Lords get on their feet, as a minimum, they already have the answer to the question they are asking. They have probably also written a book about the subject". I suggest that the noble Baroness has not written a book about regulations, although a number of our colleagues may have. I cannot specify a date at the current time, but I note the noble Baroness's comments.

I hope that my noble friend Lady Altmann and the noble Baroness, Lady Chapman, are minded to withdraw their amendments.

Baroness Altmann (Con): My Lords, I shall not detain the House. We have had a very good debate. I thank my noble friend for his words and beg leave to withdraw my amendment.

Baroness Altmann's amendment (to Baroness Chapman of Darlington's amendment to the Motion) withdrawn.

Baroness Chapman of Darlington (Lab): I start by thanking the Minister for the tone of his response to this debate. I did not anticipate that this stage of our consideration would take quite so long, but I make no apologies for enabling us to have this discussion. It has been very helpful, and I particularly value the opportunity to listen to those with whom I may not completely agree, but it is vital that we understand one another and why we have reached the positions that we have.

Much has been said about Article 16 and why we now—for want of a better word—favour that approach. Quite simply, it is clearly a legal mechanism. We have concerns about a unilateral Act by the UK Government applied to a dispute around something happening in Northern Ireland. That has never been a good way to proceed, and I do not think it is now.

When considering what to do about the Bill, the test I have applied has nothing to do with Brexit. Brexit has happened and the challenge now is to make it work—I think most people in this Chamber accept that. The test is whether pursuing this Bill and its approach, not knowing what would be in its place, assists us to find a negotiated settlement. The view of these Benches, today, is that it does not; it hinders our ability to reach a negotiated settlement. For that reason, we remain unconvinced, but we welcome—we have to welcome—the assurances the Minister gave. We anticipate receiving the information in a timely fashion but, today, I beg leave to withdraw the amendment in my name.

Baroness Chapman of Darlington's amendment to the Motion withdrawn.

Motion agreed.

Clause 1: Overview of main provisions

Amendment 1

Moved by ***Baroness Chapman of Darlington***

1: Clause 1, page 1, line 15, at end insert—

"(e) gives Ministers of the Crown power to commence its substantive provisions by regulations, subject to the condition in section 26(3A)."

Member's explanatory statement

This amendment makes clear that the ministerial power to commence Clauses 1-20 is subject to conditions outlined in a later amendment to Clause 26.

Baroness Chapman of Darlington (Lab): I am grateful and will try not to repeat myself and go over the discussion we have just had. The issue with trying to amend this Bill is that our concerns are fundamental and political, rather than about wording or drafting. We object to the very approach the Government are taking, so it is quite difficult to think of how to amend and improve it to get to a place where we could find ourselves supporting it.

It is not universal, but we have heard that many noble Lords—I would venture to say a significant proportion of the House—fundamentally disagree with the approach that the Government have adopted. They believe that it breaches international law and harms us diplomatically, not just with the EU but beyond—globally. They think it is an abuse of ministerial power and see it as detrimental to our and the Government's stated ambition for a negotiated settlement. We have attempted to find ways to amend the Bill to answer these concerns, but we have not managed to do that successfully. In this group, noble Lords will see Amendments 1, 6 and 70 in my name, and other amendments, which place conditions on the implementation of the Bill.

I have not heard anybody argue that the Northern Ireland protocol should not be improved, amended, or implemented differently. However you want to describe it, there clearly are problems. We take them very seriously,

accept that they exist, and do not hold the position that nothing should change. We have listened incredibly carefully and repeatedly to the voices of businesses and elected politicians in Northern Ireland, and we agree that change is needed. However, as we have said previously—and will now be clear to the Minister—we want a negotiated outcome, not unilateral action.

6.30 pm

Essentially, Amendment 70 prevents the implementation of the Bill unless the Government have failed to reach a negotiated settlement and have exhausted legal routes. To many, this would seem blindingly obvious: why would a sane Government initiate a process that could result in retaliatory action without going through the available legal process first, a process that—as many others have reminded us today—the Government negotiated relatively recently? The UK economy does not need any further trade friction with the EU, and we should seek a calm, constructive relationship. That means sticking to the agreements that we make. When they are not working—we accept the protocol is not working as it should—then we negotiate a solution.

It should be clear that we do not encourage the use of Article 16. However, it is preferable to the approach represented by the Bill, and it has the benefit of being legal. We should also understand what Article 16 is. It has been suggested that the conditions for triggering Article 16 had been met. It is a formal legal process. It would be unfortunate were it to be needed, but it just starts a period of formal negotiation. We should not need to do that. We should be able to negotiate without it, but that is what it is. If that is what the Government need to get a resolution, that is the process that they should prefer before they go about enacting this piece of legislation. Article 16 would be a mark of failure, but not nearly as profound a failure as the passage of the Bill.

I have added my name to amendments tabled by the noble Baroness, Lady McIntosh, and support amendments tabled by the noble Lord, Lord Purvis of Tweed, and the noble Baroness, Lady Ludford, requiring the Government to report to Parliament on the progress of negotiations. This is a sensible ask that would assist us in our consideration of the Bill. The Minister may argue that the Bill is helpful to negotiations. I have heard others say—not today but previously—that it has brought the EU to the table, but I just do not buy it. Ministers will have to forgive us if we have somehow lost a little faith in this Government's negotiating capacity and their ability to land a good deal given the shambles we have seen in recent years. It is impossible to accept when there are no statements to this House on progress. We seem to get, "Yes, we are talking and things are going okay", but the information I get is that actually nothing of substance is being done.

I regret the way that genuine issues with the protocol seem to have been co-opted by some in the Government in their search for—almost—a wedge issue. I have taken part in many debates about Northern Ireland in relation to Brexit over the years, and we have worked so hard to never divide the governing party on anything to do with Northern Ireland. We have been tempted to. It was certainly possible to in the 2017-19 Parliament, but we never did because we thought that it would not be in the interests of Northern Ireland or the United Kingdom. We thought it would be irresponsible. That is a position I am proud of and one that we would maintain.

It is disappointing that we find ourselves where we do today. There is not a need for this. Surely agreement is possible. I do not really know why Ministers are here doing this, when they should be in Northern Ireland or Brussels, talking to our EU partners and finding a resolution. Surely, this Bill or no, the only solution that will stick and last will be a negotiated one. We all know that, so I do not understand why there is not the grip, focus, determination, political leadership, buy-in and presence in the negotiations that is surely needed to reach a solution. With that, I beg to move.

Lord Purvis of Tweed (LD): My Lords, I rise to speak to Amendments 2 and 6 in my name and support those in the name of the noble Baroness, Lady Chapman. As we start our customary, more-detailed consideration of legislation in Committee, I reflect on the point made by the noble Baroness, Lady Fox, who thought that we were preventing proper detailed scrutiny in a bullying way. However, I cannot see her in her place. Maybe she popped out. I look forward to her return to take part in the detailed consideration of the Bill.

I very much agree with the noble Baroness, Lady Chapman. I have considerable doubts about whether we will be able to legislate an agreement with the European Union. Fundamentally, we are tasked with an almost impossible job. I therefore agree that her amendment is a kind of security for this legislation: it does its best in making the Bill consistent with customary international law. We will also debate this on the next two groups. If we are to see a political agreement, what is the best way of legislating to allow that to be in place? I believe profoundly that this is not the way that it should be done. Nevertheless, if it is done this way, there should be some form of security area.

I very strongly agree with the noble Lord, Lord Kerr, that we should not pass legislation which is a clear breach of international law, as the Constitution Committee reported. Concern about government probity was highlighted earlier: if we have an amendment that relies on the Government themselves to exercise discretion on the exercise of powers, I have my doubts whether they would bring forward a clear view on that discretion. For example, under Amendment 70, the position of the former Paymaster-General in Committee in the Commons would have been that the condition would have been satisfied because talks had been exhausted. However, we now know that they have not been. That is not as a result of the Bill. Maybe the noble Lord, Lord Bew, is right. However, I suspect that if the talks were exhausted in July when we had the Bill in Committee in the Commons, and are not while we have it in Committee in the Lords, it is about the political basis. I am therefore not sure that the security arrangements would effectively be watertight.

My amendments, supported by my noble friend Lady Ludford, are straightforward. They are also part of a form of security that should be updated now, then continuously on the basis of these talks. As I mentioned earlier, the Commons was told in Committee that they

[Lord Purvis of Tweed]
had been exhausted, but new life has now been breathed into them. The Government said previously that this was owing to EU intransigence. Now Minister Steve Baker tells readers of the *Times* at the weekend that the Government say that talks are progressing because he stretched out a hand of reconciliation. Setting aside the contradiction, the reality is that we should be provided with more information, from now on and going forward, on the level and content of these talks.

For example, the EU proposals in October 2021 themselves said that there should be changes to the structure of ongoing talks and of the relationship between the EU and the people and institutions of Northern Ireland. However, I have not seen the Government's response—the alternative presented by them in those talks. That would inform not only the mood of this House but our ability to pass legislation that gives regulation-making powers over the structure of that. I know what the EU has proposed; I do not know what our Government have proposed. If we are to consider, believe and call out EU intransigence, that case is harder when we know what the EU has put on the table but do not know what the UK has. How on earth can we come to the conclusion that it is being intransigent in these talks when we in this Chamber are effectively blind?

Now I think I understand, fundamentally, the dilemma of the noble Lord, Lord Dodds. He argued for Brexit, the majority of the people in Northern Ireland voted against it. He argued against the protocol, but the majority of the UK and the Conservatives inflicted that on him. This is a difficult dilemma, but ultimately it will mean that Northern Ireland, one part of the UK, will remain in an economic area of another entity, the EU single market. The only sustainable way that that can ever be for the benefit of the people of all parts of the UK is with agreement with that other entity. You cannot unilaterally legislate to enforce on another entity when you have already accepted that we are part of that entity. It is just an impossibility, so there has to be agreement, and in order for us to do our job in this House we have to know what the UK is putting forward in those talks. I should not imagine that our amendments will present the Committee with much difficulty.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank the noble Baroness, Lady Chapman, and the noble Lord, Lord Purvis, for their probing amendments. I agree with them and believe that there is a mandatory obligation on the Government to provide us with details on the negotiations and to ensure that the regulations are published—many noble Lords across this Committee agree with that—so that we know what is actually going on.

I agree with the noble Baroness, Lady Chapman, that it would be much better if Ministers were investing their time in negotiations with a large degree of rigour with the European Union to produce the desired outcome in respect of the protocol with mitigations. That would achieve everybody's objectives, including addressing the democratic deficit and the needs of those in the haulage industry and others so that there is no diminution in the good work that has already been achieved and so that better things can be obtained in terms of what we can gain by access to both the UK internal market and the EU single market, because our economy is much better when we have dual access.

In relation to dual regulatory zones, there is certain merit in them but there is also difficulty associated with them. That difficulty has already been highlighted by the dairy industry in Northern Ireland which, by and large, is all-Ireland in nature because the greater proportion of processing capacity lies in the Republic of Ireland. I think that point was referred to by the noble Baroness, Lady Doocey, at Second Reading. There are problems in relation to DAERA certificates and who grants them. I notice a quizzical look on the face of the noble Lord, Lord Caine, but I say again that Ministers should be involved directly in the negotiations. Those negotiations should take on renewed vigour. We should see the regulations and should have reports on those negotiations on a regular basis by way of parliamentary Statements to both Houses.

6.45 pm

Lord Cormack (Con): My Lords, I would like to make a suggestion. It seems to me that we are not going to achieve a great deal by going through amendments that are not going to be voted on. I understand it is the convention anyhow that we do not vote in Committee, but I would like to appeal to my noble friends on the Front Benches. Rather than the next Committee session, which is scheduled for Monday next week, why can we not have, perhaps in the Moses Room, a thorough briefing from Ministers on exactly where negotiations are, what has already been agreed and what remains to be agreed, so that we move forward on the basis of being informed by our ministerial colleagues on this very complicated and important subject?

In making that suggestion, I take into account the points made by the noble Lord, Lord Bew, in his brave intervention. I agree with the noble Lord, Lord Pannick. He and I did not agree with what the noble Lord, Lord Bew, was saying, but it was a brave and helpful contribution. I think a discussion, perhaps in the Moses Room or another committee room, could be very helpful. It would not hold up progress for more than one day and we would go forward perhaps knowing a little more about the Government's thinking.

There is, of course, the point made by the noble Baroness, Lady Ritchie. I know my noble friend Lord Caine. I admire him very much, and I know he spends a lot of time in Northern Ireland, but the other Ministers should be there, too. I very much want to see, and I made this point in my earlier intervention, our Prime Minister going there as soon as possible, and I take the amendment to that suggestion which came from the noble Baroness, Lady Ritchie, that it would be good to have the Taoiseach there as well, because the Republic and the United Kingdom have to work together. Without working together there would have been no Northern Ireland agreement, and without, in fact, the participation of George Mitchell there probably would have been no Northern Ireland agreement. I put this forward as a constructive suggestion. I would be grateful if whichever Minister is going to reply to this debate could make some reference to it.

Baroness Ludford (LD): My Lords, we heard two views earlier in the debate, which was longer than any of us expected, on the two amendments. We heard two views on whether this Bill was going to poison the chance of negotiations with the EU. One was from the noble Lord, Lord Bew, who thought it would not. I agreed with the view put forward by the noble Lord, Lord Clarke, that the Bill is extremely unhelpful to negotiations, and with the point he made about the risk of a trade war with the EU, which is the last thing we could possibly afford to risk—and I would add the prospect of undermining relations with the United States.

I noted the helpful and sensible suggestion of the noble Lord, Lord Cormack, that we get a briefing session on the negotiations, but perhaps even today we might hope that in replying the Minister can give us some flavour of the issues that the Government believe can be the peg for progress in the negotiations in, hopefully, the weeks rather than the months to come. The EU has been making suggestions for the best part of 18 months, I think—certainly more than a year—but the Government have not taken up the opportunities that have been offered, so I fervently hope that they are now going to be extremely serious about these negotiations.

I want to pick up three suggestions—which are not exhaustive—made by my Alliance Party friend in the other place, Stephen Farry MP. The first is about flexibilities in the protocol. The EU has made numerous suggestions and progress on the issue of medicines. The Government do not seem to have given much acknowledgment to the progress that was made on that subject. Perhaps the Minister might give us some idea of other sectoral issues where he thinks progress could be made.

The second suggestion made by Stephen Farry was to use Article 13(8) of the protocol, which allows the protocol to be superseded in whole or in part. Apparently, that was put in at the request of the UK Government, and it could be used to negotiate changes to the protocol by mutual agreement. Perhaps the Government could tell us whether they have any intention of invoking Article 13(8) of the protocol.

Mr Farry's third point is one that has just been made by the noble Baroness, Lady Ritchie, and by my noble friend Lady Doocey at Second Reading. It relates to the very valuable contribution that a veterinary or SPS agreement could make, particularly to solve problems around food and agriculture, especially in the dairy industry. This offer has been on the table from the EU since the protocol was first signed, and it has been a matter of considerable puzzlement that the Government have not progressed that.

Perhaps the Minister, in replying, could give us some sort of steer on where he thinks the opportunity exists to make improvements either in the protocol itself, if Article 13(8) were to be exploited, or in the implementation of the protocol by taking the route of flexibility and additions, such as an SPS agreement.

Lord Ahmad of Wimbledon (Con): My Lords, I thank all noble Lords for their contributions. I will go straight to the amendments. Amendments 1 and 70 in the name of the noble Baroness, Lady Chapman, would make the commencement of regulations under this Bill dependent on the Government confirming that they have been unable to reach a negotiated settlement with the EU and are of the opinion that all legal routes have been exhausted. I will repeat what I have said a number of times: our preference remains to resolve the issues around the protocol through talks. As I have already indicated, my right honourable friend the Foreign Secretary and Vice-President Šefčovič have already spoken a number of times to reiterate their shared commitment to finding solutions to this issue. Consequently, as I have also said already, the Government are engaging in constructive dialogue with the EU to find solutions to these problems. The Government will update Parliament on the talks with the EU at the appropriate time.

My noble friend referred to possible briefings. I cannot make the detailed commitment that my noble friend is seeking, but I will certainly reflect on his suggestion. I have just spoken to my noble friend Lord Caine about whether we could provide, as the noble Baroness, Lady Ludford, suggested, an outline at times; I certainly respect your Lordships' insights on this. I will take that back and reflect on the proposals that have been put by my noble friend. As I said in concluding the earlier debate, to the Front Benches in particular, I assure noble Lords that I will seek to continue to update noble Lords on progress. I know that I speak with a similar commitment to that of my noble friend Lord Caine in dealing with Northern Ireland on this issue as well.

However, it is the Government's view that we need to progress this Bill now to fix the practical problems that have been highlighted. Under these amendments, the UK would not be able to implement the solutions to the issues of the protocol while discussions with the EU were ongoing. This would mean that the EU could, for example, seek to introduce discussions indefinitely, under the knowledge that this Government would have to admit that negotiations had not reached a successful conclusion.

I am sure noble Lords would agree that we should not present ourselves with a choice between continuing negotiations indefinitely and no unilateral solutions for Northern Ireland. The Government—although I know that other noble Lords have different perspectives—have given their position as to why we feel it is necessary at this time to pursue and continue with the progress of this Bill.

We also believe that these amendments would require the Government to confirm that they have exhausted all legal routes under the withdrawal agreement before they could bring substantive provisions of the Bill into force. The Government have been clear that the Bill is justified, in our view, under international law. That is without prejudice to our position on other mechanisms available—

Lord Purvis of Tweed (LD): Could the Minister clarify the sequencing of talks with the EU, Article 16 and the regulations under this Bill? Is it still the Government's position that, before the regulations under this Bill, or Act, are brought forward, Article 16 would be triggered?

Lord Ahmad of Wimbledon (Con): What I said, and I have said it before, and without prejudice to our position on other mechanisms available under the withdrawal agreement and protocol, is that the Government reserve their position on Article 16. Article 16 remains an option—the Government have not taken it off the table—and it remains an option for the EU has well.

Lord Pannick (CB): Can the Minister explain how the doctrine of necessity can be satisfied when the Government themselves reserve their position to use a power that is contained in the protocol?

Lord Ahmad of Wimbledon (Con): I am sure we will return to the principle of the doctrine of necessity in later amendments. The use of Article 16 was debated during Second Reading, when a number of noble Lords, including my noble friend Lord Howard, suggested its use—indeed, that has been cause for debate. The noble Lord will be aware that that remains very much at the Government's disposal, as it does at the disposal of the EU, because that was an agreement that was signed. On the principle of necessity, as I said, I will defer to my noble and learned friend Lord Stewart, who I am sure will discuss this with the noble Lord in other amendments that we are scheduled to discuss.

The noble Baroness, Lady Ludford, talked about Article 13(8) of the protocol, which deals with how subsequent agreement interact with the NIP. The EU, from our perspective when this has been raised, continues to reject any changes to the NIP itself. However, in saying that—and I am going by the discussions we are having with the European Union at this time—my experience is that it is not just the substance of what is being discussed with the EU at the moment but the tone of the engagement as well. While there are differing opinions—I accept fully that some are saying that a delay, which has been proposed, would strengthen the Government's position—our view remains that the EU is very clear on our position on what we are seeking to do with the Bill, but that has not prejudiced the tone or substance of our engagement with the EU.

Lord Hannay of Chiswick (CB): I thank the Minister for giving way. I welcome very much his willingness, expressed to the noble Lord, Lord Cormack, to consider a proper process of reporting back on what is going on in Brussels. Having lived all my life in a profession where words mattered, I find it very difficult that the words through which the process in Brussels is referred to keep shifting all the time. Sometimes, they are technical discussions; sometimes they are talks. The word "negotiations" somehow never quite seems to come out of the Minister's mouth, but how on earth do you conclude a negotiation without negotiations? I simply do not understand; it seems that we are in an Alice in Wonderland situation.

It would help greatly if the Government were prepared to give a careful and systematic account of what is going on from their point of view. We know the Commission's point of view. It has said on a number of occasions that its mandate, which it used last October, is not exhausted. Does it have to say more than that?

7 pm

Lord Ahmad of Wimbledon (Con): My Lords, I hear what the noble Lord says; of course, he is a real veteran of diplomacy. When I refer to technical talks, of course, officials take forward some elements of the nature and detail of the discussions or negotiations—I have said it now—which are taking place between ourselves and the European Union. I totally agree with him that words matter. That is why I keep emphasising the importance of the tone of the engagement. Notwithstanding the fact that the Bill is here in your Lordships' House, we continue to engage and have those constructive exchanges, within the parties, with businesses and other partners, but also, importantly, with the European Union itself.

As I said in my earlier comments, we will explore practically how we can best respond to my noble friend Lord Cormack's suggestion; I know him well. Of course, noble Lords will also appreciate—many in your Lordships' House have been involved in negotiations—that we cannot provide a running commentary on every element. There was an Order Paper produced in June of this year, which set out the issues and what we believed some of the solutions to be. That was documented, outlining some of the key points and priorities for His Majesty's Government. I give way.

Lord Purvis of Tweed (LD): I am grateful. I read that paper, but that was prior to Michael Ellis, the Paymaster-General, when the Bill left the House of Commons, telling the Commons that talks had been exhausted and this Bill was therefore necessary. Now we are told that talks have not been exhausted. The EU has not changed its mandate, so what have the Government put on the table that is different from what it was in July?

Lord Ahmad of Wimbledon (Con): My Lords, in any negotiation, parties will consider their position as discussions continue. What I have sought to do is provide an update to your Lordships' House of the current position. I think the current trajectory of the talks, discussions and engagement is positive. As I have already highlighted, I will certainly seek—under the conditions of the discussions, with the sensitivities of many of these negotiations—to update your Lordships' House accordingly.

Baroness Hoey (Non-Afl): I appreciate that there cannot be day-to-day updates on negotiations; that would be nonsense. I also do not agree with the noble Lord, Lord Cormack, that we should spend the day having briefings; that, I think, is another pointless way of simply delaying. Can the Minister confirm something important—a big issue but easily answered: that at this stage the negotiating mandate of Šefčovič has not changed?

Lord Ahmad of Wimbledon (Con): The noble Baroness is right. The point of contention for us in any discussion has remained the ability to amend the protocol itself; that remains a key point. In all of these areas, as the discussions earlier have indicated, there are ways and means through. Of course, people will state their negotiating positions at the start and there are discussions

to be had. What is clear to us is that the reason for the Bill, as well as for the good faith in which we continue to negotiate, is to find the desired outcome, which works for all communities in Northern Ireland and, importantly, addresses specifically some of the issues—including the east-west issue, which has been talked about quite extensively during Second Reading and in other debates.

I now turn to Amendment 6 in the name of the noble Baroness, Lady Chapman. The Bill is designed to bring swift solutions to the issues that the protocol has created in Northern Ireland. These solutions are underpinned by the designation of elements of the protocol as excluded provision. This is a domestic legal action to reflect the operation on the international plane of the UK's assertion of the application of the doctrine of necessity, which was referred to earlier in relation to relevant parts of the protocol. Put simply, it is by excluding some elements of the protocol and withdrawal agreement in domestic law that the Bill is able to introduce, with necessary clarity and certainty for users, the changes to the law that are needed in Northern Ireland.

These amendments, through the conditions they impose, would undermine the ability to exclude elements of the protocol and, therefore, undermine the entire operation of the Bill. The first condition, in particular, that provision is excluded only if the EU and the UK agree to that, is, frankly, unworkable. While we are engaging in constructive dialogue with the EU to find solutions to these problems, it is surely quite evident that, if the EU were currently amenable to the full provisions of the Bill, we would already have agreed them; of course, that is not the position.

The second condition—that provision is excluded only if necessary as part of an Article 16 safeguard—also fails to meet the needs of the situation. Article 16 has inherent limitations in its scope. While the Government reserve their position in relation to Article 16—again, a point raised earlier in the debate—there would be a different action on the international plane to the operation of the doctrine of necessity. In sum, these amendments would in our view undermine the co-operation in the Bill, preventing it from delivering the solutions desired in Northern Ireland, which it is intended to provide.

On Amendments 3 and 67, in the names of the noble Lord, Lord Purvis, and the noble Baroness, Lady Ludford—

Lord Purvis of Tweed (LD): These have not yet been moved.

Lord Ahmad of Wimbledon (Con): My apologies; I have covered Amendments 2 and 43, which are the ones in this group. Without repeating myself, the notion of a regular report to Parliament on negotiations would in our view not be appropriate. It has been the position that the Northern Ireland protocol and negotiations regarding it are, like any other treaty, a matter for the Government operating under the foreign affairs prerogative.

In addition, as I have already said, it would not be conducive to a successful outcome in negotiations to provide a running commentary, nor, ultimately, do I believe the House would expect that. However, as I have said, where I can, I will look to update your Lordships' House accordingly and we will update Parliament on the status of negotiations at the appropriate times. Also, the usual mechanisms for the House to scrutinise our activity will remain open to all noble Lords. I therefore hope that, at this juncture, with the responses that I have given, the noble Baroness will be minded to withdraw her amendment.

Baroness Chapman of Darlington (Lab): I am grateful to the Minister. I note again his rather charming tone, but I am afraid he cannot disguise with a charming tone what is becoming more clearly quite a weak position. Some of the things he said have made me more inclined to support the amendments that have been tabled in this group than I was before. I thank the noble Lord, Lord Purvis, and the noble Baronesses, Lady Ludford and Lady Ritchie, for their support for our amendments.

On the point made by the noble Lord, Lord Cormack, about having a briefing, on the one hand, yes, that does make sense, but I am nervous about entering into novel processes or getting into things that are outside of the Chamber. I think it is far preferable to have something that everybody is able to participate in, and that it is on the record. Noting what the Minister said about running commentaries, no one is asking for a running commentary. This is not like negotiating through the Article 50 process; this is quite straightforward and limited in scope, everybody knows what the issues are, and there are plenty of suggested solutions. This ought not to be beyond the wit of a Minister such as he to be able to make progress. I am very—

Lord Ahmad of Wimbledon (Con): Does the noble Baroness accept the principle that the noble Baroness, Lady Hoey, asked me to clarify? The starting position, which is behind one of the reasons why we put the Bill forward, is that the Northern Ireland protocol is not working for all communities. There is a democratic deficit. We can talk processes, but the Government's intention is to unlock that principle, and I hope the noble Baroness agrees on that.

Baroness Chapman of Darlington (Lab): I have been very clear about that. I am surprised by the Minister's intervention on that point, because in both speeches I have made, and in comments elsewhere, I have been very clear on that point. The truth is that these issues are only resolved through negotiation. The question really is about the Government's approach. I have some sympathy because Ministers have inherited this approach. It is not something, perhaps, that they would have initiated themselves, and it is born of a different political landscape. However, it is something that they have to pursue now, and the Government are not being clear enough about their preferred solutions. If it were to be so, and those solutions were to be viable, they might just find that His Majesty's Opposition would support the Government in those. We want to approach this with as much consensus as we can; we do not want to have arguments with the Government over Northern Ireland. We want to agree with the Government. We want to help find solutions. That is a much more powerful position for the Minister to be in, when he is negotiating with EU partners, surely.

[Baroness Chapman of Darlington]

We will not go to a vote today and I will withdraw the amendment. Unfortunately, this dogged determination that the Government have to stick with their approach come what may, because they do not want to be seen to back down, is I think not really helping matters in this House. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendment 3

Moved by ***Baroness Ludford***

3: Clause 1, page 1, line 15, at end insert—

"(e) requires Ministers of the Crown to set out their legal advice on altering the effect of the Northern Ireland Protocol in domestic law."

Member's explanatory statement

This is linked to Baroness Ludford's amendment after Clause 25 (Publication of legal advice).

Baroness Ludford (LD): My Lords, I rise to move Amendment 3 and speak to Amendment 67. If the Government are so confident of their legal case, which rests on the doctrine of necessity, they should surely have no hesitation in making a full legal justification available to us.

They surely owe us that much, as we grapple with the contrary views that have been expressed by many distinguished sources. The International Law Commission has stressed that the doctrine of necessity must be construed narrowly and can be invoked only in exceptional circumstances, being strictly necessary to safeguard essential interests against a "grave and imminent peril". Our Constitution Committee finds:

"It is difficult to conclude that the circumstances cited by the Government"

in their own short legal paper, have indeed

"created 'grave and imminent peril'."

As the noble Lord, Lord Pannick, pointed out at Second Reading, the Government have been complaining about the protocol for a long time—almost since they signed it, in fact. So if it was not imminent three years ago, it is not really imminent now. The Constitution Committee also doubts that this Bill is the "only way" to protect UK interests since, as has already been explored, there is Article 16, which has not, despite many noises over the past year, been initiated. There are also dispute resolution provisions, and of course negotiations—or talks or something—which are, as we have been discussing, thankfully now going on.

The Constitution Committee also argues that the Bill's provisions

"go beyond those strictly necessary to remedy the peril that the Government"

claim to identify. After all, if the Bill includes, in Clause 13, the removal of the oversight role of the CJEU, what has that got to do with the doctrine of necessity and "grave and imminent peril"? I would be interested in the Government's reply to that point.

7.15 pm

The Constitution Committee concludes:

"The House has been asked to pass a Bill the enactment of which, in its current form, would in our view clearly breach the UK's international obligations."

It is interesting that it chooses "enactment". There has been quite a lot of discussion about whether it is the introduction of the Bill or its implementation. The Constitution Committee, perhaps, cleaves through that debate by choosing "enactment" as the key point.

The committee firmly rejects the Government's reliance on the doctrine of necessity. This, perhaps, coincides with other distinguished voices. Sir Jonathan Jones, former head of the Government Legal Service, said that the Government's explanation was "hopeless"—he is not mincing his words there. He said it provided no evidence for the extreme conclusion that the protocol represented a grave peril, and no explanation for why the Government had not attempted to use Article 16. He also made the point that if the UK really did face "imminent peril", the Government would be dealing with the situation more quickly than through a Bill that would take many months, at least, to get through Parliament. You do not deal with something that is grave an imminent by taking a leisurely pace with a Bill.

I will also quote Professor Mark Elliott, well known in the House, a professor of public law at Cambridge. He pointed out that the Government were aware, as we know from government documents, before it ratified the withdrawal agreement, that the protocol could result in cost and disruption to businesses in Northern Ireland. We know that. Nobody is mincing their words in their criticism of the Government. He concluded that it was "positively risible" to argue that an "unforeseen peril" had arisen. Instead, the situation that has come about is one that the Government

"could have predicted and did in fact predict."

So I am afraid the Government are not getting much support on its legal arguments.

The Constitution Committee warned us, as it did on the UK Internal Market Bill, that:

"The introduction and enactment of legislation that results in the UK violating its obligations under international law is … cause for serious constitutional concern."

So it is not just a legal matter, it is a constitutional matter because:

"Any breach of international law threatens to undermine the rule of law and international confidence in future treaty commitments made by the UK Government."

The committee also raises the question of whether Ministers are contravening

"the Ministerial Code to comply with the law, including international law."

Perhaps the Minister would cover that point in this response.

The most telling blow against the doctrine of necessity is that the Government themselves negotiated, signed and gleefully proclaimed the protocol as part of the withdrawal agreement, saying it had "got Brexit done". Political convenience cannot now prevail against these weighty and damning arguments. If the Government have any hope or desire to persuade us against all

these contrary views, surely the minimum they can do is share with us their full legal argument, by publishing the legal advice and justification they received. I beg to move my amendment.

Lord Campbell of Pittenweem (LD): My Lords—oh, I give way to the noble and learned Lord.

Lord Judge (CB): Thank you very much. Just so that we are not met with the argument that we never show legal advice as it is confidential—that there is no obligation to show it and we never do—and bearing in mind that I support the noble Lord, Lord Purvis, in arguing that Clauses 2 and 3 should not stand part of the Bill, I have some simple questions.

First, do the Government agree that the provisions of the Good Friday agreement are placed at the very front of the protocol? If the worries about the Good Friday agreement are the problem, then what is the answer to the protocol affirming that need to protect it? Secondly—this is not about legal advice—have the Government considered, and if so in what way, using Article 16 of the Northern Ireland protocol itself? I spell it all out: nothing to do with international law, just within the realms of the actual protocol. If not, why not? Thirdly, what is the necessity for Clause 13 removing the Court of Justice from the European Union's oversight role in the determination of disputes over the withdrawal agreement? That does not involve giving legal advice; it involves informing the House. Finally, and I am sorry to ask this of an individual Minister because it is a matter for every Minister, have Ministers given thought to the possibility that they have contravened their obligations under the Ministerial Code to comply with the law?

I ask those four questions on the basis of what is contained in the Constitution Committee's report. The noble Baroness, Lady Ludford, has raised them already, but can we just have specific answers to those questions, because without them Clauses 2 and 3 simply cannot stand?

Lord Campbell of Pittenweem (LD): My Lords, I thought my days of trying to beat the gun had left me behind a long time ago. I apologise.

I wish to speak in support of Amendment 3 and am glad to see that the noble Lord, Lord Ahmad, is back in his place. I have a recollection, and no doubt he will correct me if I am wrong, that on one previous occasion when this issue was raised, he expressed some sympathy for the idea that the legal advice should be made available. We have heard already in these proceedings that there is not a lawyer in the House who does not think that the Government are acting illegally and that, I suppose, is a pretty unusual state of affairs.

We have also seen that the Delegated Powers and Regulatory Reform Committee observed at paragraph 4 of its report:

> "The Bill represents as stark a transfer of power from Parliament to the Executive as we have seen throughout the Brexit process. The Bill is unprecedented in its cavalier treatment of Parliament, the EU and the Government's international obligations."

Given that the chorus of legal responses in the House is against the Government, perhaps the most notable being that of the noble Lord, Lord Howard of Lympne, and given the extreme criticism of the Government contained in paragraph 4, I respectfully suggest that the convention that legal advice is not made public should be set aside on this occasion. It is a convention; it is not a rule of law. If I may put it so, this is a case of such novelty and importance that it justifies the setting aside of the convention.

I also understood my noble friend Lady Ludford to be raising some questions about the issue of necessity. The Advocate-General will recall that in the course of his long response at Second Reading, he referred to the case of Slovakia against Hungary. I took the opportunity to read that case, and what we discover is that it is not in point at all. It was a case where both states were in breach of legal obligations and the international court called on them both to carry out their relevant treaty obligations. That is nothing to do with the issues which we have before us. But the noble and learned Lord was not satisfied with Slovakia; he went to Canada in 1995. He prayed in aid decisions taken then by the Canadian Government in relation to the Grand Banks and their overfishing, but there was no question of a treaty on that occasion.

If these two cases are offered as support for the notion that this case is one where necessity is justified, I would respectfully suggest that they do not support that thesis. The Government will have to do something rather more if they are to establish any question that necessity arises in this matter.

Lord Pannick (CB): My Lords, I very much agree with what the noble Lord, Lord Campbell, said about this being a context where it would be enormously helpful to this House, and to Parliament generally, for the Government to publish legal advice so that we can understand why they assert, contrary to the views of most—if not all—lawyers, that what they propose to do is not a breach of international law. I anticipate, however, that the Advocate-General for Scotland will tell us that there is a convention that the Government are not prepared to publish legal advice. If that is his position, it would be enormously helpful to the House if he could at least address the substance of the criticisms that have been made of the Government's position in international law. The noble and learned Lord told us at Second Reading that that was not the time or the place for him to address these arguments. I very much hope that today is the time and that he will tell the House, if he is not prepared to publish the legal advice, at least the substance of the Government's argument.

First, why do they say that the test of necessity is satisfied, even though the protocol contains a mechanism for addressing disputes and even though, as the noble Lord, Lord Ahmad, told us a few moments ago, the Government are reserving the right to use Article 16? How can it be necessary to set aside the protocol when the Government themselves reserve the right to use a provision in the protocol which is designed to address the very problems that they are concerned about?

Secondly—I dealt with these points at Second Reading, but we had no answer—how can there be an "imminent peril", when this dispute has been going on for three years, since the protocol was agreed? Why is it imminent, which is the requirement in international law?

[Lord Pannick]

Thirdly, since they have not told us this, what is the Government's case as to how the doctrine of necessity can be satisfied when the International Law Commission, the academic analysis and the case law all say, "You cannot rely on the doctrine of necessity when you, the state relying on it, have contributed to the problems which you are complaining about"? How can it not be the case that the Government have at least contributed to the perceived problem when they signed the protocol after negotiations? If we are not to have the legal advice, can we please have at least some indication or hint as to what the Government's case is?

While we are dealing with that, could we also please be told whether the Government's legal advice associates itself with the argument of the noble Lord, Lord Bew? They have never said this, but is their argument that the Good Friday agreement establishes the test of necessity? I would like to know, please, the answers to those basic questions so that when we proceed with Committee we are at least informed as to what the Government's position actually is.

7.30 pm

Lord Bew (CB): My Lords, I would like first to take up my noble friend Lord Pannick's point about the Government being responsible for this situation. I will give a simple example of why that is not an easy quick-fire point. Looking at the joint report of 2017, it is, as Michel Barnier insists, an international document where both sides signed up. I understand in this House the great sanctity of international documents; I have heard that a number of times today. Having said that—and I respect it—our Government signal in that document that they are determined to maintain the east-west relationship as described in strand 3 of the Good Friday agreement.

We have signalled that there is a problem, which is now at the heart of the matter. It is not that we are suddenly saying late in the day, "Oh my gosh, we never thought of strand 3"; it is in that document. The EU was perfectly aware when it signed the document that the UK was going to take the view that the east-west strand 3 relationship is very important and should be maintained in its current and best form.

Lord Purvis of Tweed (LD): Would the noble Lord give way on that point? I am just wishing to test that a little further with the sequencing. If he is correct about the agreement made in 2017, he also has to appreciate that it was the Government in 2019 who said that the protocol they negotiated satisfied that 2017 agreement. Therefore, they got parliamentary approval to ratify that. It became a treaty obligation which is now under question. If his argument is correct, then the sequence flows that the Government knowingly said in 2019 that the protocol satisfies that 2017 agreement.

Lord Bew (CB): Both the EU and the UK Government said at a number of points—three at least—that this agreement is designed to protect the Good Friday agreement in all its dimensions. Bluntly, it has not done that. We talk about legal opinion and what the Government's argument has been. The former Lord Chancellor, in the Commons debate on this, made exactly that point. I read the protocol agreement and what did I see? There is a reference to the Good Friday agreement and the protection of it in all its dimensions. That is not actually happening. Both sides signed up in good faith hoping that was what would happen.

Both sides signed up to the protocol, which says that the UK single market should be protected in its integrity. It might be reasonably expected for that to happen. Do noble Lords think that the current provisions for checks are protecting the UK single market in all its integrity? The idea that we both signed up for stuff is very simple. I could go on forever about how "We both signed up for stuff." To be absolutely honest, neither side fully understood what it was doing.

In particular, the negotiating history of this is clear. The EU did not understand the Good Friday agreement. Michel Barnier's memoir is perfectly clear. We cannot make pigs fly. Michel Barnier's memoir is based on a view of the agreement and the undertakings in it which is based on pigs flying. We cannot do it with the best will in the world and for all our enthusiasm to be loyal to something we signed up for. We cannot make pigs fly. His version of what he was protecting is not what it is—not by a long way. The reason for this is our negotiating defeat in 2017 and Mrs May, having effectively lost an election, desperately getting into talks. We cannot undo that; I am not saying we can. In history, we signed up for stuff and we are trying to find a compromise, but we cannot make pigs fly. We cannot make nonsense be operative. It does not matter how morally committed we are.

Lord Campbell of Pittenweem (LD): I am very grateful to the noble Lord for giving way. Is there not a possible remedy here? If there are conflicting views, should we apply the principle of contra proferentem? Those who argue for a particular view have the onus of establishing that that view is the correct one.

Lord Bew (CB): We are in a situation now where in Dublin it is accepted by those involved in the negotiation that they achieved a one-sided appropriation of this agreement. This then flows into the agreement of 2019. It was because of our weakness. We cannot undo it and we signed up for it—I get all that—none the less it is accepted by them that there is a problem. The problem cannot be met by saying "You signed up for it", "Boris was a fool" or anything like that. It is a real problem at this moment. That is the key thing we are stuck with.

This agreement and the protocol say in numerous places—the former Lord Chancellor said it in the other place, so the Government have argued this very clearly—that it is about protecting the Good Friday agreement and for good measure protecting the integrity of the UK single market. This debate is rather different from the terms it has been couched in. I keep saying that the reality is about the interaction of a prior international agreement and the protocol agreement. There are different views of this.

While we are on this subject—regarding the evidence of Sir Jonathan Jones that was cited earlier—the Attorney-General in 2019 explicitly said in the other place, and it was repeated in this place, that there is a problem: where the protocol conflicts with the Good Friday agreement, the UK reserves the right to operate

the existing prior international agreements. Who was working in the Attorney-General's office then? I am certain there were some quite good lawyers when that happened.

We heard about Professor Mark Goldie's observations, and they are absolutely true. He is a professor in public law in Cambridge who came to our committee in the Lords. I think Professor Boyle came to both committees. Professor Goldie listened to Professor Boyle, who I am certain does not support this Bill and who is much more open in principle to the arguments regarding international law, that the prior international agreement weighs heavily here. In the interaction of the two of them he personally argued Article 16 should be applied because you cannot demonstrate necessity unless it has been applied. I have often been attracted to that argument, but I am astounded by the number of Peers in this House who are mad keen for Article 16.

I am a historian, not a lawyer. I remember a few months ago when every civilised person was regarding the application of Article 16 and no one was saying "Oh, it's in the treaty." I remember the intensity of emotions—that this would be another foul act of disgraceful behaviour by the Government, even though it clearly is in the treaty. I am delighted there are so many converts today. I am not even sure; I think they might be right. It is a fashion change, not an international law change. The mood of the House has changed on this point, and nothing has changed in law.

I am not saying that Professor Goldie supports the Bill; I am certain he does not. As I said, I am not sure that Professor Boyle does either. Professor Goldie accepted the burden of Professor Boyle's argument that it is very important to have upfront protection of the Good Friday agreement. The story about what international lawyers say—I am certain this will become even more complicated in this Chamber before this Bill finishes its passage—is a little bit more complicated. That is all I want to say. I am not saying that I know. I could not possibly say that sitting on this Bench with two very distinguished lawyers.

I am not making a claim about law but about history and what actually happened, how we got here and the mood on this, because that does rather matter. What I am saying is that the Government would be within their rights to say that there is a debate on this subject and there is a real problem. If you are not even talking—as most speakers today have not—about the interaction between the Good Friday agreement, the prior international agreement, and this agreement, then you are not even in the debate in any realistic way. They would have the right to say that.

Baroness Altmann (Con): My Lords, with all due respect to the noble Lord, Lord Bew, and in due deference to the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, I will now inject the perspective of an economist and businessperson.

I support Amendments 3 and 67 and will try to inject a different perspective here. The arguments about protecting the Good Friday agreement are of course important and real. However, it seems that, despite arguing that the UK has contributed to the problem—which is essentially part of the reason why the doctrine of necessity seems unable to be applied here—there are options open to the United Kingdom to respect the Good Friday agreement, including maintaining regulatory alignment. Were regulatory alignment to be maintained, the east-west problem would not necessarily arise—because the EU could be reassured that there is less of a threat to its single market—and the north-south element would also not arise. If the UK wanted to diverge regulatorily, it has the option to negotiate that. So there are practical resolutions within our power to protect the Good Friday agreement and the protocol.

If we cast our minds back to the awful Brexit and post-Brexit periods, an assurance was given to noble Lords, including myself, that there would be technical arrangements—alternative arrangements—that would permit the flow of goods across the border that could be tracked, with trusted traders and technology being introduced, that would mean that we would not have these problems of customs procedures. If those arrangements were to be in place, the problem would not arise. So again, the UK Government have the option of saying, "We will maintain regulatory alignment until we have introduced those arrangements". That would allow us to be in a position where we would not be breaking international law.

I agree with the noble Lord, Lord Bew, when he said that, if there is a problem, we should try to find a compromise, but that again means negotiation and using the facilities we have signed up to ourselves rather than threatening to blow up the whole agreement. I urge my noble friends on the Front Bench to try to get away from the magical thinking that we can somehow square this circle by threats or by breaking international law—or even by threatening to break international law—and instead to get around the table and negotiate a reasonable way forward that gets away from this kind of argument.

Lord Dodds of Duncairn (DUP): My Lords, this debate illustrates one of the issues deeply affecting Northern Ireland politics: trust and agreements. Noble Lords have talked about agreements entered into and then broken. One of the problems that exists for unionists at the moment in Northern Ireland is that so many promises and pledges have been made but have not been fulfilled. I referred in the earlier debate to the provisions of Article 50 and the joint report published on 8 December 2017, a commitment entered into by both the European Union and the UK Government. The noble Lord, Lord Caine, was present for some of the discussions we had with Theresa May in Downing Street when this matter was discussed. Provisions were inserted, and this was agreed by the European Union and the UK Government: no regulatory difference would exist unless by the express agreement of the Assembly and the Executive. That was ditched.

This has led to a situation—and this is just one example—where unionists now feel that their voice is not listened to and that commitments entered into are not accepted or followed through. This has led to a hardening of views across unionism generally, resulting in people now saying, "We need to see the colour of people's money and actual delivery, not promises". I listened with great interest to Steve Baker the other day, who said, "You know, unionists should choke down their concerns; they can count on us". I have the

[Lord Dodds of Duncairn]
greatest respect for Steve Baker and others in the Government, but quite frankly the days of counting on others and taking people's word for it—even when international agreements are set aside during negotiations—have unfortunately gone.

7.45 pm

We have a situation where powers are given to the Northern Ireland Assembly under the Belfast agreement, and then that is set aside at the whim of the Government of the day and Parliament accedes to that. Look at the situation regarding the legislation on the Irish language that the noble Lord, Lord Bew, referred to in the earlier debate: that is a matter for the Northern Ireland Assembly. It is a devolved matter which has been taken over by this House and imposed on Northern Ireland—as have abortion laws, which the Northern Ireland Assembly has never agreed on, again at the behest of a majority here in this House; I accept that. That was done against the principle of the Belfast agreement and the consent principles therein.

We are now told that Article 16 is the way forward if there is a problem; that Article 16 is what we should rely on; that we should take comfort in Article 16. I am looking at an article published on 11 November in the *Irish Examiner*:

"The UK Labour Party has warned the British Government against invoking Article 16 of the Northern Ireland Protocol, saying that it would provoke 'further poisonous instability'."

That was about a year ago. At that time, the Government were looking at solutions within the context of the protocol, but that was derided and opposed.

Emily Thornberry, on 29 September 2021, said that it would be profoundly tragic if the Government moved to trigger Article 16 of the Northern Ireland protocol. She went on at length to say that the Government must step back from the brink and that it would have devasting consequences. On 11 May this year, Labour said that scrapping the Northern Ireland protocol would make the UK a pariah. Steve Reed, the then shadow Justice Secretary, said that triggering Article 16 to suspend the deal would make the UK a pariah. Nicola Sturgeon said that the UK should never trigger Article 16 as it would do tremendous damage.

There are other quotes that I could use, but I cite these as an illustration of the fact that unionists are told to be reasonable, to take things on trust and that we should move forward with negotiations, but time and time again the goalposts keep changing. They have changed on the basis of devolution itself and of the negotiations that were to take place on Brexit, and in the joint report and the commitments that were given in it, and now we are told, "Don't go ahead with the Bill; rely on Article 16". Yet when you examine its history, it is clear that that was seen as unacceptable.

What reliance have we without this Bill and its provisions that people would not revert to that? We must have legislation to copper-fasten some of these issues.

Baroness Chapman of Darlington (Lab): I understand that my noble friend—if I can call him that—has been lied to repeatedly, but he was lied to by the Government. I gently suggest that his beef ought to be with the noble Lords opposite me, rather than my party. As he says, our position on Article 16—as you would expect, and as I attempted to explain earlier—has evolved in the context of what we are being presented with by the Government. This approach was not previously conceived of; now that it is, it puts Article 16 in a slightly different light. This is not especially complicated, but it is the view of the Labour Party.

Lord Dodds of Duncairn (DUP): I am grateful to the noble Baroness, and I understand what she is saying, but the issues that were being discussed at the time by Her Majesty's Government, as it then was, and which the Labour Party was responding to, are the same issues that are before us today, which are affecting the political process in Northern Ireland and leading to problems with the supply of goods from Great Britain. They are exactly the same but when the solution, "Let's trigger Article 16; let's go into negotiations", was suggested, the Labour Party derided that as being toxic. The Labour Party gave support and succour to those who have allowed this position of instability and economic and constitutional harm to continue. A lot of lies have been told around the place, but it is no good, if I may say so, the noble Baroness putting all the blame on to the Government when everybody in Parliament and all political parties have to accept that the goalposts have been shifted, often by consensus, in a way that has done damage to the Belfast agreement, as amended by St Andrews, in a way that has undermined the trust of the people in Northern Ireland in the institutions.

Lord Pannick (CB): I entirely understand the noble Lord's political grievance, but the fact is that Article 16 is part of the protocol and the political grievance cannot itself provide the basis for necessity in international law. This group of amendments is seeking to understand what the legal advice of the Government is.

Lord Purvis of Tweed (LD): I always find it very interesting to follow the noble Lord. As I said before, I have been trying to understand his dilemma. For all the accusations against these Benches, suggesting that we may have been party to shifting goalposts to the Government is a stretch too far in any sport, whether it is rugby or football. We have been fairly consistent with our warnings, and I refer the noble Lord to *Hansard* when we debated the protocol and I raised these issues in 2019. We knew there were going to be the difficulties, because what the noble Lord wanted, we knew the Government were not going to satisfy. We have had three years of government gymnastics—I am mixing my sporting metaphors all over the place—trying to present a political argument which we knew was fundamentally flawed.

The only way that this will be sustainably resolved, if one part of the UK, Northern Ireland, is to remain part of the single market, is for there to be agreement. Unilateral actions against treaty obligations is not a sustainable solution to any of these problems. I understand when the noble Lord talks about a lack of trust. It is a stretch for him to make an impassioned contribution such as that and then say, "But I am going to argue passionately in favour of a Bill that gives unprecedented Henry VIII powers" to the exact same people he has said he had lost entire trust in.

Lord Dodds of Duncairn (DUP): Do not worry, I will not be arguing that passionately for any Bill that could end up being withdrawn. We have been down this road before. All I say is that I support measures that, in my view, help to deal with the protocol issues that we have. I accept what the noble Lord is saying in terms of the LibDem position, although Layla Moran pointed out last year that triggering Article 16 would be a terrible thing and tragic, and all the rest of it, so it is not exactly totally consistent on the Article 16 point.

Lord Purvis of Tweed (LD): As the noble Lord, Lord Pannick, said, there is a difference between recognising that there are mechanisms that could be put in place as safeguarding and rebalancing measures, and unilateral actions that seek to go beyond what Article 16 would be for the protocol. That is the entire point.

In supporting my noble friend's Amendments 3 and 67, I understand that the Government will have prepared—the Advocate-General will correct me if I am wrong—a legal issues memorandum, a LIM, before the Bill was approved. That goes to the Attorney-General and to the Advocate-General for Scotland, and they will have approved this legal issues memorandum which, I understand, would have had to consider the very questions that the noble Lord, Lord Pannick, indicated with regard to the options open to the Government to meet their policy ambitions. That would have included the protocol element of Article 16, as the noble Lord, Lord Dodds, indicated. In many respects, and I cover many trade debates in this House, Article 16 elements are fairly typical WTO mechanisms of safeguarding and rebalancing. The legal issues memorandum will have had to consider these options. So, at the very least, the Advocate-General can confirm to the Committee that there was a legal issues memorandum, and it did consider all these options.

The next question, therefore, is precisely where the legal argument on necessity originated. Did it originate from the FCDO? I understand that the memorandum goes to the FCDO also, for the treaties department. I am sure the Advocate-General will say that he cannot disclose this information for us, but on an issue of this importance, where did the argument for legal necessity originate? Was it his department? Was it the Office of the Advocate-General for Scotland? He is in his place precisely because his predecessor resigned, saying that his position was undermined in his endeavour to find, to quote from his letter, "a respectable argument" for breaches of international law in the United Kingdom Internal Market Act. The then Secretary of State for Northern Ireland said, notoriously, that it was a "specific and limited" breach, but the noble and learned Lord, Lord Keen, struggled hard to find a respectable argument to present for it, and because the Secretary of State was honest, the noble and learned Lord resigned. I note that the Constitution Committee report said, as has been referred to before:

"In this case, reliance on the doctrine of necessity is not a 'respectable' legal argument."

I think we will touch on it when we discuss whether Clause 123 stands part, so it will be very interesting to hear what the Advocate-General says in winding on this group in order to inform some of our discussions on the next group.

I have sympathy with what has been referred to by others and I have an inkling as to what the Advocate-General may have in the folder in front of him. He may say, "It's a long-standing convention, for very good reason, that legal advice is not published in full", and he is no doubt prepared to say it, but why my noble friend Lord Campbell of Pittenweem is correct is that we are now in a realm of significance, given the scale of what the breach of international law would be.

I will refer to it in the next group, but my noble friend provided an amuse-bouche of the case of Hungary and Slovakia, to which the Advocate-General had referred. I also read that judgment in full. It may help the noble Lord, Lord Bew, to know what the ICJ has found repeatedly. Let me quote from its judgment in one of the cases that the Advocate-General cited.

"According to the Commission"—

that is the International Law Commission—

"the state of necessity can only be invoked under certain strictly defined conditions which must be cumulatively satisfied;"—

this is the point I want to stress—

"and the State concerned is not the sole judge of whether those conditions have been met."

So even if he is right, one state party cannot determine solely, and the ICJ has found that repeatedly.

Even if the Advocate-General for Scotland says that it is a long-standing convention and cites examples of where legal advice was not furnished—he may overlook some examples of where it has been, of course, but that is a separate issue—the area that I want to ask about concerns what the former Advocate-General for Northern Ireland and the Attorney-General, Sir Geoffrey Cox, said in Committee in the Commons.

"There is plenty of precedent for the Attorney General coming to the House—I should know, I did it—to answer questions about the international law compatibility of a measure in this House. Indeed, it goes way back, I think, to either the Wilson Government or the Heath Government … I invite the Minister … to invite the Attorney General to come and answer those questions, because, in my judgment, it is an obligation to the House. The Attorney General has a residual duty to advise the House on matters such as this."—[*Official Report*, Commons, 13/7/22; col. 400.]

Will the Advocate-General state why this has not happened? Will he provide the equivalent to this House in a Statement? We are asking the same as has been asked in the past of Attorneys-General.

8 pm

Being sympathetic to the Government just this once, I can perhaps understand their hesitation. When the Paymaster-General responded in negative terms to the call for the Attorney-General to answer questions about the protocol, he did so on 13 July. The previous day, the very same Attorney-General, Suella Braverman, wrote an article in the *Times* entitled "How I'll get Britain back on track". I will quote from her article:

"The Northern Ireland Protocol Bill needs to be changed so that it actually solves the problem. That means VAT, excise and medicines should be under UK law from day one—currently they are not … Otherwise we're giving Brussels a legislative blank cheque. These are all changes I've been fighting for while in government. Without them, the bill treats people living in Northern Ireland as second-class citizens."

I can perhaps understand why the Government were reluctant.

Currently—for how long I do not know—the Attorney-General is the same Michael Ellis—

Baroness Chapman of Darlington (Lab): Not any more.

Lord Purvis of Tweed (LD): I hear he has changed. The former Paymaster-General, who is now the former Attorney-General, was citing the former Attorney-General Suella Braverman, who is now the Home Secretary—even I am struggling to keep up with what is going on. Nevertheless, the principle is clear that, if the then Attorney-General was happy to provide advice to the *Times* in her abortive leadership campaign, we humbly seek that Parliament be equally enlightened with an update on exactly what the Government's position is.

Lord Kerr of Kinlochard (CB): Perhaps I might provide a lifeline to the Advocate-General for Scotland, because I am a Scotsman too and I hate to see him being so tortured. The noble Lord, Lord Pannick, asked to see the legal advice. I am sure, as he was sure, that in reply the Minister will remind us of the convention. The noble Lord's alternative option was that the Minister should tell us now what he was unable to tell us, as it was an inappropriate time, at Second Reading.

I have a third option. I was struck that nowhere in the Minister's quite long speech at Second Reading did he ever fall into the trap of making the applicability of the doctrine of necessity his view. It was never him explaining that he believed the doctrine of necessity applied. It seems to me that the concerns of the House might be satisfied by a memorandum. A memorandum was produced in June and July, which was a singularly unsatisfactory document in my view. It looks even less good now, having been subjected to critique at Second Reading and by the noble Lords, Lord Campbell, Lord Purvis and Lord Pannick, tonight. However, there could be a second edition setting out the Government's response to the arguments that have been advanced, including by the Constitution Committee. So I suggest that a third option that would satisfy me and might satisfy the noble Lord, Lord Pannick, would be for the Minister to undertake tonight to produce for us a revised edition of the pre-summer memorandum.

Lord Bew (CB): My Lords, very briefly, I have been trying to say that the legal advice is a little more complicated and nuanced. I am not claiming, for example, that any prominent international lawyers such as Professor Boyle support this Bill. In fact, I do not think he does; he is one of the many who believe in Article 16.

I am quite astounded. Only a few weeks ago, every civilised person knew that Article 16 was the most brutish thing they had ever heard of. All civilised Peers across all parties and all civilised people knew it was the most brutish thing they had ever heard of, just as they are sure of this tonight. However, at this point we have a serious negotiation with the EU. Why do they think that, to improve the atmosphere of these talks, it would be a smart idea for the British Government to come in on Monday morning and say, "Well, you know, civilised opinion has changed. A few months ago, we thought it was brutish; we now think this Bill is so brutish that we want you now to declare Article 16". This is not serious. There is a serious negotiation going on. You cannot seriously ask the Government to do this. I sympathise and fully accept that the legal arguments are more complex than has been acknowledged in this Chamber this afternoon—they are difficult and I have no firm, final view—but it would be absurd for the Government to say at this point, "Oh, we were having this negotiation but, by the way, here is Article 16". I am sorry, it just would not work.

Lord Pannick (CB): For my part, and I am sure it is true of others who have spoken in this debate, I am not asking the Government to exercise Article 16 tomorrow. The point is that the availability of Article 16 at a later stage is the reason why the test of necessity cannot be satisfied.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I turn to Amendments 3 and 67 in the names of the noble Baroness, Lady Ludford, and the noble Lord, Lord Purvis of Tweed. The Government acknowledge that the noble Lord and the noble Baroness are right to raise the important issue of the relationship of this Bill to the United Kingdom's international legal obligations.

On the point raised by the noble Lord, Lord Kerr of Kinlochard, I consider that the amendments proposed are not necessary. The Government have published a statement setting out their legal position. I will expand on that position during my submission, in particular to answer the points raised by the noble Lords, Lord Pannick and Lord Kerr of Kinlochard, and others. None the less, a statement has been published, to which the noble Lord referred, setting out the Government's legal position that the Bill is consistent with the United Kingdom's international obligations.

Noble Lords chided me gently for perhaps going on a bit long at Second Reading—

Lord Cormack (Con): Yes, you did.

Lord Stewart of Dirleton (Con): I am grateful to my noble friend. I was left by some of the strictures and anticipations of my point from noble Lords looking for synonyms for the words "long-standing convention". However, in light of having been criticised for going on a bit long and the hour, I will confine myself to repeating—or rehearsing—the point noble Lords anticipated I would make.

It is a long-standing government policy and convention accepted by Governments of all parties not to comment on legal advice provided to the Government. A number of noble Lords who have been present in this debate or at Second Reading will understand personally the importance of that, having acted as internal or external counsel to His Majesty's Government.

I was asked by the noble Lord, Lord Pannick, about the protocol and its place in relation to the Belfast/Good Friday agreement. The protocol puts that agreement at the forefront; the problem is that, in its implementation, it is undermining it.

Lord Hannay of Chiswick (CB): The Advocate-General has just given the totally conventional response about the Government not publishing their legal advice. In that case, why did the Government publish a four-page document in the summer setting out their legal advice?

Lord Stewart of Dirleton (Con): My Lords, the Government set out their position at the outset to assuage, hopefully, the concerns of Peers and Parliament

generally about the steps which they intended to take. I do not intend to go beyond that on the Government's legal advice.

I was going on to address the point raised by the noble Lord, Lord Pannick, and others—the noble Lord, Lord Purvis of Tweed, and the noble Baroness, Lady Ludford—about the matter of necessity. The noble Lord, Lord Pannick, paid me a restricted compliment earlier. May I respond in kind by saying that I am grateful to him for the wise, kindly, and friendly manner in which he has always engaged with me since I started in this House? I look forward to further engagements with him and the noble Lord, Lord Kerr of Kinlochard, and others on these points.

The noble Lord I think was the first to pose the question, how would it be possible for the Government to depend on the doctrine of necessity when the Government have put their signature, have become a party, to the protocol, having negotiated it? Do those facts, of themselves, prevent the Government from relying on this? Because, as the noble Lord said, the doctrine of necessity cannot be relied on by a party which by its conduct has caused the problem. The noble Lord, Lord Bew, nods his head.

Lord Pannick (CB): Or contributed.

Lord Stewart of Dirleton (Con): Or contributed. Where I and the Government differ from the noble Lord is in this regard: we signed the protocol in good faith, we negotiated in good faith, but we are entitled also to look beyond the terms to the manner in which the protocol has been implemented and interpreted by the other side. In relation to that point, it is not a—

Lord Pannick (CB): I am very grateful and I apologise for speaking so often, but this is Committee. If the Government's belief is that the other side has not faithfully performed its obligations on the protocol, the protocol itself provides a mechanism by which that dispute can be resolved. The means provided is through the Court of Justice. I entirely understand why politically the Government do not like that remedy, but that is what we agreed.

Lord Stewart of Dirleton (Con): To pick up the noble Lord's point about the CJEU, the Belfast/Good Friday agreement is based, as we have heard, on the consent of both communities. It is part of a package, along with VAT and state aid rules, that causes unionists to feel less connected and less part of the United Kingdom. As your Lordships have heard in the course of the debate today, all unionist parties cited the CJEU as a key driver of a major democratic deficit. This is not a hypothetical issue; there have been seven separate infraction proceedings brought against the United Kingdom by the EU, covering issues such as value-added tax, excise, pet passports and parcels. We consider it inappropriate for the CJEU to be the final arbiter.

Baroness McIntosh of Pickering (Con): I listened very carefully to what my noble and learned friend said, but the situation remains the same today, as the noble Lord, Lord Pannick, set out, as it was on the day that the Government claimed to have an "oven-ready deal"—I think those were the words—of which the protocol was an integral part. It is a cornerstone of the EU Withdrawal Agreement and, as the noble Lord, Lord Pannick, has stated, the remedy is in the protocol. So it is very unfair for the Members on the DUP Benches to be put in this position, but that is the position that was sold to both Houses.

Lord Stewart of Dirleton (Con): My Lords, I beg respectfully to differ from my noble friend. The situation is not the same, because in the intervening period between the announcements to which my noble friend refers, and today, these problems about implementation have arisen; so the situation is not the same, and we simply cannot go back to reference the text of the argument.

Baroness Chapman of Darlington (Lab): I have noticed the emphasis that the Minister has placed twice now on the word "implementation", and I want to understand precisely where he views the problems with the protocol to lie now, because the Bill that he is supporting deals with the problems in a far more fundamental way than just looking at implementation and practicalities.

Lord Stewart of Dirleton (Con): I am referring to implementation in terms of the manner in which these problems have arisen: the problems that have led to the difficulties with which the House is currently grappling, such as the suspension of institutions and the democratic deficit. I think the noble Baroness wishes to speak.

Baroness Chapman of Darlington (Lab): I was muttering to myself, actually. Those are not problems of implementation of the protocol, those are issues that underlie the protocol; I am just trying to understand exactly what the Government see as the problem, because unless we do that in a fuller way than he is perhaps leading towards, we will not have a clear idea of what the Government are recommending the solution to be.

8.15 pm

Lord Stewart of Dirleton (Con): My Lords, I am grateful to the noble Baroness for her intervention, and I hope I will be able to, if not clear it up directly, refer the noble Baroness to the statements in the Order Paper. Perhaps I may say, in relation to the amendments with which we are currently engaged in relation to publication of the Government's legal advice, that it may well be—and I think I made the same observation to my noble friend Lady Altmann—that these points might be dealt with better in relation to later groups which will address the question of the protocol and the amendments which the Government propose. I give way to the noble Lord.

Lord Purvis of Tweed (LD): The noble and learned Lord has just told the Committee that the problem is with the implementation of the protocol. In his Second Reading winding speech he said that

"the problem lies in the protocol and not in its application."—[*Official Report*, 11/10/22; col. 768.]

So, which is it?

Lord Stewart of Dirleton (Con): My Lords, the problems with which we are grappling lie in the implementation of the protocol: I think the protocol has given a basis upon which these implementations may be made.

Lord Purvis of Tweed (LD): Is this the noble and learned Lord correcting the record now from his Second Reading speech? I am quoting directly from *Hansard* that

"the problem lies in the protocol and not in its application."—[*Official Report*, 11/10/22; col. 768.]

But he is telling the Committee today that it is in its application.

Lord Stewart of Dirleton (Con): The noble Lord promised at the very outset of Committee, when he opened the earlier debate, that this inconsistency would be pounced upon, and he has returned to the point. My answer to him is that the implementation has given rise to the difficulties we now face, and that the protocol has permitted that implementation to take place.

Baroness Altmann (Con): Could I ask my noble and learned friend to amplify what it is in the way that the protocol is working that was not anticipated? The role of the European court was always enshrined in the protocol, so I am struggling to understand what has suddenly changed to require this unilateral action to get rid of the CJEU, rather than using the mechanisms within the protocol.

Lord Stewart of Dirleton (Con): My Lords, the diversion of trade and the effects upon the confidence of the unionist community in their membership of the United Kingdom have given rise to the difficulties we now face.

As I was saying before dealing with that spate of interruptions from noble Lords, it has become apparent that one of the communities—I remind your Lordships of the importance of the concept of consent in the Belfast/Good Friday agreement—has recognised that the CJEU is a part of the problem, as unionist parties have cited the CJEU as a key driver of a major democratic deficit. The Bill therefore seeks to ensure that Great Britain and Northern Ireland courts will have the final say over the laws that affect their citizens. It will permit a referral mechanism to the Court of Justice of the European Union, recognising legitimate EU interests and supporting north-south trade. We consider this to be a reasonable step which places the matter in line with normal dispute resolution provisions in international treaties.

Lord Purvis of Tweed (LD): On that point, would the Minister be able to cite any other agreement the UK has signed where the dispute resolution mechanism affords the UK the ability to bring forward unilateral legislative solutions which are contrary to the agreement we had signed? What other examples can he cite?

Lord Stewart of Dirleton (Con): My Lords, that question brings me on to dealing with the terms of the argument in relation to Article 16, about which we have had some submissions from the noble Lord himself, the noble and learned Lord, Lord Judge, the noble Lord, Lord Dodds of Duncairn, and the noble Baroness, Lady Ludford. Triggering Article 16 would not solve the problems of the protocol. It would only treat some of the symptoms, without fixing the root causes of those problems. It has inherent limitations in terms of its scope. Such safeguard measures might address trade frictions but not the broader identified impacts of the protocol such as I have been founding upon. The legislation that the Government propose provides the comprehensive and durable solution required and certainty for businesses and the people of Northern Ireland.

Lord Cormack (Con): I must confess that I am very troubled and puzzled. If the Government have decided that this is what they are going to do, that is incompatible with having proper negotiations. How can my noble and learned friend explain that?

Lord Stewart of Dirleton (Con): My Lords, as your Lordships have heard from my noble friend Lord Ahmad of Wimbledon and the noble Lord, Lord Bew, this is not identified as an inconsistency by our counterparties in relation to this matter.

The Government's legal position is that our legislation is necessary and justified, and we make that assertion without prejudice to our position in relation to Article 16—again, as your Lordships heard from my noble friend Lord Ahmad of Wimbledon earlier. Article 16 is expressly limited. It is the Government's view that it would not solve all the societal and political issues identified, including those identified today in some of your Lordships' contributions to the earlier debate, whereas the Bill provides a comprehensive solution to those problems.

The noble Lord, Lord Campbell of Pittenweem—who in another context is my learned friend—referred me to the examples I cited when winding up at Second Reading of cases which set out the doctrine of necessity. The Canadian fisheries case concerned the Convention on Cooperation in the Northwest Atlantic Fisheries, which was a treaty. The Hungary-Slovakia case to which I also referred was a dispute about an agreement between the two parties for navigation of a river and the construction of infrastructure. In any event, I think the answer to his point is that the concept of necessity and its application in these circumstances is admitted within the articles of state responsibility.

Lord Purvis of Tweed (LD): I will refer to this in the next group, but the Minister might want to add a little extra with regards to the case he cited: the International Court of Justice threw out the Hungarian case on invocation of necessity. It said that

"Hungary would not have been permitted to rely upon that state of necessity in order to justify its failure to comply with its treaty obligations, as it had helped, by act or omission to bring it about."

I think there are some similarities in what we are hearing now, but could the Minister confirm that the ICJ did not accept Hungary's case?

Lord Stewart of Dirleton (Con): My Lords, in any case, there will be parties that are disappointed to a greater extent than others. The point is that one party proposes. That party does not determine the question; the determination of that question falls to someone else.

In relation to the point made by my noble friend Lady Altmann, our preference for negotiation clearly remains. As the Committee has heard, that negotiation is not interrupted or affected by the Bill moving through your Lordships' House.

Baroness Ludford (LD): My Lords, the Minister said that the four-page document we saw in July was designed to assuage our concern. Unfortunately, it did not. In one sense, I am impressed that the Government are prepared to receive criticism of their legal assertions in that document from people of the stature of Sir Jonathan Jones, Professor Mark Elliott, the noble Lord, Lord Pannick, and my noble friend Lord Campbell of Pittenweem, and still say, "Well, the four-page document adequately sets out our case". I am sort of impressed but also surprised that the Government are not provoked by the level and depth of that criticism to make a bit more of an effort.

One of my noble friends—I cannot remember which—highlighted the difference between the assertion made at Second Reading that the problem lies in the protocol and the emphasis this evening that the problem lies in its implementation. That would imply that there is no need to rip up the protocol, which is what the Bill is designed to achieve, and that negotiations or dispute resolution up to the ECJ would fit the bill as the problem is in the implementation. The Government keep switching their ground depending on, it seems to me, who most recently raised a point as to whether the real problem is the protocol or its implementation. The Minister said that invoking Article 16 would deal only with the symptoms not the protocol, but surely "symptoms" are the same thing as "implementation" in this context. Again, there is inconsistency here over whether the problem lies with the text of the protocol or its implementation.

The Minister rather confused me with his references to the CJEU being part of the problem. Again, that was known three years ago. The Government agreed and signed up to what the EU would not have otherwise agreed to—Northern Ireland being effectively part of the single market—without the CJEU being the ultimate arbiter of legal disputes. However, I have frankly never taken the point from the right that court adjudication creates a democratic deficit. We do not expect courts to be democratic. They are part of a liberal democracy but are not themselves supposed to be an epicentre of democracy. They rule on the application of the law.

I do not think that it says much for the Government's knowledge, understanding, foresight or policies that they are now seeking to diverge from the single market, not least in the Bill—I cannot remember its full title; it is something like the revocation of retained law Bill, otherwise known as the Brexit freedoms Bill—that had its Second Reading in the other place today; I do not know whether that is still going on. Diverging from single market legislation makes the implementation of the protocol more difficult so there does not seem to be any coherence in the Government's policy. They criticise the implementation of the protocol but are going to make that implementation more problematic; indeed, the noble Baroness, Lady Altmann, talked about how maintenance of regulatory alignment would help east-west trade. A UK return to the single market, if not the EU, would do so even more.

Lord Bew (CB): This is a little simpler than our discussion, which has reached a rather convoluted shape. The Government were clear when they launched the Bill that its function is to fix it, not to nix it, as the then Prime Minister said when he came to Belfast, in one of his graphic expressions. That is the simple fact with the protocol, not that you would realise it from anything said in this House today. For example, the Government's most important commitment to the EU, which is not to have a hard border and to protect the single market, is completely up front in the Bill.

This debate is on whether the Bill is completely destroying things, but we have all been told that it is to fix it, not to nix it. There really is not much to add. The idea may be wrong. There are a number of reasons why it might not work. The Government's case in international law may not be as strong as the Government believe. The general views of international lawyers on this subject are certainly more complex than most speakers in this House acknowledge. It is certainly a more complex matter—but this is to fix it and not to nix it.

Baroness Ludford (LD): I will not prolong the debate as we all want something to eat. I simply disagree with the noble Lord.

The noble Lord, Lord Dodds, spoke of a lack of trust. As the noble Baroness, Lady Chapman, said, his argument is surely not with the opposition parties, because we have not caused a lack of trust. I happen to believe that unionists in Northern Ireland have long had a bad deal from English Tories, which makes me rather surprised that they have such a close relationship.

I have sympathy with the argument about the lack of democratic input from Northern Ireland into single market legislation, but only the UK being a member state of the EU can fully solve that problem, as it did before. Obviously, I speak as a long-term member of the European Parliament. If there are ways to take into account the views of Northern Ireland, I would be the first to support those suggestions.

The noble Lord, Lord Pannick, answered the point on Article 16. It is not that anybody who has raised it here this evening is advocating the use of Article 16; it is just that the Government cannot invoke the doctrine of necessity when they have not exhausted all the other possibilities.

I am afraid that the Minister, who did his best in slightly shorter time than at Second Reading, has not satisfied me, and probably not my Benches, that the Government are able to put further meat on the bones of how they can justify the doctrine of necessity and thus the legal arguments for the Bill. I beg leave to withdraw my amendment.

Amendment 3 withdrawn.

House resumed.

Royal Assent

8.33 pm

The following Acts were given Royal Assent:

Supply and Appropriation (Adjustments) Act,
Social Security (Special Rules for End of Life) Act,
Health and Social Care Levy (Repeal) Act,
Energy Prices Act.

8.34 pm

Sitting suspended. Committee to begin again not before 9.05 pm.

Northern Ireland Protocol Bill

Committee (1st Day) (Continued)

9.05 pm

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

Baroness McIntosh of Pickering (Con): My Lords, I am most grateful for this opportunity to discuss and debate whether Clauses 1, 2 and 3 should form part of this Bill. I am most grateful to the noble Lord, Lord Purvis, and the noble Baroness, Lady Chapman of Darlington, for their support for all three stand part notices and the noble and learned Lord, Lord Judge, for his support for the proposition that Clauses 2 and 3 should not stand part of the Bill.

I have listened very carefully to the earlier part of the debate and obviously some of the themes will be repeated in debating this group. At Second Reading, reasons were explained as to why the protocol may not be working, and I think the noble Lord, Lord Dodds, spoke at some length on his view of why that is the case. I have had a number of emails from Northern Ireland since I tabled these notices and I would like to say at the outset that the reason for my tabling them is not to deny that the protocol is not working. That is not their purpose. What I am trying to understand, in debating whether these clauses should stand part, is the Government's thinking of the legal base and to press the Minister further.

I would like to quote two paragraphs from the report which I believe was published today by the Constitution Committee of the House. In particular, paragraph 15 on page 4 states:

"We do not accept the Government's reliance on the doctrine of necessity as justification for introducing legislation that disapplies its obligations under international law. The doctrine of necessity is narrowly construed and applicable only in exceptional circumstances, which have not been satisfied in this case."

Further, paragraph 18 also on page 4 of the report states:

"Legislation which puts the UK in breach of international law undermines the rule of law and trust in the UK in fulfilling future treaty commitments. The Government's reliance on the doctrine of necessity does not justify introducing this Bill. This raises the question of whether ministers might be thought to have contravened their obligation under the Ministerial Code to comply with the law, including international law."

I shall also refer to when this was debated in the other place on 13 July. My honourable friend in the other place, Bob Neill, the Member for Bromley and Chislehurst, stated:

"this is an unusual and rather exceptional Bill, and not necessarily in a good way. If fully brought into effect, the Bill would lead to the United Kingdom departing unilaterally from an international agreement and therefore breaking its obligations under both customary international law and the Vienna convention on the law of treaties, which is a grave and profound step for any Government to take.

I recognise that there are circumstances in which that step can be taken, and the Government asserted on Second Reading that the operation of the Northern Ireland protocol gives rise, or potentially gives rise, to those circumstances. The essence of it, though, depends on applying a factual evidence base to a legal test. The legal test in this case is essentially the international customary law convention of necessity, which is now enshrined in article 25 of the articles on state responsibility, which were adopted by the International Law Commission in 2001 and are recognised by the UN General Assembly, by our Government and by the international community as an authoritative statement of the law. Article 25 sets out that necessity may be invoked if certain tests are met. The point of these amendments is to say that if the Government, or any Government, were to take that step, they should do so upon the most compelling grounds, so that the factual basis for their actions met the legal test. The reputational consequences, politically, internationally and legally, are very significant, so this should be done only when that is thoroughly tested and set before this House to be tested."—[*Official Report*, Commons, 13/7/22; col. 365.]

That was from my honourable friend next door, Bob Neill, who chairs the Justice Select Committee in the other place.

At Second Reading and earlier, the Advocate-General referred to the legal advice that was published by the Government. I quote from the *Northern Ireland Protocol Bill UK Government Legal Position*:

"The Government recognises that necessity can only exceptionally be invoked to lawfully justify non-performance of international obligations. This is a genuinely exceptional situation, and it is only in the challenging, complex and unique circumstances of Northern Ireland, that the Government has, reluctantly, decided to introduce legislative measures which, on entry into force, envisage the non-performance of certain obligations. It is the Government's position that in light of the state of necessity, any such non-performance of its obligations contained in the Withdrawal Agreement and/or the Protocol as a result of the planned legislative measures would be justified as a matter of international law. This justification lasts as long as the underlying reasons for the state of necessity are present. The current assessment is that this situation and its causes will persist into the medium to long term."

In my view, for reasons that were well rehearsed at Second Reading and earlier today, that is not an appropriate legal basis. I ask my noble and learned friend the Advocate-General to set out why the Government have reserved their position on Article 16 and have not brought it forward as the more appropriate legal base at this time.

The Law Society of Scotland has also been instrumental in my bringing forward these clause stand part debates. In its view,

"The Government do not rely on Article 16 of the NI Protocol to justify the Bill. That Article would entitle the UK Government to take unilateral 'safeguard measures' in certain circumstances but those measures '…must be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation'.

Instead, the Government argues that these provisions do not breach international law because the situation in Northern Ireland is such that, under the doctrine of necessity in international law, any: 'non-performance of its obligations contained in the Withdrawal Agreement and/or the Protocol as a result of the planned legislative measures would be justified as a matter of international law'".

The Law Society of Scotland's quotations are from the UK Government's legal advice, which I quoted from earlier.

I believe that the Government have failed, and I regret to say that my noble and learned friend the Advocate-General has failed as yet to state why this doctrine of necessity satisfies the legal test which is understood in that regard. I again press my noble and learned friend. I am not asking him to bring forward Article 16—though I realise that, as we heard earlier from the noble Lord, Lord Dodds, the protocol is perhaps not working in a way that the Government and those representing Northern Ireland would have wished. If that is the case, why have the Government not taken what I believe is the more appropriate measure, Article 16, in that regard?

9.15 pm

I also support the arguments put forward by the noble Lord, Lord Pannick, as to why we have agreed the legal remedies of applying reference to the European Court of Justice where appropriate under Clauses 13, 14 and 20. My understanding is that these clauses would remove those remedies. I believe that the Government have failed to satisfy the test as to why the doctrine of necessity would be the most appropriate legal basis for this Bill, and yet reserve their position that they could bring forward Article 16 at a future time.

I put it to my noble and learned friend the Advocate-General that if, as he argued earlier, particularly in response to the noble Lord, Lord Purvis, it is the case that the protocol is not being applied and implemented as was intended, then the doctrine of necessity is not the appropriate legal base—it has to be Article 16. With those few remarks, I ask that Clauses 1, 2 and 3 do not stand part of the Bill.

Baroness Hoey (Non-Afl): My Lords, I oppose the removal of Clauses 1, 2 and 3 from the Bill. We had a long debate earlier this evening in which the word "delay" was used a number of times: we needed to delay, be more careful, reflect and consider. However, removing these three clauses, as proposed in the name of a number of noble Lords, shows that this is a wrecking proposal. Those Members and many others in the House do not want to see this Bill go forward. The purpose is to rip out the very heart of the Bill. If they are removed, we may as well all go home.

There are two problems with the protocol that are important. One of these, the way that the United Kingdom is affected, has been mentioned a lot this evening. I know that the noble Lord, Lord Dodds of Duncairn, mentioned this earlier, but those who oppose these clauses, and Clause 3 in particular—the noble Baronesses, Lady McIntosh of Pickering and Lady Chapman of Darlington, the noble Lord, Lord Purvis of Tweed, and the noble and learned Lord, Lord Judge—all got a letter from McBurney Transport Group, a big transport group in Northern Ireland. I hope that they read the letter and will respond. More importantly, I hope that they will listen to what was said in the letter about visiting Northern Ireland, meeting McBurney and finding out about the practical implications for a business such as that, which really understands the moving of goods back and forth. The letter said very clearly that implications would flow from the amendments they have tabled, especially their joint proposal that Clauses 2 and 3 be removed from the Bill, which would render it inoperable. The removal of these two clauses would have a particularly devastating impact on Northern Ireland.

There are all sorts of examples of how the protocol is affecting business. I am not intending to go into any more on that now. We have a lot of very eminent lawyers in this House, making very strong legal speeches. I sometimes wonder just how many people back home in Northern Ireland, sitting in the streets of east Belfast or up the Shankill Road, really feel that people in this House understand the effects of the protocol on them as a community, as a country and as individuals.

For me, the important thing about the protocol, and the second reason why I hope these clauses are not removed, is that the Irish Sea border checks are only a symptom of the core constitutional incompatibility of the protocol—the way that Northern Ireland is left subject to EU law and under the jurisdiction of the European court. This has been said over and over again. For those Peers who think it is just a matter of technical changes, and that negotiations will lead to a green line or a red line or that all these different things will happen, that will not change a single person in Northern Ireland who opposes the protocol because it has fundamentally changed how they feel and how, obviously, His Majesty's Government feel about the status of Northern Ireland.

All the Bill is doing is trying to restore the balance that the Belfast/Good Friday agreement gave, which has been broken. It is also there to protect peace in Northern Ireland. Somehow, out of this misplaced loyalty, which we have heard again tonight, of the EU always being right and the British Government always being wrong, we are finding that people want to remove these clauses really to make the Bill not worth going forward with. I urge everyone in the Committee to think carefully about what they are doing.

We have heard a lot of very true things tonight about how sad we are at the death of Lady Blood last week and about the contributions she made to Northern Ireland. I remind noble Lords of Lord Trimble, who also recently died, and his contribution to Northern Ireland and to this place. He was Nobel Peace Prize winner. He sounded warnings when he said that the protocol is a potent threat to peace and stability in Northern Ireland. It must be removed as a matter of urgency.

We would all love to see negotiations work, of course we would, but as the Minister said earlier, Mr Šefčovič's mandate has not changed one single bit in all these months. I genuinely do not believe that we are going to get very far with negotiations. Yes, we have a new Prime Minister and new people, and I am glad that the Foreign Secretary stayed the same, and I hope those negotiations will speed up and will get some movement. But we have to have security, and people in Northern Ireland need to know that the Government are prepared to act for the citizens of the United Kingdom and that they come first.

I hope that noble Lords will reflect before we get to Report and listen to what people in Northern Ireland are saying, particularly to those who understand just how easily peace in Northern Ireland can be threatened. We do not want that to happen.

Lord Morrow (DUP): I rise with great sadness to speak against the wrecking proposals in this group that Clauses 1, 2 and 3 should not stand part of the Bill. I regret it very much. If we were effectively to turn our backs on this Bill, as those championing this group would, what would we be left with? The prospect would be carrying on failed talks with the EU for another two, three or four years. We have had two years of it, and we know where it took us to. I am not opposed to talks, and I believe this Bill does not stand in the way of those talks continuing, but let us get on with this business too.

I have studied the EU's proposals, and I have to say that even if it conceded ground in the areas it is suggesting, we would have no solution. The only thing it is talking about pertains to the difficulties surrounding the economic disruption caused by the protocol. In the first instance, its proposals do not in any way address the present economic difficulties. The noble Baroness, Lady Hoey, has already referred to that, and my noble friend Lord Browne will refer to that as well, so I shall not say anything on that.

Right up until the final day of the Brexit transition period, the people of Northern Ireland enjoyed parity with the rest of the United Kingdom in having the right to stand for election and input directly into legislation or to elect others from across our communities to make laws to which people in Northern Ireland would be subject.

However, on 1 January 2021, that all changed. At that point, the right democratically reserved to Northern Ireland citizens to make laws effective in Northern Ireland was usurped in an instant, and the bulk of that power transferred to representatives in another jurisdiction for whom nobody in the Province voted. There are Members of this House concerned about the loss of some delegated powers to Ministers, despite an appropriate role being afforded to Parliament to scrutinise eventual regulations. Yet they demonstrate little in the way of concern for the loss of sovereignty associated with the surrender of law-making powers in Northern Ireland in perpetuity under the protocol governing hundreds of areas of policy.

This would be bad enough in itself, but in order to understand the difficulty, we need to see it in the context of Brexit. The UK was never relaxed about its membership of the EU. According to Professor Vernon Bogdanor, the reason for this was the sovereignty problem: the fact that the UK could be overruled and was not completely in charge of its own legislative fate. We could be overruled in the European Parliament in the context of majority voting. We could be overruled in the Council of Ministers in the context of qualified majority voting. We could be overruled by the European Court of Justice. Of course, we were a part of European governance acting through the Council of Ministers and the European Parliament, and, in this context, worked hard to defend our national interest. Many times, we were not overruled, but on occasion we were, and there was ultimately nothing that we could do about it. The fact that, notwithstanding our representation within European governance, we could nevertheless be overruled, informed our lack of sense of being part of the European demos—the problem of the democratic deficit.

Thus, the deficit was not about a complete absence of democracy, but about a shortfall of democracy arising from being overruled in a context where the absence of a sense of being part of the European demos meant that people increasingly felt that government was something that was being done to them rather than something that they were part of. In this context, one of the chief benefits of Brexit was the end of the democratic deficit. We would make our own laws. What then was the implication of the protocol for the democratic deficit? It very properly completely removed the democratic deficit in relation to the EU for England, for Wales and for Scotland, and rightly so.

What about Northern Ireland? Did it result in the removal of the democratic deficit in Northern Ireland, as in the rest of the United Kingdom? No. Did it result in the partial correction of the democratic deficit in Northern Ireland, while it was fully corrected for the rest of the United Kingdom? No. Did it result in the democratic deficit problem in Northern Ireland remaining unchanged but its correction in the rest of the United Kingdom? No. Did it result in the further deterioration of the democratic deficit in Northern Ireland, while it was fixed in the rest of the United Kingdom? No. Any of these outcomes would have had a progressively more and more damaging impact on our politics, as we go down the list—but what actually happened was infinitely worse.

In some 300 areas of law-making—this has been mentioned before—the democratic shortfall that was the deficit was replaced by a complete absence of democracy. In this context, we need to be very clear that attempts to describe the democracy problem with the protocol as a democracy shortfall or a democratic deficit radically understate and obscure the problem. The democracy shortfall or deficit was the problem we all had when we were in the EU. The problem that Northern Ireland now faces is both qualitatively and quantitatively completely different. Far from constituting a shortfall in democracy, it actually presents us with its complete negation, with all that this means for our defaced citizenship.

As my colleague and noble friend Lord Dodds of Duncairn rightly articulated to the House at Second Reading, the perverse and intolerable situation in which Northern Ireland now finds itself is akin to the UN category of non-self-governing territory—a colony of the 21st century. The United Nations charter was very clear in 1945 that countries should be self-governing, and it subjected countries that continued to make the laws of other countries to special scrutiny, requiring that they submitted regular reports to the UN on the state of the jurisdiction in their care.

9.30 pm

Lord Kerr of Kinlochard (CB): Before the noble Lord leaves the problem of the democratic deficit, I would like to say that I have considerable sympathy for his points. It was the principal reason why I was against the protocol when it was first produced. I would like to ask him: has he considered the mitigations that are possible—for example, the two suggested by the noble Lord, Lord Hain, earlier this afternoon? Would he also consider whether, unpleasant though it is to see this democratic deficit, it has an upside for Northern

Ireland—what the then First Minister described as the "best of both worlds"? Finally, would he consider why the right solution to the democratic deficit could possibly be the destruction of the Northern Ireland protocol, given that it is an integral part of a treaty that we signed? We may like it or dislike it—the noble Lord dislikes it intensely and so do I—but we did sign up to it.

Lord Morrow (DUP): I thank the noble Lord for his comments. I did listen very carefully to what the noble Lord, Lord Hain, said and I want to read *Hansard* tomorrow to get better into my head exactly what he was saying, but I was struck by some of the things he said. Like the noble Lord, Lord Kerr, I voted against the protocol, as did every unionist in Northern Ireland—so it has no support among one section of the community.

We have long moved away from majoritism. As a matter of fact, I do not remember majoritism in Northern Ireland. That age has long gone and we were told that it would never return. Politics in Northern Ireland would be by consensus; that is what we were told. We were not only told it—they put it down in law. But I have yet to hear from many who berate this Bill that they are concerned about how the Belfast agreement has been kicked right, left and centre. I ask the noble Lord, Lord Kerr, to suppose for a second that this border was where it should be and not in the Irish Sea. Does anybody—but anybody—feel for a moment that that would not have caused the complete collapse of the Northern Ireland Assembly?

We have not collapsed the Northern Ireland Assembly as such. The Ministers are still in place, doing their tasks and getting on with it, because we did it in such a way. When Sinn Féin did it, they wrapped everything up. I have never heard one Member from either the Lib Dems or Labour—which surprises me—say that Sinn Féin has done wrong here. I did not hear it. Maybe it was said when I was not here, but I have never heard that said. I find that there is pick and choose. If unionists do something, they are a nasty lot, they are nasty people, but with Sinn Féin it is, "Oh no, they have a reason; they have a cause." Well, we have a cause and we want to defend that cause.

In 1960 the UN went further and passed its decolonisation declaration, basically shifting its position to one of actively encouraging imperial powers to decolonise. Today, the UN still has a committee dedicated to the decolonisation of the small remaining colonies. If you examine its work, the UN is very clear that an NSGT is not a jurisdiction that is governed entirely by another country. Most NSGTs are largely self-governing. They remain classified as NSGTs because they are not entirely self-governing. Now, of course, I recognise that, in order to be formally classified as an NSGT by the UN, you not only have to meet the definition of an NSGT; you also have to persuade the Assembly to vote an agreement that a jurisdiction should be so defined.

I am not about to start a campaign for the UN to vote to classify Northern Ireland as an EU NSGT. However, it is clear, on the basis of the UN definition of an NSGT and the level of self-government enjoyed by existing NSGTs, that Northern Ireland not only meets the UN definition of an NSGT, but one in relation to which the colonial power—in our case the EU—controls more of the governance of Northern Ireland than do many officially recognised colonial powers in relation to their NSGTs.

The story of colonisation since 1960 has been the story of decolonisation. The actions of the EU arguably amount to the first example of new colonisation, as opposed to annexation by military force, since 1960. I find it quite extraordinary that the EU should have even dreamt of seeking this agreement. It does not reflect well on the EU at all that it should have requested this, and the fact that the UK Government had to fight it for even the most ridiculous four years, after the fact, is quite extraordinary. Of course, its justification was allegedly defending the Good Friday agreement—or Belfast agreement, whichever you choose—but this is utterly absurd.

The citizens of Northern Ireland deserve the full rigour of protection under international law in respect of their democratic right to political participation as our counterparts have in each of the other constituent parts of the United Kingdom or indeed any other country. However, that protection has been patently undermined by the protocol.

Lord Purvis of Tweed (LD): I am grateful to the noble Lord for giving way. I am concerned about his argument when it comes to the position of the new—again—Home Secretary. She said in July:

> "The Northern Ireland Protocol Bill needs to be changed so that it actually solves the problem. … The bill's 'dual regulatory regime' lets EU law flow into Northern Ireland in perpetuity … I've been fighting for while in government. Without them, the bill treats people living in Northern Ireland as second-class citizens."

Does the noble Lord agree with Suella Braverman? If he does, will he be bringing an amendment to Bill to make sure it does not have a dual regulatory regime that allows EU law to flow into Northern Ireland?

Lord Morrow (DUP): If the noble Lord, Lord Purvis, is asking me if I agree that Northern Ireland citizens are now treated as second-class citizens, yes, I do. Some people in Northern Ireland seem to be content to be treated as second-class citizens, because, like the noble Lord, they want to pull this Bill apart and the protocol to remain. I hear, in the debate today, some noble Lords saying that there are problems with the protocol, but in time that will be sorted out. Where will our economy and industry be? My noble friend Lord Browne will be making some reference to that a little later.

Article 21 of the Universal Declaration of Human Rights, among other provisions, states:

> "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. … Everyone has the right of equal access to public service in his country."

This has plainly been violated by the protocol, which has partly removed our right to take part in the Government of our country as it relates to 300 areas of law, both in terms of engaging in public service as a candidate and in terms of voting.

Of greatest importance, however, is that the plundering of aspects of our right to vote violates the Good Friday agreement. I hear many champions in this House of the Belfast agreement, and I have to admit

[Lord Morrow]
that I would not be the best advocate of the Belfast agreement, and I am prepared to say that. But let those who are stand up, and then they will run into problems with their debate and where they are going. Specifically, the Good Friday agreement affords the people of Northern Ireland the right

"to pursue democratically national and political aspirations."

Moreover, in the case of the Good Friday agreement, there is the additional international constraint arising from a foundational provision of the protocol, in Article 2, which specifically obliges the UK Government to ensure that there is no diminishment of any of the Good Friday agreement rights following Brexit. Article 2(1) states:

"The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union".

So now we confront the central absurdity: the EU pretended that an obligation that did not exist in the protocol existed, and that an obligation in the protocol that did exist in fact did not. There is nothing anywhere in the text of the Good Friday agreement saying that there cannot be a customs border, and there is something that plainly states you cannot erode the political democratic rights of the people of Northern Ireland, which was the plain consequence of placing a border down the Irish Sea.

Of course, I am not saying for a minute that the UK and the Republic of Ireland could not agree to avoid a hard land border, only that it is not required in the Good Friday agreement. In a context, however, where the Good Friday agreement prohibits—

Viscount Younger of Leckie (Con): The noble Lord might like to be reminded of what the *Companion* says about length of speeches. Fifteen minutes is indicated as the acceptable length of a speech. Might I suggest that the noble Lord concludes his speech?

Lord Morrow (DUP): Yes, I will conclude, but it is remarkable that, earlier in the evening, I noted speeches going to more than 20 minutes. I have just come in at the wrong time, I suppose, but I will draw my remarks to a conclusion and make way for some others.

Lord Judge (CB): My Lords, I support this proposal and do so conscious of the fact that, listening to some of the voices from Northern Ireland we have heard today, I am being asked to decide how I should approach the issue on the basis of sympathy for the way in which some of the citizens of Northern Ireland—those represented here—feel they have been dealt with by the British Government in the context of the whole negotiation relating to the EU, the GB and Brexit. I remind myself, though, that this is not a matter of sympathy. I spent a lot of my professional life having to decide cases where, if I could, I would have found the other way. But if the law required me to find a particular way, whether I liked it or not I was required to do so, so I did. What we are dealing with here is a treaty between the United Kingdom and the EU, not between the EU and Northern Ireland. I am sorry to say that, but the issue I am addressing is the treaty between our country and the EU.

Can I just get rid of Clause 1? It is a modern and unwelcome phenomenon. If you look at it, it says nothing. It is just a piece of PR, not legislation at all. We have too many Bills that include pieces of PR which do not take the legislation any further, and that is why I object to it. We should not have clauses in Bills that say, "This is a jolly good idea. This is what we're going to do", but more important are Clauses 2 and 3.

There have been criticisms made by the Advocate-General of the necessity argument that has been so thrown at him by, among others, the Constitution Committee. I know this has been said before, but I remind the House that necessity is not available, as it

"may not be invoked by a State as a ground for precluding wrongfulness if"

the state in question has contributed to—not caused—"the situation of necessity". Well, we have. We march into the negotiation and sign the agreement. We broadcast the agreement as having got Brexit done, for political reasons. We do not look at the consequences to, among other places, Northern Ireland—and we have not looked at it. There were voices in Northern Ireland who, to my memory, were saying, "This is a very dangerous step to be taking." We either did not look at it or, worse, looked at it and thought "It doesn't matter; we will get Brexit done."

9.45 pm

That argument, I am afraid, leaves us in this position. We are now seeking to go back on an agreement we entered into because now we are taking a different view. We do not think getting Brexit done matters so much because we have got it done, so there cannot be an argument about that. We are now looking for some other solution.

The solution to this problem is Article 16. I listened very carefully to the way in which the Advocate-General sought to answer the questions that I and others posed to him. There was the "democratic deficit". Other explanations given included the implementation and the confidence of the community of the unionists in Northern Ireland. The argument overlooks what Article 16 actually makes provision for. The provision is that if we are concerned as a country—we should be and, having listened to the arguments that I have heard from Northern Ireland this evening, I see why—then we can address the effects of

"serious economic, societal or environmental difficulties"

or "diversion of trade". If there is a democratic deficit, that is a major societal problem. The power to address it is there in Article 16.

I suspect that the Advocate-General has said to clients in his professional life, "I am sorry, Mr Smith, but you haven't a feather to fly with"—I have told my clients that on occasion and they have not been happy—but I am afraid that, in the argument that has been put forward by him on behalf of the Government, there is not a feather to fly with. He will forgive me for saying so. For that very simple reason, I take the view that the proposals in Clauses 2 and 3 taken together demonstrate unlawfulness. It does not matter what I think; the Constitution Committee and the House think so.

I am truly sympathetic with the problem of a democratic deficit. I was born in a different country—I was born in a colony too—so I understand what it means.

However, that is not an answer to the unlawfulness of these clauses and therefore not an answer to the proposal we are making that they should be removed from the Bill.

Lord Browne of Belmont (DUP): My Lords, I oppose the proposition that Clause 2 should not stand part of the Bill and that Clause 3 should also fall as a consequential amendment. If it was to succeed, the Bill would be rendered largely inoperative. In response to this, I am struck by two realities.

First, it is striking that the Government are saying, quite rightly, that the Bill is required urgently to avert a socio-economic and political crisis in Northern Ireland. Secondly, it is also striking that the democratically elected House has consented to that and deemed fit to pass the Bill with no amendment.

It is noticeable that many Northern Ireland Peers were yesterday copied into a letter of invitation—as already mentioned by the noble Baroness, Lady Hoey—sent to the movers of this amendment about the provisions in these clauses. It asked that, before they reached any final conclusions on the matter, they visit the logistics centres in Northern Ireland run by McCulla Ireland and McBurney to find out why it is not possible to apply the laws of international trade to regional trade without causing a crisis and to reflect on what they discovered before drawing any final conclusions. These are the largest haulage operators on the island of Ireland. They have considerable expertise on these matters. As Paul Jackson, the commercial director of McBurney, explained to noble Lords on the House of Lords Sub-Committee on the Protocol, were the protocol to be implemented, it would crash the Northern Ireland supply chain "within 48 hours".

In focusing on the negative implications of the protocol, and the consequences for international law, I want to make it clear that it is not my purpose to deny that the protocol is having positive effects for some—although these would become limited if the protocol were to be fully implemented. My point is simply that, in a context where 95% of our British Isles trade is with Great Britain and only 5% with the Republic, the negatives far outweigh the positives.

The discriminatory implications of denying the people of Northern Ireland the same economic right to trade with their fellow UK citizens cannot be dismissed lightly, because they cut right to the heart of our citizenship. In another instance, the negative impact of the protocol is in no way comparable with the inconvenience arising from having to negotiate customs borders between different states and the application of the rules of international trade to international trade. The inconvenience arising from applying the rules of international trade to intranational or regional trade is far greater than the inconvenience arising from the application of the rules of international trade to international trade, which is why, with the exception of Northern Ireland, it does not happen elsewhere. Thus, we are not merely confronting a situation where we are not affording members of the same polity the same levels of respect as their fellows—seeking to treat them as if they were foreigners, rather than citizens of the same country, for trading purposes—but we are actually putting on Northern Ireland a far greater inconvenience than we put on traders from other countries, and, in this sense, the UK is treating the people of Northern Ireland far worse than those from other countries.

To understand why this is so, and the implications of this from the perspective of international law, we need to understand the difference between international and intranational trade. With talk about globalisation, it is easy to get carried away into thinking that the world is defined by homogenous global economic flows, in which national borders are nothing more than an anachronism. But that is not the case: the borders, even between highly interdependent western countries, mark important lines of difference. For example, a lorry engaged in international trade will typically be a large vehicle and carry just one or two products. The cost of generating the paperwork associated with this, in terms of customs and SPS, will be tiny expressed as a percentage of the value of the cargo. By contrast, lorries engaged in trade within an economy often carry many different products, up to around 300. This is no problem because, within an economy, lorries can move freely. If, however, you introduce a border within an economy and require lorries travelling from one part to another to cross a customs border so that they must provide 300 separate customs declarations and 300 separate SPS declarations—or even more in the case of composite goods—the cost of generating the paperwork expressed as a percentage of the total value of the cargo becomes huge. It is so great in fact that the enterprise becomes either uneconomic or just not worth the bother. In this context, 200 companies in Great Britain have already ceased to provide goods to Northern Ireland, and if the protocol were to be implemented—let us not forget that it has never been anything like fully implemented—that number would increase dramatically, and we would be confronting a major socioeconomic crisis.

Some—such as the noble Lord, Lord Kerr—might respond to this by saying, "Well, why can't Northern Ireland get its goods from the Republic?" It can to a degree, but only to a relatively small degree. It must be understood that Northern Ireland is a fully integrated part of the UK economy. If one looks at movements between GB and Northern Ireland, and between Northern Ireland and the Republic of Ireland, 95% is between GB and Northern Ireland. Only 5% is between Northern Ireland and the Republic of Ireland, and that is the case notwithstanding the fact that Northern Ireland and the Republic of Ireland have both been part of the European single market since 1993. It is not possible to restructure an economy overnight by cutting off the source of 95% of supply without creating huge damage.

In this regard, it is worth remembering that the Good Friday agreement is a treaty and part of international law, and the section entitled "Rights, Safeguards and Equality of Opportunity" commits to

"the right to equal opportunity in all social and economic activity."

Yet the protocol now cuts Northern Ireland off from most of its own economy, with disastrous results. This is a real problem, because Article 2(1) of the protocol states:

"The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union".

[Lord Browne of Belmont]
In this context, notwithstanding the existence of Article 2(1), and the fact that the operation of the protocol has had the effect of diminishing the right to economic activity by cutting Northern Ireland off from most of its economy, the source of 95% of its trade, the EU has nonetheless refused to change a word of the protocol. The UK clearly has an obligation under international law to introduce the Bill before us today.

Finally, I urge noble Lords behind this group to take the opportunity to visit McBurney and McCulla before drawing any final conclusions.

Lord Bew (CB): My Lords, I shall comment briefly on the important remarks by my noble and learned friend Lord Judge. I referred earlier to the fact that the opinion of international lawyers is more complex and variegated than, say, the first 10 speakers in the House this afternoon appeared to know. One of the most important figures here is Professor Alan Boyle, emeritus professor of international law at Edinburgh, who has given evidence to committees of both Houses. At one level, his analysis is close to that of my noble and learned friend, Lord Judge. As I understand it, his view is that the Government ought to apply Article 16 at this moment.

We have been talking about this for years. I can remember, three and a half years ago, sitting down with the noble Lord, Lord Caine, looking at Article 16 and having an initial conversation about it. The Government have, at various times, been close to applying Article 16. They did not know then how fashionable it would become in this House to say that it is the way out. Had they known that that was going to happen, I am sure they would have done it, but civilised opinion said, "That is a terribly British thing, you can't do it." Amazingly, there has been a change of attitude now.

The point that Professor Boyle made, and which was not made by my noble and learned friend Lord Judge or anybody who has spoken for Article 16 this afternoon, is based on the idea that he accepted the underlying logic that the approach of the Bill to protect the Good Friday agreement was correct. There was a problem that the obvious features of the Good Friday agreement —strand 3 in particular, on the east-west relationship—are not being respected in the way the protocol was working.

It is pretty well documented, historically, how that situation arose in negotiating terms, but my point is this. My noble and learned friend, whose skills are so admirable in this matter, is just following a route that was followed for some hours today, which is to say, "Why do the Government not implement Article 16?" I more than half understand it. I am looking at the noble Lord, Lord Caine, and I suspect that at certain times in the last few years he might have thought that might not be a bad idea either. That is not the point. At this moment, politically, we just cannot do it. We have a serious negotiation with the EU. I have said this before: you cannot walk in and suddenly say, "Oh, by the way, chaps, we are now throwing this on top of your heads". The moment has gone.

Further, the advocacy offered in this House is weakened by the fact that, for the majority of those people who have suddenly discovered what a wonderful device it might be, it is not accompanied by what Professor Alan Boyle did, which is to say that the saving of the Good Friday agreement is critical. He defended it on the grounds that it might be a step we have to take, and he accepted that there is a conflict between the way the protocol is working and that original international agreement, which we also have a duty to uphold.

Lord Judge (CB): I understand the argument, although I do not agree with it, that if you employ Article 16 in the middle of negotiations, they will be spoiled. However, if you employ this Bill in the middle of negotiations, will the negotiations not be torpedoed even more?

10 pm

Lord Bew (CB): My Lords, we know for a fact that that is not so, as the Irish Foreign Minister has told us—maybe I am the only person who reads the *Irish Times*—that this Bill will not torpedo these negotiations. I am certain the Irish Government and the EU do not like it, but we know for a fact that this Bill is not torpedoing negotiations.

Lord Judge (CB): In that case, how do we know for a fact that Article 16 will torpedo them?

Lord Purvis of Tweed (LD): My Lords, if the argument of the noble Lord, Lord Bew, is so powerful, why has he failed to persuade the noble Lord, Lord Morrow, who started his remarks by saying that he has no faith in any of these talks resulting in any agreement for two or three years at least? If the noble Lord, Lord Bew, cannot even persuade the noble Lord, Lord Morrow, he may struggle to persuade others who may be a bit more sympathetic to his arguments.

The noble Lord, Lord Bew, knows that I like and respect him, but let me scotch this point about Article 16. The Government insisted that they were working in the joint committee when others on the Conservative Benches were saying they should dump that work and trigger Article 16. We on these Benches said, "Let the joint committee process do its work, because that is what the Government negotiated in the agreement." Now we have heard in Committee in the Commons that talks have been exhausted—no more on the joint committee; instead, we are bringing unilateral legislation. So the noble Lord will forgive me for being a bit cynical about the Government's position. On the one hand, they are saying that they are using the joint committee and therefore will not trigger Article 16, and on the other that they are no longer in the joint committee and need unilateral legislation. I am afraid it does not match. That is perhaps at the heart of why there is still uncertainty over the Government's proposals.

At the outset, I say that I am a borderer and live in Scotland—I was going to say that therefore I sympathise, but that sounds deeply patronising. I understand many of the arguments, as I said earlier to the noble Lord, Lord Dodds, because I raised them in the debates. We opposed the Government because we could see the situation was not only going to be detrimental but would effectively remove rights. But that is not something that our Benches or this Bill can resolve.

I respect both noble Lords who spoke with passion about this, but I put it to them that they and Suella Braverman cannot both be right. The new Home Secretary is on the record saying that this Bill will make citizens in Northern Ireland "second-class citizens" —this Bill, not the protocol. She is arguing for this Bill to be amended. She said in her article in the *Times* that she had argued that while in government. She is now back in government, so I do not know what will happen with the Government's position in this Bill on a dual regulatory system, but maybe the noble Lords can inform me later on.

If the noble Lord, Lord Morrow, is arguing so strongly that this Bill will not have Northern Ireland operating under two systems, it is incumbent on him to bring amendments to it to remove the dual regulatory system and Clause 11 when we get to it. I look forward to debating those amendments, because he surely cannot support measures in this Bill which would allow Ministers to enforce EU rules on traders within Northern Ireland.

Lord Morrow (DUP): I thank the noble Lord for giving way. All I wanted to say is that I am encouraged that I can get his support if we do that. Is that what he is saying?

Lord Purvis of Tweed (LD): I will match his "Get rid of Clause 11" with "Get rid of them all", because that is our position.

The Advocate-General said at Second Reading:

"the peril … was not inherent in the protocol's provision." —[*Official Report*, 11/10/22; col. 764.]

But he then said today that the "problem lies in the protocol", which the Government themselves negotiated. So, we are back to the situation regarding the Government's proposals, and it seems that the Government are going to rest on an assertion of necessity, with an assumption that it is not going to be tested. It surely is not welcome for us, in passing legislation, that the Government are effectively asking people to challenge it in the international courts—I can only imagine that it would be the ICJ.

The ICJ has stated in clear terms that invoking necessity on wrongfulness and not adhering to a treaty commitment cannot be a permanent solution. So I ask the Advocate-General, if he responds to any of the points that I am going to make, whether the Government agree with that. The ICJ has stated on a number of occasions that, even if invoking necessity was upheld, it is only temporary in order to remove the grave and imminent peril; it is not permanent, because it still means that that party is in breach of the treaty.

So if long-term, permanent changes are required to be made, that will require protocol changes and treaty changes, and the Government have not said that. They cannot invoke necessity if they believe that this is a permanent solution. The reason why I say that with confidence is—the Advocate-General, in schooling the noble Baroness, Lady Chapman, and me as non-lawyers, said we were "less wrong" on this—that, customarily in international law, we have to look at the record of the ICJ. I asked the Library of the House to provide me with information on when the ICJ has upheld parties who have invoked necessity. It has never been upheld, for the very good reason that it has to be limited, and "grave and immanent peril" on a cumulative basis is considered an exceptionally high bar. The Advocate-General must know that.

Of the two cases that the Advocate-General cited, the one involving Hungary and Slovakia—which was referred to by my noble friend—I found fascinating, as I mentioned before, when I read the judgment. The Advocate-General said that necessity

"was recognised by the International Court of Justice in 1997 in a case between Slovakia and Hungary regarding a dam on the Danube."—[*Official Report*, 11/10/22; col. 765]

As I referred to before, the Government seem to be relying on one case regarding communist Hungary in 1989 which the ICJ threw out.

The second case mentioned, involving Canada and fisheries, could refer to two cases. In one, the ICJ was asked by Spain to adjudicate because Canada had seized a vessel, invoking necessity, but the ICJ said that it could not look into it because Canada had passed legislation at that time to have a reservation from the ICJ, so the case could not even be heard. The other case relating to the Grand Banks should worry the Minister, as it was about imposing licence fees. Canada invoked necessity; the US responded saying that it would pay the fees of the fishermen and then claim reimbursement from Canada; then Canada amended its laws, which brought in all other aspects, and it was resolved by Canada removing the licence fees. Now, if that is a precedent, it is a worrying one, because I can see that there will be consequences with the EU as a result of this legislation. There will be reciprocal action and the UK will pay for it.

So can the Minister confirm what the Library told me, that there has never been a successful invocation of necessity? Can he tell me if there has ever been a case where any party has invoked necessity for framework legislation? I could not find it, so presumably the Minister will be able to help me.

Baroness Chapman of Darlington (Lab): My Lords, I rise very briefly; I do not see any point in repeating what other people have said. I added my name to the attempt by the noble Baroness, Lady McIntosh, to remove these clauses, and it has been observed by some that this is a wrecking move. I guess it is, in a way, if you do not agree with a Bill and feel unable to amend it in a way that would make it satisfactory, you attempt to remove clauses which then unravel it. We are not happy with this piece of legislation and we are seeking ways—some of them creative, others more blunt, as this one is—because we think the Government are taking the wrong approach.

The points about necessity have been made at length. I think the Minister needs to be as thorough as he can—although perhaps not as lengthy as he can, just very clear. I think we want clarity about exactly where the Government think they are on this. My suspicion is that the Government are backfilling their answers as they go along and that they did not really think about this, because this piece of legislation was not really thought about. Introducing it in the first place was a political act to give the impression that the Government were playing hardball in negotiations. It has kind of served its purpose, as some people have explained,

[Baroness Chapman of Darlington]
over the months. Ministers are now having to justify where they have got themselves, and we are all intrigued about where it is going to go next.

I do not know how the Minister is going to respond to the concerns raised by the DUP, which are incredibly serious and ought to be considered with the utmost thoughtfulness. Especially in the absence of any draft regulations, I do not know how those concerns are going to be dealt with. It is all very unclear. This is not the way we should proceed with any issues, and especially not when it comes to Northern Ireland.

We have been around the houses on the issue of Article 16 rather a lot. It is just ridiculous to claim that Article 16 lacks the flexibility to be able to deal with the concerns that have been raised—obviously it does. The Minister's explanation for why that is no longer the Government's preferred route does not really add up. Again, I think that in their desire to have some legislation, they are having to make up reasons going backwards, and that is why they are now coming unstuck on the Floor of the House.

I listened carefully to the noble Baroness, Lady Hoey, and her concerns about the haulage industry. It is absolutely right that those concerns should be raised. I would be very happy to go to Ballymena and to meet Mr Jackson to listen to what he has to say, because I am sure that what he said in his letter to us is true. Of course we ought to be looking at ways to make sure that those issues are fixed, but I do not think that this is the right way to go about it. This is not about the EU always being right; I think the EU was wrong to link these issues with Horizon. They have absolutely nothing to do with each other. We should have made progress on both issues, but separately. So, we do not always take the EU's side. That is just not true.

The principal concern we have is that unless we get at the very least the things we have asked for in our earlier amendments—specifically these draft regulations; that is really important—we are going to be looking at ways to make sure that the Bill does not proceed as smoothly as the Minister would like. This is not a tweaking issue; we just do not think the Government are going about this in the right way.

10.15 pm

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, as we approach what I think will be the final series of amendments for discussion tonight, I am grateful to all noble Lords for their thoughtful and entirely well-intentioned contributions to this important debate.

Clause 1 summarises the effect of the Bill and gives vital clarity on how it will function. The noble and learned Lord, Lord Judge, was critical of its drafting—indeed, of its presence in the Bill itself. He may be right to be critical but there have been, and will always be, changes in the manner in which legislation is drafted; there certainly have been over the past few years. In a matter of this sort, it is perhaps important as a matter of perception, given the history to which some contributors among your Lordships have referred, that the Bill carries assurances in Clause 1.

The clause sets out that the Bill makes domestic provision in connection with the disapplication of specific areas of the Northern Ireland protocol that are causing problems. It also sets out that the Bill provides Ministers with powers in connection with the further disapplication of additional areas of the Northern Ireland protocol according to specific purposes, as well as powers to make new domestic arrangements. The clause also clarifies how other legislation, such as the important Acts of Union, is affected by the Bill. I recommend that the clause stands part of the Bill.

Clause 2 will underpin the essential functioning of the Bill by confirming that any part of the protocol or withdrawal agreement that has been excluded by the Bill's provisions has no effect in domestic law. I think it is recognised around the Committee that, at this point, we are coming away from the preamble of Clause 1, as we might call it, into the heart of the Bill and what it intends to accomplish. I certainly took the noble Baroness, Lady Hoey, and the noble Lords, Lord Morrow and Lord Browne of Belmont, to understand that fully when they talked about ripping the heart out of this Bill through these proposed amendments.

The noble Baroness, Lady Hoey, and others, including the noble Baroness, Lady Chapman of Darlington, referred to the difficulties. I think that, wherever it stands on this Bill, the Committee is united on the fact that there are grave difficulties in Northern Ireland. I had the honour of briefly meeting the commercial director of McCulla Ireland on a visit to your Lordships' House; I listened with great interest and concern to the matters raised by him.

The vital approach of these clauses is to amend the relevant provisions of the EU withdrawal Act that currently give domestic effect to the protocol and withdrawal agreement. This technical provision is, as noble Lords have recognised, vital for the Bill to function as, without it, there may be a lack of clarity as to which of the existing protocol and EU law regime, on the one hand, and the revised operation of the protocol, on the other, has effect. Where this Bill or its powers do not exclude a provision in the protocol or withdrawal agreement, that provision will continue to have effect via the EU withdrawal Act, as now. In answer to a point made in a debate on an earlier group, I emphasise that what the Government are proposing is not the ripping up of the protocol but directed action to those parts of the protocol that are not working. The Bill seeks to leave untouched the remainder of the protocol's passages that are providing benefit, as was always intended to be the case. I therefore recommend that this clause stands part of the Bill.

Clause 3 supplements Clause 2 and will remove the requirement for courts to interpret relevant domestic law in line with the withdrawal agreement in so far as that would lead to an interpretation of domestic law that is incompatible with the Bill and any regulations made under it. This is done by the amendment of the relevant provision of the EU withdrawal Act, which currently requires courts to interpret relevant separation agreement law and domestic law consistently with the withdrawal agreement. Instead, it is made clear that no such interpretation should be made if this would be

incompatible with provisions of the Bill or any regulations made under it. It is vital to provide certainty as to how the regime should operate, so I recommend that this clause stands part of the Bill.

We have had, I submit, a lengthy and important debate during this stage of the Bill. I seek noble Lords' forbearance—

Lord Purvis of Tweed (LD): My Lords—

Lord Stewart of Dirleton (Con): I am coming to the noble Lord's point. I am not proposing to wind up immediately. I acknowledge the importance of the debate we have heard. I pray for noble Lords' forbearance if I do not respond to every point that has been canvassed specifically in relation to the doctrine of necessity, which we had a debate about in relation to the earlier group.

I anticipate what the noble Lord, Lord Purvis, is about to say. He put certain points to me in relation to the information that he had from the Library of your Lordships' House. He cites the occasions on which the doctrine of necessity has been founded and outlines significant aspects of those cases to your Lordships' House, but every legal case will stand on its own merits, and comparison of individual facts and circumstances does little to advance the argument as to the role of necessity in the unique circumstances with which your Lordships' House is faced. Therefore, with the utmost respect to the noble Lord, the point he makes is of no value.

Lord Purvis of Tweed (LD): I am grateful for the answer. I respectfully believe that my point had value, because if the Government are using precedent and customary law, it is relevant to highlight that it has never been successfully invoked, and it has never been even attempted to be invoked in the way that this Government are doing. Since we are approaching customary international law, it is worth having that on the record.

My specific question was whether the Government's interpretation of invoking necessity can be permanent, or whether the Advocate-General believes that I am correct with the ICJ stating in clear terms on many occasions that invoking necessity can only be a temporary response of wrongfulness, for grave and imminent individual aspects, but the breach is still there. Or do the Government believe that using necessity can be permanent?

Lord Stewart of Dirleton (Con): I am grateful to the noble Lord for canvassing that. Again, I accept that it is an important point, as are all those that have been made around your Lordships' House today.

Not all principles of international law are tested before a court, and acceptance by the international community of a particular practice, or codification by relevant institutions, as in the articles on state responsibility, can provide very significant precedent. Necessity provides a justification for non-performance with specific terms of the protocol, for as long as the circumstances justifying necessity persist. That relates to the temporal point which the noble Lord makes. The relevant circumstances could last for a significant length of time, so it is not necessarily a short-term justification.

Baroness McIntosh of Pickering (Con): I am grateful to have had the opportunity for this debate. I regret to conclude that, despite the affection, respect and regard that I have for my noble and learned friend, and the fact that we are both members of the Faculty of Advocates—albeit I am non-practising—the Government's legal position remains confused and flawed. On my specific question, the Advocate-General said in a previous debate that the Government reserved the right to invoke Article 16 as the legal base but did not give us the basis on which they would seek to do that. That was regrettable.

I am grateful to all who have spoken, particularly from the Front Benches opposite. I thank the noble and learned Lord, Lord Judge, for responding to the points made by the noble Lord, Lord Bew, more adequately than I could possibly have done. To all those who have spoken from the Northern Irish perspective, the House is absolutely agreed that the protocol is not working. I have had briefs from the National Farmers' Union, NFU Scotland, and the Food & Drink Federation, which would particularly like to see that matters regarding trade work as smoothly as possible, bearing in mind that the food industry is probably the largest manufacturing industry; it is larger than the car industry. It is a very big sector taken with food, farming and farm production.

So I regret that we have been put in this position and that the Government are wilfully seeking to breach an international agreement and public international law that they freely entered into. I do not intend to press this matter any further this evening, but I reserve the right to revert on Report.

Clause 1 agreed.

House resumed.

House adjourned at 10.25 pm.

Grand Committee

Tuesday 25 October 2022

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Young of Cookham) (Con): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022

Considered in Grand Committee

3.45 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the Grand Committee do consider the Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022.

Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, these regulations, which were laid before the House on 6 July 2022, will make exclusivity terms unenforceable in contracts which entitle workers to earn net average weekly wages that do not exceed the lower earnings limit—currently £123 per week. The statutory instrument will ensure that such workers are not restricted by exclusivity terms. It will give them the right to take on additional employment without being subject to detriment and—applicable only to employees—unfair dismissal.

The measures we are introducing will increase participation in the labour market, which, together with our agenda to boost productivity, will drive higher employment, wages and economic growth. We want to give businesses the confidence to hire and retain workers and provide their workforce with the skills and experience they need to progress in work. We want to put more power into the hands of individuals and businesses to find and create work that suits their personal circumstances. We want to enable workers to reskill to make the most of economic opportunities and best apply themselves to drive growth and productivity in the economy.

During this cost of living crisis, we will continue to protect vulnerable workers. These measures will help ensure that low-income workers can boost their income with additional work, should they wish to. This builds on support we have already given to many workers during the cost of living crisis. In April, we raised the national living wage to £9.50, equivalent to an annual pay rise of over £1,000 for a full-time worker. We are giving 1.7 million families an extra £1,000 a year, on average, through our cut to the universal credit taper and increase to work allowances. A new in-work progression offer will also mean that 2.1 million low-paid workers on universal credit will be able to access personalised work coach support to help them increase their earnings. These reforms reflect the Government's ongoing commitment to protecting and enhancing workers' rights across the country.

I should like to take a moment to talk through what the regulations will do. The statutory instrument will extend the protections in the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015. These existing regulations make exclusivity terms unenforceable in zero-hours contracts, where previously workers were banned from doing work under any other contract or arrangement, or barred from doing so without the employer's consent.

We are making further provisions to extend this protection to individuals who work under workers' contracts earning less than or equal to the lower earnings limit, ensuring that they can take on additional work to boost their income should they wish to do so. The regulations will also extend the right to redress to these workers, so that they have the right not to be subjected to any detriment from a non-compliant employer if they breach an exclusivity clause in their contract that is subject to these regulations. For employees, any dismissal for this reason would be regarded as unfair. All workers subject to any detriment will have the right to bring a claim or a complaint to an employment tribunal.

A second, separate statutory instrument, subject to the negative procedure, will be laid in Parliament after these regulations are approved. This is necessary to make the right to bring a claim under these regulations subject to early conciliation, a requirement set out in the Employment Tribunals Act 1996. This separate statutory instrument will mean that a prospective claimant wishing to take a case to the employment tribunal must first contact the Advisory, Conciliation and Arbitration Service about their dispute and consider conciliation before presenting a claim to an employment tribunal. This second SI will also amend these regulations to extend the time limit for making a claim to take into account this application of early conciliation.

The current provisions of the 2015 regulations make unenforceable exclusivity terms in zero-hours contracts. However, this does not cover such contracts where only one hour or limited hours are guaranteed, which leaves a number of some of the most vulnerable workers in our society subject to exclusivity terms while their weekly income is low. These low-income workers are significantly more likely than the average worker to want to take on additional work.

We have seen a rise in recent years in the use of short-term, variable-hours contracts. For some people this has been very positive, with the flexibility on offer helping those with other commitments to stay in work or get back into the labour market. For others, this has resulted in a level of unpredictability that has made it difficult to plan their lives effectively or have the financial security they need. We want to protect those most in need and address inequalities so that everyone has the opportunity to participate in the labour market and enjoy fulfilling working lives, and to make a living, especially during this cost of living crisis.

[Baroness Bloomfield of Hinton Waldrist]

The Government consulted on the policy in these regulations between December 2020 and February 2021. The consultation generated 30 formal responses from a range of legal organisations and professionals, along with trade unions, academics, local government and equalities groups. Overall, responses showed wide support for our policy proposals to extend the range of contracts in which exclusivity clauses should be made unenforceable.

On impacts, an estimated 1.5 million workers receive a weekly wage below the lower earnings limit in their main job, and the new reforms will ensure that workers in this group that have exclusivity clauses are able to top up their income with extra work if they choose.

Workers will have more flexibility over when and where they work to best suit their personal circumstances such as childcare or study, including the option of working multiple short-hours contracts. Businesses will benefit from a widening of the talent pool of job applicants to include those who would have otherwise been prevented applying for roles due to exclusivity clauses with another employer.

The reforms could also create more opportunities for low-paid workers to reskill as they take on additional work where desired, allowing individuals to make the most of new opportunities in existing sectors with growing labour demand, as well as in emerging sectors and occupations.

To conclude, the Government want to ensure that businesses and individuals can make the most of the opportunities in our flexible and dynamic UK labour market, to generate long-term economic growth and prosperity. These reforms will help us deliver on our ambition to make the UK the best place in the world to work and do business by putting more power into the hands of individuals and businesses to find and create work that suits their personal circumstances. I commend these draft regulations to the House.

Baroness Janke (LD): I thank the noble Baroness for her presentation. As she said, exclusivity terms were banned for zero-hours contracts in 2015 through the Small Business, Enterprise and Employment Act. It enabled workers unable to work enough hours for one employer to work for another. It seems outrageous that employers were able to impose exclusivity terms on an employee who was not receiving enough pay to live on and to dismiss them for doing so. However, this protection was not extended at the time to contracts with employees on very low pay. This statutory instrument extends the protection to employees earning as little as £123 a week, meaning that if they are not given sufficient hours by one employer, they are able to seek additional work elsewhere, and if they are in any way discriminated against or any kind of action is taken against them, as the noble Baroness explained, they have legal redress.

In supporting this long-overdue change, we should remember the nearly 2 million people who are on in-work benefit because they are not paid enough to live on, many of whom are on zero-hours contracts. While the flexibility of zero-hours contracts is welcome to some who are not dependent on them for main income, such as students, many on zero-hours contracts are dependent on unreliable and often short-term work without the employment rights of permanent contracts such as sick pay, holiday entitlement, pension contributions or security of employment. Employers using these contracts can dismiss workers for sickness or even pregnancy.

Although we welcome this change, which will be of great importance to the very lowest-paid workers, we should appreciate that the low pay, poor conditions and lack of employment rights of zero-hours workers are not acceptable, and that for the 2 million low-paid workers on benefits, low pay and unreliable employment lead to deep insecurity and anxiety for the poorest families. The current economic crisis hits these people hardest, and I hope the Government will take the needs of this group of people, many of whom have families and children, very seriously indeed.

Lord Jones (Lab): My Lords, I thank the Minister for her pithy and informative introduction. I wish to look briefly at Part 4 of the regulations, which is very important. Could the Minister enlarge on Regulation 7(3), which states:

"The reason is that the worker breached an exclusivity term of their specified contract"?

Then there is Regulation 8, "Complaints to employment tribunals". Regarding such complaints, will the Minister indicate the approximate annual number of tribunals dealt with? Is there a specific statistic that tells us the percentage of claims that succeed and fail? Are those statistics available for us in this debate? I think they should be.

Lastly, does the Minister have any insight into the promptness of payment of awarded compensation? How speedily is financial justice enacted? Again, I thank her for her introduction.

Baroness Blake of Leeds (Lab): I add my thanks to the Minister for a very full explanation of the material in front of us. It is important for all of us to focus on the context in which this discussion takes place and recognise the terrible state that too many families are having to live in, with insecurity and low wages against a backdrop of soaring prices. We have heard how this SI brings the situation in line with the work that has been done on zero-hours contracts in the past. I acknowledge the comments that the noble Baroness, Lady Janke, made about how difficult it is to imagine that we are in this position today.

We welcome any step, however modest, to tackle the problems we are facing in the country's labour market—as we have heard, the measure before us is modest. In welcoming what we have in front of us, we have to acknowledge that it is a sad indictment of our current labour market that the principle of someone being able to take another job alongside a low-paid job is being championed as a major step forward towards a fairer labour market. I ask us all: can we not do better? Surely hard-working people deserve the right to more predictable contracts; we should keep that at the front of our minds.

It is disappointing that a threshold of the national minimum wage or national living wage has not been adopted, which would have extended support to many

more workers than the lower earnings limit. The fact that the Government still actively chose to use the lowest reasonable income-based threshold tells us that there is still far more to do in this area, and that is compounded when we look at the implications for those claiming universal credit.

What assurances can the Minister give those earning above the current lower earnings level of £123 per week but below the universal credit threshold of £332 per week about the exclusivity clauses that remain in their contracts? What steps will be taken to protect those who may earn below the lower earnings limit but may not be covered by the regulations because they are classed as self-employed? I am talking not about those who are genuinely unemployed but those working in the gig economy, who are often placed on highly restrictive contracts that do not offer the genuine freedom that self-employment provides. As I say, this is crucial, given that the precarious nature of work at this moment in time is at the front of people's minds. Much more must be done to create stable and secure employment across the piece. I am sure that all of us know too many heartbreaking stories of how people have suffered under this regime.

4 pm

There is regret that it has taken time for this to come forward, given that it is seven years since the original regulations and that the review was started 18 months ago. However, as I say, it is welcome, but there is more to be done, and I hope we will all put all our efforts into tackling the scourge of in-work poverty. The number of children living in poverty today with at least one adult in their household in work is something that we should not countenance.

Baroness Bloomfield of Hinton Waldrist (Con): May I say at the outset and to reassure all noble Lords, particularly the noble Baroness, Lady Janke, that we take the needs of the lower paid seriously? This SI is an attempt to address some of those issues, and I, too, regret that it has taken this long to come to the statute book after the end of the consultation period.

I thank noble Lords for their valuable contributions. The points that have been raised demonstrate the need for these regulations and the broad support for introducing them. The Government are intent on driving higher employment, wages and economic growth to impact on all families, particularly the lower paid. The implementation of the regulations will support that aim by building much more flexibility into the labour market and putting more power into the hands of individuals and businesses. As we all know, short-hours contracts can provide a necessary level of flexibility for individuals, which allows them to work around other commitments such as study or childcare. Many people welcome zero-hours contracts. However, in some cases we know that they have been abused by certain employers and we have tried to introduce legislation to put that right.

This proposal will allow individuals to work multiple short-hours contracts, boosting income while maintaining the level of flexibility required for their personal circumstances. A dynamic and flexible labour market helps us retain and attract talent, while fostering a diverse and inclusive workforce. A widening of the talent pool of job applicants, who may have been prevented applying for jobs by another employer, helps businesses to fulfil vacancies in key sectors and provide employment opportunities in marginalised areas. This more flexible market encourages an upskilling of workers, allowing a match to be made between individuals and work that best uses their skills and which will drive higher employment, higher wages and economic growth. The culmination of those factors will contribute to the commitment that we are making to ensure that the UK is the best place in the world to work.

I was asked a number of questions by the noble Lord, Lord Jones, specifically on the statistics on the annual number of tribunals and the promptness of payments. I do not have those statistics with me but I shall endeavour to write with a full response, and I shall make that available to all Members of the Committee. The noble Baroness, Lady Blake, asked why we use this particular income threshold. It was a difficult balancing act, but it was felt that using this threshold balanced the needs of the employers as well as those of the employees—the workers employed under these types of contracts.

With those few words, I commend the draft regulations to the House.

Motion agreed.

Trade Marks (Amendment) Regulations 2022

Considered in Grand Committee

4.04 pm

Moved by ***Baroness Bloomfield of Hinton Waldrist***

That the Grand Committee do consider the Trade Marks (Amendment) Regulations 2022.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I beg to move that these draft regulations, which were laid before the House on 19 July 2022, be approved.

The UK's intellectual property system is consistently rated as one of the best in the world. The Government are committed to ensuring that we maintain that position. These regulations relate to a specific branch of the UK's IP system—trademarks, and in particular well-known trademarks. A well-known trademark is a mark that is considered reputable and which the general public commonly knows about, such as Rolls-Royce or Google. Trademark law gives special protection to these marks, in the light of their recognition and reputation. This protection is irrespective of whether or not they are registered in the UK.

As the Committee will know, the United Kingdom has signed a trade and co-operation agreement with the EU, which sets out the new UK-EU relationship following the UK's withdrawal from the EU. Here, the UK sought robust provisions to maintain a high level of protection and enforcement for intellectual property rights, including for trademarks. These contain dedicated provisions for well-known trademarks.

[Baroness Bloomfield of Hinton Waldrist]

The UK-EU TCA placed a binding commitment on both parties to apply an international standard for the protection of these special marks. That standard is the World Intellectual Property Organization's joint recommendation on the protection of well-known marks, adopted in 1999. The UK played an instrumental role, as a member of the committee of experts, during the preparation of these international recommendations between 1995 and 1997.

Although it had been considered, when negotiating the TCA, that UK trademark law was consistent with the joint recommendation, we have since identified the need to make a technical amendment to our existing provisions for well-known marks to bolster the protection afforded to these special rights. This will deliver on our commitment to the TCA and the WIPO's recommendation on well-known marks.

This instrument has three objectives. First, it amends the Trade Marks Act to provide owners of a well-known mark that is not registered with an additional remedy against infringement. We already have provisions in place for holders of unregistered well-known marks to stop the use of a conflicting trademark where it is being used on the same or similar goods and services. This technical amendment will change the law so this benefit can now also apply when a conflicting mark is being used on dissimilar goods and services.

As an example, a famous brand such as Rolex can rely on well-known mark provisions when its name is unjustly being used not only on watches and similar goods, such as clocks, but on sports equipment or even cleaning products. In particular, this applies where that use is likely to damage Rolex's interests or take unfair advantage of the distinctive character or repute of the Rolex mark.

Secondly, this SI will amend existing trademark law to ensure that this new remedy, and all the existing provisions for unregistered well-known marks under UK law, will now apply equally to UK nationals, so our own nationals will enjoy the same benefits as those provided to third-country nationals.

Thirdly, these changes will ensure that we fulfil our international obligations. As described previously, this includes those found within the UK-EU TCA, but it will also place the UK in the strongest position to negotiate safeguards abroad for the protection of well-known marks of British companies within the context of future trade agreements.

I turn to the impact of the SI. Due to the special nature of well-known marks and the niche nature of these IP rights, the impact is anticipated to be modest in terms of extra cases being taken to the Intellectual Property Office's tribunal or the courts. However, as already outlined, these changes are important to safeguard the robust functioning of our well-known mark provisions and to adhere to our international obligations. Stakeholders have confirmed that these amendments are a welcome addition to trademark law. The Intellectual Property Office will prepare guidance to help businesses that fall into the scope of these changes to deal with any impacts that the changes have on them.

In conclusion, these regulations relate to a niche area of trademark law but will ensure robust protection for unregistered well-known marks, and that the UK meets its international commitments. I hope noble Lords will support the draft regulations. I commend them to the Committee.

Lord Palmer of Childs Hill (LD): My Lords, first, I thank the Minister for her introduction to this SI. It is framed to substitute a connection country with the United Kingdom, and it appears to make no attempt to improve or explain the Trade Marks Act 1994. This seems a missed opportunity. What constitutes a known trademark? Is being well known a moving target? You can be well known today but disappear from sight tomorrow. Where is the dividing line? Who decides? It really worries me who decides who is well-known.

The Minister used Rolex as an example. I do not know how many people in this Chamber are interested in that top end of the market, but a lot of other trademarks are in much more use by the general populace. I was trying to think which trademarks would be referred to. I did not think of Rolex, but would it include Woolmark, BS984, which I think would concern large numbers of the population. How does it affect things such as champagne: is that protected in any way?

Furthermore, is the trademark national or international? The Minister talked about how the provision gives protection in overseas markets, but the SI seems to concentrate on Section 56 of the 1994 Act and does not really go beyond it. What happens if a trademark has a reputation elsewhere in the UK: does the SI protect it in the UK and elsewhere?

The Minister spoke about services. The SI talks about trademarks, but there are also service marks, which the SI does not mention at all. There is nothing wrong with the SI, but it seems to have missed an opportunity. Things have moved on since 1994, but we are concentrating only on Section 56 of the 1994 Act and nothing else. Can the Minister address some of those concerns?

Baroness Blake of Leeds (Lab): I shall be interested to hear the response of the Minister to the questions of the noble Lord, Lord Palmer. I thank the Minister for her fulsome explanation of where we are and why the instrument is necessary, of course noting that the regulations are subject to the affirmative procedure.

I notice that the Intellectual Property Office considered alternative options to addressing the commitment undertaken by the UK under the TCA, but there were no viable alternatives—which suggests that some alternatives were considered. I just wonder whether there will be an opportunity to review the impact of the SI and ensure that we keep up to date, ensuring for everyone involved that it is fit for purpose as time goes on.

Baroness Bloomfield of Hinton Waldrist (Con): Excuse me, I am seeking divine guidance. I wanted to give an example of a trademark that might be unregistered but would still get protection under the instrument. I keep coming back to Coca Cola and Rolex, which I recognise are both registered trademarks. The whole point of the SI is that we in the department discovered

the EU was unaware that we had a bit of a hole in our legislative cover for trademarks, so the SI has a very specific purpose: to try to plug that hole to give protection to trademarks that were otherwise not protected by the original legislation.

The noble Lord mentioned things such as champagne, but I think that is a confusion with geographical indications, which are used on products specifically protected as a term because of where they come from—such as Melton Mowbray pork pies or champagne, which have to be produced in a particular region. That is why that would not fall within the scope of this SI.

I have very few other specific answers that I can give the Committee at this stage. If noble Lords bear with me, I will write with specific answers to the questions, particularly those from the noble Baroness, Lady Blake. I hope noble Lords will agree that this SI is necessary for a very specific and small purpose, and I commend the regulations to the House.

Lord Palmer of Childs Hill (LD): Could the Minister address the comment that I made about service marks? She mentioned them in her speech, but they are not mentioned here.

Baroness Bloomfield of Hinton Waldrist (Con): At this point, I do not think that I can go any further than the comments I made in my speech, but I will include that in a full letter after this session.

Motion agreed.

Airports Slot Allocation (Alleviation of Usage Requirements) (No. 3) Regulations 2022

Considered in Grand Committee

4.16 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Airports Slot Allocation (Alleviation of Usage Requirements) (No. 3) Regulations 2022.

Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, these draft regulations will be made under powers conferred by the Air Traffic Management and Unmanned Aircraft Act 2021, or ATMUA. Following our departure from the European Union, this legislation created a more flexible set of powers for Ministers to implement alleviation measures related to the impacts of Covid, subject to a vote in both Houses. This allows the Government to adopt a bespoke approach to best support the recovery of the aviation sector. Ordinarily, airlines must operate their airport slots 80% of the time to retain the right to them the following year. This is known at the 80:20 rule, or the "use it or lose it" rule. This encourages efficient use of scarce airport capacity.

This summer, we saw a promising recovery in passenger demand. It is welcome that so many people have been able to travel on business, visit family and friends or travel abroad for a much-deserved break. However, demand remains below pre-Covid levels, and this recovery has not been without its challenges. It is well known that the sector struggled to ramp up operations. This caused some disruption at airports in early summer, which abated as the summer progressed, supported by swift action from the Government.

We have designed a package of measures for the winter 2022 season that aims to balance the recovery of the sector with enabling airlines to plan deliverable schedules. When the pandemic struck, the 80:20 rule was fully waived to avoid environmentally damaging and financially costly flights with few or no passengers. We then offered generous alleviations for four seasons while travel restrictions remained and demand was uncertain. Last summer, we implemented a 70% usage ratio, reflecting the more positive outlook in demand. We provided additional alleviation during the summer season in response to the high levels of disruption at airports arising from the continuing impact of Covid-19.

As required by ATMUA, we have determined that there is a continued reduction in demand, which is likely to persist, and we consider further alleviation measures justified for the winter 2022 season, which runs from 30 October 2022 to 25 March 2023. On 20 July we therefore published this draft statutory instrument, setting out the package of measures we propose. This package was developed following consultation with industry and careful consideration of the responses.

The draft instrument being considered applies to England, Scotland and Wales. Aerodromes are a devolved matter in relation to Northern Ireland and, as there are currently no slot co-ordinated airports in Northern Ireland, the Northern Ireland Executive agreed that it was not necessary for the powers in the Act to extend to or apply in relation to Northern Ireland.

In this instrument, the Government have focused measures on encouraging the ongoing recovery in flight traffic while protecting connectivity to destinations where restrictions remain in place and minimising the risk of disruption at airports while the sector recovers. This includes retaining the 70:30 usage requirement, but the regulations also include a justified non-use provision, which provides alleviation for airlines flying in restricted markets.

For this winter, we have expanded the list of Covid-19 restrictions that airlines may use to justify not using slots if they severely reduce demand for the route or, indeed, its viability to include pre-departure testing requirements. Restrictions covered also include flight bans and quarantine or self-isolation requirements applied at either end of any particular route. As was the case for the summer 2022 season, this will apply whether or not the restrictions could reasonably have been foreseen to ensure that we are protecting carriers and markets with long-term restrictions in place.

There will be a three-week recovery period during which the justified non-use might still apply following the end of Covid-19 restrictions. We will also allow early application for justified non-use. By this, I mean

[Baroness Vere of Norbiton]
where an official government announcement about the duration of restrictions gives rise to a reasonable expectation that they will still be in place on the date of operation of the slots. The carrier will then still be able to apply for justified non-use, otherwise it would have to reapply every three weeks. This allows earlier hand-back of slots so that other carriers can use them. It also removes some of the administrative burden.

In the winter 2021 season we allowed full series hand-back, whereby an airline could retain rights to a series of slots for the following year if it returned the series to the slot co-ordinator before the start of the season. For this winter season, we have included a more limited measure that allows the carriers to claim alleviation for up to 10% of their slots at any airport if they returned them to the slots co-ordinator for reallocation between 1 and 7 September this year.

All this is so that the aviation sector can plan its schedules and make sure that they are deliverable. We are currently considering whether further alleviation is likely to be justified and I will certainly listen very carefully to what noble Lords have to say. I beg to move.

Baroness Randerson (LD): My Lords, I thank the Minister for her comments. Slot alleviation has become routine in the last couple of years. I have always accepted it as an important aspect of ensuring that we do not have unnecessary flights. "Half full" would be an overstatement; "almost empty" would be more accurate during Covid. However, I have got to the point where I question whether it is justified any longer in the current terms that the noble Baroness presents.

The Explanatory Note refers to an expansion of the list of reasons for slot alleviation, but that expansion is still in terms of Covid. Paragraph 7.2 of the Explanatory Memorandum refers to demand being at or around 80% to 85% of 2019 levels during May to July. Does the Minister now have access to figures for August and September?

The irony is that the reduction in demand over the summer was significantly affected by the cancellation of flights because airports instructed airlines not to fly, not because of Covid but because they did not have the ground-handling capacity. That happened at both Gatwick and Heathrow. The impact was, of course, to reduce the number of flights, but it also suppressed demand beyond those who thought that they had booked flights. I am sure we all know people who found that their flights were cancelled or deferred, and people who simply gave up trying to fly abroad as a result of the congestion at airports. There was suppressed demand over the summer, so the alleviation of slot rules could be said to be no longer appropriate for those reasons. It is time the Government reconsidered it, because it distorts the market.

Finally, I point out that there is no impact assessment for this. The grounds given for this are that it is for less than 12 months, but this has actually been going on for years, as the Minister pointed out in her explanation. I draw the Committee's attention to the 12th report of the Secondary Legislation Scrutiny Committee, *Losing Impact: Why the Government's Impact Assessment System Is Failing Parliament and the Public*. At this stage, now that we appear to be through the immediate emergencies of Covid, it is important that the Government restore the standards they once had in legislation, in terms of impact assessments.

Lord Berkeley (Lab): My Lords, I congratulate the Minister on taking over full responsibility for air—until the next reshuffle anyway. I think that happened last week.

These are very interesting regulations. As the noble Baroness, Lady Randerson, said, I can see that in the Explanatory Memorandum there is a sort of conflict between wanting not to lose slots at airports, wanting to preserve monopolies and wanting to encourage competition. We do not really like running ghost flights if that is the only way to do it.

The question I would like to ask the Minister relates, as the noble Baroness, Lady Randerson, said, to some of these lists of reasons, which could become cop-outs for just about everything an airline or airport does not want. The noble Baroness mentioned shortage of airline or airport staff and strikes, which have been happening and will probably continue.

Then there is slot limitation. The noble Baroness mentioned Heathrow Airport limiting slots. I looked at the website for Schiphol Airport and it has similar limitations on slots, I suspect for similar reasons. Perhaps the Minister could tell us what is happening to these limitations on slots, certainly at Heathrow, because I think the present one finishes at the end of October. Is that matched with Schiphol and other regional or local airports in Europe? Presumably you have to have similar restraints at either end of a flight, and an awful lot of them go to Schiphol and places such as that.

The other interesting item in the list of reasons, for me, is in paragraph 7.6 of the Explanatory Memorandum, which is to do with the

"closure of airports or hotels"

and the effect that it might have on the passenger. That is a very subjective way in which to decide on slots, if one is relying on the number of people who are complaining, or what you think the solution is. I am not sure that the regulations will help matters much, in that way.

4.30 pm

I turn to paragraph 12.2. I do not really understand what it means when it refers to airlines, in order to

"retain their historic rights to the most valuable slots",

seeking

"to consolidate their operations at Heathrow … with adverse consequences for other smaller airports".

Do the Government actually mind whether that happens? There is lots of debate about Heathrow's expansion, but surely there is a policy issue here that needs to be taken into account.

The next paragraph talks about "loss-making flights". Can the Minister give us any indication of how many of those ghost flights take place in a month? Are we talking about hundreds, or thousands, or two—and are they relevant? They are pretty bad for the environment, as the Explanatory Memorandum says, so it would be nice to know how serious a problem it is.

Finally, paragraph 12.4 refers to the concern about negatively impacting

"new entry and competition amongst airlines."

I shall finish on that note. It is lovely to be able to say that we are encouraging the airlines and making sure that they stay in a good financial state. On the other hand, we have seen over the years how competition has really helped to deliver better services and lower fares. It is a challenge, and I hope that the Minister will keep abreast of those challenges—as well as customer service, at which some airlines are doing very much better than others—when she comes to look again at these regulations in six months' time.

Lord Jones (Lab): My Lords, I thank the Minister for her helpful introduction—she got airborne and made height. She might know that there is one airport in Wales, in Cardiff, and that the Welsh Government bought it for some £50 million some years ago. Previously, there were difficulties, and it was thought that the lovely land of Wales needed an airport—at the very least one. So I think that the Welsh Government were right to make their intervention. Cardiff Airport was undoubtedly not congested before purchase.

Could the Minister make a statement here in this Committee about Cardiff and slots—the 80:20 rule? Can she explain the general situation as it might concern Cardiff? One presumes that these regulations apply to Wales—it is there on page 1. Does the Minister have the information? How does the 80:20 rule impact on Wales's one and only airport? Can she make any remarks of a helpful nature about Cardiff Airport in the context of the pressures on Heathrow and Stansted? What is the impact of the regulations on Cardiff Airport?

Lord Tunnicliffe (Lab): My Lords, I thank the noble Baroness for introducing the instrument, which I welcome and which again amends the airport slot usage rules, this time to 70:30, for the winter 2022 season. The aviation industry brings growth and prosperity to the UK and, as we deal with the after-effects of the pandemic, the Government are right to amend rules such as these. However, they must also plan for the long term and provide certainty to airlines, passengers and businesses that rely on the industry.

The airline industry is now recovering from significant challenges and levels are still at around 80%. As a result, airlines would likely operate ghost flights without an amendment to the rules. None the less, I would appreciate clarification of how the department decided that 70:30 is the correct rule for the fall/winter period. Will the Minister confirm what formula was used to decide this? I hope she can confirm whether the Government expect to extend the relaxation further when this instrument expires.

I listened to the case for reconsidering. We do support the extension as it stands, but I recognise that, to some extent, this solution is looking a bit tired—I have a vision of sticking plasters stuck round it to try to make it work. My recommendation to the Minister and the department is to be extremely careful with any modification. It would be very easy to have significant unintended consequences. Ideally, we should hope that growth which allows us to grow out of the need is in sight. Once again, we support this instrument.

Baroness Vere of Norbiton (Con): My Lords, I am very grateful to all noble Lords who have taken part in this short debate. I will start with the point raised by the noble Lord, Lord Tunnicliffe, about how we got to where we are. There is not a formula per se, but obviously consultation with the industry and other stakeholders was incredibly important. We also looked at detailed data on flights.

It is quite interesting speaking to airlines; I was speaking to one yesterday. They might say, "We're back up to 100% and are doing brilliantly, thank you for asking", because they fly the European routes, which have been open for a very long time and where the demand is back. However, we know that there is wide variation in the number of routes that can be flown at the moment. Some of the long-haul routes are still not open, particularly those to China, for example, and Japan has only recently opened up. In aggregate, the picture is looking much better for the airlines, but there are still some places that cannot be flown to, which, to my mind, means that maintaining 70:30 for at least the winter season is the right decision.

The noble Lord went on to ask whether we will be doing it in future. I am not sure; that is what we are doing right at this moment. I take heed of his words that we have to be very careful with slots. We must look at the things we have in our armoury. This 70:30 slot alleviation is potentially a very large hammer to crack a nut. We would potentially look again at justified non-use. Once we and other areas of the world are further out of the pandemic, what does justified non-use look like? It seems to me that it could be a better thing to use, because you want to try to protect some airlines from factors beyond their control. I cannot say where we will go in future. Do I think it will look exactly like this? I do not think so, but I am content with where we are at the moment and where we have got to in the proposals that we have set out.

The noble Baroness, Lady Randerson, talked about demand being suppressed. Obviously, we have quite a lot of data on why demand is being suppressed. There is still a reluctance from some to come back to the skies, because of Covid. They do not particularly want to travel just yet. I agree with her that this summer did not do the aviation sector any favours: I have made the point to many people in the sector that there is a job of work to do on public perception. The sector should make sure that going on holiday, for example, is not a chore but a delight. Airports and travelling should be a delight; you want to join your airline going off to Corfu, or wherever, with the bar fully stocked and everything working. I am focusing on working with the industry on getting the industry working—not only airlines and the airports but third-party suppliers—and then making sure that we somehow get across to the travelling public that some of those terrible *Daily Mail* front pages from the beginning of last summer are no longer the case at all.

The noble Baroness expressed some doubt over whether the alleviation is needed for the winter season; I think I have managed to explain the Government's position on that. The pandemic is quite far away in our rear view mirror but not in other parts of the

[Baroness Vere of Norbiton]
world, some of which are the very valuable long-haul destinations. One would not necessarily want to disrupt the slots for them at this time.

I take the noble Baroness's point about the impact assessment, although the Government stand by our position that it is for six months. Obviously, we put as much information as we possibly could in the Explanatory Memorandum.

The noble Lord, Lord Berkeley, is right about London Heathrow; it is proposing that the passenger cap comes off at the end of October. I warmly welcome that. Heathrow, like many other airports, is very reliant on third-party suppliers and, as the noble Lord knows, the Government are undertaking a review of ground handling. That is one of the unseen parts of the entire system and if it breaks down, everyone gets very cross because their luggage does not arrive—and quite rightly so. They blame the airline, the airline has contracted the ground handlers and the ground handlers do not really see the anger of the passengers, so there is a bit of work to be done there.

The noble Lord also brought up the question of alleviation at the other end. I had the same question. However, I am reassured—and airlines have not raised this with us—that different alleviation measures in different countries have not caused a problem, so that is not necessarily an issue we need to worry about.

Are we concerned if airlines consolidate at London Heathrow? Yes, I am, actually. I do not want airlines to consolidate at Heathrow unless they have no alternative. If they have slots at other airports, I should very much like them to stay in those other airports. The Government are very much committed to regional airports.

There are no ghost flights—or fewer than 1% in the second quarter of 2022, and they were not caused by slot rules. Because the alleviations have been in place for so long now, the system has managed to adjust to them. All being well, in future, we will have no ghost flights.

I have had quite a lot of deep dives into slots and slot reform, something the Government said we would look at in *Flightpath to the Future*. It is hugely complicated: there is the balance between wanting the industry to invest for the long term, competition and not, as the noble Lord, Lord Tunnicliffe, pointed out, upsetting the apple cart by doing things that have unintended consequences. We will be looking at that very carefully.

Finally, the noble Lord, Lord Jones, spoke about Cardiff. I am pleased to say that although the regulations cover Wales, Cardiff is not an airport with co-ordinated slots. It is not quite busy enough for there not to be enough slots. We now have to get more airlines flying into Cardiff, then it will have co-ordinated slots and any regulations will cover it. For the time being, however, it has enough slots to go around. I commend the regulations to the Committee.

Motion agreed.

Water Fluoridation (Consultation) (England) Regulations 2022

Considered in Grand Committee

4.45 pm

Moved by ***Lord Markham***

That the Grand Committee do consider the Water Fluoridation (Consultation) (England) Regulations 2022.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Markham) (Con): My Lords, in moving that these regulations be approved, I shall also speak to the Health and Care Act 2022 regulations.

The water fluoridation provisions of the Health and Care Act will come into force on 1 November, and in doing so will transfer the power to initiate new schemes, or to vary or terminate existing schemes, from local authorities to the Secretary of State. Public consultation will continue to be an important aspect of proposals, and the focus of today's debate is the draft consultation regulations, which set out the process that any future consultations must follow. We know that some have strong feelings on the subject of water fluoridation and consultations relating to it, and we were keen to gather public opinion before laying these draft regulations. We therefore launched a public consultation on 8 April, which ran until 3 June 2022, seeking views on whether future water fluoridation consultations should be restricted only to those affected locally and bodies with an interest, as has previously been the case, or whether they should now be open to all, given the shift of responsibility from local authorities to central government.

We received 1,228 responses; 94% came from individuals and 6% from organisations. The majority of respondents favoured a consultation which is open to all. The draft regulations do not therefore restrict those who can respond to any future consultation. However, we understand that it is those living, working and studying in the areas in question who are directly affected, which is why the regulations also provide for consideration to be given, as part of the decision-making process, to whether those who may be particularly affected by any future proposals should be given additional weight.

Although public opinion and the extent of support for a water fluoridation proposal will continue to be important, consultations are not referendums. It is right that regulations provide for a range of other factors to be taken into account when considering a water fluoridation proposal. This includes, but is not limited to, the strength of evidence underpinning any arguments made by respondents. It is right that due regard is given to those arguments that are properly supported by sound evidence.

We are committed to scientific evidence surrounding water fluoridation underpinning any proposal. The department continues to review scientific papers published both in this country and internationally as part of the continuous monitoring of the evidence—including those on the epidemiology and toxicology of water fluoridation

—and every four years the department will continue to publish a summary report on our knowledge, in line with the Secretary of State's responsibility for monitoring the effects of the water fluoridation arrangements on the health of the populations served by schemes. I provide assurance that, if the balance of evidence in favour of water fluoridation as a public health measure were to change, a review of the current water fluoridation policy would take place.

Another important element in deciding to proceed with a water fluoridation proposal is the cost-benefit analysis of such proposals. Any new proposal will have to demonstrate that the benefit to health will represent good value for the investment of public money proposed.

We want more of the country to benefit from water fluoridation, and many noble Lords may be aware that yesterday we announced, subject to the outcome of this debate and future consultations, that funding has been secured to begin expansion across the north-east into Northumberland, County Durham, Sunderland, South Tyneside and Teesside, including Redcar and Cleveland, Stockton-on-Tees, Darlington and Middlesbrough. I know that the local authorities in these areas are strong supporters of water fluoridation. In accordance with the regulations we are debating, we will hold a public consultation on this proposal next year. This expansion would enable an additional 1.6 million people to benefit from water fluoridation, which will help to reduce the level of tooth decay in the area and over time will reduce the number of children who need to be admitted to hospital for tooth extractions.

I turn now to the draft Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022, starting with mandatory training on learning disability and autism. People with a learning disability and autistic people experience poorer health outcomes in comparison to the general population. There is a need to address the significant and persistent health disparities faced by this group of people. That is why the Government have introduced, from 1 July 2022, a requirement in the Health and Care Act for CQC-registered service providers to ensure that their employees receive specific training on learning disability and autism. Introducing mandatory training on learning disability and autism is intended to ensure that health and social care employees have the skills and knowledge to provide safe, compassionate and informed care. The Act also creates a duty for the Secretary of State to publish a code of practice which will outline how to meet the new requirement on mandatory training. The code of practice is being developed and we expect to publish a draft for consultation early next year.

The consequential amendment proposed today seeks to remove the requirement for the Care Quality Commission to issue statutory guidance about the mandatory training requirement, by amending Section 23(1) of the 2008 Act. This carve-out clause should have been applied during the passage of the Health and Care Bill. If the Act is left unchanged, registered service providers will have two sets of guidance: statutory guidance issued by the Care Quality Commission and, subsequently, the code of practice issued by the Secretary of State. Removing the requirement for the CQC to issue statutory guidance will mean that registered providers will have a single source of guidance once the code of practice is published. The Care Quality Commission has agreed to keep all its statutory guidance, which was published on 1 July 2022, available to registered service providers until the code of practice is published.

Lastly, I turn to virginity testing and hymenoplasty. Safeguarding vulnerable women and girls is a top priority for the Government, which is why we were one of the first countries in the world to ban virginity testing and hymenoplasty. Virginity testing and hymenoplasty have no scientific merit or clinical indication and are a violation of human rights. These degrading and intrusive acts have an adverse impact on women and girls' physical, psychological and social well-being. They can lead to extreme psychological trauma in the victim, including anxiety, depression, post-traumatic stress disorder and suicide, and physical trauma including damage to the hymen and vaginal wall, bleeding, infection and sexual difficulties. As such, we are proud that the Health and Care Act 2022 made carrying out, offering, and aiding and abetting virginity testing and hymenoplasty illegal.

As these are new offences, certain changes to other legislation are necessary to protect vulnerable groups. The Scottish Government have requested a change to be made to the Foster Children (Scotland) Act 1984, which contains a list of matters which disqualify a person from fostering a child in Scotland. The consequential amendments proposed today would add to that list the conviction of an offence of virginity testing or hymenoplasty in relation to a child. The change would also flow through to assessments by adoption agencies in Scotland under The Adoption Agencies (Scotland) Regulations 2009 in relation to the suitability of prospective adopters.

The 2009 regulations require those suitability assessments to be carried out by reference to a range of information, including whether the prospective adopter or any member of their household has been disqualified or prohibited from keeping a foster child under the 1984 Act. This change would have the effect of disqualifying or enabling the disqualification of individuals convicted of virginity testing or hymenoplasty offences from fostering or adopting in Scotland.

Similar changes were made to English and Welsh law in negative regulations under the Health and Care Act 2022. Scottish provisions on this matter are set out in primary legislation requiring an affirmative procedure. It was unfortunate that we were not able to make this amendment in the Health and Care Bill, as the need for the change was not identified during the Bill's passage, but the priority is to put in place these restrictions now. This change will help to protect girls and young women from so-called honour-based abuse.

Lord Reay (Con): My Lords, I have spoken previously in the House in Committee and at Second Reading of the Health and Care Bill about how the Government's water fluoridation policy is considered to be misguided by numerous eminent scientists in the UK and overseas, including government advisers. They warn that fluoridation causes a variety of health ailments, including damage to the foetal brain. I hope to offer my noble friend the Minister some constructive comments on how

[Lord Reay]
to improve the water fluoridation consultation process, which is unsatisfactory and inadequate in many respects.

First, the consultation should be more prescriptive as to the minimum level of publicity required from the Secretary of State to promote the policy. The current framework gives scope for minimal effective publicity, as the media requirement is merely defined as that which the Secretary of State considers appropriate. In comparison, in the case of public health initiatives concerning Covid, the NHS has texted those patients registered and sent letters to relevant individuals based on their ages. The same has applied to screening tests for various cancers. In addition to the NHS database, local authorities have council taxpayer databases and electoral register databases, which could be used for public information notifications. It is particularly straightforward to do that on a locality-by-locality basis, as would apply for fluoridation schemes. There could also be a specification for notices in local papers and in the national press.

Secondly, the consultation period is quite short, given that the public are expected to gather information and evidence, analyse data, review scientific evidence, carry out cost-benefit exercises and marshal arguments on a variety of aspects of a given scheme. Six months would be a more reasonable period.

Thirdly, no objective process is stipulated whereby the Secretary of State can realistically assess

"the extent of support for the proposal"

under Regulation 5(1)(a). What about the extent of opposition to the proposal? There should be a requirement for independent public opinion-polling and also canvassing of the views of parish, borough, city and county councillors. A local referendum should be considered. It stands to reason that, if a local proposal is to have any real democratic legitimacy, the view of a majority of the local populace should not be overridden.

Fourthly, it is difficult to see how the Secretary of State can gauge the cogency of arguments, ethical considerations or scientific evidence without being guided by a panel of relevant experts. These should be recruited independently from the Department of Health, by nominations from bodies such as the royal institutes or other professional bodies for engineers, statisticians, accountants, economists, scientific research bodies, toxicologists, ethicists and the like. They should be similar to commissions of inquiry or standing advisory bodies, chaired by legally qualified personnel.

Fifthly, Regulation 5(1)(b) should prescribe that particular weight should be given to representations made by individuals who would be affected by the proposal. Conversely, it is difficult to see why any weight should be given to anybody with an economic interest in favour of a proposal, because a public interest health policy should not promote private economic interests.

Sixthly, as far as "capital and operating costs" are concerned, in Regulation 5(1)(c), the relevant costs are the full range of costs, including establishment costs, insurance costs, admin costs, consultation costs, any extra security costs, extra wear and tear or corrosion costs, monitoring costs, safety training costs, additional computer software costs and many others. A narrow compass on these costs would generate some very misleading results.

On Regulation 5(1)(c), it is no good looking at the above costs in isolation: there has to be a comparative cost-benefit analysis, taking into account a range of alternative options such as no scheme, a lesser or more targeted scheme, alternative dental preventive health schemes such as providing fluoride via milk or tablets or topically, public education or in-school training, and so forth. This should include an analysis of the successful Childsmile programme in Scotland, which, through education and dentist visits to schools has been shown to reduce tooth decay in children.

5 pm

Point eight: for Regulation 5(1)(d) there should be explicit reference to mental as well as physical health, given the large amount of anxiety and other untoward psychological effects these sorts of schemes might generate.

Point nine: there should be consideration of whether the proposal promotes human rights, is proportionate in a democratic society, takes account of those with protected characteristics within the meaning of the Equality Act—those with disabilities, different religious groups, et cetera—and promotes social cohesion and whether it enhances or diminishes trust in public institutions. There should also be consideration of localism, as different communities have different attitudes, and schemes imposed by central government can create local resentment if not attuned to local circumstances. The question of human rights is important considering that water fluoridation effectively represents the imposition of medicine without consent. Some European countries have rejected the policy because they believe that it conflicts with medical ethics and best practice.

Finally, references to "available scientific evidence" should be supplemented by attaching particular weight to the latest evidence and should specifically include international evidence. The Secretary of State should be required to list the evidence that has been taken into account and state what evidence has been discounted and for what reason. In the last few years, an increasing number of international peer-reviewed studies have highlighted the distinct correlation between water fluoridation and serious health ailments, particularly with regard to the developing foetus. We would be committing a disservice to the public if all the latest available research was not analysed effectively.

Lord Hunt of Kings Heath (Lab): My Lords, it is a great pleasure to follow the noble Lord, although I do not agree with him; we debated this during the passage of the Health and Care Act through your Lordships' House only a few months ago. I must declare that I am president of the British Fluoridation Society.

I have form, because I remember when I was secretary of the Edgware/Hendon Community Health Council in the mid-1970s, taking part in an extensive consultation exercise in the London Borough of Barnet when the then Government were encouraging the introduction of fluoridation. We had two very well attended meetings

in the borough where there was a clear view in favour of fluoridating water. Unfortunately, virtually no progress has been made since then. That is why I am very glad that the Government have brought forward primary legislation, and I was very glad to hear what the Minister had to say about the intention to move ahead in the north-east. That is very encouraging and I hope that that will be the first of many such schemes.

It seems that the consultation progress that the Government have set out is entirely reasonable. We must remember that the principle is decided—it has been decided by primary legislation. The local consultations that will take place are not a reason for reopening arguments about the effectiveness of fluoridation; they are about the detailed proposals, making sure that the areas are covered correctly and that individuals can have a say about that. However, I have to say that I noted in paragraph 7.3 that in the consultation a higher weight is to be given to individuals affected by the proposals

"who reside or work in the area."

I am sure that that is right, but I ask the Minister to agree that the highest weight has to be given to the statement by the Chief Medical Officers of all four UK countries last year that water fluoridation is both safe and effective as well as being the most cost-effective way to reduce inequalities in dental caries prevalence. That must be the principle that lies behind any consultation process. I wish these regulations all speed ahead and very much hope that the foundations for a second wave of fluoridation schemes can now be laid in the north-east.

Baroness Brinton (LD): My Lords, I welcome the Minister to consequential SIs from the passage of the Health and Care Act. Some of those present will remember the long debates we had during the passage of that legislation, some of which the noble Lord, Lord Reay, has returned us to today.

I will start on water fluoridation. My points were actually about consultation, and I will return to those, but the noble Lord has a point: there are now scientific records to show that excess levels of fluoride do cause damage. There is a very good academic article entitled "Assessment of fluoride levels during pregnancy and its association with early adverse pregnancy outcomes". It concludes that this happens mainly in developing countries where the level of fluoride is not managed. I echo the point that the noble Lord, Lord Hunt, just made, that if the four Chief Medical Officers for the four countries of the United Kingdom believe that it is safe, that should be enough for us.

Of course all care must be taken and monitoring must continue, but the other point I want to make is from a dentist in Australia, who was very supportive of Australia's move to fluoridation a while ago. He said that the region where he lives was one of the last to add fluoride. He talks about the experience of having to give very small children repeated anaesthetics and pain relief, and the effect on them. He says:

"Since fluoridation was introduced to Geelong in 2009, my colleagues are much happier, as severe dental abscesses requiring tricky anaesthetic techniques are much less common, and tend to mainly come from areas in the region which still aren't fluoridated."

He goes on to say:

"The other anecdote … was that one of my colleagues who had worked in Europe for a few years went away with 3 children under the age of 6, who were the same age and social demographic as our own children. When they returned … 2 of his 3 children had needed dental treatment"

under general anaesthetic. The key point is that they went to unfluoridated places. Although I hear the concerns of the noble Lord, Lord Reay, I hope we can be reassured that everything we debated during the passage of the Health and Care Bill shows that this is being done very carefully.

During the passage of that Bill, my noble friend Lady Pinnock made a very important series of points about how to decide where to consult about fluoridation of water, given that we have so many reservoirs where water goes in lots of different directions. Often, you cannot identify each of those areas. Although it was good to hear the Minister talk about the way that consultation will happen, and it is good news that there has been broad consultation in the north-east and that there are some resources there, might the Minister comment on how it is possible for civil servants to identify the relevant areas for consultation? This was one of the reasons why we said during the passage of the Bill that there needed to be very broad consultation.

Moving on to the other statutory instrument on training on learning disabilities and autism, and on virginity testing and hymenoplasty, I signed both of those amendments during the Bill's passage. Each time it came back I spoke to both of them. It was wonderful that the Government listened and accepted the amendments on training for health staff working with people with learning disabilities and autism. I know that this is only a technical amendment to remove the CQC, but this is a moment to thank the Government for listening to the concern of those of us who work with and know many in the learning disabled and the autistic communities, who have often found that they have been treated by people who do not understand their conditions, which makes it that much harder to communicate with them.

I will now move on to virginity testing and hymenoplasty—I welcome the Minister to the language that we have all had to learn. We were very pleased that the Government decided to support measures on this. I have one question for the Minister. He mentioned that this was about the suitability of foster parents or of their household. It is not clear how wide that household is regarded; is it literally the people who live in that house, or, as in other safeguarding issues, would it also include a member of the foster parents' family who might be visiting that house on a regular basis and who, in any other safeguarding terms, would have to be notified? If the Minister cannot answer that today, I would completely understand, but I look forward to the answer because I have a particular interest in safeguarding. Apart from that, I support all three elements in front of us today.

Baroness Merron (Lab): My Lords, I start by thanking the Minister for bringing these regulations forward today. They very much flow from the measures supported in the Health and Care Act, and we are very glad to support them.

[Baroness Merron]

I will first refer to the instrument dealing with fluoridation. My noble friend Lord Hunt and the noble Baroness, Lady Brinton, rightly made the point that this is not the time to reopen the whole matter as to whether fluoridation is a good thing. I feel that that has been exhausted in the debate. I am familiar with the concerns that the noble Lord, Lord Reay, has previously put before the House and which he referred to today. However, every independent review of fluoridation has confirmed its safety. As the noble Baroness, Lady Brinton, and my noble friend Lord Hunt said, the UK Chief Medical Officers back this measure, and I do not believe that they do so lightly. I hope that the noble Lord, Lord Reay, may come round to the way of thinking that explains why this measure is important in the Act and why we need the regulation today.

I have a few questions for the Minister. Regarding consultation, the necessity of taking responsibilities away from local authorities and to the Secretary of State reflects reality, because there are real difficulties when boundaries are different, yet fluoridation needs to be brought in. Also, it is important to take communities with us in this process, and the consultation measures in this regulation provide that opportunity.

Can the Minister comment on plans to extend fluoridation nationwide? What is the plan—the vision—bearing in mind that only 10% of people have fluoride in their water at present? What timeline might we be talking about? Do the Government have a target for the percentage of the UK that will benefit from fluoridation at the end of the process? I also wonder how the Government will spread awareness of the evidence of the benefits of fluoridation and gain buy-in for them, as that is extremely important.

In the course of evidence sessions in relation to the Health and Care Act we heard from experts that many families do not habitually drink water, and that many people who suffer tooth decay are now too far down the line to stave off tooth loss. It would be helpful to hear whether the department has any plans for a wraparound strategy on dental health generally.

I note from the Explanatory Memorandum that a separate impact assessment, beyond that of the Health and Care Act, has not been done for this regulation. Can the Minister comment on that? It is important to have an analysis of how the movement of powers in respect of consultation beyond local authority boundaries will play out.

5.15 pm

Turning now to the Health and Care Act regulations, which concern minor enabling amendments and are therefore uncontroversial, I particularly reference those regarding the implementation of the ban on virginity testing and hymenoplasty, and those regarding autism training. I endorse the comments of the noble Baroness, Lady Brinton: these are excellent examples of your Lordships' House working together to make positive change. I also associate myself with her thanks to the Government and the Minister's predecessor for seeing that this was absolutely the right thing to do. At the time of the debate in the Chamber, I was very glad to support those amendments.

Statutory guidance on training for learning disabilities and autism has to be of the highest standard, wherever the guidance comes from. The regulation before us reminds us of the enormity of the task that sits with government, but it will ensure that those with autism will be able to access the support and services they need at the right standard.

Virginity testing and hymenoplasty are serious matters of abuse. They are not medical practices, they do not have medical benefits and they are both violations of the human rights of women and girls. Those who carry out these abusive practices in any part of our country should be, and now will be, regarded as criminals. I completely endorse the provision that there should be no right to foster a child. It is important, as the noble Baroness, Lady Brinton, said, to draw a clear definition here of who would be referred to by the regulation, because we want to ensure that those who are criminal in this regard cannot foster a child, because there is no fitness to foster a child.

With those comments, I welcome the regulations and thank the Minister.

Lord Markham (Con): I thank your Lordships for your contributions today. First, as the noble Lord, Lord Hunt, said, the principle has been decided in previous debates, and the debate today has been about the consultation and the implementation. As for the comments made by the noble Baronesses, Lady Brinton and Lady Merron, there is strong evidence in favour, as illustrated by the Australian dentist cited by the noble Baroness, Lady Brinton. As the noble Lord, Lord Hunt, said, we must at all times be driven foremost by the medical evidence, so I agree that the highest stakeholder in this process should be the science.

At the same time, the noble Lord, Lord Reay, makes good points about ensuring that the consultation is properly done, so I completely hear his comments about making sure it is well publicised so everyone has the opportunity to contribute to the debate, ensuring that sufficient time is given so that everyone has a chance to submit their piece, and having proper experts assess the consultations. I think we could also all agree as a principle that private, commercial interests should not be a factor that people can use. I hope those are items on which we could all agree.

On the point about health research and different cases emerging all the time, as noble Lords will be aware, under these provisions we have committed to publish the latest evidence every four years so that if things change, we are able to change with them. I hope that will give the safeguards and make sure that we are always led by the science and the medical evidence, as the noble Lord, Lord Hunt, said.

On the points about learning disability, virginity and hymenoplasty, I welcome the thanks; it was before my time, but I know that it was very much a team effort. My understanding is that it was very much the Lords working at its best, with cross-partisanship.

A very good point was raised on the foster parent household definition. I have just phoned a friend, but I am not sure my friend has given me the answer. I understand the point that you can often have an elder—a household member who might not actually

live there but who can be hugely influential—so I will come back in writing on that. It was a well-made point.

I hope I have covered all the points raised in this debate. Again, I thank noble Lords for their contributions and trust that we have been able to answer them, apart from the household point, which I will come back on in writing.

I am glad to see that we mostly agree on the benefits of water fluoridation. The regulations reflect the consultation responses from the public and will not restrict those who want to respond to future public consultations on water fluoridation schemes.

I trust that my answers have provided reassurance that removing the requirement for the CQC to issue statutory guidance on mandatory learning disability and autism training will not leave service providers without clear guidance. I trust that they have also provided reassurance that amending the Foster Children (Scotland) Act 1984 will help protect children being fostered and adopted in Scotland from virginity testing and hymenoplasty.

Finally, on a personal note, reflecting on the 10 debates and speeches I have done today, it is with pleasure that I feel I am playing a small part in doing something very good here. I thank all noble Lords for their contributions.

Motion agreed.

Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022

Considered in Grand Committee

5.22 pm

Moved by ***Lord Markham***

That the Grand Committee do consider the Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022.

Motion agreed.

Committee adjourned at 5.23 pm.