HOUSE OF LORDS DEBATE ON THE QUEEN'S SPEECH ON FOREIGN AND EUROPEAN AFFAIRS, INTERNATIONAL DEVELOPMENT AND DEFENCE, MONDAY 23 MAY 2016

Amendment to the Motion Moved by

Lord Owen At the end of the Address to insert, "but regret that the Gracious Speech did not include a bill to protect the National Health Service from the Transatlantic Trade and Investment Partnership".

Lord Owen (Ind SD) My Lords, I congratulate the noble Baroness, Lady Jowell, on an extremely moving maiden speech. I shall listen to her future contributions with great respect. A Transatlantic Trade and Investment Partnership Bill - TTIP, as it is commonly called - is vital for this country as the Government have only to sign this treaty and we lose all chance of amendment. The problem with the treaty is not that it is a trade treaty - I have supported every trade treaty in my political life - but it binds into a trade agreement a regulatory activity which could have very profound implications for many of us. It is this aspect to which I particularly wish to draw attention. First, I pay tribute to the UNITE union, which put the money forward to ask Michael Bowsher QC to make a fully detailed analysis of the treaty. Without this, we would still not have the clarity that is needed. I will quote from what he has said. He is the ex-chairman of the EU Law Committee of the Bar Council and I am told - I do not know whether it is true - that he wishes to remain. So, this is not an issue between remainers and leavers, it is a pretty important issue about how we use treaties to avoid parliamentary scrutiny in both Houses. It does not, therefore, surprise me that a similar Motion is being moved in the other place. The conclusions of the Bowsher report are as follows: "For the reasons set out in this advice, our conclusion is that TTIP poses a real and serious risk to future UKG decision-making in respect of the NHS", in England. We must remember that it is rather different these days in Scotland, Wales and Northern Ireland. He has seen the most recent statements of Commissioner Malmström and remains of the opinion that: "The content of the draft texts are such that they do not provide a bar to suit against UKG for substantial compensation - either domestically or within the arbitral Tribunal", itself a very new procedure, "for regulatory changes to the NHS. We do not consider that the new 'right to regulate' changes this position". The second conclusion is that: "The circumstances in which a viable claim for compensation will arise, and the extent and level of that compensation, is inherently uncertain under a multi-lateral

treaty agreement such as TTIP. This is evidenced by the case-law in the Tribunal, as referred to below. Furthermore, remedies under TTIP may exceed those available under domestic contract law, human rights law and European Union law". Thirdly: "It is the uncertainty referred to in (ii) above which we consider will have a direct 'chilling' effect on future action by UKG with respect to the NHS. We consider that the solution to the problems which TTIP poses to the NHS - and which is likely to provide the greatest protection - is for the NHS to be excluded from the agreement, by way of a blanket exception contained within the main text of TTIP". That cannot be done by a Bill, but it could be done by an instruction to the Commissioner, who at times has sounded as if she wants some stern guidance from the member states. "In the event that this cannot be achieved, we consider that the NHS should be the subject of a carefully worded reservation contained within Annexes II and III of TTIP". Much reference has been made in dismissing the concerns that are now beginning to be expressed from all parties and all views. In particular, it reposes on evidence given to the House of Commons Select Committee on 16 October. "The issue here is whether the new right to regulate affords UKG greater protection were it to seek to make major structural changes, to the detriment of foreign investors, to the NHS … However, despite the new right and the statements from the Commission, as set out above, our view is that the new right is very unlikely to afford UKG any greater protection. This is essentially for three key reasons: the 'right to regulate' is not new. Its substance has, in effect, already been recognised in arbitral case-law. The new right in Article 2 therefore adds very little". Bowsher traces this whole question: "The Article 2 right itself is vague. Recognition of the state's right to regulate and to make changes in fields affecting the welfare of persons, including healthcare, is subject to the inherent uncertainty in the interpretation of that right by the proposed Tribunal". Bowsher goes through various international cases and concludes: "It follows, therefore, that the right to regulate provided for under Article 2 is unlikely to provide additional protection to UKG. Were the matter to proceed to a dispute in the future Tribunal the real issue would remain: is the effect of UKG's measures such that the investor should be compensated? The right to regulate does not provide a bar to compensation". He asks whether an incoming Government would be able to make changes to the Health and Social Care Act 2012, which brought into force the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, or amend the regulations themselves. He concludes that it would not be possible, saying that, "we are of the view that the new right to regulate does not provide sufficient protection to UKG to ensure that no future government or Parliament will have its ability to increase the public sector provision of services limited". A lot of what we are going to debate, and the questions of whether or not the EU should be our partner and whether

or not we should leave, relate to the way in which over successive years but particularly the past 10 years the EU has crept into the nooks and crannies of all aspects of our lives, including now the NHS. I am not going to make the arguments that are different between the political parties about what we should do with the NHS, but I will argue to my dying day the right of a new Parliament to change the legislation of a previous Parliament under a previous Government. Forfeit that right on an issue as important to us as the National Health Service and the tolerances of society start to break down. This is the great advantage of our system of government. I will say no more about this and will now make a more partisan but short speech about what I think is -

Lord Kerr of Kinlochard (CB) My Lords -

Lord Owen No, I am not going to give way to the noble Lord. I have taken seven minutes and I have two more. I believe that the choice this country faces now has come about because of a grotesquely mistaken decision that you can introduce a common currency without a common country. It was opposed by the Bundesbank; it was opposed by the Conservative Government under John Major. We got an opt-out but once you get 19 or 20 countries in the eurozone in an EU of 28, it has effectively become an EU-eurozone grouping, and we should stop this belief that we are protected. We will be affected, as the former Governor of the Bank of England said, if the euro crisis continues and there is a euro collapse. The Prime Minister has accepted this. He gave away in his negotiation our treaty amendment rights to protect ourselves over euro changes. He said that we would not use those in order to get euro reform. It is understandable why he said that because it is of very great interest to this country that we get euro reform and an end to this stagnant euro crisis of the past six years. It is important also to recognise that behind the wish for a single currency is the wish for a single country. It is quite a noble objective. It has been pursued for many decades. It is summed up by federalism or the "United States of Europe". But in the development of the European Union - and I have watched it very closely since 1962 - there will come a point that is not possible to come back from. You will be faced with a decision that you have to join and people will argue why that is. It may be 10 or 20 years down the track. The answer to this is: this is a once in a generation, once in a lifetime choice, just as it was in Scotland. You cannot have referendums repeatedly and we have to make a choice. Can we really say to ourselves as we vote on 23 June that we are protecting this country from being sucked into a United States of Europe? I believe we cannot say that and for that reason, as well as the changes in Europe that came after the treaty of Maastricht, it is the right moment to say: go and have whatever you can get agreement on - a single state with a single currency in

Europe - and good luck to you. But we in this country should not kid ourselves. This is decision time. Failing to take it will find future generations ending up in whatever looks like a European Union. I beg to move.

10.30 pm

Lord Owen My Lords, both Front Benches have accepted the amendment. We are at the start of a debate. Another place has exactly the same amendment down for discussion in a few days. I think it would be churlish to push the issue tonight, but I hope we will start to build a cross-party consensus that the treaty needs substantial changes through the negotiation process.

Lord Hunt of Kings Heath My Lords, I ask the noble Lord to clarify. I assume that he will move the amendment formally.

Lord Owen I was not intending to, but if the noble Lord thinks it is important, I am perfectly prepared to.

Lord Hunt of Kings Heath My Lords, the Government have said that they are prepared to accept his amendment; I respectfully submit that the noble Lord should move it.

Lord Owen I have moved the amendment, and I hope that it does not delay the procedures too long.

Amendment to the Motion agreed.