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HOUSE OF LORDS

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

Monday 7 November 2022

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Introduction: Lord Swire

2.38 pm

The right honourable Hugo George William Swire, KCMG, having been created Baron Swire, of Down Saint Mary in the County of Devon, was introduced and took the oath, supported by Lord Strathclyde and Lord Marland, and signed an undertaking to abide by the Code of Conduct.

Introduction: Lord Sahota

2.43 pm

Kuldip Singh Sahota, having been created Baron Sahota, of Telford in the County of Shropshire, was introduced and made the solemn affirmation, supported by Lord Grocott and Lord Kennedy of Southwark, and signed an undertaking to abide by the Code of Conduct.

Oaths and Affirmations

2.47 pm

Baroness Valentine took the oath.

Death of a Member: Lord Boyce

Announcement

2.48 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I regret to inform the House of the death of the noble and gallant Lord, Lord Boyce, on 6 November. On behalf of the House, I extend our condolences to the noble and gallant Lord's family and friends.

Family: Protective Effect

Question

2.49 pm

Asked by ***The Lord Bishop of Durham***

To ask His Majesty's Government what assessment they have made of the report by Children's Commissioner for England *Family and its protective effect: Part 1 of the Independent Family Review*, published on 1 September; and in particular, what assessment they have made of the definition of the 'protective effect' and its implications for future policy.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, the Children's Commissioner's review is centred on the protective effect of families. We agree. A strong and safe family home helps children to meet their full potential in life. That is why we have announced over £1 billion for programmes to improve family services, including family hubs and the Supporting Families programme. The Children's Commissioner's review will help to inform ongoing work so we can be sure to support all types of families.

The Lord Bishop of Durham: I thank the Minister for her reply. The Children's Commissioner's excellent report reveals a strong correlation between close familial relationships formed through shared experiences and both the immediate well-being of children and their long-term outcomes. Families are the primary way that families support one another but sometimes, outside support is required and the report reveals that often, families struggle to access this and that it is unequally available across the country. How will His Majesty's Government ensure equal access to and availability of family support services across the whole country?

Baroness Barran (Con): The right reverend Prelate will have heard me say already the scale of the investment we are making in family services and the importance we place on them. In particular, the Government are committed to opening 75 family hubs in areas which need that support most. But I agree with the right reverend Prelate and stress the striking point in the report regarding who families in need turn to: namely, their families and friends, far, far before any statutory service.

Lord Farmer (Con): My Lords, we have a new Cabinet since my own Question on this review, so I ask again whether a Cabinet Minister has been appointed to co-ordinate every department's policies to strengthen families? Also, acknowledging the 75 hubs already mentioned and my registered interests, will the Government bring funding forward for the remaining 75 local authorities to develop family hub networks, given the huge pressures facing families and the test-and-learn approach taken to hubs in the first 75 councils?

Baroness Barran (Con): My noble friend knows that working to strengthen families is a key priority across several government departments and although there is not currently a designated Minister, we will be actively considering this. We share my noble friend's aspiration to see family hubs across the country and it is crucial that we deliver really well in the selected local authorities, so we will be building on the evidence and learning from this investment to improve services across the country.

Baroness Garden of Frognal (LD): Following on from the right reverend Prelate's Question, the commissioner highlighted that nearly all the children her team helps have significant mental health issues and struggle to access timely and consistent support from CAMHS, so will the Government seriously tackle better access to mental health services as a priority to prevent these problems escalating?

Baroness Barran (Con): A significant part of the investment we are making in family hubs and the Start for Life programme is specifically related to mental health. Some £100 million of the almost £302 million is for parent-infant mental health support, starting at the earliest possible opportunity.

Baroness Armstrong of Hill Top (Lab): My Lords, I know the Minister understands that the intervention and support of kinship carers is essential for many of the most vulnerable children and their families. There were some significant indications of the support that kinship carers need in the Josh MacAlister review earlier this year. Can the Government confirm that they will bring in measures to better support kinship carers, so that families really can care for the most vulnerable?

Baroness Barran (Con): More than 150,000 children live in kinship care, so the noble Baroness raises an incredibly important point. The Government recognise the need to support kinship carers more, and we have made early progress. We have invested £2 million to develop 100 kinship peer support groups for kinship carers; this summer, we set up the first dedicated policy team in the department focused on kinship care; and obviously, we will be responding to Josh MacAlister's recommendations on that point.

Lord Bird (CB): Will the Government be looking at the full costs of knocking £50 billion out of the social economy when we move into this period of austerity? Removing £50 billion could well cause hundreds of billions of pounds-worth of damage, especially to our families.

Baroness Barran (Con): The noble Lord raises a much broader point. Bringing it back to the review, the Government are very excited about and look forward to the second stage of the Children's Commissioner's review on the protective effect that families can offer.

Baroness Chapman of Darlington (Lab): My Lords, Dame Rachel de Souza's report makes the very valuable point that family policy should not be restricted to any one department or policy area. What are the Government doing to ensure different departments and teams are incentivised to break down silos between them—including local government—so that we can spread awareness of the support available to families and make it far easier for families themselves to navigate?

Baroness Barran (Con): Government departments already work very collaboratively in this area—my own department works closely with both the Department for Work and Pensions and the Department of Health and Social Care. The real way that we want to deliver for families is by listening to the recommendations from the Children's Commissioner and making sure that our policy is led by that vision of a family test and its protective effect.

Lord Kamall (Con): My Lords, does my noble friend the Minister acknowledge that the state cannot do all of this itself? It needs to work not only across government departments but with civil society organisations, particularly neighbourhood civil society. Can she enlighten us on some of the work that her department is doing with local civil society?

Baroness Barran (Con): My noble friend makes a very important point. Dame Rachel points out in her report that 11% of families in need turn to council services, but almost the same number—10%—turn to the exactly sorts of community services that my noble friend refers to. I know that the majority of the work to support them is done through DCMS, but my department is very much aware of their work and grateful to them for it.

Baroness Chapman of Darlington (Lab): My Lords, another of the findings from Dame Rachel de Souza's report was that the most common worries for families were financial, due to the increase in the cost of living and particularly the cost of childcare. If we ever want to achieve sustainable growth in this country, we must prioritise a complete overhaul of the childcare system to make it affordable, high-quality and easier for people to navigate. What can the Government do to help?

Baroness Barran (Con): The noble Baroness will be aware that the Government are committed to improving parents' access to affordable and flexible childcare. We will set out these plans in more detail in due course.

Baroness McIntosh of Pickering (Con): My Lords, I am a patron of the National Association of Child Contact Centres. Will my noble friend give a big shout out for child contact centres, which play a phenomenal role, relying primarily on volunteers to run them? Cafcass used to provide the service, and the NACCC has not received any money since September, which is obviously putting it in dire straits. Could my noble friend use her good offices to intervene on its behalf?

Baroness Barran (Con): I will certainly take the point that my noble friend has raised back to the department. I am delighted to express my support for the incredibly important, difficult and sensitive work that child contact centres carry out.

Baroness McIntosh of Hudnall (Lab): To take the Minister back to the answer she gave on the subject of mental health services, particularly for young people, she will be aware that the real difficulty in providing those services is that there is an insufficiently large workforce. There are simply not enough professionally qualified people to deliver the kinds of services that young people very badly need. In what way are the various funds that the Minister has referred to going to help with that problem?

Baroness Barran (Con): The noble Baroness makes a fair point, and I am happy to write to her setting out in more detail the Government's strategy on expanding the workforce. She will appreciate that this falls more within the Department of Health workforce strategy, but I am happy to expand on that. Also, there are a number of very sophisticated and helpful digital applications that can help support young people in addressing the mental health challenges they face.

Greenhouse Gas Emissions: Developed Countries

Question

3 pm

Asked by ***Baroness Sheehan***

To ask His Majesty's Government, further to the recent flooding in Pakistan, what steps they are taking as president of COP26 (1) to acknowledge, and (2) to address, the effects of greenhouse gas emissions by developed countries.

The Minister of State, Cabinet Office (Baroness Neville-Rolfe) (Con): First, I express my heartfelt sadness at the horrifying events resulting from the flooding in Pakistan. The UK has committed £26.5 million in humanitarian funding to help support the people of Pakistan as they rebuild from this terrible event. At COP 26, parties recognised that loss and damage are already impacting lives and livelihoods and agreed to scale up support to address this issue. An agenda has now been agreed for COP 27 this week and next, with a specific item on loss and damage. New news today is that the UK Government will commit to triple funding for climate adaptation, up from £500 million in 2019 to £1.5 billion in 2025, which will of course help countries such as Pakistan and Somalia.

Baroness Sheehan (LD): I thank the Minister for her Answer. The World Meteorological Organization reports that greenhouse gas emissions are at historic highs, with a worrying, unexplained spike in methane—a greenhouse gas which is 20 times more potent than carbon dioxide. Countries such as Pakistan, those of east Africa and low-lying island states are responsible for a minuscule amount of current emissions and practically none of the historical emissions, yet they are in the front line of the extreme weather events that are a direct consequence of those emissions. First, now that the Prime Minister is going to COP 27, will the Minister urge him personally to intervene and make sure that the loss and damage agenda sees some progress there? Secondly, does she regret that we have missed our own target for the Green Climate Fund this year by $288 million?

Baroness Neville-Rolfe (Con): The good news is that the Prime Minister is at COP 27 today. He has been speaking and will make announcements, one of which I have just mentioned. While I cannot go into the detail of what kind of negotiations will go on on loss and damage, we have announced funding of £5 million for the Santiago network as a demonstration of our commitment to this issue. The points the noble Baroness makes about the particular circumstances of Pakistan are interesting ones which I will take away.

Lord Howell of Guildford (Con): The Pakistan situation is clearly appalling. However, would my noble friend agree that at COP 27, rather than concentrating solely on reaffirming targets, which, frankly, may never be met, or loss and damage grants, which may never be decided, let alone paid, and while emissions worldwide continue to rise very rapidly, there is a much stronger case for focusing on innovative new world schemes for extracting carbon out of the atmosphere and absorbing it directly? Will she reassure us that the UK Government will look at these new schemes and take the lead where they can in a full and constructive way?

Baroness Neville-Rolfe (Con): I thank my noble friend for his constructive suggestion. I believe in the power of technology. The point he makes about carbon capture and storage is absolutely on the money. We have seen leaps forward which have helped us with tackling climate change on everything from electric vehicles to wind turbines, solar power, LED lighting, hydrogen and new nuclear. Carbon capture and storage are in the same category. Areas like these are where businesses can come together with Governments to innovate, drive things forward and then get them copied in lots of different countries around the world. Climate change is an international phenomenon; sadly, carbon and greenhouse gas emissions have no borders.

Baroness Boycott (CB): My Lords, last week we had a briefing from the President of the Maldives. He pointed out that, of the 100% of GDP, they spend 30% on adaptation due to the fact that the islands are being trashed by hurricanes and sea-level rises, and they are spending a further 25% on debt relief—the debt that they incurred in building infrastructure, roads and hospitals, which are now being washed away by the climate crisis. Do the Government think that there is any value in trying to work towards debt relief for nations such as this, given that the international community cannot yet come up with the £100 billion that we agreed last year in Glasgow for situations just like this?

Baroness Neville-Rolfe (Con): We are open to innovative solutions. This is another one that has come forward from the Maldives, which I have only just heard about. It is obviously right that hurricanes and monsoons and things make it difficult for countries such as the Maldives and other small islands to deal with their debts; in any financing, we would need to make sure that the result helped with climate change alleviation, but I am very happy to learn more.

Lord Anderson of Swansea (Lab): My Lords, the Question points the finger of blame solely at developed countries. Does the Minister agree that it is not just developed countries, but also countries such as China and India, whose leaders have failed to attend the conference at Sharm el-Sheikh? Does the fact of their non-attendance suggest a lack of commitment and engagement on their part?

Baroness Neville-Rolfe (Con): The attendance of the UK delegation—which includes the Prime Minister, the Foreign Secretary, the Environment Secretary, my noble friend Lord Goldsmith from our House, Graham Stuart MP, and, indeed, a former Prime Minister, Boris Johnson—shows the seriousness of this matter. To be fair, we have these big COPs, as we had in 2015 and as we were honoured to chair last year, and not all world leaders go to every COP every year. Of course, if action on climate change is going to work—for exactly the reasons that I have already articulated, in terms of there being no borders for greenhouse gas emissions—it

[Baroness Neville-Rolfe]
is absolutely essential that China, India and other big emitters step up to the plate and deliver on what they have promised and, indeed, even more.

Lord Collins of Highbury (Lab): My Lords, the Minister mentioned Boris Johnson. What has happened to Britain's global leadership since Glasgow? Boris Johnson said today that he is there in a purely supportive role, but he also said that Britain should not pay reparations for climate change. This was in complete contradiction to the Prime Minister's announcement today that we should enter into discussions about this question. Can the Minister tell us what the Prime Minister needs to do to make sure that his words are credible?

Baroness Neville-Rolfe (Con): I do not like the direction of that question. However, we have encouraged discussion on loss and damage. Obviously, the Labour Party has come out with a big initiative on reparations—which is not funded—and it is very important that we join in the discussion of loss and damage to try to find a joined-up way forward, with support from around the world. The whole problem about climate change, as I have said in the House so often, is that it is an international challenge as well as a domestic challenge.

Baroness Bennett of Manor Castle (GP): My Lords, following on from the question on loss and damage, the Minister said that it was really important that there is discussion. Have we not utterly arrived at the time when we need action, given that loss and damage was kicked into the long grass, taken out of the Glasgow climate pact and put into the Glasgow dialogue instead? Denmark has promised loss and damage money; Scotland has promised loss and damage money; and the Belgian region of Wallonia has promised loss and damage money. If the Government want to be world-leading, when are we going from discussion to actual action and a promise of money? It is not the same thing as adaptation finance.

Baroness Neville-Rolfe (Con): In my experience, you can only get action, especially in an international context, if you have constructive discussion. In terms of our contribution, the UK spent £2.4 billion on our international climate finance between 2016 and 2020 on adaptation and investment in areas that needed to address loss and damage. The Scottish Government fund is £2 million.

Lord Purvis of Tweed (LD): My Lords, there is no point in offering the least-developed countries support for loss and damage if our Government are removing funding from other areas of that community. For all the figures that the Minister has stated today from the Dispatch Box, how much is new money and how much of it is simply reallocated from the arbitrary cap of 0.5%?

Baroness Neville-Rolfe (Con): We made very generous commitments to funding on climate change last year. We are sticking to those; the Prime Minister made it clear on the steps of Downing Street that he regarded protecting the environment as very important. Sometimes you change the priority which you give to different aspects of the climate change matter, but that is the way to move forward and do things better, and the announcements that have been made today are directed exactly at that. I am delighted at the progress that is being made today, but the question is whether the discussions will deliver what we want over the next two weeks. We look forward to reporting on that when COP 27 ends.

Education Technology: Oak National Academy

Question

3.11 pm

Asked by ***Lord Vaizey of Didcot***

To ask His Majesty's Government what assessment they have made of the impact of funding for Oak National Academy on the education technology market in England.

The Parliamentary Under-Secretary of State, Department for Education (Baroness Barran) (Con): My Lords, as an integral part of the process to set up Oak National Academy as an arm's-length body, the department produced a business case which passed internal government clearances. It included an assessment of the potential market impact and was published by the Government on 1 November of this year. Monitoring market impact will be a priority throughout Oak National Academy's lifetime and will be factored into its ongoing evaluation and two-year review.

Lord Vaizey of Didcot (Con): My Lords, I refer to my entry in the register of Members' interests, in particular my work with ScaleUp Capital and Perlego. Fifteen years ago, the BBC decided to provide free education material to schools but, quite rightly, the BBC's regulator, the BBC Trust, closed it down as an unacceptable market intervention. Given that the creation of the Oak National Academy is opposed by publishers, multi-academy trusts, the educational technology sector and even the teaching unions, can my noble friend tell me why the Government have decided to nationalise the education technology and publishing sector? Can she tell me why they have decided to spend £45 million on a quango employing 80 people that nobody wants? In short, can she explain why the Government want to be the BBC?

Baroness Barran (Con): It is tempting to try to answer the last part of my noble friend's question but I will resist. I would like to set the record straight. My noble friend suggests that nobody supports Oak National Academy and that MATs were resistant to it. That is not an accurate representation of the facts. There are two big reasons why we think this is important. First, we know that our teachers spend a lot of time preparing curriculum, and we want to reduce their workload and the burden that they face to allow them to focus on their pupils. Secondly, we are clear that the quality of the curriculum can still be further improved, and Oak is one simple way of doing that.

Lord Knight of Weymouth (Lab): My Lords, I refer your Lordships to my interests in the register, particularly as a member of the board at Century Tech. The Government are splurging £43 million on Oak, which is used by only just over 5% of England's teachers but which allows Ministers, in the words of Jon Coles, the chief executive of one of the largest MATs, to promote their own preferred curriculum model. I now regularly hear from private equity investors that they are put off investing in education resources in this country because of the distortion caused by the Government clumsily entering the market at scale. Please can the noble Baroness tell the House what competitor analysis the department has undergone and why it thinks this significant investment will aid growth and choice for teachers?

Baroness Barran (Con): I have to say it sticks in my throat to have private equity investors who are responsible for considerable distortions in the children's home market lecturing the Government on distortions in the edtech market. More importantly, the Government are not distorting the curriculum. The Government are striving—I know that the noble Lord knows that this is true—to have the best curriculum for children. We know that teachers will make the best judgment on what curriculum their students need. That is why, apart from the curriculum from Oak's own partners, which will be on the platform, it will also showcase more than 80 other curriculum models for providers so that teachers can make those comparisons.

Baroness Blower (Lab): My Lords, however good the materials from the Oak Academy may be, I was very pleased to hear what the Minister said about other materials. I would like her to reassure the House that there is no intention, and never will be, that Oak Academy materials will become mandatory in schools, or even be perceived as required on the basis of support for those materials from Ofsted, to the exclusion of other curriculum materials and pedagogical style.

Baroness Barran (Con): I am delighted to be able to reassure the noble Baroness that Oak will never be mandated; it is an optional resource for teachers.

Lord Addington (LD): My Lords, I remind the House of my registered interests. Will the Government assure us that if we are using this to support teachers, it will be an example of the style of help that can be used in areas such as better education around special educational needs? If so, when will we get an idea of how this will fit in—possibly through the reaction to the review, for which we are all waiting?

Baroness Barran (Con): The procurement of materials for key stages 1 to 4 is largely discrete from the review. Oak will be providing resources only for key stages 1 to 4, and only digital resources. That procurement has just gone out, and we will wait to see what is delivered as a result.

Baroness Hooper (Con): My Lords, I declare an interest as the honorary president of BESA, the British Educational Suppliers Association, whose members have grave concerns about the Oak proposals, and who are mainly highly motivated and innovative small and medium-sized enterprises. Has my noble friend had time to read today's *Times Educational Supplement*, which points out that four out of 10 of all lessons on Oak started by pupils are not finished, with the worst take-up in disadvantaged areas? Can she comment on that? Could not the funding allocated to Oak be better spent working with tools on solutions that they know work best for their pupils?

Baroness Barran (Con): I will look at the numbers to which my noble friend refers. I wonder whether she is referring to lessons delivered by Oak during the pandemic, when they were online and children were working from home. Obviously, the resources that the department is funding Oak to develop in future will be for teachers to deliver in the classroom—although it also provides a back-up and support in the event, God forbid, of another pandemic.

Lord Scriven (LD): My Lords, following on from the question of the noble Baroness and her mention of the *Times Educational Supplement* article, the analysis also shows no clear trend between Oak usage and a school's Ofsted rating in schools overall. Therefore, why is this investment being made if it is not improving Ofsted ratings and school performance?

Baroness Barran (Con): These are very early days; this is strategic investment for the next many years. I challenge the House to think of the questions it would be posing to the department if we were not investing in digital resources for children.

Baroness Chapman of Darlington (Lab): My Lords, first, I welcome and associate myself with the Minister's comments about private children's homes.

It has been reported that Oak National Academy is considering allowing private companies to sell its lessons on for profit. I remember that, when it was first set up, it was envisaged that no individual would be able to profit from the activities of the new body. However, now facing legal challenge, the Department for Education has add to row back on geoblocking Oak outside the UK and make users aware that alternatives are available. Can the Minister update the House on this ongoing legal challenge and her department's progress towards establishing the promised "thriving commercial market" for Oak National Academy?

Baroness Barran (Con): In relation to geoblocking, Oak will not be internationalising its content; materials will be geoblocked. The noble Baroness is right that the department has received a challenge from BESA and the Publishers Association. We have responded to their recent concerns about the future operations of the ALB and we are looking at all the different models of licensing going forward. I am happy to update the noble Baroness in due course when those are decided.

Baroness Evans of Bowes Park (Con): Is my noble friend aware of the results of a recent report that found that, notwithstanding the concerns raised by noble Lords, the Oak Academy had a positive impact

[Baroness Evans of Bowes Park]
on the workload of teachers using its resources, saving nearly half of them three hours a week, the equivalent of three weeks during a school year? Will my noble friend and her fellow Ministers continue to champion a range of ways to improve educational access and resources for schools, because this immeasurably helps reduce the burden of our hardworking teachers?

Baroness Barran (Con): I agree entirely with my noble friend. She is absolutely right that almost half of teachers who used Oak reduced their workload by three hours a week. She is also right, and I reiterate, that we trust teachers and that the department supports them to have a choice of materials that they use.

Trading Relations: USA, EU and China

Question

3.21 pm

Asked by ***Lord McNicol of West Kilbride***

To ask His Majesty's Government which of the world's three largest economies—the United States of America, the European Union, and China—they will prioritise in seeking to improve trading relations.

Viscount Younger of Leckie (Con): My Lords, we are engaging with all three trading partners to remove trade barriers. In the year ending June 2022, the US was our largest single trading partner, accounting for 16% of total UK trade, worth £234.7 billion. In this period, the EU remained our largest trading partner overall. We exported goods and services worth £298.1 billion, which is 42.9% of our total trade. China was our fourth largest single trading partner, with £92.9 billion of bilateral trade, which is 6.3% of total UK trade.

Lord McNicol of West Kilbride (Lab): My Lords, I thank the Minister for that Answer. Given that trade with the EU makes up around half our imports and exports, it is vital that FTAs with larger non-EU markets, such as the US, China and India, are advantageous to the UK economy. In recent departmental questions in the other place, Ministers seemed unable to put an estimated net value to any future trade deals that the Government are pursuing, including CPTPP. Is this because the estimates do not exist or because the Government are unwilling to share them? Will the Minister therefore provide an estimate of net values to the UK of trade agreements currently being negotiated, either now or in writing if he does not have the figures at his fingertips?

Viscount Younger of Leckie (Con): I certainly will. I will read *Hansard* tomorrow, in terms of what I am about to say. We have agreed trade deals with 71 countries, plus the EU—partners that accounted for £814 billion of UK bilateral trade in 2021. As the noble Lord will know, we have signed FTAs with Australia and New Zealand and a digital economy agreement with Singapore. We have in progress India—a long way to go—Greenland, Canada, Mexico, the Gulf Cooperation Council and Israel.

Lord Alton of Liverpool (CB): My Lords, what does the noble Viscount say about having a trade deficit with the People's Republic of China of some £40 billion, when China is upgraded by the Government themselves as being a threat to the security interests of the United Kingdom, and about spending some £10 billion—the size of our entire overseas aid and development budget—on items associated with Covid, not least 1 billion lateral flow tests, bought from the People's Republic of China? Is it not time that we increased our own manufacturing capacity to ensure that such items could be made in the United Kingdom by British workers? Surely we must see that the lack of resilience and too much dependency at a time like this, given what has happened with Ukraine and Russia, is not something that this country should follow.

Viscount Younger of Leckie (Con): I always listen carefully to the noble Lord. He makes some good points. I start by saying that 61,000 jobs in this country are reliant on Chinese companies. However, human rights are a major issue; I hope that chimes with the remarks made on many occasions in this Chamber in providing evidence of the extent of China's efforts to silence and repress the Uighurs and other minorities. It is important that we create a balance between continuing trade with China and the fact that we are not looking at forming an FTA with China at present.

Lord Purvis of Tweed (LD): My Lords, we were promised that there would be no friction in our trade with Europe. There is enormous friction. We were also promised by now a full FTA with America that would mop up any slack in our trading relations with Europe. That has not happened. As the noble Lord, Lord Alton, said, we now have the largest trade deficit in our nation's history with one country—China—making up £40.5 billion. Is it not now in our strategic interest to reduce the barriers between us and our nearest neighbours—democratic countries—and to make sure that our economy is no longer wholly dependent on imports of goods from China? Why are the Conservative Government making the UK dependent on goods from China?

Viscount Younger of Leckie (Con): I do not believe that we are doing that. On the noble Lord's points, I say that our free trade agreement negotiations with the US—it is, as we know, a very important market—are paused at the moment for reasons he will know. On the EU, we know that progress is being made. Obviously, some extremely difficult and sensitive negotiations are ongoing, but we are firmly of the belief that we will be able to resolve these.

Lord Hannan of Kingsclere (Con): My Lords, with all the talk about deficits and the mercantilist mood in the House, will my noble friend the Minister take this opportunity to remind the House that imports are a prize, not a concession, and bring prices down—especially for people on low incomes? As Adam Smith pointed out as long ago as 1776, there is no point in amassing great surpluses except in so far as they pay for imports. Would it not be a good thing if we cut some of our own tariffs unliterally to stimulate this process further and grow our economy?

Viscount Younger of Leckie (Con): Well, it is imports versus exports. My noble friend makes a good point: the Government's vision is to create a UK that trades its way to prosperity. We will achieve this by championing free and fair trade multilaterally, plurilaterally and bilaterally through engagement at the WTO, our free trade agreements and our bilateral market access work. As I said, this allows us also to export using our great skills in services, digital, science, technology and advanced manufacturing.

Lord Hannay of Chiswick (CB): My Lords, the Minister says that an agreement with India is some way away, just 10 days after the target date for completing the negotiations. Can he explain why that target date was not met?

Viscount Younger of Leckie (Con): I understand that the target date tied in with Diwali rather neatly, but I am sure that the noble Lord, with all his experience, will tell me that it is right to have a date that people can work towards. India is a huge prize for this country. It is a dynamic, fast-growing trade partner and offers a terrific opportunity to deepen our already strong relationship, which was worth £29.6 billion in the four quarters to the end of quarter 2 in 2022. However, there is a lot of work to be done on this deal. It is right to have a deadline but we certainly need to work hard on the deal.

Lord Rooker (Lab): Can the Minister give any details of work that the Government have undertaken, or ensured that others undertake, to ensure that no products coming into this country from China contain cotton grown in Xinjiang? During our debates earlier in the year, two Ministers stood at that Dispatch Box and agreed to check products containing cotton, such as mattresses and nurses' uniforms, to see whether the cotton was grown in Xinjiang. You can do that from the product. What have the Government done about that, because they have never reported any results?

Viscount Younger of Leckie (Con): The noble Lord makes a good point. The Government are committed to tackling Uighur forced labour in our supply chains and are taking robust action. Over the past year, we have introduced new guidance on the risks of doing business in Xinjiang, introduced enhanced export controls and announced the introduction of financial penalties under the Modern Slavery Act. These followed the Government's announcement in September 2020 of an ambitious package of changes to the Modern Slavery Act.

Viscount Waverley (CB): My Lords, will easing border formalities be in the sights of the Government? They serve as a major barrier to trade, particularly in relation to the European Union. While the sentiment behind the Question is clearly understood, does the Minister equally recognise that emerging markets present great opportunities for British companies and government? What strategy is there to persevere with those opportunities?

Viscount Younger of Leckie (Con): I mentioned earlier a number of countries that we are actively in discussion with. However, we also have 32 hard-working trade envoys covering even more countries. Now that we are outside the EU, our aim is to reach out wherever we can. We cannot do it all at the same time but, wherever and whenever we can, we aim to agree deals with as many countries as we can that are in our best interests.

Lord Razzall (LD): My Lords, will the Minister not accept that it is misleading the House, and his headquarters is misleading the country in its leaflets, to say that the Government have signed 71 new trades when the only two new deals have been with Australia and New Zealand? In the other 69, "the EU" has been Snopaked out and replaced with "the UK".

Viscount Younger of Leckie (Con): No, it is right that we say that we have agreed trade deals with 71 countries plus the EU. That is a fact, that is what I meant to say and that is what I will stick by.

Online Safety Bill

Private Notice Question

3.32 pm

Asked by ***Baroness Kidron***

To ask His Majesty's Government, in light of the *Prevention of Future Deaths Report* published at the conclusion of the Molly Russell inquest, what plans they have to bring forward the Online Safety Bill in sufficient time to ensure its passage during this parliamentary Session.

Baroness Kidron (CB): My Lords, in begging leave to ask the Question of which I have given private notice, I declare my interests, particularly as founder and chair of 5Rights Foundation.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, the arrangement of parliamentary business is, as the noble Baroness will appreciate, a matter for business managers through the usual channels. However, the Bill remains a priority. The Secretary of State committed on 20 October to bringing it back to Parliament shortly. We will continue to work with noble Lords, Members in another place and others on the passage of this important legislation.

Baroness Kidron (CB): I thank the Minister for that reply and am happy to see him back in his place. However, after four years of waiting, I am afraid his Answer was not quite good enough.

Coroner Walker's landmark judgment that Molly Russell died after suffering negative effects of online content, and his *Prevention of Future Deaths Report*, deserve to be met with action. That action should be finally bringing forward the Online Safety Bill. Molly Russell died five years ago, the same five years in which we have been working on the Online Safety Bill, in the absence of which children suffer an aggressive bombardment of material that valorises self-harm, body dysmorphia, violent porn and, of course, suicide—

[Baroness Kidron]
real harms to real children. Does the Minister agree that it is time to stop this suffering and commit to bringing the Bill to this House before the end of this month, which is the date by which we have been told we need it to ensure correct scrutiny and its passage in this Session?

Lord Parkinson of Whitley Bay (Con): My Lords, this important legislation has indeed been a long time coming. I was a special adviser in the Home Office when it was first proposed and was in Downing Street when it was first put in the Conservative manifesto in 2017. Like the noble Baroness, I am very keen to see it in your Lordships' House so that it can be properly scrutinised, so that we can deliver the protections that we all want to see for children and vulnerable people. The noble Baroness is tireless in her defence of these people. She served excellently on the Joint Committee, which has already looked at the Bill. Like her, I am very keen to get it before your Lordships' House so that we can continue.

Lord Vaizey of Didcot (Con): My Lords, I register an interest as an adviser to Common Sense Media. I am delighted to see my noble friend the Minister in his place, although I am sad to see that his predecessor has lost his place. Anyway, he is in and he is out.

I regard the Online Safety Bill as the end of the beginning, not the beginning of the end. Mindful that the excellent chair of Ofcom is in the Chamber, I say this: is it not time to get on, expedite the Bill and allow Ofcom, finally, to start to regulate these platforms and social media sites? We have seen Elon Musk taking over Twitter—we need some action now. The Bill is effectively being scrutinised in the other place, and it is ready to come here. Let us get on with it.

Lord Parkinson of Whitley Bay (Con): My noble friend is right to point to the noble Lord, Lord Grade of Yarmouth, as one of many voices in your Lordships' House who will help us in the important scrutiny of this Bill. We are very keen for that to take place. Of course, the other place has to finish its scrutiny before this happens. Once it has done that, we can debate it here.

Lord Knight of Weymouth (Lab): My Lords, business managers will be listening. I hope they will make sure that we are given sufficient time in this House to give proper scrutiny to a highly complex Bill.

If part of the compromises that may have been made in the department are to remove aspects of the Bill, particularly around "legal but harmful", could the Minister also consider—and have conversations across government—about finding time in a subsequent legislative Session for us to finish the job if the Bill that he brings to this House does not do a proper job?

Lord Parkinson of Whitley Bay (Con): Regarding future legislative Sessions, I will restrict myself to the debate on the current one. The noble Lord is right: the business managers will have heard how anxious your Lordships' House is to see the Bill and begin its scrutiny. The decision will be communicated in the usual way.

Baroness Boycott (CB): My Lords, can the Minister assure the House that he, the Minister here and the Minister in the other place, will take advice from all the NGOs and other expert groups that have been working on this crucial issue for so long?

Lord Parkinson of Whitley Bay (Con): I absolutely can. Ministers have had meetings with such groups and officials have continued to have those meetings, even with the change of Ministers in recent weeks. These have informed the scrutiny and improvement of the Bill to date.

Lord McNally (LD): My Lords, when I sat on the Puttnam commission 20 years ago, there was some excuse for not taking action for the real harms being caused on the internet. There is no such excuse now, as has been indicated. This House and the other place have been working on this for five years. The regulators are very well tooled up and ready to move. It is inexcusable, and there will be no excuse for leaving things undone due to backroom deals at the last minute. I do not doubt the Minister's integrity on this but there must be no deals by No. 10 to weaken the Bill at this point; there is too much at stake. I do not think the Government will be forgiven if they renege on past promises to deliver a Bill worthy of the challenges that we are facing.

Lord Parkinson of Whitley Bay (Con): The noble Lord is quite right. Members of your Lordships' House and another place will be vigilant. The Bill is being laid before Parliament so that noble Lords and Members in another place can see what is being proposed and inform the debate on it.

Lord Cormack (Con): My Lords, does my noble friend agree that the tragic inquest on Molly Russell illustrated that the greatest crime of the 21st century has been the progressive destruction of childhood innocence? Will he therefore talk to business managers to ensure that a carry-over into the next Session happens if it is necessary? As the noble Lord, Lord Knight, said, we must get the Bill on to the statute book after thorough scrutiny in your Lordships' House.

Lord Parkinson of Whitley Bay (Con): The inquest into the heartbreaking death of Molly Russell highlights the importance of holding technology companies to account to keep their users, particularly children, safe online. That is why we are bringing forward the Online Safety Bill, why the strongest protections in the Bill are for children and why I look forward to debating it in your Lordships' House.

Baroness Merron (Lab): My Lords, I welcome the Minister back to the Front Bench. His former boss, Theresa May, launched the online harms agenda, which we on these Benches supported. Yet, three Prime Ministers later, we are still waiting for this crucial legislation to reach your Lordships' House. Other noble Lords have noted that the Bill must be completed in this Session, as it has already been carried over. If repeated delays mean that the Bill's passage conflicts with plans for winding up this Session, will the Government extend the Session to get the protections on to the statute book or simply drop the Bill?

Lord Parkinson of Whitley Bay (Con): I thank the noble Baroness for her words of welcome. She will appreciate that her final point is one for business managers rather than for me but I reiterate, having been there at the genesis of the discussions that led to the Bill, that I am very keen to see it in your Lordships' House and to give it that thorough scrutiny. It has already been well improved because of the work of the Joint Committee of both Houses, but it needs to come to your Lordships' House so that we can scrutinise it properly.

Baroness Fox of Buckley (Non-Afl): My Lords, the original aim of the Bill was to tackle harm to children, which we can all agree on, but it has expanded enormously and some say represents a real threat to freedom of speech for adults. Will the Minister ensure that he not only sees stakeholders working with those interested in online safety for children but meets free speech organisations and civil liberty campaigners to ensure the Bill does not become a legislative piece of censorship?

Lord Parkinson of Whitley Bay (Con): The Bill contains strong safeguards for freedom of expression. No platforms will be required to remove legal content and all services will need to have regard to freedom of expression when implementing their safety duties. Of course, although Ministers have met such groups throughout the passage of the Bill so far, I would be very happy to continue to do so to ensure that aspect of the Bill gets proper scrutiny too.

Lord Davies of Brixton (Lab): My Lords, as the noble Baroness mentioned, the Bill has been extended. One of the extensions was to financial harm caused online. Will the Government assure us that they remain committed to including strong measures on financial harm? This can hurt people as much as the other forms of harm that we find online.

Lord Parkinson of Whitley Bay (Con): The context shows the importance of preventing financial harm to people, particularly in the current economic climate. When the Bill comes forward from another place, it will be open to scrutiny by noble Lords on this aspect and many others.

Lord Harris of Haringey (Lab): My Lords, the Minister obviously has a very difficult brief to bring before your Lordships' House. He has barely opened his folder of notes during the course of this Question because all he is able to say is that it is a matter for the business managers, but is it not the case that this is a Bill about which there has been extensive consultation? There is very broad consensus. The only thing now holding it up is an internal row within the Conservative Party. It is not a question of waiting for the business managers. Could he tell his colleagues in the Conservative Party to stop arguing and enable the Bill to be brought forward?

Lord Parkinson of Whitley Bay (Con): The Bill is being scrutinised in another place by Members of Parliament from all parties. It is important that they complete that work before it comes to your Lordships' House, but it has benefited from pre-legislative scrutiny by the Joint Committee, which again drew on people from all parties and none. I am keen to see that scrutiny continue in your Lordships' House.

Lord Pannick (CB): Could the noble Lord suggest to business managers that if further time is required for the Bill and is not otherwise available, it would be available if the Government were to abandon the ridiculous plans to bring back the Bill of Rights Bill, which the Lord Chancellor appears keen on?

Lord Parkinson of Whitley Bay (Con): I will pass the noble Lord's message on to business managers, but he will understand that it is not for me to respond.

The Lord Bishop of Durham: My Lords, this seems a classic example of the people we want to protect not getting a voice. Five years' worth of children have been damaged because of the lack of this. Please can we and the business managers put the children first?

Lord Parkinson of Whitley Bay (Con): Your Lordships' House gives voice to those voiceless victims through the right reverend Prelate and, not least, the noble Baroness, Lady Kidron, who has rightly asked this Question today. I am keen for all those voices to be joined in the debate on the Bill as soon as possible.

Baroness Stowell of Beeston (Con): To go back to one of the earlier questions about financial harms, does my noble friend agree that one of the problems facing the Bill is the way in which things keep getting added to it? Once the Bill arrives in your Lordships' House—the sooner we can get on with scrutinising it, the better—it is important that we all remain self-disciplined, try not to add things to it and just focus on child safety.

Lord Parkinson of Whitley Bay (Con): My noble friend makes the sort of wise point that one would expect from a former Leader of your Lordships' House. I think that is the case with any Bill that comes before Parliament. With this one, which has benefited from pre-legislative scrutiny, Members of both Houses have been able to look at it and wider issues. I look forward to thorough but targeted debates when the Bill comes forward.

Lord Kamall (Con): My Lords, a number of noble Lords and I were fortunate to attend a round table organised by the noble Baroness, Lady Kidron, with some of the children's charities. What we heard there, even from my noble friend Lord Gilbert, who believes strongly in free speech, is that when it comes to child protection there really is no debate; there is consensus across the House. The real challenges are some of the harms that may conflict with free speech, for example, but also the issue of harms themselves. Clearly, some definitions of harm suggest that some harms may well be subjective rather than objective. How do my noble friend the Minister and his colleagues intend to deal with some of these subjective arguments over harms?

Lord Parkinson of Whitley Bay (Con): I pay tribute to my noble friend for his work on this Bill while in office. I saw him at this Dispatch Box answering questions that reflected your Lordships' eagerness to receive it and begin that scrutiny work. He is tempting me to stray into debates on the Bill itself, which we will have plenty of time for when it comes forward. As I say, the strongest protections in the Bill are for children and nothing in the Bill is designed to harm freedom of expression. The Bill holds those in balance, but I know that is one area that noble Lords will want to scrutinise during the Bill's passage.

Baroness McIntosh of Hudnall (Lab): My Lords, has the noble Lord, Lord Kamall, not precisely made the point by pointing out that what we need to do now is talk about the Bill? We are prevented from talking about the Bill for reasons that may be clear to a number of your Lordships but are certainly not clear to me. Is it not time that we get a chance to have the discussions implied in the question from the noble Lord, Lord Kamall? Although Molly Russell was the most—how can one say it? The noble Lord used the word "heartbreaking"—example put before us recently, there have been many others and there will be many more before the Bill gets on to the statute book.

Lord Parkinson of Whitley Bay (Con): The noble Baroness is right. There have been too many such cases, and we want to get this legislation on to the statute book to prevent as many of those preventable harms as we are able to. I too want to have that debate to continue the scrutiny in your Lordships' House, but it is important that the other place concludes that before we are able to do so. I hope that it will be engaged in that very swiftly and that the Bill will soon be before your Lordships.

Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022

Motion to Approve

3.48 pm

Moved by ***Lord Callanan***

That the draft Order laid before the House on 7 September be approved. *Considered in Grand Committee on 3 November*

Motion agreed.

Seafarers' Wages Bill [HL]

Third Reading

3.49 pm

Motion

Moved by ***Baroness Vere of Norbiton***

That the Bill do now pass.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, in moving that the Bill do now pass, I would like to reflect for a couple of minutes on the Bill and its passage. This legislation, although necessarily limited in scope, is a key part of the Government's nine-point plan to improve seafarer welfare and working conditions. The Bill delivers on the Government's commitment to ensure that employees with close ties to the UK are paid at least the equivalent of the national minimum wage while they are working in the UK or its territorial waters.

I reiterate the Government's intention to continue working closely with ports, the shipping sector and unions as the Bill continues its passage through the House of Commons and, crucially, as we develop secondary legislation. We are very grateful to stakeholders for their constructive engagement and interest in the legislation so far and are keen for this to continue.

I will also take this opportunity to clarify a point I made in Committee about seafarers servicing oil and gas platforms. I had previously stated that seafarers on services to offshore renewable energy installations were also covered by virtue of Article 2 of the National Minimum Wage (Offshore Employment) Order 1999. I would like to correct the record and confirm that they are not entitled to the national minimum wage under existing legislation but are considered to already be in scope of the Bill if calling at a UK port more than 120 times per year.

As ever, I thank the noble Lord, Lord Tunnicliffe, and the noble Baronesses, Lady Scott of Needham Market and Lady Randerson, for their constructive approach to each stage of this Bill and to all other noble Lords who contributed, many of whom brought deep and specific expertise. Last but definitely not least, I pay tribute to the work of the parliamentary counsel as well as the House staff, the Bill team, my excellent private office, and my noble friend Lord Younger for his support.

Lord Tunnicliffe (Lab): My Lords, I will comment briefly. The Bill is an important first step in the nine-point plan. I am very pleased that the Minister has reiterated her commitment to proceed on that plan; we all wait to see early progress. I will be studying the words relating to the clarification. I thank her and her support staff for the way that she has conducted the Bill. I do not have as many people to thank on my side, but I thank my adviser—who wrote some excellent speeches that the House heard—for supporting this work, and all noble Lords who took part.

Baroness Scott of Needham Market (LD): My Lords, we on these Benches are absolutely committed to the Government's aim of improving the pay and conditions of our seafarers. During the passage of the Bill, we heard some egregious examples which gave evidence as to why we need the Bill.

However, we do have concerns about the Bill that remain, falling broadly into two categories. One is the issue of compliance with international conventions, a number of which are potentially challenged by this legislation; the second is over issues around implementation and enforcement, which have been raised by the chambers of shipping, the British ports authorities and the trade unions. All of these have been thoroughly debated; although we continue to have reservations, we saw no point in bringing forward any amendments at Third Reading. I know that the Minister is committed to

dialogue with the stakeholders and, therefore, we still hope that some practical ways of dealing with some of these issues may yet emerge.

The general health of the shipping industry is addressed in the Government's nine- point plan. I was encouraged to hear the Minister on Report talking about the annual report prepared jointly with industry; we can all look forward to reading and potentially debating that. I thank the noble Baroness, Lady Randerson, who has been affected by the rail strikes today and is therefore not here, and the Liberal Democrat Whips' Office, as well as the Minister's private office and her team of civil servants for her constructive and always helpful engagement with us.

A privilege amendment was made.

3.54 pm

Bill passed and sent to the Commons.

Northern Ireland Protocol Bill

Committee (4th Day)

Relevant documents: 7th and 12th Reports from the Delegated Powers Committee, 6th Report from the Constitution Committee

3.55 pm

Clause 18: Other Ministerial powers

The Deputy Chairman of Committees (Lord Geddes) (Con): Before the noble Lord, Lord Purvis, moves his amendment, I advise the Committee that I will not be able to call Amendments 37 or 38 should Amendment 36 be agreed to.

Amendment 36

Moved by ***Lord Purvis of Tweed***

36: Clause 18, page 10, line 9, leave out subsection (1)

Member's explanatory statement

This amendment would remove the Minister's power to engage in any conduct in relation to any matter dealt with in the Northern Ireland Protocol, not otherwise authorised by this Act, if the Minister considers it appropriate to do so.

Lord Purvis of Tweed (LD): My Lords, I move Amendment 36. As with previous amendments of a similar character, I am grateful for the support of the noble and learned Lord, Lord Judge.

Clause 18 was neatly described by the former Treasury counsel Sir Jonathan Jones as the "do whatever you like" clause. It was unclear in Committee in the Commons what the Government's intention behind the clause was. Michael Ellis, the then Paymaster-General, said that the Government needed Clause 18, which is a power to give legal effect to a Minister's conduct in carrying out their duties. He said:

"It simply makes clear, as would normally be taken for granted, that Ministers will be acting lawfully when they go about their ministerial duties in support of this legislation."—[*Official Report*, Commons, 20/7/22; col. 1004.]

It is a great relief that we need a Minister to state that. It was quite telling that he said that they needed this power to make their conduct lawful, which would normally be taken for granted.

However, the seriousness is that there has been little explanation on what that "conduct" would be. The Government's delegated powers memorandum did not explain it. Perhaps that is because they consider this not to be delegated power. The Explanatory Memorandum did, however, give some examples, including issuing guidance. As Michael Ellis indicated, it would also be instructing civil servants. The concern is that we have many other examples where legislation frames the conduct of providing guidance. As the Hansard Society and the Delegated Powers and Regulatory Reform Committee have highlighted, this is one example of disguised legislation. Powers on providing guidance can, in effect, have legal effect. For example, my reading of this clause suggests that it is so broad that it would allow a Minister to issue guidance, which is non-statutory, but also issue instructions that that guidance needs to be followed—which, in effect, is statutory. I would be grateful if the Minister could confirm that that is not within the scope of this clause.

The Hansard Society has sought an exhaustive list of how conduct can be described. If we are to be avoiding hidden legislation, the Government need to be clear in what they seem to do. In the UK Internal Market Act, which has been referred to previously in Committee, I tried to find some equivalent—and there is some equivalent when it comes to the powers of Ministers to provide guidance. However, there are a number of subsections on that power which restrict the Minister's ability to provide that. Crucially, there is a statutory duty for Ministers to consult with those who would be in receipt of the guidance on the operation of the Act.

Finally, the DPRRC said:

"Despite its being highly unusual and its breadth, the exercise of the power in clause 18 will have no parliamentary oversight since it is subject to no parliamentary procedure."

Previously in Committee, the noble Lord, Lord Kerr, said that this is not what we do when it comes to breaking international law. This is not how we should be making laws—so broad, and with potentially few restrictions. The Minister simply says that this is about what they do already. If that is the case, why is it necessary? If it is necessary, what they intend to do with it should be spelled out exactly. I beg to move.

4 pm

Lord Judge (CB): My Lords, I just wonder what Clause 18 is supposed to mean. Does it really mean that the Minister of the Crown may do whatever he likes? Yes, it does; that was what we were discussing on Wednesday, when noble Lords and the Government listened to me. I had a dream over the weekend that the Minister today is going to get up and say, "Lord Judge, you were entirely right on Wednesday. We have changed our minds: we are going to put this Bill into proper shape".

Baroness McIntosh of Pickering (Con): My Lords, I take this opportunity to ask my noble friend the Minister what discussions there have been with the

[Baroness McIntosh of Pickering]
devolved Assemblies and Parliaments as to the process that will be used if these regulations are brought forward.

Baroness Altmann (Con): My Lords, I support Amendments 36 and 38 for the reasons that have been so eloquently set out already—I do not think that I need to repeat them. The idea that Parliament is passing a law to allow a Minister to do whatever he likes without coming back to Parliament seems to be quite breathtaking. That is nothing to do necessarily with Northern Ireland or Brexit; that is to do with our parliamentary democracy. On the question of whether Clause 18 should stand part of the Bill, I would certainly support its removal.

I confess that I find it difficult to accept that just changing "appropriate" to "necessary" will actually sort out the problem that is inherent in so many of the measures in this Bill, because a Minister could easily just say that they are doing it because they think it "necessary". Who is going to be able to challenge that? The law would still be changed.

I support the idea put forward by the noble Baronesses, Lady Ritchie and Lady Suttie, of at least having approval from the Northern Ireland Assembly. This would once again be an example of the British Government doing something with Northern Ireland, rather than to Northern Ireland—as the current wording would imply.

Baroness Ritchie of Downpatrick (Lab): My Lords, it is a pleasure to follow the noble Baroness, Lady Altmann, who highlights quite clearly the central proposition in Amendment 38, tabled in my name and that of the noble Baroness, Lady Suttie. It is about limiting the control of Ministers under the Bill by ensuring that the Northern Ireland Assembly is given necessary approval of the conduct in relation to the provisions within the Bill.

Amendment 38 seeks to amend Clause 18, "Other Ministerial powers", to ensure a limitation of delegated powers to Ministers—the very issue that was discussed by the Delegated Powers and Regulatory Reform Committee—and to ensure that

"the exercise of the Minister's power to engage in conduct in relation to any matter dealt with in the Northern Ireland Protocol that is not otherwise authorised by the Act to a motion approving the conduct in the Northern Ireland Assembly."

It throws up the accountability issues relating to the Northern Ireland Assembly—I hope that all the institutions will be up and running eventually—and would ensure that devolved regions and nations have particular control in relation to this issue.

It is worth noting that there were two important developments in the long road of the protocol. Today, the Prime Minister, Rishi Sunak, and the President of the European Commission, Ursula von der Leyen, met in the margins of the climate conference in Egypt and agreed to work together to end the turmoil in relation to the protocol. Also today, at the meeting of the UK-EU Parliamentary Partnership Assembly in this building, Vice-President Šefčovič said that if this Bill were to become law, the UK Government would put Northern Ireland's unique access to the EU market of 450 million customers at risk.

I again urge the Government to put this Bill into cold storage and ensure that there is renewed political vigour given to the negotiations. It is only through joint negotiations that all the issues around the protocol in relation to east-west issues and to trade between GB and Northern Ireland can be satisfactorily resolved to the benefit of all businesses and people in Northern Ireland.

Lord Pannick (CB): My Lords, when the purpose and the intended effect of a clause are unclear, it sometimes helps to look at the Explanatory Notes to the Bill. These are produced, of course, by the Government, and are designed to explain. But if we look at the Explanatory Notes to Clause 18, we see that the confusion and uncertainty are even more manifest.

Look at paragraphs 96 to 98 of the Explanatory Notes. Paragraph 96 tells us that:

"Clause 18 clarifies the relationship between powers provided by this Bill and those arising otherwise, including by virtue of the Royal Prerogative."

That is what Clause 18(2) says. Paragraph 97 deals specifically with Clause 18(1). It says:

"Subsection (1) provides that Ministers can engage in conduct (i.e."—

and I emphasise that it is "i.e." and not "e.g."—

"sub-legislative activity, such as producing guidance) relevant to the Northern Ireland Protocol if they consider it appropriate in connection with one or more of the purposes of this Bill."

If that is the intended purpose of Clause 18(1), why not say so? Why not limit the scope of Clause 18(1) specifically to say that Ministers can produce guidance? We could then have a debate about whether it is properly drafted, whether it is too broad or whether there should be some controls. I am afraid that what we find in Clause 18(1) bears no relationship whatever to what the Explanatory Notes tell us that Clause 18(1) is designed to achieve. My conclusion from that is that there must be real doubt here; that Ministers know what Clause 18(1) is designed to achieve and are reluctant to be specific because they do not want proper controls on the scope of their powers.

Lord Lisvane (CB): To follow the noble Lord, Lord Pannick, I wonder whether one route might be for the Minister to give us a glimpse behind the veil. What were the instructions given to parliamentary counsel? In other words, what were they asked to achieve by means of Clause 18(2)?

Baroness Suttie (LD): My Lords, I will speak in favour of Amendment 38, tabled by the noble Baroness, Lady Ritchie of Downpatrick, to which I have added my name.

My noble friend Lord Purvis of Tweed has already spelled out in great detail the potentially huge increase in power that Clause 18 could grant to a Minister of the Crown, and I believe that the noble Lord, Lord Pannick, has further explained the total lack of clarity as regards this clause.

I was reflecting on the many debates we had on this Bill last week and on the general and frankly astonishing lack of clarity from the Government as to why such sweeping powers should ever be deemed necessary—the

Rumsfeld "unknown unknowns" clauses, as my noble friend has coined them. Later this week, I believe we will be hearing a Statement from the Secretary of State for Northern Ireland on progress—or, indeed, lack of progress—in bringing back the Northern Ireland Assembly and a functioning Executive, and whether there will be elections imminently in Northern Ireland to overcome this impasse.

The Government and other noble Lords have stated that one of the Bill's main purposes was to deal with the understandable concerns of the unionist community, particularly the DUP, about the impact of the Northern Ireland protocol. One can hope that the talks taking place in Brussels and at the climate summit in Egypt will lead to genuine negotiations and a potential framework for agreement. It has also been stated that one of the Bill's purposes was to facilitate the DUP's return to the Northern Ireland Executive, yet it remains far from clear that passing this legislation in and of itself would achieve this. It is therefore increasingly hard to understand why we are pushing ahead with this very bad Bill, which sets so many dangerous precedents, if it does not, in itself, achieve even one of its so-called "main objectives"—namely, a much-needed return to a functioning Northern Ireland Assembly and Executive.

When the noble Lord, Lord Ahmad, replies to this group of amendments, I would be very grateful if he confirmed that re-establishing the Northern Ireland Executive remains one of the Bill's primary purposes. If it is, does he not agree that other much more productive approaches, such as genuine negotiations and a change of tone, could be taken that would achieve exactly the same goal, but more effectively?

Lord Cormack (Con): My Lords, here we are again. I could not disagree with anything that has been said by anyone who has spoken. I would like the Minister, for whom we all have real affection and high regard—

Lord Empey (UUP): Wait for it.

Lord Cormack (Con): Of course, everything is discerning and discriminating.

I would like the Minister to give us two reasons, or even one, why it is sensible to carry on with this Bill. We have heard today from the noble Baroness, Lady Ritchie, that sensible talks seem to be taking place on the fringes of the great COP meeting in Egypt and there are other signs of talking going on, so what is the point—I have used this expression before, and I make no apology for using it again—in Parliament putting government and negotiators into a straitjacket? It is just nonsensical. We all hope the negotiations will result in certain changes to the protocol, but why drive this Bill through at this very time?

The noble Baroness, Lady Suttie, talked about the DUP. I have always felt that it is bad to pay danegeld. That, really, is what is happening here, and it is mixed up with treaty obligations—I underline the word "obligations"—and with opportunities which many people in Northern Ireland wish to take advantage of, suitably amended.

We are on our fourth day of debate on this very bad and, in my view, wholly unnecessary Bill. Let us pause it. Let us watch the negotiations with—I hope—acclamation and welcome their results. Let us not waste parliamentary time on such a badly drafted Bill. As the noble Lord, Lord Pannick, reminded us, even the explanatory clauses do not explain it; they obfuscate and make it worse. Let us get on with some proper business and leave this rubbish in the heap where it should be.

4.15 pm

Lord Kerr of Kinlochard (CB): I have reached the same conclusion as the noble Lord, Lord Cormack, but via a slightly different route. I heard the noble Baroness and the noble Lord refer to talks proceeding amicably and constructively. The noble Lord, Lord Ahmad of Wimbledon, has regularly assured us from his own involvement in the talks that they are proceeding satisfactorily and are in no way being derailed by this Bill.

I am miles away from the action, of course—like the noble Lord, Lord Dodds of Duncairn, I would be very grateful if the Government could find the time to give us some reports on the talks from time to time—but I get a rather different impression of the view in Brussels. My impression is that there is not a great deal going on in these talks, and that the officials involved do not have the kind of instructions which give them discretion to do any negotiating. My impression is that British Ministers are not particularly hands-on, that they are not very closely involved in the talks and that, in fact, no real political input and impetus has been given as yet.

On the EU side, I think there is a natural tendency to wait and see whether the arrival of a new Government and a new Prime Minister in Britain will bring about any changes in the British position. The Commission has succeeded in persuading the member states that the CJEU cases against us can be left in limbo for the moment; a number of member states would have preferred to proceed to having these cases heard, but they stay in limbo and there seems to be a sort of consensus on that. But there is absolutely no pressure that I can detect among member states for any softening of Šefčovič's mandate or any change in the instructions he is getting, perhaps partly because they are waiting to see whether there is some change in the instructions our people have. I detect no sign of anybody believing that Šefčovič's instructions will change while the threat of this Bill hangs over the negotiations.

In my view—I repeat that I am miles away from the action, so I may be quite wrong—the only real debate among member states is whether contingency planning should be started on their side and whether it is this Bill reaching the statute book or actual use of the powers it contains that should trigger resort to action. The action would of course be the end of the talks and the necessary review of the terms of the trade and co-operation agreement. I think everybody believes that in Brussels. As the noble Earl, Lord Kinnoull, reminded us on our last day of Committee, we committed ourselves in the TCA to carrying out our obligations as in the withdrawal agreement, which include the protocol. So if we were to use the powers in this Bill or,

[LORD KERR OF KINLOCHARD]
as some say—I am among them—put this Bill on the statute book, we would be in breach of not just the withdrawal agreement but the TCA.

So I think the debate is about contingency planning for that eventuality, rather than for any change or softening of the EU position in the talks. Therefore, it seems to me, we should recognise that what we are doing here, if we were to pass this Bill, is setting ourselves up for a rather serious trade war with the EU and for the return of all the problems in Northern Ireland that will result from Northern Ireland no longer being a member of the single market. We will go back to a different form of frontier problem, from which the protocol was designed to have us escape.

So I reach exactly the same conclusion as did the noble Lord, Lord Cormack, but by a slightly different route. I do not think that the talks are going particularly well, and I hope that the noble Lord, Lord Ahmad, will act on the promise that he made on our last day in Committee to see if he could ensure that we receive progress reports on the talks. Though I am miles away from the action, it seems to me that, if we proceed with this Bill, we are heading straight into a thunderstorm that will sink the ship.

Baroness McIntosh of Pickering (Con): Before the noble Lord sits down, could he go one step further and ask my noble friend the Minister, in responding to this debate, to say whether he agrees with the analysis of the noble Lord, Lord Kerr, which I do, that we would be in breach not only of the withdrawal agreement but of the trade and co-operation agreement? It would be very good to get that on the record at this stage. Will he just go so far as to press the Minister, in summing up, to say whether he agrees with his analysis?

Lord Cormack (Con): He has done so.

Lord Empey (UUP): My Lords, Amendment 38, among others, refers to the role of the Northern Ireland Assembly in approving the conduct of Ministers. I suppose that a parallel would be a legislative consent Motion; it is the same kind of principle. It is good to hear that negotiations are taking place, but the people who are most directly affected not just by this legislation but by the protocol itself are excluded from this process. Noble Lords should bear in mind that, if a trader brings a vehicle into Northern Ireland from Great Britain, the first person whom that trader will deal with will be an employee of a Northern Ireland government department, responsible to a Northern Ireland Executive Minister.

The people who are the most directly affected and who have a direct responsibility for the implementation of any of these processes—that is, the politicians in Northern Ireland—are spectators in a matter that most directly affects them. Of course, it is a national issue and an international issue; but when you drill down, as Amendment 38 is attempting to do, the people with their hands on the problem on the day, every day, are out of the frame altogether.

Now I do not care what the issue is, but have we learned nothing in this place over the last 30 or 40 years? If you exclude people from something that directly affects them—and we had the Anglo-Irish process in the mid-1980s, when we followed the same principle that you negotiate over somebody's head and shove a piece of paper in front of them and say, "There you are: implement it"—it will not work.

Amendment 38 is just one example. Will the Minister ask his colleagues to engage the politicians in Stormont directly in this process? That could be part of a solution. When we were part of the EU, it was not unusual for Ministers from Westminster to include devolved Ministers with them in their delegations. That was quite a normal process. Can we not adapt that principle? One Minister said a week or two ago—he meant well, I have no doubt—"Leave it to us. We've got your back here. We'll look after it for you." I have to say, with the greatest respect, that our backs are so full of dagger holes that we know all about that. We will believe only what we see and hear ourselves. Bring our politicians into the picture; bring them to the table with you so they are not your enemy.

I accept, of course, that we are dealing with an international issue, and foreign affairs and related matters are not devolved—I get that. But have we not enough flexibility to bring people along as part of our delegation so that they can see persons and papers? We do not have to break any rules. What is so secret?

Before he left office, I asked the noble Lord, Lord Frost, who is in his place, a Question about all the committees that have been set up under the agreement and who populated them. I think he left office before he was able to reply to that Question, but who are they? I do not know who they are. Where are they? How many of these committees do we have? All I can tell you is that nobody of political significance in Belfast is engaged. It will not work—fix it. Let us make these discussions meaningful. Let us get the people who have to deliver what is agreed, at the table. We would never have got the Good Friday agreement had we not done that by bringing everybody in.

I have listened at some length to the arguments about the legality of the legislation and its role. I am not a lawyer, but I respectfully invite colleagues to review the evidence submitted to the Sub-Committee on the Protocol in Ireland/Northern Ireland by Professor Boyle and another colleague from the University of Cambridge on what they consider to be the legal position of this legislation. They came to the joint conclusion that the Article 16 process would have to be involved in order to make it legal. I do not know whether that is right or wrong, but I refer Members to that piece of evidence. The transcript is available, it was a public investigation by our committee, and I commend it to colleagues. I ask them to look at it and see what merit there is for us.

There is a solution here; we can find a way through this. However, I can tell colleagues from years of experience—other people in this Chamber can do the same—that, with the process that we have chosen to take, we are going about things the wrong way. I understand where the Government are coming from with the legislation, and I do not wish to see the UK Government's negotiating position weakened, but I want success. We are facing the worst crisis economically in many decades. Northern Ireland's community is facing increased costs,

in part as a result of the protocol, obviously we have the lowest levels of income, and we also have a different energy system to the rest of the United Kingdom.

Basically, our political class is out to lunch. We are not contributing anything to the solutions, because of the stand-off at Stormont. I do not want to see Sinn Féin's argument that Northern Ireland is a failed political entity justified, and that is the risk we are taking. My appeal to the Minister concerning any—indeed, all—of these amendments involving support and approval from the Northern Ireland Assembly is that one of the ways to get the Assembly going again is to engage the people who have to operate the outcome of the negotiations, so that they are part of the solution and have ownership of it.

4.30 pm

Because we in Northern Ireland are half in the EU and half out of it, there is no total solution to this; it is just a fact of life. It is a problem that is largely insoluble, but there are bits we can help with. Not only do we have to make the protocol less invasive but there has to be treaty change in the long term, because of the constitutional damage that has been done. That will take time, so we have a two-stage rocket here. We have short-term mitigations and long-term treaty change but, in the meantime, leaving Stormont as it is, history tells us, after the last number of decades—we have been through it all, and the noble Lord, Lord Kilclooney, and others were part of the process—that a vacuum is the worst possible thing we can leave in Belfast. It brings in all sorts of events that we cannot anticipate. It takes only one thing to go badly wrong.

I have to say to the Minister and His Majesty's Government about recent events that there does not appear to be any coherent strategy to deal with things, and that is what worries me more than anything else.

Lord Kilclooney (CB): Does the noble Lord accept that in Northern Ireland, when we have a democratic vacuum, the men of violence fill the gap? Is he aware that only last week, because there was a call from Dublin for joint authority in Northern Ireland—government by both Dublin and London—a bomb was planned to be planted in a government building in the Republic of Ireland, which was called off, hours before it was due to explode, only when the Government here announced that there would be no joint authority?

Lord Empey (UUP): The noble Lord is correct. I agree that history tells us that a vacuum will be filled, and it will not be filled by people who are committed to the democratic process. That is well established. There is no legitimacy for joint authority. The manifesto of the Government was clear in 2019 that it was explicitly excluded, although it was interesting that at this weekend's Sinn Féin conference, its plan B was specifically aimed at some form of jointery. That is why I say we can see where the road is leading us.

I come back to the Minister and ask him to prevail on his colleagues to open the door to the people of Northern Ireland and the elected Members, so that they can participate in the process of negotiations; they will not be sitting in the front row, but they can be in the room, they can be advising Ministers, they can be contributing and they can feed that back to their supporters. It will have a calming effect if they can see that, and if the people who have to implement the thing on the ground are part of the solution. Surely that makes common sense. What is the point of having devolution if the people who have responsibility for delivering parts of this are not even at the table?

Lord Dodds of Duncairn (DUP): My Lords, we have ranged once again, in a debate on one of the amendments, far and wide across the whole gamut of the protocol Bill and the protocol itself. In that context, I want to follow up on the speech of the noble Lord, Lord Kerr, who talked about the state of the negotiations, the technical talks, the discussions, the conversations or whatever they may be. As he rightly said, we are not au fait with the detail, and those of us whom the noble Lord, Lord Empey, referenced who deal with politics in Northern Ireland and represent people in Northern Ireland are not privy to the details either.

I think that it is correct, as the noble Lord, Lord Kerr said, that there appears to be no difference in the negotiating mandate of Commissioner Vice-President Šefčovič so far as the EU side of the negotiations is concerned. Indeed, that has been confirmed to me and, I am sure, to other noble Lords informally by people who are closer to the talks than many of us are. Of course, the Government's position has been set out in the Command Paper, published in July 2021, and in the Bill, but so long as the negotiating mandate of the European Union negotiator is not changed, there can be little prospect for any positive outcome from the discussions, certainly not in the short term.

We can all agree that we need to solve this problem, and there are only two ways that it can be solved. It is either by negotiation or by action on the part of His Majesty's Government. The danger of saying, "We're not going to get anywhere in the discussions and we should pull or pause the Bill" is in what happens in Northern Ireland. What happens to the Belfast agreement as amended by the St Andrews agreement? What happens to the institutions? I have heard very little reference thus far from noble Lords who do not have a direct connection with Northern Ireland about the implications on the political and peace process in Northern Ireland.

The longer we do not have any outcome from negotiations, and if nothing is happening on the Government's side on legislation, then the institutions will not be reformed, because there is not the basis for power sharing, when you have trashed one of the main strands of the agreement—strand 3, the east-west dimension—and when you have undermined the Northern Ireland Assembly through the removal of the cross-community consent principle. We have to address these matters.

While people may focus on what the outcome may be in terms of the withdrawal agreement and the trade and co-operation agreement—I entirely understand that—we also have to examine the implications on the Belfast agreement, on the St Andrews agreement, and on the peace and political process in Northern Ireland, which is in a very fragile state. The noble Lord, Lord Kilclooney, highlighted a recent example of where these things can go.

[Lord Dodds of Duncairn]

I urge your Lordships to examine and bear in mind the implications, if we do not get a negotiated outcome which is satisfactory. I share the analysis of noble Lord, Lord Kerr, that it does not look as if that is going to happen—certainly any time soon—and if we at the same time do not proceed with the Bill, where on earth does that leave the political process in Northern Ireland? It leaves it in a continuing state of limbo, which we have all agreed can be filled only by dangerous people—men of violence. We need to address these matters urgently.

Lord Kerr of Kinlochard (CB): May I clarify something? My position is that there will be no progress with these talks until there is the involvement of high-level politicians from this country. I remember in the 1990s the attempt to move Congress from its support of the wrong side—in the British Government's view—in Northern Ireland. I was ambassador and made a certain amount of progress, but the real progress was made only when Prime Minister Major and the then Minister of State, now the noble Marquess, Lord Lothian, took an active involvement in helping me to see the people one had to convince on the Hill. We need the involvement of senior British Ministers. I strongly agree with the noble Lord, Lord Empey, that we need the involvement of people from Northern Ireland. This must not be an agreement, if one is achieved, that is imposed on Northern Ireland. It has to be one that is owned by Northern Ireland.

However, my view is that there is no chance of persuading the Council of the European Union that it should modify Mr Šefčovič's mandate while technical talks are going nowhere and there are no signs of any movement, or even active involvement, by the highest levels of the British political establishment. I do not mean that I think the talks are bound to fail; I mean that, at present, they are not succeeding.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I maintained a Trappist silence throughout all the earlier debates on this Bill. I may be prominent among those wishing I had maintained it when I sit down in a moment or two because I recognise that I speak from a position of having less knowledge of the political and economic background to this debate than perhaps anybody else here—certainly less than anyone who has spoken.

What has driven me to my feet is what seems a striking absence of any reference to Article 16; again, we heard it in earlier debates but not today. To my mind—I speak in this respect simply as a lawyer—it is custom-built to meet any legitimate needs, which there are, to adapt processes in the Province today. What is required of the protocol by way of rewriting treaties is in doubt, but the protocol does not pre-empt the Belfast agreement obligations and commitments on all sides. On the contrary, Belfast is the primary one of these two treaties, which are enforceable under international law.

Those who know much more about this than I do emphasise—rightly, to my mind—the third strand of Belfast, which concerns east-west trade within the UK internal market. Far from the protocol pre-empting what we as the UK are entitled to insist on under the Belfast agreement, surely it accommodates the crucial argument—let the politicians in Northern Ireland make, refine, emphasise and urge this—that the regulatory controls that the EU currently exercises under the protocol, as well as the intensity of their policing, are in fact quite incompatible with its obligation to observe the Belfast agreement. You have only to look at the Belfast agreement to see that we, the UK, are duty bound to fight against the long-term alienation—I forget the precise language—of any community. We did it for the nationalists in respect of language in Northern Ireland. Now we owe the unionists some obligation to try to reinforce the critical importance of the east-west trade link here.

I therefore have no brief for this Bill. The unionists say, "You need this to get back into the Assembly". That is nonsense. They open their mouths far too wide but their legitimate interests should be—indeed, must be—protected. Do it under Article 16, which meets any imperative need of the day, and let the people of Northern Ireland specify precisely what is required by way of adapting the processes under the protocol. If there needs to be any adaptation of the language, let them deal with that too. As the noble Lord, Lord Howard, said in an earlier debate, do not be too theological about the language—just get the agreement to do what is necessary.

4.45 pm

Lord Lilley (Con): My Lords, this has been unusual in the debates that we have had so far in that far more has been said that I can agree with than that I disagree with. I even found myself agreeing with two-thirds of what the noble Lord, Lord Kerr, said, which is unusual. He is undoubtedly right that the negotiations cannot really be going as well as we would all like to hope, and as so many commentators and Ministers imply they are, as long as the EU has not been prepared to change its negotiating mandate. It will not allow a single jot or tittle of the protocol to be changed under its existing mandate, even though the protocol itself envisages the possibility of it being changed in part or in whole. That surely has to change. Maybe it has de facto; maybe the EU is agreeing to talk beyond its mandate. Let us hope that that is the case.

The disappointing aspect of the debates so far is that I have been waiting throughout for any coherent response from noble Lords, in their very powerful speeches about the illegality of what we are doing, to the questions raised by the noble Lord, Lord Bew, in particular as to what happens when there is a conflict between two international obligations, as the noble and learned Lord, Lord Brown, implied that there is between the obligations that we have under the Belfast agreement and those that we have under the protocol. I have not heard any direct response to that question: what do you do when you have conflicting international legal obligations?

Lord Pannick (CB): I am very grateful to the noble Lord but the Committee has heard repeated explanations of what the answer is. The answer is that the protocol contains Article 16, which allows for a process to

commence by which disputes can be resolved with an arbitration process. That is the answer. There is no conflict because the protocol provides a mechanism for addressing conflicts.

Lord Lilley (Con): I am grateful to the noble Lord for sidestepping the question by saying that he does not need to answer it because there is an article in the protocol that means you do not have to answer on what happens when there is a conflict between two international obligations. Clearly, however, the Government and many noble Lords from the Province who have spoken think that there is a conflict and it cannot be solved just by invoking Article 16. If it can, fine; that is wonderful.

The other related question that we have not had a response to is the point made by the Lord Chancellor in the other place that Article 1 of the protocol specifically says that in the event of a conflict between the Belfast agreement and the protocol, the Belfast agreement takes precedence. I have not heard any response to that, nor to the point, which I might be alone in making, that the whole protocol is intrinsically temporary. We know that because the EU told us that it could not enter into a permanent relationship with us because we were then a member state and it could not, under Article 50, enter into a permanent relationship with a member state; it could be only temporary and transitional. That is why the protocol itself contains provision for it to be superseded, but I have heard no response to that point from anyone.

Baroness Altmann (Con): I heard the responses given to my noble friend so far, which he seems reluctant to accept. If he does not agree that the Article 16 process would be a way of resolving some of these conflicts that have arisen and caused problems, in what way does he feel that the passage of the Bill would itself resolve those conflicts, or indeed support the Good Friday agreement?

Lord Lilley (Con): I certainly do not say absolutely that Article 16 is not the way to proceed, but I have spoken to lawyers much respected by people in this House—unfortunately I do not have their permission to give their names—who told me that we should not go down the Article 16 route because it would be a nightmare.

Lord Pannick (CB): Why?

Lord Lilley (Con): I will put the two in touch discreetly and thereby not betray confidences.

Lord Pannick (CB): I am sorry to interrupt the noble Lord and I am grateful for his patience, but it really is not good enough, when this Committee is debating these matters, for him to say that there are problems in using Article 16 but not tell us what they are.

Lord Lilley (Con): I am saying that there may well be problems. Indeed, I asked the noble Lord the other day, down the corridor, whether he was of the opinion that Article 16 could be used to solve all the problems. If it can be, fine; I am not ruling that out. However, if it cannot be, then the issue raised by the noble Lord, Lord Bew, is there on the table, and the issue raised by the Lord Chancellor is there on the table. Whatever about that, the protocol is intrinsically temporary. The whole basis of the negotiations that we entered into on the withdrawal agreement was that a permanent agreement could not be entered into in the withdrawal Act with the United Kingdom covering trade or other matters; that could happen only after we had left. Therefore, anything in the withdrawal agreement was intrinsically transitional and temporary.

Again, I have not heard a response on that today. I wait to be interrupted with a response to the point. Usually, it comes from the noble Lord, Lord Kerr, who wrote Article 50, but he has forgotten what the alternative is.

These are important issues. We need to know why we were told one thing, that this was temporary, and now are told another thing, that it is permanent. Until we get an answer to those questions, I do not know that our debate can proceed as productively as it ought to. There are other more general points which I would like to make but I will save them for another batch of amendments.

Lord Ponsonby of Shulbrede (Lab): My Lords, this has indeed been a very wide-ranging debate, but I will comment specifically on the amendments themselves.

The DPRRC refers to the power contained in Clause 18 as "strange" and notes that

"Despite its being highly unusual"

there will be "no parliamentary oversight" whatever. This was the subject of some debate in another place, with much head-scratching as to what the Government were trying to achieve. Indeed, we cannot know that, because they have not offered a clear justification. A former head of the government legal service, Sir Jonathan Jones KC, described this as a "do whatever you like" power, but why is it needed in the first place? We have no definition of "conduct". Can the Minister have a go at giving us a definition today? If that is not possible, can we have a detailed explanation ahead of Report?

In the Commons, the Minister tried to insist that concerned MPs had misconstrued the intent and that Clause 18 simply makes clear that Ministers will be acting lawfully when they go about their ministerial duties in support of this legislation. I cannot remember any other legislation where the Government have felt it necessary to clarify that Ministers are acting lawfully. Until recently, we took it for granted that this was always the case. Therefore, is this power an admission that the Government's approach to the protocol is incompatible with international law and, as a result, in conflict with the Ministerial Code's requirements to comply with the law?

There were a number of very interesting contributions in this debate. I highlight that of the noble Lord, Lord Empey, which was very constructive, about bringing into the process which is being embarked on by the UK Government respected people from Northern Ireland. I am interested to hear the Minister's reaction to the proposals made by the noble Lord. The noble Lord, Lord Kilclooney, gave a rather chilling example of the

[Lord Ponsonby of Shulbrede]
stakes we are dealing with and how important it is that we take every opportunity we possibly can to resolve the current position. This has been an interesting debate, and I look forward to the Minister's response.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I thank all noble Lords who have contributed to the debate on the amendments and the wider context. The noble and learned Lord, Lord Stewart, the noble Lord, Lord Caine, and I always look down the list to see when the first group in Committee will be. We know that the clock will strike an hour because of the context that will be set in relation not just to the amendments in front of us but opinions on the particular Bill. Like the noble Lord, Lord Ponsonby, I will focus on the specific amendments. Where I can add a degree of Ahmad colour, I will seek to do this in the best way possible.

As I and my colleagues have said, to pick up on a key point on the ultimate nature of the Bill, the reasoning behind the Government's approach is that the Bill is consistent with our obligations in international law and supports our prior obligations to the Belfast/Good Friday agreement, as has been said in various parts of today's debate—and very eloquently by my noble friend Lord Lilley.

I will begin with Amendment 36, tabled by the noble Lord, Lord Purvis, on the issue of the powers. In the Government's view, Clause 18 is not an extraordinary power. It simply makes clear, as would normally be the case, that Ministers are acting lawfully in this case. This point was made by the noble Lord, Lord Ponsonby, and others and I will attempt to put some colour on this—I do not know whether it will be to noble Lords' satisfaction. Clause 18 is included because the Government recognise that the Bill provides, in a way that is not routinely done for other legislation, for new domestic obligations to replace prior domestic obligations that stem from our international obligations. Those international obligations are currently implemented automatically by Section 7A of the European Union (Withdrawal) Act 2018. That conduit pipe currently constrains—and in the Government's view could cause confusion in the future—how Ministers can act in support of the Bill. The Government put forward that Clause 18 is to provide clarity on that point.

I note the DPRRC's view on the issue of delegated powers, which the noble and learned Lord, Lord Judge, highlighted again in his contribution. However, it is the Government's view that the power being proposed here is within the normal scope of executive action. To provide a bit more detail, this would include, for example, direct notifications from Ministers to the EU. While I am sure—I am going to hazard a guess as I look around your Lordships' House—that I may not have satisfied every question on that, I hope that that has provided a degree more detail.

Lord Pannick (CB): I am very grateful to the Minister. Can I press him for a moment on what I understand to be his explanation for Clause 18, which is that otherwise there may be some concern that the exercise of powers is not consistent with Section 7A of the European Union (Withdrawal) Act 2018? I think that is what the Minister said.

Lord Ahmad of Wimbledon (Con): I would put it slightly differently. That is the section I referred to, but it is to provide clarification in that respect. The noble Lord will interpret that in the way that he has, but I have sought to provide clarity on why the Government's position is that this should be included.

Lord Pannick (CB): Could I complete my point? I am very grateful to the Minister but I am puzzled by that explanation, because the Bill already deals specifically with this subject in Clause 2(3). I remind the Minister that it states:

"In section 7A of the European Union (Withdrawal) Act 2018 … after subsection (3) insert … This section is subject to"

this Bill. Therefore, with great respect, I do not understand why one needs Clause 18 to address exactly the same point.

Lord Ahmad of Wimbledon (Con): My Lords, I suppose that, with any Bill, the challenge for the Government is often to provide added clarification. That is exactly what we are doing, perhaps to emphasise the point that the noble Lord himself has highlighted from other elements of the Bill. I am sure that the noble Lord will come back on these issues, but if I can provide further detail on the specific actions that this would thereby permit, I will. As I said, it is a point of clarification, and I will write to the noble Lord on this point.

The best way I can sum up Amendment 37 in the name of the noble Baroness, Lady Chapman, is that it is a well-trodden theme in the context of the Bill. The positions and different perspectives on this issue are noted. All I add is that the Government's intention is to ensure that the powers—the ability for a Minister of the Crown to issue guidance to industry or provide direction to officials in relation to the regime put in place under the protocol—reflect their ability to carry out their responsibilities. In this case I can see no reason why Ministers should be able to issue "appropriate" direction in relation to trade with the EU via the short straits but only "necessary" directions over the Irish Sea.

5 pm

Although the noble Baroness has not spoken in this debate, I know from previous debates that she is worried about the scope of executive action. Everyone is concerned by this when they are sitting on one side of the House. The usual channels of judicial review will be available, but I have noted the various concerns aired in previous debates on this issue of "appropriate" and "necessary".

I turn to Amendment 38 in the name of the noble Baroness, Lady Ritchie. With her permission, I will first pick up on the valuable contributions of the noble Lord, Lord Empey. We have been engaging with Northern Irish parties. I know that when the Executive was operational there were regular meetings between the then Minister for Europe, now the Secretary of State for Northern Ireland—and indeed my noble

friend Lord Caine—and the various representatives. In the interests of time, rather than detailing the level or number of meetings, I suggest to the noble Lord, Lord Empey, as I have said to him outside the Chamber, that we would really welcome his insights and valuable experience in this regard. I speak for my noble friend Lord Caine and others in the Northern Ireland department. Both they and I will be pleased to speak to the noble Lord to see how we can perhaps further enhance the engagement that we currently have on the ground with key parties and people.

The noble Lord's point about wider delegations and representations is noticed. We value our devolved Administrations very highly in our engagements over international agreements, even when they are under reserved powers. On the wider point of engagement with the devolved Administrations, a point also raised in this debate, my understanding is that those have taken place, continue to take place and will continue to be updated as we make progress.

Baroness Ritchie of Downpatrick (Lab): The Minister just indicated that discussions have taken place with the devolved Administrations. Maybe he can give us a little more colour about the type of discussions that have taken place. In that regard, I very much take the point made by the noble Lord, Lord Empey, that there is a need for the Northern Ireland parties to be involved in the negotiations.

Lord Ahmad of Wimbledon (Con): I know that these discussions have certainly taken place at an official level. My understanding is that the Foreign Secretary has also written to the devolved Administrations on the issue of seeking consent, but if there is more detail I will update the noble Baroness.

The noble Baroness also rightly mentioned the importance of understanding the issues on the ground. As I have indicated, I believe passionately that, irrespective of where you are coming from on the Bill—whether you are from Northern Ireland itself or wherever you are sitting in this Chamber—our ultimate objective in the discussions we are having is to ensure that the protocol, and indeed any other arrangements put in place after the negotiations and debates taking place, work in the interests of all communities in Northern Ireland. That is the premise of the Government's approach.

The amendment the noble Baroness has tabled would require an approval Motion to be passed by the Northern Ireland Assembly before a Minister may act in accordance with Clause 18

"in relation to any matter … in the Northern Ireland Protocol (where that conduct is not otherwise authorised by this Act)".

However, in the Government's view, the amendment is unworkable in practice, because it would require the Northern Ireland Assembly to pass a vote every time any number of actions were taken in connection with the Bill. That could be as innocuous as providing instruction to civil servants or guidance to industry. Such a situation would clearly be prohibitive to the implementation of swift solutions to the problems caused by the protocol, and therefore would not work. Nor would it be appropriate or in line with the devolution settlement for actions—

Lord Cormack (Con): I am sorry to interrupt but I am most grateful to my noble friend. The noble Lord, Lord Empey, made a very powerful and constructive speech. I listened to what my noble friend said in response to the noble Baroness, Lady Ritchie, but would it not be possible for informal invitations to be issued to Northern Ireland politicians to attend talks, particularly if the talks themselves are informal?

Lord Ahmad of Wimbledon (Con): As I said to the noble Lord, Lord Empey, I will certainly take back his comments and constructive suggestions and will, of course, advise the House if there is more scope in our current discussions with the European Commission.

I listened very carefully to all contributions. The noble Lord, Lord Kerr, raised the issue from where he was seeing it. As noble Lords know, when I have come to the House, I have reported. I was certainly involved in one discussion last week and, as I said, it was constructive and positive in both tone and substance. I am sure that all noble Lords who have served in government will appreciate that there are limits to what detail I can share.

Subsequent discussions have taken place, to which the noble Baroness, Lady Ritchie, alluded. I do not share the view of the noble Lord, Lord Kerr, that they are not going anywhere. If they were not going anywhere, we would not be meeting and talking. I also challenge the premise that they have not engaged the highest level of the British Government. Last time I checked, the Foreign Secretary was among those counted in the highest levels of the British Government. I therefore say to the noble Lord, Lord Kerr, that that is definitely not the case. The lead person dealing with Commissioner Šefčovič is my right honourable friend the Foreign Secretary, who is a senior member of the British Government.

Returning to the amendment, for the reasons I have given, we cannot support it. However, I also point out that the Bill is needed because the Good Friday agreement institutions, including the Assembly, are not operating as they should be. I know that the noble Baroness will return to this issue. I welcome her valuable insights in this area, but I hope that, given my response, particularly on the important issues raised by her and the noble Lord, Lord Empey, she sees that we will certainly seek to further enhance our engagement with parties in Northern Ireland.

The noble and learned Lord, Lord Judge, focused on Clause 18, which simply provides the power for a Minister to engage in normal non-legislative contact where they consider it appropriate in connection with one or more of the purposes of the Bill. The clause also clarifies the relationship between powers to make secondary legislation under the Bill and those arising by virtue of the royal prerogative. It will ensure that actions not requiring legislation, such as issuing guidance for industry or providing direction to officials, can be taken in a timely manner by a Minister of the Crown. Clause 18 simply makes clear, as would normally be taken for granted—we just had a brief discussion with the noble Lord on the Government's position on this—that Ministers will be acting lawfully when they go about their ministerial duties in support of this legislation. The Government's view therefore remains that it should stand part of the Bill.

Lord Purvis of Tweed (LD): My Lords, I am grateful to the Minister for his response and to those who have taken part. I felt that I was agreeing 100% with the contribution by the noble Lord, Lord Kerr, but then I started to have doubts when the noble Lord, Lord Lilley, said he agreed with two-thirds of it. I will come back on that in just a second.

In all seriousness, I am concerned about what the Minister said. If this power, which is not framed and not specific, is guidance for industry then that is now in direct contradiction with the requirement on Ministers to provide guidance on the operation of the internal market, under the internal market Act, for Northern Ireland. Section 48, which I understand is being repealed by this Bill, as we have discussed, has a requirement on Ministers to consult before guidance is published. Under Section 12 of the internal market Act it is a legal duty for Ministers to consult Northern Ireland departments before guidance is issued. Draft guidance must be issued first. To some extent, that is the point that the noble Lord, Lord Empey, made about inclusiveness before measures.

If Clause 18 can be used by Ministers—guidance for industry, as the Minister said twice—that is far weaker than the legal requirements, and I do not understand the interaction between the two. That is a significant problem. I would be grateful if the Minister could write to explain how guidance for industry will be operated under other parts of the legislation whereas they can simply decide to do it under Clause 18 because there are no restrictions, requirements or oversight of that whatever—there is no requirement for anything in draft.

That is important, given the subtext of this serious debate and the fact that—as the noble Baroness, Lady Ritchie, indicated—Vice-President Šefčovič is in London at the moment. The Minister did not state whether any Ministers are meeting the vice-president on his visit. I am happy to be intervened on if wishes to clarify whether, during the vice-president's visit to London, any senior Ministers are meeting him.

Lord Ahmad of Wimbledon (Con): This was the subject of conversation, but the noble Lord will be aware that my right honourable friend is currently in Sharm el-Sheikh on government business with the COP. We certainly sought to see whether they could meet on this particular occasion, but I will update the noble Lord as and when it happens.

Lord Purvis of Tweed (LD): I am grateful to the Minister.

When the noble Lord, Lord Kerr, says that he is miles away from the situation, I have known him long enough to suspect that there is a wee bit of code there. He is probably actually pretty close to knowing what is going on, and I suspect that he is right. I worry, because the Government are not engaging widely, as the noble Lord, Lord Empey, said, or consulting. We have not had sight of what is on the table; we know what the EU has put on the table but not what the UK Government have put on the table. My fear is that, if the Government told us what was on the table, many people would be disappointed that they are only technical talks. Some people want them to be negotiations.

That comes on to the point made by the noble Lord, Lord Lilley. I respect and understand his disagreement with the Government's position—the Government want to mend it, not end it, and, as I understand it, the noble Lord thinks there is a more substantial issue with that. Ministers have said they want to fix it, not nix it. If you want to mend it, not end it, there are mechanisms, but there are also mechanisms if you want to end it. As Article 13 of the protocol states, it lasts as long as it lasts:

"Any subsequent agreement between the Union and the United Kingdom shall indicate the parts of this Protocol which it supersedes"—

so, if there is another treaty, this ends. There is nothing special about that; that is every treaty. A treaty lasts for as long as it lasts, and if there is a subsequent treaty then there is a subsequent treaty. So the noble Lord's beef is not with us; it is presumably with the Government in order to open up the element of the withdrawal agreement and the associated TCA that he thinks are in contradiction.

Lord Lilley (Con): Would the noble Lord deal with the Article 50 point? If it is intrinsically temporary and transitional, can it last for ever?

5.15 pm

Lord Purvis of Tweed (LD): That is the point. We have now legislated for it, and the element we have legislated for includes Article 13.8, which is the process by which it would be superseded. I do not think there is any doubt about it; the noble Lord may have doubt in his mind about it, but in the other agreements there are mechanisms if we wish to open them.

The difficulty with this process taking such a long time is that if we were in grave and imminent peril—the Government have invoked the defence of necessity—then we would have anticipated some urgent, high-level talks to have resolved this by now. Regrettably, we are back to a situation where the stakes are getting higher because expectations are higher, but the reality, perhaps, is that some of these talks are technical.

With the greatest respect for the Minister, who I know tried to offer clarification, I am worried about what this power could be used for, and we will need to return to this. In the meantime, I beg leave to withdraw the amendment.

Amendment 36 withdrawn.

Amendments 37 and 38 not moved.

Clause 18 agreed.

Clause 19: New agreements amending or replacing the Northern Ireland Protocol

Amendment 39

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

39: Clause 19, page 10, line 17, leave out "the Minister considers appropriate" and insert "is necessary"

Member's explanatory statement

This amendment limits a Minister's ability to use a delegated power when they consider it "appropriate" to cases where it is "necessary".

Baroness Chapman of Darlington (Lab): My Lords, I will allow a couple of seconds for people who have obviously got it off their chest during the first group to leave, in the hope that we do not go through the whole thing again.

Clause 19 is very short, at only a couple of paragraphs, but it is quite interesting, as it pleasingly addresses the situation we may find ourselves in where the Government have been successful in reaching an agreement with the European Union. Many of us have said, time and again, throughout this Committee, that we hope to see that. We have been challenging Ministers, as we have seen in the previous group, to show visible political leadership. The visibility has been lacking. I take on board what the Minister said about his right honourable friend the Foreign Secretary playing an active role, but visibility and political momentum have been lacking. I like to think that, had one of my right honourable friends been leading these events, we would have seen a far more outward-facing presence, if I can put it that way, through this process—but never mind.

Clause 19 looks at the eventuality of there being an agreement. The amendment I have tabled is one that will be familiar by now to noble Lords who have been taking part in this process from the first day of our considerations. The first line of the clause, as it stands, says that:

"A Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate".

I have asked that "appropriate" be changed to "necessary", and I will explain why, in this particular instance, that is sensible.

This clause gives Ministers the power to implement an agreement that they hope to reach with the EU. Obviously—and we accept this—Ministers will need some flexibility in that event, and things may need to be done as a consequence of having an agreement. But I would have thought that an agreement, by its nature, would be clear and specific, and that things would be agreed that are not currently in place that would need to happen. In that instance, surely the things that need to be done by Ministers will, by virtue of the fact that they have just been agreed to with our negotiating partners, meet the test and be necessary.

It troubles me that the Government feel they should have "appropriate" there instead. That seems to give them much greater scope than is ever going to be needed in the event that this clause is used—and we hope that it will be. I would like to know from the Minister what the Government's thinking is there, beyond thinking that "necessary" is too tight and just wanting to allow themselves a bit more room—of course they do; who would not? But this clause deals with the fact that there may be an agreement, and I do not think it is justified for the power to be as widely drawn as it is.

While I am on my feet, I note that I support the stand part notice from the noble Lord, Lord Purvis, in this case as well. The DPRRC believes that the powers in this clause are just too widely drawn, though there is obviously merit in discussing what powers are needed in the event of an agreement and what the role of Parliament should be in that situation. We think that a deal can be struck—we have said that many times—and also believe that Parliament should have the opportunity to debate any agreement, as other Parliaments will. I just note that the European Union (Future Relationship) Act 2020 was passed in a day and the TCA was ratified without direct parliamentary process. We accept that Ministers need the ability to act in the event of an agreement and we appreciate the Government demonstrating their anticipation of such an agreement in this clause, which is notable, but surely a Bill to enact an agreement would be better. That is what we have been asking for.

This is a discussion we have had with the Government on many occasions and on other agreements, when we have talked about the unsatisfactory process we still have in this country for parliamentary involvement in agreements. We do not think we have got it right yet; that is understandable, and it is perhaps going to take some time to get to that point. We have not had to engage in this for many years, but I do not think that many people in Parliament are satisfied with the way this works at the moment, and it would be helpful if the Minister could acknowledge that.

Without being too cheeky about it, we want to help the Government, given just how unsuccessful they have been so far in settling these issues. We do not see why they would be so resistant to involvement from people who are being very positive and cheering them on in their endeavours. We really do want to see a resolution to this. With that, I beg to move the amendment in my name and express my support for the stand part notice tabled by the noble Lord, Lord Purvis.

Lord Purvis of Tweed (LD): We support the amendment in the name of the noble Baroness. In supporting it, I want to make two points. First, this clause effectively turns the Constitutional Reform and Governance Act principles on their head. We have well-established mechanisms, which are set down in statute, on how we approve new international agreements. If this is a mechanism to replace the Northern Ireland protocol, an internationally made agreement, with a new agreement, then why is the CRaG process, which allows parliamentary scrutiny, debate and, unlike this, an ability to have enhanced approvals or indeed vetoing by Parliament, not going to be the route for it? I do not understand why.

Secondly, it also sets on its head every commitment that has been provided for every trade agreement: namely, that if a trade agreement requires any primary legislation to bring it into effect in domestic law, primary legislation is brought forward—this is not done by regulation. But, again, this is being set on its head. The Trade (Australia and New Zealand) Bill is coming up, which is primary legislation—not regulation—implemented with agreement. The two Bills contradict each other really quite glaringly.

I think that this is significant because of an interaction I had with the noble Lord, Lord Dodds, on one of the previous days in Committee. I asked him whether he had given consideration—if there is, as a result of these talks, an agreement with the EU—as to how that should be put in force. The Government are saying "by regulations", which are unamendable and could even be under a negative process; they could use Clause 19 to do this. If the noble Lord's concern—as well as that of the noble Lord, Lord Empey—was

[Lord Purvis of Tweed]
about the need for consent, this is not the means by which that would be secured. Yet this is the means by which the Government could enforce it. There is a very jarring comparison between what consent of any new agreement would be and how the Government are seeking powers under Clause 19 to enable them to put this into force. Clause 19 should not be the mechanism by which we have sustainable support for any agreement. An order-making power for a Minister is simply not the route—and that is in addition to the fact that they are turning on their heads long-standing practices by which we put international agreements into domestic legislation. For this reason, I do not think that Clause 19 should stand part of the Bill.

Baroness Altmann (Con): My Lords, I speak briefly to support Clause 19 not standing part of the Bill. Both the noble Baroness, Lady Chapman, and the noble Lord, Lord Purvis, have very eloquently explained some of the problems with this clause. Equally, I have a concern about just changing the word "appropriate" to "necessary", because we had a relevant agreement with the EU—the withdrawal agreement, part of which is the Northern Ireland protocol—and we have passed extensive legislation for that agreement. Yet government Ministers consider both this Bill and this clause "necessary", even though it may break international law and may tear up the agreement that we have enshrined into our law. So were this clause to stay—and, indeed, were this Bill to become an Act—there would simply be the possibility that a Minister would no longer need to come to Parliament, Parliament would have no say and our whole parliamentary democracy would be turned on its head, as the noble Lord, Lord Purvis, described. I would like to hear from my noble friend the Minister how this is consistent with our normal constitutional safeguards in our democracy.

Lord Ahmad of Wimbledon (Con): My Lords, I thank all noble Lords for their contributions to this brief debate. I turn first to Amendment 39. I welcome the points made by the noble Baroness, Lady Chapman; I was scribbling down some of them, including the phrase, "Cheerleader for the Government"—we look forward to that. I recognise that these are serious times in terms of our negotiations. Of course, it is right that we are being challenged, but contributions have also been made which are helpful in ultimately strengthening the role we want to see for all discussions: a successful conclusion in the interests of all communities in Northern Ireland.

5.30 pm

As for discussions and diplomacy, I have a bit of experience, as do other noble Lords around this House. One thing that I have certainly learned as a lesson of diplomacy is that discretion is key—it is vital. At times, there is a sprinkling of public discourse in that respect. I assure noble Lords that discussions and a number of meetings are being held. Indeed, I mentioned to the noble Lord, Lord Purvis, that my honourable friend the Minister for Europe met Commissioner Šefčovič during his visit on this very issue. The fact is that the engagement continues. I have already detailed why my right honourable friend was unable to meet on this occasion.

We have now seen how the implementation of the current protocol—I think all noble Lords accept this—is causing problems. We are looking for solutions. We feel that limiting the Government's ability to act quickly and flexibly if such a negotiated outcome with the EU needs to be implemented could ultimately disrupt what we are all seeking to do, which is to address the socio-political stability in Northern Ireland and safeguard the EU single market and the UK single market.

I say again, for the record, that a negotiated agreement is the Government's preference and the outcome and detail of that will be shared as necessary. But having the discretion for Ministers to choose the best implementation is surely in our best interests.

I shall come to the important point also raised by the noble Baroness, my noble friend and the noble Lord, Lord Purvis, on Clause 19 standing part, which is related to this. As all noble Lords have said, Clause 19 gives power to Ministers to implement a new agreement with the EU as soon as one can be reached. As I have said, a negotiated agreement with the EU remains our preferred approach and this clause facilitates that commitment, as the noble Baroness acknowledged.

I want to address the central point. The noble Earl, Lord Kinnoull, is not in his place but I gave him a brief reassurance on the Constitutional Reform and Governance Act 2010 in a previous debate—a point also made by the noble Lord, Lord Purvis. I assure noble Lords that this Bill does nothing to affect the procedures applying under that Act, so any new treaty replacing the protocol or amending it will be subject to the usual pre-ratification scrutiny that the Act provides.

This clause also allows a Minister to make legislative changes that they consider appropriate for the purposes of implementing a relevant agreement with the EU. It is also vital in ensuring that we have the ability to promptly implement—

Lord Kerr of Kinlochard (CB): Does Clause 19 not replace CRaG in respect of amendments to the protocol?

Lord Ahmad of Wimbledon (Con): My Lords, I have already said that the Bill does nothing to affect the procedures applying under the CRaG Act 2010. I have been clear on that and it is specifically in front of me as I speak.

Lord Pannick (CB): If that is the case, would the Minister be sympathetic to an amendment on Report that puts that in the Bill?

Lord Ahmad of Wimbledon (Con): My Lords, I think my priority is to complete Committee. Of course, I look forward to Report and the amendments proposed and that is when we will have further discussions on this matter—

Lord Campbell of Pittenweem (LD): Before the Minister sits down, can he tell me whether there are any other circumstances in which the Government have promoted a clause containing terms such as these that he now urges upon us?

Lord Ahmad of Wimbledon (Con): My Lords, I am sure the noble Lord will excuse me if I say that I do not have an instant response to that, but I will certainly talk to my officials and, if there are details to provide, I shall of course provide them to the noble Lord.

Lord Purvis of Tweed (LD): There is nothing in Clause 19 on consent. If there is an agreement, what is the Government's position on securing consent for it?

Lord Ahmad of Wimbledon (Con): My understanding is that we would certainly abide by our previous commitments in that respect. In the interests of clarity, I will confirm that in writing to the noble Lord.

Baroness Chapman of Darlington (Lab): I do not think we are very happy about this. The Minister says that he wants to address stability in Northern Ireland, yet this whole process goes over the heads of people in Northern Ireland. We heard from the noble Lord, Lord Empey, and others just how unsuccessful they expect that to be. There are so many issues here, I just do not understand why Clause 19 is required when there are processes available to the Government to do this. We shall come back to this, but the only thing about saying that we shall come back to it on Report is that we do not know whether we will actually get to Report, given the amendments that we discussed before we started our formal consideration of the Bill. We still have not heard anything from the Government on that. Obviously, we shall leave it for today but the discussion we have had leaves a few more questions than answers. I beg leave to withdraw the amendment.

Amendment 39 withdrawn.

Clause 19 agreed.

Clause 20: Role of the European Court in court and tribunal proceedings

Amendment 40

Moved by ***Baroness Suttie***

40: Clause 20, page 10, line 32, at end insert—

"but this section does not have effect unless it has previously been approved by a resolution of the Northern Ireland Assembly."

Member's explanatory statement

This amendment would prevent the Bill's proposed departure from the terms of the Northern Ireland Protocol, or from any related provision of the EU withdrawal agreement, in respect of the previously agreed role of the European Court (CJEU) unless Clause 20 had first been approved by the Northern Ireland Assembly.

Baroness Suttie (LD): My Lords, Amendment 40 in my name is co-signed by the noble Baroness, Lady Ritchie of Downpatrick. Like so many of the earlier and similar amendments, it aims to ensure that the democratically elected Northern Ireland Assembly would have the final say on whether Clause 20 is to be implemented. In many ways, this is a probing amendment following what I felt was a very constructive and useful speech from the noble Lord, Lord Empey, who I am very glad to see back in his place after an absence. In doing this, it is incredibly important that we make sure that there is greater involvement of the Northern Ireland political parties at every stage. Perception is all in politics and, whether or not the Minister says that meetings are taking place, the representatives here from Northern Ireland do not feel that they are taking place. Therefore, they are obviously not working as they should be.

As the noble Lord, Lord Hain, who is not in his place, spelled out so clearly on an earlier group of amendments, Clause 20 would mean that domestic courts and tribunals cannot refer any matter to the European Court of Justice in relation to the Northern Ireland protocol. Last week, the noble Lord, Lord Hain, also spelled out very clearly the potential impact of this clause on the single electricity market on the island of Ireland. My honourable friend Stephen Farry MP, when speaking in the House of Commons about a very similar amendment, made the point that if the ultimate jurisdiction of the European Court of Justice is removed, Northern Ireland's ability to access the single market for goods will be jeopardised or destroyed. A level playing field overseen by the European Court is surely in the interests of many Northern Ireland businesses and can protect access to the market in years to come. It will also protect such businesses against situations that may arise in future if any EU member state were to attempt to refuse goods coming from Northern Ireland.

Politically, it is worth stressing once again that the majority of businesses in Northern Ireland have adopted our somewhat pragmatic approach to the protocol and that the jurisdiction of the European Court has not previously been seen as a major area of concern. It is therefore hard not to draw the conclusion that Clause 20 has more to do with Conservative Party divisions and the ERG than it has to do with genuine political and business concerns in Northern Ireland. For those businesses that primarily deal with north-south trade or with the EU, any reduction of the jurisdiction of the ECJ would potentially have a profound impact on them. It is for that reason that it is very important that the Northern Ireland Assembly should be able to have its say on these matters. I beg to move.

Baroness Ritchie of Downpatrick (Lab): My Lords, I will speak in favour of Amendment 40 in my name and that of the noble Baroness, Lady Suttie, and will refer to Amendments 42 and 43A in my name.

In many ways, Amendment 40 seeks to protect the role of the European Court of Justice and to ensure adherence to the accountability mechanisms of the Northern Ireland Assembly. Adherence to the provisions in the GFA—the Good Friday agreement—are of vital importance, and any change in the protocol with respect to Clause 20 can go nowhere unless approved by the Northern Ireland Assembly.

While this is a probing amendment, like the noble Baroness, Lady Suttie, I go back to the comments made by the noble Lord, Lord Empey, about the role of Assembly Members in the Northern Ireland Assembly. Absolutely no account, recognition or acknowledgement has been taken of the role of locally elected Members

[Baroness Ritchie of Downpatrick]
of the Northern Ireland Assembly in relation to this Bill. He is absolutely right when he says that, if they have buy-in and ownership, there is greater likelihood that the UK Government and the EU will achieve a degree of resolution on many of these vexatious issues.

Many elements of the protocol are already working well for business in Northern Ireland; for example, in relation to dairy, beef and agri-food industries. But it is important to note, as the noble Lord, Lord Empey, and other noble Lords have said—and I think the point has been made by my noble friend Lord Murphy—that negotiations succeed in Northern Ireland only when the parties are sitting around the table with the UK and the EU. So I ask the Government, in their discussions with the European Union, to try where possible to exercise a degree of flexibility that would facilitate such discussions taking place in a more all-encompassing manner.

I move on to Amendment 42, which seeks to ensure that, when the UK-EU joint committee has discussed regulation of goods in connection with the protocol, there is a full report to Parliament detailing those discussions within 21 days of the meeting. In the previous discussion on the first group of amendments, when queries were put by noble Lords about the nature and content of the negotiations with the European Union, I am afraid we did not get very much back about the actual content or level of solutions. Therefore, we are left with a query in our minds about what progress is actually being made in those technical discussions; hence the need for renewed vigour in continuous, senior political engagement at a UK/EU level.

Amendment 42 rightly emphasise the role of the Assembly and the north-south institutions of the Good Friday agreement. That is further emphasised in Amendment 43A, which requires adherence by a UK Minister in the UK-EU joint committee meetings

"to respect, reflect and support proposals made by the Strand 2"

GFA implementation bodies. That goes back to the fact that many of the implementation bodies are inextricably linked to membership of the European Union—I am thinking of InterTradeIreland and Tourism Ireland. It is important that Ministers support proposals on the regulation of goods made by the strand 2 bodies in the joint committee meetings.

5.45 pm

It is important that we revert back—I urge the EU and the UK to do likewise—to the spirit and intention of the Good Friday agreement. It is fitting that, tonight, in another part of the parliamentary estate, a painting of the late John Hume, by the renowned Northern Ireland artist Colin Davidson, is being unveiled by the Speaker of the other place. In many ways, John Hume was the architect of the three-stranded approach that emerged in the Good Friday agreement, and the spirit of co-operation, partnership and working together. That can be achieved only when all the facets—namely the UK, the EU and the Northern Ireland parties—work together to achieve solutions in the best economic, political and societal interests of all of the people of Northern Ireland.

Lord Cormack (Con): My Lords, like the noble Baroness, I hope to be able to be present for the unveiling of the portrait of the late John Hume. It is a pity that our recently departed colleague Lord Trimble is not able to be there for that extraordinary occasion.

It seems to me that what the noble Baroness, Lady Suttie, said was wholly in tune with what the noble Lord, Lord Empey, said earlier in our debates: how important it is to involve the politicians in Northern Ireland. It is also important to do something else, which was touched on by the noble Lord, Lord Kerr of Kinlochard, in his speech just half an hour ago. I am very glad that the noble Lord, Lord Murphy, is in the Chamber at the moment, because the noble Lord, Lord Kerr, talked about the crucial importance of involvement at the highest possible level. We would never have had any agreement without John Major and Albert Reynolds, built upon by Sir Tony Blair, the noble Lord, Lord Murphy, and others. It is very important indeed.

No one appreciates more than I do, I hope, the tremendous tasks facing our new Prime Minister, and I wish him every possible success. However, as soon as it is possible, he should involve himself. He should go over to Belfast and meet the Northern Ireland politicians, the Taoiseach and others, because there has to be involvement at the highest level. The success of such talks would be increased if this wretched Bill were at the very least paused.

Lord Dodds of Duncairn (DUP): My Lords, I want to make a brief comment on Amendment 40, which is about approval by a resolution of the Northern Ireland Assembly. In support of this amendment, it has been stated that adherence to the spirit and intention of the Belfast agreement is vital. But if we are to be faithful to that agreement as amended by the St Andrews agreement, and to its spirit and intention, then the amendment is defective in that it does not include cross-community consent. Is this a resolution by cross-community consent?

The point that I have made—and as other noble Lords who are aware of the details of the Belfast agreement will know—is that every major decision in the Northern Ireland Assembly is made on a cross-community consent basis. That means a majority of nationalists, a majority of designated unionists and a majority overall. Anything that is not specifically a cross-community vote is capable of being turned into one by a petition of concern. If you are using the argument that you are defending the Belfast agreement, as amended, then why is the cross-community element of resolutions in the Northern Ireland Assembly left out? Why is that the case? Why is it not required to have the support of unionists and nationalists? That is the basis on which the Belfast agreement was written.

My second point is about the involvement of Northern Ireland parties. I have a lot of sympathy there, but it is worth bearing in mind that in the run-up, between 2018 and 2020, when we had all the discussions about the backstop and negotiations overall, the Irish Government made it clear on a number of occasions to us that they did not wish to have any engagement directly with political parties in Northern Ireland on the issue of Brexit. They did not see a role. Nor did

Michel Barnier see any role for the political parties in Northern Ireland; I put that point to him directly in his office in Brussels.

Lest we move to the position that the British Government have prevented this or not done enough, I say that the Irish Government and the Brussels Commission were very clear: "This is a matter on which the EU is represented by Monsieur Barnier. He speaks for the EU." Leo Varadkar was very clear when we met him in Belfast and urged him to encourage a more imaginative approach that would involve the Northern Ireland political parties and the Irish Government talking directly to political parties about Brexit—and the UK Government, of course. That was rejected: "No, Michel Barnier speaks for the EU. It is between Her Majesty's Government", as it then was, "and the EU. There is no role for anyone else." That was spelled out explicitly.

While I have a lot of sympathy with the proposition, this is not as straightforward as it would appear. I think some of the problems we have seen might well have been made easier to resolve had there been more flexibility on the part of the EU and the Irish Government, but it needs to be put on record that it was and, as far as I understand it, remains, the position both of the Dublin Government and Brussels. It would be very interesting to see whether Leo Varadkar maintains that position when he takes over as Taoiseach in a few weeks' time. It would be worth exploring that with the Irish Government, because the portrayal that this has been a one-sided exclusion is not accurate.

Lord Murphy of Torfaen (Lab): My Lords, I did not intend to come in at this stage—there are further amendments later that I am interested in making a contribution to—but I agree with an awful lot of what the noble Lord, Lord Dodds, has said. Over the last year or two, I have been complaining that the real difficulty in this negotiation, if that is the right word to use for it—and I do not think that it is, by the way—lies in the way the protocol was born. Whatever the rights and wrongs of the protocol, or of the Bill—and I think there is an awful lot wrong with it—I am not at all convinced it is doing what it set out to do: in fact, it has failed to do that, because the DUP has not moved considerably because of the nature of the Bill. One reason is that the negotiations have been almost exclusively between the European Union on one hand and the British Government on the other, as the noble Lord, Lord Dodds, said. That is a fundamental problem.

I understand why the Irish Government feel that way. They are part of the European Union; the European Union negotiates on their behalf. I thought it would be a good idea if that were reversed: the Irish Government could have negotiated on behalf of the European Union because, as we have heard a number of times this evening, the issues we are dealing with reflect two international agreements. The first and overriding one is the Good Friday agreement. That is an international agreement lodged at the United Nations and it overrides everything, so far as we can see, with regard to the future of Northern Ireland. How on earth can officials from the European Union understand the issues facing Northern Ireland in the way that the Irish Government could?

That reflects too, of course, on how you involve the Northern Ireland parties. If anybody thinks that this whole issue is going to be resolved in Brussels, that is for the birds. The issue is to be resolved in Belfast: that is where the impasse is. The impasse is: why have we not got the institutions of the Good Friday agreement up and running? It is simple. It is because people have not talked to each other. There have not been proper negotiations.

I spent five years of my life negotiating in Northern Ireland so I know how intense those negotiations have to be. There were negotiations involving the European Union at some stage, but nothing like the negotiations between, on the one hand, the two Governments—the British Government and the Irish Government—and, critically, the Northern Ireland political parties on the other. In the end, they will have to decide this.

One of the great tragedies of all this—it was not the fault of the DUP; it was the fault of Sinn Féin, in this case—is that the Assembly and the Executive were brought down over the then Irish language Bill. The result was that there was no proper Executive comprised of the parties in Northern Ireland, who could have discussed all the issues we have been discussing for the past three weeks. Had there been a proper Executive and Assembly up and running, we would not—I hope—be here in the way we are. I have a lot of sympathy for what the noble Lord, Lord Dodds, said.

I still hope that, over the next few months, the Irish Government can discuss meaningfully with the British Government. I particularly hope that there are proper, meaningful negotiations involving the political parties in Northern Ireland. By that, I mean negotiations; I do not mean going to Belfast for a couple of hours, meeting the political leaders, and then coming back again. That is not going to work. You have to get people around a table. You have to involve all the political parties in Northern Ireland. You have to do the things that we have done over the past 10 or 20 years to achieve a real, lasting solution to this issue. What we are doing now is a sham. It will not solve anything at all. The only way we can do it is through negotiations that involve the Governments and the political parties in Northern Ireland.

Lord Empey (UUP): My Lords, I want briefly to follow what the noble Lords, Lord Murphy and Lord Dodds, have said. The noble Lord, Lord Dodds, may be right about the European Union not wishing to negotiate with regional politicians. It has a long-standing position on that; the EU-Canada trade agreement got bogged down because of the Wallonians, I think, who blocked it for quite some time. But never mind what the European Union or Dublin thinks. This is what matters: what our own Government decide on who is going to speak for the United Kingdom at these talks. If our Government decide to involve people and politicians in Northern Ireland, that is our business. It is not the European Union's business. At the end of the day we know what its stance is, but that is neither here nor there if our Government decide that they are going to create their own negotiations. Who they take advice from and consult in the United Kingdom is entirely up to them, so I do not see that as an obstacle.

[Lord Empey]

I gently remind the noble Lord, Lord Dodds, that the first decision in our amendment to the Belfast agreement at St Andrews was to remove the necessity for cross-community consent for the election of the First Minister. Had that remained as it was, Sir Jeffrey Donaldson would be First Minister, not Michelle O'Neill.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I shall make a short comment on Amendment 40 proposed by the noble Baronesses, Lady Suttie and Lady Ritchie of Downpatrick. It says that

"this section does not have effect unless it has previously been approved by a resolution of the Northern Ireland Assembly."

Surely that is not an honourable reflection of the Belfast agreement, which, as the noble Lord, Lord Murphy, told us, overrides all the international agreements. The spirit, and a fundamental pillar, of the Belfast agreement is cross-community support. If what the noble Baronesses are saying is that the amendment actually means "by a resolution of the Northern Ireland Assembly with cross-community support", I challenge them to put that in and make that clear. However, I know from the previous contributions of the noble Baroness, Lady Ritchie, that she does not mean that. She means a simple majority and going back to majority rule, which has disappeared in Northern Ireland over the past 50 years—much at the behest of her former colleagues.

I therefore challenge the noble Baronesses to state clearly: do they desire recognition and an honourable reflection of the fundamental pillar of the Belfast agreement? When they speak about

"a resolution of the Northern Ireland Assembly",

are they clearly stating that that is with cross-community support? If they are not, then they are not upholding the Belfast agreement and all the pretension in this Committee is only empty rhetoric.

6 pm

Lord Pannick (CB): My Lords, I draw attention to the suggestion that Clause 20 should not stand part. During these Committee debates, we have addressed a number of extraordinary provisions in the Bill that give exceptional powers to Ministers, but Clause 20 really does take the biscuit, if that is a parliamentary expression. Let me emphasise what it provides. It provides that the role of the Court of Justice in Luxembourg is excluded, which we will all have a view about, but it goes on to say that Ministers can, by regulations, recreate the role of the European Court of Justice. Is it not quite extraordinary that a Minister should be able, by regulations, to confer a power on an external body to sit as the final judicial body determining issues that are relevant for the purposes of English law? Whether you agree with the role of the Court of Justice or disapprove of it, it cannot be constitutional for a Minister of the Crown to have an exceptional power to decide who and what is the final court of appeal for this country.

Baroness Butler-Sloss (CB): I very much support what the noble Lord, Lord Pannick, said, and add that it seems quite astonishingly narrow-minded and short-sighted to want to be rid of the European court in these circumstances. We heard at length last week about the effect on electricity, but there is a wider effect.

May I just put in a word of defence of the European court? I happened to visit it on numerous occasions. It has made some extraordinarily sensible decisions that have affected this country and particularly women, which is one of the reasons I support it. It is quite extraordinary that a Conservative Government, who I always thought had a broad view, should be quite unbelievably narrow-minded, and that some quite erroneous view of sovereignty should be taking over from the crucial role that the ECJ has to play in the work we are considering.

Lord Hannay of Chiswick (CB): I echo, from a non-legal point of view, the points made by the previous two speakers but, when looking at the European Court of Justice and its role under the protocol, I imagine that even the noble Lord, Lord Lilley, would not contradict the point that I am about to make, which is that the properly constituted British Government, supported by the properly constituted British Parliament, entered into a treaty that gave a role to the European Court of Justice. That is a simple fact. It is there, written. It is another simple fact that there is no provision in the protocol to remove that role of the European Court of Justice—none.

What we are talking about is a breach of our international commitments. I am sure one of the noble Lords on the Front Bench will again hotly deny that this is the case because, like the Red Queen in Alice, their only argument is, "It is so because I say it is so". Fortunately, that is not a terribly convincing argument in this place, where occasionally—not all the time—reason has a way of prevailing. I should like to suggest that we recognise this reality, which is that the Government's attempt to remove the European Court of Justice unilaterally from two international treaties, which they entered with the consent, support and approval of Parliament, is a breach of our international commitments.

Lord Ponsonby of Shulbrede (Lab): My Lords, we had a brief debate on matters relating to the European court last week, which largely focused on the earlier parts of the Bill. It is helpful to have this opportunity to deal with some of these issues in more detail.

The agreement reached with the EU on the status and role of the CJEU in relation to the protocol and other parts of the withdrawal agreement was carefully crafted and informed part of the oven-ready deal the Conservative Party was proud to call its own. There is some logic in what Clause 20 seeks to achieve. If the protocol no longer functions as intended, the legal processes cannot either, but that is only if one accepts that it is acceptable to tear up a binding international agreement in the first place.

The power for Ministers to introduce some form of referral process is interesting and a little surprising. It seems to contradict the earlier power in subsection (2). From a practical point of view, would not any referral scheme work only if the EU and European court agreed to engage in the process? Would this point not need to be negotiated?

There has been a wide-ranging debate on these issues, but it seems that there are some very practical consequences of trying to put into place a new referral process while at the same time needing to negotiate with the organisation one has just torn up a formal agreement with. How would that work in practice?

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, I am grateful to noble Lords for their participation in this debate. I will first address Amendment 40 in the name of the noble Baroness, Lady Suttie. I am delighted to see her in her place and will do my utmost to address her points, as I turn to the first group.

The amendment would require a positive resolution of the Northern Ireland Assembly before the provisions of Clause 20 can be brought into force. I point out, and it is a matter that the whole Committee is seized of, that we need to see the restoration of the institutions as quickly as possible. It is because of the breakdown of those institutions that the Government consider that the Bill is needed.

Clause 20 engages a complex combination of the transferred, devolved and reserved matters relating to foreign affairs and the court systems of the United Kingdom's three jurisdictions. It would not be appropriate for the Northern Ireland Assembly to constrain the UK Parliament's power to legislate, even if that legislation relates to a reserved matter.

Clause 20 is a key part of the Bill. It addresses how we treat CJEU case law, principles, and references, including in relation to those parts of the protocol that we are excluding in domestic law. I will come back to this point, but to reiterate matters taken at earlier stages before your Lordships, this is not a ripping up or tearing up of the protocol, but a recognition that parts of the protocol are not working and parts are. We seek to retain those parts that are working and dispense with those that are not.

Baroness Ritchie of Downpatrick (Lab): I thank the Minister for giving way. Does he not agree that it would be much better to undertake such discussions through negotiations themselves to correct those parts of the protocol that may be causing concern at this moment in time?

Lord Stewart of Dirleton (Con): I stress, not for the first time from the Dispatch Box by myself or my noble friends on the Front Bench, that the Government's preference remains for a negotiated solution.

The Chamber and the other place have heard from representatives of the unionist community that the presence of the European Court of Justice in the protocol is at the heart of the democratic deficit issue. Absent the provisions of Clause 20, we could end up in an incoherent position whereby substantive provisions of the protocol are disapplied but new CJEU case law associated with those provisions continues to apply. For that reason, and the others I have outlined, I urge the noble Baroness to withdraw her amendment. I emphasise that bringing back the democratic institutions in Northern Ireland is the Government's priority.

The noble Baroness, Lady Ritchie, my noble friend Lord Cormack and others raised the matter of engagement with Northern Ireland politicians. I look to the noble Lord, Lord Empey, as well, on this matter, and the noble Lord, Lord Dodds of Duncairn, touched upon it too in his submission to your Lordships at this stage. This is an important point. The Government have committed to ensuring that representatives of the Northern Ireland Executive are invited to be part of the United Kingdom delegation in meetings of the specialised and joint committees discussing Northern Ireland matters, which are also attended by the Irish Government. Also, when the Northern Ireland Executive was functioning, the then Foreign Secretary regularly met the First Minister and Deputy First Minister of Northern Ireland, along with the Secretary of State for Northern Ireland, to discuss the protocol.

However, to reiterate the principal point, the point which brings this Bill before your Lordships' House, the institutions are not functioning, and precisely because of the protocol. We will continue to engage, but the protocol has made things that bit more difficult.

Lord Purvis of Tweed (LD): The Advocate-General will have had the opportunity to reflect on a previous day in Committee, when concerns about the single electricity market were raised. A key component is EU law, which is not in question. How does the Advocate-General anticipate that the joint regulatory system operating under our approach and that of the EU can operate if EU law cannot be interpreted?

Lord Stewart of Dirleton (Con): My Lords, interpretation of foreign law is a matter with which all three jurisdictions in the United Kingdom are familiar. With the noble Lord's leave, because my remit does not extend to the operation of the single electricity market, which, as he said, was touched upon by the noble Lord, Lord Hain, in an earlier group, I will defer to my noble friends on the Front Bench and will write to the noble Lord on that point. I am grateful to him for his forbearance.

I cannot properly address the possibly important proposition raised by the noble Lord, Lord Murphy of Torfaen, in his submission to your Lordships, anent having the Government of Ireland lead the European Union in terms of negotiations. That matter will have been heard by others in the Government and given appropriate significance. It is a novel proposition expressed with the noble Lord's customary force. I am sure that the Government will look at it.

The noble Lords, Lord Dodds of Duncairn and Lord Empey, gave us the historical background and again laid emphasis which was valuable to us all regarding the importance of the cross-community aspect of the Belfast/Good Friday agreement. As I have said, briefly, the CJEU's position has been identified as a major obstacle.

Your Lordships' Committee heard something about the value to be given to polling; I think the noble Baroness, Lady Hoey, raised that as an earlier stage, contrasting polls with actual democratic exercises. However, I can say to the Committee that polling carried out by Queen's University in Belfast has indicated

[Lord Stewart of Dirleton]
that with people who have concerns about the operation of the protocol, the CJEU and its presence and status was identified as a significant problem.

6.15 pm

Lord Pannick (CB): If the role of the court of justice is, as the Minister puts it, a major obstacle because of democratic deficit, as he describes it, can he please explain to the Committee why Clause 20(3) would give an express power to Ministers to make regulations which would provide for a role for the court of justice? Surely that is inconsistent with what he just said.

Lord Stewart of Dirleton (Con): I am grateful to the noble Lord for raising the point. The Government have always anticipated that the United Kingdom courts will be the final arbiter. The clause to which the noble Lord just referred your Lordships provides for the creation of a reference mechanism, but United Kingdom law would ultimately prevail.

The noble Baroness, Lady Ritchie of Downpatrick, addressed us on Amendments 42 and 43A. I argue that those proposed new clauses are in some respects unnecessary and in some aspects of their drafting inappropriate. Article 14(b) of the protocol already requires the specialised committee to

"examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South Implementation bodies set up under the 1998 Agreement".

That is an appropriate and valuable role. We submit that, by contrast, the noble Baroness's amendments would create a statutory obligation for the United Kingdom to support

"proposals relating to the regulation of goods made by the North/South Ministerial Council and other North-South implementation bodies".

That would cede control over the United Kingdom Government's stance in the joint committee to a council in which the Irish Government sit. We consider that that would be inappropriate. The Government already ensure that representatives from the Northern Ireland Executive, as I said, are invited to meetings of the joint committee which discusses specific Northern Ireland matters, and which is attended also by the Government of Ireland. Therefore, we submit that there is already ample opportunity for representations to be made at the joint committee from both north and south.

We submit that the aspects of new clauses obliging the Government to lay reports before Parliament are also unnecessary. The Government have committed already to lay Written Ministerial Statements in Parliament before and after each meeting of the joint committee, and already do so. We also provide explanatory memoranda on matters to be discussed at joint committee meetings.

There is a more fundamental objection yet. The Bill is designed to restore the balance across all three strands of the Belfast/Good Friday agreement. The analogy with the milking stool has already been made: the three legs are of equal importance. To further empower the north-south dimension to the comparative detriment of the east-west dimension, as the amendment would do, will, we submit, exacerbate the problems facing Northern Ireland and undermine that delicate balance of the Belfast/Good Friday agreement. In that spirit, I urge the noble Baroness to not move her amendments.

Baroness Butler-Sloss (CB): Can I just ask the noble and learned Lord as a lawyer what he was meaning when he gave an explanation on Clause 20(3)? I may be very stupid, but I could not understand a word of it.

Lord Stewart of Dirleton (Con): The noble and learned Baroness doubtless speaks rhetorically. I have the utmost respect for her intellect, as does the whole House. My position, which I sought to express, was that the clause will provide a mechanism by which a reference could be laid before the Court of Justice of the European Union, but that ultimately British law, in whatever of the three jurisdictions it is operating, will prevail over that. It is a reference procedure.

Lord Cormack (Con): I am following up what the noble and learned Baroness, Lady Butler-Sloss, just said. The implication of what my noble and learned friend said from the Dispatch Box is that there is nowhere at all for the European Court of Justice. Is it really a total sticking point in the negotiations? Can he tell me whether this is negotiable? If it is not, we are doubly wasting our time.

Lord Stewart of Dirleton (Con): With the utmost respect to my noble friend's question, I do not feel I can go further from the Dispatch Box on what has taken place or what I consider likely to take place in negotiations from this point.

Lord Purvis of Tweed (LD): Will the Minister give way?

Lord Stewart of Dirleton (Con): Before I do, I say that, in response to an earlier point on which I undertook to write, I am notified from the Box that the matter of the single electricity market and the European Court of Justice's jurisdiction is covered in a letter being sent to the noble Lord today.

Lord Purvis of Tweed (LD): That gives me an opportunity to thank the Minister for his efficiency. I look forward to reading the instant letter that is on its way.

I have a point on Article 2 and the rights associated with it. I seek some reference from the Dispatch Box, because the concern that exists, as I understand it—and I am not a lawyer; that is my declared interest—is that the directives providing the rights under Article 2 are interpretive. Therefore, if there are changes to those founding rights—or updates, interpretations or case law—there needs to be a mechanism by which we will adopt that, otherwise those rights under Article 2 are not being upheld, as I understand it. But if under the Bill the court is prohibited from having that role, what will be the mechanism while we interpret those European directives, which are protected under Article 2?

Lord Stewart of Dirleton (Con): My Lords, the courts of the United Kingdom are fully competent to interpret and apply the law. The Government's intention is that the laws of the United Kingdom should prevail and that the Court of Justice of the European Union should not henceforth have a role, unless a reference is made to it.

Baroness Ritchie of Downpatrick (Lab): In relation to the European Court of Justice and access for the people and businesses of Northern Ireland to the EU single market, how will that be facilitated if there is no ECJ? It has legislative control there.

Lord Stewart of Dirleton (Con): I think this perhaps overlaps with the point that the noble Lord, Lord Purvis of Tweed, raised, but I reiterate our commitment to Article 2. That will be covered in a letter we are presently framing to the noble Baroness. At an earlier stage, she raised the point and gave the Government until the commencement of Report to furnish her with an answer. That answer is now being drafted.

There is a Clause 20 stand part notice. I will summarise what I have said. This clause allows for the proper functioning of domestic court proceedings following the removal of the domestic effect of CJEU jurisdiction under Clause 13. Domestic courts will no longer be bound by CJEU principles or decisions when considering matters relating to the protocol. I emphasise that restoration of these democratic institutions is what we seek to accomplish. Subsection (3) provides a further power to make new provision in connection with this. Regulations made under this power could set out how the UK courts are to regard CJEU jurisprudence or provide a procedure to refer questions of interpretation of EU law to the CJEU if a domestic court considers it necessary to conclude proceedings. The clause is important to ensure that the Government can provide legal and judicial certainty for domestic courts considering proceedings relating to the protocol without being subject to CJEU jurisdiction, in line with the general principles of the Bill. For those reasons, I recommend that the clause stand part of the Bill.

Baroness Suttie (LD): My Lords, I thank the Minister—not least because, as a fellow Scot, he pronounces my name correctly. The constant repetition of "Baroness Sooty" at the beginning was very pointed. Unfortunately, the rest of his reply was somewhat disappointing. However, I am very pleased that he now has on record that the pronunciation is Suttie, not Sooty.

This was a very interesting debate. It split into two distinct sections. There was a powerful debate about the negotiations taking place in Northern Ireland. The noble Lords, Lord Murphy and Lord Cormack, expressed the frustration that many of us feel, that this has to be done at the highest possible level. When the Prime Minister returns, I agree that he must go to Northern Ireland. I am sure that we will return to these matters on the Statement that we expect later this week, perhaps tomorrow or on Wednesday, where we can look at these issues in more detail. The points are very relevant, and there were some extremely good speeches.

The second major concern is around Clause 20. I listened carefully to what the Minister said, but it seems very unclear to me how the clause will protect Northern Ireland businesses, especially those that work north-south, and the single market in the future. I did not feel that we got an adequate reply to that.

The noble Lord, Lord Dodds, and his DUP colleagues raised the important point about consent. That is part of the wider principle of how we make sure that Northern Ireland politicians feel that they are involved and included in this process.

This was a probing amendment. The wording is not necessarily right. However, we should look at this again on Report, perhaps in a broader amendment on the general principle of consent. We would want to look at exactly how that was worded. None the less, on the basis that we may return to it on Report, I beg leave to withdraw my amendment.

Amendment 40 withdrawn.

Amendments 41 to 41A not moved.

Clause 20 agreed.

Amendments 42 to 43A not moved.

Amendment 43B

Moved by ***Baroness Doocey***

43B: After Clause 20, insert the following new Clause—

"UK-EU Veterinary Agreement: report to Parliament

Within three months of the day on which this Act is passed a Minister of the Crown must lay before each House of Parliament a report on the progress of negotiations with the European Union regarding the Northern Ireland Protocol which may result in a UK-EU Veterinary Agreement."

Member's explanatory statement

This amendment requires a Minister of the Crown to report to Parliament on the progress of any negotiations with the European Union that may result in a UK-EU Veterinary Agreement.

Baroness Doocey (LD): My Lords, this amendment seeks to make two important changes to the Bill: it removes the unworkable and discredited notion of dual regulation, and it mandates the Government to negotiate a veterinary agreement with the EU and to report back.

The protocol has facilitated the uninterrupted movement of livestock and livestock products, including milk, across the border between Northern Ireland and the Republic of Ireland. By removing parts of the protocol without a veterinary agreement in place, dairy farmers will bear the brunt of the Government's dogma.

We are not talking about insignificant trade: farmers in Northern Ireland produce around 2.5 billion litres of milk every year. Of that, around 800 million litres, with a value of £600 million, need to move across the border into the Republic of Ireland for processing. This arrangement is not just economically beneficial but built on necessity, because there is insufficient capacity in Northern Ireland to process all the milk produced there, putting at risk the viability of a £1.5 billion industry and the livelihoods of tens of thousands who depend on it.

6.30 pm

The dairy industry is deeply concerned by the real prospect that the changes to the protocol we are discussing in the Bill could plunge milk producers into poverty. Dairy farmers are not the only ones at risk. Each year, 400,000 lambs move from Northern Ireland into the Republic for processing. Pig farmers and others also benefit from current arrangements. It is clearly time to provide stability for the communities of hard-working people relying on food production for their livelihoods by negotiating a veterinary agreement between the UK and the EU. Such an agreement has been called for by business groups in the UK, such as the British Irish Chamber of Commerce, the CBI, the British Meat Processors Association, the British Veterinary Association and Dairy UK.

The two alternatives in play—the red and green lane approach proposed by the Government in the Bill and the express lane on offer from the EU—will both require checks on goods coming to Northern Ireland from Great Britain, as long as there is the possibility of a significant divergence between standards for goods of animal origin. By contrast, a bespoke and tailored veterinary agreement between the EU and the UK could retain trade across the island of Ireland and drastically reduce the necessity of SPS checks. Keeping checks to an absolute minimum requires either a dynamic alignment of veterinary standards or a veterinary alignment retaining common standards between the two jurisdictions.

We know that this can be achieved because the EU already has veterinary agreements in place with Switzerland and New Zealand. Switzerland, for example, has essentially no documentary or physical checks on goods travelling between it and the EU, amounting to a common veterinary area. The implementation of the agreement is overseen by a joint veterinary committee, and such a veterinary agreement is already on offer from the EU to the UK. A New Zealand-style agreement does not provide the same freedoms for the movement of goods because there is no shared land border. None the less, physical checks take place on only 1% to 10% of shipments. In that context, it is plainly absurd that checks are in place for 30% of UK agri-food products currently entering the EU. That is to say, as many as 30 times more checks are happening on products coming from Great Britain as on those coming from the other side of the world.

The amendment gives Ministers the flexibility to come up with a British veterinary agreement that they and this Parliament can live with. It is a pragmatic approach, seeking not to bind Ministers' hands but to empower them to put the Northern Ireland relationship right. I hope the Minister can respond positively to that intention. I beg to move.

Lord Bew (CB): My Lords, I thank the noble Baroness, Lady Doocey, for introducing the amendment; much that she said is extremely pertinent.

It is useful at this point to remind the Committee of quite why we are in this predicament over veterinary matters. From one point of view, you can acknowledge it as a simple function of our departure from the European Union. However, the protocol, in both the May and Johnson versions, contains a way of handling veterinary matters, which is essentially to say, "We will not accept UK veterinary testing. Pirbright is gone and you are out of the system. The only form of veterinary testing we will be able to accept is that within the European Union itself"—presumably, in the case of Ireland, in Dublin. In the EU documents of the time, there are rather interesting green pictures with little arrows showing power departing from the island of Ireland to the EU, which has now taken control of this area.

There is an obvious basic problem with that. The Good Friday agreement, whose importance has been increasingly acknowledged and accepted, was not accepted as the prior agreement when we began this debate, but I notice with pleasure that it is increasingly accepted as the key agreement; that has some significance, as it was not when we opened these discussions. The Good Friday agreement established food safety and animal health boards. For the life of me, I have never known why, in the negotiation, it was quite so necessary to have the approach of extraction of powers from the island of Ireland to the EU that the protocol, lodged by the May Government and signed by the Johnson Government, contains.

That is another example of why what the Good Friday agreement suggests, and obvious pathways that follow from everything that the noble Baroness, Lady Doocey, said, should be followed, rather than a strict obsessive acceptance of the fact that, "We signed it in this protocol and therefore it can't be changed". A negotiation is going on and it is bound to touch on these matters. In this case, as in so many others—including, I dare say, the issue we have been discussing for the last half hour—the canopy for the settlement is acceptance of the Good Friday agreement and the way in which it approached this problem. Then you get into the possibility of consensus and agreement.

It is not all the UK Government's fault that they find themselves, to put it mildly, on the back foot. It is arguable that they have not behaved particularly effectively in sorting this problem out, but it is not all their fault. The root of the matter is the failure of the EU to understand—and how could it?—the north-south dimension of the Good Friday agreement. That failure is radically revealed in Michel Barnier's memoir in these documents. The explanation has been given in various books and articles by the officials involved on the Irish side in Dublin in the negotiation on the 2017 agreement, which then set the template for the two later agreements. The explanation is that the Irish Government appropriated a particular version of the Good Friday agreement—their version—and sold it to the EU, and it was accepted in Europe and by us. We cannot revisit any of these issues in any simple sense but it remains an intellectual reality that is the clue to understanding how we can redress these processes.

All these problems that seem so insoluble—I absolutely respect the spirit in which the noble Baroness, Lady Doocey, moved the amendment—are much more easily resolved if we follow what the noble Lord, Lord Murphy, said, accept the prior importance of the Good Friday agreement and realise that the institutions and the concepts to be found there are the institutions

and concepts that provide the basis for a benign compromise that both the UK and the EU can live with.

Baroness Ritchie of Downpatrick (Lab): My Lords, I thank the noble Baroness, Lady Doocey, for her amendment because it goes to the heart of the protocol and the protocol Bill issues in relation to the need for an SPS veterinary agreement. The dairy and farming industries on the island of Ireland require an SPS agreement. I have written to the noble Lord, Lord Caine, today, following last week's debate on this issue following further discussions with elements of the dairy industry. The bottom line is that unless there is an SPS agreement, that could very much interfere with our dairy industry and totally undermine it.

I shall give a short explanation from the letter. Those in the dairy industry acknowledge the issues that the Northern Ireland retail sector is dealing with regarding the protocol and support for a dual regulatory regime, but such a regime would not work for the dairy industry because we are looking at the very survival of Northern Ireland dairy farmers. Approximately 30% of all Northern Ireland milk is processed in the Republic of Ireland because there is not the capacity to do so in Northern Ireland. It may be worth visiting some of the processing factories in Northern Ireland that are part of a greater co-operative group to see what they do and what they are trying to tell us.

If you create a hard border for milk, which the dual regulatory scheme outlined in the Bill will, there will be enormous environmental issues. Northern Ireland does not have the capacity to dump 30% of its milk, and milk has special regulations for its disposal. You could then move to the culling of perfectly healthy animals which, in a cost of living crisis, is inconceivable. Finally, this would lead to devastating consequences for the economy of Northern Ireland, as the agri-food industry is its bedrock.

So I say to the Minister that those in the dairy industry have looked at the impact of a 30% reduction in sales to an average Northern Ireland farmer. When you consider their average interest on loans and their loan repayments, this would result in an annual negative cash flow. In other words, their costs would be greater than their income.

In summation, it is vitally important that the negotiations achieve an SPS veterinary agreement. From what I have read in the non-papers from the EU of October last year, it is very prepared to enter into such an agreement as part of the negotiations. However, the dual regulatory regime will not work for the agri-food sector. Maybe a bespoke arrangement is required for the retail sector where some of the problems lie.

Baroness Chapman of Darlington (Lab): My Lords, I am very grateful to the noble Baroness, Lady Doocey, for her amendment because it roots our discussions in the real world of farmers and manufacturers and focuses our minds on jobs and prosperity. The noble Baroness, Lady Ritchie, as usual, got it completely right and explained the impact on the dairy industry very powerfully. I will not repeat some of what she has already said, although I was intending to.

We ought to be working towards an SPS agreement. We on these Benches have thought that we should be working towards that sort of agreement for the whole of the UK and we have held that position for over a year because of the very clear benefits it would bring to food and drink manufacturers. I think the food and drink industry is still our biggest manufacturing sector in England, so there would certainly be significant benefits to the whole of the UK of this approach.

One benefit would surely be to assist—not to resolve completely—in overcoming some of the issues experienced by producers, hauliers and those wishing to trade east-west. We are reminded quite rightly by the noble Lord, Lord Bew, that we need to be concerned about this. It would be hugely beneficial to our industries in Northern Ireland and beyond. We understand that not every problem will be solved this way and we know that some SPS checks were there prior to the protocol, for other reasons. That seemed to work fairly well for quite a long time, so that may still be necessary. It will be interesting to see what the Minister thinks about that.

At this stage, we think we need this to help with the costs and administrative burdens faced by producers, distributors and retailers. A couple of examples have been referred to. I will briefly refer to the Swiss deal. They have an agreement where regulations are aligned, eliminating virtually all documentary, identity and physical checks. New Zealand, as we have heard, has an equivalence model that has made processes simpler and reduced checks. We probably would not want to replicate either of those models directly. Obviously there are differences, such as the volumes coming from New Zealand and the fact that many of the loads going east-west in our situation are mixed, that make neither model directly replicable. We think we probably need a bespoke agreement and the door to that seems to be open with the EU, so it is curious that the UK Government seem quite so reluctant to explore that option.

6.45 pm

The amendments in my name are designed to highlight the very real problems faced by not only the dairy industry, but that industry in particular, since the partial implementation of the protocol. What businesses in Northern Ireland are saying as loudly as anything else is that they want stability and predictability, and they are just not getting that from the Government at the moment. What will the Government do if this Bill is enacted? How should businesses prepare?

The amendments we have put down would require the Government to bring forward draft regulations and consult the relevant sectors on them. We know the Government are holding discussions and there is some engagement, and we welcome that, but the problem is the basis of that engagement. Listening and having conversations is absolutely vital—I would not argue with that—but a proposal to discuss, get feedback on and potentially amend, to help people understand what the Government have in mind about what would actually be implemented on the ground, is probably missing, because we have not seen any draft regulations. I hope we do ahead of Report, should we get to that, but at the moment the engagement cannot have a solid basis because the Government have not been clear with business.

[Baroness Chapman of Darlington]

Manufacturing NI put it very well. It says that it has been clear with the Government that, if they proceed unilaterally with this Bill, particularly with an all-encompassing dual regulatory regime, that would create myriad risks for businesses. It says the UK Government are putting their success at risk. I am not saying that all the discussions we have been having about Henry VIII powers and all the rest of it have not been important, but when you hear a sector body say something such as that, it is very troubling, because we know we need to support the economy of Northern Ireland and we know why. The failure of the Government to be clear, to resolve these issues and to get to a settled position is letting down entrepreneurs and businesspeople in Northern Ireland. That is why I am very pleased to support the amendment tabled by the noble Baroness, Lady Doocey, and also commend the ones in my name.

Lord Ahmad of Wimbledon (Con): My Lords, I thank all noble Lords who have taken part in this debate. In particular I thank the noble Baroness, Lady Doocey, for tabling her amendment. I was saying to my noble friend Lord Caine that I think we are getting into some of the reasons. Irrespective of people's views on the Bill itself, the fact is that businesses are facing problems and challenges that need resolution. I will come on to the specific point that the noble Baroness tabled so ably.

Amendment 43B, in the name of the noble Baroness, Lady Doocey, asks the Government to update Parliament on the progress of negotiations on the veterinary agreements between the UK and the EU. Let me say right from the outset that we have always been very serious about our negotiations on the protocol, and we remain so. Our preference remains to resolve the issues with the protocol through negotiations, and the Bill provides a power to implement any agreement which follows those negotiations—indeed, we had quite an extensive discussion on that particular point. I assure the noble Baroness that the Government have engaged quite extensively with the EU on reducing the burden of SPS checks and controls under the protocol, which she also highlighted.

Where we are right now—I am seeking to provide detail while also acknowledging what the noble Baroness, Lady Chapman, said—is that, currently to date, the EU has proposed that any veterinary agreement should be based on dynamic alignment; the Government believe that this would compromise UK sovereignty over our own laws, including our ability to strike trade deals. However, on the specific points that the noble Baroness raised, we remain open to broader negotiated solutions, and we hope that the talks taking place currently can secure a bespoke biosecurity assurance—I welcome the contribution of the noble Baroness, Lady Chapman, in this respect—which maintains our high standards for animal, plant and public health. I know that resonates with all noble Lords.

I will also provide some detail on where we are on both the Swiss and the New Zealand agreements. Of course, the EU has a precedent for making such agreements with other countries—as all noble Lords acknowledged, and I am grateful for that—either through stand-alone agreements, such as the EU-NZ veterinary agreement, or as part of wider agreements with trading partners such as Canada and Switzerland. The UK proposed an SPS model predicated on equivalence and similar to the EU-New Zealand model in the TCA negotiations last year and, indeed, in earlier negotiations and discussions with the EU on the Northern Ireland protocol. However, the EU rejected the possibility of an agreement based on equivalence. The Swiss-EU SPS arrangement is the model that the EU has put forward repeatedly to agree with the UK and is based on dynamic alignment. There is a difference here, but at the same time I appreciate both the tone and substance of this debate, and I want to assure noble Lords that we remain open to these specific points because they address the practical problems being experienced.

Let me say a brief word on the issue of statutory reporting, although I think I have already covered this point previously. As with any negotiations, this is a matter of the foreign affairs prerogative. As I said previously—and I have sought to provide a bit more detail on some of the context in my response—I will certainly seek to update noble Lords, and I appreciate the insights that the noble Baroness, Lady Doocey, has brought to this debate.

Turning now to the other contributions, including those from the noble Baronesses, Lady Ritchie and Lady Chapman, I will discuss Amendments 58, 60 and 63 together. These amendments would also place a number of requirements on the Government relating to various specific sectors within Northern Ireland, notably the publication of draft regulations and a sector-specific impact assessment, as well as to engage in consultations with representatives from those sectors. Let me say immediately that I entirely sympathise with the desire to ensure that we are properly considering the impact of legislation on all businesses within Northern Ireland. It is for this reason that we have engaged extensively with stakeholder groups across business and civic society in Northern Ireland, in the rest of the UK and internationally—I know that my noble friend Lord Caine will speak to this in subsequent groups; indeed, he covered this in our previous debates in Committee.

In addition to routine engagement, during the summer the Government held over 100 bespoke sessions with over 250 businesses, business representative organisations and regulators to inform the details of how the dual regulatory and trade boundary models should work in practice. In this respect, I can share with all noble Lords—and, in particular, with the noble Baroness, Lady Doocey—that we gained a lot of practical information from that, and we are reflecting on the wealth of feedback received as we continue to develop the details of the underlying regime. The regulations themselves will be the product of this very engagement with business to ensure that the implementation of the new regime is as smooth and operable as possible. Your Lordships' House will have the opportunity—

Baroness Chapman of Darlington (Lab): Although what the Minister has just said is very welcome, ordinarily there would be engagement so that the Minister could make well-informed suggestions. Then, of course, a period

of consultation on whatever ideas the Government intended on implementing would follow. Is the Minister saying that that process would be followed in this case?

Lord Ahmad of Wimbledon (Con): I know that the noble Baroness, and other noble Lords—the noble Lord, Lord Purvis, among them—have pressed me on the issue of the detail of the draft regulations. That is, again, very much the process we have adopted to make sure that we are speaking to industry and businesses and reflecting those in the draft regulations that will be published. The regulations will be reflective, as I said earlier, of the wealth of the feedback we have received. The scrutiny of the regulations will be done in the usual fashion and, of course, the Government will provide all the usual accompanying material under parliamentary procedures. The full details of the new regime will be set out in and alongside the regulations made under the Bill, including any economic impacts where appropriate. This will allow Parliament to be informed in its scrutiny of the new regime when it has been put in place.

On the issue of a statutory duty to publish such material, as suggested in the amendments, the Government's view is that it would not be appropriate to place a statutory duty on the Government. The legislation is needed to tackle the urgent problem we have sought to identify with the workings of the protocol in Northern Ireland. While we do not anticipate any issues with providing information before regulations are brought forward, we do not want to tie our hands unnecessarily in this respect.

Finally, I say to all noble Lords who have participated in this debate that I welcome these specifics, and I hope noble Lords will appreciate that I have sought answers and am listening during the course of Committee, as are my colleagues. I am seeking to provide a bit more detail on what we have but, while asking the noble Baroness to withdraw her amendment, I do value the insight and the practical and constructive nature of the amendments that have been tabled.

Baroness Doocey (LD): My Lords, I thank the Minister for the way he has accepted what I have said. It is very important that there is an agreement—it is absolutely critical. I do not for one moment underestimate how difficult it is for a negotiation at this level, but I urge the Government to move heaven and earth to make sure that at the end of the negotiations there is a veterinary agreement. We simply cannot allow the livelihoods of tens of thousands of people to be put at risk; it is just not an option. But for now, I beg leave to withdraw the amendment.

Amendment 43B withdrawn.

Clause 21 agreed.

Clause 22: Regulations

Amendment 44

Moved by ***Lord Ponsonby of Shulbrede***

44: Clause 22, page 11, line 15, leave out subsection (1)

Member's explanatory statement

This amendment removes the ability for regulations under the Bill to make changes that could normally only be made by an Act of Parliament (including modifying this Bill).

Lord Ponsonby of Shulbrede (Lab): My Lords, Amendment 44, in the name of my noble friend Lady Chapman of Darlington, concerns Henry VIII powers and general rules regarding regulations. This amendment removes the ability for regulations under the Bill to make changes that could normally be made only by an Act of Parliament, including modifying this Bill. I also support the clause stand part notice in the name of the noble Lord, Lord Purvis, which seeks to oppose the inclusion of Clause 22, which sets out the general scope and nature of the powers contained in this Bill.

Clause 22(1) has the effect of making every regulation-making power in the Bill what the DPRRC has referred to as

"a super Henry VIII power."

Ministers would be able to make any provision that would normally be made by an Act of Parliament, as well as modifying the Bill once enacted. The DPRRC's report included a helpful comparison with the powers afforded by the European Union (Withdrawal) Act. It felt those powers were too broad, yet Section 8 of that Act was subject to a sunset clause and a number of clear and important restrictions.

7 pm

As has been discussed in previous groups, the Bill would allow Ministers to conduct themselves in a manner that may otherwise be deemed unlawful, while at the same time allowing the Treasury to introduce or amend taxes with only a minimal parliamentary role. In some senses, the removal of Clause 22(1) would constrain the powers exercisable under other parts of the Act, but that constraint is nowhere near sufficient in and of itself.

This brings us back to the prospect of removing entire clauses from the Bill on Report, should we even be in a position to proceed at the appropriate time. So, these amendments in a sense restate some of the arguments we had at earlier stages and I look forward to the Minister's response.

Lord Judge (CB): My Lords, I keep hearing the words "democratic accountability" and then I look at the Bill and I cannot find any. We have listened as Clauses 4 to 21 have been debated in this Chamber. If we add those clauses together, we have a lamentable lack of democratic accountability. I expect it will be said, "Ah well, as always, the House of Commons can reject any regulations" and so on; and, "We have a long history of how there are 16 different ways in which the regulation-making powers can be exercised." To that, I will say: but they have not exercised that power since 1979. This is not democratic accountability; this is quite extraordinary legislation, passing huge amounts of power into the hands of the Executive. Others have spoken. Clause 18 creates tertiary power—guidance—which is not quite a regulation of the sort we are talking about but can create matters that require compelling attention from those who have to abide by the guidance.

Let me just look at Clause 22(1), because it makes what has gone so far rather trivial. It states:

"Regulations under this Act may make any provision that could be made by an Act of Parliament (including provision modifying this Act)."

[Lord Judge]

I then add the words "and any regulations made under it", because that follows. What it means is that the Bill, having been successfully enacted, could be dismantled by the Government two weeks later. It could be dismantled by a Government three years from now or by a Government 10 years from now. It could restore the very thing that the Bill says it is trying to get rid of—all in the hands of a Minister making regulations under the Act. That is not Henry VIII. I have lost count; I have tried to add it up in different ways. Is it Henry VIII plus Henry VIII for Clauses 4 and 5? That comes to about Clause 79. It cannot be. Is it Henry LXIV, because it is Henry VIII squared? This is an extraordinary power when the Bill is already riddled with Henry VIII powers. I am not jesting about this. The Bill provides for its restoration at any time that the Government of the day choose, or any part of it, or some of it along with other legislation. That is not how we should legislate. Should we not be ashamed of ourselves?

Parliament gave Henry VIII the power to bastardise his first and second children, to say that he was the Pope in England and that he was God's messenger on earth, to decide the succession, and to say that the monasteries should all come down—the widest act of criminal damage this country has ever seen. Then he produced a Bill giving him the power, by proclamations, to create new laws. I shall not read it all out. What did the successor to that Parliament do? It said no. There was a battle, but in the end that power had this proviso to it put in by the Commons:

"nor that, by any proclamation … any acts, common laws (standing at this present time in strength and force) nor yet any lawful or laudable customs of this realm … shall be infringed, broken or subverted, and specially all those acts standing this hour in force which have been made in the King's Highness's time".

He was not allowed to modify an Act of Parliament by proclamation.

We do not have proclamations anymore; we have statutory instruments. We have regulation-making powers that amount to a modern form of proclamation. We must not agree to clauses of this kind in any Bill. Those that we have agreed to—shame on us. We must not agree to this one. We must insist on the determination and, in its case, the courage shown by the 1539 Parliament not to give the King the powers he wanted. We must not give the Government the power they want in this clause.

Lord Pannick (CB): My Lords, as we go through this Committee, we are discussing clauses that confound constitutional principle in ever more astonishing ways. I entirely agree with what was just said by the noble and learned Lord, Lord Judge. It is quite extraordinary that we should be asked to approve a clause that would confer power on a Minister to make by regulations

"any provision … including provision modifying this Act".

The Committee has heard a number of powerful speeches over its four days explaining why it is wasting parliamentary time in analysing the Bill when it is a sideshow to the need to resolve the dispute with the EU. Whatever view you take about that issue, what is a manifest waste of time is for this Committee, and for Parliament on Report, at Third Reading and in the House of Commons on ping-pong if it comes to that, to debate, amend and approve legislation after lengthy debate, only for Ministers to have the power to say, "I don't care about that. Parliament might have agreed it, but I'm going to set it aside. I'm going to substitute something else." What is the point of parliamentary debate if that is what a Minister can do?

Indeed, such is the breadth of this provision that a Minister would have a power to substitute in the Bill something that he or she approves of that has been specifically rejected by Parliament. Parliament might have passed an amendment against the views of the Government, yet, under this clause, as the noble and learned Lord, Lord Judge, said, two weeks or three years later the Minister can say, "That may be what Parliament has done, but I'm going to insert something different". As the noble and learned Lord said, we really have to take a stand. This cannot be right in principle and it cannot be acceptable to Parliament.

Baroness Butler-Sloss (CB): I want to add to the two speeches that have just been given, with every word of which I agree. The Minister may say that we are being hypocritical, as was said earlier, because there have been earlier Bills where we have allowed Henry VIII clauses; but I have been in this House since 2006 and in my time I have never seen a Bill anything like this one, with enhanced Henry VIII powers—or Henry LXIV powers. To my knowledge, in my time we have never had a Bill that has gone so far beyond what one might almost call the "normal" Henry VIII clauses. I entirely agree with what the noble and learned Lord and the noble Lord, Lord Pannick, said. It really is time that the Government stand back and ask, "Is this actually reasonable? What is it that we are trying to do?" It is utterly unacceptable.

Lord Purvis of Tweed (LD): My Lords, it is very hard to follow those three eminent contributions. The egregious nature of this clause and its subsections goes beyond parliamentary affrontery because they impinge on the devolved Administrations as well. Not content with abusing this Parliament, Clause 22(6) will abuse the other Parliaments in the UK as well by creating new powers for Ministers of the Crown over those of devolved authorities. As the delegated powers memorandum blithely puts it:

"Where a matter would normally fall within the legislative competence of the devolved administrations and the passage of devolved primary legislation would not be appropriate",

as the Minister of the Crown would say, "or timely", on a timetable that the Minister of the Crown would set,

"it may be appropriate to create a new devolved delegated power by exercise of this power."

It is a Trojan horse for abusing not only Parliament but Parliaments.

I have not been a Member of your Lordships' House for as long as the noble and learned Baroness but I have been here nine years and I was a member of a devolved authority. This is not how we should be making legislation at all. This is the clause about which Sir Robert Neill said at Committee stage in the Commons,

"this is Henry VIII, the six wives, Cardinal Wolsey and Thomas Cromwell all thrown in together".—[*Official Report*, Commons, 13/7/22; col. 370.]

The serious issue is that I do not know what limits the Government expect there will be on these powers. Could there be new criminal penalties? If not, they should not be within this. How about new tax powers? If that is not the intent, it should not be made possible by this Bill. Could it affect any part of the withdrawal agreement on other rights and freedoms? If that is not the Government's intent, they should say so, but there are no such restrictions.

This is a Trojan horse, and in looking at some of the clauses a side of me wonders whether I should oppose it. It is so broad that we could rejoin many of the EU institutions we have left—just from this wee clause in this wee Bill. That might suit our Benches, so perhaps we had better not complain too much. Through Clause 22(6) and other sweeping regulation-making powers, we could rejoin the customs union and many of the institutions. If that is not the Government's intention, the Minister should say so at the Dispatch Box. If he does not, we could use it for that purpose.

More seriously, and I will close on this, the noble Lord, Lord Kerr, has been consistent since the outset in using a phrase that has struck me: this is not what we do when it comes to international law. The noble and learned Lord, Lord Judge, hoped over the weekend that this was all a dream and that he would arrive here on Monday to find that, like Bobby Ewing in "Dallas", these three days in Committee never really happened. I arrived back in the country this morning from speaking at a parliamentary gathering in Buenos Aires—a network of parliamentarians supporting the International Criminal Court—in the presence of the president of the ICC. I have to say to the Minister that there have been very few times that I have been embarrassed to say that I am a British parliamentarian, but the knowledge of parliamentarians from across the world about what we are doing with this legislation shocked me. They know what we are doing. There are international gatherings about how Parliaments can support the international rules-based system, the ICC and international standards in law. This is not what we do. But it is even worse than that because our Government tell other countries what they should not do, but we are doing it at home. This is an opportunity to stop it. I hope that, even at this stage, the Government will listen to the noble and learned Lord, Lord Judge, and just stop it.

7.15 pm

Lord Campbell of Pittenweem (LD): My Lords, I wish to add for a moment or two to what has been some pretty powerful gunfire from those who are eminently qualified in making the serious submissions they have made.

My attention has been caught by Clause 22(6), which seeks to interfere, one might say, with devolved authorities. Looking at my friend, the noble Lord, Lord Dodds, it occurred to me that, were he part of a devolved authority in Northern Ireland and there was the exercise of a power under subsection (6), he would take pretty short shrift with it, I am sure.

To introduce perhaps a rather vulgar political point, we in Scotland are concerned constantly with the movement towards independence. Part of that movement is, often by fiction, offered to the potential electors in a referendum on the basis that Westminster wants to interfere with Scotland. It seems to me that subsection (6) might provide rather more substantial evidence of an intention of that kind.

I know that there are honourable men sitting on the Government Front Bench, but do they really believe in their hearts that it is right to urge upon this Committee the contents of this particular subsection? Surely they must realise that it is inimical to every principle upon which Parliament is founded and this House operates. If I may be forgiven for my impropriety, it is time for the Front Bench to fess up.

Lord Dodds of Duncairn (DUP): My Lords, it is a pleasure to follow the noble Lord. I take the point that he made about Clause 22(6). As a Member of the Northern Ireland Assembly for many years, I know how much Members of the Assembly value their right to make laws in the areas that are devolved to it. However, I must say gently to your Lordships that, in recent times, there have been a number of examples of this House and the other place interfering in the devolved settlement in Northern Ireland. Although some of us have pointed that out, it has been with your Lordships' positive assent and approval that the overriding of the devolved settlement in Northern Ireland has taken place in a number of areas. I would like to see a consistent approach to the devolved settlement in Northern Ireland, not this pick-and-choose approach where something being okay appears to depend on the issue of the day but, if you do not like what the Assembly has done, you can interfere—as seems to have happened on a number of recent occasions in this Parliament.

I want to highlight Clause 22(3). On the face of it, it appears—I am open to correction by those who are much more learned and have more legal expertise in these matters than me—to put some kind of restriction on the wide Henry VIII powers that are given under this particular clause. The one thing that it is apparently not possible for regulations under the Bill to do is

"create or facilitate border arrangements between Northern Ireland and the Republic of Ireland which feature at the border … physical infrastructure (including border posts), or … checks and controls, which did not exist before exit day."

Having listened to the debate, I think that may well be able to be swept aside at any point. However, why is emphasis put on the one thing that is mentioned? I look to the Government Front Bench as to why it is mentioned, given that it really has no effect. Of course, we do not want any extra infrastructure at the border between Northern Ireland and the Irish Republic and it has never been the desire or wish of anyone in the Northern Ireland political parties, or the Irish Government, the British Government or the EU, to have such infrastructure. But it would be quite helpful and an acknowledgement of unionist concerns if there were a similar provision which acknowledged—under strand 2, the north-south approach in the Belfast agreement and the importance of that relationship, but also strand 3, the east-west dimension—that regulations may not create or facilitate border arrangements between Northern Ireland and the rest of the United Kingdom.

Baroness Hoey (Non-Afl): I am following the noble Lord closely on this point. Does he realise that today Maroš Šefčovič talked about the need for fewer border checks and, in fact, that they could be invisible on the

[Baroness Hoey]
Irish Sea border. Does the noble Lord agree that if they can be invisible on the Irish Sea border, they can be invisible at the frontier, where of course checks should happen between one country and another independent country?

Lord Dodds of Duncairn (DUP): Of course. It appears that things may have moved on, because once all these ideas were dismissed as completely fanciful. Indeed, "unicorns" were brought into play and all sorts of dismissive language was used. I am glad that now there is at least an acknowledgement that some of these checks can be done in the way that the noble Baroness has described Maroš Šefčovič as talking about.

The important point here is that we have been told throughout the Brexit process that there cannot be a single check or single piece of infrastructure on the Irish border because otherwise that will lead to violence—it will be attacked and that will undermine the Belfast agreement—without anyone, hardly, making the obvious point that, if that is unacceptable north-south, then it is doubly unacceptable between Northern Ireland and the rest of the United Kingdom. What does that say to the unionist population?

One of the reasons we have the alienation of people in Northern Ireland is the one-sided approach and interpretation of the Belfast agreement. I would just like an explanation. Whatever its actual import or ability to be enforced, or the fact that it can be superseded by a ministerial direction, why do the Government highlight that issue and not the fact that the reason why we have such a problem in Northern Ireland with the political institutions is that we have this similar kind of infrastructure and checks between one part of the United Kingdom and the other?

On the point that has been raised very powerfully by noble Lords on the legal issue, I fully understand why they take the position they do and, as has been said, it has been raised in relation to other Bills and Acts. I would love to see the same outrage and anger expressed more widely; it may well have been during the passage of the then Bill, before my time in your Lordships' House.

You can imagine therefore that if there is such outrage about powers being given by Parliament to the Executive and UK Ministers, how citizens of Northern Ireland—British citizens, fully part of the United Kingdom—feel about powers being not just taken from Parliament and given to Ministers but given to foreign officials of the European Commission to propose law. They are totally unaccountable to anyone in the United Kingdom. They do not have to answer to anyone or answer any questions. There is no parliamentary process whatever within the United Kingdom that can even challenge the directives and regulations that cover 300 areas of law affecting the economy of Northern Ireland. Therefore, while accepting entirely the points made about delegated legislation and Henry VIII powers, I would like to see reflected some of the same concerns about how we in Northern Ireland feel about the way that laws are now made by a foreign polity in its own interest. It is not in our interest; it is made in its own interest.

The Bill is part of an effort to try to remedy that problem. People have said we will have negotiations. But given that we have already had communicated to us that the EU is not open at this stage to changing the mandate of its main negotiator, certainly, how else are we going to get to a situation where that outrageous situation in Northern Ireland is remedied?

Lord Ahmad of Wimbledon (Con): My Lords, I thank—I think—all noble Lords for their contributions to this debate. There were some highlights. I have to go home and explain to Lady Ahmad that the noble and learned Lord, Lord Judge, dreamt about me over the weekend. That is a moment to ponder and reflect on, as any good Minister would, from the Dispatch Box.

Like the noble Lord, Lord Purvis, I have the opportunity to travel, although I was asked today as I came into your Lordships' House, "Tariq, why aren't you in Sharm el-Sheikh?". I said three words—"Northern Ireland protocol"—which put that colleague in their place. I heard what the noble Lord said about international law and the rule of law. Notwithstanding the challenges, it is right that we have this level of scrutiny. I listened very carefully to the noble and learned Baroness, Lady Butler-Sloss, and I agree with her. We are all talking about time in Parliament, et cetera. The other day, I was informed that I am now second only to the noble Earl, Lord Howe, in term of my time on the Front Bench. Let us watch that space as well. With the nature of reshuffles, you never know what will happen when.

In all seriousness, we have a lot of respect internationally. That is why, in successive elections in the ICC, three major positions have been held by the UK. Again, in the ILC, a successful campaign was run. I feel very strongly that, irrespective of the nature of the discussions we are having, the United Kingdom has a very strong reputation internationally and I, for one, am very proud to be not just a British parliamentarian but a British Minister representing these interests abroad.

I come to the specifics now, the nitty-gritty of the amendments themselves. I first say again that on the issue of the Henry VIII clause—specifically on this clause, but more generally across the Bill—of course the Government are listening very carefully to the contributions being made. We have had legislation in the past where we have equally had this level of scrutiny. It is a reflection of our democracy that it allows us to have these challenges to the Government.

I turn to Amendment 44. The Bill provides specific powers to make new law in certain areas, as noble Lords have pointed out, including where we are disapplying the EU regime in domestic law and where such laws are required to make our new regime work. To give effect to the new regime set out in the Bill, amendments to domestic legislation may be required, including Acts of Parliament where appropriate.

Moreover, certain sectors in Great Britain are currently also regulated by retained EU regulations which have protected status under Section 7 of the European Union (Withdrawal) Act 2018 and cannot be modified except by an Act of Parliament or certain specified subordinate legislation. An example is retained EU regulation 2016/425, which currently regulates personal

protective equipment in Great Britain. It may be appropriate to amend such legislation for the purposes of the dual regulatory regime to ensure that the UK regime applies appropriately also to all of the UK and appropriately to Northern Ireland.

We recognise, of course—and I have heard it again today—the seriousness of amending legislation, and also proposing new legislation. The noble and learned Baroness pointed to legislation already passed, where Henry VIII clauses have been included. I will not challenge the fact we have had quite challenging discussions in this respect as well, but Parliament has already considered and put on the statute book these particular issues of amending legislation. While it might be somewhat of a small recognition of the powers, these particular powers to amend Acts of Parliament will be subject to the affirmative procedure, allowing Parliament to scrutinise and review any changes to existing legislation, even where these changes are consequential, or technical. I recognise, of course, the depth of the challenge that has been put to the Government and, in all respects, respect the seriousness of the contributions that have been made.

7.30 pm

Lord Purvis of Tweed (LD): I am grateful to the Minister for giving way. The example he cited with regard to the operability of the red lanes is covered earlier in the Bill, so the regulation powers were debated. So I do not understand why they are needed in such a broad manner under this clause, which does not even have any of the restrictions of the previous ones. If they need powers for the operation of any of the new red lanes, they are there in Clauses 4, 5 and 6. We have debated these; they exist.

Lord Ahmad of Wimbledon (Con): My Lords, I was merely emphasising. I did refer to earlier clauses as well when I was giving one specific example in this particular group. But I hear what the noble Lord says, and, of course, I recognise that there are issues, particularly in this clause, about the powers that are being proposed. In coming on to that particular point, in relation to the concerns raised by the breadth of powers, each individual power that is being proposed in the Bill is being constrained by its purpose. None of them is a "do anything" power, and Clause 22(1) does not make them so: it merely ensures they can fully fulfil their purposes.

Lord Judge (CB): The clause says that regulations under this Act may make

"any provision that could be made by an Act of Parliament (including provisions modifying this Act.)"

The words are completely expressed.

Lord Ahmad of Wimbledon (Con): As I said, we are seeking to put a power in the Bill, and I will provide clarification on that. Each individual power that we are seeking to take in this respect is being constrained by its purpose—but, if I may, on that point, I will write to the noble Lord once I have talked to officials specifically about this aspect of the debate.

Lord Pannick (CB): Perhaps I could invite the noble Lord, when he writes to the noble and learned Lord, Lord Judge, to explain why it is appropriate for Ministers to have the power to make regulations to modify this very Act. Can he specifically address how Clause 22(1) fits with the clause mentioned by the noble Lord, Lord Dodds, Clause 22(3), which contains the express exception:

"Regulations … may not create or facilitate border arrangements"?

Yet, as I understand this Bill, Ministers under Clause 22(1) could simply disapply Clause 22(3). It would be completely otiose. What is the point of having a restriction in the Bill that a Minister, by regulation, could simply disapply?

Lord Ahmad of Wimbledon (Con): I shall of course cover the specific point the noble Lord has highlighted, as well. I appreciate that it is for the Government to make the case on the specific provision contained in the Bill to ensure that we can, as far as possible, satisfy the issues and the questions being raised.

Clause 22 sets out the general scope and nature of the powers contained in the Bill. This will ensure the powers have the appropriate scope to implement the aims of the Bill. The clause sets out that regulations made under the defined purpose of the powers in this Bill can make any provision—this was a point noble Lords made—for that purpose that could be made by an Act of Parliament. This includes amending the Bill, as the noble Lord has just pointed out, or making retrospective provision.

As the noble Lord, Lord Dodds, said, the clause confirms that regulations under this Bill may not create or facilitate border arrangements between Northern Ireland and the Republic of Ireland that feature, at the border, either physical infrastructure or checks and controls that did not exist before exit day.

Subsection (6) provides that a Minister can facilitate other powers under this Bill to be exercisable exclusively, concurrently or jointly with devolved Administrations. The noble Lord, Lord Pannick, raised a specific point just now, which does require clarification on two elements within the clause. I will make sure that they are covered.

A concern was raised about the ability of the Government to work with the devolved Administrations. As I said on an earlier group, the former Foreign Secretary wrote to the devolved Administrations and we are engaging with them on the implementation and provisions of this Bill. It is the Government's view that these new powers are necessary to make the regime work smoothly and to provide certainty to businesses.

While recommending in Committee that this clause stand part of the Bill, I recognise that, while we share moments of humour in Committee, it is right that these detailed concerns were tabled in the way they were. This allows the Government—

Lord Dodds of Duncairn (DUP): I am very grateful to the Minister before he sits down. He sort of glossed over Clause 22(3) by, in effect, reading out what it says. But I respectfully seek an explanation of why that subsection has been inserted when there is no similar provision on checks and infrastructure between Northern Ireland and the rest of the United Kingdom.

Lord Ahmad of Wimbledon (Con): On that point and the earlier issue of why this is specific, we want to avoid a border between the Republic of Ireland and Northern Ireland in any shape or form. That is the specific nature of this and we have all desired that in our discussions, but I take on board and understand the noble Lord's point. Indeed, the noble Baroness, Lady Hoey, also pointed to this and how the operability of the border is causing challenges. This is inherent in the protocol, which provides this de facto border between two different parts of the same sovereign nation. That is the problem that we are wrestling with and seeking to resolve—so I acknowledge the noble Lord's point.

Lord Campbell of Pittenweem (LD): Before the Minister is allowed to resume his seat, I understand and accept that the Secretary of State may be engaging with the devolved authorities. On that basis, may we take it that their responses to that engagement will be publicly available?

Lord Ahmad of Wimbledon (Con): My Lords, I will not go into the speculative nature of what each devolved Administration will say, but we have great resilience and passion within our devolved Administrations and I am sure that, as discussions and negotiations progress, both the Government and your Lordships' House will be very clear about what the Administrations think.

Lord Kerr of Kinlochard (CB): The constitutional point is clearly the huge point here; mine is a minor addition. Would the noble Lord look at Clause 22(2)(a) and (b) and put himself in the position of an EU negotiator? Would he willingly come to an agreement with the British if they had just given their Ministers the power, without any parliamentary oversight, to make any provision they wish, notwithstanding that it is not compatible with the protocol or any other part of the EU withdrawal agreement?

As the negotiator contemplates trying to find practical solutions to make the protocol less burdensome, the negotiator is confronted on the other side of the table by a Government who are taking to themselves the right to change anything in the withdrawal agreement without consulting Parliament. I think as a minimum—and I put this very mildly—that does not improve the chances of the negotiations succeeding, which is why I think so many in Brussels believe that if we proceed with this Bill, the talks, the negotiations and the consultations will not succeed.

Lord Ahmad of Wimbledon (Con): That was almost a rhetorical question being posed to me. What I can say in response is that the engagement we are having with the European Union is—as I have said before, and I would be very up front and honest if this was not the case—being done constructively. The EU understands and appreciates the basis of why we are seeking to do this. It also understands that this Bill is being scrutinised, as is happening this evening, and that we are continuing to work in terms of constructive engagement.

As I have said before, with the Commissioner visiting the UK, the engagement between my right honourable friend and Commissioner Šefčovič is in a good place in terms of the level of engagement, in both tone and substance. I cannot go further than that. The noble Lord is very experienced in all things diplomatic and, indeed, is a veteran of the EU Commission. I am not going to speculate on what an EU Commissioner or an EU negotiator will say because I have never been one.

Lord Purvis of Tweed (LD): The Minister is being patient with us and I know everybody is hungry. As the Minister has generously said he is going to write to Members taking part in the Committee, will he add something for my benefit, which is giving examples of other legislation that we have passed in which any and all parts of it can be amended by regulation immediately on commencement?

Lord Ahmad of Wimbledon (Con): This is turning into a very long letter. I think I am going to get something from the Box which says, "Minister, do not commit to writing anything ever again." But I know what the noble Lord has asked of me.

Lord Ponsonby of Shulbrede (Lab): My Lords, the Minister has been put in an impossible situation. I thank all noble Lord who have spoken in this debate. It is a hard act to follow. We have had the noble and learned Lord, Lord Judge, talking about extraordinary legislation and quoting from the Proclamation by the Crown Act 1539, the noble Lord, Lord Pannick, talking about wasting the Committee's time and then using that very legal words "otiose" when comparing Clause 22(1) and Clause 22(3). We have had the noble and learned Baroness, Lady Butler-Sloss, talking about never seeing so many Henry VIII powers in her time in Parliament. The noble Lord, Lord Purvis, asked a number of questions, including one we have heard just now, and the noble Lord, Lord Dodds, very relevantly asked about the reason that there is an exception in Clause 22(3) about border infrastructure on the north-south border, so I look forward to seeing this letter as well. I beg leave to withdraw the amendment.

Amendment 44 withdrawn.

7.45 pm

Sitting suspended. Committee to begin again not before 8.15 pm.

8.15 pm

Amendment 45

Moved by ***Baroness Hoey***

45: Clause 22, page 11, line 16, at end insert ", but may not amend, repeal, or create an incompatibility with, the Act of Union (Ireland) 1800 or the Union with Ireland Act 1800."

Member's explanatory statement

This amendment prevents a Minister of the Crown making provision by regulation which has the effect of repealing, subordinating or otherwise interfering with the United Kingdom's foundational constitutional statutory framework.

Baroness Hoey (Non-Afl): My Lords, in moving this amendment I will also, in some detail—I apologise, but I have not spoken very much in Committee—make a constitutional plea to the Government on behalf of British citizens in Northern Ireland.

This amendment is very simple. It seeks to remedy an important gap at the heart of the Bill. I believe the Bill is good. It creates the framework for a fair and balanced solution and, if the powers it confers are used appropriately, will restore Northern Ireland's place within the union. Clause 1(c) is clear that one of the Bill's primary purposes is to remedy the present subjugation of the Union with Ireland Act 1800 and the Act of Union (Ireland) 1800, which together are known as the Acts of Union.

The Prime Minister before the previous Prime Minister, speaking in the House of Commons, claimed that the withdrawal Act was not intended to affect the Acts of Union, yet a few months later senior counsel, on behalf of the then Government, went to court in our protocol case in Belfast and argued exactly the opposite. As the late Lord Trimble simply put it:

"The Act of Union is the union."

That is undeniably true. In *Halsbury's Laws*, the Acts of Union are described as

"the statutory warrant for the continued incorporation of Northern Ireland with the United Kingdom".

The High Court and Court of Appeal in Northern Ireland have been clear—we should not really need a court to tell us this—that the Acts of Union remain in force and together have the status of constitutional statutes.

There has been some commentary suggesting that the Acts of Union were somehow repealed or overridden by the Government of Ireland Act 1920 or later statutory provisions, but that is simply not so. The 1920 Act simply made provision for separate devolved arrangements in two parts of Ireland, each of which remained fully part of the United Kingdom and subject to the United Kingdom Parliament. There was and is nothing in the Acts of Union to prevent the creation of subordinate legislatures, provided that the King in Parliament remains sovereign.

Section 1(2) of the Irish Free State (Agreement) Act 1922 provided that the southern parliament be dissolved, and the Irish Free State (Consequential Provisions) Act 1922 provided that the 1920 Act no longer had effect beyond Northern Ireland. This has the effect of a non-textual amendment to Section 75 of the 1920 Act, maintaining the untrammelled authority of Parliament over Northern Ireland. In consequence, southern Ireland no longer remained within the UK but Northern Ireland did, and therefore remained firmly under the constitutional protections of the Acts of Union. These legislative events in 1922 at most altered the territorial extent of the Acts of Union but did not alter the fundamental constitutional foundation of the union itself.

Here is the simple question I pose to noble Lords. Article 3 of the Acts of Union creates our Parliament, and Article 6 prescribes the economic constitutional framework—essentially, the UK internal market. Could a majority in Parliament constitutionally abolish Parliament, and thus our democratic constitutional system itself, and in its place usher in new authoritarian arrangements? If noble Lords think not, because Parliament is a constitutional fundamental, then that constitutional fundamental is derived from Article 3 of the Acts of Union. If Article 3 of the Acts of Union is a constitutional fundamental, as a matter of simple logic there is no reason to give some lesser status to Article 6. Why should one receive greater constitutional deference or protection than the other?

In our largely unwritten constitution, something may be unconstitutional—that is, offensive to or subversive of our constitutional order—without being necessarily unlawful. Our constitution, however, is entrusted primarily to us and our colleagues in another place. We are here as guardians of the constitutional arrangements of the United Kingdom as much as we must be guardians of the rule of law. But if a law, even one made by Parliament, is unconstitutional, it is our duty to stand against that in discharge of our functions in this House. In my view and that of many others, Section 7A of the European Union (Withdrawal) Act 2018, which brings the protocol into domestic law, is unconstitutional, given that its effect is the subjugation of the Acts of Union and thus the fundamental constitutional basis of the union itself.

While this Bill may well conflict with international obligations under the protocol—although I think that Article 16 of the protocol itself makes any such claim doubtful—any such obligations must yield for two reasons. The first is the doctrine of necessity, which has been set out by the Government and dealt with expertly by many Members of this House, including the noble Lord, Lord Bew. I need not repeat those contributions but, in so far as I have heard them relate to international law, I support them.

The second, which I think needs to be gone into a little more fully, is that the protocol subjugates the fundamental constitutional foundation of the United Kingdom. The Government have an overriding constitutional obligation to remedy that and, if that requires acting against a previous treaty, so be it. The Bill as it stands would remedy the present breach of the Acts of Union if Clause 4 were brought into force via commencement order. However, there still seems to be a hole. Although the Bill, in line with its intent in Clause 1, would remedy the present breach of the Acts of Union by removing the most offensive elements of Article 5 of the protocol from having effect in domestic law, it does not prevent a Minister of a Crown using the Henry VIII powers that we have heard so much about to replace the current arrangements with new arrangements that would again breach the Acts of Union. The superficially attractive answer to that point is to say that Parliament could legislate again to subjugate the Acts of Union if it so wished. As a matter of parliamentary sovereignty, it could—notwithstanding the validity of my point around how it is constitutionally improper.

The distinction here is that Parliament, with all the checks and balances, could do it or try to do it. As it stands, Clause 22 permits—or, to put it another way, does not prevent—a Minister of the Crown by regulation to alter the foundational constitutional arrangements of the United Kingdom. If it were to stand, it would

[Baroness Hoey]
mean that a Minister of the Crown, in exercising powers as specified in Clause 22, could again subjugate the Acts of Union and thus act in a manner contrary to what is, superficially at least, a fundamental aim of the Bill, which is to restore the Acts of Union.

It is notable that Clause 22 prevents a Minister of the Crown doing anything by regulation that would create a north/south border. This inherent imbalance, which my amendment seeks to remedy, once again eliminates the entirely one-sided nature of the so-called "peace process" in Northern Ireland. A Minister of the Crown, as we heard from the noble Lord, Lord Dodds, earlier, is prohibited in exercise of these powers from doing anything to facilitate or create a land border where it should be, but there is no such constraint on creating a border in our own country and subjugating the Acts of Union. That simply is an absurdity. I know that the Minister could not really give a reason why this had not gone in but I trust—being very naive, perhaps—that it was simply an oversight on the part of the drafters.

There is no reason why the Government could not adopt this amendment. In answer to a question posed in the House of Commons by Sir Jeffrey Donaldson MP, the then Secretary of State—the previous Secretary of State, not the current Secretary of State; it gets a bit confusing—gave an assurance that the exercise of powers under the Bill would have to be in a manner compatible with the Acts of Union. He made that assurance in the House. If that assurance, given to Parliament, is to be worth while, why would the Government not give effect to it by way of a straightforward clause in this Bill?

I therefore ask again for clarity from the Government. I know the Minister may well need to go back and discuss whether they will perhaps be able to adopt this amendment, so I do not expect an answer right now, but I do pose a question—and, if possible, I would like a response in the wind-up—about the commitment made by Brandon Lewis MP. Is the Minister willing to reaffirm to this House that any new arrangements to be made by regulation will have to be compatible with the Acts of Union?

This is fundamental. If the Government cannot do so, they will be saying to pro-union people, who the Conservative Government continue to urge to trust them, that the promises made to them about the restoration of the Acts of Union are in fact hollow and that once again they may well be being tricked. There seems to be little point in remedying the Acts of Union breach via the commencement of the relevant provision in this Bill and then replacing that which has been removed with another breach of the Acts of Union. It brings us back to the same place, because no self-respecting unionist will support arrangements which occasion a breach of the Acts of Union.

The fundamental issue for unionists—the clue is in the name—is that the Acts of Union must be restored, and the Acts of Union require equal footing in matters of trade. Let us be clear: the restoration means an end of EU law applying in Northern Ireland. If it continues to apply in Northern Ireland but not in the rest of the United Kingdom then the Acts of Union are breached. A breach of the Acts of Union is also a breach of the principle of consent because it fundamentally alters the constitutional position of Northern Ireland within the union.

That brings me to another pertinent point. Last week, after a lot of procrastination, the Northern Ireland Office ruled out lawmaking powers over Northern Ireland for Dublin. It did so correctly, on the basis that this would breach the principle of consent. Can the Government therefore explain how they reconcile the plainly correct position that lawmaking powers being handed to Dublin would breach the principle of consent with their continued entirely illogical claim that handing lawmaking and judicial powers to Brussels does not? What, tell me, is the difference between Brussels exercising lawmaking powers over Northern Ireland and Dublin doing the same? In truth, I do not think that there is any coherent answer to that.

This amendment would offer protection to the fundamental constitutional basis of the United Kingdom. We do not want any more trickery, clever footwork or compromising that ends up with Northern Ireland's constitutional position not absolutely restored—not just in the present but protected in the future—to being an integral part of the United Kingdom. Amending Clause 22 would provide some measure of constitutional safeguard, which I am afraid is necessary. A little under two months ago, the Government again went before the court in Northern Ireland and argued that the territorial extent of the United Kingdom should be interpreted as meaning only Great Britain, with Northern Ireland instead treated as part of the EU's territory. That was the Government's case. Noble Lords can see why so many pro-union citizens in Northern Ireland have voted in huge numbers to give the DUP the mandate to take nothing on trust. I am really sad to say that this Government are increasingly losing the trust of those who cherish the union.

Over the years, unionists and loyalists in Northern Ireland have been betrayed by Conservative and Labour Governments, again and again. They had courage in times of war, fighting for the UK, and through 40 years of terrible terrorism, and their loyalty has been rewarded by being treated like second-class citizens, with constant appeasement to the Irish Government and those who are dedicated to destroying the union and the very birthright of unionists to live as equal citizens under the protection of His Majesty's Government. They were betrayed during the home rule crisis, betrayed after the First World War and betrayed in 1985, and, sadly, many in Northern Ireland now feel that, even in the 1998 agreement, the unionist community was deceived. That is partly why many of us are determined to get rid of those injustices and ensure that what was promised by the sovereign Government of this country to its British citizens in Northern Ireland is upheld.

Of course, the final betrayal was the Northern Ireland protocol. It was said that no British Prime Minister could allow a border in the Irish Sea—and yet we saw what happened. When such a border was put there, subjugating Northern Ireland and its citizens, it was an historic wrong. There is no justifying or explaining it. It plunged a knife into the back of British citizens in Northern Ireland, the part of the United Kingdom

which I call my home. The historical record will show those who stood up for our country, the United Kingdom, and those who stood with the EU and a foreign Irish Government.

8.30 pm

The question I pose to the Conservative—I think it is still called the Conservative and Unionist—Government is this: when future British generations look back, when many of us in this House are long gone, how will they judge each of us? Have we done the right thing? Have we at all costs defended the union and all that it stands for, because that is what the Government should be doing? Unfortunately, they have not done right by the unionist people of Northern Ireland all the time. We, as the representatives speaking for those very many pro-union people in Northern Ireland, will not be second-class citizens in our own country.

I am sad to say that there will be no power sharing in Northern Ireland unless the rights of unionists are respected the same as those of nationalists. There will either be no power sharing, or those rights will be respected. The first step is to restore Northern Ireland to its integral place within the United Kingdom. That requires the restoration of the Acts of Union. There is no compromise on that fundamental issue. I genuinely cannot understand how anyone in this United Kingdom House of Lords cannot see that this amendment should be supported. The Minister may not be able to give an immediate answer when he is responding but I hope he will take this back and look at it, and that we will be able to move on this on Report. I beg to move.

Lord Bew (CB): My Lords, I thank the noble Baroness, Lady Hoey, for this amendment. She knows from many discussions and from what I have said in this House that, despite the distinguished legal heft behind her argument on the Acts of Union, I do not accept it. By the way, I do not accept the argument that the protocol subjugates the Acts of Union, but I do not want to repeat things that I and others have said during this debate.

However, the noble Baroness's speech is very important for a particular reason. I look over at the noble Lord, Lord Murphy of Torfaen, and the noble Baroness, Lady Hoey, and remember that we were all in exactly the same place in April 1998—in favour of the agreement. All of us were determined to get that agreement going. The speech from the noble Baroness, Lady Hoey, reflected a significant degree of disillusionment, largely provoked by events since the protocol.

The issue that the noble Baroness homed in on was the Acts of Union. The White Paper which preceded the Bill does not reference the issues around the Acts of Union, whereas the Bill does. It is more briefly than the noble Baroness would like, but it none the less references upholding the Acts of Union. That reflects the deterioration that has occurred in public opinion in Northern Ireland, even since the publication of the White Paper. The Government decided—I understand for tactical reasons—to include a reference to the Acts of Union in the Bill.

We have listened tonight to quite a lot of esteemed legal opinion, but the truth is that this is a political problem. It has to be faced up to. The truth is that we are in a very difficult moment when it comes to the possibility of making the Good Friday agreement's institutions operate as we head toward its 25th anniversary. The strong conviction that I have—I think the noble Lord, Lord Murphy, also feels this—is that there is no other show in town, and so that is what we should be working to do.

One of the reasons why I am a little uncomfortable about the eloquent discourses on Henry VIII powers—I have been in this House long enough to have heard many such—is the point forcefully made by the noble Lord, Lord Dodds, tonight. The House gets very excited about Henry VIII powers when it suspects that the uses will not be loved by the House but, when it is a Henry VIII power which is pretty unpopular with large sections of opinion in Northern Ireland, the House has no qualms. We have seen it most recently on the abortion issue. What matters is not Henry VIII powers but the purposes to which they are put, and in this case the purposes to which these powers would be put would be essentially dealing not with a sea of anonymity but with EU interventions of one sort or another in the laws of the United Kingdom.

The way in which the House approaches this really makes me uncomfortable, because it is an attitude of mind that does not reflect the political nature of the problem. The noble and learned Lord, Lord Brown of Eaton-under-Heywood, as a very esteemed legal mind in this House, actually faced up to what the Good Friday agreement, an international agreement, says quite clearly at Article 1(5). He used the expression: "You cannot live with long-term alienation." The British Government—the sovereign Government—have a responsibility to address the long-term alienation of a community, as they did only recently on the Irish language. There is no question about that. "Alienation" is a perfectly fair translation, but that piece of legislation actually says that the British Government as the sovereign Government have to deal on the basis of equality of esteem with the long-term aspirations of both communities. There is no question but that the protocol as it now stands is seen by the unionist community as a whole as flouting its long-term aspirations.

I suppose that just after Brexit came into our lives—unhappily, for many—former Taoiseach Bertie Ahern, who was present in 1998, came to this House and addressed the House of Lords Select Committee. He said, "You can talk all you like about Europe but there is the little matter of the Good Friday agreement, held as an international agreement in the United Nations." The House has tended to forget that. Therefore, while I am sympathetic to the fundamental legal thrusts at the beginning of the amendment in the name of the noble Baroness, Lady Hoey, the fact that many people in Northern Ireland will see her case as, if anything, too soft and too moderate is a sign of how we are losing control of public opinion in Northern Ireland and our ability to intervene in that public opinion. That is extremely worrying.

The noble Lord, Lord Empey, who was in his place earlier this evening, is quite right: we cannot afford to give the impression that Northern Ireland is an ungovernable entity. There must be a return to power sharing. I will be clear about this: it will not occur on any other basis than a renewed form of historic

[Lord Bew]
compromise. We should take the amendment in the name of the noble Baroness, Lady Hoey, as a warning about how public mood is evolving away from compromise, and all the lectures on Henry VIII powers in the world are not anything like as significant as that fact for the political history of this country.

Baroness Ritchie of Downpatrick (Lab): My Lords, I have three amendments in this group but, before referring to them, I say that obviously this set of amendments really deals with the restrictions on the use of ministerial powers. In fact, the noble Lord, Lord Bew, referred to the kernel of the issue, which is about the politics of Northern Ireland. I think that is what the noble Baroness, Lady Hoey, also said. Obviously, as a democratic Irish nationalist I come from a very different position, and I make no bones about it. In the fullness of time, subject to agreement and to consent, I would like to see the island of Ireland politically united, but that is united according to the principle of consent and united by agreement. The land is already united, but I mean the uniting of people on the island.

In this discourse, we must not forget that we have to move towards compromise and achieve it. I go back to the point made by my noble friend Lord Murphy: the most important thing is that there is an urgent need for the parties in Northern Ireland to be directly involved in the negotiations with the UK, the Irish Government and the EU. Unless that happens, we will go down the road of technical negotiations and discussions ad infinitum but they will not solve the political issues that exist, and those political issues urgently require to be resolved if we are to have the restoration of political institutions.

In that context, I pose this question: do all parties and all peoples want those political institutions restored? For my part, I would like them restored because they are based on the principle of consent and it is all about power sharing and co-operation. Because of the nature of the divided society in Northern Ireland, it cannot go any other way and the only solution is via the Good Friday agreement. I hope we will get back to that, and the best way to do it is through negotiations between not only the UK and the EU but the parties in Northern Ireland that are most directly affected, representing all the people, and of course the Irish Government, who could take on the role of the EU or work in partnership with the EU as a member state.

Amendment 46 seeks to circumscribe and limit the regulations to ensure adherence to Northern Ireland Assembly approval for a legislative consent Motion. The regulations are referred to only in the Bill; they are not specified and will be subject to secondary legislation. The noble Lord, Lord Bew, referred to Henry VIII powers. If this were just about Henry VIII powers then it might be quite simple, but it comes back to the overarching umbrella of the political situation and the need for a political solution. Here, there is a total disregard for the democratic consent of the Assembly and the importance of what it is there to do as an organ of the Good Friday agreement. It is important that that is built into this legislation, although obviously I would prefer that the legislation was not there and that it was replaced totally by negotiations.

Amendment 54 seeks the agreement of the First and Deputy First Ministers acting jointly on behalf of the Executive or Assembly. In that, I am building in joint accountability. There is a case for reverting to the appointment of the Ministers jointly as joint First Ministers. In fact the noble Lord, Lord Empey, referred to the earlier situation where, at St Andrews, that principle was undermined. Appointing Ministers and calling them joint First Ministers would emphasise power sharing, co-operation and jointery. It would recognise the principle of consent as prescribed by the Good Friday agreement, and it would get away from the idea of one side saying, "Make me First Minister", and the other side saying, "No, make me First Minister". We have to ensure that equality and parity of esteem are recognised in the Bill if the Bill is to go ahead.

Amendment 55 proposes a new clause requiring the Minister yet again to obtain the consent of the Northern Ireland Assembly to exercise the power to make regulations conferred by the Bill. It would also require a Minister to obtain the consent of the Assembly for the continued application of the regulations beyond the relevant period. It would therefore require the consent and the accountability of the Assembly. There should be no imposition of these unspecified regulations without the agreement of the Assembly. The fundamental point is that the people of Northern Ireland and their elected representatives in the Assembly are key and fundamental to the whole process, and should be directly involved in the negotiations in deciding the way forward.

8.45 pm

We must not forget that the wrecking ball in all of this was Brexit, out of which was born the backstop, to be replaced by Johnson's protocol. That is why we have arrived at this point—so many things have been undermined by that tsunami of Brexit. That is very unfortunate, because it is has impacted on the island of Ireland in terms of our political relations and our economic stability. It is time that we got back to brass tacks and went down the road of a negotiated settlement in respect of the protocol that involves everyone—but particularly the Members of the Assembly—to address the issue of the democratic deficit.

Lord Dodds of Duncairn (DUP): My Lords, it is a pleasure to follow the noble Baroness, Lady Ritchie of Downpatrick. I have just a couple of small points before dealing with some of the wider issues raised by the amendments tabled in this group.

First, on the negotiations, I do not disagree with the involvement of Northern Ireland parties, as I said previously. It was suggested earlier—I think by the noble Lord, Lord Empey, who I regret is not in his place at the moment—that it did not matter what the EU thought as long as the British Government involved the Northern Ireland parties, but we are not talking about consultations; we are talking about negotiations. I think the noble Lord, Lord Murphy of Torfaen, put his finger on it: it is about getting people around the table. If you are going to negotiate, you need the EU and the Irish Government to be on board. The fact is that, regrettably, they have not changed their position from their previous utterances, where they said that

this is entirely a matter for the EU, not for regional parties or any individual member state Government; they have said it is for the European Commission, negotiating under the mandate given to it by the Council of Ministers.

My second point is on the issue that the noble Baroness, Lady Ritchie, raised about the joint First Minister nomination, which was also raised on the previous set of amendments. It should be remembered that the Saint Andrews agreement took place towards the end of the 2000s, in an effort to restore devolution after years in which it had been brought down—again, by Sinn Féin, given the fact that it was out murdering people in the streets, and had not decommissioned its weapons, despite promises that it would do so. There was the famous quote by the late Lord Trimble, who said, "We have jumped, now it is your turn." Of course, Sinn Féin never did reciprocate. As a result, we had the Northern Bank robbery, and the institutions were down for three or four years. They were eventually restored as the result of Saint Andrews, and that was a cross-community agreement which made the arrangements in relation to the nomination of First and Deputy First Minister. That was the result of a cross-community agreement, so the idea that that is contrary to the principle is simply wrong.

I fully endorse what the noble Baroness, Lady Hoey, said about her amendment. It is an important amendment which deals with an issue that has caused considerable concern and anxiety in Northern Ireland, which is the fact that thus far the courts have ruled that Northern Ireland's constitutional position, Article 6 of the Act of Union, has been subjugated by the Northern Ireland protocol. That is a legal ruling. If we are paying such close scrutiny to the legal technicalities, the legal position set out in the Bill and all its intricacies—which is perfectly proper—we cannot then simply dismiss the ruling of the courts in relation to the Act of Union as neither here nor there. This is an important matter for unionists. It is the foundational constitutional document of Northern Ireland's place within the United Kingdom, so this is no small matter. It is something that is being challenged by unionist political leaders right across the board, and it is therefore important that it is addressed.

That is why the Belfast agreement, as amended by St Andrews, is in some considerable difficulty, because the protocol has this effect on our constitutional position. The fact is that we have another series of amendments, tabled in the names of the noble Baronesses, Lady Ritchie and Lady Suttie, about "consent of the Northern Ireland Assembly", which does not include the cross-community element—the cross-community vote. Again, this says to unionists that, while some are prepared to defend and speak up for the Belfast agreement, and say that this is all about protecting it, when it suits them they just change it. The Belfast agreement provides for votes like this on a cross-community basis, yet time and time again we see things being tabled in this House which undermine the agreement. We are told that we should respect the agreement and its spirit, yet here we have amendments that go against what is in the Belfast agreement—never mind the issues about the east-west relationship and strand three of the agreement, which are trashed by the protocol, and the removal of the democratic consent mechanism for the protocol itself, which means that the Assembly had absolutely no say at all before the protocol was introduced. So we are in a very difficult situation.

There is no doubt that unionists have lost a large degree of confidence in the institutions of the Belfast agreement. On what was agreed in 1998, many of us opposed those elements which released unrepentant murderers back on to the streets of Northern Ireland after serving only two years for some of the most heinous crimes imaginable of murder and depravity—people from both sides of the community were allowed to walk free from jail. The Royal Ulster Constabulary was consigned to history, and there were all sorts of issues about Sinn Féin being admitted into government while the Provisional IRA was still murdering people in the streets, as I said, and were still fully armed. Those of us who opposed these things were told, "You've got to accept all these things in the name of peace." Many people did accept them; there was a referendum, it was passed, and the institutions were set up. But unionists had to accept into government people who parties here in Westminster—and, ironically, the parties Fine Gael and Fianna Fáil in the Irish Republic—would not accept into coalition with them. Northern Ireland is lectured all the time about democracy and accepting Sinn Féin into government—and we have accepted Sinn Féin into government, as per the votes of the people who gave them votes and demanded a coalition arrangement. However, the same people who lecture unionists refuse to have anything to do with them in terms of a coalition in the Irish Republic—and I imagine that neither the Labour Party nor the Conservative Party would admit them into a Government here.

We are seeing that the basis of the settlement in 1998 is now continually undermined. The principle of consent has been breached as a result of this protocol. We now have increasing clamour, including recently from the Irish Taoiseach, about changing the rules of the Belfast agreement and how the Assembly should operate. Indeed, I understand that the Taoiseach went so far as to say that it was a matter for the Irish Government, the British Government and the parties. I am sorry, but strand one is a matter for Northern Ireland parties and the UK Government; it is not a matter for the Irish Government. They are entitled to be involved in strand two and strand three issues, but not the internal government of Northern Ireland. This is causing real concern among unionists. We are in a dangerous situation, and not just because of the protocol but because we are seeing that the Belfast agreement is now going to be completely undermined if some people get their way. Majority rule, which, as we have heard, has not happened and has not been the case in Northern Ireland since the early 1970s, is something which has been railed against for over 100 years. However, as a result of boundary changes and the rest, as soon we have a non-unionist majority in the Assembly—it is not a nationalist majority; unionists are still the biggest designation—and because that now does not suit Sinn Féin, the SDLP or even the Alliance Party, some say, "Let's change the rules." If unionists had been suggesting such a thing in the late 1990s, during the 2000s or up until 2019, we would have been howled down as being in breach of the very fundamental principles of the Belfast agreement.

[Lord Dodds of Duncairn]

The more talk there is of that; the more talk there is about joint authority in the event of no devolution—something that, again, is entirely contrary to the Belfast agreement—the more talk there is about the protocol being rigorously implemented or not changing the protocol in the way it needs to be changed to get unionist consent; the more we are in danger of seeing the restoration of the Assembly and the institutions of the Belfast agreement receding further and further into the distance. That is the reality. We do not want that to happen. We need to get a grip. The more delay there is, either in negotiations or in the UK Government taking the action needed to restore unionist faith in the political process in Northern Ireland, the longer the institutions will be down. This Government cannot have a situation in which Northern Ireland is left in limbo, where no decisions are taken by anybody, where there are no Ministers and where civil servants do not even have the powers they had the last time. We need Northern Ireland to be governed. The UK Government, who have sovereign responsibility under the Belfast agreement and their constitutional responsibilities, need to take responsibility and act for the good government of Northern Ireland.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, I shall add a few remarks. The constitutional position of Northern Ireland within the United Kingdom is a very important issue for many people in Northern Ireland, and certainly for the unionist population. There is no doubt whatever that the protocol is undermining and has undermined Northern Ireland's position. I believe it is a vehicle to continue to undermine the position of Northern Ireland within the United Kingdom. The protocol has brought a profound constitutional change to the very heart of the United Kingdom, because the courts have now ruled that the meaning of the Act of Union, the foundation of the union, has been changed by the protocol, courtesy of it being given direct effect in UK law through the withdrawal agreement Act, with the effect that this subjugates the meaning of Article VI of the Act of Union to the protocol.

I was asked this afternoon how many years I had been in public life in Northern Ireland. It is hard to believe, but in May next year, it will be 50 years: 37 years in the council, 25 years in the other House as a Member of Parliament, 16 years in the Northern Ireland Assembly—and so it goes on. And then in this place here. Now, over the years, I have seen and witnessed, sadly, Northern Ireland's position being pushed on to the ledge of the union, as it were—pushed to the side. Our position in the United Kingdom has been undermined.

I have to say to your Lordships' House that the unionist people are very suspicious of both Front Benches, and indeed other parties in this House. When it comes to defending positions, Dublin will defend the nationalist and republican position, but who will defend the unionist position? You would expect the United Kingdom Government to do that, but it is sad to say that successive Governments have not been very good at it. As my noble friend Lord Dodds mentioned a moment ago, certainly strands 2 and 3 give Dublin the right to have a say. But when it comes to strand 1—last week we had the Secretary of State for Northern Ireland in conference with the Foreign Minister of the Irish Republic to talk about whether there should be a poll in Northern Ireland and an election for the Northern Ireland Assembly. Those are the internal affairs of Northern Ireland, yet the basis of the Belfast agreement was that Dublin has no right to a say on such matters. That once again makes people suspicious.

9 pm

I have to say that, when it comes to the cost for people desiring and maintaining their position within the United Kingdom, it has cost many people their lives in the Province. I represented the Mid Ulster constituency for 15 years. Go along the border there, to Castlederg, and you will find that the graveyard there has more headstones for security force members who were murdered. Why? Because they wanted to maintain their position within the United Kingdom and the IRA wanted to destroy them and take away their lives.

I come back another point I want to make, concerning the amendment tabled by the noble Baronesses, Lady Ritchie and Lady Suttie. Once again, I point out that they say the regulations must be passed by the Northern Ireland Assembly. A few moments ago, the noble Baroness, Lady Ritchie, said that as an Irish nationalist, she wanted a united Ireland. No one can deny that as a legitimate aspiration for her. It is certainly not my aspiration, but it is hers. However, she said that she believed it would be united by consent. The very basis of the Belfast agreement is cross-community consent. I ask the noble Baroness, Lady Ritchie, "What would you do with a million unionists or loyalists going into a united Ireland who didn't want to be there?"

Baroness Ritchie of Downpatrick (Lab): For the avoidance of doubt, and for the information of the noble Lord, Lord McCrea, when I say "consent and agreement" I mean consent, and it must be the consent of all the people—unionists and nationalists.

Lord McCrea of Magherafelt and Cookstown (DUP): I thank the noble Baroness. That then begs the question: why is it not in her amendment? Why is it simply the consent of the Northern Ireland Assembly, which in fact removes it from cross-community consent? That is not what they are talking about here. If it had been, it would be in this. I listened very carefully to the noble Baroness, Lady Suttie, saying that this would be looked at on a later date. I trust that this will be taken on board. We will not move forward unless there is cross-community consent, and there is no cross-community consent and no unionist consent for this protocol, which they believe is a vehicle for taking Northern Ireland out of the United Kingdom.

Baroness Chapman of Darlington (Lab): My Lords, this is an extraordinary clause. The speech made by the noble Baroness, Lady Hoey, introducing this group, proved the point. She argued that Ministers could, under this clause, act in a way that is incompatible with the Act of Union. My interpretation of this clause is similar to that described by the noble Lord, Lord Pannick, in the discussion of the previous group, in that it gives Ministers the ability to do pretty much anything. There is no restriction on powers. Maybe the Minister

had been briefed that there was. Clearly, in this clause at least, that is not the case. That is the point that many noble Lords have been trying to get across to Ministers, and it is the underlying reason for much of the unhappiness with this Bill.

It is probably a bit tedious for the noble Lord, Lord Bew, to listen to us wittering on about this again and again. I completely understand that, as it does seem rather separate from what is happening on the ground and the political issues that he quite rightly says the Bill is really all about. I totally agree with him on that. Nevertheless, the method that the Government are choosing to deal with these political issues is one which gives them these quite unprecedented powers. We have come across this sort of thing many times, but we have never seen it quite as blunt as this. That is why they are getting a sort of two-pronged dissatisfaction with this approach.

The amendment in my name refers specifically to subsections (2)(a) and (2)(b). This is the bit where Clause 22 makes it clear that Ministers would be breaking international obligations and gives them permission to do so. Obviously, if the Bill became law, Ministers would not be breaking domestic law because it would be domestic law, but they would be breaching their international obligations. Ministers' answers on this issue have been far from convincing. How is passing the Bill responsible if we do not know what the Government are going to do? We do not know that because they are giving themselves such wide powers. If the powers were in some way restricted to issues relating to the problems that the Bill tries to solve, perhaps the Government would be on a firmer footing. However, we are at such a precarious point; for example, there may be elections and there may not be.

I am trying not to have a dog in this race but, from the discussion we have just heard, it is absolutely clear that the problems being described are real and need to be dealt with. They need a Government who are properly engaged and will deal with them seriously. A clause such as this one says the opposite to all communities. Who knows where this will go? There is obviously no trust in the Government on this issue. We have heard it; it is very clear. Even the people who broadly support the Government's approach do not trust them to do this correctly and do right by them. That is a big problem. It is a problem here in getting support for this clause, but it sure as heck is also a problem on the ground in Northern Ireland.

The Government have got themselves into a real mess on this issue. The powers in the Bill are not constrained to a particular purpose. I just do not know how the Government will deal with this. We have been told that we will get a letter, as if this is a discussion that the Government could not have foreseen, anticipated and had proper answers for. While we are doing our job of going through this Bill, the Government do not have an answer on what was foreshadowed well by noble Lords' contributions at Second Reading but have to go away and write us a letter. It is not good enough. We need to know the Government's response to that issue, and particularly on this clause, before we can properly proceed.

I completely agree with everyone who said that we must have the restoration of the political institutions. Some people seem to think that the Bill will help but we disagree. We think that it is bad politics and will lead to more disappointment, probably disappointing the very people who have come here tonight to support the Government in this endeavour. This clause is a problem; the Minister has learned that very well, I think. I am afraid that listening to tonight's exchanges has made me more convinced than I was before that we on these Benches cannot support this clause unless something shifts dramatically before we reach Report. I just do not know where we go with this Bill.

The Parliamentary Under-Secretary of State, Northern Ireland Office (Lord Caine) (Con): My Lords, I am grateful to all noble Lords who spoke in this debate. I rather hesitate to say this in front of the noble Lord, Lord Bew, who was taught at Cambridge by the great Tudor historian Sir Geoffrey Elton, but as we go through these debates, I feel I am becoming increasingly isolated in being a Member of your Lordships' House who might still have a sneaking admiration for the reign of Henry VIII. Indeed, I confess that I have a portrait of Thomas Cromwell in my office. However, I will go no further because I do not want to provoke a debate with noble Lords about the 1533 Act of Restraint in Appeals and its preamble. I will therefore fast-forward, if I may, to 1800 and the Acts of Union, referred to in the amendment moved by the noble Baroness, Lady Hoey.

Let me say at the outset that I entirely sympathise with the noble Baroness's position and amendment. Clause 1, as she pointed out, explains that the Acts of Union are not to be affected by provision of the protocol that does not have effect in the United Kingdom. I agree with her and noble Lords who have pointed out the fundamental importance of the Acts of Union as the bedrock of Northern Ireland's constitutional position in the United Kingdom.

However, I am sorry to point out to the noble Baroness that her amendment has the potential to risk the exercise of the powers under the Bill. For example, the red lane in our new model will continue to apply EU rules to goods moving through Northern Ireland into the European Union and single market. This is crucial to ensuring that there is no hard border on the island of Ireland and to upholding the overall objectives of the Act of Union regarding the free flow of trade in the United Kingdom. The restrictions imposed by her amendment could risk the implementation of this revised operation of the protocol, which is designed to uphold our commitments to the union.

I know the noble Baroness is very supportive of the Bill, but this amendment could undermine the certainty that it seeks to provide. She and my noble friend Lord Dodds of Duncairn made a very large number of points around subjugation and so on. I hope she will appreciate that I cannot go into great detail at the Dispatch Box because, as she knows since she is a party to it, this amendment treads very much the same territory as is the subject of a live case in the Supreme Court, which I think is expected to be heard very shortly.

[Lord Caine]

I reiterate my and this Conservative and Unionist Government's—a label I proudly wear in your Lordships' House—strong support for the union and Northern Ireland's integral position within it. I have no hesitation in reiterating what we said at the end of last week about joint authority; it is simply incompatible with the provisions of the Belfast agreement and we will not countenance it. I assure the noble Baroness that we are determined to resolve the issues to which she alluded in her amendment this evening and, on that basis, urge her to withdraw it.

I turn to the amendments in the name of the noble Baroness, Lady Ritchie of Downpatrick. It has been said many times and in much detail, but I feel I have a duty to remind the House again that it is because of the operation of the protocol that the Northern Ireland Assembly has not been sitting since February, and the Bill aims specifically to restore political stability in Northern Ireland and facilitate the reconstituting of a fully functioning Executive and Assembly in line with the Belfast agreement. In the absence of functioning institutions, creating a legal requirement—as the amendment from the noble Baroness would do—that consent from the Assembly be granted before regulations can be made under the Bill risks in these circumstances setting a test that simply cannot be met, because there is no functioning Assembly.

This amendment would also be constitutionally problematic, effectively limiting the UK Government's ability to exercise their powers in excepted and reserved areas of policy such as international affairs and trade, respectively. Given that it would also apply to the commencement power, it would make the coming into force of legislation of this Parliament subject to a veto by the Northern Ireland Assembly. That would affect this Parliament's right to legislate for Northern Ireland, something the Belfast agreement makes very clear is unaffected; as such, the Government cannot accept it. For that reason, I ask the noble Baroness not to press her Amendments 46 and 55.

9.15 pm

On the noble Baroness's Amendment 54, we are sympathetic to the need to involve the Northern Ireland Executive and Northern Ireland politicians and political parties as far as possible. My noble friend Lord Ahmad of Wimbledon detailed some of the steps we have taken and will continue to take to do that. I am very happy to discuss any suggestions the noble Baroness may have, as I am with my noble friend Lord Empey, who was here earlier. The problem with Amendment 54 is that creating a legal requirement that consent be granted by the First and Deputy First Ministers acting jointly before the power to make regulations can be conferred upon Northern Ireland departments risks setting a test that cannot be met, given that we currently have no functioning Executive or Assembly. As with other amendments we have discussed, it is simply not acceptable, as the amendment would grant the First and Deputy First Ministers an effective veto on the UK Government's ability to exercise their powers in excepted and reserved areas of policy. For these reasons, I ask the noble Baroness not to press her amendment.

Finally, I turn to Amendment 53 in the name of the noble Baroness, Lady Chapman of Darlington. I believe that the intention of this amendment is effectively to prevent regulations under the Bill making provision which is incompatible with the protocol. Taken as intended, this would effectively prevent the regulations under the Bill implementing the policy regime as a whole—I am sure that is her intention. I do not intend to go over the extensive ground we have already covered in this area, but I reiterate that, in the Government's view, we are acting consistent with our obligations under international law and in support of our prior obligations under the Belfast agreement. Of course, the Government have published a legal statement to that effect.

I do not wish to provoke an extensive debate on an issue that has detained the House for very many hours over the past number of days, but I think it is worth pointing out that our intention here is and always has been to protect those elements of the protocol that are working while remedying those that are not. That is why the Government consider it is appropriate and proportionate to take the powers in this legislation.

In response to the noble Baroness's final point about taking these issues seriously, I assure her that we are. That is why we brought forward this legislation in the first place to enable us to fix the elements of the protocol that are not working, to facilitate a return to functioning devolved government in Northern Ireland and to protect the Belfast agreement in all its forms. On that basis, I ask her to withdraw her amendment.

Baroness Hoey (Non-Afl): My Lords, I thank the Minister for his response, and particularly for his reassertion of the United Kingdom Government's commitment to the union and to Northern Ireland's integral place within the union. I do not accept his reason for not accepting this amendment. I will look at what he said and I hope he will reflect between now and Report.

I thank noble Lords who spoke. The noble Lords, Lord Bew and Lord Dodds, both gave a very serious warning about the situation in Northern Ireland. The comment of the noble Lord, Lord Bew, that this is no small matter is something we should all reflect on. I am actually very pleased that the noble Lord, Lord Purvis, did not speak. I will take that as a sign, and hope that the Lib Dems will support this when it comes to Report. But I do not assume the same about the noble Lord, Lord Kerr, who also did not speak on this amendment.

Seriously, this is an important issue and it is not going to go away. I hope that, at this stage, we have given everyone a bit of thinking to do before Report. I beg leave to withdraw the amendment.

Amendment 45 withdrawn.

Amendments 46 to 54A not moved.

Clause 22 agreed.

Amendment 55 not moved.

Amendment 56

Moved by ***Lord Ponsonby of Shulbrede (Lab)***

56: After Clause 22, insert the following new Clause—

"Duty to seek an agreement on outstanding issues with the Northern Ireland Protocol

(1) Before a Minister of the Crown may exercise any of the powers in sections 1 to 20, His Majesty's Government must—

(a) seek an agreement with the European Union regarding outstanding issues with the Northern Ireland Protocol, or

(b) pursue and exhaust all legal options under the EU withdrawal agreement.

(2) Within the period of three months beginning with the day on which this Act is passed, and every month thereafter until—

(a) an agreement is reached, or

(b) a Minister of the Crown is of the opinion that an agreement cannot be reached,

a Minister of the Crown must lay before each House of Parliament a statement outlining what progress has been made in negotiations."

Member's explanatory statement

This amendment would make it a statutory requirement for the Government to seek a negotiated outcome with the EU, and to exhaust legal routes under the EU withdrawal agreement before availing itself of the powers in this Bill. The amendment would also require Ministers to provide regular updates to Parliament regarding the ongoing UK-EU negotiations.

Lord Ponsonby of Shulbrede (Lab): My Lords, Amendment 56 deals with the

"Duty to seek an agreement on outstanding issues with the Northern Ireland Protocol".

This amendment would make it a statutory requirement for the Government to seek a negotiated outcome with the EU and to exhaust legal routes under the EU withdrawal agreement before availing themselves of the powers in this Bill. The amendment would also require Ministers to provide regular updates to Parliament regarding the ongoing UK-EU negotiations.

In this amendment, we seek to bring together two issues in a single text: the negotiated settlement and the regular updates. This would ensure that the extraordinary measures in this Bill could not be used until all legal routes are exhausted. We know that the Government will say this amendment is unnecessary, yet the very existence of this Bill highlights the lack of good faith displayed by Ministers. We have been asked to trust in the new negotiations, but we have not yet had an update from the Foreign Secretary—although we are told we may get one later this week, and I would be grateful if the Minister could confirm that. Colleagues such as the noble Lords, Lord Hannay and Lord Kerr, often remind us of the Commission's duties to the European Parliament, so why, after all this time, does the Conservative Party continue to sideline what they call the mother of Parliaments—this House? If the Government really are acting in good faith, they should take no issue with this amendment. It is a restatement of their own policy, coupled with a request for further information. I beg to move Amendment 56.

Lord Hannay of Chiswick (CB): My Lords, I support this amendment. I have spoken on a number of previous occasions about the fact that we are fumbling around in the dark. The noble Lord, Lord Ahmad, made a noble attempt at an earlier stage in today's debate to say something about what was going on but I am sorry to say that, if I was being impolite, I would say that what he said was the square root of nothing. Are we going to get something more than that? We ought to. That has been the practice of previous British Governments in negotiation as a third party when we were outside the European Union and in many other negotiations. I think it is pretty shocking that we are not getting that.

It also underlines a point which all our debates illustrate: that the Government have put the cart before the horse. Surely the right sequence would have been for the Government to enter into a serious process of negotiation from last February onwards; but they did nothing—absolutely nothing. We now know that nothing happened after February. As that process went along, they should have reported it to Parliament. At some stage or another, it would have been perfectly reasonable for the Government to say that we cannot go on like this for ever and, if we cannot get a negotiated agreement to sort out the implementation of the protocol in order to cure it of some of the imperfections which none of us contests, then we may have to go down a unilateral course.

If the Government had done that, I suspect that we would have had an agreement by now—but the lady who was Foreign Secretary at the time and who had her eye on higher things, which, alas, turned out to be a flash in the pan, went down another course, which was to put the cart before the horses. And that is where we are: with the cart firmly before the horses. Here we are, spending hours and hours discussing what we are going to do if this process of negotiation, which the Government say is their preference, fails. Well, the time to do that is when it has failed, when the Government have made a full and detailed report of why it had failed, and when we can see what the other side in the negotiation says about whether those reasons for failure are justified. Then Parliament can take a view on what to do next.

Instead of which, we are being asked to do all this now in the, alas, totally futile belief that this will somehow put the frighteners on Brussels. Well, it does not look to me as if Brussels is terribly frightened; nor has it been for many months. So I wish we could just get away from this and leave the process of deciding what we do if the Government's preferred option fails, and then we will deal with that when we get to it. We will cross that bridge when we get to it.

Lord Murphy of Torfaen (Lab): My Lords, I too support my noble friend's amendment. When we look at this pointless and rather daft Bill, we realise that it has achieved absolutely nothing. They would have been more influenced by the man in the moon than by this Bill.

The Bill might have done something, but so far has done nothing, to achieve progress in Northern Ireland. I would be very interested if the people negotiating on the European Union's behalf looked at a video of the last couple of hours' debate in this Chamber. They would then realise that these are not the "technical issues" that we are told are being resolved at the moment. It is not about oranges, sausages and the rest of it; it is

[Lord Murphy of Torfaen]
about people's identity in Northern Ireland, whether they be unionists, who feel that their own British identity is threatened by the protocol, or nationalists, who feel that they are threatened in some other way.

The first thing the Government should understand is that in some ways the negotiations now have to be parallel: a negotiation between the European Union—with, as I said earlier, a much bigger involvement by the Irish Government—and the United Kingdom Government on the protocol itself, in parallel with negotiations to restore the institutions of the Good Friday agreement. Those institutions have effectively collapsed and there is a case for looking at them again. The noble Lord, Lord Dodds, referred to the Taoiseach's comment about changing the rules on the way the Assembly and Executive operate—remembering, of course, that the St Andrews agreement changed the rules of the Good Friday agreement. But they were changed by agreement. That is the issue: they were not changed unilaterally by one side or the other.

In the next six months—I will come to that in a second—there should be a structured negotiation on the one hand with the European Union and on the other between the political parties in Northern Ireland and, where appropriate, on strands 2 and 3, with the Irish Government. I do not think that has entered the Government's head over the past eight to nine months. For all sorts of reasons, which everybody knows about, they have not really been bothered; they have let things drift. There have not been proper negotiations. It seems to me that one of the Government's most important responsibilities is to ensure that Northern Ireland does not go backwards 30 years—and it is quite possible that that could happen.

I think the European Union sometimes does not understand the absolute uniqueness of the Northern Ireland situation, of the Good Friday agreement and of the identity issue. There is no comparison anywhere within Europe, perhaps even in the world, with what has happened in Northern Ireland, and it seems to me that that has not been appreciated by the people doing the negotiating.

9.30 pm

So what should happen? In six months' time, we will have the anniversary of the Good Friday agreement. We have six months in which proper negotiations should take place. Forget the elections; they will achieve nothing. They will cost £7 million but nothing will really happen and we will come back with a more hardened and polarised Northern Ireland. Forget the elections and have a proper negotiation over six months with people who understand Northern Ireland and have lived their lives in Northern Ireland to try to deal with the issue, and similarly with the European Union. Then we will have the symbolic anniversary of 25 years of the Good Friday agreement, then the St Andrews agreement, and perhaps we will get somewhere —but that must include people in Northern Ireland. You cannot negotiate above their heads.

Any agreement must be owned by the political parties in Northern Ireland. We can talk about vetoes and consent; you can out-veto yourself until you go into oblivion. What we mean by consent is agreement by positive consent—a positive consensus, which is really what underlies everything we have done in Northern Ireland over three decades. Forget elections, have proper negotiations and let us resolve this issue.

Lord Ahmad of Wimbledon (Con): My Lords, I thank all noble Lords for their contributions. Perhaps I may pick up on a couple of points made by the noble Lord, Lord Murphy. I listened carefully to his earlier contribution and those of others, and the Government's position is very much about negotiations with the European Union and having a very informed discussion also with all the parties in Northern Ireland. I know that my noble friend Lord Caine and I have listened attentively and carefully to some of the constructive proposals the noble Lord put forward about effective engagement.

The noble Lord, Lord Murphy, makes a notable point about the anniversary of the Good Friday agreement as well. He knows far more than I about the ways that we can make the agreement—whatever agreement is, one hopes, negotiated with the EU—work for all the communities of Northern Ireland. I am sure this will be an ongoing discussion that we will have in the days and weeks ahead.

I turn briefly to Amendment 56 and the reasons why the Government cannot support this amendment. It would prevent a Minister of the Crown exercising regulation-making powers under the Bill, unless the Government have sought an agreement with the European Union regarding outstanding issues with the Northern Ireland protocol, or all legal routes under the EU withdrawal agreement have been exhausted. It also commits a Minister to outline specifically to Parliament the progress on negotiations. Let me say once again—I have said it a number of times and will continue saying this—that the Government's primary intention is to secure a negotiated agreement with the EU. That is why we have been engaging in a constructive dialogue with EU officials over recent weeks and engaging at a political level, as I said earlier this evening.

However, we feel that linking the exercise of regulation-making powers in the Bill to progress in the negotiations and an exhaustion of legal routes in the withdrawal agreement, which I suspect was the intention behind this amendment, would hinder rather than improve the chances of a negotiated settlement. It risks drawing the UK into a never-ending dialogue with the EU, whereby it could always be claimed that an agreement is constantly within reach but never materialises. As such, we are not supportive of this amendment. The Government have also outlined that in our view the Bill is consistent with international law. This is of course without prejudice to other legal mechanisms existing under the withdrawal agreement that we have discussed previously.

On the central point raised by the noble Lord, Lord Ponsonby, about updating the House, we are of course both listening carefully—I was discussing this with my noble friend Lord Caine—from a Northern Ireland Office perspective as well as from that of the FCDO. We will look to update the House on negotiations and discussions at the appropriate time. I hope that at this time the noble Lord, on behalf of his noble friend, will withdraw this amendment.

Lord Ponsonby of Shulbrede (Lab): My Lords, it has been a short debate which has gone over some territory that we have covered a number of times already. The noble Lord, Lord Hannay, referred to putting the cart before the horse and my noble friend Lord Murphy described this as a pointless and daft Bill—but je went on to give some very constructive suggestions about how to move forward with proper negotiations as we come up to the 25th anniversary of the agreement.

I will withdraw Amendment 56, but I notice that the noble Lord, Lord Ahmad, was diplomatically opaque when he said that he would update the House at an appropriate time, whereas we heard from the noble Baroness, Lady Suttie, earlier this evening that it may well be later this week.

Lord Ahmad of Wimbledon (Con): While there are discussions going on, I do not want to anticipate which department will give a Statement. I want to be definitive, so I do not in any way want to give misleading information or information that is not yet correct. That is why I was being "diplomatically opaque", as the noble Lord called it.

Lord Ponsonby of Shulbrede (Lab): I beg leave to withdraw the amendment.

Amendment 56 withdrawn.

Amendment 57

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

57: After Clause 22, insert the following new Clause—

"Parliamentary approval of the outcome of negotiations with the EU

(1) A Minister of the Crown may make regulations under section 19 only if—

(a) a Minister of the Crown has laid before each House of Parliament—

(i) a statement that a relevant agreement as defined in that section has been reached, and

(ii) a copy of the agreement,

(b) the agreement has been approved by a resolution of the House of Commons on a motion moved by a Minister of the Crown, and

(c) a motion for the House of Lords to take note of the agreement has been tabled in the House of Lords by a Minister of the Crown.

(2) A Minister of the Crown may make regulations under sections 4 to 17 only if—

(a) they have laid before each House of Parliament a statement that—

(i) His Majesty's Government have been unable to reach an agreement with the European Union regarding outstanding issues with the Northern Ireland Protocol, and

(ii) they are of the opinion that His Majesty's Government have exhausted all legal options under the EU withdrawal agreement,

(b) they have laid before each House of Parliament an assessment of the likely impacts of the regulations, and

(c) they have consulted Northern Ireland business organisations on the contents of the proposed regulations and laid a report regarding that consultation before each House of Parliament."

Member's explanatory statement

In the event of a negotiated settlement being achieved with the EU, this amendment would require both Houses to debate that agreement, with the Commons having to approve it. In the event that no agreement is achieved, Ministers would have to follow various steps before being able to make regulations under parts of the Bill.

Baroness Chapman of Darlington (Lab): My Lords, I will be very brief. I do not want to spend too much time on this amendment. Essentially, what we are asking for is a process in Parliament in the event of an agreement being reached. We want the Government to succeed in getting an agreement and think it is a helpful safeguard to allow the elected House to express its view and for this House to debate a draft of the agreement. It would be especially useful, I suggest, if the Northern Ireland Assembly is not restored in time. It would be helpful because if it is not and there is no debate in Parliament, who knows what they might be agreeing to? There would not be an opportunity for anybody's elected representatives anywhere to have a debate about what is going to happen, and we think that is not ideal, given the history of how we got to where we are.

If Ministers are unable to achieve a deal and have exhausted legal routes under the protocol and wish to use the powers in the Bill, they should have to follow the steps in subsection (2) of this amendment, which would include a detailed impact assessment and proper consultation with Northern Ireland businesses on proposed regulations.

We have had many of these debates already and I do not propose going over each element of this in great detail now. Ministers know how we feel about consultation, draft regulations, the involvement of Northern Ireland and listening to businesses. So I think I will just leave it at that and I beg to move.

Lord Ahmad of Wimbledon (Con): My Lords, I thank the noble Baroness for the amendment and her explanation. On her second point about consultation, I think the Government have rehearsed this point several times and the record of the Government's position stands. It totally resonates with us. I have sought to the extent that I can to give reassurance of continued consultation in that respect.

Turning specifically to Amendment 57, on the supremacy of the House of Commons and giving the vote, I understand where the noble Baroness is coming from on this. However, I once again state quite clearly that the procedures under the Constitutional Reform and Governance Act—CRaG 2010—will apply to any qualifying treaty that needs to be implemented by regulations made under the Bill. The Act already provides for appropriate scrutiny and I hope that, while she may not be totally satisfied, based on the fact that she has tabled this amendment, I once again give her that reassurance. I am sure that we will return to several aspects of this, particularly as we move through to other stages of the Bill.

Again, I note the point she is making about the importance of parliamentary scrutiny, but I hope at this time she is minded to withdraw her amendment.

Baroness Chapman of Darlington (Lab): I do not really feel the need to reply. I think we have said everything that can be said on this topic through these debates, so I beg leave to withdraw.

Amendment 57 withdrawn.

Amendment 58 not moved.

Amendment 59

Moved by ***Baroness Chapman of Darlington (Lab)***

59: After Clause 22, insert the following new Clause—

"Impact assessment: construction

(1) Within the period of three months beginning with the day on which this Act is passed, and before a Minister of the Crown may exercise any of the powers in sections 1 to 20, the Secretary of State must lay before both Houses of Parliament an impact assessment pertaining to the construction sector in Northern Ireland.

(2) In preparing the impact assessment under subsection (1), the Secretary of State must—

(a) publish any draft regulations they intend to make under this Act, and which may be reasonably expected to relate to the sector,

(b) consult such persons as the Secretary of State considers appropriate representatives of the sector."

Member's explanatory statement

This amendment would require the Secretary of State to publish and consult on draft regulations relating to the construction sector, prior to using the powers under the Bill to make regulations affecting that sector.

Baroness Chapman of Darlington (Lab): Similarly, these amendments would require the Secretary of State to publish and consult on draft regulations relating to various sectors of the Northern Ireland economy—including construction, electronics, energy and manufacturing—prior to using powers under the Bill to make regulations affecting those sectors. We want to see these draft regulations. They keep coming up. We have made our contentment with going to Report conditional upon them; they are very important to us and, I believe, to sectors in Northern Ireland.

We have previously had interesting debates on the merits of a UK-EU veterinary agreement and the importance of proper consultation with food-focused sectors of the economy, but it is important to remember that Northern Ireland businesses operate in every imaginable field, so these amendments cite a variety of sectors. We could have gone further—it is not an exhaustive list by any means—but we wanted to highlight to Ministers the unique challenges faced by businesses in Northern Ireland. Manufacturing, in particular, is having a tough time at present, with supply chains still experiencing disruption and inflation adding to business costs. In August, the Northern Ireland Business Brexit Working Group said that using the powers under the Bill would

"create a myriad of reputational, legal and commercial risks for many of our businesses",

putting at risk Northern Ireland's position as

"a top performing region in exporting goods".

My noble friend Lord Hain has previously spoken about the challenges facing the energy sector in Northern Ireland, and the ongoing uncertainty around future trade terms is creating its own difficulties for the other sectors mentioned in these amendments.

We continue to hope that the protocol can be made to work but, if the Government are to insist on their unilateral action, they need to fully involve the businesses that are operating on the ground, trying to fill and satisfy their order books. It is an incredibly difficult time for businesses anywhere in the UK but you cannot listen to the debates that we are having and not understand how much more difficult it is to plan and run your business in Northern Ireland. Some of the problems are caused, of course, by the protocol that we all want to see fixed; others, I am afraid, are caused just by the continuing uncertainty that has been brought about by this situation. I beg to move.

Lord Ahmad of Wimbledon (Con): My Lords, I will speak to Amendment 59. Again, I suppose the final thing is about approach. There is nothing the noble Baroness has said that I disagree with, in that, yes, we are seeking to provide clarity to Northern Ireland businesses. I totally subscribe to what the noble Baroness said about problems arising from the operation of the protocol but that, equally, there are wider issues that businesses across the United Kingdom, and indeed globally, are facing.

I fully sympathise and align myself with the desire to ensure that we consider the full impact of our legislation and its practical application for businesses. My noble friend Lord Caine previously detailed some of the groups that we are working with; indeed, the Northern Ireland Business Brexit Working Group, which the noble Baroness mentioned, is one of them. We will continue to engage with them. We have had quite extended discussions and debates on the publication of regulations, and I have acknowledged that I fully recognise the desire to do so, and to ensure the scrutiny of these regulations in the usual fashion. Equally, our view is very clear that these regulations also need to be fully discussed—a point agreed on by all noble Lords—to ensure that businesses can make them operable in a practical sense. Notwithstanding that, I hope the noble Baroness will be minded at this time to withdraw her amendment.

Baroness Chapman of Darlington (Lab): I am obviously happy to withdraw the amendment. I note what the Minister just said about understanding our desire to see the draft regulations and his desire to make sure that they are worked up—I think he said "consulted on with business" or words to that effect. However, we had asked for draft regulations before we moved to Report. Before I sit down—that is the phrase we use here—can he indicate whether he anticipates that the Government will be able to provide that?

9.45 pm

Lord Ahmad of Wimbledon (Con): My Lords, I will have to disappoint the noble Baroness on that point. I cannot give a specific commitment. The material will be published in due course. I fully recognise and note what the noble Baroness has said.

Baroness Chapman of Darlington (Lab): I beg leave to withdraw the amendment.

Amendment 59 withdrawn.

Amendments 60 to 64 not moved.

Clause 23: Making regulations under this Act: general provisions

Amendment 65

Moved by ***Lord Ponsonby of Shulbrede***

65: Clause 23, page 12, line 25, leave out from "regulations" to end of line 29 and insert "may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Member's explanatory statement

This amendment makes most regulations under the Bill subject to the affirmative procedure.

Lord Ponsonby of Shulbrede (Lab): My Lords, Amendments 65 and 66 would make most regulations under the Bill subject to the affirmative procedure and strip out supplementary provision which would become redundant as a result.

As we discussed in earlier amendments, most powers in the Bill could be exercised with little or no formal scrutiny. These amendments would make the bulk of regulations made under the Bill subject to the affirmative procedure, ensuring that the SIs had to be debated and justified. Of course, I understand that this is no silver bullet and this House never makes a habit of voting down statutory instruments.

Last week, I asked the Minister what planning had been undertaken in relation to the powers in the Bill. Have the Government decided on a sequence yet? Do we know how many statutory instruments we may be dealing with? If the Minister is unable to comment at this time—we have received no correspondence on this matter—is he in a position to update the Committee on the likely number of statutory instruments that the Bill may generate? I beg to move.

Lord Ahmad of Wimbledon (Con): My Lords, I thank the noble Lord for moving this amendment. I also recognise his point about these instruments being affirmative. I note that we recognised that in an earlier debate today on another issue. Of course, affirmative statutory instruments allow for those debates to be taken forward.

My colleagues and I have said before that we want an opportunity to scrutinise all regulations under the Bill. The Government will provide all their usual accompanying material under normal parliamentary procedures. I can commit at the current time that any regulations that amend Acts of Parliament will be subject to the affirmative procedure, although there will be some technical and detailed regulations under the Bill that may be subject to a negative procedure. That does not in itself mean that there will be no scrutiny, but I note what the noble Lord has said.

There are obviously details still to be determined around the volume of the SIs that would be coming, but I will see whether there are further details that I can share with the noble Lord and inform him appropriately. For now, I ask him to withdraw the amendment.

Lord Ponsonby of Shulbrede (Lab): I beg leave to withdraw Amendment 65.

Amendment 65 withdrawn.

Amendments 66 and 67 not moved.

Clause 23 agreed.

Clauses 24 and 25 agreed.

Clause 26: Extent, commencement and short title

Amendments 68 to 70 not moved.

Amendment 71

Moved by ***Baroness McIntosh of Pickering***

71: Clause 26, page 15, line 45, at end insert—

"(3A) Regulations under subsection (3) may not bring any such provision into force before 31 December 2026."

Member's explanatory statement

This amendment delays the coming into effect of most of the legislation until 31 December 2026.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful for the opportunity to move this simple amendment. Basically, I am suggesting that the Bill, if it were to carry, would not enter into force before 31 December 2026.

On a number of occasions my noble friend Lord Ahmad has repeated that it is the Government's firm belief that by proceeding with this Bill on the Northern Ireland protocol, they are not jeopardising our relations—particularly our trade relations—with the European Union. Personally, I agree very much with the sentiments of the noble Lord, Lord Kerr, who said earlier that the Bill not just breaches the EU withdrawal agreement but would breach the terms of the trade and co-operation agreement agreed with the EU following our departure.

Today we hear from Egypt that the Prime Minister had his first meeting with the President of the European Commission, Ursula von der Leyen. At the same time, we have also heard that European Commission Vice-President Maroš Šefčovič—apologies for my pronunciation—has stated that there would clearly be ramifications for trade should the Government persist with this Bill.

This amendment is, if you like, a get-out clause for my noble friend if he were to follow my advice and better judgment and pause the Bill at this time. There are other ways of dealing with the very real sentiments raised by my noble friends on the DUP Benches and others, and I do not believe that the Bill is the right vehicle to do that. It is my firm belief that the best way forward is through negotiation, not intimidation. I am sure my party would wish to distance itself from any form of intimidation, in whatever shape or form it comes.

That is my plea to my noble friend the Minister and the Government at this time: if they persist with the Bill, they should agree with Amendment 71 that the Act would not come into effect before 31 December 2026. I beg to move.

Lord Ahmad of Wimbledon (Con): My Lords, I thank my noble friend for moving the amendment. I understand and acknowledge that she wishes to create the space for negotiations, but the Government have

[Lord Ahmad of Wimbledon]
passed the Bill through the other place and introduced it to your Lordships' House because of the situation in Northern Ireland. For more than four years the situation has continued in a very challenging way. Furthermore, it is the Government's view that this amendment, if agreed, would remove their ability to rapidly implement any new agreement via Clause 19.

As my noble friend will be aware—we have discussed it several times during the passage of the Bill in Committee and at Second Reading, and it was a point made by several of our colleagues and my noble friends from Northern Ireland—the Assembly has not sat since February and there is ongoing business disruption across the economy. Much of this can be aligned to the unworkability and lack of operability of the protocol.

From our perspective as the Government, it would be a sad dereliction of our duty if we were just to let the current situation continue. Although I hear what my noble friend says—she expressed her opinion about my right honourable friend meeting the President of the European Commission and our continued discussions with the EU Commissioner leading the negotiations—there is nothing more I can really add to what I have said already.

From my perspective and that of the Government, we do not feel that this amendment would be helpful to our current position. Therefore, we cannot support it and I hope my noble friend will be minded to withdraw it.

Baroness McIntosh of Pickering (Con): I am grateful to my noble friend for his response and I will consider what to do between now and Report. I believe this amendment would give the possibility of reaching consensus and agreement in Northern Ireland, so that democratic legitimacy can be returned, and enable us to meet our international obligations. For the moment, I beg leave to withdraw the amendment.

Amendment 71 withdrawn.

Amendment 72

Moved by ***Lord Purvis of Tweed***

72: Clause 26, page 15, line 45, at end insert—

"(3A) A Minister of the Crown may not make regulations under this section so as to bring sections 1 to 20 into force until both Houses of Parliament have approved a mandate for negotiations between the United Kingdom and the European Union regarding the Northern Ireland Protocol."

Member's explanatory statement

This amendment provides that core provisions of the Bill cannot come into force until Parliament has approved a mandate for negotiations between the UK and the EU regarding the Northern Ireland Protocol.

Lord Purvis of Tweed (LD): My Lords, I think the noble Baroness, Lady Hoey, brought about some cross-community consensus earlier when she said that she was glad that I had not spoken. As I am trying to ingratiate myself with all colleagues, it may assist if I speak to the last two groups together, if that is acceptable to the Minister and the Committee, just for efficiency's sake.

I found it curious earlier when the Minister said that he rejected an earlier amendment because it might give the impression that agreement was in reach and talks would go on. That does seem to be the Government's approach and, at some stage, we will need much greater clarity about not only the status of the talks—or negotiations, as the noble Lord, Lord Murphy, indicated—but what they are about. We know what the mandate of the EU is, but we still do not know what the position of the UK is. The purpose of Amendment 72 is to indicate that, before any regulations come into force, we would need to know exactly what is likely to be agreed.

Amendment 73, the final amendment in Committee, relates to the points that were very well made by the noble Baroness, Lady Chapman, regarding the fact that there will be a stage when we need to see the regulations, and I need not rehearse that argument again. We cannot do our job without seeing drafts or indications before Report, and it really should be impossible to commence the legislation unless we have seen the regulations. That is the purpose behind Amendment 73, but I beg to move Amendment 72.

Baroness Hoey (Non-Afl): My Lords, I want to make it very clear to the noble Lord, Lord Purvis, that I love listening to him speak and I have no aspersions against him whatever. I was just pleased that perhaps he felt that my amendment was worth considering enough to not contribute.

On this, I know it is extremely difficult for the Minister to do so, but could he give us some idea of how long he visualises—he is smiling, so I think he knows what I am going to ask—the negotiations going on before someone actually says that this is not going to work? One of the reasons I am very keen to get this Bill through as quickly as possible is so that we have it there as a safeguard. It would be helpful to know if there are any discussions going on behind the scenes on timing and just how long we can keep negotiating if we are not getting anywhere.

Lord Dodds of Duncairn (DUP): My Lords, I commend the noble Lord, Lord Purvis of Tweed, because I think I heard him say earlier that he returned from Buenos Aires this morning and then went straight into this debate on the Northern Ireland protocol. It is very appropriate that he is the proposer of the last two amendments. I commend him on his stamina. I agree with the idea that regulations should be published as quickly as possible.

Lord Ahmad of Wimbledon (Con): My Lords, I thank all noble Lords who have participated in this brief debate. I thank the noble Lord, Lord Purvis, for combining the last two groups, which means that I cannot actually say I did 13 groups in total today. I am really grateful for the contributions that have been made.

To pick up the point made by the noble Baroness, Lady Hoey, about the time of negotiations, I would put my career as a Minister—and indeed that of any negotiator—on the line if I were to determine the length of negotiations. As I said, I have shared as much as

I can. I have heard the desire to know more and I fully recognise that; if I were sitting anywhere else in the House but in this position, I would be pushing in the same manner for more details of the discussions and negotiations. I am pressing colleagues across the Government to see how much more we can share about discussions taking place both in Northern Ireland and, importantly, within the EU.

10 pm

We have talked often about the EU but several noble Lords have emphasised the importance of speaking to, and having engagement directly with, the Republic of Ireland. While it will defer to the Commission, we are having discussions directly about the situation and trying to find a resolution to the issue of the protocol. From an Irish perspective, that is important because of the north/south issue, which also remains part of that.

I turn to the amendments. Amendment 72 would prevent any regulations being made on Clauses 1 to 20 coming into force until Parliament approved a mandate for negotiations between the UK and the EU. I say to the noble Lord that, while our preference remains to resolve the issues with the protocol through the negotiations, to pick up on the point made by him and the noble Baroness, Lady Hoey, it is about the ability to move forward if negotiations do not have the desired outcome. Still, I cannot stress enough that the preference remains—and the engagements that have taken place to date, certainly in recent weeks and months, are very much focused on—a negotiated settlement. It has long been our position that the Northern Ireland protocol and the negotiations regarding it, like any treaty, are a matter for our Government, and therefore we cannot agree this amendment.

On Amendment 73 in the name of the noble Lord, Lord Purvis, as I have said on other occasions, there will be another opportunity to scrutinise regulations. The point has been well made through various debates and the Government will provide the usual accompanying material. I assure all noble Lords that we will continue to press to ensure that we provide this information under normal parliamentary procedures, but I recognise and have heard very clearly the desire to see these regulations as early as possible. The point was made in earlier debates, as it was again in this short debate, about the importance of ensuring that businesses have clarity over the issues that we are seeking to amend.

In concluding this Committee stage on a personal reflection, I thank all noble Lords for the days that we have been in Committee on behalf of my noble and learned friend Lord Stewart and my noble friend Lord Caine. I know there is much where more detail is required, about both regulations and information to be shared. From my perspective as the Minister of State at the FCDO, I have fully heard the real desire for more detail about the current discussions taking place and the negotiations framework in the context of our conversations with the EU. I hope that over the coming days we will be able to provide further detail on how things are progressing.

Lastly, I thank all noble Lords for their brevity, certainly after dinner. It has allowed us to conclude Committee in a timely fashion, and for that I am grateful. For the time being, I ask the noble Lord to withdraw his amendment.

Lord Purvis of Tweed (LD): I am grateful to the Minister, as always. I thank him, the noble Lord, Lord Caine, and the noble and learned Lord, Lord Stewart of Dirleton, the Advocate-General, for their courtesy in Committee, which is very much appreciated. We look forward to the correspondence.

I thank the noble Baroness, Lady Hoey, for her kind words. I was just teasing but, as the Minister well knows, silence from me is not always tacit approval. Still, the question that she asked is valid; we were told in July that talks had been exhausted, but now they have not been. Before we come back for consideration of what we decide about Report, we will need much more information on that.

I very much enjoyed contributing with the noble Lord, Lord Dodds, in Committee. These issues do not tire me because I find them intellectually stimulating, but we owe the people of Northern Ireland our effort, our interest and our scrutiny, because these are the lives of people of our country that we are legislating for and it is an important job that we do. The conference that I was speaking at was with many MPs from different countries who are struggling and fighting for the ability to do what we have been doing in Committee, and I am very privileged to be able to do it.

But, ultimately—the words of the noble Lord, Lord Kerr, always stick in my mind from a previous day in Committee—this is still a pig of a law, with apologies to the Minister. It has lipstick on now, and we have given it a nice frock, but it is still a pig of a law, and that has not changed. It is illegal, it is a power grab, and it will not work. Fundamentally, those three aspects are what we will have to decide on in deciding whether it even goes to Report. Until that point, and with those considerations, I beg leave to withdraw the amendment.

Amendment 72 withdrawn.

Amendments 73 to 75 not moved.

Clause 26 agreed.

Bill reported without amendment.

House resumed.

House adjourned at 10.06 pm.

Second Reading Committee

Monday 7 November 2022

3.45 pm

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, I remind your Lordships that the Minister, the noble Lord, Lord Parkinson, is on his feet in the Chamber. We will start the Committee as soon as he gets here.

Arrangement of Business

Announcement

3.49 pm

The Deputy Chairman of Committees (Baroness Pitkeathley) (Lab): My Lords, before the Minister moves that the Bill be considered, I remind noble Lords that the Motion before the Committee will be that the Committee do consider the Bill. I should perhaps make it clear that the Motion to give the Bill a Second Reading will be moved in the Chamber in the usual way, with the expectation that it will be taken formally.

Electronic Trade Documents Bill [HL]

Motion to Consider

Moved by ***Lord Parkinson of Whitley Bay***

That the Committee do consider the Bill.

3.49 pm

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Parkinson of Whitley Bay) (Con): My Lords, I am grateful for the Committee's understanding. I have just finished answering a Private Notice Question in the Chamber.

The Bill allows for the use in electronic form of certain trade documents, such as bills of lading and bills of exchange, which currently have to be on paper and physically possessed. It implements the recommendations made by the Law Commission of England and Wales in its report on electronic trade documents, which was published earlier this year. The Bill is not mandatory: it is a permissive and facilitative piece of legislation. Though it is only a small Bill, of seven clauses in length, its impact will be huge. It will help to boost the UK's international trade, already worth more than £1.4 trillion, by providing benefits to UK businesses over the next 10 years of £1.1 billion.

In short, the Bill will allow businesses to use electronic trade documents when buying and selling internationally, making it easier, cheaper, faster and more secure for them to trade. It is fully supported by the businesses and industries that it is designed to help. The Government's role here is simply to remove an obstacle to progress and to pave the way for international trade and trade law to be brought up to date.

The Law Commission published its recommendations and draft legislation in March this year. In its report, it made recommendations for legislative reform to allow trade documents in electronic form which can satisfy certain criteria to have the same legal effect and functionality as their paper counterparts. The Law Commission undertook significant consultation on the aim and contents of the Bill throughout the development of its recommendations. It spoke to a wide range of interested parties, including academics, lawyers, trade experts and industry representatives.

No previous attempts have been made to legislate in this area, which is one of the factors that makes this Bill unique and novel. While the Law Commission's recommendations are for the law of England and Wales, we have worked with the territorial offices and devolved Administrations to ensure that the Bill can be extended to Scotland and Northern Ireland to ensure that businesses across the UK can benefit from this important development.

Business-to-business documents such as bills of lading, which are contracts between parties involved in shipping goods, and bills of exchange, which are used to help importers and exporters complete transactions, currently have to be paper-based. Existing laws, such as the Bills of Exchange Act 1882 and the Carriage of Goods by Sea Act 1992, did not envisage the digitisation of these documents. This Bill seeks to modernise the law, enabling this move to digital trade documents. Under the Bill, digital trade documents will be put on the same legal footing as their paper-based equivalents, giving UK businesses more choice and flexibility in how they trade.

The impact of the Bill cannot be overstated. Whether it is lowering transaction costs associated with trade by reducing resourcing and operational costs and increasing productivity; whether it is increasing efficiency and encouraging business growth by facilitating the development of digital products and services; whether it is delivering environmental benefits through a reduction in paper documents and emissions from couriering the paper documents; or, critically, whether it is increasing the security, transparency, traceability and transactional data of the flows of goods and finance—the Bill has the potential to revolutionise UK businesses' ability to trade across borders.

To illustrate this, the process of moving goods across borders involves a range of actors, including those involved in transportation, insurance, finance and logistics. One trade finance transaction typically involves 20 different parties using between 10 and 20 paper documents, totalling over 100 pages. Research carried out by industry and academia has produced the following illuminating statistics and figures.

The use of electronic trade documents will reduce trade contract processing times from between seven and 10 days to as little as 20 seconds, according to the industry publication *Trade Finance Global*. The Digital Container Shipping Association estimates that, if 50% of the container shipping industry adopted electronic bills of lading, the collective global savings would be around £3.6 billion per annum. The International Chamber of Commerce estimates that small and medium businesses could see a 13% increase in international business if trade is digitised, and the World Economic Forum has found that digitising trade documents could reduce global carbon dioxide emissions from logistics by as much as 12%. Electronic trade documents also increase security and compliance by making it easier to trace records.

[Lord Parkinson of Whitley Bay]

The Bill will lay the foundations for the future digitisation of our global trade approach and ambitions. I hope it receives strong support from your Lordships and I look forward to noble Lords' contributions to this debate. I beg to move.

3.55 pm

Viscount Waverley (CB): My Lords, the Minister intimated that this is a milestone, innovative Bill, so with the leave of the Committee I intend to follow that theme and be equally innovative.

One of the essential ingredients to make progress with the global trading community is to combine innovation, build efficiency and create sustainability and to do so by joining the dots—putting the jigsaw into place, if you will. Currently there are different excellent components that could usefully be harnessed into a unified approach, rather than being taken in isolation. Over the past months, I have been reflecting on a possible global trade blueprint and will take the extended opportunity afforded today to put into context three ingredients that could dovetail with the Electronic Trade Documents Bill, which would be a key component. However, none is dependent on any other.

The first lends itself well, as the Commonwealth is fertile ground given the commonality of common law and language, which is the bedrock of this Electronic Trade Documents Bill. It is a free trade agreement template initially targeting Commonwealth member states, excluding the two that are members of the EU as they are responsible to internal protocols, that can be adjusted by country to address any specific anomalies. I was originally approached some time back by a well-meaning US interest to stitch together a US/Commonwealth agreement, including the UK, of course, that would unlock the UK/US circumstance, given that the bilateral free trade agreement is moribund. This Commonwealth approach would consist of making a template of what is expected to be covered in a trade agreement with language options built in. To fast forward to the week before last, I was delighted to learn at first hand that our very own noble Lord, Lord Hannan, who is not in his place, is also running with this ball with his Institute for Free Trade, in a most welcome development.

The second is a dedicated, big-data analytics platform to encompass advanced data analytics and modelling for foreign trade data relating to supply chains in order to consolidate multiple datasets already used by the International Trade Council. These datasets, with additional overlays into a single database, could be used for analysis of markets and supply chains, forecasting and predicting market behaviour. This would enable corporates to validate their supply chains, understand market pricing, monitor competitors and forecast the market and would allow Governments seeking to assist their exporters to find new markets, identify priority investment FDI targets and model future market demand, growth, customers and suppliers. A UK entity is in the making to transition this data for global consumption.

Thirdly, and this brings me full cycle to the Electronic Trade Documents Bill, the magic is that it is all the more beneficial for being an enabler process, free for the world to join up to—just follow the provisions. If the answer to today's ails is in the timing, this initiative hits the spot with the legal enactment necessary to a more competitive world to the benefit of all. Passing this law would be a victory for global trade and for the United Nations, as the legislative work is led through the UN Model Law on Electronic Transferable Records—MLETR. By allowing electronic documents and physical documents to be used in parallel, the transition to paperless trade can be made an evolutionary process where the adoption of electronic trade documents will take place when different stakeholders in trade and trade finance are ready to take the step to paperless trade.

Radical change in removing paper-based trading documents will make for a faster, lower-cost, more resilient and more liquid world of trading, leading towards transparent digital supply chain management. It will be especially good for small businesses. While all problems cannot be solved at once, recognising a practical step-by-step approach to solve one would be an excellent beginning.

The Bill is core to the success of improving logistical flow that will address the impediment to the speed of payments, and the current need to move paper to discharge goods and receive payments, bringing more opportunities as we align with the MLETR and benefit from digital trade corridors and individual country compliance, to which I have referred. This will allow for documents that carry value and promises to be drawn up and signed in digital form, provided that the system or document fulfils the listed requirements of the Bill.

A number of trade documents with which domestic and cross-border trade would become significantly more efficient and affordable for all are listed, but small and medium-sized entities would benefit the most. This will create significant opportunities for smaller importers and exporters globally, one reason being that the law of England and Wales is often used when parties have difficulties agreeing on the jurisdiction in which to settle disputes.

Therefore, the Bill brings benefits not only for the United Kingdom but for importers, exporters, carriers, brokers and bankers internationally. It should be recognised that the Bill is a stepping-stone towards enabling the modernisation of domestic and international trade, but more needs to be done to reduce friction in trade and trade finance.

Four questions come to mind which illustrate this and I would be grateful for the Government's view. Are they satisfied that: international digital identities are sufficiently harmonised; international digital signatory laws are harmonised; international freight tracking systems with a lack of interoperability are a hurdle that needs to be overcome; and legal entity identifiers are accepted universally?

Significant work is being done and progress is being made in these areas by industry organisations but this needs to be supported by Governments to pave the way for international harmonisation and adoption. It will be a balancing act to create international standards in such a way that creates legal certainty on the one hand without hampering further adoption of new technologies or innovation on the other.

The United Nations Model Law on Electronic Transferable Records is a very well-designed framework, balancing the need for commercial certainty, relying on current and internationally well-harmonised substantive laws, with allowing for electronic trade documents, providing that the provisions in the MLETR are met.

The Bill will play a pivotal role when other countries revise their bills of exchange acts and other trade-related legislation when promoting alignment to the MLETR. I anticipate that this will become a global trend, with law changes already taking place in North America, South America, the Middle East, Asia and Europe.

The Bill does not change the function of the instruments listed in the Bill. All the safety mechanisms these instruments have and cater for remain intact. Allowing them to be in electronic format means that they will become more efficient and significantly safer. I underline, however, that the Bill does not address the quality of signatures or how to establish identities, other than to say that they need to be "reliable". The European Union has a list of trusted digital signature sites and for trade it is important that different parties can use simple verification processes to trust the documents coming from another party, but it is up to the contracting parties to define the method to ensure reliability.

What is reliable today, however, will differ tomorrow as new technology evolves. Legislation that is principles-based rather than technically prescriptive is more favourable. The adoption of the EU regulation for eID and other electronic trust services has been slow in cross-border trade, the main reason being that these have not been readily available and easily accessible as technical solutions. The result has been paper-based trade rather than electronic. Although not perfect, in some cases a lower standard is the stepping-stone for adoption, especially in cross-border dealings, provided that the parties have agreed on where to settle disputes.

The Bill does not resolve the development and standardisation of eID and signature technologies, however, which must continue to evolve. We will also see new payment and settlement solutions, possibly decentralised, as we realise that large players such as MasterCard and Visa will come to have a large degree of global systemic risks associated.

The Bill will help to encourage the development of solutions that will address deficiencies. To take some examples to illustrate progress, Trace:Original, a product of Enigio of Sweden, is producing the means by which electronic documents that will be trade finance-enabled yet functionally equivalent to a paper document, which will render documents paperless using existing processes and international practices, provided that this Electronic Trade Documents Bill passes. I am informed that Lloyds Bank is showcasing the technology available and that the efficiency gains are significant for all concerned. There is also noteworthy development with Contained's BlueRing platform as a technology solution advancing the process.

It is essential that there be a key role for the Commonwealth Secretariat in informing and encouraging Governments. We should also look at a mix of the Institute of Export and International Trade—with which I am also discussing the role of secretariat to the All-Party Parliamentary Group for Trade and Investment, which I co-chair—with additional support from the International Chamber of Commerce, as an architect of this Bill, together with a secondee of HMRC of this electronic trade initiative. A trade advisory to Governments, International Economics, might also be well suited to act as a global co-ordinator.

These are early days, with much to do and no time to lose. This enabling Bill is, however, the beginning of an exciting journey that ticks the boxes and I commend it accordingly.

4.07 pm

Lord Lansley (Con): My Lords, I am very glad to have the opportunity to follow the noble Viscount, Lord Waverley. He is, as he mentioned, co-chair of the all-party group for trade and export promotion, of which I am a member—

Viscount Waverley (CB): Vice-chair.

Lord Lansley (Con): Indeed—I am a vice-chair. I thought the noble Viscount made some interesting points, and I very much join him in welcoming the Bill.

Sometimes, we are wont to criticise Bills that are in the form of a framework but, in this instance, there is an understandable structure here from the Law Commission. In the adoption of electronic trade documents, it encountered the legal constraint of the possession of electronic trade documents as a common-law principle and, rather than try to codify and put into statute everything relating to the common law in this respect, it said, "Let us at least try to equate electronic trade documents to paper documents in statute." This will allow us to see how some of the courts' decisions over time enable those established principles in relation to paper documents to be extended into electronic trade documents, which would be very helpful.

We are, therefore, dealing with a Bill that is technology neutral. I know that my noble friend Lord Holmes of Richmond knows far more about the technology of these things than I do; I hope he will agree that a technology-neutral Bill is a good structure for us to work with.

I want to talk about a number of other things. I am a member of the International Agreements Committee of your Lordships' House and we have had the opportunity to look at some of the agreements that we are now entering into; for example, on digital trade with Singapore and the free trade agreements that we have entered into with Australia and New Zealand, as well as the prospect of entering the CPTPP agreement, which, in the context of regional, international and plurilateral agreements, is probably the most advanced in its promotion of digital trade. There is no point having such agreements that open these opportunities for digital trade if we do not put the literal building blocks of digital trade in place.

Last October, the G7 group of Trade Ministers agreed digital trade principles. I think the United Kingdom was instrumental in enabling that to be brought together; it is therefore terrific that we are implementing it rapidly in our legislation. As the noble Viscount,

[Lord Lansley]

Lord Waverley, said, I hope other countries will take similar steps to put their jurisdictions into a similar framework. I hope we will look toward the framework of the United Nations Commission on International Trade Law, the Model Law on Electronic Transferable Records, to which the noble Viscount referred. The more that jurisdictions across the globe can structure their legislation domestically on an international template of that kind, the better.

We have a particular responsibility because, for so many of these international trade documents, in so far as they have a legal base, they have it in English law. I am advised that 80% of bills of lading, if they were challenged, would be challenged in an English court. We really need to make sure that our law is a leader in this respect. I hope we will find that during our work on this Bill.

I entirely applaud the Bill's overall structure and intentions. My noble friend the Minister very well and happily set out all the substantial benefits that can accrue from this, in trade, economic and environmental terms. I very much look forward to our achieving those. However, there are issues we need to discuss, notwithstanding this being a Law Commission Bill; by its nature, we need to examine it—it is our job as a revising Chamber to look at it very carefully and ask all the questions, not least so that the other place can be confident that it can pass it happily and quickly.

I will refer to a range of issues. Underlying this is the fact that, if we are not trying to structure the legislation around the concept of the possession of electronic trade documents, we are none the less trying to adopt what is referred to as exclusive control in the singularity of electronic trade documents. It is difficult. The explanatory notes to the model law in UNCITRAL captured it rather well at paragraph 82, which says that

"a paper document, as a physical object, is by nature unique and, furthermore, centuries of use of paper in business transactions have provided sufficient information to commercial operators for an assessment of the risks associated with the use of that medium, while practices relating to the use of electronic transferable records are not yet equally well established."

We need to be sure that we understand where the risks emerge. There are potential benefits associated with the use of electronic documents, as my noble friend will doubtless explain, including those in security and reliability, but there are also risks.

I hope the House will establish a Public Bill Committee to examine this Bill so, before I stop, I will raise a number of issues. I do not ask my noble friend to reply to them in this debate; they are more appropriate for the committee, but I thought it would not hurt to flag them up, simply because in my preparation for today I encountered a number of issues that I thought would be interesting to discuss.

First, there is a reference in Article 13 of the model law under UNCITRAL to time. Provisions relating to the indication of time and place are found in many trade documents; there may well be mechanisms through which we can make the time of documents electronically secure, but not necessarily in the same way as we do with paper documents. This concept of "reliability" will have to be extended to time on documents as well as to other factors. Since Article 12 of the model law is transposed almost literally into this Bill, for example, I wondered why we have not transposed one or two other aspects of it in the same way.

Secondly, on the question of acting jointly, when one is dealing with paper documents, one knows who has possession of them. In the context of electronic documents, not least because of some of the technological aspects, such as the number of people who have access to a private key, we may deal with people who have to act jointly in circumstances that would not be evident for paper documents. We need to understand the safeguards associated with the intentions of people acting jointly, because the Bill rests upon that understanding and how it will be achieved.

Thirdly, there is a whole process in Clause 4 by which documents can be transferred from paper to electronic or electronic to paper forms. The Bill is clear that this has to be in circumstances made evident in the respective documents. However, if I recall the Explanatory Notes correctly, it is clear that, while that should be the case, if it is not, it does not automatically follow that the electronic trade document concerned is not valid. It may still meet the criteria to be a valid document for these purposes. I would like to explore in Committee how that is the case and what happens in circumstances where documents are transferred from one form to another, not least because there is greater risk of duplication in such a case.

Clause 1(2) lists examples of documents. This is not the same as the list in the model law. I know that this is not exhaustive—it is indicative—but I do not understand why, in paragraph 38 of the explanatory notes to the UNCITRAL model law, for example, there is a reference to

"bills of exchange; cheques; promissory notes; consignment notes; bills of lading; warehouse receipts; insurance certificates; and air waybills."

This is not the same as the list in the Bill. Why is it different and what are the justifications for those differences?

A question we need to follow up and explore further in the debate is the intention of the Law Commission. It says it is going to come on to the interaction between these changes and private international law, but we need to think particularly about the transitional issues—I hope they are only transitional—associated with our jurisdiction creating valid electronic trade documents when other jurisdictions do not. How do we deal with those connections? From our point of view, similar to the discussion on a single trade window, we want interoperability. We want our borders to be frictionless and other borders to be frictionless. That means they need to be aligned in various ways, including in those jurisdictions.

I want to make two final points. First, I want to explore what the voluntary industry standards are for the purposes of the reliability standard. Secondly, in paragraph 36 of the Explanatory Notes to the Bill, there is an expectation that documents are original, but there can of course be multiple original documents. There can be multiple paper documents that are treated as original. The explanatory notes for the model law make it clear that this is something that electronic

trade documents do more readily. We have to understand that these documents are not necessarily singular and how to deal with them when they are not, but are multiples that are original.

I hope that gives your Lordships a sense of the discussions we might have in Committee. I very much share what I hope is the collective view of the House: I support this Bill and want to see it make good progress quickly.

4.20 pm

Lord Holmes of Richmond (Con): My Lords, it is a pleasure to take part in this Second Reading consideration and to follow my noble friend Lord Lansley. I congratulate my noble friend the Minister on his return to the Front Bench. He is back in physical form and was not in digital form for very long, but it is great to have him back on the Front Bench. I also congratulate him on the way in which introduced this small but incredibly significant piece of legislation.

I would like to set out the problem, the solution and the potential benefits. Before I do that, it is worth also giving thanks to all those who have got us to this stage, not least Professor Sarah Green at the Law Commission, those at the International Chamber of Commerce, not least Chris Southworth, and many others who have worked to get the Bill into condition for our consideration this afternoon. The problem is pretty simple: to have possession of goods—if they are under a bill of lading, for example—you must be able to possess that document. It is much more than a contract merely setting out terms; it is a possessive document. Possess the paper and you possess the goods. How is it possible to take this ownership into a digital and intangible, and as yet in so many ways so contested, world?

Fortunately, because of new and emerging technologies —the technologies of the fourth industrial revolution—we now have such an opportunity. I agree entirely with my noble friend Lord Lansley that although distributed ledger technology, or blockchain, currently offers great possibilities in this space, in no sense should the Bill be anything other than neutral about technologies. What we can be absolutely certain of is that a plurality of technologies will be coming through, which potentially—not inevitably—can do great service for us in this and other areas.

The solution is the legislation before us. It is the digital standards initiative, worked upon by the ICC and the WTO. That technology, not least because of its ability to enable immutability and interoperability, is why I undertook research to report on distributed ledger technology in 2017. I wanted to highlight the potential public and private good for the nation from that technology. Had I not done that, the fear, which is as clear and present a danger today as it was back in 2017, is that all too often blockchain is seen as bitcoin, which is seen by many as suboptimal. Thus all the potential public and private benefits—potential, not inevitable—of distributed ledger technology could be lost even before we got beyond proof of concept. Those three elements—legislation, standards and technology —give us the opportunities which we are discussing today.

I turn to the benefits. The economic benefits were well set out by my noble friend the Minister. There is £1.4 trillion of business in international trade in the UK currently; if just 50% of bills of lading were put in this format, there would be a £3.6 billion annual benefit for the UK. Respondents to the Law Commission's consultation asserted a potential 5% saving in transaction cost as a result of this.

Perhaps even more important than the economic benefit, and certainly pertinent today, are the environmental benefits. The World Economic Forum calculates a 10% to 12% reduction in carbon from the logistics business if these measures are fully implemented. At the moment, if a cargo comes into Singapore, for example, without the paperwork as it is in London, someone has to board a plane to go to Singapore to deliver the document because, remember, "possess the document, possess the goods". There is the economic waste and an environmental impact of those actions. As result of this Bill those seven to 10 days are potentially reduced to a 20-second process with no travel requirement. This could give us the transparency and accountability that we require in our supply chains. Recent history has shown us in painful ways that we do not have the supply chains we currently need or transparency, accountability and sustainability in our supply chains. This legislation could combine origin, ownership and payment liabilities in the same data ecosystem, with all actors being able to access broadly the same data for economic, social and environmental benefits.

The Electronic Trade Documents Bill is in many ways one of the most important Bills, yet currently so few people know about it. It is one of the most important Bills heard of by so few. It has the potential to eliminate over time the 4 billion-plus pieces of paper currently circulating around the world. Crucially, the Bill as drafted is rightly facilitative and permissive. It is not mandatory, and that is quite right. Does my noble friend the Minister agree that even after the passage of the Bill that means a continuing need for industry-led, government-supported efforts to ensure that we continue to provide that combination of legislation, standards and technologies to enable all in this ecosystem to avail themselves of the potential benefits which it enables?

Other issues have already been touched upon which are incredibly significant in this space. What is my noble friend the Minister's view on where the current work is in terms of the 2025 border strategy and the technologies being deployed there, not least in the potential for atomic settlement at the border and how that could transform the experience for our traders, and on how the current work on digital ID in the UK can lead and interact internationally and ensure that there is that work on standards and that there is interoperability? It is fruitless for any nation to have tip-top digital ID if there is no interoperability. What other work is currently going on in my noble friend's department and across Whitehall on the deployment and potential use of distributed ledger technology and all the technologies of the fourth industrial revolution? What potential problems is his department currently looking at putting such technologies to?

[Lord Holmes of Richmond]

The Electronic Trade Documents Bill is one of the most significant pieces of legislation which most people have not heard of. It is trade-transforming, tech-enabling, economic growth-generating, carbon-cutting legislation. The UK has such an opportunity when tied to common law to lead, connect and collaborate in this space, not least across the G7, for the benefit of all nations right around the globe. I wish this legislation a safe Second Reading and swift passage into statute.

4.29 pm

The Earl of Lindsay (Con): My Lords, I am grateful to the Committee for the opportunity to make a short contribution in the gap. I greatly welcome the Electronic Trade Documents Bill and, in doing so, declare an interest as chairman of the government-appointed national accreditation body, the United Kingdom Accreditation Service—UKAS. It is in that role particularly that I commend this Bill for the downstream benefits it will bring. They include greater transparency, digital verification and mutual recognition of third-party testing, inspection and certification—all of which are critical to reducing technical barriers to UK and global trade.

More generally, in echoing my noble friend Lord Holmes of Richmond, I welcome the Bill's purpose to make trade more efficient and sustainable, as well as the important opportunities it will enable in respect of international co-operation and interoperability in digital trade.

Our current paper-based processes are part of a labour-intensive trade system that will benefit from moving to quicker, digitally based transactions. This will be especially welcomed by SMEs, which are often affected most by the complexity and associated costs of trading systems that are heavily paper based. They are likely to be among the largest beneficiaries of a move to digitally based transactions. I wish the Bill well through its further stages.

4.31 pm

Lord Fox (LD): My Lords, when I used to run events to which not many people turned up, in justifying the occasion, I used to tell my boss, "The quantity doesn't matter; the quality of the people is important." This debate has demonstrated that and the quality of the speeches that preceded will indicate how low-quality mine is—but I will do my best.

I join the chorus of people welcoming the Minister back to his position. He was hardly gone at all. This in no way disparages his successor and predecessor, who did a sterling job on the Product Security and Telecommunications Infrastructure Bill, as I can personally attest. I wish him well, too.

However, this is a difficult Bill for the Minister because, although it is cast as a digital Bill, it is turning out largely to be a trade Bill. I echo the noble Lord, Lord Lansley, in saying that some questions may be answered during the Public Bill Committee, rather than by the Minister—although noble Lords are always happy to hear his responses.

These Benches welcome the Bill. On the face of it, it is a technical Bill that has broad support from the industry. As we heard, the Government have said that it can bring great improvements in speed and efficiency, such that it reduces costs and cuts the environmental impact of trade. As we know, the Law Commission's report suggests that the industry generates 4 billion paper documents a year and that the changes could cut the processing time of these to 20 seconds, which is almost no time at all. Never mind the carbon and cost reduction; think of the efficiency and smoothness of this. Getting it right is important because, as the DIT tells us, international trade is worth more than £1.4 trillion to the UK.

But there is another, potentially more significant element to this very slim Bill. It is being viewed by many in the legal world as the first legislative attempt to solve the "possession problem". It seeks to address the idea that the traditional understanding of what it means to possess something is no longer adequate in our digital age. The noble Lords, Lord Holmes and Lord Lansley, alluded to that. The principles of English law that underpin the use of trade documents are based largely on historical mercantile practices. Here I have a vision of coffee shops, with Dr Johnson looking on, as insurance and bills of lading papers march in and out. Frankly, that was happening and it is what we seek to transpose with this Bill. Most trade documents rely on physical possession to be legal and, in this country, there is no legal recognition of electronic trade documents, which this Bill seeks to fix.

The Explanatory Notes put this well—I put it on record because it is the nub of the Bill:

"a bill of lading is a document used in the carriage of goods by sea which, when transferred to a buyer (or any subsequent lawful holder), gives that holder constructive possession of the goods described in the bill, and a right to claim delivery of them from the carrier."

The document equals the goods, so that is what we seek to reproduce in electronic form. The way in which the law, as it stands, treats that permission is premised on the idea that electronic documents cannot have the same relevant legal properties as physical pieces of paper—to whit, exclusivity or the ability to be associated with a single person. However, as we have heard, technology has now reached a point where electronic documents can be created which have these properties. I commend the noble Lord, Lord Holmes, on expertly setting out the properties, for example, of distributed ledger technology in this regard although, as he points out, we must remain technology-neutral in the legislation.

We have also heard that a number of countries have taken steps to recognise the use of electronic documents as legally valid. The most obvious example was set out by the noble Viscount and the noble Lord, Lord Lansley: the Model Law on Electronic Transferable Records, the beautifully named MLETR. This is supported by major stakeholders such as the International Chamber of Commerce as an international solution to the possession problem and, I am told, has been implemented in Bahrain, Singapore and Abu Dhabi. To be recognised as legally valid under the MLETR, an electronic document must, through a reliable method, be capable of being subject to an identifiable person's exclusive control. I repeat: a reliable method.

With this backdrop, and at the Government's behest, the Law Commission looked at this. The Government have acted on its final recommendations, made in

March 2022, and brought forward this Bill, which proposes three criteria that electronic trade documents should be subject to, reflected in Clause 2. I will not read them out, but they are independent existence, exclusive control and that the document must be fully divested on transfer.

As I have said, we support the Bill and its aims. However, it has implications around solving the possession problem and we think the committee must focus on that when we discuss it later, as it will need some careful consideration. For example, in its consultation response, the law firm Linklaters considered the issue of control and argued that it is not completely clear whether the Bill refers to legal or factual control. The Law Commission proposals suggest the concept of control should be limited to factual control, but this is not specified in the Bill. The noble Viscount, Lord Waverley, went into deep technical detail but there is a high-level issue, alluded to by the noble Lord, Lord Lansley. Linklaters highlights the practical issues that arise from the requirement that only one person has control. As we have heard, digital keys can be shared to multiple people, so restrictions on sharing could exclude much of the existing technology for moving documents around. Requirements for verification may interfere with the concept of control, especially if this is done through third parties. The committee should also consider this.

As has been said, the Bill does not establish

"what constitutes possession of an electronic trade document"

so it seems to us that the concept of control—and, through that, possession—needs to be more tightly defined. In the end, this Bill's scrutiny should aim to establish whether the aim of ensuring that paper and electronic documents achieve "equivalent" effect has been achieved.

This Bill is almost identical to the draft Bill from the Law Commission with two obvious exceptions. First, in Clause 5, "Exceptions", the Law Commission made explicit reference to bearer bonds being exempt from the Bill. This is not referenced in the Government's Bill; rather, Clause 5(2)(b) says that the Secretary of State can exempt document types by regulations. Why is there this variation between the Bill and what came from the Law Commission?

Secondly, this Bill also varies from the Law Commission's in the extent that it applies. The Minister referred to this in his opening speech. The Law Commission consultation applied to England and Wales, whereas this Bill applies across the whole of the United Kingdom. The Explanatory Notes state that

"DCMS, in discussion with the Territorial Offices and Devolved Administrations, has extended the extent of the Bill to the whole of the UK."

The Minister referred to discussions with Scotland, but I do not think that he mentioned Northern Ireland, so I am interested in how that fits. The Scottish law officers said that Scottish law differs from the law of England with respect to possession, so how will the differences in the approaches of the two countries' laws on possession be covered by this one Bill?

In his opening speech, the Minister talked about the traceability and transparency afforded by digital documentation. I draw a parallel between digital money and cash as an example. However, this sets a number of hares running, because it clearly offers great opportunities for HMRC and indeed law enforcement agencies. How does the Minister see the traceability and transparency to which he referred working? Surely those wishing to conceal what they were doing would continue to operate with paper documentation, so I wonder how far forward we would really get.

As I draw to a close, I would like to address how this Act will be implemented. Like the noble Lord, Lord Holmes, I hope and trust that it quickly becomes law. The Bill allows for documents to be converted between paper and electronic forms, which is key as international trade requires reciprocal recognition of documents and different jurisdictions will recognise electronic documents to varying extents. What consultation are the Government doing internationally to encourage other countries to implement the recognition of electronic documents?

This Bill also presents the potential, as we have heard, for huge cost reduction and environmental benefit, but that is dependent on take-up of digital trade documents. The Minister said that there was potential for £3.6 billion of savings, but that relied on 50% of documents going from paper to digital. What plans do the Government have to advertise this change to business and to help business to take it on? Will the Government monitor the use of digital documents to see how take-up is going, and will they be able to make an assessment of whether further changes are needed to encourage future take-up?

Finally, this is a legislative attempt, as I have said, to solve the "possession problem". While there is a narrow focus on trade documents in this Bill, it may—and, I think, should—inform government thinking on wider policy in relation to digital assets. In November 2019 the UK Jurisdiction Taskforce published its *Legal Statement on Cryptoassets and Smart Contracts* and suggested that crypto assets should be treated as property under English law. This principle has since been underlined in case law, but the law is not comprehensive and is still grappling with the particular issues raised by digital assets.

The Law Commission launched a separate consultation on proposals to ensure that the law recognises and protects digital assets in a digitised world. That consultation closed last week, on Friday 4 November. When can we look forward to the results being published? Can the Minister tell us whether it is the Government's view that this Bill sets a precedent for how future law will cover the possession of crypto assets? I look forward to the Minister's response and to Committee stage.

4.45 pm

Lord Bassam of Brighton (Lab): My Lords, like all other Members of this Committee I welcome the Minister back to this modest piece of legislation, although it has a truly massive import, as all previous speakers have said today. I have drawn one or two points from their comments.

The noble Viscount, Lord Waverley, made the point that this was a major innovation in legislation and an important part of a jigsaw that needs to fall into place

[Lord Bassam of Brighton]
if we are to ensure that our place in the trading world is maintained. The noble Viscount asked four important questions; I shall listen for the answers to them with great interest. As he said, this is part of an exciting journey and one which we obviously need to follow closely. I was deeply impressed by his contribution and that of the noble Lord, Lord Lansley, who accurately described it as an important framework Bill—that is what it is, at seven pages long. With his enormous experience in international trade, I am sure that he will focus laser-like attention on it when we get to Committee. The major issue that he identified was interoperability, which is key to what we are trying to achieve here. Overcoming obstacles around that will be extremely important.

I was grateful to the noble Lord, Lord Holmes, for his comments because he brought the debate into the real world when he said that the Bill could achieve something like 5% savings in transaction costs. In itself, that does not sound like an enormous amount, but when you think about the value of international trade it is vast. Another important point that he made was about the environmental benefits that this legislation could bring. I think we are all very conscious of those now, but he also talked about the importance of accountability and transparency and we, too, on our Benches, very much share that.

The noble Earl, Lord Lindsay, made the important point that SMEs will be the big beneficiaries from this. That is without doubt or question, because clearly it is of enormous advantage to an SME when its transaction costs are reduced and ability to trade speedily is very much underlined. The noble Lord, Lord Fox, talked about the Bill being technical, and it is, but the big problem it has to solve is that of possession. We should all focus on that.

The Labour Benches fully support the introduction of the Bill. We see it as a long overdue reform, which allows for the legal recognition of certain types of documents used in trade and trade finance in electronic form. This will finally mean that parties can use the law that currently applies to paper trade documents when transacting with electronic trade documents.

As we know, the Law Commission does invaluable work in advising on the reform of long outdated legislation. Despite the size and sophistication of the international trade market, many of its processes, and underlying legislation, are based on practices and frameworks developed by the nation's merchants hundreds of years ago. It is the Bill's intention that electronic trade documents, when capable of possession, should be treated in law in a manner equivalent to their paper counterparts—a simple notion but one that is obviously complex to implement.

The Bill represents for us a most welcome opportunity to further modernise trade transactions. In theory, it should speed up transactions and bring business into the modern world, where electronic interactivity is commonplace. The Law Commission report said that

"there is an existing set of complex private international law rules that determine which courts have jurisdiction over a dispute, and which country's laws should be applied to resolve it … these rules are complex and fact specific".

It then said that electronic trade documents may give rise to

"novel issues … that require further consideration".

For instance, it continued, there are "inherent difficulties" in ascertaining "the geographical location" of digital assets, including electronic trade documents. Similarly

"questions may arise as to how an electronic trade document issued in England and Wales would be treated by a country that does not recognise the validity of electronic trade documents".

The Law Commission also recommended that private international law aspects of electronic trade documents should be dealt with in a separate commission project that deals with digital assets more broadly as part of its 14th programme of law reform. I think it was supposed to be completed in mid-2022. Can the Minister advise on what steps will be taken in the meantime to mitigate issues that may arise affecting the operation of trade transactions? Can the Minister undertake to report back to Parliament on the operation of the provisions within a year of the date on which the Act is implemented?

We on our Benches believe it is important that parliamentarians are kept advised of progress in this field. I have nothing much more to add, except that we thank the Law Commission for its critical work on the Bill which we see as largely uncontroversial and of great value in ensuring that the world of trade and commerce operates smoothly and efficiently as possible and that UK businesses are not disadvantaged in any way. This Bill eases those processes and transactions that we need for us to continue to be competitive in a highly competitive world of trade.

4.51 pm

Lord Parkinson of Whitley Bay (Con): My Lords, I am very grateful to all noble Lords who have contributed to today's debate, including my noble friend Lord Lindsay, who spoke in the gap. As the noble Lord, Lord Fox, rightly said, it is quality not quantity that counts. I am glad that noble Lords who took part were unanimous that although the Bill may be small its potential impact is significant.

In my opening remarks I touched on that transformative impact, and I am keen to emphasise the elegant way that the Bill achieves its goal. It is a simple Bill, although I hesitate to use that word because a great deal of consideration and work has gone into making it so. My noble friend Lord Holmes of Richmond is right to pay tribute by name to some of the people who have been involved in that important work. The Bill achieves what it sets out to do in a minimalistic way. As the noble Viscount, Lord Waverley, said, it is also an enabling Bill which leaves people free to sign up to use it if they wish. The opportunity it presents to bring trade law up to date is immense.

English law underpins the laws of global trade, and all eyes will be on us in the UK as we take this legislation forward. As the noble Viscount, Lord Waverley, said, the benefits will be there for others to accrue beyond these shores. The objective of the Bill is for the UK to take the lead in setting an international standard for how electronic trade documents can be defined and recognised under domestic law with the intention that other jurisdictions will adopt similar laws. The more

that other countries harmonise their domestic laws to recognise electronic trade documents, the less it will matter whether UK law and this Bill in particular apply, and that is the case with paper trade documents today.

I am grateful to my noble friend Lord Lansley for highlighting some of the areas that he intends to probe in the Special Public Bill Committee. He is right that the Bill requires that scrutiny there.

I will deal with some of the questions that were raised. I hope it will be useful. I will, of course, look to see whether it is worth writing on further points ahead of the Special Public Bill Committee, although I would be grateful to noble Lords for recognising that that is the place to go into some of the deeper detail. I am always happy to speak to noble Lords ahead of that committee if it would be useful.

I agree with my noble friend Lord Holmes that there are many opportunities for technological solutions. One of the underlying principles of the Bill is that it is technology neutral. It would run counter to the objectives of the Bill if it were to prescribe or mandate a particular electronic trade document system. That would be likely to stifle innovation and risk excluding participants on the basis that their system does not satisfy the Bill's requirements. The Bill does not specify what constitutes a reliable system or mandate a particular type of system. Rather it sets out various factors that a court may take into account when determining reliability. The Bill therefore offers some guidance on how to assess the reliability of electronic systems. We have been working closely with industry, which is developing standards to ensure reliability and verifiable authentication of electronic trade documents.

Lord Fox (LD): One issue that is worth investigating further is who is the arbiter of reliability when it comes down to a system. Is it the buyer, the seller, a third party or some accreditation body that says it is reliable?

Lord Parkinson of Whitley Bay (Con): If I may, I will accept the noble Lord's invitation to look at this in Committee because it is worthy of the deeper scrutiny that that affords.

A number of noble Lords understandably referred to the United Nations Commission on International Trade Law, or UNCITRAL, and its Model Law on Electronic Transferable Records, or MLETR, which is the international attempt to provide a legal framework for electronic trade documentation that can be adapted and adopted by individual jurisdictions. In developing its recommendations for reform, the Law Commission was particularly cognisant of this model law. The recommendations have been developed with a keen awareness of it, aligning with it where possible and integrating its spirit and objectives into the particularities of the law of the UK. As such, the provisions of the Bill are broadly compatible with the MLETR, but are drafted to cater for the nuances and specificities of UK law.

For example, the Bill expressly and clearly provides that electronic trade documents are capable of possession, while the MLETR provides that control is a functional equivalent to the fact of possession. It is clearer and more direct to extend the application of the concept of possession itself, rather than to use control as a functional equivalent to the fact of possession. That is something that the noble Lord, Lord Fox, touched on in his remarks about restrictions on control.

Within this Bill, control is a question of fact, as reflected by Clause 2(3)(a), which did not feature in the Law Commission's draft Bill. The Bill does not define possession; it is a common law concept, which is highly flexible. Again, noble Lords will want to discuss this area in Committee, but the Law Commission's advice, based on extensive research and consultation, is that it would be difficult, if not impossible, to set out in legislation what constitutes possession of an electronic trade document because possession is a fact-specific concept that has always been notoriously difficult to define in abstract terms. Furthermore, it would be impractical to frame legislation to cover the full range of possible solutions that could arise in relation to possessing electronic trade documents, particularly given the potential for technology to develop and give rise to different forms of control and therefore possession. I look forward to discussing this in greater detail in Committee.

The noble Lord, Lord Fox, asked about the territorial extent of the Bill, particularly in relation to Northern Ireland. The Bill is intended to apply UK-wide, as the issues concerning the legal blocker to possessing electronic documents are broadly the same. Apart from the provision in Clause 3(4), which extends only to Scotland and relates to the interaction between the Bill and the Moveable Transactions (Scotland) Bill, the Bill extends UK-wide. It is reserved in relation to Northern Ireland on the basis that the Bill deals with the reserved matter of trade with any place outside the United Kingdom. We have agreed with officials in the Northern Ireland Executive that the legislative consent Motion process is not therefore engaged.

Lord Fox (LD): Is this Bill compatible with the Northern Ireland protocol? Is it compatible with the unique position that Northern Ireland has within the United Kingdom in having an open border with the EU?

Lord Parkinson of Whitley Bay (Con): We do not expect the Bill to have any impact on the operation of the Northern Ireland protocol. It is a measure to digitise business-to-business trade documents. It will allow businesses to use electronic trade documents when buying and selling internationally, and the benefits will be realised irrespective of whether trade is internal to the UK market or is global.

The noble Lord, Lord Fox, also asked some further questions about other jurisdictions. DCMS and the Department for International Trade agreed the digital economy agreement with Singapore, which includes a memorandum of understanding that put in place a pilot project to explore and text the interoperability of electronic trade documents.

The noble Viscount, Lord Waverley, asked about digital ID and e-signatures. I certainly agree that digital signatures and digital ID are areas that would

[Lord Parkinson of Whitley Bay]
benefit from harmonisation. As noble Lords stated, this Bill is merely the first foundational step towards digitisation and interoperability. The Bill is very specific in removing the legal blocker to possession of electronic trade documents; that really is its core purpose. We want to remove an obstacle for UK businesses that trade internationally. In giving electronic trade documents legal effect, we can unlock their current and future potential.

I will of course consult the *Official Report* of the debate to see whether there are any further points on which it might be useful to follow up before Committee. I look forward to the further scrutiny that this modest but important Bill will receive then. I am very grateful to noble Lords for their remarks and the questions that they have raised today.

Motion agreed.

Committee adjourned at 5.01 pm.