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Public Bill Committee

EUROPEAN UNION (REFERENDUM) BILL

Second Sitting

Tuesday 3 September 2013

CONTENTS

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Saturday 7 September 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: †Mr Joe Benton, Mr Gary Streeter

† Bain, Mr William *(Glasgow North East)* (Lab)
† Burley, Mr Aidan *(Cannock Chase)* (Con)
Campbell, Mr Gregory *(East Londonderry)* (DUP)
† Dowd, Jim *(Lewisham West and Penge)* (Lab)
† Ellwood, Mr Tobias *(Bournemouth East)* (Con)
† Hart, Simon *(Carmarthen West and South Pembrokeshire)* (Con)
† Hopkins, Kelvin *(Luton North)* (Lab)
† Horwood, Martin *(Cheltenham)* (LD)
† Latham, Pauline *(Mid Derbyshire)* (Con)
† Lidington, Mr David *(Minister for Europe)*
† Reynolds, Emma *(Wolverhampton North East)* (Lab)
† Sheerman, Mr Barry *(Huddersfield)* (Lab/Co-op)
† Smith, Miss Chloe *(Parliamentary Secretary, Cabinet Office)*
Vaz, Keith *(Leicester East)* (Lab)
† Wharton, James *(Stockton South)* (Con)
† Williamson, Gavin *(South Staffordshire)* (Con)

Kate Emms, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 3 September 2013

[Mr Joe Benton *in the Chair*]

European Union (Referendum) Bill

Clause 1

Referendum on the United Kingdom's membership of the European Union

2 pm

The Chair: Welcome back everyone. I hope you have all had a nice, refreshing break.

We come to amendment 46, with which it will be convenient to consider amendments 48 and 73. Mr Horwood was due to move the lead amendment. He is not here but it is open to any member of the Committee to move the amendment.

Emma Reynolds (Wolverhampton North East) (Lab): I am willing and able, Mr Benton.

I beg to move amendment 46. Let me start by explaining the rationale for my tabling amendment 73, which would require the Secretary of State to set a campaign period of at least 28 weeks, although that period would not be set in stone and the House can consider it in further detail on Report. I would be interested to know how the Parliamentary Secretary, Cabinet Office, the hon. Member for Norwich North, who is with us, might respond to it.

The Electoral Commission put forward that period of time, principally given the experience of the alternative vote referendum, for which the period of time was much shorter than 28 weeks. The alternative vote legislation received Royal Assent in February 2011, and the referendum was held on 5 May. The Electoral Commission deemed that time period to be insufficient. On the basis of that experience, the Electoral Commission recommended that, for future referendums—not specifically for this case—a period of at least 28 weeks should be set for campaigning.

Obviously, the campaign period will depend on the nature of the referendum, the question being asked, and the scope of the referendum. We may wish to consider the campaign period in further detail at a later stage, but I thought it would be useful to table this probing amendment at this stage. Given that the Parliamentary Secretary, Cabinet Office, is with us in the Committee, I would be interested to hear her response.

There was too short a campaign period for the alternative vote referendum; however, the other extreme is to have too long a period after a referendum has been announced and legislated for. I am looking at my hon. Friend the Member for Glasgow North East, who, out of all of us, has the most experience of these matters. In Scotland, there seems to be an overly long campaign period.

Mr William Bain (Glasgow North East) (Lab): As my hon. Friend is aware, the Edinburgh agreement provided for a maximum date by which the referendum in Scotland ought to be held. To widespread dismay—not least from the electorate in Scotland—we have effectively ended up with a referendum campaign period of two and a half years. Most people are of the view that that is extraordinarily excessive.

Emma Reynolds: As I say, Mr Benton—

The Chair: Order. As you will appreciate, the hon. Member for Cheltenham was to move the lead amendment. In his absence, we allowed the hon. Member for Wolverhampton North East to speak to amendment 73. To regularise the position, I request that the hon. Member for Cheltenham, if he is in a position to do so, to move the lead amendment now. I will return to the hon. Member for Wolverhampton North East later.

Martin Horwood (Cheltenham) (LD): I beg to move amendment 46, in clause 1, page 1, line 5, leave out 'shall' and insert 'may'.

The Chair: With this it will be convenient to discuss the following:

Amendment 48, in clause 1, page 1, line 6, after 'day', insert:

'which does not coincide with the UK's presidency of the Council of the European Union'.

Amendment 73, in clause 1, page 1, line 6, at end insert:

'(3A) The Secretary of State shall appoint the date on which the referendum is to be held at least 28 weeks in advance of the proposed polling day.'.

Martin Horwood: I am happy to move the lead amendment and I apologise for my absence. Amendments 46 and 48 go to the heart of the problems of some of the aspects of the Bill, even for those of us who are keen on the concept of referendums. Amendment 46 seeks to take the word "shall" and replace it with "may". That goes to the heart of the rather artificial way in which—as we all know—this Bill has come about. It seeks to mandate a future Government and Parliament in a problematic way. We can all imagine the kind of circumstances in which something that appeared to be a great idea in 2013 may not appear to be such a great idea when we come to the precise timing envisaged in this private Member's Bill.

For instance, if we are in the middle of continuing negotiations over the future of the eurozone, that could affect both our relationship with the eurozone and also, potentially, our own regulatory frameworks to do with our banks—to what extent are EU-wide regulations going to impact our ability to regulate that aspect of our economy? That could impact also on whether our voting procedures and ability to influence events inside the eurozone, for example, are being debated and questioned at European level. I am sure that Liberal Democrats, along with other parties in the Chamber and this Committee, would be very keen to maintain Britain's role at the heart of those negotiations. That would apply whether or not we are in favour of in or out in a subsequent referendum, because even those who are in favour of exit from the European Union could presumably envisage an outcome where the general public wisely votes to stay inside the European Union. If, in the

meantime, we have jeopardised our negotiating position in what could be very critical negotiations for the future of the United Kingdom and its position in Europe, we would have done enormous damage to this country's national interest.

Therefore, it is a case of introducing a voluntary element—a bit of flexibility—into the Bill. It is important that if we pass the Bill we are making a statement in favour of the principle of an in/out referendum; the Liberal Democrats have supported that for many years. However, the rigid and mandatory nature of some of the clauses are central to the problems around it. That is why I would like to see the word "shall" replaced by the word "may" under amendment 46.

Amendment 48 addresses another potential problem with the rigid timing, in that if we imagine the referendum campaign taking place towards the latter end of 2017, part of the referendum campaign might coincide with Britain's presidency of the European Union. One can imagine the accusations—of bias, for instance, from the pro campaign side, by using the presidency to influence votes and paint a picture of Britain at the heart of Europe. Although that is a very positive one from my point of view, it would, at the very least, be a complicating factor in the electoral campaign. We might have to get the Electoral Commission's judgment on whether materials, promotion, publicity and activities relating to the presidency and the events that would be happening in the UK might influence the outcome of the referendum campaign. I am sure that neither those campaigning for an in vote nor those campaigning for an out vote would desire that. Perhaps that was a subtle bit of timing on behalf of the Prime Minister, since by then I think that he would belong to the in camp, and therefore be aligned more with colleagues in the Liberal Democrat and Labour parties—

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): Will he not be the leader? Or Prime Minister?

Martin Horwood: I am not pre-judging whether he will be the leader of the Conservative party; I am saying simply that he will be an influential figure in this campaign and this decision, whatever precise role he plays at that point. None of us can know what role we will be playing at that stage. As I say, it would be a complicating factor to have this going on at the same time as the EU presidency.

Mr Bain: I draw the hon. Gentleman's attention—and, indeed, that of the Committee—to the strong parallels between the point he has just advanced and the referendum that is going to happen in Scotland. The Scottish Government are now demanding that the UK Government observe a period of purdah in the run-up to the referendum on 18 September next year, in which no announcements would be made that could affect the outcome. How on earth would it be tenable to conduct the presidency of the European Union if a similar principle were applied for any EU referendum that was to be held?

Martin Horwood: The hon. Gentleman makes a good point. I think we have all already learned from the experience of the Scottish referendum campaign—how matters of timing, the wording of questions, the coincidence of different things and the extended timetables can all lead to accusations on both sides of bias or undue influence. Those issues certainly complicate the job of people who seek to ensure that any referendum campaign is fair and reasonably put to the electorate.

A period of purdah, as the hon. Gentleman suggested, would be an interesting thing to have—the country exercising the presidency of the EU being obliged to observe some kind of purdah in relation to Britain's relationship with Europe. It is inconceivable that that could be carried out. Even the talents of the Europe Minister, who has found himself able to extract an agreed position out of the most challenging of circumstances in the past, would be challenged. All that suggests that the Bill is a hastily drafted, hastily tabled and not brilliantly thought-out piece of legislation.

It is unclear how the proposed referendum would relate to the Political Parties, Elections and Referendums Act 2000 that is already in place, which is supposed to govern the conduct of any referendum. There is absolutely no reference to the Act in any part of the Bill.

Amendment 48 would insert the words,

"which does not coincide with the UK's presidency of the Council of the European Union".

Both amendments would allow a little bit of flexibility and prevent complications. They would make the eventual passage towards the kind of in-out referendum that we want to see even easier and simpler. Therefore they might be in the interests of even those who are desperately keen to have the Bill passed by this Parliament.

Emma Reynolds: I will endeavour to set off from where I finished just a moment ago. Amendment 73 suggests a minimum 28-week period for a campaign preceding a referendum. That is based on two recent experiences. The first is the alternative vote referendum, for which the Electoral Commission deemed there was not sufficient time for the campaign to take place. Secondly, although we have not yet had the referendum in Scotland, as my hon. Friend the Member for Glasgow North East pointed out, two and a half years seems far too long.

There were three months for the alternative vote and there will be two and a half years between the enactment of the legislation for a referendum in Scotland and the referendum. We need a campaign period that is somewhere between those two extremes, and the 28 weeks proposed by the Electoral Commission seem sensible. We may want to return to the time frame in greater detail at some stage, because each referendum is different in nature. The proposed referendum is of great constitutional importance, so perhaps an even longer campaign period might be agreed to deal with the complexity of the arguments.

I also want to speak briefly to the amendments tabled by the hon. Member for Cheltenham, with which I have great sympathy. Amendment 46, as he has set out, would make the Secretary of State's decision to lay an order by 31 December 2016 to set the date of a future referendum discretionary, not mandatory. That would give whichever Government are in power at that time the flexibility to decide whether the timing is right. As the hon. Gentleman has set out, we simply do not know what the European Union will look like in 2016, or in 2017 for that matter. We do not know whether the

[Emma Reynolds]

eurozone will have integrated more closely at that stage, whether through banking union or some form of more tightly integrated economic and monetary union. Some people talk about fiscal or political union.

2.15 pm

Martin Horwood: The hon. Lady makes a good point in support of my amendment, for which I am grateful. It is not simply that we do not know what future shape the European Union might take, but that negotiations might still be under way. As with the current negotiations over the eurozone, fiscal responsibility, solidarity and so on, we might have found by then that these things draw out for far more years than we initially expect. We might never have found a good moment to hold a referendum, and find that negotiations are still under way when the deadline approaches. We would therefore have no idea on what we were voting.

Emma Reynolds: The hon. Gentleman makes a good point. I was living and working in Brussels at the time of the intergovernmental conference and the Convention on the Future of Europe, which was launched with great fanfare by the former French president. Back then—I cannot remember the exact year, but I think it was around 2003—they never thought it would take so many years for a treaty to materialise.

Given the experience of what became the Lisbon treaty, it seems unclear to us in 2013 what stage we will be at in future negotiations on the shape of the EU, as the hon. Gentleman pointed out. We do not know what the relationship will be like between the wider EU and a more tightly economically integrated eurozone. Indeed, we do not know what shape the eurozone will take. Will it be much bigger than it currently is? Although no political party in our country advocates joining the euro, some other member states are keen to do so, one of which hopes to join next January.

The numbers will be different, so the ratio between the eurozone and the non-eurozone will be different. That ratio might also be fluid—other member states might wish to join the eurozone in 2016 or 2017. At some stage, I would imagine Poland will join the eurozone. I do not know whether that will be any time soon, but some of the politicians to whom I speak in Poland certainly say that they are keen to do so at some stage, if the conditions are right. I agree with the hon. Member for Cheltenham that developments in the EU are all very fluid, and it is by no means certain. It is pretty probable that by 2016 negotiations will not have concluded. Even then, it will perhaps not be clear when they will conclude.

I wish to speak about amendment 48, which was also tabled by the hon. Member for Cheltenham, and on which he made some excellent points. I want briefly to underline the fact that I share his concern that, during our presidency of the Council of the European Union, materials will be produced—they were last time—that we would not want to influence either side of the debate. I know which side of the debate I am going to be on, and I am not saying that such materials would necessarily influence one way or the other, but it could happen.

I might even go beyond the hon. Gentleman's proposal. We may return to this issue, but if we were to have a referendum in the first half of 2017—if that were to happen, I would be arguing to stay in—and the electorate decided that they wanted us to leave the European Union, we would not have left by the end of that year because it would take some time to set that process going. We might find ourselves having a referendum in the first half of 2017, with the electorate saying that it wanted to leave, and then have the presidency in the second half of the year, with us halfway in and halfway out, which would be bad for everybody involved.

Jim Dowd (Lewisham West and Penge) (Lab): My hon. Friend says that if the referendum is in the first half of 2017, she looks forward to voting in favour, a position which I believe she shares with the Prime Minister, but is it not a bit ridiculous to throw away your bargaining position by saying that, whatever conditions emerge from the process, we will vote in favour?

Emma Reynolds: In his speech in January, the Prime Minister said that he wanted to campaign with his heart and soul to stay in, but he also said vaguely that he wanted some sort of renegotiation. He did not use the word "repatriation" in that keynote speech, which was one of the biggest omissions from it, but he has been more explicit—or, rather, implicit—in other speeches and in comments in the House of Commons. As will be picked up in relation to a later amendment, it remains unclear what exactly he proposes to repatriate. The first question he was asked by a journalist after his keynote speech was, "If you don't get what you want in terms of repatriation, how will you vote?" If I remember rightly, his response was that he did not want to start from a position of failure and that he assumed he would be successful. It remains to be seen to what changes, if any, other European Union member states will agree, and those changes would have to be unanimous: we would have to have the support of all the other member states.

All those things are unclear, which makes the timing so difficult. As the hon. Member for Cheltenham pointed out, by 2016 or 2017 there might be negotiations about some future treaty change, but those negotiations would be at an early, not a late stage, given the state of flux in the eurozone at the moment and the fact that there does not seem to be any appetite in certain quarters, not least France and the Netherlands. That situation might change in the next three or four years, but it will not happen quickly, and once negotiations start, they are not usually quick either.

The hon. Member for Cheltenham is very wise to highlight that period in amendment 48. As I have said, I would be tempted to make it even longer—the six-month run-up to the presidency and the six-month presidency would be a good suggestion to which we might return.

Martin Horwood: The more the hon. Lady talks, the more it occurs to me that the inevitable conclusion is that, if such a coincidence were likely, Britain would have to signal in advance—unless an amendment such as this one had been agreed—that, to prevent such complications and bizarre scenarios, it could not take up the presidency of the European Union. That would be an early and clear signal of how this kind of exercise

is sending Britain sliding towards not only potential exit from the European Union, but the margins of European decision making.

Emma Reynolds: I could not agree more. At the heart of this is what I hope transpires in future years—that even though we are not in the eurozone, the UK will again be a leading member of the EU. I want to see that, but we cannot be a leading member and not have a good presidency when we have it, because it comes around only so often. It would not be in the national interest for the debate and referendum to take place during so critical a time for our relationship with the EU. In fact, it might be a deep embarrassment to have the referendum, which would question our relationship with the EU, during or just before the presidency. I am not saying that that debate should not happen at some stage, but it should not coincide with that period of time. I therefore support the amendment proposed by the hon. Member for Cheltenham.

Mr Bain: As well as the UK holding the presidency of the EU in 2017, there will be other hugely significant events in the European Union in that year, as the next French presidential election and the next but one German federal legislative election will be held then. In the context of such important decisions in that year, does my hon. Friend believe it likely that any outgoing or incoming Government in France or Germany would have concluded views about a fully renegotiated EU treaty by that point?

Emma Reynolds: No. I agree with my hon. Friend on the changes of Government that we might see in Germany and France during that period, which is, as he points out, critical in terms of not only our EU presidency, but those elections; it would be a bad time for us to hold a referendum. On timing, if one were in favour—as I am not—of announcing a referendum at some future date, it might be much better to do it in 2018 or 2019, after the French and German Governments are in place and after our presidency of the EU. That would seem a sensible time frame.

I am interested in what the hon. Member for Cheltenham has said. I do not know whether the Foreign Office, No. 10, the Prime Minister himself or indeed the right hon. Member for Aylesbury had realised—perhaps the right hon. Gentleman might elucidate this point when he responds—that 2017 is precisely when we have the EU presidency. It seems a rather unfortunate clash. Perhaps, in the spirit of trying to improve the Bill, Government Members might want to reconsider the date.

The Minister for Europe (Mr David Lidington): I will speak briefly. To avoid any misunderstanding, as this is the first sitting following the summer recess, I want to repeat what I said during our debate in July: for the purposes of the Bill, the Prime Minister and the Deputy Prime Minister have agreed to suspend collective responsibility within Government, and so I speak as a Conservative Minister, not on behalf of the coalition as a whole.

I will deal with the three amendments in this group. Amendment 46, tabled by my hon. Friend the Member for Cheltenham, would remove the duty for the Secretary of State to appoint a referendum date by order. If the amendment were added to the Bill, it would make the power to hold a referendum completely discretionary. The amendment has a technical defect: making the holding of the referendum discretionary would require a corresponding amendment to the requirement in clause 1(2) that the referendum be held before 31 December 2017. Without such an additional amendment, under the terms of the amendment, the poll would still have to be held, but there would be no requirement for the Secretary of State to set a date for it. That is simply a technical point, and I will not rest my argument on it.

Martin Horwood: Given his opening remarks, I am not sure whether I should call the right hon. Gentleman "the Minister" or "the right hon. Gentleman"; I think it is probably "the right hon. Gentleman" in this context. He has made his point, but there is no technical error; it is simply that the amendment is consistent with amendments that we suggested earlier that fell. It is still a reasonable amendment to propose; it just happens that its pair was not passed in our earlier proceedings. However, I am sure that we will revisit the matter either on Report or in the House of Lords.

Mr Lidington: I want to focus on the substance of amendment 46. I disagree with it because the purpose of the Bill is to provide for a referendum and for there to be a clear duty on the part of Government to make that referendum happen; therefore, making the holding of a referendum entirely discretionary strikes at the Bill's central purpose.

2.30 pm

Martin Horwood: The Minister has not actually advanced an argument against those that I put. I would be interested to hear his response specifically on the quite plausible scenario that I set out, which is that negotiations on the reforms to the eurozone and on treaty changes might still be ongoing. If by that stage we had not found a good moment to hold a referendum and this deadline was approaching, surely he can see that any Government would want somehow to flex or adjust that timetable.

Mr Lidington: I refer my hon. Friend to what I said during our debates back in July, which was that there is a balance to strike between the need for flexibility to take part in negotiations that would involve a large number of other countries as well as the United Kingdom and the need for certainty and for a clear date, both to act as a spur and a discipline for those negotiations to move forward, rather than simply being open-ended, and also as a clear signal to the British public, the opinion of whom is, frankly, mistrustful of the promises of all political parties, that we are serious about this endeavour.

I also remind the Committee—this is relevant to all three amendments in the group—of what I said in July: I have always seen the window of opportunity within Europe to revise the treaties as being a period that begins with the arrival, in late 2014, of the new Commission and the election of the new European Parliament. The other end of the process is the French presidential election in spring 2017 and the German federal election in autumn 2017. The logical window in terms of the

[Mr Lidington]

European scene is for discussions about the treaties to commence once the new Parliament and Commission are in place, but for those to be concluded ahead of those important votes in France and Germany respectively and then for national ratifications to take place between the conclusion of the negotiations and the election of the new European Parliament in 2019. Different countries, of course, have their own ways of ratifying treaty change.

Emma Reynolds *rose—*

Martin Horwood *rose—*

Mr Lidington: I will give way to the hon. Lady and then to my hon. Friend.

Emma Reynolds: I am interested in what the Minister says; I am following it closely. In terms of the timetable, does he think it is really realistic that between the formation of the new Commission and the new Parliament next year and effectively 2016 the negotiation would have to take place and that then there would be a decision to have a referendum in 2017? Does he not see that that is incredibly ambitious and that such negotiations on treaty change have never been done before in that time period?

Mr Lidington: I am not so pessimistic. Actually, the formal negotiation period for previous treaties has not been long. We are talking about two years or two years-plus for a period of formal negotiations. Also, after the experience of the convention on the constitutional treaty, there is an awareness throughout the European Union that people do not want to become bogged down in negotiations that go on for year after year; there would be a willingness to bring matters to a conclusion.

Do not let us forget either that other countries have their own interests and objectives involved. If our colleagues who are in the eurozone want to take forward the commitment in the fiscal compact and roll that into the body of the treaties within five years of that agreement in December 2011, they will need to take that action within the time frame that I suggest. We know that leading politicians in Germany have talked about the possible need for changes to the treaties in order to impose greater fiscal discipline upon the members of the eurozone, so others too would have an interest in seeing the result and in seeing the negotiations take place relatively smoothly.

Martin Horwood: My right hon. Friend makes a reasonably persuasive argument, but does it not fly in the face of all experience to expect any negotiations within the EU to happen within a timescale that anyone could predict? That certainly has not happened in the aftermath of the initial financial crisis. He also made the point that the next German federal elections might be imminent at that stage. If negotiations on treaty changes were still going on at that point, as he seems to envisage, would we not find exactly what we are finding right now in the run-up to these German elections, which is that it becomes less likely that treaty changes will be agreed in advance of the elections because doing so would paralyse decision making?

Mr Lidington: That is one reason why I have always looked to the window of opportunity lying between late 2014 and the end of 2016. It is conceivable that things could spin on into 2017, but it seems that the preceding two and a bit years are the logical moment of opportunity.

Martin Horwood: The Minister makes an important concession. If it is conceivable that negotiations might carry on, what would we do?

Mr Lidington: I think that having a deadline in legislation usefully focuses minds on the notion that negotiations cannot and should not be open ended. Clearly, no Parliament can bind its successors. It is always open for new primary legislation to be introduced in a crisis; we did that when the previous Labour Government had to shift the date of the local government elections because of the foot and mouth epidemic in parts of England. That is not something that the leaders of my party are looking for; they are firmly committed to the date. Parliament, however, always has the opportunity to address crises if and when they arise.

Kelvin Hopkins (Luton North) (Lab): The reality is that those who do not want a referendum, and who certainly do not want a referendum to be won and for us to withdraw from the European Union, will find every reason for never holding one at all.

Mr Lidington: Even though I perhaps do not share the hon. Gentleman's longer-term ambitions for this country's relationship with Europe and I very much support what the Prime Minister has said about how he hopes the referendum campaign would be conducted, the hon. Gentleman is right that there are those who believe that the British people should not be given a voice. The absence of any mandate for the Secretary of State and of any clear deadline would simply encourage that point of view.

Jim Dowd: I am grateful to the Minister for his characteristic generosity in giving way again. He says that fixing a date acts as a discipline—a focus—but upon whom? Is it those seeking concession or those from whom concession is being sought? I do not see how the latter could happen with an artificial deadline inserted by this Parliament.

Mr Lidington: I do not agree with the hon. Gentleman's characterisation of the negotiations we envisage; that they somehow require concessions, with others having demands. What the Prime Minister said in his Bloomberg speech in January was that he believed that far-reaching reform of the European Union was in the interests not only of the United Kingdom but of every member state, precisely because of the crisis over the lack of popular confidence in how decisions are taken within the EU. If we look at the most recent opinion research, such as the reputable surveys carried out by Eurosearch and Eurobarometer, we see that mistrust of the EU is greater in France now than in the United Kingdom. Even in Spain, a country that has been passionate about its membership of the EU, confidence in the EU and its institutions has plummeted in percentage terms from the 70s into the 20s.

Mr Bain: If we take at face value what the Prime Minister says is the aim of any renegotiation process, which is a new treaty, that treaty will not just have to go through ratification processes in this country but in all of the other 27 member states of the EU as well. The question then presents itself: what would the British people be voting on? What would happen if the referendum were held here first, but a referendum in France, in Ireland or in any other country of which a referendum is an important part of ratification rejects a treaty, perhaps requiring that the treaty be renegotiated again? The question presents itself: what on earth would the British people be voting for?

Mr Lidington: What the British people would be voting on would be a package of reforms to the European Union, including—as my right hon. Friend the Prime Minister envisages—some changes to the treaties, to which every one of the 28 Heads of State and Government had given their consent, and therefore their commitment to seek, through their appropriate national means, the ratification of those changes.

Clearly, in any democratic country there is—as we found out only recently—the risk that a Government may not get their own way with their legislature or indeed in a referendum, but those are challenges that one would then have to address at the time. I believe that all one can work for is a successful negotiation that secures the interests of the United Kingdom and of Europe as a whole, and then—having agreed all that—we and the other 27 countries would put that to our Parliaments and, as appropriate, to the public.

Emma Reynolds: Would the Minister concede that, as I have set out already, one of the reasons that this timetable is unrealistic is that there are now 27 other member states? He referred earlier—I think implicitly—to what were perhaps shorter treaty changes that happened in previous decades, but that was when there were very few members of the EU. Now that there are 28 member states, it is very difficult indeed to see that there could be treaty change or renegotiation of the nature that he and his party are talking about between the end of 2014 and 2016.

Mr Lidington: I am more optimistic than that, partly, of course, because of some of the other treaties. If one looks back at Maastricht, Nice and Amsterdam, one sees that the formal periods of negotiation did not take many years before we got agreement. It is true, as the hon. Lady said, that membership of the European Union then was smaller than it is today. However, my own experience of the minor treaty change that has happened on my watch—the amendment to article 36—was that there was a dynamic to those talks. I accept that that was a narrow treaty change, but there was a dynamic at work that meant that people were able to come to an agreement quite quickly. Countries did not wait for a formal gathering to work out their views and their negotiating positions. They talked to each other bilaterally, the rotating presidency and the Commission were in touch all the time with different Governments, and so it was possible to work out in the end a position that everybody felt able to agree upon. That gives me confidence that two and a bit years or more is not at all an implausible objective.

I will move on to amendment 48, which was tabled by my hon. Friend the Member for Cheltenham, which seeks to ensure that the date of the referendum does not coincide with the United Kingdom's next presidency of the Council, which is scheduled to fall between July and December 2017. I understand the reasons why my hon. Friend has tabled the amendment. He and the hon. Member for Wolverhampton North East are right to say that there might be certain complications if a referendum were to coincide with the United Kingdom's presidency of the EU.

2.45 pm

If one looks at the European scene, however, the likelihood of that outcome seems relatively slim, certainly from where I am standing now, simply because of what will happen anyhow in both France and Germany during 2017. The probability is that things will have been agreed before the French presidential election campaign gets up any steam. However, I would prefer my hon. Friend not to press amendment 48, because it would be unwise simply to remove altogether the option of holding the referendum within the term of our EU presidency. The probability is that a referendum would be held before our presidency started, but—as he and others have said—we cannot be exact in our predictions about the timing of negotiations and so it is sensible to allow additional flexibility in the Bill.

Finally, amendment 73 would require the date of the referendum to be set not only before 31 December 2016 but at least 28 weeks before the proposed polling day. The amendment would therefore make an exception for this referendum from the general provisions of the Political Parties, Elections and Referendums Act 2000, or PPERA. That Act sets out that the minimum referendum period must be 10 weeks. That 10-week period comprises 28 days for campaigners to register as permitted participants and to apply to be assigned as a designated organisation; 14 days for the Electoral Commission to assign designated organisations; and 28 days for the campaign itself. I stress that those are minimums. Section 103 of the PPERA states that there must be a minimum of 28 days between the date on which the Electoral Commission designates campaign organisations and the date of the poll itself.

The PPERA sets out a 10-week period and it is right that we work according to that general legal framework. I do not know whether the hon. Lady would want to propose reforming the PPERA itself, so that the 28-week minimum period applied to all referendums and not just the one proposed in the Bill, but that would seem to be a more logical approach than the one she has put forward in amendment 73.

A 10-week minimum period is not necessarily too short; after all, the referendum we are talking about would follow a period of negotiation, during which time we would expect significant political debate in Parliament, in the media and among think-tanks about the pros and cons of particular European reforms and about the future of the United Kingdom's relationship with the European Union. Although I am not certain that I will be able to persuade my Liberal Democrat colleagues of this, there comes a point at which most electors feel that a surfeit of leaflets has come through their letterboxes. I have stood as a candidate in six general elections, and I have usually found that towards

the end of an election campaign, when one knocks on a door, one is met, not with hostility, but with glazed eyes and a sense of, "Oh no, not again. Please let this all be over so I can get on with life." Those of us who have taken part in by-election campaigns—the hon. Member for Glasgow North East will remember this well—will have come across that sort of public reaction very often indeed.

Kelvin Hopkins: At least some of us can say, "Don't worry; we are not from the Liberal Democrats."

Mr Lidington: I do not think anybody has ever mistaken the hon. Gentleman for a Liberal Democrat. I would prefer to rely on the provisions in the 2000 Act, and I hope the hon. Member for Wolverhampton North East, on reflection, will not press her amendment.

The Chair: For good order's sake, does the hon. Lady intend to speak? The mover of the lead amendment has the option to wind up.

Emma Reynolds: Given that I started, although I was not supposed to, I want to say briefly that mine is a probing amendment. I think we will return to it at some stage in our deliberations, so I do not wish to press my amendment.

Martin Horwood: I will just revisit the arguments that we have heard. In opposing amendment 46, the Minister did not put his most persuasive case ever; he basically said that he does not think there is much of a problem.

The hon. Member for Luton North, in a succinct intervention, put the most persuasive argument against it: those who are in favour of a referendum fear that the amendment would enable future Governments to wriggle out of their responsibility to call a referendum. In making that allegation—I can see that it may weigh heavily on the hon. Gentleman—I think he is misreading the arguments that are being put against the Bill. Those of us who are keen on in/out referendums and have voted for them—not on some delayed timetable, but there and then at the time of the Lisbon treaty—are not nervous about the Bill because we are against in/out referendums and never want one held, but because we do not want one held on this concocted timetable, which has been produced for the party-political reason that the Prime Minister needed to get off an anti-European hook and needed to conjure up unity out of the division in his party over European policy.

There is a good case for holding an in/out referendum. From a pro-European position, it may be the only way we will ever lance the boil of Euroscepticism. It would allow us to get the argument over with once and for all and stop it hanging over our relationship with Europe, and the confidence that people have about our future in Europe, our business in Europe, and our relationship with Europe on things such as justice, home affairs, security and the environment. I do not think the accusation of the hon. Member for Luton North is right, and I was not persuaded by the Minister's arguments against amendment 46.

I also did not find the arguments against amendment 48 particularly persuasive. Again, the Minister essentially said that he does not think there is likely to be a problem. However, in both cases he actually conceded there might be a problem, but he did not explain what he or a Government of which he was a part might do in the event of those scenarios happening. If we are to create good legislation in this place, we need to think through those scenarios.

A more persuasive argument that the Minister might have put is that I should withdraw the amendment on the basis that the Bill is a cunning plot by the Prime Minister to do exactly what I imagined in my opening remarks. Maybe it is a subtle bit of timing that will wrong foot the anti-Europeans in his party by giving the Prime Minister—or whichever Prime Minister we have at the time—the perfect platform from which to demonstrate Britain's potential for leadership in Europe at the very moment that a referendum campaign was mooted or taking place. Therefore, it could be seen to be a subtle pro-European ploy to choose this particular timing and have it coincide with the United Kingdom's presidency of the Council of Europe.

On amendment 73, it is sensible to have a certain amount of timescale specified, on a reasonable basis, although I was shocked and appalled at the slurs on the Liberal Democrat leafleting strategy which has been so successful in so many by-elections and local election campaigns. I am sure the Minister simply has not taken enough time to read through his "Focus" leaflets—which I am sure are delivered regularly—and appreciate the wealth of information about local decision-making.

Mr Tobias Ellwood (Bournemouth East) (Con): "It's a two-horse race here."

Martin Horwood: Indeed. It will be a two-horse race in the referendum of course. I do not know whether we will have bar charts and whether we will be saying "the no campaign can't win here".

Jim Dowd: Will the hon. Gentleman give way?

Martin Horwood: I will, although I think the Chairman may be about to tell me off for deviating from the subject.

Jim Dowd: I just wondered whether the hon. Member had any sustainable or empirical evidence that anybody at all reads "Focus" leaflets.

Martin Horwood: I certainly do, and I would point to the huge response to my current position on Cheltenham accident and emergency as evidence that "Focus" gets enormous readership. In the context of European politics it is an important idea. The original idea of the "Focus" leaflet was a radical one from Liverpool in the community politics era, when we thought that decisions were being taken without people understanding them or knowing what was going on. The "Focus" leaflet was a device for empowering communities and for telling them what was going on in their local community because councils did not tell them. We have a parallel situation in the European Union—we have fallen into a situation where decisions are taken by elites, where communication is not as good as it should be and where people do not always understand the decisions that are being taken at European level. We should not to use these big questions of the future of

Britain in Europe for party-political purposes—to use them as a kind of party-political football—and I fear that is exactly what this Bill does.

I will not press these amendments to a vote. I have not been persuaded by the arguments, but having already lost the paired amendment to amendment 46, I can see that it probably will not succeed. I do see the potential pro-European argument against amendment 48, so I will not press that to a vote either. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Martin Horwood: I beg to move amendment 49, in clause 1, page 1, line 7, leave out sub-paragraph (4) and insert—

'(4) The Secretary of State shall consult the Electoral Commission regarding the question that is to appear on the ballot papers under subsection 3(1), as stipulated in Clause 104 of the Political Parties, Elections and Referendums Act 2000.'

The Chair: With this it will be convenient to discuss the following:

Amendment 88, in clause 1, page 1, line 7, after 'the', insert 'only'.

Amendment 50, in clause 1, page 1, line 9, leave out 'be a member of' and insert 'withdraw from'.

Amendment 94, in clause 1, page 1, line 11, at end insert

'In Cornwall, a Cornish version of the question shall also appear on the ballot papers.'.

Amendment 95, in clause 1, page 1, line 11, at end insert

'In Northern Ireland, an Irish and an Ulster Scots version shall also appear on the ballot papers. In Scotland a Gaelic and a Scots version shall also appear on the ballot papers.'.

Amendment 90, in clause 1, page 1, line 14, at end insert—

'(7) A referendum cannot be held after the dissolution of the Parliament in existence at the commencement of this Act.'.

Martin Horwood: Amendment 49 seeks to address one of the problems with this Bill that I identified in July—that it has been drafted as if the Political Parties, Elections and Referendums Act 2000 simply did not exist. It is unclear exactly what the relationship between that Act and the Bill would be if it is passed, and I hope that the Minister might be able to give us one of his learned and exceptional discourses on that subject when he makes his own remarks.

Amendment 49 is a simple and straightforward one which seeks to insert into the Bill a reference to that Act, and in particular clause 104 which is designed to avoid the very kinds of arguments that have already started over the wording of the EU referendum. We have already had arguments about whether the word "remains" should be in there, whether the word "be" should remain, or whether we should perhaps have the word "leave"—which for me would be the more honest wording. A later fall-back amendment—amendment 50—in this group proposes that. This vote would have enormous implications, and it should be very clear to people that they would be changing the status quo. I will return to that argument in a moment.

The point of the Elections and Referendums Act was to avoid these issues becoming party political footballs, and to have an impartial procedure and an independent body—the Electoral Commission—able to judge and comment on the wording of the question. I do not think that we have yet heard an opinion from the Electoral Commission on the wording of the referendum question, but there is no obvious way in which it could influence that under the terms of the Bill as drafted. Therefore, I hope that this might be an amendment that the promoter of the Bill, who has been strangely silent so far, or perhaps his representative on Earth, the right hon. Member for Aylesbury might be willing to accept as it seems to be in the interests of all parties to have things on an impartial, less party-political basis.

3 pm

Amendment 50 is a fall-back in case amendment 49 fails or is withdrawn, and it simply rephrases the question in the Bill. Instead of:

"Do you think that the United Kingdom should be a member of the European Union?",

which sounds like a neutral decision, let alone the alternative wording that has been discussed, which is should "remain", I propose that it should say: do you think that the United Kingdom should "withdraw from" the European Union? That would be a much clearer instruction to the electorate to vote on something with grave implications; they will be changing the status quo.

It is not about carrying on as normal but without the pesky European Union. We will be putting at stake a whole range of relationships that Britain has with Europe. It puts at risk our membership of the single market and our relationship with those countries with whom the European Union has negotiated free trade agreements. Through both of those things, we therefore put at risk potentially millions of jobs.

We would put at risk our relationship with Europe on justice and home affairs, with the extensive co-operation that we have through measures such as the European arrest warrant and Europol; and in fact, all the other measures in the potential justice and home affairs opt-out that the Government have just decided are a good thing and should remain as part of our relationship with the European Union.

We would put at risk some measures on the environment, including our membership of the emissions trading scheme, our representation at the UN framework convention on climate change and so on. Those would be huge changes with huge implications and it should be clear to the people who are voting that they are not voting for the status quo; they are voting to change our relationship with Europe.

We have seen, during the Scottish referendum, an exactly parallel discussion where members of the Scottish National party were presenting the idea of Scotland leaving the United Kingdom as a simple, straightforward measure; they were saying that not much would change, but we would just get rid of those pesky Sassenachs who interfere in our business, that our relationship with the European Union, NATO, the Crown and so on would all continue completely unchanged and that would be perfectly fine and dandy and uncomplicated. Whereas, in fact, what has emerged from the discussion from the Scottish referendum is that it is far from simple and far

from uncomplicated. We cannot necessarily assume that we would automatically be part of all the relationships before and exactly the same is true in the European Union referendum context.

We cannot make these assumptions about the single market. We cannot make these assumptions about the free trade agreements or the European arrest warrant or Europol or the emissions trading scheme or the UN framework convention on climate change.

Mr Bain: The hon. Gentleman is making a series of excellent points. He is entirely right to point to the example of what is happening in Scotland, because the more scrutiny that has been put on the case for leaving the United Kingdom, the weaker that case has become. That is surely true in relation to the argument on the UK leaving the European Union as well. Does he share my concerns that we have heard precious little in any of the Committee sittings so far, either from the promoter of the Bill or the Minister, about what the practical consequences of the question in the Bill would be? Does he share, for instance, my concern that we might have to leave the acquis of the European Union altogether and then try to opt into unspecified parts of that? Is it not bizarre that we have not actually heard about any of the practical consequences of what the Bill is about?

Martin Horwood: The hon. Gentleman makes an extremely good point. With no disrespect to the hon. Member for Stockton South, who has obviously succeeded in raising an important issue, it is strange that he has hardly taken part in the debate on his own Bill at all. Since there have been negotiations on a reasonable timetable for the completion of the Committee stage, I do not see any reason why the hon. Gentleman could not now be participating a little more actively in promoting his own Bill.

The point made by the hon. Member for Glasgow North East is exactly right. There are implications to the Bill, and the practicalities of actually leaving the European Union are quite fascinating and challenging. If we really think it through, we are talking about almost having to have two parallel sets of negotiations in the lead-up to a referendum. There is the set that the Prime Minister has talked about, which, as far as his speech went, I think many Liberal Democrats would probably go along with. Those negotiations would be about trying to redefine the relationship with the European Union in ways that increase subsidiarity and decision making at local and national levels, reduce the burden of regulation and red tape, and perhaps simplify some of the procedures in the European Union in ways that are helpful to European citizens and businesses.

However, such negotiations are based on a presumption that we will continue to be a member of the European Union. I suppose there will have to be parallel negotiations based on what kind of deal we would want to get in advance of leaving. Presumably, there ought to be some kind of understanding of what such a deal would be by the time we vote in a referendum. Would we be a member of the emissions trading scheme? Would we still share in the European arrest warrant? Would we still have access to the single market as currently envisaged? Perhaps even more importantly, what financial contribution would we have to make, on the same basis as Norway, to European budgets over which we would have absolutely no control? That is an important negotiation, and it would be interesting to hear what the right hon. Member for Aylesbury thinks of that.

Hon. Members who support the Bill might suggest that negotiations could come after the referendum. Well, I have been on a negotiating skills course, and one of the fundamental things they told me—

Mr Aidan Burley (Cannock Chase) (Con): Did you get a certificate?

Martin Horwood: I do not think I did, but I richly deserved one, because I learned a very important lesson that seems to have been completely lost on the proponents of the Bill. If someone has decided the outcome of the negotiation—that they are going to leave—beforehand, then they have fundamentally weakened their negotiating position. If we really have not negotiated on the deal by the time the referendum takes places place—if we do not know whether we would share in the European arrest warrant, whether we would be a member of the emissions trading scheme, or what amount we would have to pay out of British taxpayers' money for access to the single market—we will be in an enormously weak position to negotiate in a way that is beneficial to the United Kingdom if the referendum has led to our exit.

Jim Dowd: When the hon. Gentleman talks about weakening the negotiating position, does he not feel that the entire Bill—I mentioned before the summer recess how deeply flawed and impractical it is—is really just part of an iterative process? They have started with the answer, which is no to membership of the European Union. Everything else is just back filling and finding out the justification for arriving at that conclusion.

Martin Horwood: The hon. Gentleman makes an important point, and I think that that is the rationale for some people supporting the Bill, but of course the Prime Minister and—I would guess—the right hon. Member for Aylesbury would argue that they are still in the in camp and would be arguing for membership of the European Union, and that the Bill is a way of getting out of a party divide over Europe ahead of the next general election in 2015. For some Members, however, the Bill is clearly just part of a process that is leading us to the inescapable conclusion that we should exit from the European Union, and they will do everything that they can to advance that case.

The Minister for Europe must tell us what the timing of negotiations would be and what our situation would be ahead of the referendum. My amendments relate to those issues, and I commend them to the Committee.

Emma Reynolds: This group of amendments is one of the most important because it attempts to deal with the central issue in the Bill, namely, what the question should be. In any referendum, that is a sensitive, complicated and subtle issue. It is crucial to ensuring that the referendum result, especially if it is a close result, is not questioned.

Before the summer recess we talked about Quebec, where a referendum was held; the difference between the yes and no votes was so minuscule that those who were not content with the outcome complained about how the question was worded. Should this referendum

go ahead, it is in all of our interests, whether we are on the pro-European side or the Eurosceptic side, to ensure that the question put to the British people is absolutely right and is not leading in any way.

It is instructive to look at the note that was sent to us by the Electoral Commission in early July, which set out its standard framework for responding to a Bill of this nature. After the Second Reading of a referendum Bill on a constitutional question, the Electoral Commission starts to research, consult on, and test variations of the question.

The hon. Member for Cheltenham talked about whether the question should be the formulation in the Bill—

"Do you think that the United Kingdom should be a member of the European Union."

Should it be, "Should the United Kingdom be a member"? Or should it be, "Should the United Kingdom remain a member",

in case there is some confusion about whether we are actually in the EU? Some people confuse the euro with the EU—we are not in the eurozone, therefore they think that perhaps we are not in the EU. I am not trying to cast aspersions on people's knowledge of this matter; however, the verb—"remain", "stay", "withdraw", "leave"—is a very important thing to get right. Should the result be as close as it was in the Quebec referendum that we discussed in July, if the question was not put in the right way the people who were not happy with the result might complain about how the question was formulated.

Mr Bain: If the public are to have confidence about the process that Members of this House have been asked to sign up to, there should be a reference to the Electoral Commission in the Bill. Our experience of the AV referendum was that the wording of the referendum question had to be altered following a report by the Electoral Commission; in Scotland the same issue has arisen.

Emma Reynolds: My hon. Friend makes a valid point. We can also look at historical precedents. For the 1975 referendum a consultation document was published about what the question should be, and there was consultation with the different political parties. There was a thorough process leading to the wording of the 1975 referendum question. That is why I am sympathetic to amendment 49, which was tabled by the hon. Member for Cheltenham, and my hon. Friend's comments.

Jim Dowd: My hon. Friend mentioned the 1975 question. I am one of the few people in the room, along with my hon. Friend the Member for Luton North, who voted in that referendum. The words were:

"Do you think the UK should stay in the European Community"—

the word "economic" was not used. During the consultation on what the question should be, it was agreed that in parenthesis, after the word "Community", the words "Common Market" should be added, so that the public would be in no doubt. Far more people at that time referred to the European Community as the Common Market; some people still do, most notably my hon. Friend the Member for Bolsover (Mr Skinner). That wording was added entirely to minimise the chances of public misunderstanding.

3.15 pm

Emma Reynolds: I take my hon. Friend's point; my grandad still calls it the Common Market whenever I talk to him about it—he takes a very different position from mine, but that is another story. As I have said, there was substantive consultation before the 1975 referendum, and my hon. Friend is absolutely right that, in response to that consultation, those words were added. We would not add "Common Market" with reference to the present-day European Union, but there may be an additional element, which, after consultation and testing of the question by the Electoral Commission, the commission would recommend. Perhaps we would agree; indeed, I hope that there would be cross-party consensus on such a thing. If this referendum goes ahead, it is in all of our interests to have cross-party consensus on the question and also consensus between pro-Europeans and Eurosceptics.

It would be much better to have clear agreement on the question across the different parties and different camps so that, if the referendum were to happen as set out in the Bill, once we had held it the outcome would be clear and would not be questioned. It would be the worst of all possible worlds for everybody involved if we had a very close result and then a protracted discussion about whether that result really meant what it meant. We should avoid that scenario, which is why I am very sympathetic to amendment 49.

I am not convinced by amendment 50. I would prefer the wording of the question to be, "Should the UK remain in the EU?" I understand the arguments made by the hon. Member for Cheltenham for using, "withdrawal from," and what the implications would be. My argument is that it is just as clear to say, "Should the UK remain". I would prefer that formulation to, "Do you think the UK should remain": people should know when they are voting that, if there is a result, something will come after that; it is a question not just of what people think but of what will happen as a result of the vote. I would prefer the formulation, "Should the UK remain a member of the European Union?"

I am not saying that we should always believe what we read in the press, but there has been speculation, not that that was the original formulation—it was, but that is not what the speculation is about—but about what happened when the Prime Minister was in Washington and the draft Bill was rushed across the Atlantic. As my hon. Friend the Member for Lewisham West and Penge has pointed out, the big change from the draft Bill we saw at the time of the debate on the Queen's Speech and the Bill we have today is that, back in May, the draft Bill used the question, "Do you think the United Kingdom should remain a member of the EU?" We have been led to believe by some parts of the press that that has been changed because some Eurosceptics were unhappy that "remain" sounded positive and felt that the wording ought to be "should be a member".

Those are the sorts of discussions that I think we should have; we have not had enough time to consider those questions. I look forward to seeing the work by the Electoral Commission, which is an objective source of information and has a proper role under the Political Parties, Elections and Referendums Act 2000 in assessing and testing the referendum question. This group of

[Emma Reynolds]

amendments—indeed, any amendments about the referendum question—are at the heart of our consideration of the Bill. Such considerations will be revisited on Report in more detail.

Mr Lidington: I am grateful to my hon. Friend the Member for Cheltenham and the hon. Member for Wolverhampton North East for their comments. If I am honest, although my hon. Friend has tempted me, I think that some of his comments about the arguments for and against British membership of the European Union took us a little beyond the scope of the Bill, and certainly beyond the scope of the group of amendments. I am happy to offer him a view in a few words. I suspect that neither he nor the hon. Member for Lewisham West and Penge are regular attenders of Conservative party conferences. I have spent the last three Conservative conferences going from one fringe meeting to another explaining why our party has traditionally believed that membership of the European Union is in the interests of the United Kingdom. I am certainly familiar with the case that he has been making. I am sure that those arguments will be aired in full both during negotiations and, even more importantly, during the referendum campaign itself. What we are doing in this Bill is making provision for the people of the United Kingdom to have the final say in this.

I have made no secret of the fact that my hope and expectation is that we see a successful negotiation followed by a firm endorsement of continued United Kingdom membership of the European Union. Others in my party and other political parties will have a different ambition for our relationship with the European Union. The point about this Bill is that it allows the electorate to take the final decision and settle the argument definitively.

A number of amendments deal with the wording of the question and the role of the Electoral Commission in relation to the Bill. We heard comments from both my hon. Friend the Member for Cheltenham and the hon. Member for Wolverhampton North East about the precise wording of the question proposed. When I look at the form of wording proposed in the Bill, I do not think that it is in any way likely to gull people about the choice that they are being invited to make. It is a pretty plain question that voters, whether or not they follow the proceedings of the European Scrutiny Committee with great attention, will find easy to comprehend. But I can assure the Committee that the Electoral Commission is already actively engaged in looking at the text that is proposed.

Nothing in the Bill in any way removes or subverts the requirement under section 104 of the Political Parties, Elections and Referendums Act 2000 for the Electoral Commission to consider and report on any referendum question specified in a Bill introduced to Parliament. The Electoral Commission has already set in train that work to fulfil its statutory duty and to assess the intelligibility of this proposed referendum question. It has been seeking views on the wording proposed in the Bill and it intends to report its findings to Parliament by the middle of October, which would give Parliament the opportunity to consider the Commission's views during later stages of the Bill.

Martin Horwood: I am grateful to the Minister for making that quite detailed forecast, although it is only a forecast and public bodies sometimes take longer in their deliberations than they initially advise us. Can he confirm that the Report stage of this Bill will not take place until the Electoral Commission has reported? Is that a firm commitment?

Mr Lidington: My understanding is that the days set down by the House for consideration on Report of private Member's Bills do not start until after the time when the Commission intends to report to Parliament. We still have quite a number of Fridays allocated to Second Reading debates of those private Member's Bills that were successful in the ballot. The Electoral Commission is not unaware of the parliamentary timetable and the expectation of Members of Parliament that they will have the opportunity to consider its views during later stages of consideration of the Bill. I am sure that the chair of the Electoral Commission will take note of the report of the Committee and what my hon. Friend has said.

Several other amendments in this group refer to the language in which the question should be posed, and seek to add a requirement for versions in Cornish, Scots Gaelic, Irish Gaelic and Ulster Scots to the existing requirement for a Welsh version of the question on ballot papers in Wales.

The statutory requirement under the Welsh Language Act 1993 is for balclot papers in all elections and referendums in Wales to carry both Welsh and English language versions. There is no such requirement in the statutory arrangements relating to traditional minority languages in Scotland or Northern Ireland. That is why the distinction is made in the Bill. Again, while there might be a debate on another occasion about whether to give those other languages the same status in our system as Welsh currently enjoys, I do not believe that this particular measure should be singled out for special treatment for Cornish, Irish/Scots Gaelic or Ulster Scots.

I hope again that my hon. Friend the Member for Cheltenham and the hon. Member for Wolverhampton North East will not press the amendment to a Division.

Jim Dowd: On a point of clarity, if there is an overriding legal imperative in the Welsh Language Act, it should surely be the case naturally that it is followed. All that we should see in this Bill is a stipulation that that particular provision is disapplied. If the Bill does not mention it all, surely the Welsh Language Act should take precedence and ensure that there is a question in Welsh.

Mr Lidington: I think that previous Bills to authorise referendums contained a particular provision regarding the Welsh language, but I will take advice and let the hon. Gentleman know if I need to qualify what I have just said.

Emma Reynolds: Just to be clear, the amendment tabled by the hon. Member for Cheltenham and the further amendments from my hon. Friends the Members for Huddersfield and for Lewisham West and Penge are probing amendments. In particular, amendment 49 relates to something that we will wish to consider in more

detail. As I set out in my speech, the formulation and wording of a question in any referendum, but this one in particular, are central to a successful outcome. The question should be clear and the subject of consensus between the different political parties and camps involved, including the pro-European and the Eurosceptic camps. If there is a close result, that will avoid a protracted debate on whether the referendum outcome holds or not.

I would prefer, and it is in the interests of all of us, that, should the referendum take place, the outcome should be clear and seen and perceived to be clear. Therefore, consensus on the formulation of the question is necessary.

3.30 pm

Mr Bain: The point my hon. Friend makes is important not only if there should be a referendum, but if there should be a yes vote in that referendum, particularly for Members on the Government Benches. I relate this to the point I made to the Minister earlier: if there were to be difficulties with ratification of any treaty that could be negotiated in other EU states and the terms of that treaty had to be changed, as has happened in the past through ratification processes, does my hon. Friend not share my sense that there would be difficulties, particularly in the Conservative party and among Conservative voters, about accepting a different treaty from that which had been put to them in a referendum?

Emma Reynolds: Yes I do. All of those issues are in play and they also relate to the timing and process amendments that we discussed earlier. I have not supported these amendments and I do not think that they should be put to a vote; they are major issues that we ought to come back to at a later stage.

Martin Horwood: I am tempted to enter the argument about the different languages that should be used on the ballot paper. The hon. Member for Huddersfield raised an important issue with the amendments. He may be pushing it a little with Scots, which as I understand it is simply a dialect of English, although I will probably get a whole load of furious letters from Scotland about that now. It may not always sound like it from the poetry of Rabbie Burns, but I think that it is basically English.

Mr Lidington: The hon. Gentleman talks about Scots. Of course, Ulster Scots could sometimes be said to be subject to similar criticism, but they are two distinct dialects.

Martin Horwood: Indeed, but there are quite a few minority languages floating around the United Kingdom that could appear on the ballot paper if we wanted that. If my hon. Friend the Members for St Ives (Andrew George), for North Cornwall (Dan Rogerson) and for St Austell and Newquay (Stephen Gilbert) were present, I am sure that they would enthusiastically support the inclusion of Cornish on the ballot papers in Cornwall and I would not want to get on the wrong side of any of them.

Kelvin Hopkins: For the information of the hon. Gentleman, in Luton we have 120 different languages spoken in schools.

Martin Horwood: The size of the hon. Gentleman's ballot paper would be absolutely enormous if that were to be reflected in the referendum. To address the most serious amendment in the group, which is tabled in my name, amendment 49, it is an optimistic hope of the right hon. Member for Aylesbury that the Electoral Commission will report in time for its verdict and conclusions to be reflected in the debate on Report. If he wants the Electoral Commission to play a part in the outcome of the discussions on the wording of the question, I really cannot see any possible objection to this amendment being made.

Mr Lidington: I have taken advice on the precise dates. My understanding is that the first date for the consideration of private Members' Bills on Report is Friday 8 November. The Electoral Commission stated its clear intention of reporting on its findings to Parliament by the middle of October and it seems to me, therefore, that my hon. Friend should take some assurance from that.

Martin Horwood: I take some reassurance, but that reinforces the point that I was making before the intervention: if that is the intention in any case, what earthly objection can there be to amendment 49? That explicitly links the referendum wording to the Electoral Commission's input to try to make it clear to the British public that this referendum is really about the interests of the United Kingdom within Europe being debated in a way in which fairness and reasonable balance is given and no undue weight is given to one side or the other. It should not be a party political device to cover up disunity over Europe within the Conservative party in time for the general election.

The way in which Conservative members of the Committee can disprove that contention is to vote for the amendment and place the role of the Electoral Commission clearly in the Bill. For that reason, I am inclined to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 7.

Division No. 3]

AYES

Bain, Mr William	Horwood, Martin
Dowd, Jim	Reynolds, Emma
Hopkins, Kelvin	Sheerman, Mr Barry

NOES

Burley, Mr Aidan	Lidington, rh Mr David
Ellwood, Mr Tobias	Wharton, James
Hart, Simon	
Latham, Pauline	Williamson, Gavin

Question accordingly negatived.

Pauline Latham: On a point of order, Mr Benton. Will you check the numbers?

The Chair: I can confirm that the numbers were as declared: ayes 6, noes 7.

Emma Reynolds: I beg to move amendment 74, in clause 1, page 1, leave out line 14 and insert

'super-affirmative resolution as set out under section 18 of the Legislative and Regulatory Reform Act 2006.'.

The Chair: With this it will be convenient to discuss the following:

Amendment 39, in clause 1, page 1, line 14, at end insert

'under the super affirmative resolution procedure set out in Schedule 2.'.

Amendment 40, in clause 1, page 1, line 14, at end insert—

'(7) The Secretary of State shall consult with the Electoral Commission before making an order under subsection 6.'.

Amendment 75, in clause 1, page 1, line 14, at end insert—

'(7) The Secretary of State shall consult with the Electoral Commission before making an order under subsection (6).'.

New schedule 2—*Super-affirmative resolution procedure*—

1 The "super-affirmative resolution procedure" in relation to a draft order under this Act is as follows.

2 The Minister must have regard to—

(a) any representations,

(b) any resolution of either House of Parliament, and

(c) any recommendations of a committee of either House of Parliament charged with reporting on the draft order,

made during the 60-day period with regard to the draft order.

3 If, after the expiry of the 60-day period, the Minister wishes to make an order in the terms of the draft, he must lay before Parliament a statement—

(a) stating whether any representations were made under subsection (2)(a); and

(b) if any representations were so made, giving details of them.

4 The Minister may after the laying of such a statement make an order in the terms of the draft if it is approved by a resolution of each House of Parliament.

5 However, a committee of either House charged with reporting on the draft order may, at any time after the laying of a statement under paragraph 3 and before the draft order is approved by that House under paragraph 4, recommend under this subsection that no further proceedings be taken in relation to the draft order.

6 Where a recommendation is made by a committee of either House under paragraph 5 in relation to a draft order, no proceedings may be taken in relation to the draft order in that House under paragraph 4 unless the recommendation is, in the same Session, rejected by resolution of that House.

7 If, after the expiry of the 60-day period, the Minister wishes to make an order consisting of a version of the draft order with material changes, he must lay before Parliament—

(a) a revised draft order; and

(b) a statement giving details of—

(i) any representations made under paragraph 2(a); and

(ii) the revisions proposed.

8 The Minister may after laying a revised draft order and statement under paragraph 7 make an order in the terms of the revised draft if it is approved by a resolution of each House of Parliament.

9 However, a committee of either House charged with reporting on the revised draft order may, at any time after the revised draft order is laid under paragraph 7 and before it is approved by that House under paragraph 8, recommend under this paragraph that no further proceedings be taken in relation to the revised draft order.

10 Where a recommendation is made by a committee of either House under paragraph 9 in relation to a revised draft order, no proceedings may be taken in relation to the revised draft order in that House under paragraph 8 unless the recommendation is, in the same Session, rejected by resolution of that House.

11 For the purposes of paragraphs 4 and 8 an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.

12 In this section the "60-day period" means the period of 60 days beginning with the day on which the draft order was laid before Parliament under section 1(6).'.

Emma Reynolds: Amendment 74 will require that, rather than the ordinary affirmative statutory instrument procedure, any order made by the Secretary of State under clause 1(6) would be subject to the super-affirmative resolution procedure. That procedure was introduced by the previous Labour Government under section 18 of the Legislative and Regulatory Reform Act 2006. It is a statutory instrument with enhanced parliamentary scrutiny. It requires separate Committees of both Houses to scrutinise the orders and it can recommend that no further action be taken. The question of an EU referendum is simply too important an issue for the standard affirmative procedure to be used. I am suggesting a more thorough procedure, and that a Committee of each House should examine the Government's recommendations with a vote in both Houses by all Members present if either Committee raises concerns about the orders.

There are further concerns about lack of parliamentary scrutiny and oversight in the Bill, which I hope the whole House will consider in more detail on Report.

Mr Sheerman: As a bear of little brain, I need an example of when that procedure was last used. Can my hon. Friend tell me how often this super-duper affirmative process has been used?

Emma Reynolds: I thank my hon. Friend for putting me on the spot. He said in July that I and some other Members had been here for only five minutes, so I am sure he is in a much better position—

Mr Sheerman: I wish my hon. Friend had not brought that up.

Emma Reynolds: I am sure my hon. Friend is in a much better position to tell me how many times since 2006 this super-affirmative procedure has been used. I am not entirely sure. I am proposing the procedure for this legislation not because of how often it has been used in the past and in what cases, but because this is a constitutional Bill of such important magnitude in terms of what might happen that when it comes to section 1(6) an order is worth further consideration.

Mr Sheerman: I was not being awkward. I rather like the notion. As a Member who has been in the House for some time, I am suing the BBC for ageism because it called me a very ageist name. Because of my question in the House yesterday, it called me a veteran. That refers back to people who have been here for only five minutes. I like the sound of my hon. Friend's proposal because we as parliamentarians too often see things slipped through in statutory instruments with little appraisal and few safeguards. Such super-duper appraisal seems to be useful and I want it to be used on many occasions.

Emma Reynolds: Perhaps we should call it "super-duper" instead of "super-affirmative". That seems to be more layman's language than some of our boring language.

I am proposing the procedure because the matter is, as my hon. Friend said, of such great importance that it would be worth Members of both Houses considering in detail the order that the Secretary of State will have to lay before each House, rather than allowing it to go through on the nod. As he knows, having been here a lot

longer than me, many statutory instruments and orders of this sort are nodded through the House, and right hon. and hon. Members may not even notice if they have not looked at the Order Paper on that day.

The intention in this group of amendments, particularly amendment 74, is that Members of both Houses should have another opportunity to consider the serious implications of the legislation if it is law at that time.

Mr Bain: Is not my hon. Friend's point supported by the fact that were the question in clause 1(4) to be put in a referendum it would affect the workings of every Department of State? It is not a matter just for the Foreign and Commonwealth Office, nor the right hon. and hon. Members on the European Scrutiny Committee. It would have an impact on every Department of government in this country.

Emma Reynolds: That is right, and it is why the Committee that is foreseen by the super-affirmative resolution procedure would consider implications that go beyond the Foreign Office, because there would be an impact on every Government Department, given the magnitude of what is being proposed, especially if the referendum outcome were to be negative—that is, in my language, if we were to lose the referendum. I know that my hon. Friend the Member for Luton North takes a different position, however.

3.45 pm

I agree with the point that my hon. Friend the Member for Glasgow North East raises because it is absolutely crucial that the implications of holding such a referendum are considered not only now, during our consideration of the Bill, but when the order is laid. We understand that the implications go way beyond the original Department, although as the right hon. Member for Aylesbury pointed out, he is here as a Conservative Minister, not as a coalition Minister. As we said in a previous sitting, we do not know who will be in government in 2016 or 2017. The intention behind the Bill seems to be that that would be the Foreign Secretary, although that is not laid out—the Bill just refers to "the Secretary of State". As my hon. Friend points out, it is essential that we consider the fact that the implications of the Bill go way beyond one Department of Government.

Amendment 39 and new schedule 2 would also require that any order made by the Secretary of State under clause 1(3) would be subject not only to the ordinary affirmative procedure, but to the super-affirmative resolution procedure. New schedule 2 imports the provisions of section 18 of the Legislative and Regulatory Reform Act 2006 into the Bill to make it clear that the super-affirmative resolution requirements would apply. It may be that, legally, we would not need new schedule 2—perhaps we could refer to the provisions of the 2006 Act. However, I thought it would be clearer if we added the new schedule to the Bill, although I am willing to find out whether that is strictly necessary.

Amendment 40 would require the Secretary of State to consult the Electoral Commission before making any order. As we have already discussed, the Electoral Commission has an important role to play in all types of referendums, but especially in this instance. Its role is to ensure the integrity and transparency of all elections and referendums in the United Kingdom, so it is worrying that there is no reference to the commission in the Bill. As the hon. Member for Cheltenham argued earlier, it would be useful if the Bill referred to the important and crucial work of the Electoral Commission, which is why amendment 40 proposes:

"The Secretary of State shall consult with the Electoral Commission before making an order under subsection (6)".

It is worth adding that the role of the Electoral Commission is not just limited to the conduct of the referendum; it is concerned also with its mechanics, which are very important at this stage of the debate. Given that these points are so important, we may return to them on Report.

The amendments are probing. It is worth thinking about not only what the Bill would mean in terms of holding a referendum, but what happens between now and the referendum—in other words, under subsections (3) and (6) with regard to laying the order. The Bill should include more specific detail about what would be involved and the process that would be used in laying that order. How would that order come before Parliament? What say would hon. Members have? This private Member's Bill is of such constitutional importance that it would be worth having the super-affirmative—or super-duper, as my hon. Friend the Member for Huddersfield prefers to call it—procedure in place.

I am interested to hear what the Minister thinks about these probing amendments. I wanted to test the water on including a reference to the Electoral Commission in the Bill and on the procedures to be used with orders.

Martin Horwood: I will not speak for long. Amendments 74 and 39 and new schedule 2 would introduce this wonderful super-affirmative procedure. I do not know how many lay people the hon. Lady talks to, but I do not advise changing the title to "super-duper" procedure. My constituency has a posh image, but I would not fancy going around some parts of it to persuade people to vote for something super-duper.

Emma Reynolds: Will the hon. Gentleman give way?

Martin Horwood: No, I will not give way on that.

The risk in the whole procedure is that it looks insanely complicated. If I were being suspicious, I would see the hand of the right hon. Member for Kirkcaldy and Cowdenbeath (Mr Brown) in devising it, because it is so complicated and a bit like some of his tax systems, such as the tax credit system. The procedure also runs an obvious risk of confirming the worst suspicions of the hon. Member for Luton North: it is an opportunity to derail any possible referendum, should one be agreed and should any Government attempt to introduce it.

We must pay some attention to a little fall-back provision towards the end of the new schedule, under which a draft order may not be proceeded with. In political terms, that might be a desirable outcome for those of us who do not want to see Britain's exit from the European Union, but in procedural, democratic and parliamentary terms, the measure is not a desirable way to defeat a piece of legislation or to stop a draft order from proceeding. I am therefore not wildly sympathetic to the proposals, although I appreciate the good intentions behind them. The hon. Lady described the amendments and the new schedule as probing, so I hope that they will not be pressed to a Division.

[Martin Horwood]

Amendments 40 and 75 are pretty consistent with the ideas behind my amendment 49, which has just been defeated. Those who want the Electoral Commission to be consulted, as under my amendment, can have no objection to amendments 40 and 75. We are otherwise setting a rather dangerous precedent through the Bill. As the right hon. Member for Aylesbury suggested, the only reason why we expect Report to come after the report of the Electoral Commission is probably the summer recess, which has given the commission time to consider things. If the Bill had been introduced at a different time of year, it might have been considered on Report in a matter of weeks. Had we done as some Members wanted in the summer and dealt with the Bill in a single Committee sitting, we might have been on Report in advance of the Electoral Commission's report.

Mr Lidington: Will the hon. Gentleman give way?

Martin Horwood: I will finish my line of argument and then the right hon. Gentleman will have the opportunity to respond.

Depending simply on the fortune of the calendar and the parliamentary timetable as to whether the Electoral Commission has time to influence a Bill would set a bad precedent. I do not want to set such a precedent for referendums that might arise in the future, such as perhaps on proportional representation.

Mr Burley: We had one.

Martin Horwood: I am afraid that we did not have a referendum on proportional representation; we had one on the alternative vote. I could bore the hon. Gentleman for hours about the difference—I am sure that many Liberal Democrats would endlessly entertain him about it—but you, Mr Benton, would tell me that I was deviating wildly from the subject of the Bill.

I can see no possible objection to amendments 40 and 75. The hon. Member for Wolverhampton North East described them as probing, but I would be supportive if she pressed them to a vote.

Kelvin Hopkins: Unusually, I find myself in agreement with the hon. Member for Cheltenham, because this looks like a procedural device that might, as he put it, derail a move towards a referendum. If that did happen, and it was a trick, the electorate, among whom there is a very substantial majority in favour of a referendum, would feel very angry indeed, and rightly so.

That would be the case especially if there was a Joint Committee of the Lords and ourselves. The Lords—wonderful people though they are—are mostly not elected, and they must be regarded as a second Chamber. The primary legislative Chamber must be the House of Commons, as we are directly elected. I and other members of the European Scrutiny Committee have frequent meetings with representatives of the Lords, and I have yet to find a Eurosceptic voice among them. They are not elected, so they do not necessarily have to represent the views of the electorate. If those fine, upstanding peers were to use their majority to derail progress towards a referendum, anger would be widespread, and rightly so.

It would therefore be very unwise to have this procedure. We want a straight vote in the House of Commons. Members of the House of Lords will have their chance when the Bill goes to them to do what they will with it. I suspect they will ultimately acquiesce in the wishes of the Commons; one hopes that will be the case, especially if the Bill is carried and we move towards a referendum. This is therefore an unwise proposal. Much though I admire the abilities and wisdom of my hon. Friend the Member for Wolverhampton North East on many issues, we must disagree on this one.

Mr Lidington: I am grateful to the hon. Member for Wolverhampton North East for the courteous way in which she moved her probing amendments. This is a perfectly reasonable proposition for her to want to test. I have to say at the start that I do not find her arguments persuasive, but let me explain why.

First, however, let me respond to the charge made by my hon. Friend the Member for Cheltenham that, had the Committee stage of the Bill been completed in July, it would have been impossible for the House to consider the Electoral Commission's views on the wording of the question before Report. The House has laid down that the first Friday available for the Report stage of private Members' Bills should be Friday 8 November. The private Members' Fridays between now and then are taken up with further Second Reading debates on private Members' Bills. Therefore, that November date would still have been the earliest on which the Bill could have been considered on Report.

Martin Horwood: My right hon. Friend answers one half of my concern, but not the other. It is true that I talked about the parliamentary timetable, but I also talked about the importance of the summer recess and the time of year in allowing the Electoral Commission time to report before Report stage. He must allow that bringing the Bill forward at another time of year might have meant much more rapid progress. The point is one of principle: if things depend on the parliamentary timetable or the timing of the Bill, the approach is wrong in principle. In principle, we should consult the Electoral Commission on the wording of referendums; there should be no objection to including that in the Bill, and I still have not heard an objection from the Minister.

4 pm

Mr Lidington: I do not want to go over again territory we have covered in previous debate this afternoon, but section 104 of the Political Parties, Elections and Referendums Act 2000 imposes a clear obligation on the Electoral Commission to consider the wording of anything proposed in a Bill—it does not have to wait for enactment—and to make a report to Parliament. So far, with all the various referendum proposals we have had since 2000, the Electoral Commission has had the opportunity to comment, and Parliament has had the opportunity to take its views into account. One can speculate about various alternative hypothetical timetables, but that statutory obligation still applies so long as the 2000 Act remains in force. Had the Bill been brought forward at a different time of the year, Parliament and Government would have had to think through how to give effect to their obligation under the 2000 Act. As it

stands, the Electoral Commission will present its report to Parliament in good time so that it can be taken into account by the House of Commons before the Bill is considered on Report.

On the substance of the serious group of amendments on the super-affirmative resolution procedure tabled by the hon. Member for Wolverhampton North East, my two reasons for disagreeing with her proposed course of action relate first to the purpose for which the procedure was invented and secondly to the reasonable expectation of the opportunities for parliamentary and public debate on a package of European reforms ahead of the proposed referendum.

On the procedural point, the super-affirmative resolution procedure was invented to cope with power being effectively given to the Executive through the use of secondary legislation to amend or revoke primary legislation. The procedure was always intended as an additional check on the Government of the day so that if they resorted to secondary legislation in the limited circumstances permitted by statute, Parliament would have the right laid down in statute to make the Government pause and consider the arguments over a 60-day period before the fast-track method of amending or repealing primary legislation was allowed to continue. It was a remedy for what are often termed Henry VIII procedures. I will not dwell for too long on the 16th century, Mr Benton, but I note in passing that the reference to Henry VIII is based on a fundamental misinterpretation of the Proclamation by the Crown Act 1539, but we can explore that on a different occasion.

If we look at how super-affirmative resolution procedures have been applied in the past, we see, for example, that under the Legislative and Regulatory Reform Act 2006 the procedure can be used for legislative reform orders, which are available to Government to repeal or amend certain primary legislation. Under the Localism Act 2011, the Secretary of State may

"amend, repeal, revoke or disapply a statutory provision which he or she thinks prevents a local authority from exercising its 'general power of competence'".

Any such order is subject to additional scrutiny by the Delegated Powers and Regulatory Reform Committee.

Under the Human Rights Act 1998, there is provision for remedial orders where a higher British court or the European Court of Human Rights finds primary legislation to be incompatible with the European convention on human rights. The then Government provided in the 1998 Act for a fast-track remedy to bring statute law into compliance with such a judicial decision without the need for full parliamentary procedure to amend the relevant statute. The then Government rightly made those remedial orders subject to a super-affirmative resolution procedure as an additional safeguard.

What the hon. Lady proposes is rather a departure from the purpose for which this procedure was first devised. That does not mean that one should rule it out of court automatically. I accept that point. But the purpose of her amendments is very different in nature from the kind of check on untrammelled ministerial power to amend statute which this procedure was designed to provide safeguards for.

Mr Sheerman: I find this fascinating. It takes me back to my undergraduate days and when I was educated at Hampton school, which was founded by Henry VIII—I was not there at the time. This is interesting but it is analytic. The Minister has not at any stage said when the procedure has been used and in what situation. Has it been used? Is it used? Is this a totally hypothetical opportunity in terms of these super-affirmative resolutions?

Mr Lidington: I will have to take advice in order to answer the hon. Gentleman's question in detail. From memory, in the last Parliament measures were brought forward under either the Human Rights Act 1998 or the Legislative and Regulatory Reform Act 2006. But that was in a limited number of cases. This was never designed as a procedure that should be used all that frequently. It was intended by the then Government to be something that was deployed exceptionally. Normally we would say that, where any Government need to amend primary legislation, they should do so through a Bill that is subject to full parliamentary process in both Houses. It is right that that should be our default option and our preferred route if we are seeking to amend primary legislation. So the super-affirmative resolution procedure to provide a check on the Executive's wish to use a fast track to amend primary legislation is something that should be invoked only on rare occasions.

Kelvin Hopkins: It seems to me that the shadow Minister has turned the arrangement on its head. It was intended as a check in the hands of the legislature on the Executive. This looks like it might be a check on the legislature by the Executive, particularly an Executive who were keen to slow down progress towards a referendum in order to get a yes vote.

Mr Lidington: The hon. Gentleman makes a telling point here. If the Bill becomes law there would be an obligation on this or any future Government to hold an in-out referendum on European Union membership within the time frame prescribed in what would then be the Act. The introduction of a further Committee procedure, an enforced delay and a period of consideration of 60 days before even the formal referendum arrangements and campaign laid down by the Political Parties, Elections and Referendums Act 2000 could begin, certainly seems an unnecessary brake on progress. The hon. Gentleman is right. There is a risk that this could be used to delay or prevent the electorate from having the final say.

Mr Bain: Over the summer recess I have been enjoying what we might call a little light reading—the first six of the balance of competence reports which the Minister's Department has published. They demonstrate the point that I made earlier to my hon. Friend. This is a decision that affects every walk of life and every conceivable area of government. In those circumstances, do we not need a cross-departmental Committee to look at the reports rigorously and make a recommendation to Parliament based on that analysis?

Mr Lidington: The hon. Gentleman will not like me for saying so, but I think his tastes in light reading for the beach are similar to those of the late Baroness Thatcher, when she could be persuaded to take a holiday.

The point that the hon. Gentleman made takes me on to the second limb of my argument. I do not want in any way to impugn the motives of the hon. Lady in tabling her amendments, but I would ask the Committee to consider the parliamentary reality of the circumstances we envisage. We are envisaging that for a period of time, perhaps as much as a couple of years, the United Kingdom Government and its European partners would

[Mr Lidington]

have been involved in a detailed negotiation to seek the reform of the European Union and, indeed, that some of those reforms would have involved changes to the European treaties. That process itself is going to produce opportunities for questions to be asked, for the Backbench Business Committee to seek debates, for the Select Committees to haul Ministers in front of them to give evidence, and for the Scrutiny Committees in both this House and the House of Lords to do the same.

At the end of that time, we envisage that the Prime Minister would come forward, explain to Parliament the deal that he had achieved—that would have to be finalised at a European Council meeting—and be questioned on it. All of that would be ahead of the referendum timetable then being triggered. It is not just a probability but a certainty that, as we found at the time of the Lisbon treaty, the European Scrutiny Committee will take evidence and publish reports. I can remember the then Chairman of the European Scrutiny Committee, the hon. Member for Linlithgow and East Falkirk (Michael Connarty), publishing some pretty trenchant reports that were not in every respect easy reading for the Government at the time in what they said about the Lisbon treaty.

Opposition Members are right to say that a new deal in Europe would involve many Government Departments, not just the Foreign and Commonwealth Office, so I expect that the departmental Select Committees would take a close interest in how the outcome of such negotiations affected their areas of policy. My argument to the Committee is that precisely those Select Committees, which follow the detail of policy work and which, under the terms of the Standing Orders of this House, have an explicit duty to hold the Government to account in those areas of policy at European level as well as at national level are best placed to provide the House as a whole with the informed analysis and comment that the hon. Lady is seeking through the mechanism that she has proposed. Of course, the work of those Committees—the Scrutiny Committees and the Select Committees—would involve a greater range of Members who, I venture to say, have more expertise in their respective subject areas than the joint committee that she proposes in her amendments.

I am confident that our parliamentary arrangements will ensure that the House and the British public are properly informed that the detail is indeed available. I do not doubt that it was a well-intended group of amendments, but to try to apply the super- affirmative resolution procedure to the end that is proposed is not necessary or of particular help.

4.15 pm

Emma Reynolds: It is regrettable that, given his expertise in political history, the right hon. Member for Aylesbury did not expand further on his great knowledge of 16th century political history. We were all waiting for it with bated breath. Given the deft way in which he deals with such matters, I am sure that he could have wound it into our discussions on the Bill that we are considering today.

I shall respond to the two arguments put forward by the Minister for Europe, the first of which was that the original purpose of the procedure was not to deal with such matters. I disagree. I am sorry that my hon. Friend the Member for Luton North finds himself in disagreement with me, but my intention is honourable—indeed, all Members are honourable. I want further scrutiny to be given to an important decision, and that is the tone and intention of the amendment. It is not to derail the Bill or to postpone it, but its measures are of such constitutional significance that the procedure under the amendment would be appropriate because of the scope of the Bill and its consequences.

The Minister for Europe talked about opportunities in Parliament to consider the implications of the Bill. It is certainly true that the European Scrutiny Committee, in this Parliament, under this Government and when we were in government, is not a Committee that pulls its punches. We all know that the hon. Member for Stone (Mr Cash) is not always in agreement with the Minister for Europe. As the right hon. Gentleman pointed out, the Chairman of the European Scrutiny Committee, when we were in government, was not always in agreement with our Government either.

I do not doubt the great eagerness and dedication that the European Scrutiny Committee would give to the Committee stage of the Bill. The amendment would establish a joint committee of both Houses that would oversee all the many implications and consequences of the Bill, as my hon. Friend the Member for Glasgow North East said, and how it would touch on many aspects of government and our daily lives. The advantage of such a procedure is that the two Houses would come together and have an overview, which departmental Select Committees would not have, of the many consequences of either outcome of the referendum for Government and Parliament. I tabled the amendments in a desire for greater scrutiny.

Mr Sheerman: My hon. Friend is in a certain mode today; it is different from when the Committee sat previously, and—much to our astonishment—when the Prime Minister was sitting in the Gallery. We are all recovering from the fact that, last Thursday, someone took notice of a vote in the House of Commons. It had an impact throughout the world, not because the usual foreign affairs buffs were discussing foreign policy, but because the whole of the House of Commons was involved in a major debate, the result of which shocked most of us as well as the rest of the world. Is that not the reason why discussing this dislocation—this major question of the UK coming out of the European Union—is bigger than European scrutiny and bigger than anything we have seen apart from last Thursday's deliberation? Everyone will be involved and everybody will be participating. Some of the Opposition's amendments relate to the fact that this is an unimaginably major issue. Here we are debating it in a Private Member's Bill, but this whole episode will be beyond the experience of most of us in the House of Commons—even someone like me who has been here for a hell of a long time.

Jim Dowd: More than five minutes.

Mr Sheerman: More than five minutes.

Emma Reynolds: I will try not to be tempted to be drawn on last Thursday's debate and vote. If there is any parallel between last Thursday and what we are discussing now, it is that Parliament is sovereign and

powerful and that the Executive are not all-powerful and cannot do what they like. In the United States and in France, the President can certainly do what they want in such matters, but that is not the case in our country. On significant constitutional questions, such as our membership of the European Union, Parliament is and should be sovereign. It is in that spirit that I tabled probing amendments on the super-affirmative resolution procedure. It is not a cynical ploy to derail the later stages of this legislation, should it pass this one; it is simply to try to improve what happens in the future and to ensure that adequate time is given for consideration in both Houses and by both Houses coming together, because the matter is so important. It is quite rare in our Parliament that both Houses jointly consider matters, but it would be an advantage to have both Houses coming together on such an issue.

Jim Dowd: The super-affirmative procedure is a novel development, but it is not radically different from the affirmative procedure itself, to which the order would be subject. My hon. Friend the Member for Luton North is wrong to say that the Lords should not look at this matter. They will have to approve the statutory instrument under the affirmative procedure in any event. If I understand it correctly, the super-affirmative procedure simply adds a period of consultation after the Minister lays the order, during which time either House or relevant Committee of either House can examine the proposal. That is then referred back to the Minister, who can either bring it forward in its original form or amend the order—it is one of the few occasions when a statutory instrument can be amended—and then proceed with it under the normal affirmative procedure. It is just an extra period of consultation. The Minister's hands are not tied and it certainly cannot be used as blocking mechanism. It just means that the views of both Houses and any relevant Committees need to be taken into account before proceeding with such an important matter.

Emma Reynolds: My hon. Friend makes a good point about this group of amendments. As he elegantly and eloquently put it, the proposal is about the possibility of amending the order should the Joint Committee of both Houses recommend that to the Minister and should the Government of the day, whichever political colour they might be, decide that that is right thing to do. As he also said, it is an add-on and is not that much different from the affirmative procedure—

Mr Sheerman: I am sorry, but I am going with Luton North here. I used to tease my hon. Friend the Member for Luton North that he still had not given up on nationalising the top 100 British companies. I am pointing out how consistent he has been over the years. He is a radical and I am going over to his view on this matter.

I was absolutely rapt, when the Minister was looking at his civil servants, about the forensic approach that they would take to finding out whether this is being used and—what is more important—where it came from. We know it did not come from the wonderful speech we had; it did not come from Henry VIII; but did it come from a particular personality or group of personalities in the Treasury in an early period in the Labour Government? I am very interested forensically in where it came from, because knowing that would give me the ability to judge, with my hon. Friend the Member for Luton North, how powerful the provision is. What was the motivation for something so powerful, and to whom would it really give power? Was it the Executive or was it the legislature?

Emma Reynolds: This is the start of the discussion, and I am sure we will come back to it. Perhaps, when we do, those facts will be before us, and we shall be able to judge. My hon. Friend the Member for Huddersfield, who seems a bit ambivalent about the matter—if I can explain his position in that way—may then be better able to consider the background. My hon. Friend the Member for Luton North is, as ever, consistent.

Kelvin Hopkins: As my name has been mentioned several times, I thank my hon. Friend for giving way. My heroes, when I was young, were Nye Bevan and Michael Foot. I think my views would have been regarded as middle of the road by Harold Wilson and Clement Attlee, but there we are. *[Interruption.]* My hon. Friend the Member for Huddersfield can say what he likes, but they certainly would not be regarded as moderate by Tony Blair.

The point about the Joint Committee—I do not want to make it too brutally, but this is the realpolitik of the situation—is that if we have a Joint Committee there is no doubt that our unelected Friends in the Lords would put a unanimous group of pro-European people on it. That would mean a pro-European majority on the Joint Committee, which would cause all sorts of stresses and tensions. I am a unicameralist and have voted in previous Parliaments in favour of a single House of Parliament. Much as I respect the House of Lords, and its Members, as individuals, I think a unicameral Government would be much better.

Emma Reynolds: I do not want to get drawn into a discussion of the advantages or disadvantages of a unicameral system, so at this point I will just say—

Jim Dowd: Will my hon. Friend give way?

Emma Reynolds: No, I need to wind up.

The amendments deserve further scrutiny. They are probing amendments. I wanted to test the temperature in the Committee. I hear what the Europe Minister says, and he is right to say that my intention is good. It is not to derail the relevant provisions. Perhaps, as my hon. Friend the Member for Huddersfield has pointed out, we may be able to dig up a bit more evidence about how and why the approach was introduced, and how it is being used. That might better inform us about whether such a way of proceeding is relevant. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration be now adjourned. —(*James Wharton.*)

4.28 pm

Adjourned till Wednesday 4 September at five minutes to Nine o'clock.