When addressing the House during the second reading of the European Union (Withdrawal) Bill, I committed to placing a letter in the Library of the House. This letter addresses points raised by Noble Lords about the Bill which I did not have the opportunity to respond to during the debate.

A record number of contributions were made during the debate. I responded to many of them at the time and I have endeavoured to address any outstanding points concerning the Bill thematically below. However, if any Noble Lords feel their questions have not been answered, I would ask them to please contact my office.

Parliamentary scrutiny of the Bill was raised by many of your Lordships, including the Noble Lady, Baroness Smith of Basildon and the Noble Lord, Lord Alii, among others. The Bill came to this House after the extensive debate of over 500 amendments in the other place, during which the Government accepted amendments tabled by the Procedure Committee to establish a sifting committee for secondary legislation, and amendments on providing further information through explanatory statements and greater transparency about the impact on equalities legislation. Noble Lords should be assured that the Government is currently in the process of considering all the amendments which have been tabled for Committee, and we have set out our commitment to establishing an equivalent sifting committee in this House. This will no doubt inform robust scrutiny at Committee stage. We have been clear that where members make credible suggestions for how we can improve the Bill, we will listen and work with them. I look forward to these collaborative efforts as we begin Committee stage on 21 February.

Many Noble Lords referenced the Constitution Committee report concerning the Bill. The Government is grateful to the Committee, and the Delegated Powers and Regulatory Reform
Committee, for their thorough analysis of the Bill. We are considering their recommendations carefully.

The Noble Lady, Baroness Symons of Vernham Dean, raised a recommendation put forward by the Lords Constitution Committee concerning the publication of an impact assessment on how the provisions in the Bill will affect the Belfast Agreement. The Noble Ladies, Baroness Lister of Burtersett and Baroness O'Neill of Bengarve also asked how the Government will maintain its commitment to the Belfast Agreement with the passing of the Bill and the removal of the Charter of Fundamental Rights. The Government remains steadfast in its commitments to the Belfast Agreement and its associated obligations under international law. The Bill will not make any changes to our obligations under the Belfast Agreement. On the Charter, the Belfast Agreement was signed in 1998, before the Charter was proclaimed in 2000 and brought into force in 2009. As a result, the Charter is not referenced in, nor does it form background to, the Agreement.

Lord Warner of Brockley raised the timetable for passing the Bill. The British people voted to leave the EU and we will deliver on their instruction and in accordance with the Article 50 process. It is important that this Bill is passed in time for Parliament to give appropriate scrutiny to the secondary legislation that is required for EU exit.

Many Noble Lords made contributions regarding the delegated powers in the Bill. I would like to reassure the Noble Lady, Baroness Lister of Burtersett, that the Government intends to maintain the protections which derive from our equalities legislation as the UK exits the EU. The Government has already during the Commons stages published on Gov.uk an outline of all the areas where corrections are required to equalities legislation. The Government's amendment to Schedule 7 in the Commons also ensures that there will be transparency in any changes to equality legislation, and that when making all the SIs under the key powers in this Bill, ministers will have to certify that they have complied with the obligations on them in equalities legislation. Ministers have also promised to provide this information alongside other Brexit related primary legislation.

Regarding the urgency provision raised by the Noble Lord, Lord Sharkey, the Government envisages using the urgent procedure very sparingly, such as in cases where there is a clear and practical impetus to have a correction to the law made in time for exit day and there is limited time available. This might be because the SI could not be made until very close to exit day, or where the effect of the correction would take substantial time to implement by regulators or businesses in order to be ready for exit day. Of course, as the urgent procedure in the Bill makes use of the “made affirmative” procedure, any SIs made using this procedure will be subject to scrutiny and will require the agreement of both Houses if they are to remain in force.

The Noble Lord, Lord Bilimoria and the Noble Lord, Lord Browne of Ladyton, among others, raised the matter of Parliament’s vote on the final deal. I can confirm that the Government has committed to hold a vote on the final deal in Parliament as soon as possible after the negotiations have concluded. This does not depend on the flexibility or reversibility of Article 50.
The Noble Lord, Lord Taylor of Warwick, asked about the legal status of retained EU law and expressed concern that ministers will determine legal status on a case by case basis. Retained direct EU legislation will not automatically have a status of ‘primary’ or ‘secondary’ legislation. This is because the breadth of the unique nature of this legislation would mean it would be inappropriate to provide it with a single “default” status for all purposes. The Bill instead contains several important status-related provisions which provide how retained direct EU legislation should be treated for certain purposes. For example, Schedule 8 sets out that, for the purposes of the Human Rights Act, retained direct EU legislation is to be treated as primary legislation. Whether retained direct EU legislation is to be treated as primary or secondary legislation for the purpose of other statutes will be considered on a statute-by-statute basis and set out in further regulations made under the Bill as necessary. This is the right approach for achieving maximum legal certainty after exit day.

The Noble Ladies, Baroness O’Loan and Baroness Byford asked about the number of statutory instruments and timetable for scrutiny and making these. The Noble Lord, Lord Taylor of Warwick also asked about the role of this House in scrutinising SIs. The Government’s estimate of 800 - 1000 EU-exit related SIs is based on the detailed work Departments have done into what may be needed. It is not possible to give a definitive figure as the volume of legislation will depend on the outcome of negotiations, on policy decisions to be taken, and on further work to be done on how we bring forward the secondary legislation. Bearing in mind the sensitivities surrounding the UK’s negotiations with the EU, the Government will make efforts to publish a sample of SIs in draft where this is appropriate. At this point in time, 20-30% of SIs are expected to trigger the affirmative procedure. As the Leader of the House stated, she is considering how to incorporate the same changes embodied by the new Commons committee into the terms of reference of the Secondary Legislation Scrutiny Committee.

Noble Lords raised a number of questions regarding the devolution settlements. For example, Lord Wallace of Tankerness asked about the ability of Scottish Ministers to deal with deficiencies in direct EU legislation. This type of EU law applies directly to member states. So, where there is directly-applicable EU legislation, exactly the same law currently applies to each part of the UK, including in otherwise devolved areas, such as agriculture. In order to provide certainty to businesses the Bill ensures that consistent corrections can be made to this type of law with its uniform application across the UK.

We are currently assessing with the devolved administrations where frameworks are needed and where they are not. If a framework is not needed, it is right that the DAs should also be able to determine how to amend those laws so they function properly on and after exit day. That is why we amended the Bill at Commons Report Stage, to make clear that devolved Ministers can use the powers in the Bill to modify direct retained EU legislation where the decision that a framework is not needed has been given effect through the Order in Council procedure. The Government has also committed to consult with the devolved administrations before making any corrections to direct EU legislation that relate to an area of otherwise devolved competence; and we have of course committed to bring forward an amendment to clause 11, which we continue to discuss with the Scottish and Welsh Government. Making
the statute book work for exit day will be a joint endeavour between the UK government and devolved administrations, and the UK Parliament and devolved legislatures.

During the debate there was also discussion about the possibility of a sunset provision in Clauses 10 and 11, and in Schedule 2. The sunsetting provisions for powers established in Clauses 7 and 8 have equivalent sunsetting provisions for the powers of devolved administrations given by clause 10 and Schedule 2; these can be found at paragraph 1(4)(a) (read with clause 7(8)) and paragraph 13(6). As to clause 11, we have been clear that the competence arrangement in that clause is a temporary arrangement that provides certainty for everyone in the UK and allows time for detailed discussions with the devolved administrations on where common frameworks are needed in future. As set out above, we have made a commitment to bring forward an amendment to clause 11.

My Noble Lord, Lord Browne of Ladyton enquired about the list prepared by the Government to inform discussion between the Scottish and UK Governments about where it may be necessary to agree common frameworks. The Government has undertaken a comprehensive assessment of where devolved competence interacts with EU competence. Following this, we have developed a provisional and working analysis that assesses where we think legislative and non-legislative frameworks will and will not be required, which we have shared with the devolved administrations. The Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office has committed to publish this analysis as soon as possible. We expect to be able to do this shortly in order to provide the clearest assessment possible. We welcome scrutiny and input from parliamentarians, the devolved legislatures and wider stakeholders as discussions on these issues move into a greater level of detail.

We also remain committed to working closely with the devolved administrations to make quick progress on these detailed questions on whether frameworks are needed and how they will work if they are. Constructive discussions between the UK Government and devolved administrations continue at official level to assess where common frameworks may or may not be required. Detailed policy workshops covering key policy areas are underway with sessions forthcoming in cross-cutting areas including the internal market, trade, state aid and governance. The Chancellor of the Duchy of Lancaster continues to have discussions with Scottish and Welsh Government ministers. Progress and next steps on common frameworks will be reviewed at the forthcoming meeting of JMC(EN) on 22 February.

The Noble Lord, Lord Krebs and the Noble Lady, Baroness Young of Old Scone asked about the timing of the Bill with regards to the establishment of new environmental protection measures. The Bill will convert the existing body of EU environmental law into UK law and allow appropriate corrections to be made, making sure that the same protections are in place in the UK and laws still function effectively after the UK leaves the EU. This will provide businesses, communities and stakeholders with maximum certainty as we leave the EU. The new statutory body will build upon existing protections.

Lastly, in response to the Noble Lord, Lord Wallace of Saltaire, on withdrawal from the Treaty on European Union, this Bill is about providing businesses and stakeholders with maximum
certainty as we leave the European Union by ensuring that, wherever practical, the same rules and laws apply after exit. We are pursuing a deep and special future partnership with the EU, the exact nature of which will be determined by the outcome of the negotiations. The shape of any such agreement will be in no way limited by the powers in the Bill. We will bring forward further legislation if it is required to give effect to this partnership, including any new regulatory relationship with the EU.

I am grateful to Noble Lords for their contributions during second reading and look forward to further constructive debate during Committee stage of the Bill.

Kind regards,

[Lord Callanan's signature]

LORD CALLANAN
MINISTER OF STATE FOR EXITING THE EUROPEAN UNION