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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Tuesday 29 January 2019

2.30 pm

Prayers—read by the Lord Bishop of Chelmsford.

Brexit: Security

Question

2.37 pm

Asked by ***Baroness Quin***

To ask Her Majesty's Government what discussions ministers from the Home Office and the Ministry for Justice have had with the heads of police forces about security issues relating to Brexit.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, Ministers are in continued dialogue with a range of operational partners on policing and security co-operation. The Government are preparing for all eventualities, and this includes continuing to work closely with our operational partners on EU exit planning.

Baroness Quin (Lab): My Lords, while the economic consequences of a no-deal Brexit are dominating the headlines, is it not the case that the consequences of no deal on vital security co-operation with the European Union are equally alarming? Did the Minister see the item in the *Belfast Telegraph* yesterday about the retiring chief constable there who felt that he was in the dark over Brexit? Surely, he and other police chiefs around the UK need to be fully involved in preparing the vital future security relationship with the European Union.

Baroness Williams of Trafford: I totally agree with the noble Baroness and, to that end, we had a useful debate on that subject last week. For her information, at his Home Affairs Select Committee appearance, Deputy Assistant Commissioner Richard Martin, who is the Brexit lead for the National Police Chiefs' Council, confirmed regarding policing:

"If we crash out on 29 March, we will have the team up. We will have everything written. We will have the whole system and the network developed, and we will be there, sitting on the shoulders of forces across the country from a policing point of view to help them through what that looks like. We will be fully prepared".

Lord Hannay of Chiswick (CB): My Lords, will the Minister be so kind as to say what the extradition arrangements will be for each of the 27 member states on 30 March in the event of no deal? If she does not have those details at her fingertips, could she write to me and ensure that the letter gets here before 30 March?

Baroness Williams of Trafford: I will try to make sure it gets to the noble Lord by 29 March. I shall not go through every one of the 27 states, but in the event of no deal we would rely on the Council of Europe European Convention on Extradition of 1957. Just for noble Lords' information, it is already used for other non-EU countries—for example, Norway.

Lord Paddick (LD): My Lords, the Commissioner of Police for the Metropolis, Cressida Dick, has said that the way in which we currently quickly extradite and arrest people will have to be replaced, but it will be more costly and slower and will potentially put the public at risk. Does the Minister agree? Will the Government admit that the UK will be less secure outside the European Union, deal or no deal?

Baroness Williams of Trafford: I do not necessarily agree with the second statement, but one thing I can say to the noble Lord is that the way to avoid no deal is for the House of Commons, which is currently deliberating on it, to agree to a deal.

Lord Kennedy of Southwark (Lab Co-op): Can the Minister tell the House of any Brexit dividend on leaving the EU in relation to security matters?

Baroness Williams of Trafford: The noble Lord makes a very constructive point—

Lord Foulkes of Cumnock (Lab Co-op): It is a good question.

Baroness Williams of Trafford: Yes, it is a good question, and it is going to get an answer, if I can get a word in edgeways.

We have to work very hard to make sure that there are no gaps in capability and that, if we leave the European Union without a deal, some of the alternative mechanisms and instruments are in place.

Lord Elystan-Morgan (CB): Does the Minister agree that there has been great success in co-operation between the United Kingdom and European forces? Can she assure the House that the same systems, under another name, will still prevail and be as efficient as previously?

Baroness Williams of Trafford: Under a deal situation, the political declaration has provisions for Eurojust, Europol, Prüm and PNR. Leaving without a deal would necessitate us relying on other mechanisms to fulfil those obligations.

Lord Harris of Haringey (Lab): My Lords, we will be relying on a 63 year-old convention from the Council of Europe. Will the Minister tell us how long, on average, extradition requests take with those countries where we currently rely on it compared with the European arrest warrant that we have with the 27 EU nations?

Baroness Williams of Trafford: It is certainly the case that the European arrest warrant is a very smooth process. I cannot give the noble Lord an estimate of the exact time relying on the Council of Europe convention because it has not happened yet. I can give estimates of what happened when we relied on the convention, but I cannot give an estimate on what has not happened yet. There is no doubt—I think this goes to the nub of the noble Lord's point—that the European arrest warrant is a very smooth process.

Lord Cormack (Con): My Lords—

Lord Tebbit (Con): My Lords—

Lord Cormack: I think it is my turn this time.

Lord Taylor of Holbeach (Con): Order. The House will hear from my noble friend Lord Cormack.

Lord Cormack: Can my noble friend assure the House that, although it would be very much a second best, bilateral negotiations are already taking place with all the countries of the European Union, particularly the larger countries—France, Germany, Italy and Spain—to ensure that we have bilateral agreements if we have the very unhappy result of no deal.

Baroness Williams of Trafford: My noble friend is absolutely right. With particular reference to Europol, this is pertinent, as we would have to have a series of bilateral co-operation mechanisms. In addition, we would be moving our Europol liaison bureau to The Hague.

Baroness Ludford (LD): My Lords, the case in Georgia is likely to be an example of how long extradition takes when a country is not in the European arrest warrant. On access to databases such as the SIS and Europol, the Government are going to have to seek a data advocacy decision. Is not their unreliability on upholding European human rights standards going to prove an obstacle to getting that decision?

Baroness Williams of Trafford: My Lords, it is important to point out that Ireland is not part of SIS II. Of course, we used alternative channels such as Interpol up to 2015, so it is clear that alternative systems do work. Our nearest neighbour, Ireland, is not actually part of SIS II.

Social Metrics Commission

Question

2.45 pm

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government what assessment they have made of the report *A new measure of poverty for the UK*, published by the Social Metrics Commission in September 2018.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): The Government welcome the work that the Social Metrics Commission has done. Measuring poverty is complex, and this report offers further insight into the nature of that complexity. The Social Metrics Commission report acknowledges that further work needs to be done, particularly around data availability and quality. We want to carefully consider the detail that underpins the methodology that the Social Metrics Commission has employed when this has been made available to us.

Baroness Lister of Burtersett (Lab): My Lords, I congratulate the commission, so ably led by the noble Baroness, Lady Stroud, on achieving such wide support for its innovative relative poverty measure. David Cameron pledged that the Conservative Party would recognise, measure and act on relative poverty, yet now Ministers repeatedly cite only the so-called absolute poverty statistics when challenged. What has changed to negate that pledge, other than the worrying increase in relative poverty since 2011-12, especially among children, and the Government's regressive social security and other austerity policies that have taken their toll?

Baroness Buscombe: My Lords, the Government accept that the current suite of measures is not without limitations. However, the relative poverty line, for example, moves across with average income, which is useful when looking at whether groups are or are not keeping up with the middle of the income distribution over time, but it does not show whether the average income of those on the lowest incomes is improving in real terms. Therefore, if everyone's income were to double tomorrow, the number of people in relative poverty would be unchanged. The absolute poverty line, on the other hand, moves with inflation, providing a better measure of how the income of those on low incomes compares with the cost of living.

Baroness Stroud (Con): My Lords, do the Government believe that the inclusion of debt and assets and the extra costs of disability and childcare are an improvement to the measure and give us a better understanding of the nature of poverty?

Baroness Buscombe: My Lords, this is a very important point. I thank my noble friend for introducing a debate on this very subject last week. It is right that we take note of the unavoidable extra costs of disability and childcare. However, so far as we understand it, the Social Metrics Commission does not include, for example, the unavoidable cost for the elderly of social care. In regard to disability, it is important to note that we spend more than £50 billion a year on benefits to support disabled people and those with health conditions. It is encouraging that 973,000 more disabled people have entered into work in the last five years, and we now have much more generous childcare provision.

Lord McKenzie of Luton (Lab): My Lords, we share my noble friend's enthusiasm for the approach adopted by the commission, particularly the focus on relative poverty. This is a measure that takes account of both income and inescapable costs to which the Minister has just referred, such as childcare, housing and the impact of disability. Under the commission's new measure, there are 14.2 million people in poverty, nearly half of whom are living in families with a disabled person. Do the Government think that this is acceptable? Measuring is all very well, but what are the Government going to do about it?

Baroness Buscombe: To answer the last point first, the current measure shows that in 2016-17 23% of people in households where someone was disabled were in poverty, compared with 24% in 2010-11, so that shows that poverty levels among disabled people are not rising. Compared with 2010, there are now 1 million fewer people—300,000 fewer children, 500,000 fewer working-age adults and 200,000 fewer pensioners—in absolute poverty.

Baroness Janke (LD): My Lords, given the variations in poverty rates across the regions—as much as 10%, according to the report—what plans do the Government have to address the specific causes, issues and needs of the regions and to improve the conditions of those in poverty across the country?

Baroness Buscombe: My Lords, it is important to say that we are committed to action that will make a meaningful difference to the lives of disadvantaged children and families, and that goes beyond a focus on the safety net of the welfare system to tackle the root causes of poverty and disadvantage. I am taking a particular interest in debt, working with my honourable friend the Minister for Pensions and Financial Inclusion. We are also very much looking at housing, working across government with the Ministry of Housing, Communities and Local Government. These issues matter very much when looking at the root causes, as does low pay, and that applies not just to the private sector; it is important that we also look at the third sector and other institutions that might not be paying sufficient wages to those whom they employ.

Lord Howarth of Newport (Lab): Does the Minister accept that the availability of a new and more informative measure of poverty must be the springboard to new action to alleviate poverty? To start with, will she insist with her colleagues in the MHCLG that their proposal to remove the deprivation factor from the foundation formula for the allocation of grants to local authorities would further impoverish urban communities already impoverished by this Government's disproportionate reductions in grant, further widen inequality and, indeed, put further pressure on the social security budget?

Baroness Buscombe: My Lords, as well as doing the work that I have just referred to, over the coming months we look forward to the release of further information from the Social Metrics Commission and to working with the commission. In particular, the department is keen to be involved in the stakeholder discussions on some of the critical and more complex issues which the noble Lord recognises and which the commission is taking account of in its measures.

Baroness Couttie (Con): My Lords, I would be very grateful if the Minister could tell us what action the Government are taking to help working households which are struggling with the cost of living increases and to stop them falling into poverty.

Baroness Buscombe: My Lords, we are supporting those on low incomes through the national living wage, which was increased from £7.50 to £7.83 in April 2018, and this April it will increase again to £8.21. The party opposite may make noises but it did not introduce the national living wage.

Noble Lords: Oh!

Baroness Buscombe: Noble Lords might laugh but we introduced the national living wage, never mind the minimum wage. We have also raised the personal allowance from £11,500 to £11,850, which will make a basic rate taxpayer £1,075 better off in 2018-19 than in 2010-11. We have doubled the amount of free childcare available to working parents of three and four year-olds to 30 hours a week, saving them in total around £5,000 per child per year.

Drones: Consultation

Question

2.53 pm

Asked by ***Lord Balfe***

To ask Her Majesty's Government what consultations they are conducting on the operation of drones in United Kingdom airspace; and whether they will include the British Airline Pilots Association and the Guild of Air Traffic Controllers as members of draft Airspace Modernisation Strategy committees.

Lord Balfe (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and draw attention to my interests as listed in the register.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the Government have a wide range of engagement with industry on the operation of drones in UK airspace, and the government response to the latest formal consultation was published on 7 January. The Department for Transport will continue to work with the British Airline Pilots Association and the Guild of Air Traffic Control Officers, airports, drone manufacturers and other key stakeholders on all issues relating to the operation of drones in UK airspace, including airspace modernisation.

Lord Balfe: I thank the Minister for her reply. I refer, in particular, to the airspace modernisation strategy committee and point out that a very good reason for including BALPA and GATCO on it is that they have first-hand practical experience of the complex operations of both flying through airspace and regulating it. They will have a lot to offer when this new strategy is developed.

Baroness Sugg: I thank my noble friend for the work he does in his role as president of BALPA and his highlighting of aviation issues both inside and outside the Chamber. It has not been possible to offer every stakeholder a seat on the airspace strategy board, but the DfT and CAA are working with GATCO and BALPA to ensure they have the appropriate representation in the governance structure. Given their expertise and, as my noble friend points out, their practical experience, we really value BALPA and GATCO's ongoing input and we will continue to work with them to consider what sub-committees they should sit on as part of the new airspace modernisation programme.

Baroness Randerson (LD): My Lords, Gatwick and Heathrow are now purchasing equipment to combat drones, but it is very expensive. Does the Minister believe that all airports have to equip themselves with this expensive equipment? This could be beyond the financial capacity of some small airports, but a small airport being interrupted by a drone could be just as

[Baroness Randerson]
dangerous. Precisely how are the Government working with airports across Britain to ensure a rapid response to another drone attack?

Baroness Sugg: My Lords, the noble Baroness makes a very important point. Of course, we need to ensure that all our airports are protected, but there is a degree of proportionality to that. I met with airports recently and will continue to work with them on ensuring that they have the best capability possible. Also, the Centre for the Protection of National Infrastructure is working on standards for counter-drone technology and offers advice to organisations, including airports, on the availability of current technology.

Lord Kirkhope of Harrogate (Con): My Lords, as my noble friend will know, I am chairing an all-party parliamentary inquiry into lower airspace in the United Kingdom. Apart from the guild of air pilots and other interested organisations, is she consulting or likely to consult with the responsible advocates of drone flying—those who want to abide by regulations and controls? To what extent is she in touch with those people as well as other stakeholders?

Baroness Sugg: My Lords, of course it is very important that we take the needs of general aviation users into consideration, as well as drone flyers. As my noble friend points out, the vast majority of drone users behave safely and responsibly. We will continue to work with them as airspace modernisation and drones develop.

Lord Berkeley (Lab): My Lords, the Minister used the word "proportionality" today, and in a previous answer. Could she explain the principle of proportionality between a drone closing Gatwick for two days and people being allowed to do what they like with them elsewhere? It is a bit of a challenge, is it not?

Baroness Sugg: The noble Lord is quite right; it is a challenge. We have brought in laws governing the use of drones within airport exclusion zones and across the country. It is against the law to fly your drone above 400 feet, but the noble Lord is right to point out that this is a complex issue.

Lord Palmer (CB): My Lords, when are these committees hoping to report? Will they do so to her department or to Parliament as a whole?

Baroness Sugg: The airspace modernisation programme is under way and the process will take a number of years. We have not modernised our airspace for over 50 years, and doing so will bring a lot of benefits to the users of our airspace and the communities living around airports. We will ensure that the House is kept updated as plans develop.

Lord Tunnicliffe (Lab): My Lords, given the disruption at Gatwick and Heathrow, can we be clear about who is authorised to destroy a drone? Will those authorisations be extended in forthcoming legislation, and who is likely to be authorised under future legislation?

Baroness Sugg: My Lords, the police have the power in certain circumstances to access and use equipment to take drones out of the sky. That, of course, will be subject to police weighing up the risk to the public and of wider collateral damage against the scale of the offence being committed. The Home Office is leading a cross-Whitehall effort to improve the police's ability to tackle drones quickly and effectively.

Lord Naseby (Con): Can my noble friend confirm whether all commercial airports now have a 5-kilometre limit for flying drones? If that limit is not in force, why can it not be brought forward in emergency legislation? Otherwise, thousands of passengers will be at real risk.

Baroness Sugg: My Lords, we announced earlier this month that we will extend the airport restriction zone to the air traffic zone, and 5 kilometres each side of the runway. That is not in force at the moment but we are working on statutory instruments to amend the air navigation order, and that will be completed very shortly.

Health: Vaccines

Question

3 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government, further to the report by the Royal Society for Public Health Moving the Needle: Promoting vaccination uptake across the life course, published on 24 January, what steps they intend to take to counter misinformation about vaccines propagated in social media.

The Earl of Courtown (Con): My Lords, the United Kingdom has a comprehensive vaccination programme that achieves high uptake nationally. Although there is misinformation about vaccinations circulating on social media, the public have a high level of confidence in the immunisation programme, health professionals and the NHS, and prefer to obtain information from those sources. Public Health England works closely with NHS England to ensure that health professionals and the public have up-to-date, accurate information on the benefits of immunisation.

Lord Hunt of Kings Heath (Lab): My Lords, I welcome the noble Earl to the health brief. There is a little bit of complacency there. He is right that, overall, vaccinations for children are at a high rate but he will know that, in relation to MMR, this is not reaching the levels we would like. Throughout Europe, there have been record outbreaks of measles. This report, which came out a couple of days ago, showed that two out of five parents get highly misleading information on social media; obviously, this has some dampening effect on vaccination uptake. My understanding is that companies such as Facebook and others will not take down wholly inaccurate information in the interests of some kind of spurious balance. Will the Government reconsider their response, show a bit of gumption and take on the social media companies on this?

The Earl of Courtown: The noble Lord, Lord Hunt, makes some very good points. It is outrageous that rumours circulating on social media or in any form on the internet dissuade people from taking up proper immunisation. The noble Lord is aware of the highly successful immunisation activities in this country and how effective they have been. As far as social media is concerned, the noble Lord will be aware of the internet safety strategy White Paper, which we will introduce this winter and which will have a statutory code of practice to ensure that social media firms take action on harmful content.

Viscount Ridley (Con): My Lords, is my noble friend aware that it is almost exactly 300 years since Lady Mary Wortley Montagu came back from the British embassy in Constantinople and spread the practice of inoculation throughout this country and the whole of western Europe by her example? Does he think we can celebrate this tercentenary to press home the point about the great value of vaccination, and indeed the problems that the noble Lord, Lord Hunt of Kings Heath, has mentioned, by putting her on the new £50 note?

The Earl of Courtown: My Lords, my noble friend Lord Ridley makes a good point. I must admit that I was not totally aware of Lady Mary's tercentenary but my noble friend is quite right that this country leads the world on this issue. For example, as I mentioned before, the work we have done on vaccination programmes, particularly since the introduction of the measles vaccine, has prevented an estimated 20 million cases and 4,500 deaths in the United Kingdom.

Baroness Jolly (LD): My Lords, reaching every child, eligible working-age adult and older person with vaccinations must be a priority for the Government and the NHS. Experts might not be trusted, but health professionals, as the Minister said, command a high level of respect when it comes to giving advice. What assessment have the Government made of the "making every contact count" approach among health professionals to ensure that vaccine advice is delivered across the health system?

The Earl of Courtown: My Lords, there are a number of areas where there is good contact between patients and healthcare professionals, particularly in early years with babies. A record is now kept of immunisation targets. When they have to be given, patients are given reminders by their doctors, and these are chased up. Later in life, students attending university are made aware through Universities UK and UCAS of what vaccinations are available and what they should have. The noble Baroness makes a very good point.

Baroness Hayman (CB): My Lords, does the Minister agree that pernicious and damaging misinformation about vaccinations not only threatens children's lives in Europe and America, where there are good health services, but is even more damaging to children in the developing world, where there are not those services to deal with the consequences of low levels of vaccination and where childhood immunisation has been perhaps the greatest weapon in reducing childhood mortality?

The Earl of Courtown: The noble Baroness, Lady Hayman, is quite right. We in this country are very lucky to have the NHS and, for example, the numerous leaflets that are trusted by so many people and available in surgeries across the country, which are not available to people in Africa. Any misinformation found on the internet can have very harmful effects. I could not agree more with the noble Baroness.

Baroness Thornton (Lab): My Lords, the issue here is the herd immunity provided by mass vaccination. As my noble friend rightly points out, the influence and effect of social media are probably not assisted by unhelpful and ill-informed tweets by, for example, the President of the United States. Has the department done research that addresses when a population is at risk? Parents who do not get their children vaccinated are actually freeloading on the immunity created by parents who are responsible and do get their children vaccinated. I would be grateful if the Minister could tell me whether the department has researched when immunity cover is compromised and put it in the Library.

The Earl of Courtown: I thank the noble Baroness. She makes a very important point about lowering immunisation where other individuals are not immunised themselves. I think the available figures say that 5% of parents refuse to let their children be immunised. This can have an effect. One can see blips in uprates in diseases. I will of course try to find out any further information and I will write to the noble Baroness and send a copy to the Library.

High Speed Rail (West Midlands-Crewe) Bill

Motion on Standing Orders

3.08 pm

Moved by ***Baroness Sugg***

That if a High Speed Rail (West Midlands-Crewe) Bill is brought from the House of Commons in the next Session of Parliament, the Standing Orders of the House applicable to the Bill, so far as complied with or dispensed with in this Session, shall be deemed to have been complied with or (as the case may be) dispensed with in the next Session.

Lord Berkeley (Lab): My Lords, I will briefly ask the noble Baroness a couple of questions on this Motion. It is good to have it before the House—it shows progress with HS2—but I am wondering why today. It is probably because we do not have much else to do in your Lordships' House. Could she give us any idea as to when the Bill will complete its passage through the House of Commons and when we might see it?

Before the Bill comes to your Lordships' House, will the Government publish a new business case and cost estimate for phase 2a—the subject of the Bill—taking into account the latest information about land purchase and design development? I am already hearing stories about quite difficult ground conditions on the route, including salt mines. There are lots of salt mines in

[LORD BERKELEY]
Cheshire. Let us hope that the costs estimate does not go shooting up. I ask this because on HS2 phase 1 we are still working on the 2013 business case, which is six years old—six years of the Infrastructure and Projects Authority's amber/red designation, which I think is a record.

This was raised in the House of Lords Economic Affairs Committee hearing last week, when Nusrat Ghani, the Minister, and officials gave evidence. When the committe quoted higher costs to the Minister—I think she had probably gone to vote by then—the officials said, "We don't recognise these figures". When the committee went back to them and said, "If you don't recognise the figures we're quoting, what figures do you recognise?" The answer was, basically, "None". I do not know whether this is the first of many Treasury blank cheques, or whether in fact the Minister will confirm, as she did in a Written Answer to me about six months ago, that before permanent work starts on phase 1, the Government will come up with a new cost estimate and a new business case.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, perhaps I may add a couple of question to those of my noble friend Lord Berkeley. I must admit that I am a wee bit worried now that he has told me about the salt mines in Cheshire—but I will have a go nevertheless.

This Motion refers to,

"the next Session of Parliament".

I am glad to see that the Government Chief Whip is here, because my first question is: when is the next Session of Parliament? When are we going to get it? Will the Queen ever come here again? Will we have a Queen's Speech—because we have a whole range of things to get though? With what is happening down at the other end of the building, this Session could go on and on. So, before we agree to this, it would be useful to know when the next Session of Parliament is due to begin.

My second question relates to the question of publishing the business case, which my noble friend raised. The original business case, which seems to be being forgotten—I know that my noble friend Lord Snape will not have forgotten it—envisaged that the high-speed rail would go all the way up to Glasgow and Edinburgh in Scotland. Therefore, the business case was based on competition: competing with the airlines that fly now between London and Glasgow and Edinburgh. If it is not going up to Glasgow and Edinburgh, that business case does not arise—so I would be grateful to know whether the business case does include the extension of high-speed rail to Glasgow and Edinburgh.

Those are my two questions. I hope they are not enough to get me sent to the salt mines of Cheshire.

Lord Snape (Lab): My Lords, before the Minister responds, and without wishing to send my noble friend to the salt mines or anywhere else, could she offer some reassurance to those of us who have long supported this particular scheme, as far as costings are concerned? My noble friend who asked the first question of the Minister is, like me, regarded as a supporter of HS2. I am tempted to say, "With friends like us, who needs enemies?" I think that the costings we have had so far are causing considerable concern—although the Economic Affairs Committee has never been well disposed to this particular scheme and has criticised it on financial grounds on previous occasions. Can the Minister offer some reassurance to those of us who support this scheme that the costings are sensible and that we will not have to keep defending it against people who appear to believe that if you think of a figure and double it, that would be the cost of HS2 in future.

Finally, would the Minister agree that it is essential, whether or not the scheme gets to Scotland, that pressure is taken off the west coast main line, and alternatives are offered in the way that, we all hope, HS2 will bring about?

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): I thank noble Lords for those questions. On phase 2a costs, in July 2017 we published the business case for phase 2a, which included the funding envelope of £3.48 billion at 2015 prices. We still believe that cost estimate to be correct and so do not intend to publish any further cost information at this stage, but we will publish a further incremental estimate of expenses with the *Additional Provision 2* shortly, which I hope will provide noble Lords with some reassurance.

On timing, the Bill is currently at Select Committee stage in another place. Once it completes all its stages there, it will come here. I am not able to give an exact date to the noble Lord, but we expect it to be the summer—of this year. I think it is fair to say that announcing the dates for the next Session is well beyond my purview.

3.15 pm

Lord Foulkes of Cumnock: That is a new way of putting it; it is usually "above my pay grade", so "beyond my purview" is new. Sitting two down from the Minister is the Government Chief Whip, who is paid a lot more than she is. I wonder whether the Chief Whip would care to intervene and tell us when the next Session of Parliament is due to start. If he cannot do so today, maybe he will do what he did when I raised the issue of Recess dates and announce them a week later.

Baroness Sugg: My Lords, I will restrict myself to answering questions on HS2, which is within my pay grade. On HS2's costs in general, of course all major projects face challenges and it would be unrealistic to expect HS2 to be straightforward. We are absolutely committed to delivering HS2, and HS2 Ltd has been set an ambitious target of starting phase 1 services in 2026. HS2 Ltd is currently working with contracted suppliers to keep phase 1 on track, which includes updating and agreeing an assessment of schedule confidence. We will make those schedule details public as part of the full business case for phase 1, which is due to be published later this year. The spending review in 2015 established the long-term funding envelope for delivering HS2 of £55.7 billion at 2015 prices, and we remain determined to deliver HS2 within that.

On timing, there was no particular reason for debating the Motion today. It is simply when it was scheduled as a formal procedure. The equivalent procedure has

already passed in another place and it follows the precedent for hybrid Bills in this House. I agree with the noble Lord, Lord Snape, on the necessity for HS2. We have seen a doubling of passenger numbers on our railways; we are at capacity and we urgently need a new railway to help deal with that demand. I beg to move.

Motion agreed.

Merchant Shipping (Recognised Organisations) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.17 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 12 November 2018 be approved. *Considered in Grand Committee on 23 January.*

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the next four Motions on the Order Paper were down to be moved en bloc but I am grateful to the noble Baroness, Lady Randerson, for her courtesy in advising me in advance that she wished to speak to one of them. I will therefore move the Motions separately. I beg to move.

Lord Berkeley (Lab): My Lords, I will not delay the House for long but I have to question the point of this SI. It seems to try to ensure that we have the same safety regulations for passenger ships and many other things as we had before Brexit, this being a post-Brexit SI. But I do not think that we have the same regulations at the moment, because I happened to go on a passenger ship in Brittany last summer which looked exactly like what I thought would be a nice idea for a ship to go to the Isles of Scilly. I had a long chat with the skipper and got hold of all his certificates and the regulations on the board. I asked him, "Can you operate across the English Channel and to Scilly, in all weathers and at all times of day?" He said, "Yes—when do you want me to start?"

I thought this idea would be interesting, so I sent that information to the Maritime and Coastguard Agency but the answer that I got back said, "We do not recognise French legislation". I thought that there was one common European system for ferries which could go across the English Channel, or anywhere else, to help interoperability so I was a bit distressed that this did not happen. Maybe the Minister will not be able to answer my point but I would be glad to have some response from her, perhaps in writing.

Baroness Whitaker (Lab): My Lords, I declare an interest as chair of the Newhaven coastal communities team, in which capacity I have spent some time going through port-related regulations. I have a general question about all four of these statutory instruments. They are to come into play if there is no deal. As that is the only course against which there is a parliamentary majority, is it really a good use of our parliamentary time to scrutinise these instruments?

Baroness Sugg: I thank noble Lords for those questions. This first piece of secondary legislation is about the recognised organisations, which play a vital role in ensuring that ships are built and maintained so that they operate in compliance with standards for safety and to prevent pollution. The MCA delegates about 85% of its work to recognised organisations. These regulations will simply make changes to adapt an EU system for approving, monitoring and assessing recognised organisations in the UK system. I am afraid I will have to take the Scilly Isles point back to the department and look into that, and will come back to the noble Lord on it.

This is a no-deal SI. During an implementation period, the SI would not be needed because the withdrawal agreement will provide that EU law should continue to have the same effect. I fundamentally believe that it is important that as a responsible Government we continue to prepare for no deal. The long programme of statutory instruments is all about ensuring that we have a functioning statute book should we leave with no deal on 29 March. As long as that remains a possibility, we will need to continue the scrutiny of these SIs.

Motion agreed.

Ship and Port Security (Amendment etc.) (EU Exit) Regulations 2018

Motion to Approve

3.21 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 21 November 2018 be approved. *Considered in Grand Committee on 23 January.*

Lord Berkeley (Lab): My Lords, I have a very quick question on this one, to do with air pollution and the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008. This basically moves the responsibility for ensuring minimum air pollution from ships from the European Economic Area to the United Kingdom. I do not want to go into any detail at all, except to say that I hope the Minister can confirm the statement that has been made many times before by Ministers in this House—that when we leave there will be no reduction in environmental standards. I am particularly interested in:

> "In Schedule 2 (engines excluded from regulation 21) … before 'the European Economic Area' insert 'the United Kingdom or'".

I hope the Minister can confirm that there will be no reduction in environmental standards from this change.

Baroness Whitaker (Lab): My Lords, I support my noble friend. Newhaven, like many others of our working ports, is also a residential town. People live very close to the port area, so environmental protection from the emissions from ships is extremely important.

Lord Foulkes of Cumnock (Lab Co-op): Can the Minister confirm if this is one of the statutory instruments required only in a no-deal scenario?

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): Again, I thank noble Lords for those questions. These regulations will make appropriate amendments to the existing ship and port security legislation, and will ensure that the current regime remains operable following the UK's withdrawal from the EU. I confirm that there will be no reduction in environmental standards, and that this SI is needed only in the event of no deal.

Motion agreed.

Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018

Motion to Approve

3.23 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 27 November 2018 be approved. *Considered in Grand Committee on 23 January.*

Baroness Whitaker (Lab): My Lords, exactly the same points apply about the protection of citizens.

Lord Foulkes of Cumnock (Lab Co-op): Can I also ask in relation to this one if this is required only in the event of no deal?

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, I confirm that this is another SI that is required only in a no-deal scenario. It makes changes to legislation on controlling sulphur dioxide emissions from ships, substances used to prevent the fouling of ships' hulls, and transport and works legislation in relation to environmental impact assessment. It corrects deficiencies that would mean that environmental legislation did not work as intended. It is designed to ensure that we continue to maintain our high environmental standards.

Motion agreed.

Ship Recycling (Facilities and Requirements for Hazardous Materials on Ships) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.25 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 13 December 2018 be approved. *Considered in Grand Committee on 23 January.*

Baroness Randerson (LD): My Lords, I seek an assurance from the Minister. I promised her after our discussion in the Moses Room that I would look at *Hansard* carefully to see what she had said in response to my questions. I regret that she did not address my concerns. Although the letter that I received this morning attempted to do so, it basically conflicts with the Explanatory Memorandum.

Again, this is a no-deal SI. I keep hoping that the House of Commons will rescue us from this dystopian nightmare, but it looks again today as if it might not do it, so I accept that we have to prepare for this and I do not seek to interrupt that process. Unlike the three SIs that we have just approved, this SI involves new policy. As your Lordships will be aware, ship recycling is a very dangerous process. If done without high levels of safeguard, it can be dangerous to both the environment and the individuals involved in it.

To tackle this, EU regulations have created a list of approved facilities for ship recycling, not all of which are in the EU—the Minister told us last week that some facilities are in Turkey and the USA. The approval process for those facilities involves inspection, which is complex and expensive, particularly for those outside the EU.

Like the other no-deal SIs, this one removes references to the EU and gives substitute powers to the Secretary of State. However, it goes further. Paragraph 7.3 of the Explanatory Memorandum makes it clear that the UK list would initially include all facilities on the EU list. However, it also,

"establishes a new procedure allowing ship recycling facilities worldwide to apply for inclusion onto the new UK approved list".

Given that there are some very dubious practices in ship recycling in some parts of the world and that it would be very costly for us as an individual country acting alone to inspect and constantly police standards in a yard on the other side of the world, I regard this as a worrying new policy.

I can see that the policy is in the buccaneering spirit of the Brexiteers—"We can do this more cheaply. There are easier ways of doing this. Cut some costs"—but it could mean a dangerous lapse in standards and controls. The Minister assured me this morning that it would not lead to a lapse in standards, so my purpose in speaking is to invite her to reassure us on the Floor of the House that the Government are not looking to expand their list in the way in which the Explanatory Memorandum states, and will take a precautionary approach so as to maintain the highest environmental standards.

3.30 pm

Lord Berkeley (Lab): My Lords, I very much support the noble Baroness's comments on this SI. It is designed to put some regulation around the breaking up of ships. As we all know—and as the noble Baroness said—it is a difficult and possibly polluting process. There was a time, a few years ago, when a shipyard in the UK was breaking up ships that had been towed across from the United States because they were not allowed to be broken up there. I have always thought that our environmental regulations were supposed to be better than theirs. They certainly were not then. Why they were not towed to India or Bangladesh, heaven only knows, because it is even worse there.

I share the noble Baroness's worry that there may be one common list at the moment, but it is very easy for UK commercial interests to put pressure on the Government here to enable UK shipbreakers' yards to compete with those on the continent by lowering standards. The paragraph in the Explanatory Memorandum that the noble Baroness quoted also says:

"To allow UK flagged ships the widest choice and to minimise administrative burdens on ship recycling facilities, our policy is to align the UK list with the European list as far as practicable".

This is the dangerous bit. When the Minister responds, I hope she will confirm that there will be no reduction in any environmental or other standards, compared with Europe's, if and when we leave.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, this is yet another of these statutory instruments. I share the exasperation of the noble Baroness, Lady Randerson. It is almost as if a collective madness has overtaken this Parliament. We are spending hours and hours on this, using up the time of brilliant officials and keeping excellent Ministers working. While we are discussing these statutory instruments, some of our colleagues in Grand Committee are discussing other statutory instruments relating to legal issues. All of these will be required only in the event of no deal—which, apparently, none of us wants and which we are trying to get off the agenda.

I read the contribution from the noble and learned Lord, Lord Mackay of Clashfern, to the debate yesterday, and how wise it was. If only we would do what the noble and learned Lord suggested and take some decisive action. For goodness' sake, have we become collectively enthralled and caught up in this interminable process?

We are told that even after today's votes this may not be the end of it. On 13 February—the day before St Valentine's Day, of all choices—we will have yet another opportunity. The Prime Minister is unbelievably adamant and stubborn. Despite the fact that leader after leader in Ireland and everywhere in Europe is saying, "No, this agreement that has been discussed and debated over the last two years, and which has been agreed, is legally binding and cannot be changed; it is a legal agreement", she wants to say, "Oh, no, no, no, I am going to try yet again".

Where are we? What use is this Parliament? What use is this House if we cannot do something to stop it? We should be doing something. We had a third debate yesterday. It was like Groundhog Day, going through the same arguments again and again. With no disrespect, I have heard the wonderful speech from the noble Lord, Lord Hannay, on half a dozen occasions now, with little bits added here and there. I do not pick him out for any particular reason. The same applies to almost everyone who has spoken in all three debates. It really is outrageous that we are put through this.

What else could the Minister and her excellent officials in the Department for Transport be doing? We heard earlier from my noble friend Lord Snape about the importance of HS2. These things all need to be pushed forward and considered. We are having problems on the railways, such as with Northern rail. The Secretary of State seems to have constant problems in relation to transport. If he had more time, instead of being preoccupied with Brexit, he might just be able to cope with some of them—maybe—and the officials might be able to deal with them. Why? This really is outrageous. Admittedly, this is not all to do with this particular statutory instrument, but I feel a lot better having said it.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, I am pleased that the noble Lord feels a lot better for having got that out of his system. I absolutely agree with him about the excellence of the civil servants in my department—and across Whitehall—who are working incredibly hard to ensure that these statutory instruments are correct and that they are in place so that we have a functioning statute book in the event of no deal. I share the noble Lord's desire to reach agreement on the withdrawal arrangements. I am sure that we will be watching the other place with close interest today and on Valentine's Day. I should probably leave it there.

This SI will ensure that the legal framework for ship recycling remains legally operable when the UK leaves the EU. It will make amendments to the EU ship recycling regulation and three Commission implementing decisions. I hope that I will be able to provide the noble Baroness and the noble Lord with assurance on our standards. All UK ship-recycling facilities with a valid permit are eligible to be included in a new UK list. That list will also include all the non-UK ship-recycling facilities on the European list when we exit the EU. We expect those two lists to remain closely aligned with each other. In effect, any changes to the European list after we leave the EU will almost certainly be mirrored on the UK list. As a consequence—

Lord Berkeley: Does the list include places such as Bangladesh, India and other places outside the EU or the UK? They are major centres for ship recycling and I am sure that many noble Lords will have seen the revolting conditions that people have to work in to cut up old ships on the beaches.

Baroness Sugg: It does include some non-EU countries. I am afraid I cannot find the list in my files, but I will write to the noble Lord to confirm which countries are on it. The EU has very high standards of recycling and we will continue to match them after we leave.

The Secretary of State reserves the right to change the list. The power to add new facilities to it is included so that it does not become static. If we did not include this power, it would not be possible without primary legislation to add ship-recycling facilities to the UK list and to mirror what the EU does on its list. Over time, that could reduce the choices that UK ships have, compared with their EU counterparts. Because we will be retaining the standards and criteria for approving ship-recycling facilities used under the current EU regulation, the UK and EU lists will continue to be compiled to the same high standards. The powers in this instrument cannot be used to lower the standards of ship recycling.

If the EU changes its criteria, we will of course consider revising ours along similar lines. We do not think that this will happen for a few years, until the ship recycling regulation—which is fairly new—beds down. The Commission is committed to reviewing the EU regulation 18 months before the Hong Kong convention comes into force. That could lead to amendments to the criteria for ship-recycling facilities on the European list to align it more closely with that convention. If this happens, we will liaise closely with the EU, as our two regimes are virtually identical. Again, any change to those criteria would need to be done through regulation.

[Baroness Sugg]

The EU regime is one of the strictest in the world. We are committed to maintaining those high standards, regardless of our membership of the European Union. I am happy to confirm that there are no—

Baroness Randerson: I appreciate the Minister's attempts to reassure us. I ask her to go back and look at paragraph 7.3 yet again to see whether the Explanatory Memorandum needs to be recast, because both I and the noble Lord, Lord Berkeley, have quoted things from it which give a different impression of government policy. I am relieved to hear what the Minister has to say. I accept it totally, but there is a gap between what she is saying to us here today and what the Explanatory Memorandum appears to suggest. That could lead to confusion in the future.

Baroness Sugg: I have read the Explanatory Memorandum a number of times. I do not think it is contradictory, but I acknowledge that perhaps further reassurance could go into it. I will certainly follow up in writing and place copies in the Libraries of both Houses to provide that reassurance.

No facilities on the UK list are in Bangladesh, India or Pakistan, but I will send the noble Lord the full list.

As I was saying, the EU regime is currently one of the strictest in the world. It has incredibly high standards, and we are committed to maintaining them regardless of our membership of the EU.

Motion agreed.

Financial Services (Implementation of Legislation) Bill [HL]

Report

3.41 pm

Clause 1: Power in respect of EU financial services legislation with pre-exit origins

Amendment 1

Moved by ***Lord Bates***

1: Clause 1, page 1, line 9, leave out from "appropriate" to end of line 11 and insert—

"(1A) In subsection (1)(b) "adjustments"—

(a) in relation to legislation mentioned in subsection (2)(a), (b), (c), (d) or (f), means provision to mitigate or remedy deficiencies in the legislation arising from the withdrawal of the United Kingdom from the EU, and

(b) in relation to legislation mentioned in subsection (2)(e) or (g), means changes to reflect, or facilitate the transition to, the United Kingdom's new position outside the EU, but does not include changes that result in provision whose effect is different in a major way from that of the legislation."

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I thank all noble Lords for their engagement in this Bill not just in Committee on 8 January, when we had an excellent session looking at the Bill to see how it could be strengthened, but also when we followed that up in various interactions with Peers in the gap after that. There was a meeting on 22 January in which we shared some of the ideas at that point, and that conversation has continued. I place on record our gratitude particularly to the noble Lords, Lord Davies and Lord Tunnicliffe, but also to the noble Lord, Lord Sharkey, the noble Baronesses, Lady Bowles and Lady Kramer, and to my noble friends Lord Hodgson and Lord Leigh for their interaction. I also thank the noble and learned Lord, Lord Judge, for his impromptu legal advice in Committee.

Amendment 1 has been grouped with an amendment in the name of the noble Lord, Lord Davies, and the convention is that I cannot pre-empt what he will say. I will listen to him very carefully, and will simply move my amendment at this stage and address the concerns and issues raised in the noble Lord's amendment at the end.

Amendment 1 is designed to perform two functions. The first change, as set out in the proposed new subsection (1A)(a), is in response to a recommendation by the Delegated Powers and Regulatory Reform Committee—I again place on record my thanks and appreciation to it for its scrutiny, published in the 42nd report of that committee, under the chairmanship of my noble friend Lord Blencathra. In its report, the committee noted that, for those files listed in the Schedule which are still in negotiation, the justification for the power to adjust is that it is not now possible to know what the final form of that legislation will be. However, the DPRRC noted that the same justification could not be used for files already agreed, and it recommended that the power to adjust be limited only to the files in the Schedule to the Bill. I can now say that the Government are able to implement the DPRRC's recommendation. These files have been settled while the UK has been an EU member and has been around the negotiating table at all stages with a full voice. We accept the principle that this is settled law that has received UK sign-off and that, as such, an ability to fix deficiencies is more appropriate than one to make policy adjustments.

The proposed new subsection (1A)(a) therefore ensures that, for the first category, the Treasury will have no ability to make policy adjustments when these files are domesticated. These files are: the prospectus regulation; articles 6 and 7 of the central securities depositories regulation; article 4(1) of the securities financing transactions regulation; and articles 37 and 38(2) of the markets in financial instruments regulation. Instead, the Treasury will only be able to fix deficiencies in the manner of the current onshoring process under the established terms set out in the EU withdrawal Act.

3.45 pm

Noble Lords will note that delegated acts under the prospectus regulation—which my noble friend Lord Leigh has taken a close interest in—are detailed in Clause 1(2)(e) of the Bill. They have not joined the prospectus regulation in the category of files which we note as being agreed but not yet in force. Under the prospectus regulation, the Commission is required to adopt delegated acts by 21 January 2019. However, it has not yet done so and as such, we have been unable to move this section. With the leave of noble Lords, should the Commission publish between now and Third Reading, the Government will look to remedy this issue at that stage.

The second purpose of this amendment is set out in proposed new subsection (1A)(b). This is in response to the considerable concern in Committee about the term "adjustments" in the Bill, which could provide the Government with the ability to make wholesale changes to these pieces of financial services legislation. While the Government are clear that the term "adjustments" is inherently limiting, we of course understand the desire for certainty and clarity. In order to address this—and I thank the noble Lords, Lord Sharkey and Lord Davies, from whose amendments in Committee we have taken inspiration—the proposed new subsection (1A)(b) makes the limited nature of the power clear. The Government will only be able to make adjustments that reflect or facilitate the transition to the United Kingdom's new position outside the EU, but that does not include changes that result in provisions whose effect is different in a major way from that of the legislation. This new wording clarifies the limitations on the power to make adjustments while, crucially, still allowing for some changes that may be needed as the UK will not have been at the negotiating table when these files were finalised nor, for that matter, will it have been advocating on behalf of the UK financial services industry during that process.

I know we will discuss the term "major" in more detail in the amendment from the noble Lord, Lord Davies. I will listen very carefully to the comments he makes and seek to offer some reassurances in my response. In short, the intent here is to make clear that, when domesticating the files in question, such adjustments would be possible only to better achieve a similar outcome to the original file but simply with a better fit for UK -specific circumstances. This limited flexibility is crucial. I hope noble Lords will forgive me for repeating a point I have made previously when debating this Bill: without the ability to make adjustments to these files, a deficiency-fixing power will be inadequate. We would be left in a position where the power in the Bill was, perhaps, unusable for the files in the Schedule. In a no-deal scenario, without any of the benefits of an implementation period, it is hard to imagine we would want to domesticate in full pieces of legislation that had been finalised without UK input or a voice for the UK financial services industry. Should we not be able to domesticate these under this Bill, it would leave us requiring primary legislation in each and every instance in order to adopt the latest international regulatory standards.

The issue of how we, as a legislature and as a Government, deal with the future volume of financial services legislation that is at present agreed at EU level is not one for this Bill. I reiterate that this Bill is not the Government's proposed long-term solution for all financial services legislation going forward. The Government will take forward its proposals for a sustainable, long-term model in due course. This Bill is instead a short-term, time-limited solution to some of the uncertainties that would result from a no-deal scenario. I hope that these limitations, which should be considered together with the much-strengthened reporting requirements which we will discuss later, will provide the assurances noble Lords were seeking. I again place on record my appreciation to all noble Lords who have contributed and enabled us to lay this amendment before the House. I beg to move.

Amendment 2 (to Amendment 1)

Moved by ***Lord Davies of Oldham***

2: Clause 1, in subsection (1A)(b), leave out "major" and insert "significant"

Lord Davies of Oldham (Lab): My Lords, the Minister is to be congratulated on the way in which he has handled this Bill. In Committee, we raised several significant issues and pressed him to consider our arguments carefully. He has certainly done that and has brought back to the House Amendment 1, a position with which we are in agreement.

We are mindful of the background that all these efforts are being conducted against. This very afternoon, the House of Commons is struggling to achieve a position, and the Prime Minister hopes to achieve a position in which this Bill will be utterly redundant because we will have left the European Community with an agreement. But it is obviously right that, in an area of such importance to our economy as the services industry, we have legislation in place that takes account of the extremely serious situation that would arise if we left the European Community without a deal.

The Bill would, however, play its part in fulfilling the regulatory machinery necessary for the services industry, but without doubt additional work would have to be done at that stage. Given that we have done a great deal to help create European law in this area, it would be remiss if we left the services industry without effective regulation and less equipped than it was while we were part of the European Union, if in fact we leave without a deal.

As he would expect, I join the Minister in paying tribute to my noble friend Lord Tunnicliffe, who has played a significant part in examining the Bill and producing insights into what could be done, upon which the Minister has been able to build quite successfully. I also pay tribute the noble Lord, Lord Sharkey. He has stayed involved with the Bill and has offered the best possible advice on a number of occasions. His persistence and insights on these issues have been invaluable, together with those of the noble Baronesses, Lady Kramer and Lady Bowles, both of whom have played a significant part in these discussions.

We are grateful to the Minister for the way he has handled this Bill. He appreciated the anxieties that we articulated as best we could both at Second Reading and in Committee. He has met the most crucial point of all: that the Government were initially seeking powers for the Treasury that could not be justified. Subsequently, the Delegated Powers and Regulatory Reform Committee came to share that position, as it made fairly clear in a detailed submission to the House. That obviously informed our contribution to the debate. However, the Minister has gone a considerable way to allaying the anxieties that we have expressed about the Bill and I am therefore very much in favour of his amendment.

I turn to Amendment 2, to which I am meant primarily to speak. I have only a short comment because there is not a great deal at issue. It again gives me the opportunity to appreciate the efforts of the Minister. We had a useful meeting with him that

[Lord Davies of Oldham]
ironed out all but the narrowest of differences. There is not much in the difference between "significant" and "major" but I am strengthened by some help from the other place. Apparently, in her speech to the House of Commons this afternoon, the Prime Minister said that she would return to Brussels to seek a significant change to the Brexit withdrawal agreement. She did not use the word "major" but "significant", a word that we are seeking to enjoin the Minister to appreciate. However, I will not press that rather minute point.

Lord Sharkey (LD): My Lords, we welcome all the government amendments to the Bill. We particularly welcome Amendment 1, which greatly improves the Bill's structure and clarity. As we pointed out in Committee, it was not helpful to try to deal with two different categories of legislation via one mechanism. Amendment 1 puts that right.

Proposed new subsection (lA)(a) deals with settled EU legislation now in force in the same way in which Section 8 of the European Union (Withdrawal) Act does and narrowly restricts the adjustments that can be made. Proposed new subsection (lA)(b) deals with legislation not yet in force in the EU but under current discussion—legislation that is in flight. Here the adjustments are less constrained. I note the Minister's comment that the legislation contained in subsection l(2)(e) dealing with the prospectus regulation may come into force before Third Reading and could therefore be moved at that stage into the proposed new subsection (lA)(a), leaving only the in-flight legislation in the schedule to be covered by proposed new subsection (lA)(b).

In their amendment, the Government have significantly tightened the meaning of the previously rather controversial word "adjustments", as it applies to the in-flight legislation in the schedule. Their amendment sets down what in this context adjustments may and may not do. When it comes to what adjustments may do, the new wording has it right. The changes are,

"to reflect, or facilitate the transition to, the United Kingdom's new position outside the EU".

I think this is close enough to the restrictions in Section 8 of the European Union (Withdrawal) Act. When it comes to what adjustments may not do, the new text states that they may,

"not include changes that result in a provision whose effect is different in a major way from that of the legislation".

I am pleased that this is a much tighter restriction than that contained in the original text but I have some concerns about the use of "major", which is why I have added my name to the amendment in the name of the noble Lord, Lord Davies, which proposes the word significant in place of major. In the ordinary use of those words, "significant" imposes more constraint than does "major". It seems to be entirely possible for some difference in effect to be significant without in itself being major. An *OED* definition of "significant" is:

"Sufficiently great or important to be worthy of attention; noteworthy",

and seems to support this view. Unfortunately the *OED* also defines "major" as "important, serious or significant".

The real issue is how the word "major" will be interpreted in practice by the Treasury, and probing that is the purpose of Amendment 2. What will it mean when applied in this context? In particular, what tests will the Treasury apply to the differences contemplated in proposed new Section (1A)(b) of the Government's amendment to determine whether they are major? I would be very grateful if the Minister could set out explicitly what those tests will be.

4 pm

Lord Hodgson of Astley Abbotts (Con): I shall speak briefly in support of the Government and the clause as drafted, primarily because of the points just made by the noble Lord, Lord Sharkey. When I went to the *Oxford English Dictionary* to check, I got the results he has just described, but it seems to me that the Government's choice of word is better than the one now being advanced by the noble Lords, Lord Sharkey and Lord Davies. I urge my noble friend to be of good courage and stick with it.

Baroness Bowles of Berkhamsted (LD): My Lords, I thank the Minister for a good set of amendments that respond across the piece to concerns that were raised in Committee. I shall probe a little further on what can and cannot be done for the purpose of clarification.

Clause 1(1) states that this is about converting,

"the provisions, or any of the provisions, of any specified EU financial services legislation".

So the option is still there not to convert it or to convert only parts of it. At an earlier stage, I suggested that that could be adapted. I noticed that when the Minister spoke, he used the word "files" as if the files were all transposed at once, but we must recognise that some things may not be transposed. I believe that is the intention. Here, I should give my usual reminder to the House of my interests as set out in the register, in particular as a director of the London Stock Exchange. In the first set of EU legislation—that which is completed but not yet active—you could still omit some or all of it and do an EU-type adaptation, but you could not adapt it if you chose to convert it. It has got to be relatively straightforward.

For the not yet completed, there is greater flexibility. I have a few little tests of my own to see whether this would be allowed. First, what if you wanted to keep a current provision instead of having a new one? That is quite simple: you probably just leave it out and do not convert it, which falls within what is allowed. If you want to reflect more closely an international standard—let us say that the EU has embellished it in some way—could you do that? I think you probably could because you are still going back to the originating international standard, but it would be interesting to hear what the Minister has to say about that. What if you want to reflect more closely UK market data because it has been calibrated on EU data, by then absent us? I expect most of that happens in technical standards, but it would be interesting to have the Minister's view on whether the Government could make such a change. I think it would be allowable.

What about aligning with alternative provisions made in other major international markets? That would be departing from alignment with the EU into alignment

with somewhere else. Let us say that you wanted to align tick sizes with Hong Kong or the US, rather than staying with the EU regime. Would that be allowed? I think that is quite a marginal issue. The Minister does not have to use that particular example, but it would be interesting to know where that would lie in the tests. If you want to avoid disrupting the functioning of UK markets—the sort of comment you often hear—you are probably left with the option of not converting that element.

My final test is, what happens about proportionality for SMEs and SME markets? I am not sure how that would work out: if the legislation has not included proportionality, is it reasonable and within scope to put some proportionality in? That measure is probably relatively popular from a UK perspective, so it would be nice to know whether that could be covered.

Lord Leigh of Hurley (Con): My Lords, I too refer to my declaration of interest in the Members' register, which has not changed since I last spoke. Despite my interest, I confess that I had some difficulty understanding all of subsection (1A)(b) of the proposed new section. The noble Lord, Lord Sharkey, read out the easy bit. The difficult bit is the words,

"but does not include changes that result in provision whose effect is different in a major way from that of the legislation".

I think I understand the intent, but I am not sure that the words are exactly as another draftsman might have chosen to put it.

I am today looking for an assurance from the Minister that the adjustments he proposes will allow the Government the flexibility needed: in particular, if there is a restriction on changes that might be significant or major, that these will not bite where change really is needed if we leave the EU with no deal. As the noble Lord, Lord Davies of Oldham, has said, this legislation will come into play only if we have left without a deal—which nobody in this House seeks as a primary option—and in those unfortunate circumstances, we might need to be as flexible as possible.

By way of example, in respect of article 2(e) of the prospectus regulation, the alleviations granted by the EU were a compromise designed to suit all member states' markets, all of which are very much smaller than the UK's. The Government should adjust these to make them proportionate to the scale of the relevant UK markets. For example, the threshold below which public offers—an area I am particularly interested in—are exempt from the requirement to publish a prospectus, which is a huge cost, has been set at €8 million. By the way, initially it was agreed to be €2 million, then it went up to €5 million without any issues and then it became €8 million. For the UK market alone, a more appropriate level might be, say, £20 million.

The noble Baroness, Lady Bowles, referred to the definition of SME growth markets, which is a very important term. The definition was of course a compromise designed to suit all member states' markets, and to avoid in some instances classifying members' entire national stock market as an SME growth market, which would be a bit unfortunate. Perhaps the Government want to adjust this to make it proportionate to the scale of the relevant UK markets, possibly increasing the maximum market capitalisation from €200 million to £500 million.

Outside of article 2(e), I have mentioned at earlier stages of the Bill some issues relating to CSDR settlement discipline which are perhaps inappropriate and, in some cases, highly damaging to the unique, quote-driven liquidity provision of the UK's SME market. I hope that I have satisfied the noble Baroness, Lady Kramer, that short selling in those markets is not damaging or dangerous to the UK economy. This would not apply to EU-based dealers, thus putting UK market makers at a competitive disadvantage because it would apply to them.

I hope the Minister can assure me that the Government will retain the power to have the flexibility needed to allow the UK to set its own rules for our financial services market, which is very different from the EU's. I appreciate that this provision applies only in respect of in-flight rules but it sets the tone, and hereon in we will want to create our own bespoke laws, which may well diverge from the EU's but will be more appropriate for our market. Rather than just hanging around hoping for some small alleviations in the circumstances of a no-deal Brexit, we really will need to act in a way that suits us in these areas.

Baroness Kramer (LD): My Lords, I am very grateful not to be the Minister, who has to respond to my noble friend Lady Bowles and the noble Lord, Lord Leigh. I can see that it is a challenge and I hope that if I talk for a few minutes, it will give the Box a little more time to get notes to him.

I think that the House knows that my underlying question has always been how we draw the line so that we know when it is appropriate for change to be carried through by an SI and when it should come to this House as primary legislation, particularly in this field. What happened in the weeks and months immediately following a no-deal exit would shape whether we were in a position to maintain access to the EU market for our most significant industry—the services sector—and indeed for the economy as a whole. I think that in the changes he has made the Minister has got us to a better place and to a much clearer understanding of the Government's intent. If he wanted to split the difference, he could say "major or significant" and deal with the problems all in one go.

I want to say how much I appreciate the listening that the Minister did and how much we appreciate the listening, thought and effort that his officials put into responding to the queries and issues that we raised. It gives me the feeling that we in this House, including the Government, are all essentially on the same page in understanding the significance of the period that would follow no deal and how carefully and sensibly we would have to approach regulation in the financial services area because of the potential knock-on impacts and unintended consequences, which could be extraordinarily severe.

With that sense that the Minister understands when an issue should be brought to the House because it is a fundamental change of policy and critical to an underlying key sector of the economy, and when it is an issue that

[Baroness Kramer]
can rightly be dealt with under a statutory instrument, I can say that I am very happy with the changes that have been offered and, again, I thank the Minister for them.

Lord Bates: I thank noble Lords for their contributions. I particularly thank the noble Lord, Lord Davies, for moving his amendment and giving us the opportunity to comment. I very much concur with the noble Baroness, Lady Kramer, about how the officials have engaged in this process. I do not know whether it is appropriate to refer to them on the Floor of the House but I will do so anyway. I think that they too found it a very useful interaction. This Bill is beginning its journey through the legislative process in your Lordships' House, and the ability to shape and craft it so that it will have been improved by the time it leaves this House will make the job of the other place, which has quite a lot on its plate at the moment, a little easier.

I also agree with the tribute paid by the noble Lord, Lord Davies, for the work being done by officials and, indeed, by UK Members of the European Parliament and the industry on shaping EU financial regulation over the years to make it effective and proportionate.

I believe that the intent behind the noble Lord's amendment and behind the noble Lord, Lord Sharkey, putting his name to it was to give the Government an opportunity to put further flesh on the bones of what is meant by "major" and "significant". They will become the new version of "corresponding" and "similar", which we discussed in Committee. I do not want to hark back to that debate; instead, I shall focus on these key words. I will put some remarks on the record and then turn to the point made by my noble friend Lord Leigh.

It is clearly important that we find a way of limiting this power appropriately, and I am very grateful for the proposal in Amendment 2, moved by the noble Lord, Lord Davies. However, the noble Lord's amendment could have the unfortunate and unintentional effect of rendering the power and therefore much of the Bill almost unworkable. The reason the Government settled on the term "major" rather than "significant" in drafting this amendment was the greater clarity provided by the term "major".

4.15 pm

Turning to the dictionary definition of "significant", I should begin by saying that all of my remarks relate to this specific use of the term and are purely directed to the Financial Services (Implementation of Legislation) Bill—the noble Lord, Lord Davies, sent a spinning ball down the wicket about how this term is being used in another place at this very moment. Turning to the dictionary definition, "significant" can be interpreted in a range of ways. At one end of the spectrum it can be interpreted as having a meaning identical to the term "major". At the other end it can be interpreted as meaning simply any change of any consequence. If it is construed as having the same meaning as "major", this amendment would essentially have no difference in effect. However, if it is construed as meaning any change of any consequence, the Bill could become almost unworkable, as any change that the UK sought to make—however minor—would have a consequence of some kind, or else we would not be making it.

Where adjustments are needed to benefit UK companies, protect the UK's financial stability or meet international commitments—concerns raised by my noble friend Lord Leigh—they will necessarily have an effect of some consequence, even if there is no major departure from the effect of the original legislation. As such, I fear that the amendment as proposed by the noble Lord would either have no effect on the function of the power or the unfortunate effect of rendering the power in the Bill almost unusable, depending on the manner in which the word is interpreted. The word "significant" would result in ambiguity and introduce a risk that the power could be given different interpretations. The Government's proposed drafting would provide clarity since the term "major" has a much clearer meaning and cannot be given the same range of interpretations. It would enable necessary adjustments to be made while ensuring that they do not result in a major change from the effect of the original legislation.

As I noted earlier, the intent here is to make it clear that when domesticating the files in question, such adjustments would only be possible to better achieve a similar outcome to the original file, but simply with a better fit for UK-specific circumstances. Where major changes in policy direction are proposed, the Government agree with this House that the appropriate course would be to bring forward primary legislation. That is the reasoning behind the wording as proposed. The Government have listened carefully to the issues raised by Peers across the House in coming forward with the limitations to the adjustment power.

Let me turn to some further points. One is more difficult to respond to immediately. The noble Baroness, Lady Bowles, sought to draw us further on the tests for whether we could keep existing legislation. The answer is yes, by leaving out the provision. She is correct about international standards; these potentially apply. On SMEs and proportionality, the Government are committed to that position—but, if we can, we would like to take the opportunity to set that out in writing to address those concerns.

Turning to the point made by my noble friend Lord Leigh, I reassure him that the Government understand the need for flexibility in the UK's rule setting post Brexit. This is why we have sought to retain flexibility on the files in the schedule, which includes the Commission's SME growth markets proposal. However, in the debate throughout the Bill's progress it has been made clear that there is a strong sense that the power to amend has been too broad. The Government have listened to those concerns and have agreed to remove the ability to adjust from those four files, two of which—the prospectus regulation and the CSDR—the noble Lord referenced in his speech. This is because the Government accept the argument put forward by the DPRRC that we have been at the negotiating table in advance. The noble Lord is quite right that we are broadly content with these files. We cannot know the full context facing the financial services industry in a no-deal scenario. Our priority must therefore be to protect the UK industry in all

circumstances, and it is only right that we should take a judgment closer to the time about the appropriateness and the value of each file.

The noble Lord also made a valid point about the longer-term regulatory regime looking beyond this immediate two-year period. We recognise that the model in the Bill should apply only for an interim period while the Government consider a sustainable, longer-term approach that balances the need to ensure appropriate parliamentary oversight of financial services legislation while, crucially, maintaining the flexibility and competitiveness of our regulatory regime.

I thank my noble friend Lord Hodgson for his brief intervention in offering his support. I hope that those words of clarification on the Government's intent in their use of the word "major" will be helpful and reassuring to the noble Lord, Lord Davies, to the extent that he feels able to withdraw his amendment and to support the government amendment standing in my name, which his original amendments were the inspiration behind.

Lord Davies of Oldham: My Lords, the Minister's reply puts me a little on trust in that, until I read *Hansard* tomorrow, I am not too sure I will be able to follow the detail with sufficient accuracy. I was somewhat appalled as I was thrust back to my old tutorial days as a rather vulgar split infinitive came right in the middle of one of the denser parts of the Minister's text. But I know that he has set out to meet the challenges that we have put in our questions to him, so I will more than give him the benefit of the doubt—I beg leave to withdraw my amendment.

Amendment 2 (to Amendment 1) withdrawn.

Amendment 1 agreed.

Amendment 3

Moved by ***Lord Bates***

3: Clause 1, page 2, line 13, after "unless" insert "—

(a) "

Lord Bates: My Lords, I again thank noble Lords for their contributions and in particular my noble friend Lord Hodgson. Our debate on the previous grouping focused on what limitations would apply to the power under this Bill. This grouping looks at the complementary subject of reporting to ensure that the Government are as transparent as possible in the exercise of the power. The Bill, as introduced, placed a duty on the Government to publish a report annually on their exercise of the power. It was clear in Committee, however, that there was some room for improvement. I am again grateful and indebted to noble Lords from across the House for their work in Committee and in the period between Committee and Report.

I turn to Amendments 3, 4 and 5. The noble Baroness, Lady Bowles, proposed that, where adjustments or omissions are needed when implementing the files, the Government should publish a report beforehand setting this out in detail to make sure that Parliament has sight of this, and can consider the merits of the proposals. Given the exceptional nature of the Bill and the powers being sought, it can only be right that the Government are clear with Parliament and the industry about how they intend to implement these files. The Government therefore propose introducing a new requirement, as set out in Amendments 3 and 4. These would ensure that, before laying any statutory instruments before Parliament under the affirmative procedure, the Government must first publish a document detailing the proposed text of the regulation with an accompanying report. The report would have to outline what, if anything, has been omitted from the original EU legislation, where there had been any adjustments to the original EU legislation, and provide justification for these adjustments.

As I noted in Committee, the three-month requirement could risk being too long. The essence of this Bill is the speed with which it will allow the UK to keep its regulation up to date and responsive to the uncertainty of a no-deal scenario. The amendment therefore proposes a one-month deadline. However, the Government will of course commit to publishing these documents earlier where possible.

On Amendment 5, in Committee my noble friend Lord Hodgson suggested a more regular reporting cycle than the yearly proposal in the Bill as introduced, and that these reports should set out the Government's reasoning for why any adjustments might have been necessary. I again reassure noble Lords that it was always the Government's intention to set out such a justification. This underpins the spirit behind the proposed new subsections (8) and (9) in Amendment 5. This requires the introduction of a more regular requirement for the Treasury to report—now every six months. It requires the Government to specify both how the power has been exercised over the previous six-month period and how they intend to exercise it over the coming six-month period.

This change has the further benefit of clearing up an inconsistency helpfully highlighted by the Delegated Powers and Regulatory Reform Committee in its 42nd report. Previously, the reporting deadlines were set out on calendar dates, whereas the power was to be commenced with reference to "exit day" as defined in the European Union (Withdrawal) Act. This amendment now tidies up the drafting to ensure that the reporting periods are set with reference to the commencement of the power itself. I again convey my thanks to the Delegated Powers and Regulatory Reform Committee.

Finally, proposed new subsection (9A) in Amendment 5 responds to the suggestion from the noble Lord, Lord Adonis, and the noble Baroness, Lady Bowles, in Committee. Here we propose to introduce the same requirement for the financial regulators—the Bank of England and the Financial Conduct Authority—to report on their exercise of any powers sub-delegated to them through the Bill. This follows the model established in the EU withdrawal Act. We agree that it is right that, as they will be implementing much of the legislation contained in this Bill, Parliament and the public should be kept informed of how their functions are being discharged.

I hope these amendments demonstrate the extent to which we believe it is vital that Parliament can properly assess and consider legislation taken forward under the Bill. These amendments on reporting, alongside

[LORD BATES]
clearer limitations of the power itself, substantially improve the safeguards that apply to the Bill. I hope these will provide the reassurances that I know the Committee sought.

Baroness Bowles of Berkhamsted: My Lords, I thank the Minister for listening to everything said in Committee. There really is little else to say other than that he has taken on board three of my amendments. I am very pleased to see them there. I accept that he has cut down the timescale in the pre-legislative report, if I can call it that, to one month from three months because it might be necessary to do things more rapidly.

If I can pick out a theme from the several speeches I made before, it is that Parliament should not be surprised by what the Government intend to do and do. This suite of amendments, including the more frequent reporting suggested by the noble Lord, Lord Hodgson, makes it very clear: we are told before and afterwards. In fact, we might be told before twice by the two reports—the generic one, if I might put it that way, and the precise one. We will also know where things are so that the diligent individual, possibly when dealing with things in the Moses Room in Grand Committee, will not have to search around wondering where things have or have not gone.

I thank the Minister. He has served me and us very well in this.

Lord Hodgson of Astley Abbotts: My Lords, I add my thanks to my noble friend and his officials for Amendment 5, which in large measure answers the points I tried to raise in Committee. I am extremely grateful to him and to the Government.

An epochal event such as Brexit will obviously require a certain degree of statutory flexibility. That is why I support the principle of the Bill, but that does not mean that the powers under it should be exercised below the radar. I am therefore extremely grateful to my noble friend for having set the reporting periods, when he made it clear that it is not just a question of reporting: it is a question of why it is being used, as well as that it has been used. That is important to maintain confidence.

4.30 pm

Before I sit down, I want to raise one other point which featured in our early Committee debates. Here I come back to a point touched on by my noble friend Lord Leigh of Hurley, and that is the regulatory strategy: the climate, if you like, which the UK will seek to establish post Brexit. I expressed concern in Committee that regulators really undertake an effectiveness assessment, with a view to identifying changes that could easily be made following changes in market practice, without significant regulatory risk. As a result, the financial services industry is always in danger of being trapped into an upward-only regulatory lockstep. I took a good deal of incoming fire in Committee, notably from the noble Baroness, Lady Kramer, who described the UK regulatory system at col. 2167 as "a global gold standard". For me, this implies that it is absolutely perfect and needs no change at all and, possibly, that if I was given a chance I would scrap the whole lot. That is a travesty of my views. Well-organised, focused and effective regulation is absolutely essential if we are to maintain the high reputation of the UK's financial community. Low-quality, unfocused and ineffective regulation brings the whole system, even the good bits of it, into disrepute.

I will give the House a very quick example of current regulation. We have just had the National Crime Agency's report on last year's activities. One of the key measures is the suspicious activity reports. There was a 10% increase in SARs last year; 464,000 were sent in, which is 1,856 every day in a 250-day working year. I will leave noble Lords to decide whether or not anybody could handle that and assess it. The Law Society said that,

"the large volume of reports with limited or nil intelligence value is the key challenge of the current SARs regime in the UK".

Dig fractionally deeper and there are consent SARs. These are when one of your clients may not be behaving quite as well as he or she should, and you go to the authorities and say, "This is the situation, I want consent to do the transaction". You are, essentially, running up a very red flag. Last year, with the increase in these consent SARs of 20% to 22,600, 85 per working day, the number of arrests out of that 22,600—clearly, right at the sharp end of everything, that is what the firms are telling the authorities—was 40, covering 28 cases. The money collected—and we are talking about billions flushing through the system here—was £52 million. That system is not delivering. In thanking my noble friend on the Front Bench and supporting this amendment, I hope noble Lords will remember the need to update, to inform, to improve and then to eliminate regulations that no longer have an application.

Baroness Kramer: My Lords, with that provocation I say to the noble Lord, Lord Hodgson, that perhaps we should look at the quality of enforcement. I would far rather that we had too many warning signs, but captured a large part of the wrongdoing, than missed major wrongdoing because there were so many options where people could avoid early warning signs. I suspect we have an enforcement problem, and often in this House we have heard that echoed. It sits entirely outside what we are dealing with today. For goodness' sake, let us be very wary of the seductive argument that where we fail to enforce we should not even investigate.

Lord Tunnicliffe (Lab): My Lords, I support Amendments 3, 4 and 5. They are the product of ideas from all parts of the House: from the noble Lord, Lord Hodgson, and particularly from Lib Dem Members. Amendment 4 strikes me as a very important innovation. Other parts of the Administration may want to ponder what should be done here, because while it will all be down to the Government how they use it, it creates a mechanism by which we get will close to being able to amend an SI. Clearly, no great measures are going to fall because we have no great power to influence them and we all know that we are not going to vote on such SIs.

However, to be able to discuss an SI with the Government—obviously not on the Floor of the House

but perhaps by approaching Ministers on particular issues—before it is laid would be an important step forward. Proposed new paragraph (b)(ii) and (iii), inserted by Amendment 4, is also important for making how such an SI is generated much more structured. I hope this will give real transparency to SIs, which can at times be very complex. I end by thanking the Minister for his efforts on the Bill and almost by celebrating, for want of a better term, the extent to which we have been able to come to consensus.

Lord Bates: I thank the noble Lord, Lord Tunnicliffe, for his last intervention. In effect, I think he was saying that in the way we have been working together we have perhaps somehow pioneered a new way of approaching financial secondary legislation. I am pleased that he feels that.

I am grateful to my noble friend Lord Hodgson for his support for the amendments. He was tempting the noble Baroness, Lady Kramer, to rehearse the vigorous and full debate which took place in Committee on these provisions. Perhaps I may step out of the middle simply to reiterate that the Bill is not the Government's proposed long-term solution for all financial services legislation. The Government will take forward their proposals for a sustainable, long-term model in due course, when there will be lots of opportunities to discuss the important issues which have been raised.

Amendment 3 agreed.

Amendments 4 and 5

Moved by ***Lord Bates***

4: Clause 1, page 2, line 15, at end insert ", and

(b) that draft was laid more than 1 month after the Treasury published a document (which may be one published before the passing of this Act)—

(i) setting out what is proposed (subject to any revisions prior to laying for approval) as the text of the regulations,

(ii) detailing which provisions (if any) of the particular EU Directive, or EU Regulation, would not be covered by the regulations, and

(iii) detailing any adjustments that would be made by the regulations in reliance on subsection (1)(b) and giving the reasons for considering those adjustments appropriate."

5: Clause 1, page 2, line 16, leave out subsections (8) and (9) and insert—

"(8) For the purposes of subsection (9)—

(a) there are 4 reporting periods,

(b) the first begins with the passing of this Act and ends 6 months after exit day, and

(c) each subsequent reporting period is the 6 months beginning with the end of the previous reporting period.

(9) No later than 1 month after the end of each reporting period, the Treasury must prepare and publish a report—

(a) on the exercise of their powers under subsection (1), or by virtue of subsection (4), in the reporting period,

(b) on their proposals for exercise of the powers in any future reporting periods, and

(c) tabulating, in relation to regulations made under subsection (1) in the reporting period—

(i) the provisions of specified EU financial services legislation to which the regulations relate, and

(ii) any adjustments made by the regulations in reliance on subsection (1)(b) and the reasons for considering those adjustments appropriate.

(9A) Paragraph 32 of Schedule 7 to the European Union (Withdrawal) Act 2018 (annual reports on exercise of sub-delegated powers) applies also in relation to exercise of any rule-making power given to the Bank of England, or the Prudential Regulation Authority or the Financial Conduct Authority, by regulations under this section."

Amendments 4 and 5 agreed.

Schedule: List of proposals for the purposes of section 1

Amendment 6

Moved by ***Lord Bates***

6: The Schedule, page 5, line 27, at end insert—

"14A The European Commission's proposal of 24 May 2018 for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment.

14B The European Commission's proposal of 24 May 2018 for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341."

Lord Bates: My Lords, I again thank noble Lords for their contributions. The noble Lord, Lord Sharkey, made a contribution in Committee in which he expressed concern about the omission of some files from the Schedule and Clause 1. At Second Reading and in Committee the omission of two sustainable finance files, which complete the EU's sustainable finance package, was raised. I am pleased to confirm to the noble Lord and the House in general, and to the sustainable finance industry, that the Government are happy to add these two files to the Schedule via this amendment. I thank him for pointing that out and I beg to move.

Amendment 6 agreed.

Teacher Recruitment and Retention Strategy

Statement

4.38 pm

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, with the leave of the House, I will now repeat as a Statement the Answer given yesterday in the other place in response to an Urgent Question on the Government's teacher recruitment and retention strategy. The Statement is as follows:

"Last year, we recruited over 34,500 trainee teachers into the profession—over 2,000 more than the year before—but the growing number of pupils means that we need even more teachers at a time when we have the most competitive labour market on record. Today, the Government have launched the teacher recruitment and retention strategy, outlining our priorities ahead of the spending review. First, we are creating the right climate for head teachers to establish the right cultures

[Lord Agnew of Oulton]
in their schools. Secondly, we are transforming the support for early-career teachers. Thirdly, we are building a career offer that remains attractive as teachers' lives and careers progress. Fourthly, we are making it easier for great people to become teachers.

At the heart of the strategy is the early-career framework. Developed with teachers, head teachers, academics and experts, and endorsed by the Education Endowment Foundation, it underpins what all new teachers will be entitled to be trained in at the start of their career, in line with the best available evidence. The early-career framework will underpin a fully funded two-year package of structured support for all early-career teachers, including additional time off-timetable for teachers in their second year and fully funded mental health training.

By the time the new system is fully in place, we anticipate investing at least an additional £130 million every year to support the early-career framework delivery in full. This will be a substantial investment, befitting the most significant change to the teaching profession since it became a graduate-only profession. In addition, the recruitment and retention strategy outlines how the Government are going to create the right climate for head teachers to establish supportive cultures in their schools, where unnecessary workload is driven down. This includes consulting on replacing the floor and coasting standards, with Ofsted's "requires improvement" as the sole trigger for an offer of support.

The recruitment and retention strategy, including the early-career framework, has been developed closely with the sector. Its publication marks a crucial milestone for the profession, as well as the start of a conversation between government and the profession about how best to deliver on the promise of this strategy".

4.41 pm

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for repeating the Statement, and welcome much of the strategy, as well as the fact that the teaching unions were fully involved in formulating it. It was certainly a long time in the making. The Government published their response to the Workload Challenge consultation four years ago next month, and the Secretary of State promised this strategy 10 months ago.

With official figures showing that teachers leave the profession at the same rate as they enter it—and with secondary school rolls due to rise by 15% in the next six years—we welcome the clarification from the Schools Minister yesterday that the £130 million annually pledged to support the strategy is indeed new money, but we shall watch closely to ensure that that commitment is delivered.

I have two questions for the Minister on issues with which I am sure he will be familiar, as they relate to academies. First, will the requirement in the early-career framework to give second-year newly qualified teachers time off-timetable be extended to every school, including academies? Secondly, the plans for a teaching school review are vague, but it seems the Government want to hand their responsibilities over to multi-academy trusts. Can the Minister say how schools that are not part of a MAT will be able to participate in these collaborative partnerships?

Finally, there is the elephant in the room in this whole debate: teachers' mental health, which is in crisis, with studies showing that 40% of teachers are on medication. You cannot have a meaningful policy on retention and recruitment—I have advisedly reversed the order because in many ways retention is more important—without properly addressing mental health issues encountered by teachers. The Statement makes passing reference to fully funded mental health training, but what does that mean? Does it refer to teachers' own mental health or that of their pupils? Even that brief reference relates only to early-career teachers. What do the Government have to say about support for those whose careers have developed further than that, and where is the issue of mental health in the strategy itself? I have been unable to locate it where it most sensibly should have been placed: in Chapter 3 or, failing that, Chapter 2—but no. It cannot be assumed that workload is the sole contributing factor. Making assumptions is always dangerous, and failure even to acknowledge mental health is more dangerous still, not just for the valued professionals who are our teachers but for the children to whom we entrust them.

I accept that the Minister may be unable to respond to all these issues, but we believe they are important and I ask that he writes to me to set out the Government's position, if that is more convenient.

Lord Agnew of Oulton: I thank the noble Lord for his questions. Dealing with the ones that I can address straight away, I reassure him that academies will be included in the early-career framework. This is a strategy for the entire state-funded system.

Regarding the question on teaching schools, we are reviewing this at the moment and have not fully completed our thinking. One issue of concern to us is that there are too many teaching schools that between them are not receiving enough money to meaningfully engage with the surrounding areas that they are being asked to help. We are looking to rationalise that. We hope that good multi-academy trusts will play a role in that, but we are certainly not seeking to exclude good schools.

I agree with the noble Lord that retention is more important than recruitment, because there is no point pouring people into a bucket with a hole at the bottom of it. We have given a lot of consideration to how we improve retention. A big problem is the workload and how it is being imposed, particularly on young teachers. We are aware from the figures for those leaving the profession that the percentage of younger, newly qualified teachers leaving the profession is one of the highest categories. We are working on that. There are several areas of concern; for example, the pernicious expectation that young teachers should be responsible for planning their own lessons, when we want to encourage schools to provide much more support.

I shall write separately to the noble Lord to address his concerns on mental health.

Lord Storey (LD): My Lords, I am grateful to the Minister for his Statement, in which he gave the context and rationale for the teacher recruitment and retention

strategy that was published yesterday. I am delighted that the Government have worked with the co-signatories listed on the inside cover. The tone of the strategy is very positive.

I do not agree however, that it is a full national strategy, as there is more work to be done. How are middle leaders to be developed, and do those who manage MATs need knowledge and perhaps experience of how schools work? While the partnerships in the document reflect a new beginning for schools, what role do the Government see for local authorities, which, after all, are the largest employers of teachers? What a pity they were not involved in the formation of the strategy.

The strategy starts by stating that,

"there are no great schools without great teachers".

Hear, hear.

Lord Agnew of Oulton: My Lords, the focus is on early-career teaching at this stage. We have outlined four key areas. One is funding, which will allow teachers in their second year to reduce their timetable by 5%. We are encouraging a reduction in teacher workload, which I covered a moment ago, and a more diverse range of options for career progression, which will help teachers further along in their career. We want to continue to make sure that teaching is considered a great career for those coming into it. We launched an initiative last year called Discover Teaching. Some 13,000 potential recruits have been through that system.

We need to see how the first phase of this programme evolves. We are rolling out some pilot areas in September next year: Bradford, the north-east and one other area which I shall find in my notes in a moment. We will learn from our experience of how those work before we implement the programme across the country.

Lord Pickles (Con): I have always been quite surprised at the lack of support for new people entering the teaching profession, compared with other professions. My noble friend has spoken about some of the burdens. Can he talk a little about the positive help that the new strategy will give to newly qualified teachers in the first couple of years?

Lord Agnew of Oulton: Yes, as I mentioned a moment ago, newly qualified teachers in their second year will have 5% taken off their teaching timetable—that is in addition to the 10% taken off the timetable in the first year. High-quality, freely available curricular and training materials will be designed to complement the early-career framework. There will be funded early-career framework training programmes and support from a trained mentor, including funding to take into account the additional call on mentors' time in the second year of induction.

The Lord Bishop of Ely: My Lords, I am grateful to the Minister for his Statement and for this way forward. First, he knows that the Church of England runs many small rural schools, and recruitment and retention is always a creative challenge. Have the Government considered how the strategy is to be rural-proofed for full application across the country? Secondly, Chapter 3 talks about further leadership development. Can the Minister tell us whether the Government are going to continue to encourage bodies such as the Church of England Foundation for Educational Leadership in developing professional qualifications for middle leaders and heads of MATs?

Lord Agnew of Oulton: I share the right reverend Prelate's concerns about rural schools. We have particular funding pots within the overall formula—sparsity funding, for example—which give a typical small rural primary school an additional £135,000 a year and a small secondary school £175,000. We are committed to the various ongoing training programmes. Only this morning, I was addressing a group of some 80 people involved in professional development training and encouraging them in what they were doing. I absolutely support what the right reverend Prelate has said.

Baroness Morris of Yardley (Lab): My Lords, I broadly welcome the announcement. There is a lot in it that offers hope for the future. The challenge will be in implementing it. I think it is overclaimed. I do not think it is the biggest change since teaching became an all-degree profession. Indeed, there are not many individual proposals that have not done the rounds before, so it is worth learning from them. The advanced skills teacher has been redesigned under a different title.

I have two questions. I very much welcome the protected time that will be offered for new teachers. I listened to what the Minister said about the amount of money that will be put into the system. Can he confirm that it will be ring-fenced when it gets to school level? Otherwise, in times of diminishing budgets, it will not get spent on the purpose for which it was intended. Secondly, how is he going to overcome the problem of making excellent schools that are not academies part of the school-led improvement system if he is going to give a lot more power to multi-academy trusts?

Lord Agnew of Oulton: I will have to write to the noble Baroness to confirm whether the money will be ring-fenced at school level. Certainly, our preference is to give autonomy to schools, but I will check on it and come back to her. Support is aimed beyond academies at all state schools. Only just over 50% of pupils are in academies today, so it is not our intention to see those still in the local authority system left behind.

Higher Education (Fee Limits for Accelerated Courses) (England) Regulations 2018

Motion to Approve

4.52 pm

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

That the draft Regulations laid before the House on 29 November 2018 be approved.

Viscount Younger of Leckie (Con): My Lords, during the passage of the then Higher Education and Research Bill two years ago this month, I noted that, following our call for evidence, the Government were considering how best to support accelerated degrees. During those two years, we have conducted a detailed assessment of the literature review of global accelerated degree provision,

[Viscount Younger of Leckie]
published a consultation on our proposed fee changes, evaluated the detailed and quite varied responses and published the Government's response to the consultation late last November. I am therefore delighted to bring these regulations before you today.

The regulations should be read alongside the wider fee limits regulations, which set tuition fee limits for standard degree courses from August 2019, and which were approved by Parliament last summer. The Higher Education and Research Act 2017—known as HERA—enabled regulations to set different fee limits specifically for accelerated courses. The regulations before you today set out various fee limits in respect of accelerated degree courses starting from August 2019.

I believe we share the same fundamental aspirations for higher education in this country: it must remain autonomous; quality of provision must be safeguarded and strengthened; it must offer genuine benefits, including value for money, to students, graduates and, indeed, our wider society. These aspirations underpin the Government's overall ambitions for diverse and flexible post-18 education, embodied in the wide range of measures set out in HERA, which were debated here in considerable depth. Those debates included the amendment enabling these very regulations, which was tabled by the noble Lord, Lord Stevenson of Balmacara. The Government's ambitions are being further developed through the ongoing review of post-18 education and funding.

I want to pause a moment to set out the details of these regulations, and the impact they will have on higher education. For the first time, public universities will be able to set a higher annual fee specifically for accelerated degree courses. This will allow providers to charge up to a maximum of 1.2 times the equivalent annual fee cap for standard, non-accelerated courses which, as the House will be aware, currently comprise the vast majority of all undergraduate provision in this country. Without these regulations, accelerated degree providers can only charge for each year of accelerated tuition at the standard fee rate, regardless of the actual volume of teaching delivered in the year. For example, they can charge only 67%, or two years of fees, for delivering the same teaching modules and content that are delivered over three years with a standard degree. With these regulations, public universities will be able to secure up to 80% of the total standard degree fee income for each accelerated degree that they deliver.

It is worth noting that accelerated degree courses are already offered by a handful of public and private universities. This form of degree teaching offers clear and unique benefits to many. When surveyed by the Student Loans Company in summer 2018, accelerated degree undergraduates were emphatically positive, with 92% saying that they were glad they had chosen to study an accelerated rather than a standard degree. In their own words, students responding to the survey make it clear why they are glad. For example:

"It's cheaper. Faster. Keeps you motivated throughout the process. Better understanding of summertime modules, due to class sizes being relatively small. Asking lecturers direct questions more often".

"I feel like I'm not wasting time—the course still allows me time for volunteering and enjoying my hobbies, and also allows me to study—and it saves me a year".

"It has not only meant I can get into a job quicker, but it means that the work is constantly challenging you. It is super exciting to work like that".

"Saves money and minimises time at uni"—

says another—

"I am a mature student—a career changer—so this reduces loss of earnings".

Finally:

"Being older, saving a year of loans and time is a big deal to me".

Providers who offer accelerated degrees concur with these positive comments. Accelerated students are highly focused on effective study. Accelerated teaching timetables are more flexible than the standard model, with year-round opportunities for research breaks.

In spite of these benefits, and the positive testimonies of accelerated degree students themselves, current provision of accelerated degrees is tiny. In part, this limited provision simply reflects the financial challenge of delivering the content of a three-year degree over two years, meaning that the university can only receive two-thirds of the income it would be entitled to, were it to deliver the same content over the conventional three years. This is the challenge that the regulations before the House today will squarely address.

I will outline some of the wider concerns raised by respondents to our consultation process. Some of these perhaps reflect assumptions and misunderstandings which are not borne out in practice. We have, however, given them all careful consideration. First, it is suggested that accelerated courses could create an inferior class of degree, with cheaper and lower-quality teaching staff who will have no time to research or maintain their own academic development. Our response to that is that, although accelerated degree providers have said that their timetables can be challenging to devise, the provider experience is that this challenge is manageable and—just about—affordable. Some staff value the more flexible timetable that enables them to take research leave or vacation breaks outside the traditional summer period. These providers also assert that, to be effective, accelerated degree teachers must be high-calibre—committed, focused, inspiring similarly ambitious students.

As required by HERA, the OfS has published the registration conditions to be met by registered providers in its regulatory framework. Those conditions include ones relating to the quality of, and standards applied to, the higher education on offer. These quality and standards conditions apply to all courses, including accelerated degrees. All are treated in the same way. The OfS is also required by HERA to assess whether registered HE providers, and bodies seeking registration, meet the published conditions on quality and standards. All of this will ensure that accelerated courses are held to identical quality standards and assurances as those of all higher education courses.

Another concern raised is that the student experience on an accelerated course will be inferior to the standard equivalent, for a range of reasons. Students need time to develop learning skills. Most will not be able to sustain the workload, and with intensive study they will miss the wider opportunities and experiences integral

to student life, including the opportunity for part-time work. But the reality is that accelerated students generally study at the same weekly rate as their standard peers—not more hours in the week; simply more weeks in the year. Many accelerated students work part-time. Mature students find the weekly student timetable quite manageable compared with full-time employment.

5 pm

It is true that some young people need more time to develop the academic skills necessary for graduation. But individuals, as this House knows, learn at different rates. Some students thrive on the more consistent pace of accelerated degree study. Some current providers of accelerated degrees interview applicants to ensure they understand the specific characteristics of these degrees, such as the need to maintain a steady pace of work. Universities considering accelerated provision may feel this is a mutually beneficial step, especially in the early stages when cohort sizes are critical in making the best use of available budgets.

Our proposals have also faced the challenge that there is no evidence of real demand for accelerated degrees. Although current accelerated provision is still barely visible—as I mentioned earlier—our findings actually contradict this: 73% of providers that responded to the 2016 call for evidence on accelerated degrees reported seeing a demand for accelerated courses from students or employers. There is also evidence of a lack of student awareness: 55% of non-accelerated current students surveyed by the SLC in 2018 had never even heard of accelerated degrees. Clearly, we have important work here to bring accelerated degrees fully into public awareness, especially for young people on the point of considering their higher education choices, and for the young mature individuals keen to improve their employable skills but unsure how they will ever find the time or money to do so.

Employers are starting to understand the potential of accelerated degrees. For example, the consultation response from the EEF—the manufacturers' organisation—noted:

> "Employers want to see more flexibility from the higher education sector and for higher education institutions to be more responsive to their needs. Accelerated degrees are one means of achieving this flexibility and responsiveness … A quicker, more flexible, pathway for employers to recruit engineering graduates is welcomed, therefore, manufacturers support the principle of accelerated degrees".

I am confident that the positive experiences of current providers and students, and the potential benefits and optional nature of these measures, will substantively mitigate these concerns.

Perhaps the most important next step is for government to work closely to share the basic facts, the real challenges, but above all the unique benefits, of accelerated degrees. We will continue to develop wider communication strategies to raise awareness with students, providers, employers, schools, parents and the wider public. In particular, we want to ensure that accelerated courses are understood and included in the information given by careers advisers to their young students.

We are working with the SLC, the Office for Students and other bodies to ensure that accelerated degrees offered under these regulations are identified and recorded in HE data. We can then track their impact on enrolment, graduation and longer outcomes for accelerated degrees, compared with their standard equivalents—including for all protected characteristics. Statistics such as the invaluable LEO data take time to emerge, even for accelerated degrees. If these regulations are approved, we will conduct a three-year review to assess the immediate impact of higher annual fee caps on accelerated provision and uptake.

In spite of their benefits, accelerated degree courses are not for every student or every provider. They will not remedy every concern that exists in relation to higher education. Our job is to offer providers a real and lasting incentive to deliver more accelerated courses and to make every potential student aware of the pros and cons of all the possible higher education choices available to them, including accelerated degrees. We also need to be mindful that some individuals simply cannot or will not enrol on any degree course other than an accelerated one.

These regulations will create a genuine incentive for public degree providers who want to innovate and diversify further. We have a responsibility to do all we can to help many more future students have the widest possible range of learning opportunities after school. We want them to experience the many benefits of tertiary education, to help them realise their optimum potential. We need to support the resilience of our domestic industries by helping higher education to innovate in its provision, and deliver a highly skilled, homegrown workforce, whose skills can flex and grow at a pace that will keep up with the speed of technological development. I see accelerated degrees becoming an essential part of making higher education more flexible and more accessible. I commend these regulations to the House. I beg to move.

Baroness Garden of Frognal (LD): My Lords, I thank the Minister for explaining these regulations and setting out the Government's thinking on accelerated degrees. They were, as he said, the subject of much discussion during the passage of the Higher Education and Research Act. As he also said, currently the provision is tiny, and we wonder how much demand there will be for these degrees. How many universities do the Government anticipate will offer accelerated degrees? At the moment they are largely in the humanities; does he envisage their extension to science and engineering?

We know that the University of Buckingham has been at the forefront of two-year degrees, with considerable success and customer satisfaction. The Minister said that these have been evaluated and that the quality and academic rigour of the courses has already been looked at, but are they as robust as traditional three-year courses? I wonder how the international community will view them, given that many overseas universities have four-year courses and already express reservations about our three-year programmes, particularly in disciplines such as engineering. Will our students be at a disadvantage in that respect?

Given the concerns we have long expressed about the dire decline in adult and part-time education, will accelerated degrees do anything to stem that tide? What research has been done regarding mature students and those from deprived backgrounds and lower

[Baroness Garden of Frognal]
socioeconomic groups? The fee rates in the regulations would not seem encouraging to those of limited means. Also, students who have taken accelerated degrees are not always recognised by the student loans system as studying during the summer, which leaves them short on their maintenance loan funding. Again, that would not seem to be an incentive to those of limited means.

We recognise the need for more flexibility in the system, given the growth in online learning, although sadly, that has not been to the advantage of the Open University, which has seen a worrying drop in student numbers. Will these degrees present further competition, or do the Government anticipate a completely different student body from the OU's?

The Minister mentioned the teaching staff; what consideration has been given to them? They are under pressure regarding research, which many have traditionally done during the long summer break. He mentioned that there are ways of juggling the timetable so they can do their research at different times, but what discussions have the Government had with university staff to assess how they feel about teaching programmes where there is little time off for non-teaching duties?

Regulation 6(3) refers to the Erasmus year. Can the Minister give any reassurance that Erasmus will continue into the future? It is a great programme that has been of benefit to many students, who have learned about living life in another country. It will be of even greater value if we do leave the EU. Can the Minister update us on Erasmus, as it features in these regulations? I know we do not have any idea what is in the post-18 review, but is it likely to lead to the stable and sustainable HE funding that we would certainly hope for?

Accelerated degrees are probably here to stay, although probably not for large numbers of students, as the Minister has said. I look forward to hearing how the Government see them developing, and his answers to the concerns I have raised.

Lord Luce (CB): My Lords, I would like to focus on the two-year degree, of which I have considerable experience. I declare an interest as the chancellor of the University of Gibraltar, but more relevant to this discussion is my five years as vice-chancellor of the University of Buckingham in the 1990s. As everybody now knows, as an independent university it has pioneered the two-year degree over the last 43 years. Started, with inspiration, by the late Lord Beloff, it is run today under the determined and courageous leadership of vice-chancellor Sir Anthony Seldon, and by a very committed team.

When I look back on my own education, I feel particularly privileged that I had three years at Cambridge and one extra year at Oxford. When I became vice-chancellor of the University of Buckingham in 1992, I had an open mind about the value of the two-year degree. But, by the time I had finished, after five years, I was deeply impressed by the motivation of the students. Many of them, naturally, were mature students or overseas students, and both those groups benefit in particular from short courses of this type. I realised that it was possible after two years to reach the same standard of degree as after three years. One only has to look at the list of alumni of the University of Buckingham to see what they have achieved in life.

When I left, I was convinced that the two-year degree would expand rapidly elsewhere, but today, only 0.2% of all students are doing two-year degrees, and only a few universities have taken it up. When I think more fully about why this is the case, I realise that it is not surprising. Until the introduction of these regulations, there was no incentive for traditional universities to set up two-year degrees, which involve major adjustments in teaching commitments, research, the use of facilities and many other areas. Therefore, I fully support the objective of these regulations to establish fee structures that are an incentive for diversification and a wider range of choice.

I do, however, have reservations about whether the current fee structure will be sufficient to provide the parity of esteem that is needed between two-year degrees and other degrees. The facts are these. In a two-year degree, students pay one year less for accommodation and living costs and they start work or further study one year earlier. At Buckingham, they do this by having four terms a year, one of which, I should stress, is set aside for research for teachers. In the two years, they spend 80 weeks studying and 24 weeks on holiday—the traditional university degree involves 18 months' holiday and the equivalent amount working—and they achieve the same standards.

What is the result of this for the University of Buckingham? According to the National Student Survey, it is near the top, and often at the top, for student satisfaction, and it is top in the Government's teaching excellence framework. What is more—a point that the Minister made—it impresses employers because its students work hard to achieve their degrees, and many of them get very good jobs.

The general point I want to emphasise is this. We all know that there has been a serious decline in the number of not only part-time students but mature students. To my mind, the two-year degree is an extremely good opportunity for mature students to take up the challenge. My concern is with the fee structure and whether there is enough incentive for universities and providers to introduce these courses. Although the advantage is that the student will pay 20% less than for a three-year course, the university is therefore being asked to provide 50% more teaching each year for a fee that is 20% less than the total income from a three-year degree. Given the £11,100 cap being introduced in these regulations, Buckingham would need to reduce by 10% its current fees of £12,600 per annum for undergraduates.

It is therefore hard to make a business case for offering a two-year degree—other than for a few low-cost, high-demand subjects such as business law and accountancy—for engineering, science or certainly medicine. It is impossible for the University of Buckingham to go for the approved fee-cap status unless it reduces its overall standards. There are some sharp challenges here. I fear that some of the for-profit providers may well be able to adopt only the cheaper courses and that the proposal may, overall, undermine the general standard that Buckingham sets for two-year degrees.

I know that the Minister has been to the University of Buckingham among his many duties, but I ask him to reassure me and, I hope, others in the House that the regulations will be monitored and reviewed. I hope that not only will there be a review in three years, as provided for, but that the Government will carefully monitor progress and the effect the regulations are having once they are introduced. I want the Government to succeed in their objective, and the Minister to assure us that he and other Ministers are aware of the dangers of undermining the concept of a successful two-year degree—and that they will always monitor the situation carefully.

5.15 pm

Baroness Blackstone (Ind Lab): My Lords, I very much support the notion of accelerated degrees. Most of the criticisms that the noble Lord speaking on behalf of the Government went through do not stand much scrutiny. I accept his argument that the criticisms do not merit abandoning the idea of accelerated degrees. I also accept that the cost of providing them will be somewhat higher for universities than would be the case if they were simply teaching all their degrees on a normal three-year pattern—although I suspect that there may be some exaggeration of how much greater the costs will be. Imaginative universities will find ways in which to provide some of their courses in combination with students on three-year degrees, so they will not be taught entirely separately from those students.

However, my concern is different. While I accept that one has to incentivise universities—I heard the concern of the noble Lord, Lord Luce, that the additional funding may not be enough to do so, and there are of course very few such courses—my concern relates to the demand for them. I agree with the noble Baroness, Lady Garden of Frognal, that the demand is already small. It will be even smaller if we put the fees up. Surely the Government are aware that mature students are more debt averse than any other category of student. Most students who are likely to join these programmes will be mature students.

My view, as a former vice-chancellor and head of an institution that took many mature students, as well as being vice-chancellor of a conventional university, is that these degrees are unlikely to be suitable for most 18 to 22 year-olds, who will want to spend a little longer as undergraduates. They will benefit from doing so and from all the other things that one can do. Of course there will be mature students who want to go through faster and are able to do so. However, why put the fees up again when one knows that many people have decided not to become undergraduate students—or master's students, for that matter—because the fees are so high and they do not want to take on the additional debt?

Why, for heaven's sake, do the Government not consider an alternative, much more effective route of providing universities that are putting on these courses with some grant, paid directly by the Government, rather than simply loading up the cost of the course on to the graduate? Only then will demand for the programmes be maintained. The Government need to think again about the fee aspect of these regulations.

Lord Willetts (Con): My Lords, I very much welcome the proposals brought to us today by the Minister. I am sure that he is right that this adds an extra element to the options available to prospective students, and it certainly therefore brings more diversity into the system. I should draw noble Lords' attention to my interests as set out in the register as chancellor of the University of Leicester, an adviser to 2U and a visiting professor at King's College, London.

I am sure that the Minister was right that there will be some mature students—I was fascinated by what the noble Baroness, Lady Blackstone, just said—for whom the prospect of studying so briskly in two years will make this an attractive option. However, for many 18 year-olds, the prospect of three years away from home studying a course at that length will remain very attractive. In fact, I would be so bold as to make a modest bet with the Minister or anyone else who will take me on that in the coming years the increase in the number of students studying for four years will be greater than the increase in the number of students studying for two years.

Believe it or not, quite a lot of students enjoy being at university. The Minister quoted a student as saying that the advantage of this would be that it would minimise the time at university. There may be some students who think like that but, in my experience, many students enjoy their three years, and the biggest single surge in demand in higher education at the moment is for master's degrees—adding an extra year to the time at university. So if we look at where the growth in higher education is coming from, I think we are very likely to see it in master's degrees rather than in two-year courses.

I have two questions for the Minister. First, for those of a suspicious cast of mind, when we see that this full degree is to be delivered for a total fee cost of £22,000 over two years, we wonder what would happen if £22,000 were divided by three and became a new fee total for a three-year course—something slightly over £7,000. Can the Minister assure us that it would be a serious mistake for us to worry about such calculations? Will he assure us that he will take to heart the very interesting intervention from the noble Lord, Lord Luce, who made a point about the costs that an exceptionally efficient and well-respected university, the University of Buckingham, encountered? The argument was that £11,000 times two was insufficient resource for the University of Buckingham, so we can presume that any such reduction in fees would not provide the resource that even an efficient and well-regarded university such as Buckingham would require in order to educate its students.

As we are straying into this territory, will the Minister say whether there is any information that he can share with noble Lords about the current likely timetable for the publication of the Augar review?

Lord Winston (Lab): My Lords, I must be forgiven, but I have some misgivings about the way the noble Viscount, Lord Younger, rather glossed over the possible disadvantages of an accelerated degree. I shall speak very briefly about this. I am an employee of a Russell group university which has a minimum three-year course. Some courses are longer. One of our great

[LORD WINSTON]
difficulties, particularly with scientists, is to understand and recognise that, increasingly from the age of 15, young people are learning more and more about less and less. Knowledge is expanding exponentially, and there is a huge amount of extra learning involved. One of the problems for our society is that increasingly we have become so specialised that we forget many of the societal values, the ethical issues and the other problems that a graduate has to recognise. Universities are not just about learning to do a job better; they are also about learning more about our humanity and what makes us human.

When I was at university, I did not learn how to become a doctor—in fact, it would have been useless to try to become a doctor from my course—and I did not learn anything about molecular biology, but I am now both a doctor and a scientist. I had time to read Chaucer and Thomas Hardy, for example. I looked at a whole range of things; I learned film as an art form. That makes a very big difference to a student's general experience at university. For me, the point of being at university was to widen my horizons, not to narrow them.

Therefore, when the Minister comes to measure the impact of these accelerated courses, which I think he has somewhat glossed over, how does he intend to ensure that the kind of metrics that we apply are not based simply on results or the number of people in employment, but also on how these students, when they graduate, see themselves as part of society so that they act in an effective way to support society; they actually understand how to communicate with people and they understand the ethics of what they are doing, whether they are in the humanities or the sciences? It seems to be something that is easily forgotten as we learn more and more about less and less.

Lord Storey (LD): My Lords, we welcome the development of accelerated degrees but, of course, academic integrity and excellence has to be the hallmark of any degree, and it certainly must be the same for accelerated degrees. I was interested in the point made by the noble Lord, Lord Willetts, and his bet. More and more young people who go to university realise that getting a degree is good, but they think that if they want to do that particular job they have to get a first. Now they are saying that if they want to get that job, it is not just about getting a first: it is about getting a master's, a distinction definitely and maybe a merit. I see a pattern that students might well go and do three years at university: two years doing their accelerated degree and a year doing the master's. It would be a three-year package to get their first degree and a master's.

I have always been slightly bemused about the student experience that we have heard about. Students usually finish at the beginning of June and go back in mid-September. Many students would want to carry on with that sort of student experience and do all the things that being a student implies. It is not just about academic work and rigour: it is about socialising, discovering yourself and so on. That will continue and long may it continue.

I have two concerns that other noble Lords have mentioned. I agree with the noble Lord, Lord Luce, that accelerated degrees tend to be limited to certain subjects, particularly business studies and languages. We need to hear from the Minister how we can ensure that universities are properly funded so that they are able to offer courses for the subjects that he mentioned, such as engineering or the sciences, to increase student choice.

My second concern, which a number of people have mentioned, is the whole business of mature students. We see a decline in their numbers and a decline in the number of people doing Open University courses. What does the Minister have to say about this, because the finances do not really work for mature students and we need to ensure that they have those opportunities? I heard the suggestion made by the noble Baroness, Lady Blackstone. I am not convinced that the Government would actually do that, but we need to be inventive to ensure that those mature students are actually returning to higher education.

Lord Mackay of Clashfern (Con): My Lords, one matter that occurs to me in relation to accelerated degrees is the question of staff. I got the impression earlier in the debate that the staff for a quicker type of degree would be different from the staff dealing with the rest. That might be partly due to a difference in subject matter, but within the same subject, is the Minister suggesting that the staff teaching the accelerated degrees would be different from the staff dealing with ordinary, full-time degrees?

5.30 pm

Lord Watson of Invergowrie (Lab): My Lords, I think it is fair to say that there is broad agreement on the urgent need to address the lack of flexibility in our higher education system. With the challenges facing us when we pull up the drawbridge on 29 March, not to mention the many unknowns around the world of work as automation gathers pace, our education system urgently needs to adapt, particularly the further and higher education sectors.

To some extent, the Government have acknowledged that, because over the past 18 months or so we have seen the publication of the *Made Smarter Review*, the industrial strategy, the Government Office for Science report *Future of Skills & Lifelong Learning*, the post-18 review, the careers strategy and the national retraining scheme, inter alia, which leads to something of a conundrum. With Philip Augar about to publish the review of his panel's look at post-school education, why did the Government pre-empt that, as long ago as November, by publishing their proposals for accelerated degrees? Would it not have been better to await the Augar recommendations before announcing the accelerated degree proposals to fit in with the Government's intentions thereafter?

The proposal for the increase in accelerated degrees serves little purpose in the great uncertainty that existing universities and providers face from the lack of knowledge of what the future holds in terms of our participation in Erasmus+ and the Horizon research programmes, plus the withdrawal of funding from the European Social Fund and European Regional Development Fund, from which many community-focused universities and providers have benefited.

Accelerated degrees received statutory underpinning in the Higher Education and Research Act. During the passage of that legislation, the Minister and I, together with many others, some of whom are here this evening, spent hour after hour discussing hundreds of amendments. It was the task with which we were engaged at this time two years ago, and I doubt that any of us would wish to turn the clock back to that particular period.

We support the concept of accelerated degrees but not in the form outlined in these regulations. Many universities already offer this form of study, but the new provisions will allow the two-year course funding system more flexibility to further encourage their uptake.

Many noble Lords have highlighted the fact that accelerated degrees tend to be limited to subjects such as business and languages. As others have done, I put it to the Minister that it is important that he sets out whether he intends to ensure that universities are properly funded so as to be able to offer higher course subjects such as engineering or the sciences to further increase student choice. I was taken by the suggestion from my noble friend Lady Blackstone that the Government should provide specific funding to universities to reduce the load on students wishing to study for an accelerated degree. I look forward to hearing the Minister's response to that.

The Government highlight as a benefit of these regulations that students who opt for a two-year degree will save at least 20% in total tuition costs compared with the costs of a standard three-year course. More accurately, I suggest, we are being asked to support a 20% hike in tuition fees, albeit for a two-year period of study, without any commensurate guarantee of an improvement to, or at least maintenance of, the quality of tuition and …, the other provision from universities.

It is the details and the firm focus on increasing the maximum fee cap with which we disagree because we do not believe that, at this stage, it will bring the wider benefits to universities or, more importantly, to potential students that the Government claim it will. We are not alone in that view. For example, the chief executive of the Russell group said:

"Greater choice for students is always good but I would caution ministers against 'overpromising'. The Government's own projection for the likely take-up of these degrees is modest and we actually hear many students calling for four-year degrees, for example, to spend a year on a work placement or studying abroad".

MillionPlus said:

"Demand for accelerated degrees has been low for many years and is unlikely to increase significantly on account of these fee changes".

There is little evidence of solid demand for this type of course.

The real casualties from the 2012 funding changes that led to the tripling of tuition fees have been part-time students in England, whose numbers have dropped by 59% in the last six years. Those who have been most deterred from study by that increase are not those aged 18 entering full-time higher education but older, especially disadvantaged, students. It is apparent that the biggest reason for the decline is the fees and funding policy in England because, as noble Lords will know, the average student debt in England has risen to £46,000. Even more alarmingly, the Institute for Fiscal Studies found that the removal of maintenance grants from students from low-income families meant that they were graduating with the highest debt levels, which in some cases are in excess of £57,000. Therefore, the trend in those potential applicants has been away from participation in higher education.

These regulations increase the higher amount to start a degree to £11,100 on an annual basis. It is not difficult to imagine the impact that will have on the ability or willingness of less well-off students, or potential students, to enrol for these courses. Of course we shall never know how many were unable or unwilling to meet the increased pro-rata figure.

The University and College Union has said that the new arrangements are not about increasing real choice for students, but could allow for-profit companies to access more public resources through the student loans system. That was a point that many noble Lords cautioned against during the various stages of the Higher Education and Research Act 2017 in your Lordships' House and it is a strong possibility that we believe the Government should not ignore. However, I should say that it is at least open to speculation as to whether or not such an outcome would be anathema to the Government's ambitions for the future direction of higher education.

The Explanatory Memorandum to these regulations lists the theoretical benefits for providers and students, but it also refers to the numerous concerns that have been expressed across the sector. It says:

"Students on existing accelerated degrees report a very high level of satisfaction, and highlight the opportunity to graduate and start or resume work a year sooner … together with costs savings and academic benefits".

That ignores the fact that those degrees would be available only to students able to study all year round. That has major implications for access and participation for part-time students which, as I have already highlighted, are in freefall under this Government. Can the Minister explain how accelerated degrees will address the devastating fall in part-time higher education study?

There is another consideration about the wider benefits of student life beyond the degree itself—what the Minister called "the student experience" in his opening remarks. The University and College Union has stated that:

"Accelerated degrees result in reduced opportunities for students to engage in part-time employment over the course of their studies. This limitation is particularly acute for students from disadvantaged backgrounds who are more likely to need to seek employment in order to fund themselves through university".

Would that students did not need to work part-time during their course, as was the case when noble Lords here today were studying. But we know that most do and perhaps that demonstrates that the accelerated degree proposals are focused not on those sorts of people, but in many cases on better-off or employer-funded applicants.

The lack of downtime—holiday time, if you like—factored into these degrees also means that they could prove difficult to student parents or those with caring responsibilities. Have the Government given due attention to such considerations? I hope the Minister might say something about that aspect of the regulations, because

[Lord Watson of Invergowrie]

I suspect that the students he quoted, who enjoyed pursuing hobbies and other activities, were not encumbered by financial constraints.

The Open University says that there needs to be increased choice and flexibility for students to study at a time, pace, mode and place that they choose; we very much agree. One of the stated objectives of the 2012 funding reforms was to allow greater diversity of provision, including more short two-year courses and more part-time opportunities. With the reforms having failed to achieve that objective, it is vital to increase options. However, the Government have failed to address the crisis for the Open University and other adult learning providers. Accelerated degrees are just one form of flexibility and, as MillionPlus says, the Government have missed out on the opportunity to create,

"greater flexibility in fee structures and loan availability to enable students to access financial support for periods of study of less than a year (for example to borrow by modules rather than by year)".

We agree with it when it concludes that:

"True flexibility…can only come when students are not penalised for studying part-time, or for shifting between full and part time study".

Finally, it is clear that the Government have given little thought to the impact on staff workloads of accelerated degrees. There is no guarantee that existing university teachers will be willing or able to teach the new accelerated degrees as proposed. There is a risk that an increase in accelerated degrees will compromise time currently allocated by these teachers to research, as other noble Lords have said. Worse, it is likely to lead to the use of even more casualised teaching staff to deliver provision during the summer months. With threats to our existing world-class higher education institutions and research piling up from the uncertainties of an existence without the solidarity offered by membership of the European Union, that is not a chance that we should be taking.

What steps have the Government taken to alleviate the pressures on staff that these courses may create? Ministers should focus on not simply accelerated courses for a market driven by untested new providers but protecting the global strength and reputation of UK higher and further education.

We do not support these regulations in what they seek to achieve because we do not believe that they are equipped for that. When they were debated in another place two weeks ago, the Government carried the day when the Opposition put the regulations to a vote. We do not intend to do likewise in your Lordships' House, but the concerns that I have outlined must be addressed if accelerated degree courses are to contribute meaningfully to the greater flexibility needed in higher education.

Viscount Younger of Leckie: My Lords, I appreciate the broad support for these regulations, but I have also taken note of a good number of questions that have been raised this afternoon in the Chamber, which I regard as being extremely helpful.

As one lays regulations such as these, it is important to continue to listen. This will definitely feed into and impact on the monitoring and reviewing of what we have started today—and that helps to answer a question from the noble Lord, Lord Luce, who asked what we will do to be sure that we monitor these regulations and their rollout, effect and impact. I reassure the noble Lord that we will most certainly do that.

I will also say at the outset that I agree with the noble Lord about the inspirational leadership that has come from Sir Anthony Seldon, who has spoken a lot about accelerated degrees. Knowing him a bit, it is not all in favour. He has his own points to raise about it, but he has been a leading light, I think it is fair to say, in this particular respect, so I am delighted that we have reached this point today on the regulations, bearing in mind his input.

The noble Lord, Lord Willetts, mentioned the Augar review. To repeat what I have said before in the Chamber, there is no new news but the review will report in early 2019, as scheduled. Mr Augar will report at an interim stage. The Government will then consider and conclude their overall review—it is a government review—and accelerated degrees are being considered by this review. So, until the review is concluded, we will continue with the government aim to increase wider provision and access—but, of course, as the House would expect, I cannot pre-empt the review's conclusions.

The noble Lord, Lord Winston, raised an interesting and much broader point. I listened carefully to what he said about the—if I may put it this way—human side of accelerated degrees and their participation in society, and also a focus on the measures for success, which I thought was very interesting. We of course agree about the importance of higher education in developing a student's all-round character and we will certainly reflect on this point in considering how we review accelerated degrees. Accelerated degree students' term-time so called "free time" is the same as that of standard students. Accelerated degree students do not consider their student experience and their capacity to mature as inferior to those of standard students. I say that at the outset because it is an interesting reflection on the subject that we are talking about today.

The noble Baroness, Lady Garden, raised an interesting question about international recognition and whether the Government had considered this. The QAA does not believe that accelerated degrees pose a specific issue in terms of international recognition. An accelerated degree comprises the same number of academic credits as a non-accelerated equivalent—but it is obviously another thing that we need to reflect on.

The noble Baroness, Lady Garden, also asked about assurances and an update on the future of Erasmus+. We welcome the proposal for the successor scheme and, as stated in the White Paper, we are,

"open to exploring participation in the successor scheme".

Timing is dependent on the wider negotiations on the future UK-EU partnership, as she will be aware, and I am sure that other Ministers have said this in the past. In addition, an updated technical notice has been published by the DfE on GOV.UK which states the current position on no-deal preparations for Erasmus+. The department is working to agree with the European Commission what continued participation in the programme post exit could look like, but we have, so far, had no formal engagement or response from the Commission—that is where we are on that.

The noble Baroness, Lady Garden, also asked about the extension of accelerated courses beyond the humanities. I say to the House and to the noble Baroness that there is no reason why many courses other than humanities could not be accelerated. It would be for providers to consider the requirements of professional accreditation bodies. I go further to remind the House that the whole point of HERA was to allow universities and providers to have the autonomy to decide for themselves what might be best for their students, and to look at the demand and how they can best market the courses. As I said, it is early days, and we think, as the noble Baroness, Lady Blackstone, said, that there is the opportunity for some enlightened thinking in universities on these regulations.

5.45 pm

The noble Lord, Lord Luce, raised the point that I alluded to slightly earlier on monitoring accelerated degrees. I want to go a little further by saying that we agree that it is vital to monitor and evaluate the impact of these reforms. We will conduct a review of accelerated degrees three years after these regulations come into effect. The consultation asked specifically whether accelerated degrees needed a higher standard of monitoring. Interestingly, the majority of respondents said, "No, let's treat and monitor these degrees in the same way as all other degrees".

My noble friend Lord Willetts asked about the £22,000 accelerated degree two-year fee and whether it would become the fee cap for three-year degrees. We have no intention of doing this. The annual fee caps depend on whether a course is standard or accelerated. Accelerated caps cannot be applied to a standard degree.

The noble Baroness, Lady Garden, raised the question of whether the Student Loans Company will recognise accelerated degree students as requiring maintenance over the summer period, which should be the assumption for an accelerated degree. These regulations will allow all accelerated degrees to be recognised by the SLC, UCAS, the OfS and HESA. Long course loans cover maintenance for all longer degrees—that is, longer than 30 weeks per year—including accelerated degrees.

The noble Lord, Lord Luce, asked about the affordability to providers, including private providers, such as Buckingham, and public providers. Private, non-registered providers can continue to charge affordable fees. Registered providers currently can afford accelerated degrees in some areas. The regulations will provide even more funding. Providers might need to consider cross-subsidy, as they do currently with standard degrees, as the noble Lord will know. Cost savings from the third year of overheads, which has been confirmed by HEFCE, will be continued.

Quite a few other questions have been raised. I will look at *Hansard* and check what I have not answered, and I will certainly write a letter to all noble Lords.

Baroness Blackstone: My Lords, the Minister, as is his wont, has very courteously answered most of the questions put to him. I am feeling a bit miffed, because I put a question to him that he has not touched on. I argued that it is of course legitimate to incentivise universities to provide more of these courses, but there is more than one way of incentivising them. Why choose a route that disincentivises the students from taking these courses? Higher fees are likely to lead to mature students looking at the up-front fee and thinking, "I don't want to do this programme". Why not pay a government grant? You then avoid having to put the fees up. Fees are already very high and there is a huge amount of criticism out there, as the Minister is fully aware, of the size of fees and the amount already charged. This is an example of going yet higher. Could the Government come back to look at whether a government grant could be paid directly to universities, having considered carefully how much extra cost they are having to sustain, rather than laying it on the students to pay a higher fee? It is a simple question.

Viscount Younger of Leckie: It is indeed, but I cannot give a simple answer to that one this afternoon; I can only say that I very much noted what the noble Baroness said about seeking grants. As I said earlier in response to a question from my noble friend Lord Willetts, I suspect this is a matter that Philip Augar will look at in his review. The bigger issue is whether it should be tuition fees, grants or a mixture of the two. I am not in a position to answer that question today.

However, I would like to go further, because the noble Baroness raised an interesting point about mature students. It might be helpful to say that we hope and envisage that mature students will look at these proposals seriously. Points have been raised about the cost involved for mature students. It depends on how you define "mature", but I would imagine that it is those who have had several years in employment, who perhaps are not particularly comfortable in that employment and want to make a change, and for whom a two-year degree at a total cost of £22,000 might just be within their scope. Some people might say that is quite expensive, but we think there could be some demand for that. The noble Baroness, Lady Blackstone, raised the point that it would be more applicable to mature students, rather than younger students setting out from school. This may be the case, but as I said earlier, it is early days and I think we need to see how this is rolled out and how universities and providers grab the opportunity and market it. We then have to monitor it carefully, not just in three years but over the period up to three years, when we can have a proper review. I hope that helps, but I am not in a position to answer the noble Baroness's first question.

Today's debate will continue to inform and help us to meet the wider challenges of expanding higher education provision. It will also help raise awareness and understanding of accelerated degrees for providers, potential students, employers and the wider public. I commend these regulations to the House.

Motion agreed.

House adjourned at 5.51 pm.

Grand Committee

Tuesday 29 January 2019

3.30 pm

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, I should advise the Committee that if there is a Division in the House, the Committee will adjourn for 10 minutes.

Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

3.30 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, this draft instrument forms part of our ongoing work to ensure that, if the UK leaves the EU without a deal, our legal system will continue to work effectively for our citizens. If Parliament approves the withdrawal agreement, which includes an implementation period, and passes the necessary legislation to implement that agreement, the Government would defer the coming into force of these instruments until the end of that implementation period. Once a deal on our future relationship has been reached, we envisage that they would be revoked entirely.

Your Lordships will be aware that, as part of these preparations, the Government have published a series of technical notices to outline the implications of a no-deal exit for citizens and businesses. One of these, published on 13 September 2018, was titled *Handling Civil Legal Cases that Involve EU Countries if There's No Brexit Deal*. It set out the implications of a no-deal exit for the rules on how to resolve cross-border disputes in civil and commercial cases.

The Secretary of State, the Ministry of Justice ministerial team and officials have had regular engagement with key stakeholders in the field of civil, commercial and family justice, including the Law Society of England and Wales, the Bar Council, through the Brexit Law Committee, and individuals. This has included discussions on the technical notice, to ensure that our policy proposals in respect of no deal provide the best outcome for citizens and businesses. The instruments we are discussing today are designed to implement the policy outlined in the technical notice. The Joint Committee on Statutory Instruments reviewed the statutory instrument and had no substantive comments.

This draft instrument makes changes to the rules in England and Wales, in Northern Ireland and in Scotland that determine which courts should have jurisdiction in cross-border civil and commercial cases involving courts in EU and relevant EFTA countries—that is, those party to the Lugano convention: Norway, Switzerland and Iceland. It also changes the rules on how to ensure that any judgments or decisions can be enforced across the EU and relevant EFTA states.

It may be helpful if I explain the current effect of EU law in this area. The current principal measure in relation to civil and commercial law is known as the Brussels Ia regulation, as it replaced the so-called Brussels I regulation. Denmark has a separate agreement with the other EU member states, based on Brussels Ia, to give Denmark access to the EU's system of civil judicial co-operation, because it does not normally participate in EU justice and home affairs measures, pursuant to Protocol 22 of the Treaty on the Functioning of the European Union. There is also a separate but similar agreement, the 2007 Lugano convention, based on Brussels I, between the EU and Norway, Switzerland and Iceland. It also applies to Denmark. Brussels I, as distinct from Brussels Ia, remains of some continuing relevance because it applies in respect of actions commenced prior to 10 January 2015, but it is of limited relevance to the present issue.

The Brussels regime provides clear and reciprocal rules on jurisdiction in civil and commercial matters—that is, which court should hear a cross-border case. Its application is mandatory. There is no discretion for courts to act otherwise than in accordance with the regime. This means that if, for example, a UK consumer or business has a dispute with a party in another EU member state or a Lugano party, there are clear rules to follow to determine where the case should be heard. This negates the risks of parallel proceedings and more than one court hearing the same case.

There is almost automatic recognition and enforcement of judgments from one participating state in another. This means that if a business successfully sues a business in one participating state, it can enforce the resulting judgment where it needs to without going through costly and time-consuming additional processes. This is possible because all participating states must apply uniform rules of jurisdiction and can trust that jurisdiction was taken properly and appropriately.

The Brussels regime operates almost entirely on a reciprocal basis. Its effectiveness is founded on mutual co-operation between states. Countries respect the jurisdiction of each other's courts and recognise and enforce each other's judgments. However, with some limited exceptions, including consumer and employment cases, the Brussels rules do not apply if the defendant to the dispute is domiciled outside the EU. In such cases, EU member states and the Lugano parties apply their own national rules when dealing with cross-border matters.

What will change should we leave the EU without a deal? If the UK leaves without an agreement, the current EU regime for determining these matters will cease to apply to us. After such an exit, the reciprocity in the EU regime will no longer apply in relations between the EU member states and the UK, nor between the Lugano parties and the UK. Furthermore, there are no unilateral actions that the UK can take to compel the EU as a whole to continue to apply the reciprocal jurisdictional rules or to enforce judgments. Simply put, the rules under which we currently operate under the Brussels regime would cease to function effectively in the event of a no-deal exit.

For this reason, it is necessary to legislate now to provide clarity about how the UK will determine whether it has jurisdiction in a civil and commercial

[Lord Keen of Elie]
case and when UK courts will recognise and enforce judgments from EU countries. However, let me be absolutely clear: without a reciprocal agreement in this area, we cannot determine what rules the EU will apply. This will be down to member states' own national laws.

As set out in the instrument before us, the Government's response to this is, with limited exceptions, to revert to the rules on jurisdiction and on recognition and enforcement of judgments that currently apply to cross-border disputes where the Brussels regime does not apply—that is, for disputes involving parties from the UK on the one hand and countries outside the EU and the Lugano parties on the other. This instrument is not creating new policy but transitioning to a well-developed and understood set of rules that provide an effective framework for UK courts to work with and take into account the lack of reciprocity in this area.

There are a few exceptions to this general approach. Importantly, the rules of the Hague Convention on Choice of Court Agreements 2005 will continue to apply, as the UK is acceding to it as a contracting state. This is being brought into UK law post-EU exit by a separate SI, which has been subject to the negative procedure—that is, the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018. Broadly speaking, this means that the courts of a part of the UK will take jurisdiction whenever a valid choice of court agreement to which the convention applies has been made and will readily recognise and enforce a foreign judgment from a foreign court validly selected under such an agreement. Courts of other contracting states to that convention will equally recognise and enforce a judgment from a UK court to which the convention applies.

The EU was a signatory to the 2005 Hague convention on behalf of all members of the EU. It is therefore necessary that we should become a signatory to that convention as an individual state on exit. The application to do so was made on 28 December 2018. It will become effective under the terms of the convention as of 1 April this year.

Secondly, we have sought where we can to maintain jurisdictional protections for UK consumers and employees contained in the Brussels regime. These rules are not restricted to EU-domiciled defendants, so we can retain to a large degree the consumer and employee-friendly approach of the Brussels regime while restating them in a manner specific to UK-based consumers and employees. This largely obviates the need for a consumer or employee to sue abroad in these cases, with the expense and difficulty that brings.

This instrument is necessary to fix the statute book in the event of a no-deal exit. We have assessed its impact and published a full impact assessment. Broadly, we have concluded that although in certain respects the common law may operate less efficiently than the existing Brussels regime to which the UK is party as a result of EU membership, only negligible costs would arise from this SI, relative to the alternative of leaving legislation on the statute book that ceases to operate effectively in the absence of reciprocity after the UK leaves the EU.

Lord Adonis (Lab): My Lords—

Lord Keen of Elie: I am not taking interventions during the opening speech. It is the Government's view that removing deficient retained EU law and associated domestic legislation from domestic law will clarify the rules that apply to determine jurisdiction, recognition and the enforcement of judgments post exit. This has the benefit of protecting litigants from unnecessary expense and making UK legislation more transparent, therefore protecting its reputation. This will also ensure that the same rules apply to cross-border matters involving EU and non-EU countries.

There will be deficiencies in retained EU law, which implements the instruments of the Brussels regime, due to a lack of reciprocity. That will become obvious if we leave the EU without a deal. This SI fixes those deficiencies and establishes a practicable set of rules for dealing with cross-border disputes in civil and commercial matters in such a scenario.

Lord Adonis: My Lords, before the Minister sits down—

Lord Keen of Elie: I have already sat down.

Lord Adonis: The Minister said that he would not take interventions.

Lord Keen of Elie: That is correct.

Lord Adonis: That is extremely disrespectful to the Committee, if I may say so, because now there is no other way for us to ask the Minister questions before he responds at the end of the entire debate—and we will have no means to come back on his statements at that point because the Question will be put at the end.

Lord Keen of Elie: Just to be clear, I have already sat down.

Lord Adonis: I am happy to take an intervention from the noble and learned Lord, even though he was not prepared to take one from me. I will speak later in the debate but I just want to put on record that I find his actions extremely disrespectful to the Committee. That alone would lead me to wish to negative the instrument, because the Minister is not subjecting himself to the proper process of interrogation and answering questions on the regulations. It is immensely disrespectful and the first time that a Minister has come to a Grand Committee and not been prepared to answer questions in the normal way.

Lord Beith (LD): My Lords, when I looked at the instrument, I began to wonder whether the Minister was open to the charge from some of his colleagues here and in the other place that he was part of Project Fear, because the instrument sets out some consequences of Brexit, both in general and in a no-deal scenario, pretty starkly.

The loss of reciprocity is central to this instrument. I did not notice the Minister express any concern or grief at this but it represents the removal of something that we have developed in recent years, to the great advantage of litigants, and which we are about to lose, to our detriment. The consequence is that separate enforcement will be required in many cases, including judgments of foreign courts; by foreign, I mean courts in the EU or the Lugano states. Incidentally, that includes Norway, a state with which we have particularly close and friendly relations.

The Explanatory Notes to the regulations show that the Government go only this far by stating:

"The impact on business, charities or voluntary bodies of this instrument is, on balance, expected to be positive when compared to making no changes to retained EU law".

However, in the same paragraph the notes go on to explain that,

"an increased risk of parallel proceedings … could increase the number and complexity of disputes before the courts and the cost of litigation for parties … Common law rules also involve a less efficient mechanism for recognising and enforcing judgments than using existing EU rules deriving from the Brussels regime, which will cost those seeking to have their judgment recognised in the UK more money and time".

There is a serious loss in that and a further loss in relation to the European Judicial Network, another development that has been beneficial to this country and to justice across Europe generally. Again, a bald statement is made in paragraph 7.14:

"The inability of the UK to continue to take part in this network is as a result of EU Exit, this SI simply reflects that new status".

Another valuable judicial development is to be simply cast aside.

3.45 pm

It is not clear from much that the Government have said elsewhere so far to what extent they are making the retention of any of these things a priority in the withdrawal agreement and the political processes that would follow if the withdrawal agreement is approved. Of course, we have no idea what would be agreed to. Precisely what will happen under the scenarios of either no deal or a deal needs to be made a little clearer. I think the Minister has indicated that the instrument would not be commenced if there was a deal, but perhaps he could explain that a little more clearly. My understanding so far, partly from intervening on him in another debate, is that there will have to be quite extensive provisions in any withdrawal agreement Bill to prevent all these no-deal SIs coming into effect if they are not needed. It is unclear whether any part of them would be needed if we had a deal but the Government were unable to reach satisfactory agreements about reciprocity and judicial co-operation so as to continue with the provisions whose loss I have been lamenting today.

I hope the Minister can make clear at some point what will happen to this instrument under either of those scenarios and to what extent it is the Government's intention to seek to recover what, in a no-deal situation, they know they will lose in the respects that I have mentioned.

Baroness McIntosh of Pickering (Con): My Lords, I rise to ask a question and I am grateful to my noble and learned friend Lord Keen for setting the scene. A theme seems to be developing in relation to practitioners and the recognition of court judgments with the Government's proposed exit from the European Union. My noble friend has responded to some of my concerns as regards practitioners and trading in legal services, which I hope to address in the context of the Trade Bill.

My specific concerns relate to the remarks of my noble and learned friend and what is set out on page 5 of the Explanatory Memorandum, which sets out a number of the deficiencies that will arise if we crash out without a deal. I presume that this falls into the same category that services and the jurisdictions of courts fall into with the World Trade Organization and its General Agreement on the Trade in Services. My question is similar to that of the noble Lord, Lord Beith. What will be the status of this in those circumstances? However, I have a more direct question of my own. If this is being done on the basis of reciprocity and if the instrument before us today seeks to fill the gap so that court judgments will be recognised in this country, what measures are the Government and my noble and learned friend's department taking to ensure that reciprocity will be respected in the circumstances of Britain leaving without a deal?

Lord Hope of Craighead (CB): My Lords, could the Minister say something about the effect of what is being provided for here on the common-law principle of forum non conveniens? I am sure he knows very well that the doctrine of forum non conveniens was eclipsed, as regards membership of the EU, by the reciprocity principle and the rules that apply throughout the EU.

Lord Foulkes of Cumnock (Lab Co-op): I am grateful to the noble and learned Lord, who is far more polite than someone else—I gather the Minister did not give way earlier on. Could he explain to non-lawyers exactly what he is talking about?

Lord Hope of Craighead: Yes, certainly. There is a principle, which originated in Scotland, by which a court can decline jurisdiction in a case brought in, let us say, Scotland, on the ground that it is not convenient because there is a better place for the case to be tried. It originated particularly in Scotland out of attempts to raise matrimonial proceedings in Scotland that had a far closer connection with England. The argument developed that if it had a closer connection, it was more convenient, and so the court would decline jurisdiction and you would be transferred to England. That principle is of long standing and has been regarded as very useful in our jurisdiction. However, one of the effects of joining the EU and being subject to the jurisdiction of the European Court of Justice arises from the particular case of Owusu, which the Minister may know about, which has laid down very strict rules that the forum non conveniens principle cannot apply.

Am I right in thinking that, because it is common law and not the subject of any statutory measure, it will be for the courts to work out whether the principle applies without the restrictions that currently apply so long as we are a member of the EU?

Baroness Vere of Norbiton (Con): My Lords, I remind all Members of the Committee that it is a convention that a noble Lord does not intervene if they were not here at the start of the debate.

Lord Adonis: My Lords, that is a completely inappropriate intervention. My noble friend was not present at the beginning of the debate because he was in the Chamber debating no-deal regulations. It is the Government's fault that no-deal regulations were being debated in the Grand Committee and in the Chamber at the same time.

Lord Foulkes of Cumnock: I am most grateful to my noble friend. I take great exception to what the noble Baroness said. I am surprised that she knows a lot about convention, as she has not been here very long, but obviously she has picked it up from somewhere. Conventions are conventions, not rules that need to be and must be obeyed. I understand that one of the conventions is that when Ministers are explaining something and are asked a question, they normally give way and answer it. In all the Grand Committees that I have been in, throughout the years—I have been in a number—the Minister has given way. Of course, we are getting used to the noble and learned Lord, Lord Keen, by now.

Lord Marks of Henley-on-Thames (LD): My Lords, it is not often that I confess to feeling sorry for the noble and learned Lord, Lord Keen, but on this occasion I do, and in the presence of a number of other distinguished lawyers, who have considerable experience of commercial litigation involving cross-border and cross-European border disputes. It is almost impossible to overestimate the importance of the regime that we have built up across the European Union for the resolution of issues of jurisdiction, recognition and enforcement in civil and commercial disputes. We have been promised so many times, in debate after debate on the Brexit issue, that we would not be in this position. The Government were going to get a deal, and one of the first things they would insist on in getting it is that we would preserve the cross-border jurisdiction, recognition and enforcement issues, or rules that we have built up with Brussels Ia.

We are in this position now; I entirely accept that the Minister opened this debate on these regulations on the basis that the Government are still hoping for a deal and that if there is a deal, we will continue along the course of resolving this issue. But it was with horror that many of us heard the noble Lord, Lord Callanan, last night refuse to accede to the Motion of the noble Baroness, Lady Smith, because it ruled out no deal—which it did not—and for him and the Government to be so prepared to countenance no deal.

In our view and that of almost every commercial lawyer with whom I speak, the issues surrounding cross-border litigation are being given far too little prominence and importance. What we are losing is clearly defined in the Explanatory Memorandum as,

"a system of uniform jurisdictional rules to identify the appropriate court in which to bring a civil law or commercial claim"—

that is the first bullet point on page 2—and,

"a simplified mechanism to recognise and enforce the judgment EU Member State/EFTA state courts in civil and commercial cases, with a view to reducing costs for litigants and increasing efficiency. The possibility for such simplified and almost automatic treatment of the judgment of one such state in another is based on the 'mutual trust' that each state will have applied the uniform rules of jurisdiction".

This statutory instrument, subject to some relatively minor exceptions, effectively revokes Brussels Ia, which is at the heart of the Brussels regime. It is also significant that it abandons the European Judicial Network, which has been a forum for judicial co-operation of great use throughout the European Union, and does so with no replacement. The very limited exceptions that I mentioned were mentioned by the Minister: some consumer and employment cases—in British courts, of course—transitional cases and the choice of courts arrangements under the Hague Convention. That is, to coin a phrase used by some Brexiteers in the past, thin gruel indeed compared with the widespread benefits that we get from the system of judicial co-operation and our current arrangements.

Lord Adonis: My Lords, the noble Lord is making an extremely powerful case. For those of us who are not lawyers and are struggling to understand precisely what we are losing as a result of this no-deal regulation and the preparations, can he tell us what we as a country would lose by not being part of the European Judicial Network? It was not mentioned at all by the Minister.

Lord Marks of Henley-on-Thames: I shall move on to that in the course of what I have to say. I do not propose to deal with the detail of it, because the detail is all spelled out.

What we have at the moment is a common system for arranging which court will have jurisdiction, recognising the judgment of courts throughout the European Union and the other convention states and the enforcement of judgments across the European Union. The point of that, and what we will be losing, is the capacity for citizens and businesses to know that they can sue, wherever they are in the European Union, in the appropriate court and that that judgment will be enforced across the Union. That was not the case before the convention and will not be the case thereafter. We will effectively be thrown back on to the rules that pertained before the EU. Those rules are those we have with third countries and in many cases involve satellite litigation, duplication of litigation and duplication of costs. That means that our citizens and businesses will be left weaker and less protected. Notably, totally uncosted in the documentation surrounding this statutory instrument is that commercial disadvantage costs money.

The fact that Britain has become so successful and so attractive within the European Union owes not a little to the fact that its system of law and the mutual recognition and enforcement that it enjoys with other European countries has made it attractive as a gateway to the European Union for those outside the European Union, as well as an attractive forum in which to deal for other member states. Losing that advantage is important and will largely offset some other advantages that we have by having a stable, effective and well-respected legal system.

4 pm

The truth is that when we have been told that there is going to be a deal, we have been told in the same breath that this would not happen because the Government would not let it. The problem we now face is that we will be going back to those ghastly, sterile battles that many of us remember, when we were trying to work out which court should have jurisdiction. It always depended at first on where a defendant was validly served whether you could then have leave to serve out of the jurisdiction and whether a litigant fulfilled the criteria for getting such leave. I have the greatest respect for the noble and learned Lord, Lord Hope, and his praise for and defence of the doctrine of forum non conveniens—that is, the inconvenient place to do litigation—that led to satellite litigation about which was the forum non conveniens. Certainly, in major cases it may have led to a sensible and just decision-making process for which court we should be in, but you were litigating in two countries and that was expensive and unattractive. If we are now to go back to a system where we are litigating in two countries on whether we should be in one or the other, we will make ourselves less attractive as a commercial trading nation than those that remain parties to Brussels Ia, as the rest of Europe will.

On enforcement, we presently have a system whereby enforcement across the EU is automatic. We are proposing to move back to a system where, to enforce a judgment obtained in the UK against a French company, you are going to have to start litigation in France. That is wasteful, expensive and unattractive. People will stop coming here and we need to get rid of it.

The impact assessment—the Minister very fairly opened on this point—compares the situation of having no deal and not passing this statutory instrument with having no deal and passing it, and said that on that comparison the benefits are positive. However, that is not a real impact assessment. What we need to assess is the real impact of this statutory instrument and the effect of losing the regime, compared to what we have now—that is, the effect of leaving. My noble friend Lord Beith quoted from paragraph 12.1 of the Explanatory Memorandum.

Lord Adonis: My Lords, if the noble Lord will forgive me, both he and the noble Lord, Lord Beith, have referred to the first sentence of paragraph 12.1, which I think is highly misleading to the lay reader until you have read it twice and understand what it says:

> "The impact on business, charities or voluntary bodies of this instrument is, on balance, expected to be positive when compared to making no changes to retained EU law".

That is very different from saying "when compared to the status quo". The ordinary reader would expect the impact being compared to be that of this new regime compared to the status quo, whereas what the Government are doing, which is seriously misleading to the House and to the public, is claiming that, in comparison with exiting the EU and then making no changes to retained EU law, we are no worse off. That misses the massive elephant in the room: we are leaving the EU in the first place and so losing all the benefits, as he and other noble Lords have mentioned, that come from being in the EU and being part of this reciprocal regime in the first place. Could he tell me whether I have understood this issue correctly?

Lord Marks of Henley-on-Thames: The noble Lord has understood it absolutely correctly and has plainly made the point more eloquently than I did. It was the point I made when I mentioned that the noble and learned Lord had accepted that that was how the Government's impact statement worked. The noble Lord is right to draw the distinction between the,

> "impact on business, charities or voluntary bodies of this instrument is, on balance, expected to be positive when compared to making no changes to retained EU law",

and the real meat of this, which is in the last part of the paragraph:

> "However, as compared to the pre-Exit position, common law rules on jurisdiction provide for a discretionary rather than mandatory stay in the case of parallel proceedings. This creates an increased risk of parallel proceedings"—

precisely the point I was making—

> "whether the court in the United Kingdom is seised first or second. This could increase the number and complexity of disputes before the courts and the cost of litigation for parties. Common law rules also involve a less efficient mechanism for recognising and enforcing judgments than using existing EU rules deriving from the Brussels regime, which will cost those seeking to have their judgment recognised in the UK more money and time".

Addressing the Committee, I attempted to add my further point that it is not just the cost to litigants who go through all this but the attractiveness of the United Kingdom as a location for doing business that suffers from the fact that you cannot rely on a uniform system.

Before closing, I simply ask this. We are in this dreadful position of being a very short time away from the risk of a no-deal Brexit. As Sabine Weyand put it yesterday—I make no apology for her being blunt, because I think she was right to be—we could fall into it "by accident" rather than on purpose. What a travesty for a Parliament almost entirely opposed to a no-deal Brexit to be at risk of forcing our country into this calamitous outcome by accident—but that is where we are. So I ask the noble and learned Lord: in the circumstances, given that almost everybody accepts that this reciprocal set of arrangements for the justice system is of such crucial importance to our functioning legal system, what talks have there been at Secretary of State for Justice level with other members of the European Union to try to preserve some element of a reciprocal system that will replace what we have, even if we walk into this catastrophe by mistake?

Lord Garnier (Con): My Lords, I seek your Lordships' indulgence. I was a little late to this sitting of the Committee because I was detained listening to the wonderful oration of the noble Lord, Lord Foulkes, in the Chamber. He made a number of interventions.

Lord Foulkes of Cumnock: With the permission of the noble Baroness, Lady Vere, I intervene merely to apologise to her, because I realise that she will be as upset as I am about what we are doing at the moment. She was a very good director of ConservativesIN and campaigned very hard for us to stay in Europe, so I realise she must be deeply hurt by what her Government are undertaking at the moment. I apologise.

Lord Garnier: We are not only in danger of talking about forum non conveniens but interventus illicitus. I will advance one simple point. I entirely accept what my good friend, the noble Lord, Lord Marks, has said on the unfortunate state of affairs we are in, and would be in were we to have a no-deal departure from the European Union. Surely the whole point of today's exercise is to anticipate that and to ensure we have mechanisms in place to mitigate the consequences he has so correctly spelled out. Yes, it is all very sad and much to be regretted, but it would be even more to be regretted if my noble and learned friend Lord Keen were unable to move this Motion to its sensible conclusion.

Lord Marks of Henley-on-Thames: I will simply respond to that, because in a sense it is an intervention on me. I accept that this is conditional in the sense that the noble Lord mentions. However, my fundamental point was that the importance of this aspect of no deal has been woefully underestimated in considering how dangerous the concept of no deal is. To that extent, I regard the points I have made in highlighting that danger as valid, because no deal is profoundly to be shunned.

Lord Hope of Craighead: In fairness there is an EU sub-committee chaired by the noble Baroness, Lady Kennedy of The Shaws—I cannot remember which sub-committee it is.

Lord Marks of Henley-on-Thames: Justice.

Lord Hope of Craighead: Thank you. The Justice Sub-Committee prepared a detailed report drawing attention to exactly what the noble Lord has referred to. There was an impassioned debate—I do not know whether the noble Lord was present—at which these points were made. The criticism is not against us, as it were, because in this House we have been taking our responsibilities seriously. However, I understand the point the noble Lord makes about the effect of leaving the EU and the distress he feels.

Lord Beith: There is one thing the Government have not made clear. The impact statement, brief as it is, is structured around there being two options—the other option being not to change retained EU law. As I understood it, that option implied that in a no-deal situation, if we did not have this instrument, the courts would be left behaving as they had previously and hoping that courts in other countries would do the same. One of the things that was not explained very well in the impact statement—perhaps the Minister can clarify this later—is what the other option the Government rejected was.

Lord Beecham (Lab): My Lords, I have practised law for a long time—fortunately none of it in relation to the EU and the complications we are debating today. I defer to the more qualified Members of the Committee today, some of whom have already addressed us.

These regulations might best be described as a hors d'oeuvre to the four-course Brexit banquet we are being served today—although, curiously, neither the Joint Committee on Statutory Instruments nor the Secondary Legislation Scrutiny Committee has raised any concerns.

In addition to reverting to the pre-EU membership system, the statutory instrument repeals a decision that currently allows the UK to co-operate on civil and commercial matters in the EU judicial network. What estimate have the Government made of the impact on the UK of that change, and what consultation took place with industry or other potentially interested parties given that the so-called Brussels regime operated on a reciprocal basis?

The Law Society, which is generally supportive of the statutory instrument, is concerned about the loss of the existing framework for determining which national court has jurisdiction and for recognising whether or not there is a choice of court between the parties to disputes.

The impact assessment contains a disturbing paragraph which states:

> "Businesses and individuals litigating in the courts of EU countries will have an advantage over those litigating in the UK as UK litigants cannot guarantee the judgment they get from the UK courts is enforceable in the EU but litigants who get a judgment from the EU courts, will almost always be able to obtain enforcement of it in the UK".

It is a one-sided deal, as it were. The English legal system has prospered remarkably through its participation in the EU but that looks to be one of the costs and losses that it will incur.

The Law Society notes that hitherto the existing system has fostered cross-border trade and encourages litigants to use the UK courts in the knowledge that their judgments would be enforceable across the EU and calls on the Government to accede to the Lugano convention—which, as the noble and learned Lord has indicated, is not an EU organisation although the EU is a party to it. Can the Minister indicate the Government's response to that suggestion?

Lord Adonis: My Lords, the only noble Lord who has not been prepared to take interventions is the Minister; it is unprecedented in my experience of Grand Committees. It is a straightforward attempt by the Government, which I am afraid we have seen time and again, to suppress parliamentary debates and shorten proceedings in a Grand Committee. One can understand why the Government wish to do this: it is simply impossible now to introduce and enact all the statutory instruments relating to no deal in time for the UK to leave the European Union at the end of March unless they are not scrutinised by Parliament. If they are not, the Government can increase the volume that come before the Grand Committee day by day. The hundreds more that have to come can then be hustled through. I say to the noble and learned Lord, who we hold in high esteem as a barrister, that if these sorts of proceedings and this sort of short-circuiting of due process were taking place in a court in which he was appearing, I imagine that he would be the first to criticise it. It is our duty to hold him to account. As he is not prepared to follow the normal conventions of the Grand Committee and the House, that should lead us to refer this regulation to the House for further debate as a matter of principle, not least because of all the issues raised in the debate.

4.15 pm

I speak in further defence of my noble friend Lord Foulkes, who has played an exemplary role in ensuring that the House performs its proper function in scrutinising these statutory instruments. Even with his many abilities—he has served in more parliamentary assemblies than perhaps any other Member of your Lordships' House—he is not capable of dividing himself in two and appearing in the Chamber and in a Grand Committee at the same time. This is why he could not be present at the beginning of our proceedings and was reprimanded by the Government Whip, who is also seeking to hustle the proceedings of the Grand Committee. This is relevant because the Chamber and the Grand Committee are both considering no-deal statutory instruments.

I had a keen interest in the merchant shipping and transport-related statutory instruments being debated in the Chamber—areas where I have some direct knowledge, experience and expertise, unlike on the matters covered in these instruments. I wished to be in the Chamber, but because the statutory instruments had already been debated in a Grand Committee, I thought that it was more important for me to be here. However, it is totally unacceptable—your Lordships should place this on record—to expect us to debate and scrutinise the same instruments in two places at once, making it impossible for us to conduct our business responsibly.

We are clearly going to be in for a lot more of this. I have just been in the Gallery of the House of Commons watching the Prime Minister's dismal performance in the debates. She is still refusing to rule out a no-deal Brexit, even at this late hour, even though she had no answer to the repeated interventions from Members of Parliament on all sides of the Chamber about the sheer impossibility of conducting a no-deal Brexit at the end of March with a statute book and a set of regulations in a shape that would make it possible.

Lord Foulkes of Cumnock: I am grateful to my noble friend for what he said. I was participating in a debate on the other statutory instruments we are dealing with, as was confirmed by the Bench opposite.

Until I heard the excellent speeches from noble Lords on the Liberal Democrat Front Bench and the noble and learned Lord, Lord Hope, I had not realised what a vital issue we are dealing with. As my noble friend Lord Adonis said, we are not dealing with it line by line in the detailed way that we would normally deal with something so important. Even worse, there has not been proper consultation. We have not heard the views of a widespread group of lawyers: only a few have been consulted. If we had had a wider consultation, the lawyers might have been able to point out some of the difficulties that might arise. We could end up with some unintended consequences because of a lack of scrutiny not just in here but outside. Does my noble friend agree?

Lord Adonis: My noble friend makes a very powerful point. Paragraph 10 of the Explanatory Memorandum says on consultation:

"A formal consultation on these legislative amendments has not been carried out".

I do not know why the relevant Delegated Powers Committee did not highlight that as an issue before the House. The noble and learned Lord, Lord Hope, in a very telling intervention—as a former head of the Supreme Court—talked about the wider impact of leaving the European Union on our legal system and on the recourse that individuals and bodies corporate have as a result of losing all the benefits of EU membership. Given the scale of those concerns and losses, I would have thought that a formal consultation should have been the first thing to be carried out in respect of this statutory instrument.

Although my noble friend Lord Foulkes and I lack expertise in many of these areas, we can see the common themes because we have been present for the statutory instrument debates on all these subjects. One common theme is that of the Government seeking to hustle through these regulations with minimal debate; the other is very inadequate consultation. The consultation has been so inadequate because it simply would not have been possible to conduct a consultation according to the normal Cabinet Office rules of publishing draft instruments, which require: 12 weeks of formal consultation; assessment of the consultation responses; their publication; and the Government response to the consultation, all within the timescales available. The normal standards of good government, which my noble friend and I remember in the far distant days when we had Governments that sought to improve the country and not wreck it—as we have at the moment—simply do not apply any more.

Indeed, it is not just that there was no formal consultation, which we read in paragraph 10.1. Paragraph 10.2, which is suspiciously familiar to Members of the Grand Committee because we have had variants of it time and again too, states:

"The Government's basic approach … has been discussed with a number of members of the legal profession".

Which members? Perhaps the noble and learned Lord will tell us when he responds, if he intends to respond to any of the points raised in the debate. On what basis did the Government choose those members? Why has the list of those consulted not been published? Lastly, I put a fair question to the Delegated Powers and Deregulation Committee, which examined these regulations: why did it not seek to bring before the Grand Committee a statement about the consultation processes that were actually undertaken?

My noble friend and I remember that in other cases, we have seen in Explanatory Memoranda that the Government consulted "selected" and—what was the phrase?—"trusted" members of the relevant industry. Members of the Grand Committee who were present for that debate will recall that we had a long discussion about what "selected and trusted" means. We did not think that the phrase included my noble friend Lord Foulkes and myself because, clearly, we are not trusted by the Government to engage in scrutiny or else the noble and learned Lord, Lord Keen, would have allowed us to intervene on his remarks. However, it is important that the Grand Committee understands who the Government are consulting so that we can also understand who they have been listening to, as well as on what basis they have made any changes to the drafts. Those who were consulted as set out in paragraph 10.2 is therefore important.

[LORD ADONIS]

I want to make a few remarks on the statutory instrument. I was struck by the remarks of the noble and learned Lord, Lord Hope, about the wider context. I hope that the Minister might tell us more about that in terms of what rights will be lost and what the losses will be to the country as a result of not having reciprocal arrangements. As a complete layman, what I do not understand from reading the document in its entirety as regards the Brussels regime is that looking at the dates, the Brussels regime predates British membership of the European Community. I believe that the document dates from the 1960s and is known as Brussels Ia. We have a number of different variants in the Brussels regime that go back to 1968, which of course was five years before the United Kingdom joined the European Community. That raises a big issue.

Unless someone can correct me, as I understand it, the Government are proposing to withdraw from the Brussels regime. The noble Lord, Lord Marks, made a point that ought to be brought out more; indeed, it was mentioned by the noble Lord, Lord Beith, too. It appears that a very important policy decision has been taken in this statutory instrument: not to leave retained EU law static on departing from the European Union, which is the default procedure under the European Union (Withdrawal) Act, but to make changes. I am not technically competent enough to understand the changes fully, but the Government have glossed over changes in paragraph 12.1 covering the difference in quantifiable terms between making no changes to retained EU law and changing it.

The question that I would like to put to the noble and learned Lord is: if we were part of the Brussels regime before we joined the European Community—he is going to correct me, which is good, because this is exactly the kind of knowledge that the Grand Committee needs—why do we not simply revert to the position before 1973 rather than go to the new position that the Government are establishing under this statutory instrument? Perhaps he could explain the benefits of the new position. Looking at all the lawyers nodding their heads in the Grand Committee, I may have misunderstood the position. All I can say is that, if I have misunderstood it, I suspect that many members of the general public will have misunderstood it, too, so I look forward to the House doing what it is supposed to do on these occasions and elucidating the real state of play.

The other fundamental point, which was mentioned by the noble Lords, Lord Beith and Lord Marks, is the highly contradictory and misleading impact statement in paragraph 12.1. It seeks to minimise the impact by relating it simply to the difference between making no changes to retained EU law, if we crash out with no deal, and making the changes that are set out in the statutory instrument, rather than relating it to the much wider context of the impact on reciprocal rights, the ability to enforce those rights and so on that arises from leaving the European Union without a deal. Even during this debate, because I have been so restrained in my interventions, I have not been able to understand fully what has been said. The noble Lord, Lord Marks, referred several times to satellite litigation. I do not understand what satellite litigation is. Could the noble Lord explain?

Lord Marks of Henley-on-Thames: It is when you are litigating about two issues at once. You are litigating in a principal case and you have another case going on to decide one aspect.

Lord Adonis: In different jurisdictions?

Lord Marks of Henley-on-Thames: In this case, it is two jurisdictions. There is one case and you are having an argument, in another court, about whether it should be proceeding in court 1 or a court in another jurisdiction.

Lord Adonis: That is a very helpful elucidation, because I thought that it might be litigation that took place on a satellite.

Lord Marks of Henley-on-Thames: That is for the future.

Lord Adonis: I did not understand the concept. There are more absurd things. Given that the Government are now preparing for martial law, we are told, if there is a no-deal Brexit, litigating in relation to satellites would be a far less absurd proposition. I take the key point to mean that, under the existing Brussels regime in which we operate as part of the EU, you do not need to undertake satellite litigation, because proceedings in one jurisdiction count as proceedings in all jurisdictions. As a non-lawyer, I hope I have understood that point correctly. The satellite litigation to which the noble Lord refers is a considerable loss of benefit to people seeking to litigate. Not only is that the case, but it also makes this jurisdiction considerably less attractive to people to bring cases in, which I took to be the noble Lord's other point. These are huge issues about the whole future of our legal system and the rights of redress that people have in it, all of which the Government are trying to hustle through in a statutory instrument subject to limited debate and with the Minister not prepared to take any interventions whatever.

The other key point that arises relates, as the noble Lords, Lord Beith and Lord Marks, said, to the final sentences in the long and highly convoluted paragraph 12. Those sentences, which completely contradict the earlier sentences, say that,

"as compared to the pre-Exit position, common law rules on jurisdiction provide for a discretionary rather than mandatory stay in the case of parallel proceedings. This creates an increased risk of parallel proceedings whether the court in the United Kingdom is seised first or second. This could increase the number and complexity of disputes before the courts and the cost of litigation for parties. Common law rules also involve a less efficient mechanism for recognising and enforcing judgments than using existing EU rules deriving from the Brussels regime, which will cost those seeking to have their judgment recognised in the UK more money and time".

I do not understand why no assessment has been made in any quantified way of the impact of all those significant losses, as set out in the final sentences of paragraph 12.1. Perhaps the Minister will tell us why. Could he offer the Grand Committee some assessment? It is important before we agree to this statutory instrument that we have some assessment of its impact.

I am also surprised because some of the noble Lords present are members of the relevant EU committees and the Delegated Powers Committee. Why did they not ask for such an assessment to be conducted before the statutory instrument came to the House?

4.30 pm

Lord Marks of Henley-on-Thames: The noble Lord may have noticed that in the impact assessment, among the business assessments, it just says "not applicable". That seems a dereliction of duty.

Lord Adonis: I take the noble Lord's point. Is he saying that he believes that they are applicable?

Lord Marks of Henley-on-Thames: They certainly are.

Lord Adonis: So why does it say that they are not applicable? These issues are significant.

The final issue in the debate, to which I hope the noble and learned Lord will respond, was raised by my noble friend Lord Beecham and other noble Lords. It is about the losses to this country of not being part of the European Judicial Network. My understanding is that there is nothing statutory about the network. Am I wrong? Is the network a formal institution of the European Union? If it is an informal body, and if belonging to it brings us great benefits, why can we not continue to be members of it even after we leave the European Union? Indeed, to the lay man, being part of the network would seem positively beneficial because, presumably, the network co-ordinates and promotes joint understandings. If we will be separate jurisdictions, with neither wanting, as far as possible, to operate in parallel, is that not all the more reason for us to be part of the network and not seek to leave it? If we crash out with no deal and all losses as set out or implied in the Explanatory Memorandum, why we are not seeking to remain part of the European Judicial Network? Might it be in the country's best interests for the Government to seek to keep us in the network?

Lord Keen of Elie: My Lords, this Parliament decided that the United Kingdom will leave the European Union on 29 March this year. That is the determination that has been made. That date has been set in law. The Executive must respect the law as determined by Parliament and respond responsibly to it, as laid down by Parliament. Therefore, they must address the implications of us leaving on 29 March if, as at present, we do not have a withdrawal agreement concluded with the European Union. That is what this statutory instrument seeks to address.

In that context, we must address the difference between leaving on 29 March and doing nothing about the existing state of the law—with regard to judicial recognition, identity of choice of court and law, the enforcement of judgment and so on—and doing something about it. I quite understand the observations of the noble Lord, Lord Marks, about the benefits of our being in the Brussels Ia system, but we can be in the Brussels regime only as a member of the European Union. According to Parliament and the law it made, we will cease to be a member of the European Union on 29 March 2019. Although the Brussels regime can be dated back to 1968, it was in that context a regime for existing European Union members and not open to non-members, to clarify a point made by the noble Lord, Lord Adonis.

The first point is that we have to consider the impact of us leaving on the date I have mentioned if we make no change to the existing law, and the impact if we change the existing law. I quite understand the point repeatedly made, that in many ways we would prefer the cake analogy: we would like to have our cake and eat it. We would like to remain within the regime, even if, as Parliament has determined as a matter of law, we are leaving on 29 March 2019. But we cannot have it, because Parliament has made that determination. Many may regret it now, and many may regret it later, but that is the law as determined by this Parliament, and we have to accept that. We can seek to change the law—of course we can—and no doubt there are many who may, even now, seek to change it. However, the law is as determined by this Parliament.

Lord Marks of Henley-on-Thames: I hope that the noble and learned Lord will at least address my question on what consideration has been given to applying to join the Brussels regime entirely separately. Although he says that it is a creature of the European Union, and by and large of course it is, there do not seem to be insuperable obstacles to negotiating reciprocity around the context of the Brussels regime but outside the European Union.

Lord Keen of Elie: I take the noble Lord's point when he says "negotiate"; that is the whole point. If he looks at the political declaration, there is a reference to the desire of all parties to negotiate on this among other issues so that we may be part of a regime perhaps similar to Lugano. Let us be clear: we have not only applied to become an individual signatory to Hague 2005, which involves reciprocity between the convention members and ourselves—although I say, quite candidly, that it is not as perfect as Brussels Ia, being more akin to Brussels I. That is why it is in many ways a second best to that extent, but that is as far as we can go. We have also applied to the council of the Lugano convention to become a party to the Lugano convention—a point raised by the noble Lord, Lord Beith. That will of course require the consent of the EFTA parties and of the EU, and it will be subject to negotiation, but we hope also to be a member of the Lugano convention.

If noble Lords have regard to the impact assessment, they will see that under option two we looked at simply leaving the UK law as it is—in other words, embracing all those relevant terms of Brussels Ia without any right to reciprocity from the EU 27. The difficulty there is that in the absence of reciprocity, people would not know what they were going to get from those provisions. Furthermore, it would raise two obvious difficulties. First, corporations, companies and associations within Europe could secure a decree there and automatically seek to secure enforcement in the UK, but companies, corporations and associations in the UK that secured a judgment from a UK court could not expect to enforce it in the EU 27 countries. That is why I stressed the concept of reciprocity. Yes, we want to negotiate and to secure reciprocity, but until we do, we have to make sure that the statute book is in some sort of order for a no-deal exit—which, as far as I am aware, no one truly wishes for.

[Lord Keen of Elie]

Secondly, if we embrace the Brussels Ia regime without being a member of the EU, we would be discriminating between the EU 27 jurisdiction and all the other third-party countries. We would be giving some benefits to the EU 27 under Brussels Ia, albeit without reciprocity, but we would not be giving the same benefit to third-party countries such as the United States, India and China, and Commonwealth countries such as Australia and New Zealand. That raises real issues about discrimination in the context of wider issues on services and so on.

Lord Beith: I thank the Minister for explaining the Government's objections to option two. It might have been a good thing if he had written the impact assessment and developed those points. I shall still disagree with him on some other matters, including the fundamental issue here, but he has clarified that very helpfully.

Lord Keen of Elie: I am obliged to the noble Lord. I know the noble Lord, Lord Adonis, made much of this, but that is why the impact assessment is between the statute book as it is upon exit and the statute book as it would be under the instrument upon exit, because Parliament has made the law and Parliament is determined to exit on 29 March. If that is reversed, so be it, but that is where we are and that is the impact that we have to properly address in this context.

On the wider point made by the noble Lord, Lord Marks, about the benefits of being in the EU and within Brussels Ia, I am not going to seek to disagree with him. Brussels Ia was a marked improvement on Hague 2005, for example; we all know that. Therefore, in many senses, exit from the EU without a deal is unattractive in the context of the provision of legal services in the UK, as indeed are the implications of that for those who have to engage those services and have recourse to the courts. No one is denying that either, but these are the consequences of the law that Parliament has made in these circumstances.

The noble Baroness, Lady McIntosh, asked what steps are being taken with regard to reciprocity. As I say, we are applying to become signatories to the Hague convention 2005, which will give us certain reciprocal rights. We are applying to the council of the Lugano convention to become a party to that, which will give us reciprocal rights with the EFTA countries. In addition, we are intent upon negotiating around the whole issue of judicial co-operation in future, which is why it features in the political declaration. At this stage we cannot demand reciprocity from the EU 27 and they are certainly not prepared to offer it at this stage. At a very early point there were discussions about, for example, the recognition of legal qualifications and mutual issues of that kind, and the EU made it very clear at that stage that that was a discussion for another day. That is where we are.

Coming on to a further point made by the noble Lord, Lord Beith, about what happens to the SI, if we have an agreement on the terms of the present withdrawal agreement then we go into a two-year implementation period where we will remain a part of the Brussels Ia regime, so the instrument itself will essentially be suspended by the withdrawal agreement Bill. However, it will not be completely done away with because at the end of the implementation period—two, three or four years, whatever it might be—we will then have to decide whether or not we have achieved agreement with the EU 27 on future judicial co-operation. That might be on essentially identical terms to what we have now, in which case we will not need the instrument at all, or it may be that we cannot achieve agreement at that stage, in which event we will need to revive the instrument in order to bring the statute book into proper order. That is why I have referred to it as being "deferred" in that context; it is deferred for the implementation period, whatever that period might ultimately turn out to be. That is where we are on that.

On the issue of forum non conveniens, which the noble and learned Lord, Lord Hope, alluded to, that has always been a part of our common law because we apply it in the context of third party countries outwith the Brussels Ia convention. The noble and learned Lord may recollect the litigations that took place around the Pan Am/Lockerbie case and the attempts to take it further than just applying the doctrine of forum non conveniens but rather to apply the issue of interdict against the raising of proceedings in a third party country, which is attendant to the doctrine of forum non conveniens—although I recall being in a Texas court where the judge asked it to be pointed out to me that in Texas they do not have forum non conveniens, and we have to accept that there are some jurisdictions of that ilk. Nevertheless, the courts will fall back upon these common-law concepts which have not been done away with but have not applied in the context of the Brussels Ia regime for the reasons that the noble and learned Lord very carefully pointed out.

The European Judicial Network is a very fine body but it was set up in order that there could be engagement across the EU 28 about the operation of the regime that at the moment we are referring to as Brussels Ia, but it also looks at Brussels IIa and other issues. It concerns the operation of that regime and how it may be improved. For example, it contributes to how you move from Brussels I to Brussels Ia. If we are not part of the regime, we are not part of the European Judicial Network and we really have no part to play in that. But again if, going forward, we are able to achieve a negotiated position with the EU 27 where we are, if you like, semi-detached from Brussels Ia and the other Brussels regime, no doubt they will consider allowing us a seat perhaps not at the table but at least in the room of the judicial network in order that we can contribute to it. However, that too is a negotiation for another day. It is not what this instrument is addressing and not what it is intended to do. So, with all due respect to the noble Lord, Lord Adonis, there is no elephant in the room. Parliament removed the elephant when it decided that, as a matter of law, we would leave on 29 March 2019. The Executive have to address that point in order to put the statute book in proper order.

4.45 pm

Over and above that, the noble Lord, Lord Adonis, alluded to the issue of consultation. Consultation was held with a whole series of exit groups, but one has to

see the consultation or discussions in the context of what I have just explained. We are not talking about the comparison between no EU exit and EU exit. That is not a relevant comparator for our present purposes or for the purposes of this instrument for the reasons I have sought to explain. The comparator, as shown in the impact assessment, is between leaving without changing the statute book and leaving with the necessary and relevant changes to the statute book. That is where we engaged with the Law Society, the Bar, the Family Law Group, Resolution and firms from the magic circle in order that we could be clear about which direction we had to take. There is only one direction to take. In any event, we have to put the statute book into proper order if we exit with no deal. We cannot simply retain the Brussels Ia regime when we are not a party to it. It just does not make sense. To that extent, I hope I have been able to address the points raised by noble Lords. It is in these circumstances that I commend the draft instrument to the Committee.

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): My Lords, it might be helpful if I remind the Grand Committee that this afternoon we are merely considering the regulations, not approving them. Whatever the Grand Committee decides, the regulations will need to be approved in the Chamber, and Members will have the opportunity to debate and vote on it there if they so wish.

Motion negatived.

Mutual Recognition of Protection Measures in Civil Matters (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

4.47 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Mutual Recognition of Protection Measures in Civil Matters (Amendment) (EU Exit) Regulations 2019

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Committee will be aware that as part of the no-deal preparations we have, as I indicated earlier, published a series of technical notices to outline the implications for citizens and businesses. I referred earlier to the technical notice published on 13 September 2018 which made clear that we are committed to unilaterally recognising incoming civil protection measures from EU countries to ensure that vulnerable individuals would continue to be protected. This instrument amends the retained EU law to give effect to that policy.

Before I set out the effect of the instrument, it might help if I first explain what I mean by a civil protection measure and how the rules are currently applied both in the United Kingdom and across the EU. A civil protection measure is a decision ordered by an issuing authority of an EU member state in accordance with its national law that imposes restrictions on one person with a view to protecting another when the latter's physical or psychological integrity may be at risk. The civil protection measure imposes one or more obligations on the person causing the risk. For example, they may be restricted from entering the place where the at-risk individual works or resides, or from contacting them by telephone or other means.

Examples of civil protection measures in England and Wales include non-molestation orders under Part IV of the Family Law Act 1996 or injunctions under Section 3 of the Protection from Harassment Act 1997 and there are similar provisions in the law of Scotland. In the law of Northern Ireland, such measures include non-molestation orders under Article 20 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 and injunctions with regard to harassment.

Regulation 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, which I will refer to as the civil protection measures regulation, provides for the mutual recognition of such protection measures in civil matters across the EU. The effect of this is that a civil protection measure granted in one member state must be recognised in another without any special procedure for achieving this and it must be enforceable in another member state without any need for a declaration of enforceability. It is, in effect, treated as if the civil protection measure had been ordered in the member state addressed.

If we leave the EU without an agreement then, as presently drafted, the retained EU law will become deficient as the UK will no longer be a member state and will therefore be unable to recognise and enforce an incoming protection measure from any EU member state under the terms of the civil protection measures regulation as retained. Accordingly, the instrument provides that an incoming civil protection measure from an EU member state shall, under the terms of the civil protection measures regulation, be recognised without any special procedure being required and enforceable without the requirement for a declaration of enforceability.

However, the instrument revokes the provision relevant to issuing a certificate in the courts of England and Wales and Northern Ireland which is required for recognition and enforcement in an EU member state under the civil protection measures regulation. The reason for this is that we are unable to legislate unilaterally to restore the reciprocity of approach. That is something I mentioned earlier. We cannot require an EU member state to comply with the civil protection measures regulation with respect to a civil protection measure issued by a court in the UK when we will no longer be an EU member state. The consequence is that EU member states will no longer be bound to recognise, let alone enforce, civil protection measures issued in the UK.

It is our view that to provide for courts in England and Wales to issue such certificates when there is no certainty that the civil protection measure could be invoked in the UK under the EU regulation would provide no benefit for citizens. Indeed, on the contrary, that runs the risk of giving a person at risk a false expectation of continued protection in an EU member

[Lord Keen of Elie]
state. To give a simple example, if after exit we were to issue such a civil protection measure to an individual who was going to Poland, they might go to Poland in the belief that they enjoyed some degree of protection because of the order made by the English court, but in reality they would enjoy no element of protection when they got there because the order would not be recognised by the Polish court. Of course, for reasons that I have mentioned before, we hope to take that forward in the context of negotiation. The instrument is designed to address the issue of a no-deal exit from the EU.

Although the Government accept that this loss of reciprocity means that those with civil protection measures issued in our courts who wish to travel to the EU will be in a disadvantageous position as compared to those with protection measures issued in the EU who wish to come to the UK, we believe that it is right that we do what we can to provide as much reassurance as possible to persons, often vulnerable persons, who have been granted a protection measure issued in the EU. This is to the benefit of all citizens living in the EU, whether they be EU or UK nationals.

Frankly, we did not come to that conclusion on our own. The proposal that, post EU exit, civil protection measures and certificates issued in EU member states continue to be recognised and enforceable in the UK was discussed with family law stakeholders and leading family law practitioners as we developed our thinking on the issue.

These regulations cover England, Wales and Northern Ireland and the issues here are devolved to Scotland. The Scottish Government are dealing with this matter separately and are determined to bring forward their own legislation in this area. However, we understand that they also intend to continue recognising and enforcing incoming protection measures.

This instrument ensures that the element of the regime for mutual recognition of civil protection measures that we can continue to operate under a no-deal scenario applies—namely, to continue to unilaterally comply with the regulation in England, Wales and Northern Ireland with respect to incoming civil protection.

The civil protection measure regime is not, so far as we are able to determine, widely relied on in any formal sense. However, it provides for hapless people in vulnerable situations an additional protection when moving from an EU member state into the UK. It is for that reason that we have decided on this unilateral approach to this particular issue. It is perhaps a pragmatic approach, but it means that we do what we are able to do in this situation for vulnerable individuals without creating a false expectation of protection for those who may be in the UK and contemplating going to other EU states. We therefore consider that this is the best and most appropriate approach to take if the United Kingdom leaves the EU without a deal.

It is in those circumstances that I commend the instrument to the Committee—adding the caveat, again, that we hope to exit with a deal and to engage in fruitful and constructive negotiations about judicial cooperation at all levels going forward.

Lord Hope of Craighead (CB): My Lords, about half-way down page 3 there is a reference to "participating Member State" and that it means "a Member State other than Denmark". Am I right in thinking that, although it is dealt with specifically there, there is no change as far as Denmark is concerned because it does not participate in the EU regulations? Is it purely a matter of drafting that this provision appears?

Lord Keen of Elie: The position as I understand it —I mentioned this earlier—is that pursuant to Article 22 of TFEU, Denmark has an opt out from all of these issues but has a bilateral agreement with the EU in respect of them. I have been corrected. It does not have a bilateral agreement in respect of this one but it does with the others—I apologise—and that is why Denmark is excepted.

Lord Hope of Craighead: It is really a clarification in the drafting—it does not change anything. That is my point.

Lord Keen of Elie: That is entirely right.

Lord Beecham (Lab): My Lords, as we have heard, this statutory instrument has the effect of preventing UK courts from providing similar protection measures and certificates to secure the recognition and enforcement of their judgments in the EU while, paradoxically, recognising such measures and certificates issued by the EU courts. This is extraordinary. There is not an impact assessment as far as I know—if there is I have missed it—and no indications as to what steps will be taken to ensure reciprocity by the EU on this subject. The noble and learned Lord mentioned that possibility en passant without substantive clarification.

The Law Society recommends that there should be an explicit clarification that protective measures issued in the Scottish and Northern Irish courts will be recognised in England and Wales. Perhaps the noble and learned Lord will deal with that when he replies to the debate.

The Secondary Legislation Scrutiny Committee has recommended that this SI should be upgraded to an affirmative, stating:

"To allow UK civil courts to issue certificates post EU-exit would, potentially, mislead protected persons as to the recognition and enforceability of their UK issued protection measures in EU Member States post exit potentially placing them at risk".

That sounds significant and I wonder why the Government have chosen to adopt the procedure they have rather than make this an affirmative, given the potential implications identified by the Secondary Legislation Scrutiny Committee. It points out that it is unclear what measures would be taken to ensure UK judgments would be recognised after Brexit and that there is an assumption that the EU states will not respect civil protection measures issued in England and Wales. Can the noble and learned Lord confirm that?

Finally, there is a question about the potential cost to the UK Government, the courts and the police of enforcing EU-issued protection orders, which will still be valid, while ours will not be valid there. It looks one-sided: the cost will fall on us as a nation because contrary positions have been taken up. Can the noble and learned Lord clarify that?

Lord Marks of Henley-on-Thames (LD): My Lords, I broadly welcome this measure and that the Government has in this case taken a humane approach and decided unilaterally to accord recognition to the question of reciprocity, other than the state's protective measures for the safety of parties, particularly for domestic proceedings and vulnerable citizens. We understand the limited exceptions where such measures being enforced here would be manifestly contrary to public policy or inconsistent with a subsisting United Kingdom judgment.

However, I take the opening point made by the noble and learned Lord that it is important to consider what can be negotiated. What contact has there been at Secretary of State level to see whether some reciprocity of consideration could be given to enforcing protective measures granted by United Kingdom courts in the rest of Europe? Why was that not done a great deal of time ago and outside the context of the other negotiations?

I do not agree with the point made by the noble Lord, Lord Beecham, that we should worry about the cost in the United Kingdom of enforcing protective measures from other member states which we have agreed humanely to enforce. That is a cost we have to absorb. In areas such as this, I believe that accepting that a degree of reciprocity is not essential to achieving a satisfactory outcome for both sides is helpful. I hope that we will get unilateral action the other way in due course. It will certainly make negotiation a great deal easier.

Lord Beith (LD): I agree entirely with my noble friend. Oddly enough, we had not consulted each other beforehand, but we reached the same conclusion from the same basic principles: where people are particularly vulnerable, when the arrangements we make in this country can afford them some protection, we should do so without regard to the reciprocity we would prefer, which we might not be able to have.

It is particularly depressing to have to see through this statutory instrument which says to people in desperate family situations threatened with violence, "Sorry, but, whereas we have been able to issue a procedure in the past which gives you some protection, even if you are going elsewhere in the European Union"—which they may be doing because there are grandparents or aunts and uncles for their children to see—"we can no longer offer you that, and you are that much more vulnerable as a consequence". We really must negotiate our way to a better position. Like my noble friend, I think it is right that the Government should continue to offer protection when a court elsewhere in the European Union has deemed it necessary.

Lord Keen of Elie: My Lords, I am grateful for the contributions. No matter how divisive the issues that we face on Europe, we should seek to do good where we can in the present circumstances. We consider that we can do this by accepting these unilateral measures for the benefit of EU and UK citizens.

Regarding the issue of reciprocity, we would clearly like to see the development of a reciprocal regime similar to that which is presently enjoyed, but the way negotiations have been carried on is such that they will not be salami-sliced, if I can put it that way. Going forward, we are going to have to negotiate judicial co-operation as a whole. It is therefore not possible to pre-empt the Commission on these matters by taking them one by one, however regrettable the matter might appear to be.

On the matter of costs, I concur with the noble Lord, Lord Beith: in a sense, it is a matter of no real concern whatever that cost might be, given the individuals that we are concerned with. However, I understand that these orders are very few and far between and that there will be no major impact on our public authorities.

On Scotland and Northern Ireland, the regulation does not apply intra-UK; it applies to the UK as a member of the EU. Intra-UK, these matters are determined by our domestic law, and I see no reason to anticipate that the Scottish Government will alter the present system whereby within domestic law you can have suitable reciprocal enforcement of orders in this area. It is a matter for the Scottish Government to bring forward their own instrument in this regard, and I am not in a position to pre-empt them on that.

Against that background, I am obliged to noble Lords for having welcomed this instrument, at least to the extent that it is doing some good. I therefore commend the draft instrument to the Committee.

Motion agreed.

Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

5.06 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I turn to two further draft instruments that form part of the preparations for a no-deal exit. They are, as before, concerned solely with no-deal preparations. The Joint Committee on Statutory Instruments has reviewed these SIs and has no substantive comments to make about them.

I have already referred to, so shall not return to, the terms of the technical notice published on 13 September 2018 that covered these issues as well. I should say that prior to the publication of that notice my officials met on several occasions with key family law stakeholders, including leading family law practitioners and representative bodies, to ensure that our policy proposals provide certainty for citizens, legal practitioners and the court system in so as far as is appropriate as we transition to a post-exit arrangement in the event of no
deal. That engagement has continued alongside the development of the instruments that we are discussing today, which are designed to implement the policy outlined in the technical notice of 13 September last

[Lord Keen of Elie]
year. I will come on to comment on a number of points that will arise concerning a further instrument in connection with some of the somewhat technical issues here, which I will endeavour to deal with as shortly as I can.

The first regulations we are considering in this debate are the draft Jurisdiction and Judgments (Family) (EU Exit) (Amendment etc.) Regulations 2019. These make changes to the current EU rules governing cross-border family law disputes that involve courts in the UK and EU member states. Again, the instrument remedies deficiencies that would arise from retaining these EU rules in the event of us exiting without a deal.

The second set of regulations are the draft Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) Regulations 2019 which amend rules governing the jurisdiction and recognition of orders in relation to the dissolution of civil partnerships and divorce of same-sex married couples, which currently correspond to the EU rules. The effect of these regulations is that the rules relating to the dissolution of civil partnerships and the divorce of same-sex married couples will instead correspond to those for the divorce of opposite-sex married couples made by the first set of regulations—namely, the first instrument that I refer to. In other words, we are concerned to ensure that all these parties remain aligned.

It may be helpful if I outline the existing EU rules in this area. There are two applicable EU regulations: Brussels IIa, as distinct from Brussels Ia, and the maintenance regulation of 2009. The Brussels IIa regulation provides rules to determine, in cases where those involved come from or live in more than one member state, which court has jurisdiction—that is to say, has the right to hear a case—in relation to divorce and matrimonial disputes; matters of parental responsibility such as disputes between parents as to residence of and contact with their child; or care proceedings. It also provides rules for recognition, and enforcement where necessary, of a judgment from one member state in any of the others.

This includes a provision supplementing the 1980 Hague Convention on the Civil Aspects of International Child Abduction. That provision empowers the court of the EU member state of the child's habitual residence to make an order requiring the child's return to that state even if an order has been made by the member state to which the child was taken or in which the child was retained, that the child should not be returned. The regulation also provides rules on the availability of legal aid in these cases and for co-operation between central authorities in EU member states. As far as jurisdiction and recognition and enforcement of judgments in matters relating to parental responsibility is concerned, the Brussels IIa regulation covers similar ground to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, to which I will turn later.

The second applicable EU regulation, the maintenance regulation, sets out in a similar manner to Brussels IIa the rules governing which EU member state court has jurisdiction in cross-border cases concerning family maintenance, together with rules governing the recognition and enforcement of decisions in these cases and provision about legal aid and central authority co-operation. This covers similar ground to another Hague convention: the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. It is interesting to note that many regulations of the Brussels regime developed from Hague convention provisions. Like the 2005 convention, the 2007 convention was signed by the EU on behalf of all member states; again, we have taken steps to apply to become an individual state signatory to the 2007 convention. That application has been accepted already; on exit, we anticipate that in the absence of a no-deal exit, we will be a party to that convention from 1 April 2019.

Should the UK leave the EU without an agreement covering these matters, the Brussels IIa and maintenance regulations will no longer operate between the UK and EU member states since these regulations rely on reciprocal action between member states. Even if the UK were to purport to apply these rules after exit, the UK's status as a third country would mean that the regulations as they bind the EU member states would not apply to the UK. For example, EU member states would not be bound to afford recognition or enforcement under the regulations to decisions of courts in the UK. Retained provisions of the regulation would also overlap with the Hague convention provisions to which I have referred; that in turn would be liable to create confusion and potentially undermine the operation of those conventions because people would be left in doubt over which regime they should have regard to or recourse to in such circumstances. It is this deficiency in retained EU law, which would otherwise remain on the statute book, that we seek to remedy.

The principal means of addressing this deficiency is to revoke the Brussels IIa and maintenance regulations, subject to transitional arrangements for cases that are in train on exit day; there would be recognition for those cases for transitional purposes. However, they will be removed, as they form part of retained EU law, by the jurisdiction and judgments regulations. As I touched on earlier, this will not, however, leave us without rules or international co-operation in these areas. The UK is already a contracting state to a number of Hague conventions in the field of family law which cover many of the same areas as the Brussels IIa and maintenance regulations. In particular, I would mention the 1996 Hague convention, which covers similar ground in respect of jurisdiction, recognition and enforcement of judgments and co-operation between authorities as the Brussels IIa regulation; all EU member states are bound by that 1996 Hague convention. The UK is already a contracting state to that convention, so it will apply upon exit with no deal.

5.15 pm

Similarly, the 2007 Hague convention contains similar recognition and enforcement rules and provisions on co-operation between authorities to the maintenance regulation. Again this applies to all EU member states with the exception of Denmark because, as the noble and learned Lord, Lord Hope, observed, Denmark has an opt-out under protocol 22 with regard to these

matters in general. The necessary steps have been taken to ensure that the UK will, in the event of exit without a withdrawal agreement, be a contracting state to the 2007 Hague convention. As I indicated, that should be effective from 1 April 2019. I should add that the 1980 Hague convention on child abduction will also operate, and has operated since 1986. It will continue to apply between the UK and each of the EU member states that are parties to it. Again, that will give a degree of legal certainty.

There will, however, be some gaps in coverage and potential loss of effectiveness if we move from the Brussels regime to the Hague conventions and common law regime. There is no Hague convention covering the grounds of jurisdiction for cross-border divorce or maintenance. The jurisdiction and judgments regulations address this issue in the following way. For jurisdiction in maintenance cases, provision is made to revert to the various common law or statutory rules which operated before the maintenance regulation and other relevant EU regulations came into force. The Government intend that the maintenance remedies under Schedule 1 to the Children Act 1989 remain the same post exit as they are currently, under the Brussels regime. I am aware that concern has been expressed by some family law practitioners as to whether the instrument as drafted would actually achieve this aim. That is because there are some provisions where it is doubted whether the existing schedule to the Children Act would cover, for example, capital and property orders.

However, I can confirm that it is the Government's position that the current remedies are appropriate and should continue to be available to a court post exit, to the extent that they are available at the present time. We do not want there to be any ambiguity about the Government's intentions in that regard, so we are going to work with stakeholders to ensure the necessary clarity. We will bring forward a further statutory instrument if necessary to put this beyond doubt. In doing so, we will also look at some other technical issues that may arise here with regard to Article 3 of the maintenance regulation. That deals with jurisdictional rules and a somewhat technical point about whether you can take jurisdiction in a case where one party is habitually resident in the jurisdiction of the court but, for example, the parent and child are outside that jurisdiction rather than the other way around. These are quite complex jurisdictional issues, but we intend to look at those as well as we bring forward the next instrument.

In addition, there is a highly technical issue under Article 7 of the maintenance regulation about pension sharing arrangements. It is possible to seek an order from the English courts with regard to the sharing of a pension fund within our jurisdiction. That can be done pursuant to the Matrimonial and Family Proceedings Act 1984. However, in quite exceptional circumstances where neither party is amenable to the jurisdiction of the English courts, there is an issue as to how you secure that jurisdiction for such an order. There is a provision in Article 7 of the maintenance regulation, which may have been misused but was used, involving forum necessitatis—a forum of necessity—a novel concept introduced by the maintenance regulations. It was envisaged that it would be applied where, for example, one jurisdiction was in the midst of civil war and had no available courts so out of necessity you had to go to another jurisdiction to get an order.

It has been drawn to our attention that there have been a very small number of cases—potentially 20 to 50 applications—seeking to apply jurisdiction on the basis of forum necessitatis in the context of pension funds within the jurisdiction of the English courts. Again, this will be a highly complex issue of jurisdiction because it has ramifications. I just indicate that, because this, too, is related to this issue, we will look at it as we take forward a further instrument in this area. It is not covered by the present instrument and there is no attempt to cover either Article 3 or Article 7. As I indicated earlier, because there is a related issue that we will address with regard to remedies under the Children Act 1989, we will look at all of them together.

In divorce cases, the Brussels IIa jurisdiction grounds presently apply in all cases, regardless of whether there is an overseas connection, and regardless of whether any overseas connection is to an EU member state or to a third-party state. They have applied for a long time and therefore have the benefit of familiarity. They are tried and they have been tested. So, the jurisdiction and judgments regulations will include provisions for replicating in domestic law, the applicable Brussels IIa grounds for England and Wales and Northern Ireland, and make a further ground of sole domicile available to all cases. You cannot at present have a jurisdiction on the ground of sole domicile because it conflicts with the Brussels IIa regime, but we will have it as an additional ground of domicile. This will ensure a continuum as regards jurisdiction in divorce, rather than reverting back to a common-law scheme, based largely on domicile, which goes back to the pre-Brussels IIa regime and, indeed, pre-Brussels II.

Divorce is a devolved matter in Scotland. The Scottish Government have decided to take forward their own instrument in this area. They will decide how they intend to deal with it.

There is also a Hague convention of 1970 on divorce recognition, which has been implemented in the UK by provisions of the Family Law Act 1986. The UK and 12 other member states are party to this convention. As a party to it, and having incorporated its provisions into UK domestic law, we will recognise overseas divorces wherever they are from, be it from the 12 or from other states.

This leads me to the second instrument, the civil partnership and marriage regulations. I hope I can deal with this quite shortly. The regulations are simply intended to ensure that the provisions in domestic law with regard to civil partnership and same-sex marriage are identical to those for other marital situations and that the provisions for divorce are kept in step. It has always been our intention that this should be the case.

I hope that this covers all aspects of these provisions. I should be content to answer any queries. I commend the draft instrument to the Committee.

Lord Beecham (Lab): My Lords, again, I am grateful to the noble and learned Lord for being clear and relatively concise about the matters he is taking through

[Lord Beecham]

this Committee today. It was important that he should explain the Government's approach in this statutory instrument and he has done so very well.

The first of these two statutory instruments is the one in today's batch which appears to have raised the most concern. It is disturbing that no impact assessments were published until 24 January and even more disturbing that they contained next to nothing of interest. It is fair to say that the Law Society "broadly supports" the statutory instrument on the basis that,

"it would be inappropriate to unilaterally continue the existing mechanism in the event of no deal".

The grammatical error is theirs, not mine. Can the noble and learned Lord indicate whether there have been discussions with the EU about the future position on this, or on any other basis?

The Law Society stresses,

"the scale of loss of international functionality in family law in the event of no deal",

It points out that,

"the lives of UK and EU 27 citizens have become intertwined in the last 40 years".

It goes on to cite five significant benefits enjoyed by UK families, the future of which are at risk.

These are: the regulations on mutual recognition of protection orders, which help the protection of victims of domestic violence or harassment across borders; the European enforcement order, which facilitates the enforcement of uncontested claims; the maintenance regulations facilitating cross-border payment and maintenance; and the Brussels II regulation, which allows mutual recognition of divorce orders and determines the jurisdiction for them in domestic cases in close collaboration with courts and welfare services on issues affecting children, including child protection and abduction. Finally, the system provides mutual recognition of contact orders, and the enforcement of orders such as, in effect, custody of access.

Without a deal, we would have to fall back on less comprehensive provisions. There are, however, a number of additional concerns. Although the Minister in the other place, Lucy Frazer, informed the Justice Select Committee that there is an agreement to apply current rules to cases ongoing on exit day, the Ministry of Justice has confirmed that there is no such guarantee that the EU states will do this—they will treat us as a third state, and it will depend on their own law. This raises the risk of a rush to the courts to secure a decision under the present regime, which would cause real difficulties in cost to our own system.

Alternatively, people may find that a case started under one set of rules will be concluded under another set, with consequential delay and at greater cost. If the new system is deemed by one party more likely to assist his or her claim, there might be competing petitions. Will the Government therefore be addressing these issues—at the very least, seeking to ensure that the current rules will continue to be applied in all cases begun before Brexit?

I understand that the EU has issued a notice saying that only orders that should have been registered in the relevant member state would be recognised. There is also concern that the instrument, as drafted, could mean that a prenuptial agreement that is the subject of negotiation at the date of Brexit may not be upheld. We are dealing with issues potentially affecting large numbers of people, with 1 million British citizens living in the EU, and 3 million EU citizens living in the UK. The Bar Council points out that there are currently as many as 16 million cross-border family disputes in the EU, 140,000 international divorces and 1,800 cases of child abduction. What is the Government's estimate of the number of cases of these three kinds affecting UK citizens, and EU citizens resident in the UK? I do not anticipate that the noble and learned Lord will have that information today, but I am sure he will convey it after today's events.

The Council points to two EU instruments that impact significantly on our family law. One is on jurisdiction, recognition and enforcement of decisions in matrimonial cases, parental responsibility, and crucially, on international child abductions. The other deals with maintenance, including child maintenance. But the Bar Council cites a range of other benefits, including the protection of victims of domestic violence and forced marriage protection orders, together with a streamlined process for enforcing uncontested claims—for example, where the parties agree an out of court settlement.

While departure from the EU without a deal would not affect UK law, the Bar Council points to the risk of uncertainty, duplicate court proceedings, possible problems with enforcing UK court decisions in the EU, and significantly, costly pressure on an overstretched court system here. There are possible alternatives, which the Bar Council cites, under the Hague and Lugano conventions. But these are not, apparently, without problems. For example, we would have to join the EFTA or secure the agreement of all Lugano state members to adopt those systems.

There are also problems over financial provision for children. For example, these will be made only where the child and its resident parent live abroad, and the non-resident parent lives in England and Wales—whereas now it is the other way round. Should not the position be as it was before? As it stands, children living in the UK with fathers in the EU are likely to lose out. Further, it will be possible for the court only to make an order for periodical payments and lump sum or property orders.

5.30 pm

Moreover, it appears that there could well be problems in relation to the potentially traumatic issue of child abduction. While the provisions of the Hague convention on child abductions would continue to apply, the Bar Council points out that the additional provisions embodied in the current EU regime would not. These include the home country's ability to override a decision of the other country not to return a child; the hugely important six-week timetable, vital in abduction cases; the focus on listening to the child's voice; and the failure, in the event of a no-deal Brexit, to benefit from impending changes, including a limited appeal in abduction cases. I understand that the department is due to revert to the Bar Council on a number of points. Will that

happen before this statutory instrument is debated in the Commons? If not, and if subsequently it is decided that further changes are needed, what would be the likely timeframe?

It is four months since the chairman of the Lords European Union Select Committee wrote to the Lord Chancellor expressing concerns about the state of negotiations. Tellingly, the committee referred to the Government's technical note published in September saying that it is,

"to help families and individuals make informed decisions about their futures. But, in our view, it does little more than encourage concerned individuals to seek legal advice. We are unable to ascertain any plan that will address our core concerns about the 'profound and damaging' impact of a no-deal Brexit on the UK's family law system and those that these courts seek to protect: children".

The committee noted that the Lord Chancellor's UK-EU civil judicial framework provided little detail on how the Government's aims would be achieved and observed that its understanding of the Hague convention in the event of no deal suggested a,

"worrying level of complacency … that assumes that we can leave the EU without alternatives in place and that other international arrangements will fill the void left by this important EU legislation".

I understand that the noble and learned Lord met yesterday with the Resolution Foundation. Will he confirm that future consultations with the foundation and similar organisations will take place at an earlier stage of the process? For that matter, will he confirm that impact assessments will be published much earlier than four hours before statutory instruments are to be debated, as has apparently been the case today? Today's impact statement avers:

"Businesses and individuals litigating in the courts of EU countries will have an advantage over those litigating in the UK as UK litigants cannot guarantee the judgment they get from the UK courts is enforceable in the EU but litigants who get a judgment from the EU courts, will almost always be able to obtain enforcement of it in the UK".

I should make it clear that I and other Members understand that the Minister and staff at the Ministry of Justice had a hugely difficult task in drafting the important secondary legislation in which Parliament will be drowning for months, if not years, to come. This is a consequence of the Government rushing into a decision to enact massive legislative changes in an absurdly short time without adequate consultation. It is devoutly to be hoped that at least we will not end up with a no-deal Brexit which makes such legislative provision necessary, even if that requires us to undergo another round of secondary legislation to accord with a further and better change of circumstances.

Lord Marks of Henley-on-Thames (LD): My Lords, I do not propose to address the same matters of detail that the noble Lord, Lord Beecham, has done. I said a great deal of what I wanted to say about the general impact on judicial co-operation and co-operation in legal matters in the debate on the first of these statutory instruments. But let the Minister and the Government be in no doubt that the issue of co-operation in family justice, and the replacement of the system we have now by the bitty and only partial system he has outlined, is the substitution of a much less satisfactory and much less smooth step backwards—which is to be deplored—from the extremely well-respected and widely understood system that we have now across the European Union.

The noble Lord, Lord Beecham, mentioned 16 million cross-border family disputes. The European Parliament estimates that 10% of European citizens are married to people of a different citizenship, and a very large number of those are married to other European citizens. I am one of them; many in your Lordships' House and the other place are also married to other EU citizens. Even Nigel Farage is—or was—married to an EU citizen of another state.

We have a system now that works well and is widely respected across the whole gamut of domestic law. Jurisdiction is the area where I think there has been the most difficulty because the first court is the place of jurisdiction in divorce rulings, which was difficult to accept but is now widely understood. Recognition and enforcement are absolutely crucial. Going back to the Hague rules will be unhelpful by comparison with what we have now. The system of child abduction goes back to the Hague convention of 1980. Yes, it was there but the override that we have under Brussels IIa makes the system work far better, far more effectively, far more cheaply and with far more co-operation.

Judicial co-operation across the European Union has generally been helpful and beneficial and we have all gained immeasurably from the co-operation across different jurisdictions. Legal aid is available in respect of cross-border disputes within the European Union, which will not be available after we leave it. The new arrangements for the maintenance regulations are absolutely hopeless compared with what we currently enjoy for intra-European disputes, as anybody who is involved with divorces between, for instance, UK and US or other third-country litigants well knows.

I entirely accept the Government's argument that we simply could not insist on losing reciprocity and nevertheless maintain unilateral arrangements in the case of these convention advantages, the reason being that we would put UK citizens at severe disadvantages when their relationships with other EU citizens broke down. Nevertheless, the Minister and the Government should not rest on the consultation that they have had by discussion with some family lawyers. The Government should be in no doubt that family lawyers generally deplore the loss of the European regime, which is what would face us if we went through with a no-deal exit.

The Explanatory Memorandum produced by the Government is in similar terms to, and shares the faults of, that in respect of civil and commercial cases. It says at paragraph 12.2 on page 6:

"In the event of a no deal EU Exit, the impact on business, charities or voluntary bodies (being those that advise, represent and support individuals and families engaged in cross-border family law matters) of this instrument will, on balance, be positive. The amendments provide a basis for continued reciprocal cooperation with most EU Member States through the UK's participation with those Member States".

It then goes through the Hague conventions that will be available. That is a comparison with the prospect that we would enjoy if we had no statutory instrument to cover this position. The Explanatory Memorandum faces reality later on in that paragraph, where it says:

[Lord Marks of Henley-on-Thames]

"However, the change to Hague Convention rules and the new domestic rules on divorce etc jurisdiction, maintenance jurisdiction and parental responsibility legal aid will require relevant businesses, charities and voluntary bodies to familiarise themselves and adjust their administrative arrangements to deal with the new rules. In some cases (especially divorce etc jurisdiction) the new rules could lead to greater disputation and complexity".

Greater disputation and complexity always means greater cost. In family cases it is greater stress, unhappiness and mental health issues, and severe damage to children. One sees in so many of these cross-border cases the added damage to children, even with the present benign arrangements, because their parents are in different jurisdictions. The Explanatory Memorandum goes on:

"In the event of a no deal EU Exit, the impact on the public sector is expected to be an increase in case volume and complexity of cases before the family court due to the changes in divorce and maintenance jurisdiction rules. However, this instrument will have positive impacts on the family court as it ensures there will be workable rules governing cross-border family law disputes".

Once again, this is confusing the two issues. Yes, there will be workable rules and, yes, that is better than no rules at all, but it is far worse than what we have now.

Of course, I accept the other statutory instrument that same-sex marriage and civil partnerships should be put on the same basis as opposite-sex relationships, but we are once again facing a situation where it is my view—and, I suggest, a view that ought to be taken seriously by the Government—that the loss of co-operation in family law and relationship law generally would be very serious, and that those prepared to countenance no deal should take that into consideration far more than they do at present. I know that the noble and learned Lord and the noble Baroness, Lady Vere, take these matters seriously. I wish other members of the Government would do the same.

Lord Keen of Elie: I am obliged to noble Lords for their contributions. I reiterate what the relevant comparators are for impact assessments in consideration of these instruments. This Parliament determined to make a law by reason of which we leave the EU on 29 March 2019. The Executive not only have to respect that law, as made by this Parliament, but have to make appropriate plans and arrangements to allow for that in the event that no withdrawal agreement is in place as at 29 March. So, with respect to the noble Lord, Lord Marks, we are carrying out a relevant comparison within the impact assessments in that context.

I will not gainsay the comments about the benefits we have enjoyed from the Brussels regime, whether in the context of divorce, maintenance, child abduction or the wider issues we have already discussed today of commercial and civil cases. We have all benefited from that regime, but we cease to be a party to it because this Parliament has made a law determining that that would be the consequence on 29 March 2019.

On the issues of family law, fortunately we have, in essence, the foundations for all that we find in Brussels IIa. We have the 1970 Hague convention on recognition of divorce and separation and the 1980 Hague convention on child abduction. The noble Lord, Lord Marks, is quite right that it does not contain the override, but then it cannot because we will not be in a position to make an order overriding an order of an EU state court when we have left the EU. We simply cannot do that unilaterally, so we have to accept that. We have the 1996 Hague convention on jurisdiction, applicable law, recognition, enforcement and co-operation in family matters. In the context of maintenance, we have the 2007 Hague convention. All of that will be in place and, as I indicated earlier, we are also applying to be a party to the Lugano Convention, although my understanding is that the Lugano Convention is on civil and commercial rather than family matters. Nevertheless, we are taking all the steps we can at this stage to cover all bases.

On the question of future co-operation, the political declaration refers to the intention to negotiate these matters, but it takes two to tango—as is sometimes observed—and therefore the pace at which we can negotiate these issues is dictated not only by us but by the EU, and we have to take that on board.

The noble Lord, Lord Beecham, referred to the European protection order. That is a particularly difficult issue because the European protection order is in the form of a directive, which is quite specific in its terms. It says that an EU court can issue an EPO only to another EU jurisdiction, and that an EU court can recognise an EPO only from another EU jurisdiction. It is simply not possible even to apply a unilateral aspect of the EPO, but we have done that with regard to the civil protection orders that I referred to earlier.

We have done as much as we can in preparation for a no-deal exit—a no-deal exit of which no one, as far as I am aware, is truly in favour. But we have to plan for that contingency given the state of the law as it has been determined by Parliament. It is in these circumstances that I commend the regulations to the Committee.

5.45 pm

Lord Beecham: I am grateful to the Minister. He cites the difficulty with the restriction of the powers of the European court. Could that be addressed, not as part of a no-deal situation, but in the event of a negotiated deal? I assume that it would, but it would be welcome to have that on the record.

Lord Keen of Elie: I am not in a position to say what will or will not be addressed in the context of negotiations that are not yet under way, and that are pursuant to a political declaration that is attendant upon a withdrawal agreement that is not yet an agreement. So I am reluctant there. I observe, however, that it would be necessary for the EU to amend the relevant directive. It would have to amend it quite significantly to afford that benefit. No doubt parties will bear in mind the potential benefits of such an order going forward.

There is only one other matter that I will mention. The noble Lord, Lord Beecham, referred to me meeting the Resolution Foundation—in fact, it was my officials who met it, not me, to be clear on that. With that, I commend this draft instrument to the Committee.

Motion agreed.

Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

5.46 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Civil Partnership and Marriage (Same Sex Couples) (Jurisdiction and Judgments) (Amendment etc.) (EU Exit) Regulations 2019.

Motion agreed.

Equality (Amendment and Revocation) (EU Exit) Regulations 2018

Considered in Grand Committee

5.47 pm

Moved by ***Baroness Barran***

That the Grand Committee do consider the Equality (Amendment and Revocation) (EU Exit) Regulations 2018

Baroness Barran (Con): My Lords, I am honoured to present to the Committee the Equality (Amendment and Revocation) (EU Exit) Regulations 2018. This statutory instrument, in common with many others currently proceeding through this House and the other place, is necessary to enable the Government to ensure that the equalities statute book remains appropriate as we leave the European Union.

The regulations make purely technical changes to the Acts listed and ensure that our equalities legislation continues to operate effectively after exit day. They are wholly consistent with our commitment to upholding equalities protections across the United Kingdom as we leave the European Union, including those previously conferred by EU law, which have now been incorporated into domestic law through the European Union (Withdrawal) Act 2018. This commitment was most recently repeated by the Prime Minister in the other place on 21 January, when she guaranteed that,

"not only will we not erode protections for workers' rights … but we will ensure this country leads the way".—[*Official Report*, Commons, 21/1/19; col. 1258WS.]

A majority of the amendments are to the Equality Act 2010, an Act that constitutes one of the strongest pieces of equalities legislation in the world. That includes provisions to provide comprehensive protections from discrimination, harassment and victimisation on the grounds of nine protected characteristics. We are determined to ensure that the 2010 Act will continue to give certainty and continuity to, among others, employees, employers and service users, creating a stable environment in which the UK economy can grow and thrive. By passing the regulations, Parliament would ensure that those hard-won protections continue to operate after we have left the European Union. These regulations are purely concerned with ensuring that the legislation remains fit for purpose, by removing or replacing references relating to the European Union, its laws and institutions that will become redundant at the point of exit. This package of changes additionally includes the revocation of two pieces of peripheral, and in one case entirely moribund, retained direct EU law.

I am unsure how much detail the Committee may require about the proposed changes, many of which are merely the replacement or removal of one or two words. It would not be practical to address every change in this speech, but if noble Lords have questions about specific regulations, I will endeavour to address those in my closing remarks.

For the time being, it may assist the Committee if I set out the legislation being amended, together with an example for the purposes of illustration. The draft instrument amends: references to enforceable EU rights, references to EU law and the European Economic Area, and specific EU directives and harmonisation provisions. These provisions will become deficient after we leave the EU unless they are amended. While a majority of amendments are to the Equality Act 2010, the regulations also contain amendments to: the Civil Partnership Act 2004, the Gender Recognition Act 2004 and the Equality Act 2006—which establishes the Equality and Human Rights Commission, its governance arrangements and powers at its disposal.

The regulations also amend, in a minor way, the Equality Act 2010 (Amendment) Regulations 2012, which implement a 2011 ruling of the Court of Justice of the European Union that sex should not be used as a risk factor in determining individuals' insurance premiums and benefits—the Test Achats ruling. A further regulation then replicates this change in the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012. This is the only change to Northern Ireland legislation proposed in these regulations.

At this juncture it may be helpful to the Committee if I mention our approach on devolution when preparing this instrument. The amendments to the Civil Partnership Act and Gender Recognition Act relate to policy areas within the competency of the Scottish Parliament, and accordingly we have worked closely with the Scottish Government, and through them, the Scottish Parliament, to ensure there is agreement and to secure the necessary legislative consent. We have also consulted the Welsh Government on these regulations.

Importantly, we have also consulted the Equality and Human Rights Commission in the preparation of these regulations, to ensure it agrees with the legislative need for the changes and that it is content with the approach taken overall, and, in particular, in relation to the amendment that impacts the commission.

Lastly, I will briefly address the two pieces of retained direct EU legislation that we are proposing be revoked. One is Regulation 1922 of 2006, which established the structure and governance of the European Institute for Gender Equality—the research papers for that institute are available on the web. The regulations simply concern the structure of the organisation, which will not be of relevance to us following our exit. The other is Decision 771 of 2006, which established the European Year of Equal Opportunities for All of 2007. As the title suggests, this is outdated and no longer has any practical implication.

[Baroness Barran]

I draw noble Lords' attention to the equalities transparency statement in the annexe to the Explanatory Memorandum. This is prepared in line with the commitment that the Government gave during the passage of the European Union (Withdrawal) Act that every EU exit-related statutory instrument would state whether and, if so, how it amends the Equality Acts of 2006 and 2010. Unlike the vast majority of such SIs, these regulations amend those Acts, and this fact and its effects are duly recorded in the statement.

In conclusion, I hope that noble Lords will recognise that the regulations in this statutory instrument are intended solely for the purpose of correcting deficient or redundant provisions in the legislation that I have outlined. Put simply, this legislation will no longer work exactly as Parliament intended once we have left the EU if this SI is not passed into law. Without making these small technical changes, we would risk leaving in place legislation that is no longer fit for purpose, at best, and which simply does not operate effectively, at worst. I beg to move.

Baroness Gale (Lab): My Lords, I thank the Minister for the full explanation she has given as to why this SI is before us today and why it is necessary, and for outlining the parts of the regulations that have been revoked and the reasons for that. We support this technical statutory instrument, and I am pleased that this action is being taken now. No doubt the Minister is aware of the concern of the #FaceHerFuture campaign that the UK could fall behind on gender equality once we leave the EU. Will she say what measures the Government will take to ensure that we keep pace with the EU to maintain gender equality? We need a broad commitment from the Government to set out a positive post-Brexit agenda for the promotion of women's and girls' rights and gender equality; to ensure that the UK keeps pace with EU measures that maintain gender, race and LGBT equality; and to ensure that women's services providers, including women's refuges and other domestic abuse services, receive stable funding. That must remain on the agenda. The UK Shared Prosperity Fund must ensure adequate funding for women's services.

The Explanatory Memorandum states,

"removing these references will not alter the present effect of EU law domestically in the field of equalities, which the Government is committed to retaining under the principle of 'non-regression'".

That is good news, and I hope that it will continue after we leave the EU. If the principle of non-regression is to be maintained after we leave the EU, will the Minister ensure that your Lordships' House is provided with the information necessary to keep pace with the EU in all matters relating to equalities? Will the Government act on that information if it suits our legislation? I believe this is necessary in order that we do not fall behind the EU in equality for all. I look forward to the Minister's response and I thank her for explaining this SI.

6 pm

Lord Deben (Con): Will my noble friend help me by kindly explaining what is meant by paragraph 3.10 in Part 2 of the Explanatory Memorandum, because I have read it carefully and I do not understand it?

I am concerned that although the Government have made all these promises about maintaining our standards, in the substantive legislation we have had in front of us, none of these things have been entrenched. I point in particular to the Trade Bill, where there is nothing to say that we will insist in future on having trading arrangements only with countries that maintain the same standards that we have. This is marginal in cost terms, but very important in principle. In the European Union, we have common views and our trading is done under common standards. That will not be true in future. Therefore, when we have substantive legislation, I am looking for the Government to entrench those standards so that they are taken into account in the trading negotiations. At the moment, they are not taken into account and Parliament is excluded from any discussion of the trading deals that will be done, whereas we are not excluded—at least, the European Parliament is not—when it comes to European trading deals.

If my noble friend cannot answer that question now, I hope she will explain why the Government insist on generalised statements but do not include such statements whenever they can be justiciably insisted on. I like it when the Government's feet can be held to the fire, not when a particular Prime Minister has made a generalised promise. I have no doubt that my right honourable friend the Prime Minister has every intention of carrying through what she says, but she will not be Prime Minister for ever—I think that is an uncontroversial statement. I should like a commitment from the Government that in all the substantive legislation they bring forward, they will insist on having the same attitude towards the issues we have discussed today: civil partnership, gender recognition, sexual discrimination and the like.

That is particularly important when it comes to some parts of industry. I know that people say that it really does not matter very much. It certainly matters to our standards on agriculture. In some countries that we propose to have agreements with, there are no standards of this sort. They are able to do things we would not, which reduces their costs and enables them to compete unfairly.

I say one other thing to my noble friend. It is very difficult for those of us who have looked at these matters seriously not to be extremely angry that the Government continue to believe it is even possible to contemplate a no-deal exit. The damage done by that would be so serious that the Government make themselves look pretty ridiculous by not standing up and saying, "We will not allow this to happen and therefore we will not put through this legislation". In any case, they cannot get it all through in time.

When my noble friend replies, she might be kind enough to avoid two phrases that she uses, neither of which help us. The first is, "not be of relevance to us". The fact is that what the European Union decides in future, if we leave it, will be of relevance to us. It will not be of relevance in the sense that we will have to obey it, but the idea that we will not be affected by the decisions the European Union makes seems to me pretty barmy. This is one of the problems: we are putting ourselves in a position where we will be affected

by decisions the European Union makes, even though we will have no say in those decisions, which will not directly be imposed on us. To use a phrase such as, "not be of relevance to us", is to mistake the situation. What we mean is that, were we to leave the European Union, we have to amend our laws to exclude those bits that refer to the European Union. That is not the same as saying that it is not of relevance to us.

There is another little word that my noble friend used: merely—that this "merely" changes the situation to the new situation. This is not a "mere" change; it is another piece of legislation that makes Britain less able to deal with these matters, less influential and, frankly, less safe. As the noble Baroness, Lady Gale, perfectly properly said, we need real acceptance that if we remove ourselves from the European Union, we do not have the same guarantees of continuing with these standards. Most of us find unacceptable the idea that leaving the European Union is merely a matter of transference.

I hope my noble friend will accept that it is much easier if we just say, "This is an attempt to put our law into a position in which it would not totally collapse were we to leave with no deal". Let us not use any of these words that diminish or reduce the seriousness of what we are doing—the barminess of the whole process and the fact that, if we were to leave the European Union with no deal, we would not be bothering much about gender recognition but about whether people could be fed and whether we could get things on to the supermarket shelves. This is the problem with our discussion: it is all in fairyland. It is all as if things would just go on and that somehow we could have these little changes at the edges.

This is not my noble friend's fault. She has not started it and I have no idea what her views about it are—she would, of course, not be able to state them whatever they were. I want her to understand that this is an extremely painful process for any of us who have cared about Britain's role in the world and in Europe, and Britain's leadership. Therefore, we have to be very careful if we use the words "merely" or "not be of relevance to us". I leave it to another time for my noble friend to explain precisely what paragraph 3.10 is, but if she can do that today I would be very pleased.

Baroness Hussein-Ece (LD): My Lords, I thank the Minister for her introduction to this SI and for setting out the Government's position. I should like to raise a few points. I speak as someone who has been involved in equalities issues for many decades. I recognise some of the hard-fought rights people in our country now have as a result of the EU and grassroots campaigns from women, people from different minority backgrounds and the LGBT+ community. These have all been hard-fought, as has been said. They were never given; they were fought for.

As the Equality and Human Rights Commission rightly says, the EU has played a pivotal role in ensuring that the underpinning of these rights has been embedded in our laws. For example, EU law has led to changes in UK law to protect equality and human rights, which, let us not forget, includes things such as human trafficking, including greater protections for victims and victims' rights; disability rights, with huge changes due directly to EU laws, such as improved protections at work and Braille labelling for medicines; workplace discrimination, including protections on grounds of religion or belief, sexual orientation or age; and equal pay. These were all very hard-fought for.

There are concerns. I hear what the noble Baroness said, but these nevertheless have to be addressed. For example, in the event of no deal, which is what we are addressing with the SI, the Government will be looking for other international trade deals. The Government have always been looking to reduce the burden on business and business leaders, who, in some quarters, are always pushing for workers' rights to be reduced. That is a fact. It might be part of new trade deals. These things have to be addressed and we have to have some answers and reassurances that we will not water down any of our hard-fought equality laws or rights.

For example, a briefing from Liberty states that there will be "serious consequences" for human rights after withdrawal. According to Liberty, the EU withdrawal Bill,

"will not retain the Charter of Fundamental Rights of the European Union",

and will remove the ability,

"to bring legal claims based on the general principles of EU law".

I am not a lawyer or an expert, but these things seem quite concerning.

Also, under the same fundamental principles, Liberty says that there are rights that do not have equivalents in our domestic law. For example, Article 3, on bioethics, provides,

"a right to physical and mental integrity, prohibiting eugenic practices, the use of the body and its parts for financial gain and the reproductive cloning of human beings".

I did not know that until I read that. Another example is Article 14, which provides,

"a right to vocational and continuing training. Unlike its analogue under the ECHR, Article 14 is framed as a positive right—rather than a right not to be denied an education".

It turns it round in that way. Another example is perhaps pertinent to Members of your Lordships' House:

"Article 25 (rights of the elderly): recognises the right of older people to lead a life of dignity and independence and participate in social and cultural life. This right is unique and has no equivalent under the ECHR or any justiciable international treaty".

Lord Deben: Is not the fundamental problem that because we have not taken that into our law, there is no justiciable ability of people to take the Government to court? When the Government say, "This is merely moving from European law into British law", that is not true. It is moving those little bits in detail, but it is not moving the fundamental rights which are enshrined in these very important statutes and which we can refer to in the courts. Now we will not be able to take the Government to court on a full range of these matters, which is a serious diminution in our rights.

Baroness Hussein-Ece: The noble Lord advances my case. I was giving a few examples of some of the rights that currently protect different sections of society, but they will not necessarily be protected—and probably will not be—under what is proposed in the SI, which

[Baroness Hussein-Ece]
simply harmonises and takes out some of the laws that we currently enjoy and puts them into domestic law. If it is not already something that we recognise, it will not be there. Therefore we need some answers to these issues.

Article 10, which is important and which we discuss a lot in your Lordships' House, is on freedom of thought, conscience and religion. It,

"includes a right to conscientious objection not recognised in domestic law".

That is another example of what will not necessarily be harmonised or merely slipped into our domestic laws, because it does not already exist.

The question with the EU withdrawal Act as it stands is: is it not the case that we risk losing protections for sections of society that we have enjoyed for many decades now? An example is the loss of protection for women in work. The noble Baroness, Lady Gale, mentioned gender equality and how we must keep pace on that and not slip back. In addition, as I mentioned earlier, some business leaders see some of these rights as a burden. We need some reassurance from the Government of today, but they may not be the Government of tomorrow, a future Government, so reassurances in themselves will not be enough, because Governments come and go. We need something more fundamental enshrined in our law, which will provide the protections that we do not currently have.

Can the Minister address some of these issues? Another example is that European law has recognised the right of older people to live a dignified and independent life. There is no equivalent of that in the ECHR or a treaty, as I said. While I understand the sentiments the Minister expressed today, we need more than assurances; we need something more cast-iron, and even copper bottomed, which we will probably not get today. That will probably be for another day.

There are a lot of questions and concerns about how we keep pace with issues such as gender equality, race equality measures, LGBT rights and disability rights. Those laws are always evolving to keep pace. The EU has been a positive force for change, enabling us to keep pace and harmonise with those laws. If we are outside the EU, what will be the force for that? Will equality legislation and priorities simply slow down? They may not be a priority any more; other legislation will probably be seen as more of a priority. Quite simply, they could just be weakened and diluted and rights could be lost.

I ask the Minister to address the points that I have made and give more reassurance as to how these issues will be tackled. The UK has proudly played a pivotal role in bringing these protections for protected groups into EU law—we have been at the centre of that, if not the forefront—so how will we ensure that we do not fall behind?

Lord Smith of Finsbury (Non-Afl): Before the noble Baroness sits down, I suggest a very clear example of exactly what she has been talking about. In 1997-98, the only reason why we in this country were able to change the rules on the age of consent for gay male sex was that two brave gay men took the case to the European Court, and the court gave a judgment that meant that not only were we able to change the law here but we had to change it. That is a very good example of exactly the impact, which the noble Baroness is talking about, that it has had over many years.

6.15 pm

Baroness Hussein-Ece: I was just concluding but I am very grateful to the noble Lord, who I know has himself been pivotal in equality. In fact he was my MP at one time, and I remember that he was in the vanguard of changes in equality legislation.

I have many more examples, which I shall not itemise today, but we are looking for an example like that. There might be something in future involving the rights of people who need protecting. Where do we go for that if the Government of the day are not interested or do not see it as a priority? What will be put in place to ensure that future generations have the same protections that we have enjoyed?

Baroness Barran: My Lords, this has been a very constructive and heartfelt debate, and I thank noble Lords for their helpful points regarding both a recognition of the progress made in this country over many years in relation to equalities and the challenges that we face in future. I hope that noble Lords are reassured to some extent by my opening remarks about the nature of the proposed amendments in this specific instrument, as a number of the points raised are obviously broader than its scope. These changes are necessary to ensure a properly functioning statute book after EU exit while not in themselves amounting to substantive changes in policy.

I shall deal with a number of the points raised by noble Lords. The noble Baroness, Lady Gale, asked how we will keep pace with the EU to maintain gender equality specifically, while the noble Baroness, Lady Hussein-Ece, and my noble friend Lord Deben raised broader points in that regard. I reassure all noble Lords that we are committed to keeping all the protections in the Equality Act 2006 and the Equality Act 2010, which include gender equality but also go much broader.

My honourable friend the Minister said last week in the debate on this instrument in the other place that from the date we leave the EU, the UK will be free to set its own priorities, including those on gender equality and women's rights. The UK has often been in the vanguard of developing new legislation and policies that support women in the workplace, tackling violence against women and girls, and ensuring that women are represented in political and public life. Our recent regulations, for example, requiring employers to publish their gender pay gap go further than anything required by the EU or any other member state. The other area where this country differs in a very positive way from the rest of the EU, is in relation to the public sector equality duty. I hope that noble Lords will reflect on the balance; there are definitely areas where this country is significantly ahead in terms of equality legislation.

Lord Deben: My Lords, all that is very true and I am proud of what this Government have done in both of the areas to which my noble friend refers, but could she explain why we have not transcribed into British

law the requirements of the document to which the noble Baroness, Lady Hussein-Ece, referred? Those are the fundamental rights. We may be free to make changes, but humans in this country are no longer free to take the Government to court. We are losing a basic right. This is not a freedom at all.

Baroness Barran: If my noble friend will be patient, I will cover that point in a moment.

We will continue to engage with leading academics across Europe and internationally, bringing together the latest research on what works to deliver gender equality in the workplace through our Workplace and Gender Equality Research programme and our Gender & Behavioural Insights programme. Once we leave the EU, we will remain close to our European colleagues. We will continue to share good practice, collaborate with others and follow developments in Europe closely—a point which my noble friend Lord Deben questioned. The EHRC will remain part of Equinet, which is the European Network of Equality Bodies, and continue to be engaged with their work. Through bodies such as the Council of Europe, where a UK official now chairs an important gender equality body, the ILO and the UN, we will ensure that we are engaged with institutions and countries that are committed to achieving gender equality and the empowerment of all women and girls.

The noble Baroness, Lady Gale also asked about funding for specialist women's services. She will know that this is a cause dear to my heart and I understand very well why she raises this point. The Government are absolutely committed to protecting victims of domestic abuse. Since 2014, MHCLG will have invested £55.5 million in services to support victims of domestic abuse, which includes funding refuges. The department is carrying out a review of how domestic abuse services are commissioned locally and funded across England. The review has been informed by an audit undertaken by Ipsos MORI for the provision of domestic abuse services across England which will enable us to understand what impact they are having and identify any gaps. MHCLG is also working with the domestic abuse sector and local authorities, drawing on their expertise and data, to develop sustainable delivery options for domestic abuse services in future. The noble Baroness will, I know, also welcome the introduction in the other place of the draft Domestic Abuse Bill, which I am sure will provide an opportunity to address some of these issues.

She also asked about the issues of non-regression and how this House will be kept updated. As I have already said, the Government are absolutely committed not to roll back workers' rights when we leave the EU. This has been confirmed most recently by my right honourable friend the Prime Minister. I cannot ensure that your Lordships' House will be updated formally with changes in EU equalities law. Obviously, the Equality and Human Rights Commission and the Women and Equalities Select Committee will continue their important work and produce their reports, which noble Lords will be interested to follow.

The noble Baroness asked for an assurance about the shared prosperity fund. We will be consulting on this and are concerned to ensure that disadvantaged groups are not left out of the fund. I am pleased to say that the Government Equalities Office is discussing gender issues, which are clearly very relevant here, with those in government leading on the fund.

My noble friend Lord Deben asked me to explain paragraph 3.2 of the Explanatory Memorandum—

Lord Deben: Paragraph 3.10.

Baroness Barran: I am sorry. Paragraph 3.10, which relates to Regulation 5(9)—I have to warn the noble Lord that this may not shed entire light on the matter—states:

"Regulation 5(9) amends Schedule 23 to the Equality Act 2010. This provision currently contains an exemption which allows a training provider to provide training to a person who is not ordinarily resident in the European Economic Area (EEA) where the training provider thinks that the training recipient does not intend to exercise the skills obtained in this country. The amendment recognises that the UK will not form part of the EEA after exit day and so ensures that this exception now applies to any country outside Great Britain".

If the noble Lord would like me to write to him to clarify that any further, I would be delighted to do so.

The noble Lord also asked about future trading arrangements. I cannot speak for any future Government, but this Government have absolutely no intention of diluting workers' rights, which was noted by my right honourable friend the Prime Minister very recently, as I mentioned. He also questioned whether we were trying to "diminish the debate"—I think those were the noble Lord's words. I will try not to say the "M" word, but I am trying to focus only on the specifics of this statutory instrument. To repeat the words of my right honourable friend the Minister for Women and Equalities in the other place, this gives us a chance to choose our priorities going forward. It is really important that all noble Lords acknowledge the leadership we have shown. I have a table here that shows a number of areas, particularly in relation to goods and services, where this country is leading the way in rights. I already mentioned the public sector equality duty.

Turning to the questions of the noble Baroness about the Charter of Fundamental Rights and wider human rights issues, this statutory instrument does not have any bearing on the charter, which applies only to EU law or EU-derived law. It catalogues a range of EU rights and principles, the original sources of which are found elsewhere in EU law. The charter itself is not needed after EU exit because EU law, which is the source of these rights, will be copied on to our domestic statute book. I hope that the noble Baroness may take some reassurance from the fact that the Women and Equalities Committee acknowledged this in its 2016 inquiry, agreeing that,

"it would be difficult to apply the Charter so that it would function in a domestic context alone".

In addition, the protections from the European Convention on Human Rights, which have been given further domestic effect by the Human Rights Act 1998, are unaffected by EU exit. The noble Baroness also raised a number of other issues, but if she will forgive me, I will just pick one, in relation to equal pay protections. These existed in Great Britain long before any EU rules were introduced and the European Union

[Baroness Barran]

(Withdrawal) Act 2018 will retain Article 157 of the treaty of fundamental rights of the European Union in domestic law.

6.30 pm

I conclude by reiterating the Government's commitment to our broad and ambitious equalities agenda, which is unaffected by our decision to leave the European Union. That agenda includes ensuring our law remains usable after EU exit, while preserving the strong protections in the Equality Acts of 2006 and 2010, together with the rights inherent in related legislation. That is what these regulations are designed to achieve; I commend them to the Committee.

Motion agreed.

Committee adjourned at 6.31 pm.

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