Vol. 795
No. 250

Wednesday
6 February 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

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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

Wednesday 6 February 2019

3 pm

Prayers—read by the Lord Bishop of Lincoln.

Migrant Crossings: Naval Assets
Question

3.06 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government what has been the total cost charged by the Ministry of Defence to the Home Office for the use of HMS Mersey and naval assets in the Channel since 1 January.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the deployment of the Royal Navy vessel is an interim measure while the two Border Force cutters currently redeployed from overseas make their way back to UK waters. To date, this has cost £700,000. The deployment is funded by the Home Office and will be kept under constant review.

Lord West of Spithead (Lab): I thank the Minister for her Answer. This operation has been a complete and utter shambles. That is a real worry because, as we move towards Brexit, the need to patrol our territorial seas and enforce our laws both there and in our exclusive economic zone is going to become greater. Who on earth is co-ordinating this? In the Navy we have a nice tradition where occasionally we shoot a senior officer to encourage the others. This might be a perfect candidate for the case. We have in place a joint maritime operations centre, which has all the departments there. Why can we not fully fund it and put a person in charge—a naval officer or whoever, I do not care—who can co-ordinate our shortage of assets to do the things we need to do? This is only going to cost a couple of million, which is not that much in the big order of things.

Baroness Williams of Trafford: The noble Lord is absolutely right to point out that as we approach Brexit we should be mindful of some of the events that might happen around it. We will shortly have a director in post at JMOCC, which I hope gives him some comfort. The nature of a crisis would determine the co-ordination response.

Lord Paddick (LD): My Lords, the Minister will have seen a report in the *Sunday Times* that the Government have reduced a promised £22 million towards a public health approach to tackling knife crime to £17 million. Is that where the Home Office found the money to pay the Ministry of Defence? If so, can she explain why the Government see keeping desperate refugees out of the UK a priority over saving the lives of British youngsters on our streets?

Baroness Williams of Trafford: My Lords, when I saw the article in the *Sunday Times*, I realised it was wrong. The noble Lord is absolutely right to state that £22 million was committed. It still is committed; £17 million of it has already been allocated. That is not to say that the additional £5 million will not be forthcoming, because it will. In terms of desperate refugees, I think he might be referring to the PNQ that he is about to ask, but these are serious criminals.

Lord Hamilton of Epsom (Con): My Lords, can my noble friend tell us why we need expensive naval ships to escort immigrants, who may be in sinking boats, to our ports?

Baroness Williams of Trafford: My Lords, the nature of the event was such that the two cutters to which the noble Lord, Lord West of Spithead, referred were undergoing maintenance at the time. Yes, there has been a temporary deployment of a Navy ship. It is not cheap—I agree with my noble friend on that—but the two cutters will soon be back in action.

Lord Kennedy of Southwark (Lab Co-op): My Lords, can the Minister assure the House that the Home Secretary's decision has not left us vulnerable elsewhere in the world? What is being done to break up the operations of these criminals and catch the people smugglers, whose reckless actions are putting people's lives at risk?

Baroness Williams of Trafford: My Lords, an awful lot of work is going on to stop the movement of people across the water—recently it has been in the channel, where the waters are very dangerous indeed. The noble Lord might like to know that as recently as the last couple of weeks, the Home Secretary met Minister Castaner to discuss bilateral co-operation on maintaining our waters and keeping people safe when they make those terrible journeys across the channel.

Lord Green of Deddington (CB): My Lords, is the Minister aware that most of these refugees crossing the channel are from Iran, and that their chance of staying in the UK, whether permission is granted or not, is 97%? Would it not therefore be better to have a really effective way of differentiating between genuine refugees and economic migrants, and making sure that the latter are returned?

Baroness Williams of Trafford: The noble Lord is correct about the high percentage of Iranians. His second point is right too, and that is what we are trying to achieve.

Lord Wallace of Saltaire (LD): My Lords, as part of its contingency planning for a crash-out no-deal Brexit, is the Home Office preparing measures to discourage British citizens from leaving the country?

Baroness Williams of Trafford: No, my Lords, we are not.

Lord Alton of Liverpool (CB): My Lords, will the Minister reconsider the Written Answer she gave me last week about some of the Iranians who have fled their own country because of persecution, or even because they were facing execution for reasons such as religious belief or coming from particularly at-risk minorities? She said that it would be impossible to

[Lord Alton of Liverpool]
carry out a manual count of those who have come across the channel and look at the reasons why they have come, to identify whether they are economic migrants or genuine refugees fleeing persecution.

Baroness Williams of Trafford: When I wrote to the noble Lord saying that we could not do that, it was simply because the data was not available to disaggregate, but I will look at his Written Question again and see whether I can give him any further information.

Social Media: Online Anonymity

Question

3.12 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what steps they are taking, or intend to take, to deal with online abuse by people using anonymous social media accounts.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, online anonymity is an important part of a free and open internet—but being anonymous online does not give anyone the right to abuse others. The Government have made it clear that more needs to be done to tackle all kinds of online abuse. We will publish a joint DCMS-Home Office White Paper this winter, setting out a range of legislative and non-legislative measures and establishing clear standards for tech companies to help keep UK citizens safe.

Lord Kennedy of Southwark (Lab Co-op): My Lords, does the Minister accept and understand the huge concern of law-abiding citizens that people are hiding behind anonymous accounts and making threats to kill, to rape, to assault and to bully, using racist, anti-Semitic and Islamophobic language? The platforms that host these people have done nowhere near enough to deal with this problem. If they will not get their own house in order, the Government must make them, through legislation. Will the Minister impress on his colleagues in government that the forthcoming White Paper must make that clear to them?

Lord Ashton of Hyde: I am happy to be able to agree with the noble Lord. Let us be clear: when abuse exceeds the threshold and moves into criminality, in most cases so-called anonymous perpetrators are actually traceable, so they can be prosecuted according to the law. I recognise the public disquiet about this, and, as the noble Lord said, we are considering what more can be done, by non-legislative means but also, when required, by legislation—and there will be legislation. We will consider what to do about anonymous abuse specifically, and we will address that in the online harms White Paper, which, as I said, is due out this winter.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend recall that we got a dramatic improvement in attitudes towards health and safety when we made the directors of the company personally liable for it? Should we not do the same for internet service providers?

Lord Ashton of Hyde: One of the things we are considering is a duty of care. That might include holding directors personally responsible. We have not decided that yet, but it is certainly an idea worth considering. As it is a White Paper that is coming out this winter, there will be a consultation on it, so we welcome views from my noble friend.

Lord Clement-Jones (LD): My Lords, the Law Commission, in its scoping report last November into abusive and online communications, said that one of the key barriers to the pursuit of online defenders was, "tracing and proving the identity of perpetrators, and the cost of doing so".
I heard what the Minister said about the White Paper's contents, but will the Government include a provision allowing the stripping of anonymity in circumstances of online crime? Have the Government had any discussions with the police or other enforcement agencies to understand the issues they face in tracking these perpetrators and bringing them to justice?

Lord Ashton of Hyde: It is certainly something worth considering in the White Paper, but as far as dealing with the police is concerned, the Home Office is working with policing to identify ways to tackle this when it goes over the threshold into criminality. These are relatively new crimes; the police will have to evolve methods to deal with them. We have also worked with the office of the Director of Public Prosecutions. There is a digital intelligence investigation programme, aiming to ensure policing has the ability to investigate the digital elements of all crime types. Also, the Home Office is working with the College of Policing to drive improvements in overall police capability to investigate and prosecute online offences.

Lord Campbell-Savours (Lab): My Lords, going back to the Minster's original response, in what sense does he believe anonymity helps freedom of speech?

Lord Ashton of Hyde: If, for example, you are in an authoritarian regime—

Lord Campbell-Savours: We are not.

Lord Ashton of Hyde: I said "if"—we do not think only about this country. That is one example. If you are a 15 year-old girl who is being abused, being able to go on to the internet to ask for health advice or let people know about it is an example of where anonymity can sometimes help.

Baroness Fall (Con): My Lords, our children grow up in a world that is under huge pressure from social media. They never get a day, or, indeed, a night off. This is a world where no one seems to take accountability or responsibility for what is said at all. While we all argue among ourselves about what to do, I urge the Minister and those drawing up the White Paper to start with the simple but powerful principle of transparency. We should not allow people to hide behind the veil of anonymity.

Lord Ashton of Hyde: As I said, sometimes anonymity is the right thing, but I take on board what my noble friend says. We definitely believe that tech and social media companies need to take more responsibility. We have said that. The Secretary of State plans to visit

them to outline some of the measures we propose to take. There is absolutely no doubt that there is general feeling in the public that something needs to be done to control these large social media companies. People have to take responsibility. We will make sure that that happens, with legislation if necessary.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, will the Minister get a copy of the speech made today by Tom Watson, the deputy leader of the Labour Party, on this subject, and consider each of his proposals carefully?

Lord Ashton of Hyde: As I said earlier, this is a White Paper and we are having a consultation. We certainly welcome views from everyone. I will make sure that the letter is looked at in the department—I probably will not even have to tell them to do that. However, we are trying to build a consensus. We have to take into account libertarian views, the need to preserve innovation for tech companies—which is so useful to our economy—and to protect vulnerable people, especially children.

Lord Hogan-Howe (CB): My Lords, could we return to the issue of policing resources, which was alluded to earlier? There are two areas which have serious concerns for the police and also, therefore, perhaps for the Government. One is the recovery of digital evidence, which has already proved challenging in rape cases and other sexual offences where mobile phones have to be examined in great detail. The second point is that this is a people process as well as a hardware process. Both require lots of people, and at the moment, this explosion of criminal offences means that it is demanding an awful lot of people and cost at a time when police numbers are dropping. It is something that the Government have to consider seriously.

Lord Ashton of Hyde: Regarding the first part of the noble Lord's question, we are supporting the Digital Public Contact, which will deliver a single online home for policing and provide a secure digital channel for the public to upload evidential material in a digital format. I have explained what we are doing with the College of Policing.

As for the second part of the noble Lord's question, my noble friend the Home Office Minister is sitting next to me and I am sure has listened to his point.

Lord Hunt of Kings Heath (Lab): My Lords, are the Government really prepared to take these companies on? I pray in aid the Government's approach to getting them to pay proper tax in this country. Despite the huffing and puffing we have heard from the Chancellor, no action has been taken. Can the Minister assure me that the Government are prepared to take them on?

Lord Ashton of Hyde: In the area that we are responsible for, regarding online harms and safety, we are. As far as tax is concerned, that is a different matter and I do not have the responsibility for it. However, I am sure that the Chancellor will listen to the noble Lord's views.

Railways: Dawlish

Question

3.22 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what progress has been made in improving the resilience of the railway line at Dawlish towards south Devon and Cornwall since the two-month disruption beginning on 5 February 2014.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, Network Rail has worked to develop long-term solutions to make the railway at Dawlish and Teignmouth more resilient to extreme weather, engaging an expert team of tunnel, cliff and railway engineers. This is part of a £15 million investment provided by the Government. The first phase of work to protect the sea wall began in November, with essential repairs now completed to four breakwaters. Following engagement with local stakeholders in autumn last year, Network Rail has now submitted plans for a new, stronger sea wall at Dawlish.

Lord Berkeley (Lab): I am grateful to the Minister for that reply, and am sure the House will wish to congratulate Network Rail on the way it recovered from that terrible accident five years ago where the track was waving in the air with nothing underneath it. However, is the Minister aware that already this winter services have been disrupted on 10 occasions—sometimes because the tide is just over the tracks and the tracks are buried? One solution might be for the Secretary of State to play King Canute, but I am sure he would not want to do that. The alternative is to encourage Network Rail with some funding to go ahead with the issues that the Minister mentioned. Also, will she start looking at the process of reopening the Okehampton-Tavistock line, to provide a better service to Plymouth and Cornwall for when the line by the sea is disrupted?

Baroness Sugg: I join the noble Lord in congratulating Network Rail and the orange army who did such a great job of recovery after the storms more than five years ago. We have been clear that ongoing investment in the south-west transport infrastructure is a key priority, and we remain determined to find a permanent solution for Dawlish. As I said, £15 million of funding has been made available, and world-leading engineers have been carrying out detailed assessments. Network Rail is making good progress on its plans, and we are considering them carefully.

On the noble Lord's point about the regular Okehampton service, we are working closely with the local councils on that. We responded to the future of the Great Western franchise consultation last August, and are looking into what scope of work will be needed to reinstate regular services on that route.

Lord Snape (Lab): My Lords, does the Minister agree that it is not just the track that has been a problem, but the trains? Does she agree that the wretched Voyager trains used on this stretch of line are completely

[Lord Snape]
unsuitable for the journeys they undertake daily? Cancellations and short running take place every week, and as the 40 year-old British Rail-built high-speed trains are now coming off lease, why do the Government not modernise them and replace the Voyagers with properly built trains that would be far more comfortable for travel between Aberdeen and Penzance than the toy trains there are at present?

Baroness Sugg: My Lords, the noble Lord is right to point to the issues we have had on that track: when there are high waves and sea spray close to the track the Voyager trains cannot run, as they have brake resistors on top. CrossCountry is working to assess whether there might be engineering solutions that would enable the Voyager class to operate through Dawlish in those challenging conditions. We are also looking into providing further additional rolling stock, but the Government and franchise operators are investing heavily in new, improved trains.

Lord Teverson (LD): My Lords, the economies of west Devon, Plymouth and Cornwall rely very much on this line. Last autumn a six-foot hole appeared under the track in the Dawlish area, so this is far from solved. Yet, despite Devon and Cornwall—regrettably—being stuffed with Tory MPs there seems to be no real action at all. Can the Minister give us a date when the fundamental structure, whether it is the line that the noble Lord, Lord Berkeley, refers to or the sea wall, will be completed? When will something be done?

Baroness Sugg: My Lords, this train line has been a long-standing problem ever since it was opened in 1846—that year trains failed to run along it. We are working closely on that and although I am not able to give the noble Lord a date, we are making significant progress. Network Rail has submitted a plan that we are looking at carefully and we hope to make an announcement on it very shortly.

Lord Rosser (Lab): First, in very bad weather, as has been said, the Voyager trains used by the CrossCountry franchise are often unable to operate west of Exeter, as electrics on the roofs of the trains are adversely affected by salt water coming over the sea wall in the Dawlish area. Will the new Hitachi trains being introduced on the line also be adversely affected by salt water coming over the sea wall? Secondly, Network Rail's plan for preventing sea damage is, as has been said, to build a new, higher sea wall, in respect of which it has made a planning submission to the relevant local authority, with the knowledge of the Secretary of State. We know the problem is only going to get worse as sea levels rise, so what happens if that planning application is declined? What is plan B? Or is there no plan B?

Baroness Sugg: The noble Lord is right to point to the issues we have with CrossCountry trains. The new intercity express trains on GWR were also affected by weather along the Devon coast last week, so we are working very closely with Hitachi to find a solution. As the noble Lord pointed out, there is a planning submission in play and, as I said, we are absolutely determined to come up with a long-term solution to this problem.

Baroness Watkins of Tavistock (CB): My Lords, will the Minister clarify whether she thinks the only long-term solution is to have an alternative line from Exeter to Plymouth? Otherwise, we are perpetually trying to put right something that she acknowledges has been inappropriate since 1848.

Baroness Sugg: Since 1846. The case for reopening the former route between Exeter and Plymouth via Okehampton and Tavistock was assessed by Network Rail in 2014. It found that there was not then a case for reopening this route in its entirety. We are doing work on that: Great Western Railway has been asked to develop proposals to reintroduce regular services between Exeter and Okehampton; and Devon County Council is progressing work to develop the case for reinstating the railway between Bere Alston and Tavistock. Delivery of these schemes may enable the full reopening of the former route in the future, subject to a viable business case being demonstrated.

Brexit: Outstanding Commitments

Question

3.29 pm

Asked by ***Lord Robathan***

To ask Her Majesty's Government what agreement, if any, has been reached with the European Union concerning payment in the event of a no-deal Brexit of £39 billion for the United Kingdom's estimated outstanding commitments.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government are committed to getting a good deal for the UK, and have agreed a fair financial settlement with the EU. Even if the UK leaves without a deal, the Government have always been clear that the UK has obligations to the EU—and that the EU has obligations to the UK—that will survive its withdrawal, and that these obligations would need to be resolved.

Lord Robathan (Con): My Lords, I am sure everyone in the House will agree that we—be it as individuals or as a nation—should pay our debts. But I suspect that most of us would also agree that we should not pay bills when we have received nothing in exchange. I hear that the European Commission is demanding that, whatever happens—should we leave without a deal—it would expect £39 billion from us. This probably has more to do with the hole it will have in its budget when we leave, rather than anything else. Could my noble friend reassure me that we will definitely renegotiate any financial deal should we—regrettably—leave without a deal on 29 March?

Lord Bates: The position on the financial settlement was that it went alongside the withdrawal agreement. It is, if you like, looking at our obligations to the EU as a result of our membership. It is not connected to the future economic partnership that we hope to negotiate with our European friends and partners. Were we not to honour that financial settlement, which is part of the withdrawal agreement, that would probably have a significant bearing on our ability to get a good deal for the UK in the future.

Baroness Kramer (LD): My Lords, I thoroughly agree with everything the Minister just said: if we do not honour an obligation that we signed up to, we will have difficulty negotiating a sensible deal with the EU. Does he also recognise that the way we handle this is being watched around the globe? If we are seen as people who do not meet obligations—trying to find some technical angle or way to weasel out of a commitment that we have made—we will have no chance of getting future trade agreements of any value.

Lord Bates: The noble Baroness is right. We need to remember that our net contribution, because of the way it is calculated, is made up not just of what the UK sends to the European Commission but of what the European Commission sends to the UK. Therefore, there are two parties to this; both are making contributions, and both need to honour their obligations. We believe that the financial settlement does just that.

Lord Hannay of Chiswick (CB): My Lords, would the Minister not confirm that the £39 billion was entered into in good faith by the Prime Minister and the Government in December 2017, and simply represents what the two sides—the Commission and the British Government—believe is owing in respect of various commitments over many years? If that is so, the suggestion that we do not owe this money if we leave without a deal has no basis.

Lord Bates: In that sense, that is correct. The range of the figure in the financial settlement is between £35 billion and £39 billion. The OBR has put it at the top end of that range. When we went into that negotiation, one thing the European Commission wanted to do was discount the rebate, which is a significant element of our contributions and benefits the UK. That was included in the final calculations, so I believe it represents a good settlement, alongside the withdrawal agreement, and should command support on all sides of the House.

Lord Davies of Oldham (Lab): My Lords, is it not right for us to assume that the majority of British people who voted to leave the European Union did so because they had a different perspective on the future of the United Kingdom—particularly on control over decisions? The idea that the country is full of animosity towards the European Union—when, after all, the initiative to leave was taken by us—is false. Therefore, the people expect us to meet the obligations that we entered into as far as the European Union is concerned.

Lord Bates: I am very happy to agree with that sentiment. We want a deep, ongoing relationship with our European friends; part of that means honouring what we signed up to. This was what we signed up to at the Council meeting back in November, and we should support it.

Lord Hamilton of Epsom (Con): My Lords, was not the £39 billion made up of our annual contributions for the two years of the implementation stage? I cannot see how we would owe that if we were to leave with no deal. Did a committee of your Lordships' House not say that we would not owe the EU anything with no deal?

Lord Bates: That position, which was taken by the House of Lords committee, was looked at by the Government, who took a different view, believing that there were obligations. They observed that there was no existing legal mechanism to enforce them, but they said that the European Union would be entitled to pursue litigation through courts to recover payments. As I say, the best way to resolve all these issues is through a deal, and through the deal that is on the table.

Lord Harris of Haringey (Lab): My Lords, the Minister has been extraordinarily helpful to the House today. Maybe he could just confirm something for someone like me, who sometimes finds it very difficult to follow these arguments. Is he saying to people who say that there is some way in which we can just wave aside this £39 billion commitment, that that is bogus and misleading the British public? Can he also confirm that the British Government believe that when they have international obligations, they should meet them?

Lord Bates: I agree with all of that. We certainly agree with my noble friend Lord Hamilton, who made the good point that part of the £35 billion to £39 billion covers the implementation period, which is the two years of ongoing contributions to the European Union. He is also therefore correct to point out that if we left without a deal, there would not be an implementation period, so that money would not be paid. However, there would need to be some mechanism to reach a negotiated settlement, or it would be as a result of a legal challenge in some court.

Lord West of Spithead (Lab): My Lords, how will we deal with things such as the £1 billion we have invested in Galileo, which we will now not be able to use? How will that be resolved—as part of the £39 billion, or separately?

Lord Bates: All these figures went into the financial settlement; that is how we arrived at those numbers. As regards our future relationship, that is a matter for the future economic framework, which, once we get the withdrawal agreement through your Lordships' House and on to the statute book, we can look forward to negotiating with our European friends.

Deportation: Jamaica

Private Notice Question

3.36 pm

Asked by ***Lord Paddick***

To ask Her Majesty's Government what is their response to reports that five foreign nationals who were due to be deported to Jamaica have since been reprieved.

Lord Paddick (LD): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, it would not be appropriate to comment on individual cases, particularly those subject to ongoing legal proceedings. It may be helpful

[Baroness Williams of Trafford]
to know that a number of factors impact on a person's planned removal from the UK. This does not mean that the original decision to remove the individual was incorrect. If barriers to their removal are resolved and they are not granted a form of leave, the person remains subject to deportation as required under the UK Borders Act 2007.

Lord Paddick: My Lords, I am grateful to the Minister. Yet, lawyers representing some of those due to be deported say that the reprieve is permanent. Yesterday, I asked the Minister how the Government could be sure that those they intended to deport as foreign national offenders were actually foreign nationals, bearing in mind the mistakes that had been made with the Windrush generation. The Minister said that she had been assured that all those being deported were foreign nationals. Yesterday, in the other place, the Home Secretary said that the law required him to deport foreign nationals convicted of serious offences and that if he did not deport them, he would be breaking the law. As I say, overnight it has been reported that five of those due to be deported are no longer going to be deported. Can the Minister explain: did the Government mislead the House, or has the Home Secretary broken the law?

Baroness Williams of Trafford: I have not misled the House, nor has the Home Secretary broken the law. I thought I had made clear in my original Answer that the original decision to remove an individual is not incorrect, but there may be factors that need to be resolved, such as fresh asylum claims and other reasons why a fresh appeal might be lodged, which might mean that someone is not deported but might ultimately be deported. Therefore, neither is true.

Lord Kennedy of Southwark (Lab Co-op): My Lords, while I accept that deportation must remain an option for the Government, some of the decisions to deport people that I have seen reported look extremely harsh. How can we be confident that the Home Office is being just in its application of the deportation policy generally?

Baroness Williams of Trafford: My Lords, I have to say that it was under a Labour Government that the UK Borders Act 2007 was brought in. A deportation order must be made in respect of a foreign criminal sentenced to a period of more than 12 months, and we will not resile from that—I am sure the noble Lord would not expect us to do so. This was what my right honourable friend the Home Secretary was referring to when he made his comment yesterday about not wanting to break the law.

Lord Rooker (Lab): My Lords, the implication of what the Minister said, a bit like what the Home Secretary said yesterday, is, "Oh, this is a law that Labour brought in. We are being forced to do it, because Labour did it". If you do not agree with that law, why have you not got rid of it? Why use petty party points on a serious issue like this?

Baroness Williams of Trafford: My Lords, there was a very good example of petty party points in the other place yesterday. It is not that the Home Secretary does not agree with the law; the Home Secretary is abiding by the law.

Baroness Hussein-Ece (LD): My Lords, within the last few days I met a man who has lived in the UK for 41 years, since the age of four. He was due to be deported to Jamaica, but then his deportation was cancelled, which is obviously good news. Does the Minister think this is a just way for this country to conduct its deportation policies? How many more people are in the pipeline to be deported day after day, and which we are only hearing about in the newspapers? Somehow the Government are in denial that they have any responsibility to take care of these people.

Baroness Williams of Trafford: My Lords, the noble Baroness will understand that I will not comment on an individual case. She is absolutely right that deportations go on all the time. Although this flight has come to the fore in the media this week, it is nothing unusual. I cannot comment on whether this deportation has been cancelled or not.

Lord Faulkner of Worcester (Lab): Does the Minister agree that one of the weaknesses in the Government's position over the Windrush scandal was that it demonstrated evidence of a "Gotcha!" culture in the immigration service and in the Home Office? Achieving a deportation was chalked up as a victory by the staff concerned. Can she reassure us that that culture has now gone and that some of the worst aspects of the Windrush problem will not recur?

Baroness Williams of Trafford: The noble Lord is right to make this point. When the Home Secretary first took up his post, he made it a central priority that that culture of a hostile environment—which had grown up over the years, if we are to be honest—would be far more attuned towards talking about a compliant environment and that the culture in the Home Office would be changed to be far more humane. That was demonstrated in the aftermath of what happened to the Windrush people. I hope this continues towards those who genuinely have a right to be in this country.

Baroness Berridge (Con): My Lords, while it is welcome that the new Home Secretary has made this a central plank, there is continuing concern as these cases continue to bubble up. Can the Minister assure us that the Home Secretary is having a series of meetings not just with the high commissioners of these various Caribbean islands, but also with community representatives? May I remind my noble friend that a considerable proportion of these people, particularly of this generation, are involved in faith communities? Maybe reaching out to these leaders would help resolve some of these cases more swiftly.

Baroness Williams of Trafford: My noble friend makes a good point. The Home Secretary has been in touch with the high commissioners. Of course, local—particularly Caribbean—communities are best placed

to know where people who need help can seek it and where cases can be dealt with. We have reached out to all these Caribbean communities and beyond in order to encourage people to come forward to get the help which they might need to resolve their status.

Baroness Benjamin (LD): My Lords, there is a real need to have cultural understanding of individuals who are being investigated. There needs to be public confidence that people are being treated fairly. How many BAME people are Home Office officials working on these cases to give the public the confidence they need?

Baroness Williams of Trafford: I am afraid that I cannot answer the noble Baroness's exact question, but I will find out what proportion of BAME staff work in the Home Office and let her know that.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, just for clarification, will the Minister explain that, when a foreign national is convicted of a criminal offence and receives a sentence of, I think, more than two years, they then qualify for deportation? It is probably a matter for the judge to make a recommendation and then the Home Office takes over to see whether there are any mitigating circumstances. Is that correct?

Baroness Williams of Trafford: It is actually a sentence of more than 12 months, but certainly Article 8 considerations are taken into consideration before someone is deported. The provision exists under the UK Borders Act to deport people who have been sentenced to 12 months' or more imprisonment.

Baroness McIntosh of Hudnall (Lab): My Lords, I wonder whether the noble Baroness will return to her previous answer on the subject of the hostile environment, which I think she described as having grown up over many years. My recollection—on which I am sure she will correct me if I am wrong—is that in fact the policy may have had a number of aspects, but it was named and prosecuted under the previous Government, and the Home Secretary at the time was the current Prime Minister.

Baroness Williams of Trafford: We could have a debate about this, but I understand that the phrase was actually coined by Alan Johnson, but I shall not start on party-political exchanges because, the phrase having been coined, the culture of hostility grew up over a number of years. We could argue the semantics of it, but it grew up over a number of years. Compliance on immigration matters is far more important than a hostile culture within the Home Office or anywhere else.

Lord Teverson (LD): My Lords, it is certainly my experience from business that it takes several years to change a culture in a company. Can the Minister explain to the House what is practically been done—I do not want to use the phrase re-education—in terms of training? Are programmes under way, or is this just Ministers telling people not to enforce the policy any longer?

Baroness Williams of Trafford: The noble Lord will know from his experience that the person who sets the culture in an organisation is the leadership, and I think the Home Secretary made it abundantly clear when he came into post that the hostile environment was no longer to be, but the noble Lord is right: it takes time for these things to change.

Financial Services (Implementation of Legislation) Bill [HL]

Third Reading

3.47 pm

A privilege amendment was made.

Motion

Moved by ***Lord Bates***

That the Bill do now pass.

Lord Sharkey (LD): My Lords, very briefly, I should like to ask the Minister a question to do with the in-flight EU prospectus regulation, which has passed all its legislative stages but has not yet been gazetted, as I understand it, and so cannot be treated as settled legislation and is therefore treated in the Bill under the amendment provisions in Clause 1(2)(b). If the legislation is gazetted while the Bill is in the Commons, do the Government intend to move it into the category of settled legislation, governed by Clause 1(2)(a)? What happens if the legislation is gazetted after the Bill has left the Commons but before 29 March? How will the Government make sure that the power to make adjustments is not applied to the now settled piece of legislation?

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, that is a good question. We had hoped that it would be gazetted before then, in which case we could then have made the amendment that we talked about. I was grateful for the noble Lord's suggestion on that. I cannot say that we have had an explicit conversation about this aspect, but it is going to arrive. Providing that it passes your Lordships' House, it will be heard in the Commons I think on Monday next week. The same principle would apply—that if it is gazetted we will put it in there. That was certainly the spirit of what we agreed. I will make absolutely sure that the Economic Secretary and the Financial Secretary, who are dealing with this in the other place, are apprised of the commitment that I gave and which we will seek to honour.

Lord Davies of Oldham (Lab): My Lords, I am grateful for that answer, which shows that the Government are on top of the issue—against a background where we must all recognise that time is somewhat short with regard to this legislation. The SI relates to a service industry that is a crucial part of our economy. We could not afford any situation in which a gap occurred; I am sure that the Minister is seized of that fact.

We are all aware of the fact that there are not many days left to the point where we are due to leave the European Community, yet there is still a very large number of SIs to be considered. Slips such as this,

[Lord Davies of Oldham]
which are minor, can be remedied reasonably quickly by appropriate action, as the Minister indicated. But slips such as this could be costly if we are right up against the wire with regard to the legislation we are seeking to pass. We must all be conscious of the fact that the Government's programme between now and the end of March is pretty demanding, to put it mildly. So, although I accept entirely what the Minister said and am reassured by the promptness of the Government's response, this is an indication that there is many a slip between cup and lip, and the Government do not have much time for a monumental programme.

Lord Adonis (Lab): My Lords, when the Minister spoke on 4 December at Second Reading, he said that the Bill was part of a package of measures and statutory instruments to ensure that the financial services industry would be covered in the event of no deal. He said specifically:

"That stability and continuity is being delivered by the 60 or so statutory instruments that Her Majesty's Treasury is introducing under the European Union (Withdrawal) Act 2018".—[*Official Report*, 4/12/18; col. 934.]

Will the Minister tell us how many of those 60 or so statutory instruments have been laid before Parliament, and would he be in a position to write to me to tell me what the timetable is for laying those that have not yet been laid before Parliament before 29 March?

Lord Foulkes of Cumnock (Lab Co-op): My Lords, before the Minister answers those questions, may I ask one of my own in relation to the report of the Delegated Powers and Regulatory Reform Committee? Will the Minister tell the House whether and how the recommendations in paragraphs 8, 16 and 19 of that report have been dealt with?

Baroness Kingsmill (Lab): My Lords, before the Minister responds, will he give me some assurances about how these regulations and this legislation, when it becomes legislation, are going to have any particular impact on online financial institutions? I think that they are the ones where the future is going to lie. I declare an interest as a former chairman of Monzo, an online bank. It is important that the Minister gives some reassurance about the particular impact that this could have on a completely different form of financial institution.

Lord Bates: I thank the noble Lord, Lord Davies, for his comments. As he has set out, the schedule that we are up against here is pretty demanding. All of us on the Front Benches are in solidarity in recognising the demands of the work going on. It is also demanding on some of the committees of your Lordships' House, which are having to do an incredible amount of work. I am thinking of the Secondary Legislation Scrutiny Committee and its sub-committees, under my noble friend Lord Trefgarne and the noble Lord, Lord Cunningham of Felling, which is doing a tremendous amount of work.

The noble Lord, Lord Adonis, asked about the progress being made. We have agreed that we will provide regular updates. We have approximately 60 pieces of secondary legislation that need to come through. Around 45 are subject to the affirmative procedure and, of those, 22 or 23 have made their journey through the House, with some benefiting from the scrutiny of the noble Lord himself. That is basically where we are: about half way. We have some 31 sitting days before Brexit, so it is a pressurised and demanding situation.

I turn to the point made by the noble Lord, Lord Foulkes, about the Delegated Powers and Regulatory Reform Committee. I thank that committee in particular because it has done an excellent piece of work. In fact, we almost took the committee's script to express concerns about the extent of the Henry VIII powers, some of the wording and some of the files that were in flight and which we have just been talking about. I am pretty sure we have addressed all those concerns. If that is not the case, I will write, but from recollection we wanted to address all the points.

The noble Baroness raised the online community. Of course a number of pieces of legislation relate to online financial regulation. I cannot be specific about which ones are relevant but it is a crucial point. We have had many long discussions in Grand Committee in the Moses Room about statutory instruments that have a strong online financial services element to them and make a significant contribution to the success of UK financial services. We want that to continue once we leave the European Union.

Lord Tunnicliffe (Lab): My Lords, perhaps I may say a word or two to put this discussion into perspective. This side hates the idea of a no-deal exit and so on, but the Bill is an outstanding example of co-operation by the Government. The Bill has changed massively from the one introduced at Second Reading. The Government facilitated discussions with the Minister and officials. It is now a much better Bill and, given its task, which we abhor, it is nevertheless a good Bill.

Baroness Bowles of Berkhamsted (LD): My Lords, I remind the House of my interests as set out in the register. I also express my thanks to the Minister and his officials, along with other noble Lords who tabled amendments. We have a more than satisfactory outcome. We now have much greater transparency, some new procedures under which the Government will report on what is going to happen and tables to show us where things have gone. I hope this will perhaps lay the ground for how some other things, in what may be more fortunate circumstances than Brexit, could continue in the future. On behalf of these Benches, I thank the noble Lord and the officials.

4 pm

Lord Foulkes of Cumnock: I will ask a supplementary question to follow up the excellent contribution of my noble friend Lord Tunnicliffe about perspective and co-operation. The Bill, with the excellent co-operation of the opposition parties, has taken a number of weeks to get through this House, as the Minister knows. We are now dealing with the Trade Bill, the Healthcare (International Arrangements) Bill, the Agriculture Bill, the Fisheries Bill, the immigration Bill and the withdrawal Bill. Could the Minister, for whom I have great respect because he has a lot of experience here and in the other place—perhaps he

has more wisdom than the previous people of whom I have asked this question—give me some indication of how these Bills, of which there are at least six, can be dealt with between now and 29 March?

Lord Bates: The noble Lord knows, having stood where I stand, that the Motion before the House is that this Bill do now pass. To be frank, most of us on the Front Bench are taking it one Bill and one SI at a time, so I will sidestep that question. I am sure my noble friend Lord Young, who has provided excellent assistance throughout on this, and is a member of the Government Whips' Office, will have heard the remarks. I also thank the noble Baroness, Lady Bowles—

Lord Foulkes of Cumnock: That is really helpful. Is the Minister now saying that the noble Lord, Lord Young, for whom I have equally great respect, will answer that question?

Lord Bates: If my noble friend Lord Young were so inclined, he would probably want to give me a kick from the side and suggest that I keep moving on.

I turn to the point made by the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Bowles, because it was a good one: there is a great deal of expertise in this House, which could be brought to bear. We even had some free legal advice from the noble and learned Lord, Lord Judge, to help us on our way. When we work constructively and recognise that the Government have a right to make progress with legislation, we can do some good work. Certainly, we can ensure that this legislation leaves your Lordships' House much more fit for purpose and in better shape as it moves to the other place. That will, we hope, assist in expediting it through its procedures. I beg to move that the Bill do now pass.

4.02 pm

Bill passed and sent to the Commons.

Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2018

Motion to Approve

4.02 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 27 November 2018 be approved. *Debated in Grand Committee on 14 January.*

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the Grand Committee debate we had on this instrument on 14 January was extensive and wide-ranging; I am grateful to all noble Lords who took part so rigorously. Following that debate, I wrote a letter to noble Lords who participated, providing details on specific matters raised, which I placed in the Library.

The EU-derived law which provides for the current EEA regional exhaustion regime needs amending to ensure that it continues to function appropriately after exit as retained EU law. This instrument, therefore, provides a temporary solution if we leave the EU without a deal. If Parliament does not agree to this SI, it would expose businesses to considerable uncertainty and the risk of litigation. During the Grand Committee debate, noble Lords asked whether UK businesses and rights holders were put at a disadvantage. This arrangement should not disadvantage UK businesses compared to EU businesses. UK and EU businesses exporting secondary market goods from the UK to the EU may be more restricted, but that restriction would apply equally to all businesses, whether they are based in Brussels or Birmingham, and it depends on where rights are held and which direction the goods are travelling, not on nationality.

At this point, I would like to mention correspondence I received from the Publishers Association. Publishing is a key contributor to the UK economy and the sector considers that this instrument is,

"of immense importance to the UK's publishing industry, and it is vital that it proceeds into law",

and,

"helps avoid a potential regulatory cliff-edge for books, offering interim certainty to the industry, while the longer-term exhaustion framework is consulted upon".

For the benefit of the House, I wanted to expand on some key matters raised in Grand Committee.

Baroness Kingsmill (Lab): My Lords—

Lord Henley: I am not going to give way. I think it would be more convenient if I made my speech, allowing the House to listen to it, and then took questions. I will continue.

In Grand Committee, noble Lords asked about the approach taken to consultation on the drafting of this no-deal instrument. The legislative approach for exhaustion of IP rights in a no-deal scenario was being developed at a time of considerable sensitivity over the ongoing withdrawal agreement negotiations and the shape of the future relationship. This meant that the usual formal consultation on the legislative instrument was not appropriate. The level of consultation was consistent with the approach being taken with respect to no-deal legislation across government. My officials have engaged with businesses across many sectors since the referendum. They have spoken to rights holders, distribution companies, academics and trade associations. This engagement helped establish support for the legislative approach taken on this instrument. It is ongoing engagement that will continue as the work progresses, not just on exhaustion but more widely too.

While this instrument is intended to provide a temporary fix if the UK exits the EU without a deal, the Government are already considering options for what exhaustion regime is best for the UK in the future. Such an important decision on the UK's future exhaustion regime is not to be rushed. It is not sensible to put a sunset clause on this instrument. We intend to take the necessary time to build a robust evidence base and to consult with businesses and consumers before any major decision is made on the UK's future exhaustion regime.

I appreciate that noble Lords have asked about the process for assessing the impact of the adjustments made by this instrument to retained EU law, as they

[Lord Henley]
have asked about other such instruments. I believe I have addressed this matter in my letter to noble Lords, and I hope that the explanation was helpful.

Finally, on a specific point, noble Lords in Grand Committee raised a question as to whether the law relating to exhaustion of rights would be interpreted in accordance with pre-exit EU case law, most notably the Silhouette case. The answer is yes, it will, in accordance with the provisions of the withdrawal Act. In addition, Regulation 2 of this instrument makes it clear that the effect of domestic retained EU law under Section 4 of the withdrawal Act relating to exhaustion of rights does not change after exit, despite the UK not being an EU member state. Whatever effect it had in the UK before exit will be the same after exit.

To summarise, this instrument is important to support the movement of parallel goods, including essential commodities such as medicines. It is a necessary technical fix for UK laws to prepare for our exit from the EU and to provide legal certainty in a no-deal situation. I understand that stakeholders remain very interested in the Government's future plans on this matter, and I know that my officials at the Intellectual Property Office are keen to have continued constructive engagement with them. The Government value their input in helping them better understand the views of businesses and consumers. I beg to move.

Baroness Kingsmill: My Lords, I merely want to tell the Minister that I too have been advised by the publishing industry. It is with some reluctance that it has agreed that this is necessary legislation, because of the uncertainty that it would otherwise suffer.

The British publishing industry exports more books than any other country. This piece of legislation is vital for it. While it recognises the importance of this SI going through as a temporary fix, it is nevertheless typical of the kind of rushed legislation that has been necessary because of Brexit. This is another example of a gold-standard industry being put at risk because of the pressure to rush that we are all under.

I emphasise that the correspondence that I have had with the publishing industry has suggested that it is extremely unclear about what will happen and that the uncertainty around the long-term provisions for these particular and very important rights causes it considerable concern. For the record, can the Minister clarify this point?

Lord Clement-Jones (LD): My Lords, whatever the merits of these SIs, I am pleased that we are now debating them on the Floor of the House. I referred in Committee to what my noble friend Lord Tyler said about the critical importance of effective and timely scrutiny of Brexit-related secondary legislation. We have to do this properly. I noticed that the tag in front of this business is "Business expected to be brief", but we do still have a few loose ends, even after the Minister's opening statement.

The problem throughout has been inadequate public consultation and the lack of any sunsetting on these statutory instruments. In his letter of 21 January, the Minister defends the lack of proper public consultation as not being meaningful when,

"no wider policy changes were being taken forward",

and because it,

"would have risked removing the EU's incentive to agree to an ambitious future relationship on intellectual property".

I fail to see the substance of the first point, as these SIs are more than technical, and the logic of the second, as, in my experience, contingency plans do not prejudice negotiations.

As we have discussed, we are unilaterally allowing EU 27 goods already placed on the market there to be exported to the UK, which is good news for parallel importers but not as good for parallel exporters from the UK. It is clear from the Government's small print that these exporters may well need to seek permission to gain entry into the EU. That remains the case.

The Minister did not respond about what the Government are doing to mitigate their situation, by advice or otherwise. I was pleased that he confirmed that the ruling in the Silhouette case and those that followed will apply post Brexit to this modified exhaustion regime. In his letter and in Regulation 2(2), the Minister prays this in aid. It could still have been dealt with expressly in the language of the statutory instrument.

In his responses, the Minister also failed to totally clarify the work being conducted by the IPO into a future exhaustion regime. I very much agree with the noble Baroness, Lady Kingsmill, about how we know about the Government's current thinking emerging from the review and research, and about organisations such as the Publishers Association asking for the Government's assurance that they will avoid an international copyright exhaustion regime being implemented in the longer term. Indeed, they are asking for an effective national exhaustion regime so that the UK's outstanding creative industries, including the publishing industry, will be properly supported. Is that the intention of a future exhaustion regime?

I do not know whether the noble Lord, Lord Adonis, will speak on this SI, but there are a number of aspects that have not yet been covered on the subject of intellectual property rights—the geographical indications, for instance. I see that there is now a draft statutory instrument on what will happen to design rights in the event of a no-deal Brexit. I look forward to that debate. Then there is the very important aspect of rights of representation by IP advisers, trademark attorneys and the like. I do not recall the Minister talking about that either when he addressed us in Committee.

Finally, I express bafflement at the fate of the draft Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations, which the sifting committee and our own Secondary Legislation Scrutiny Committee considered should be dealt with by the affirmative procedure. I do not think the Minister answered that question. When will the draft SI come before us? There are some loose ends and I hope that in the course of the debate the Minister will be able to tidy them up.

4.15 pm

Lord Stevenson of Balmacara (Lab): My Lords, I am happy to follow the noble Lord. He has made some detailed comments and posed some questions which I hope the Minister will be able to respond to.

Having said that, I accept that the Minister's letter of 21 January—running to eight pages and covering a lot of detail—as well as subsequent meetings have done a lot to clarify some of the issues that were before us when this was first considered in Committee. But good scrutiny leads to further debate and discussion, so it is not inappropriate that we should come back and point out areas that are not as good as perhaps they should be as we pass this important, time-limited piece of legislation. I also agree that the clarification about the Silhouette case, which was a confusing passage of discussion in Committee, has made things much clearer and will be helpful to those involved in that issue.

The Government should take away from this process three main things. First, if there is an SI of the sort of significance represented by the three intellectual property regulations before us today, the fact that consultation need not be carried out is not sufficient to assuage the concerns of those who have had to respond, even as late as yesterday, to these issues. There is a lesson to be learned here about the need for more engagement and a more considered approach to the context of these amendments. I accept the pressure of time and the difficulty of fitting everything in, but the consequence of not consulting according to the style and process that people have become accustomed to, just because this is a special case, has meant that we have not had the best advice that would have been available to us in ordinary circumstances.

Related to that, the question of whether one needs an impact assessment is also important. There is of course a de minimis figure, which was in the Cabinet Office rules. But when one thinks about the impact that these new regulations will have, even for a time-limited period, the Government should be prepared at the very least to bring forward for consideration evidence that the de minimis figure has been met. At the moment, all we get is an assertion; we are left to guess whether the figures that might be construed will work. That is not satisfactory in terms of general process.

Thirdly—this does not apply to the SI before us at the moment but applies to the other two—considerable variations in approach have been taken by the different departments on the EU exit SIs. There should be some overall consideration of this when the time comes to review how, in some areas, the limited licence available to ensure that the statute book is in good order as we leave the EU, if we do, on a no-deal basis, has been interpreted differently in different departments. We heard even today that the Treasury has a completely different approach from that of others on the issues of consultation and preparation of estimates that I have been talking about. The public interest would be better served by a slightly different approach.

Lord Adonis (Lab): My Lords, first, I thank the Minister for his extensive letter to noble Lords responding to the debate in Grand Committee. I have a specific question and will then make some comments on the wider issue of consultation which has bedevilled all our proceedings on these no-deal statutory instruments, because the consultation has been so haphazard and unsatisfactory. My question is in response to the Minister's opening remarks, when he said that it was "not sensible" to put a sunset clause on the current exhaustion regime. That is a judgment which the Government have made but, since this is clearly a matter of extreme importance to the industry, can he tell us what the view was of stakeholders who were consulted on the issue of the sunset clause? I understand that that issue has bedevilled these proceedings throughout.

On consultation, the Minister's letter was significant; it accepted that the consultation which had taken place had been in confidence. Having secret consultations which are not open to all relevant people, or all those who wish to take part, particularly from the industries consulted, is contrary to almost all of the principles of public consultation. The Minister's letter has an extremely convoluted paragraph about how this secret consultation was conducted. It says that the Intellectual Property Office, or IPO,

> "identified the relevant representative organisations or businesses it would usually engage with, and who would give a range of views. Because of the confidential nature of the review"—

which was entirely self-imposed by the Government; this did not need to be confidential but could have been an open, public review—

> "the IPO then identified and invited 12 individual experts who had previously liaised with the IPO in a role within one (or more) of those relevant organisations".

The letter then lists the organisations. It continues:

> "I believe this is consistent with what I said in my … clarifying remarks about this process during my closing speech; the IPO's understanding was that these individuals were 'from' those organisations but they were, as I clearly said, 'a group of individual stakeholders' and the IPO 'consulted them in their personal capacity'. I therefore also agree with Lord Warner that the organisations themselves were not consulted in the way that would usually happen".

Reading that twice, one realises the truly extraordinary nature of the consultation which has taken place. The Government have arbitrarily and secretly selected 12 individuals because—to cut to the chase—officials happened to know them and had dealt with them previously. They then chose to consult them, telling Parliament that the consultation process was adequate. However, when pressed, it is clear that these people do not in any respect represent the organisations from which they have come. We are not told who the individuals are and they are not in any way accountable for their advice. We are told that the advice was given individually, but we are not told what it was. When it comes to disputes on major aspects of policy embedded in these regulations, the Government blandly assure us that the decisions they have taken are sensible. In my experience, Governments always think that their decisions are sensible; I have not yet met a Treasury Minister who said that their decisions were not sensible. However, the Government will not even tell us whether the "sensible" decisions they have made reflect the secret consultation that took place before the preparation of the statutory instruments.

Because of the unsatisfactory nature of this whole procedure, we will have to approve this regulation. However, in any normal circumstances, we would not approve a regulation on the basis of a secret consultation with 12 individuals—selected secretly by the Government, whose names we do not know and who are not in any way accountable—when there should be a public consultation. I raise this point not only to highlight

[Lord Adonis]
the unsatisfactory nature of this, which goes to the heart of all this no-deal planning, but because of the cascade of regulations still to come. Every time your Lordships meet, a plethora of regulations appears before us. In the health Bill, which we debated yesterday —I did not participate, but I read the Bill during the proceedings—there was provision for a whole slew of further regulations, with procedures as yet undecided.

I invite the Minister to respond on this, as I think it is important to get this on the record. Can he give some undertakings that consultation on future regulations laid before your Lordships will be done in an open, transparent way, so that we are not faced again with consultations with secretly selected individuals? As noble Lords will recall, when we were debating one of the instruments, we were told that the individuals were "selected and trusted" respondents—presumably on the grounds that a general public consultation with people who were willing to share their views would not engender trust.

This is not good government. In any circumstances other than this national emergency, I am confident that your Lordships would not agree to process, let alone consent to, regulations on this basis. We need some assurance that, in the time remaining, consultations will be conducted in a proper manner, rather than in the secret, cloak and dagger, totally unaccountable fashion that we have seen in respect to this instrument.

Lord Warner (CB): I want to follow up that point. I remind the Minister that after our rigorous series of exchanges in Grand Committee on these regulations, I took the liberty of submitting a Written Question, which was answered extremely helpfully on behalf of the Cabinet Office by the noble Lord, Lord Young of Cookham. I wanted to check that my memory was correct about the Cabinet Office rules on consultation. Not only do they require 12 weeks—during which people can comment in what is often a helpful way for the Government of the day—but the twin leg to this is that the Government have to publish those responses to their consultation. Not only have the Government, as the noble Lord, Lord Adonis, said, cut out the middleman in their approach to consultation, but by doing it that way they have avoided the commitment to publish the responses to that consultation. So there is a twin problem with the Government's approach to many of these SIs. I suspect it is going to continue in relation to the Healthcare (International Arrangements) Bill, which contains Henry VIII powers for the Government to produce a lot of SIs. If the Government go on behaving on these SIs in the way that they have behaved on those we are discussing today, they will drive a coach and horses through their own Cabinet Office rules on the way we go in for consultation on legislation.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I have waited in vain for some Conservative Members to contribute to this debate. When I moved here from the other place, a number of people, including the noble Lord, Lord Strathclyde, who I am glad to see here, told me that the great thing about the House of Lords is its careful scrutiny, the work that it does scrutinising detailed legislation using all its expertise, knowledge and background. That is why I am surprised. We are dealing with a statutory instrument on intellectual property, which a lot of Conservative Members, in particular, must have expertise in. I see the noble Lord, Lord Faulks, who has probably been involved with this in his work in the legal profession. There are others who no doubt could contribute. We have 12 statutory instruments here. I have been at a number of meetings of the Grand Committee, and with the notable, standout exception of the noble Lord, Lord Deben, there have not been any Conservative Members contributing. What has happened to this great scrutiny of the House of Lords? We have had wonderful and important contributions from some of my noble friends, including my noble friends Lady Kingsmill, with her experience in the law, and Lord Winston, when we were discussing the transfer of embryos and other matters. We have heard from the noble Lord, Lord Warner, from the Cross Benches, but no Conservatives. Yet today we have 12 statutory instruments—

A noble Lord: We have 11.

Lord Foulkes of Cumnock: We have 11. The noble Lord has made my argument much better, actually. On the Order Paper there are 180 statutory instruments waiting to be discussed by the Grand Committee and by this House, on planning procedures, plant protection, ozone depletion, plant health, equine records—I could go on. I will not, your Lordships will be glad to hear. But I could go on and on, because there are 180 of them—and some are on really important matters.

4.30 pm

If the Lord Speaker is still running the visits to schools that we have been involved in, how can I honestly go to schools and say, "I am a Member of this great House of Lords, and we scrutinise. We are there to scrutinise legislation line by line"? This is a dereliction of duty. We are going to pass these statutory instruments, which could have unforeseen consequences —yet we are rushing them through. It is an appalling situation.

I know I am going a bit beyond intellectual property and making a general point—but we will see this again and again. It will go on all day today, all next week and the week after that. We shall certainly not have got through even the 180 on today's Order Paper by the end of March. Can we really go before pupils—or, indeed, anyone—and say, "The House of Lords has done a really good job of scrutinising all these statutory instruments"? This is not to mention the six Bills that we still have to deal with—the Trade Bill, which is currently under way; the one on healthcare, which we discussed yesterday; the ones on agriculture and fisheries—and a whole range of other things that we still have to do.

This is an astonishing situation. It is only the Liberal Democrats, the Cross Benches and the Labour Party who are doing as much as possible within the time available to scrutinise these documents. The Conservatives—where are they? Perhaps the noble Lord, Lord Strathclyde, can tell me where the great

people in the House of Lords who would scrutinise this legislation are, and what an important job we have done. I am very disappointed.

Lord Strathclyde (Con): My Lords, I crave the indulgence of the House for a moment. I was not here at the start of the debate but since the noble Lord, Lord Foulkes, has mentioned me twice, it is only fair that I should defend myself. His proposition is stuff and nonsense. Of course the House of Lords offers great scrutiny of all kinds of legislation, including secondary legislation of this kind. But the noble Lord ought to assume that the fact that noble Lords do not speak is because they are entirely satisfied with the opening speech of my noble friend Lord Henley, the Minister, who has used his skill, judgment and expertise, built up over many years, and gives great comfort to the House when he stands at the Dispatch Box.

Lord Foulkes of Cumnock: I am most grateful to the noble Lord. The lesson in fly fishing that he taught me has worked.

Lord Maxton (Lab): My Lords, I rise briefly just to make a point to the noble Lord, Lord Strathclyde. On intellectual property, the Minister did not say one single word about the changing technologies that greatly affect the way in which intellectual property is seen. I have not read, or even picked up, a book for the last two years—because I read on a Kindle. What about that sort of change?

Lord Henley: My Lords, some of us still read books, and some of us still read letters. I shall not follow up the Scottish exchanges that have just taken place; I shall start with the letter referred to by the noble Lord, Lord Stevenson—the letter that I sent, I think, on 21 January. The noble Lord, Lord Adonis, described it as "extensive"; the noble Lord, Lord Stevenson, said that it was eight pages long. What I have in front of me is six and a half pages long, so I just want to be clear that we are all talking about the same letter. I see that the noble Lord, Lord Adonis, and I are going to count.

Lord Adonis: I read it on my iPhone, so I have no idea how long it was.

Lord Henley: I think that deals with the point about modern technology—but I deal in letters, and mine is six and half pages of A4. I hope we are all talking about the same letter, which I sent on 21 January. I think, and hope, that it dealt with a great many of the points that have been raised.

I shall go through some of the points that came up in the debate. The principal one referred to by the noble Lords, Lord Adonis, Lord Stevenson and Lord Foulkes, is that there has been a failure of consultation—it just has not been good enough. I believe it has been consistent with the approach taken on no-deal legislation across government. The Government's consultation principles are clear. Consultations should have a purpose. The statutory instruments in question make only those corrections to retained EU law that are necessary to give the UK a functioning statute book in what we have all made clear is the unlikely event of a no-deal exit, and maintain as far as possible the existing domestic position. A consultation on policy change would not have been meaningful as that is not what these instruments do. Again, I set that out in my letter.

I make it clear that there will be full and proper consultation on further changes. All those who have had dealings with the Intellectual Property Office will accept that it has a good record in this respect. It consults properly and will take into account the concerns of all those who have an interest. I give an assurance that the IPO will do that: it will consult and make sure—

Lord Warner: Before the Minister sits down, could he address the second leg of the Cabinet Office guidance? Even if we accept that there is a truncated and specialised consultation process, what about publishing the findings of the process, which is a key part of the Cabinet Office rules? Do he and his colleagues accept that if we are to have special arrangements, they should also publish findings of that consultation process?

Lord Henley: If there are findings that it is necessary to publish I give an assurance those will be published. If the noble Lord will bear with me, I want to talk about the future and make it clear that the IPO will consult and publish the findings properly so that the noble Lord and others with an interest will know what is going on.

I turn to some of the other points I want to address—I was not about to sit down, because there are other points to be dealt with. The noble Baroness, Lady Kingsmill, asked about long-term certainty for publishers and referred to the letter from the Publishers Association. I repeat what I said in my remarks: the Publishers Association made it very clear that it saw it as vital that these regulations should be on the statute book in the event of no deal.

Baroness Kingsmill: The Publishers Association also made it clear that this was not entirely satisfactory, but that it was an essential interim position that needs to be taken. As it said in the letter, this is not ideal, but something forced on publishers. My point really was that this wonderful industry, which is gold standard, as we all know, has been forced to accept unsatisfactory legislation because it is a last-minute attempt to put a finger in the dyke of the possibility of a no-deal Brexit. The publishers again made it clear in the letter that they need some clarity about the future. That is the point I want the Minister to cover in his answer.

Lord Henley: I do not accept the noble Baroness's metaphors, but I repeat what was said, and the noble Baroness is quite right to repeat the other parts of the message from the Publishers Association.

I come to the point I was about to deal with: the long-term certainty that the Publishers Association and the noble Baroness are looking for. The regional exhaustion regime currently in place supports frictionless trade in goods within the EEA and is considered to provide the optimal balance between the interests of rights holders and consumers. Consumers in the UK will continue to have access to a wide range of products

[Lord Henley]
at more competitive prices. Maintaining the current arrangements avoids the uncertainty of cost for UK businesses and consumers associated with a change of exhaustion regime, while the UK considers the impact of a future change to the regime. The SIs, we have made clear, essentially preserve that status quo, but that allows us time to consider evidence and consult on any future change.

I shall move on to the sunset clause, raised by the noble Lord, Lord Clement-Jones. Again, I believe I dealt with this in my opening remarks, but the instrument is intended to be a temporary measure. The Government are considering options for the future. As I made clear, that will continue with extensive stakeholder engagement and consultation, and we must make sure that we have robust evidence. Until we have dealt with that, we will need this in place in the event of no deal. Therefore it is not necessary to have the sunset clause referred to by the noble Lord and the noble Lord, Lord Adonis. Planned research removes the purpose of the sunset clause and the consultation will, in the end, provide the appropriate solution for the future.

I turn to the noble Lord's further question, on mitigation for exporters. I make it clear that the arrangement will not disadvantage UK businesses, as opposed to EU businesses, as the effect depends on where businesses hold rights, and not on which country they are based in. A continuation of the status quo will minimise any negative economic impact. For example, it will allow existing import arrangements into the UK to continue, including for businesses that rely on secondary market goods. Businesses wishing to continue to parallel export goods from the UK to the EU will need to check with owners of rights in the EU—which may be UK businesses themselves—whether they need permission to do so. For example, UK businesses owning trademarks in the UK and EEA may choose to limit how their goods are parallel exported from the UK to the EEA, if they wish to exploit market conditions such as consumer preferences and labelling regulations.

Lord Clement-Jones: My Lords, I am sorry to interrupt the Minister. That is precisely the detriment that I was talking about—that they will need to seek permission if they are going to export in those circumstances. Therefore, the question is: what assistance and advice will they be getting directly from the Government?

Lord Henley: They will have advice, as is appropriate, from the Government, and the IPO will offer that. However, we cannot force the EU to take a more favourable position to mitigate this effect. Again, this will, we hope, be dealt with in any deal; we are dealing with a no-deal situation in these regulations.

Finally, the noble Lord, Lord Clement-Jones, wanted the Silhouette case expressed more clearly. The withdrawal Act makes clear that EU case law before exit will continue to apply to the interpretation of EU-derived domestic law after exit. Furthermore, Regulation 2 makes clear that the effect of domestic retained EU law under Section 4, relating to exhaustion of rights, does not change after exit, despite the UK not being a member state. Whatever effect it had in the UK before exit will be the same after exit, as I hope I made clear in my opening remarks. I believe that deals with the questions that have been put to me.

Motion agreed.

Patents (Amendment) (EU Exit) Regulations 2018

Motion to Approve

4.44 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 28 November 2018 be approved. *Debated in Grand Committee on 14 January.*

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, as with the previous instrument, this was the subject of a wide-ranging debate in Grand Committee on 14 January. Again, I wrote to noble Lords who spoke in that debate to respond to the points raised, and also placed a copy of my six and a half-page letter in the Library. Since the Grand Committee debate, I have held further helpful and constructive meetings with the BioIndustry Association and the ABPI. Let me make it clear that I value those regular contacts and the insight that they bring on behalf of this important industry. I will continue to have discussions with representatives from industry and hear their perspectives as we move forward. As Life Sciences Minister within the department, my door is always open.

In my discussions with the life sciences sector, it has made clear the value and importance of supplementary protection certificates—SPCs—to the industry, and its concerns about the potential for those valuable IP rights to be affected by a no-deal exit. I hear and understand that. The only intention of this instrument is to fix what would break and to do so in a way that preserves the current operation of the law. We are considered to have one of the strongest IP systems in the world and the Government remain fully committed to maintaining that position. That is why we are preserving the status quo so far as possible in a no-deal exit. It is right that we continue to prepare for a no-deal scenario as long as that remains a possible outcome.

One issue raised in Grand Committee, and addressed in my letter, dealt with the approach taken to consultation on this instrument. In my meetings with industry bodies, we had discussions on this point and on why the usual wide engagement by the IPO was not possible on this occasion. The withdrawal Act established the policy direction which this instrument follows: to preserve the existing law at the point of exit and maintain the status quo as far as possible, ensuring a smooth transition for business. As the Government's consultation principles make clear, a consultation on a policy which is not changing would not be of benefit. Nevertheless, the IPO wanted to ensure that the drafting of the instrument achieved its aims, by getting external views. Therefore, it was decided, consistent with the constraints in place, to carry out a confidential technical review of the drafting. In addition to providing valuable feedback on the drafting, the participants also raised wider concerns, including on the issue of the SPC term.

The recent engagement with industry bodies also touched on this issue, which was raised in Grand Committee by the noble Lord, Lord Warner. As I reassured them in those discussions, the sole objective of this instrument is to fix parts of the retained law that would otherwise break upon exit. Therefore, the changes being made simply ensure that an SPC which is granted the day after exit would be given exactly the same term of protection as it would if granted the day before exit. Without such intervention, term would have to be calculated without any reference to authorisations granted in the UK. Innovators have expressed the view that this intervention should be to rely solely on a granted UK authorisation to calculate term. This would give a longer period of protection if the product comes to the UK later than the EEA. As I set out in my letter, this has the potential to tip the balance between the interests in this area at a time when maintaining the status quo is critical.

I fully understand that innovators have concerns about wider potential effects of a no-deal exit on the regulatory environment; that has come through strongly in my recent discussions. These are legitimate concerns which must be carefully explored, and it is entirely correct that they are raised. Pharmaceutical innovation is a vital part of the UK economy; the companies which research and develop new drugs are some of our most important and valuable, and we benefit greatly from their work. If we end up in a no-deal situation, I am keen to start immediately exploring these issues with innovators and all other interests, and to make progress as early as possible after a no-deal exit.

In conclusion, by preserving the status quo as far as possible in a no-deal exit, I hope that the Government's aim is clear—to maintain the UK's highly regarded IP framework and the important protection that it provides. I beg to move.

Lord Warner (CB): My Lords, I raised several concerns about this SI in Grand Committee, as the Minister recognised. As he knows, these were the result of briefings from the BIA and the ABPI, with which I am glad to say he has had further meetings. However, since his meetings both these organisations have provided me with further briefing about their continuing concerns.

Before turning to these concerns, I will briefly place them in the wider context of the damage done by Brexit—and the Government's conduct of it—to our highly successful life sciences industry. This damage could make Nissan and Sunderland look like small beer if we are not careful. From the Prime Minister down, the Government have shown a poor appreciation of the damage being done to this sector: the loss of the EU medicines regulator from the UK; the loss of investment opportunities in the UK; the missed opportunities for collaborative international joint research, development projects and clinical trials; the drain from the UK of talented overseas scientists; and the likely loss of a growing amount of our own homegrown scientific talent.

To this litany of casual vandalism the Government have now added a statutory instrument which, if it were used in the case of our exiting the EU with no deal, would reduce the protection of exclusive intellectual property. The problem is caused by the SI's approach to supplementary protection certificates—SPCs—which are a key part of the intellectual property protection framework for pharmaceutical research. SPCs are intended to give a period of exclusivity from inherent risks in the development of new pharmaceutical products. But the industry's trade bodies—both the BIA and the ABPI—are convinced that, in the real world that they occupy, the SPCs as structured in this SI are fundamentally flawed.

In their view—the exact opposite of the Minister's—this flaw reduces the period of exclusivity for drugs authorised in the UK, because the start of the period for exclusivity in the UK is backdated to a drug's earlier authorisation in the EU. They are losing a bit of their exclusivity period. The chief executive of the ABPI put this extremely well:

> "Britain is internationally renowned for its strong IP framework and this has made it an attractive home for investment from all industrial sectors, including pharmaceuticals. We're concerned that these measures are a step backwards and seriously undermine the strong life sciences sector that we've worked so hard to build over the past 70 years".

These views are shared by the BIA.

The problem has arisen in large part from the Government's failure to consult properly on these regulations at the outset—as has been shown to be the case in other no-deal SIs, as we have already discussed. I drew the Minister's attention in Grand Committee to the inadequacies of that consultation process, and I am pleased to see that he seems to have accepted some of that and tried to rectify matters through proper discussion with the ABPI and the BIA. I congratulate him on taking that particular initiative.

I think that the Minister will be pleased to know that I do not intend to bang on further about past misdemeanours. Instead, I ask him to give the industry two clear-cut assurances about the future conduct of the Government. First, I would like to hear it from him, on the record, that the Government recommit to the UK's status as a world leader in safeguarding intellectual property and commit to make no further erosions of the UK intellectual property framework; and, secondly, that the Government commit to a specific review of the intellectual property legislation being introduced through statutory instruments as part of the no-deal Brexit planning. The reason for that second one is, frankly, that the industry is very sceptical about whether the Government will just drop these proposals if there is a deal. Ministers in the Government need to understand that they have lost a lot of the confidence of this sector. The time has come for them to start to rebuild that confidence in an industry which is vital for this country's future.

Lord Clement-Jones (LD): My Lords, the noble Lord, Lord Warner, has expressed the impact on the life sciences industry extremely effectively and eloquently, and I do not wish to repeat anything of what he said. Quite apart from the damning quote from the chief executive, Mike Thompson, the key sentence that I saw in the ABPI's briefing was:

> "The signal the Government has sent to global pharmaceutical companies large and small is that the UK will be less committed to IP protection after Brexit than it has been to date".

For a major industry to consider that seems extremely damning.

[Lord Clement-Jones]

As the noble Lord, Lord Warner, pointed out, the Minister said that it is correct to raise these issues and he is keen to start exploring them, so there is some intention now to have some consultation post the SI rather than proper consultation before it. I think we are looking forward to hearing a bit more of a concrete proposal from the Minister with regard to what precisely is planned.

The Minister's six and a half-page letter, as we must now call it, dealt with the question of participation in the unified patent court, as set out in the White Paper last autumn. I made the point in Committee that if the UP convention is ratified by Germany and comes into force ahead of our exit date, the UK will need to work out how to remain a member of the UPC or withdraw from the systems, which could have significant impacts on business. In that context, I questioned in Committee whether the UK will have to acknowledge the supremacy of EU law and the ECJ as part of the signing up process. In his letter, the Minister advises that,

"when ruling on domestic cases, UK courts will not be bound to follow decisions of the UPC, or rulings of the European Court of Justice applied by the UPC".

The last time we discussed this SI, I brandished a 39-page opinion on the subject, so I am rather baffled by the advice that the IPO and the Minister have received in those circumstances, if we have signed up to the unified patent court agreement. I would very much like to hear a bit more clarification on that subject from the Minister.

Lord Stevenson of Balmacara (Lab): My Lords, this is another good debate on these issues. I will not fall out with the Minister about the length of his letter—we can brag about size elsewhere if we wish to—but it came out of my printer at eight pages. I leave that curious intellectual puzzle to him to sort out. Maybe there were other issues that had to be added in.

The Minister could well have dealt with other matters, including various aspects of whether the Silhouette case would apply in this area of the law; one of the points raised in the correspondence was the question of whether Silhouette, which applies to one aspect of our intellectual property, in fact has resonance through its relationship to the other aspects of the IP world and will also be applied. However, that may be for the future.

The noble Lord, Lord Clement-Jones, is right to raise questions about the unified patent court, which could change the game here. If the Minister is minded to confirm any of the points raised by the noble Lord, can he also confirm that premises for the unified patent court have been acquired in London? Are they fully available and ready to be moved into? We are expecting the courts to be operational very shortly, but it would be useful to have confirmation that this is still the case.

5 pm

The issues have been well rehearsed. I am grateful to the noble Lord, Lord Warner, for continuing to press as to exactly what issues were raised by the consultation that did not happen, by the people who were not consulted and by the organisations which should have been consulted in order for us to have a better understanding of how this would play when the SI is made. It again raises the question of how consultation is done when there is a significant change in the law.

This is the first of the two intellectual property SIs over which the Government have exercised their judgment to try to assist future negotiations and debates by finding an asymmetric solution. I will come back to this in the next SI. We should not take at face value the view that this would roll forward the exact situation that existed prior to our leaving on a no-deal arrangement. There are changes being made. They may be good and sensible, but they have not been subject to the sort of consultation and debate nor to the costings that would have been appropriate were this an ordinary situation.

Lord Adonis (Lab): My Lords, I want to follow the remarks of the noble Lord, Lord Warner. It is deeply unsatisfactory that the only way we can know the interests of those most intimately affected is if an individual Member of your Lordships' House relates conversations that they have had to this House. In Grand Committee, the noble Lord, Lord Warner, told us about conversations that he had had but which had not been published because there had been no formal consultation.

The Minister said that he has met relevant stakeholders. We are grateful for that. I hope that, in his reply, he will clarify the issue about the duration of SPCs, particularly for the benefit of those of us who do not follow the detail of what is at stake. I take the noble Lord, Lord Warner, to be saying that a substantive change in the duration of SPCs will take place as a result of these regulations and that this will have a major impact on the industry concerned because of the protection of intellectual property. So this is not, as we have been told all along, a technical issue about rolling over existing regulations. It is a substantive change. This has never been clearly brought out in our proceedings.

Lord Warner: Just to be clear, the industry is saying that, because of the way in which the Government have drafted this SI, the period of exclusivity will be less than it would have been in the past. So there is a material change in the financial benefit through the period of protection that was previously given. The industry is worried not just about that aspect but about the signal it gives about whether the Government are going to move away from a gold-standard intellectual property framework. They are worried that this is the first step in this particular direction.

Lord Adonis: I understand the significant point that the noble Lord makes.

None of this came out in the Explanatory Memorandum's summary of the non-existent consultation and secret discussions that took place. The only reason this has come before your Lordships is because of the successive conversations which the noble Lord, Lord Warner, has had with the industry. His point seems entirely reasonable. The industry is concerned as to what this means for the wider protection of intellectual property and the big impact it might have on investment in a crucial national industry. This is not a technical issue; it is fundamental. We were not

alerted—in any part of the process leading to these regulations coming before the House—about any of these issues.

The Minister said that, since the Grand Committee debate, he has conducted discussions with industry representatives. We should be grateful that, by calling attention to the lack of consultation, this encouraged the Government to engage in more formal consultation after the instrument was laid. In my day, good government involved consulting about instruments before they were laid, not afterwards. The noble Lord, Lord Warner, and I were in the ancien régime when there was Cabinet Office guidance on 12 weeks' consultation and publication of consultation results to which the Government gave reasonable responses. In this national emergency, all this no longer applies.

I should be grateful if the Minister could bring out precisely—because it is important that we have it in *Hansard*—what is the substantive change in respect of SPCs and what is in fact at stake in terms of the lesser protection that will be available for crucial intellectual property in the industry. It is still not clear to me from the remarks of the noble Lord, Lord Warner, but since he is doing such a good job of responding to the debate, he may be able to tell us the scale of the impact that this is likely to have. Are we talking about minor changes, because it is calculating differences in dates at which patents were granted, as I understand it, and whether European and UK patents are granted at different times under the new regime? I should be grateful if the Minister could say more and clarify more.

The other significant point about the regulations is that the consultation was not just secret, in the way I set out in my earlier remarks, but in his introductory remarks the Minister did not address the point made by the noble Lord, Lord Warner: that there is still profound dissatisfaction in the industry. All the Minister told us in his rather—if he will forgive me for saying so—bland opening remarks was that he had met industry representatives. He did not say anything about the content of those discussions or what representations were made to him. We only know about the content of those representations because of the remarks of the noble Lord, Lord Warner. I deduced from his remarks that those representatives are profoundly dissatisfied, think that this will be a diminution of the protection of intellectual property in the industry, are worried about the cavalier way in which this has been done and think it might have a big impact on future investment. These are substantial matters. As I said, in the normal course of events, they would lead us seriously to question what is effectively a proposed change in the law.

If we had a proper legislative process, we would be moving amendments and might require formal consultation to take place. It is deeply unsatisfactory that these big concerns are dribbling out only because of the activity of a few noble Lords independently consulting industry stakeholders and pressing the Government to give us some indication of what they have said, while the Government shield behind a claim that these are technical changes, which is denied by the industry. For the Government to say that the consultations that have taken place are necessarily secret is totally unsatisfactory for such changes.

Lord Henley: My Lords, first, I repeat that we do not want to move away from the gold standard of IP that we have. Secondly, I make it quite clear that I regularly meet the two organisations referred to, the BIA and the Association of the British Pharmaceutical Industry. The chief executives of both those organisations sit on our Life Sciences Industrial Strategy Implementation Board, so I see them both regularly. I hope that we have a very good relationship and that full and frank discussion is always possible between me and them and between them and the department more generally.

Lord Warner: I just want to be clear to the Minister. What representatives of the industry are telling me in the letters and briefings they have sent is that they have interpreted the Government's behaviour as meaning that they think that the Government is signalling that we are moving away from a gold standard of intellectual property protection.

The reason they say that is that, in this particular case, we will now have two regulators—when we come out of the EMEA, we will have a UK and an EU regulator for pharmaceutical products. I cannot put it any more clearly than this. They are saying that, if you apply for authorisation of a drug under the UK regulator, the period of exclusivity should start from the date of authorisation; it should start not from any authorisation that may have been given by the EU regulator at an earlier date for the drug to be introduced in the EU but from the authorisation when the drug is authorised in the UK. I do not think that I can be clearer than that. There is clearly a fundamental difference of view between the industry and the Government on this issue. No amount of fine words from the Minister is going to conceal that.

Lord Henley: My Lords, if the noble Lord, Lord Warner, will allow me, I was trying to say that, first, I want to continue discussions with them and we will do that. I do not believe that we are as far apart as the noble Lord is suggesting; nor do I believe that we are undermining the gold standard in IP that we wish it to achieve.

We do not want to do anything to undermine our large and successful pharmaceutical industry. It is one of the jewels in the crown, and has a turnover of £41.8 billion. I remind the noble Lord that it has seen a large amount of investment in research, particularly since 2016, and considerable new investment from abroad—again, since 2016. This is an industry that is flourishing and will continue to flourish. We believe that the level of investment within that industry that is supported by the SPC system, which ensures that British businesses are compensated for the period of patent loss protection while requesting market authorisation, is very important. Making sure that our law continues to work is therefore important.

The noble Lord, Lord Warner, says that there is a flaw in the SI: he says that there is a policy change. There was considerable debate on the issue in Committee. As I said previously, I do not share the view that there is a policy change here. This instrument keeps in place the existing calculation of SPC duration. At present, it is calculated from the first market

[LORD HENLEY]
authorisation in the EEA, which includes the UK. The instrument ensures that the exact position remains in place after exit and the calculation is the same. It is precisely this kind of deficiency that the withdrawal Act gave Ministers powers to affect.

The noble Lords, Lord Warner and Lord Adonis, then talked about the industry and said that it wants something different. The BIA and the other organisations representing pharmaceutical innovators would prefer the legislation to be changed so that the term of an SPC would be calculated based on only a UK market authorisation. They argue that the exit may lead to industry launching new pharmaceutical products later in the UK and that they may receive later market authorisation than in the rest of the EEA. That would give a period of SPC exclusivity for a longer period than under current laws. I can see why they argue that point: it is perfectly legitimate that they should do so. However, it would be a significant policy change, affecting the whole of the pharmaceutical industry and the NHS. I do not believe that it would meet the Government's commitment to avoid a cliff edge for businesses by maintaining the status quo, which is what we are seeking to do, on exit day.

I turn now to the commitment that the noble Lord, Lord Warner, sought from me about whether we would commit to a review within two years. As I have already said, I am keen that we immediately start to consult with all those bodies concerned, and more widely—indeed, with everyone that noble Lords can think of—and explore the landscape after a no-deal exit, and also to look at what happens in other events, to make progress on the issues that concern them. As part of those discussions, I am very happy to talk about the timing and scope of any review of the SPC term. The Government have said that they will review the data and market exclusivity arrangements within two years of a no-deal exit—should there be such an exit, and again we have made it clear that we neither expect nor want a no-deal exit—in order to make sure that we remain competitive. I am sure that we can discuss with stakeholders how any review of SPCs would fit in with that work.

The noble Lord, Lord Clement-Jones, asked about unified patent court judgments in the UK. I can tell him that the UPC is an international court and is not part of the UK judicial system. Its judgments are therefore not binding but can be considered, as is the case with any other foreign judgments. That is obviously a matter for the courts.

The noble Lord, Lord Stevenson, also asked about the unified patent court. I can tell him that the unified patent court and the new British patent will commence shortly after Germany ratifies the UPC agreement, although obviously we have no control over what goes on in Germany. Germany's ratification is currently on hold pending the outcome of a complaint against the UPC to its constitutional court. Finally, I can tell the noble Lord that the London building is indeed ready.

Lord Clement-Jones: My Lords, how can it be a unified patent unless there is unified set of jurisprudence to cover it?

Lord Henley: My Lords, as I have said, these are matters which the UK courts can take into consideration. However, the judgments of international courts are not binding on them. I think that I have answered all the questions and I beg to move.

Motion agreed.

Trade Marks (Amendment etc.) (EU Exit) Regulations 2018

Motion to Approve

5.15 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 28 November 2018 be approved. *Debated in Grand Committee on 14 January.*

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, as with earlier instruments on exhaustion and patents, this was debated on 14 January in Grand Committee, where noble Lords raised questions about the consultation and impact assessment process. Noble Lords also put some questions on technical points specific to this SI, seeking clarification on ongoing proceedings, costs and priority dates of pending applications. I repeat my thanks to all noble Lords who shared their time and expertise with the Committee on those matters. I addressed many of the points raised in my letter of 21 January to Members of the Committee. I hope that my answers were helpful and have met the expectations of noble Lords who took part.

The Government have laid these regulations to ensure continued protection in the UK for EU trademarks, thereby providing businesses with maximum security, clarity and certainty. Under current law, businesses can obtain an EU trademark, which, as a unitary right, provides protection across the whole of the EU. When we leave the EU, that protection will no longer extend to the UK. To address this, the Government will create a comparable UK trademark for every EU right that is registered on and before exit day. These comparable trademarks will inherit earlier filing and priority dates recorded against the corresponding EU trademarks and will be fully independent UK rights that can be challenged, assigned, licensed or renewed separately from the original EU trademark. Each comparable trademark will be created automatically and free of charge, meaning that a minimum administrative burden will be placed on rights holders. Those not seeking to hold comparable UK trademarks will be able to opt out by notifying the IPO. The instrument also sets out the Government's approach for accommodating the 85,000 trademark applications which are pending before the EU Intellectual Property Office on exit day.

A number of technical issues were raised both during and after Grand Committee. Given my answers in my letter to noble Lords, I shall focus on those outstanding concerns which were raised subsequent to my letter. The noble Baroness, Lady Bowles, inquired in Grand Committee about the effect of priority dates on pending applications and compatibility with the Paris convention. I was pleased to have a meeting with

the noble Baroness and trademark legal professionals to discuss these and other matters that she raised. At that meeting I clarified that we believe the instrument is compatible with the UK's obligations under the provisions of the Paris Convention for the Protection of Industrial Property, which contain rules on claiming international priority.

I remain confident that the chosen approach provides the most practical means for preserving the rights of pending EU trademark applications. In respect of issues identified with the conversion of EU trademarks, I have also confirmed to the noble Baroness that such rights will be preserved via provisions contained in the Interpretation Act 1978. A copy of my letter, which addresses the noble Baroness's concerns on both the Paris convention and conversion rights, will be placed in the Libraries of both Houses. I found our discussions on these two issues most helpful, and was grateful to the noble Baroness for her valuable insight as a trademark and patent attorney. Building on those discussions, I will ensure that her points are reflected in business guidance to be published by the IPO closer to exit day.

In conclusion, these regulations are vital to ensure that businesses do not lose their trademark protection in the UK, and to ensure the continued effectiveness of our domestic trademark system if we do not secure a deal with the EU. I hope noble Lords will support the draft regulations, which I believe provide businesses with clarity and certainty regarding their intellectual property. I beg to move.

Baroness Bowles of Berkhamsted (LD): My Lords, first, I declare my interests. I am a retired European patent and trademark attorney, but, if I were to un-retire, I would find myself among those unfortunates who, going forward, would no longer be able to practise before the EUIPO in respect of trademarks and designs. This matter—that a part of professionals' representation is cut off—is not one we have discussed before. My noble friend Lord Clement-Jones was interested to hear what the Minister had to say on the issue, and to confirm my interpretation that current UK representatives will no longer be representatives is correct.

This SI largely replicates the provision in the withdrawal agreement, so it is not really a no-deal SI; it is the shape of the SI that will happen in due course—if there is a deal—possibly with some minor changes to dates and other things, but I could not see anything that differed from what one would expect under the withdrawal agreement.

As the noble Lord, Lord Henley, has explained, I had a long meeting with him and officials from the department and the IPO; I thank them very much for their time and for listening to my views and those of some representatives. I apologise to the noble Lord, Lord Adonis, but I did a little secret consultation myself, just to make sure that, being retired, I had not lost the plot. What I wanted was a statement that there would be continuity of rights at the point of Brexit so that, although the SI was internally consistent under UK law—it gave clear instructions as to what our courts would decide—it would also neatly fit within the usual conventions. That required only an assertion, which we have effectively had, that the rights continue—rather than dying and, in some way, being resurrected.

The letter that the noble Lord, Lord Henley, has now placed in the Library, and which was addressed to me on 4 February, is interesting. First, he deals with the priority rights that I discussed in the Moses Room in Grand Committee. The second issue I raised was about an EU trademark application that was refused before Brexit but, under the rules, it can be converted to a national application by applying at the EU end for three months. There was concern that there is no mention of what happened to those applications and to that conversion right. Was is lost or was it not? Some representatives thought that it was lost.

The letter refers to the Interpretation Act, and it is worth pointing out what that Act says. It confirms that an Act that repeals an enactment does not affect,

"any right, privilege, obligation or liability acquired, accrued or incurred under that enactment".

The letter goes on to say that the EU trademark regulation will constitute EU retained law for the purposes of the European Union (Withdrawal) Act 2018; and that pursuant to the power in that Act, it is repealed and replaced by the UK regulation. This solves the problem. There is a definite assertion here that the right to convert will be retained but the conversion will be done entirely before the UK IPO, instead of starting it off in the EU. This general application of the Interpretation Act would apply to any regulations, not just these; it might be applied to those on patents that we have just discussed. That is one reason why I asked that the letter be put in the Library. It is possible that we contemplated this when we were going round the loop of the withdrawal Act, but I had misplaced it in my mind, and that might be the case for other noble Lords.

I am satisfied that it is "job done" on the confirmation of continuity and the issues I sought reassurance on. I am also grateful to the Minister for explaining that the Government will take into account the various other measures we raised, which are much more to do with practice.

The salient point here is that some 60% of trademark applications are made by individuals for their own businesses, without professional assistance. So it is quite important that the advice the IPO is able to give keeps them up to speed with changes that they might not be aware of, such as that they still have the conversion right and for how long.

There is still a matter to be dealt with: for nine months, there are latent rights hanging about. If you file a trademark application, it might look like the way is clear and then, all of a sudden, it is not, because people want to continue with the one they have under the EU. The question is how the IPO is to deal with notification, so that an applicant knows the full picture before making decisions that might be otherwise prejudicial to their rights when deciding whether to go ahead and have notice sent to people or to withdraw their application. My proposal was that they have to have the right to be able to suspend until that nine-month period is over, if it looks as though there is something in their way. Obviously, this is not a matter for this statutory instrument, but it will turn out to be a matter of concern if a significant number of those 85,000 applications are continued with. From what I

[Baroness Bowles of Berkhamsted]
can gather, it is likely that more than half will be, so intervening applicants will have a difficult nine months to navigate.

Lord Stevenson of Balmacara (Lab): My Lords, we discussed this SI in some detail in Grand Committee and so there is very little more to be said. The Minister, in his letter of six and a half pages—or is it eight?—covered a number of points also. We have since then had another letter—I have printed it out on my own machine and have it in front of me and so can measure it; it is a page and a half, if he wishes to know the detail—which has added a considerable amount, including the rather interesting extemporary view that the UK Interpretation Act 1978 confirms different powers about these regulations, and which might be of more relevance in some other areas of work that we still have to consider.

We are very lucky to have the expertise of the noble Baroness, Lady Bowles, available to us on this issue. She has been able to keep us right on a number of points. My point follows from hers in that this SI is moving away from simply trying to establish what continuity would mean in the context of a no-deal exit by offering something valuable to those who hold trademarks in the EU and wish to continue business in the UK after Brexit.

5.30 pm

It could be argued—I am not saying that it should be—that it is right to apply what will apply in the EU to this issue: in a no-deal exit, the UK would register those who wished to register UK trademarks here and leave aside the question of what rights trademarks registered in the EU would have here. That is not what the Government have decided. I believe they have agreed that rights registered in the EU will be recognised within the UK. I will not ignore the clear benefit there for consumers, but it must be detrimental to current and future UK holders of trademarks who will not be able to register them in the same way as they would had we stayed in the EU.

I do not think that there is a right or wrong answer to that—it is probably where we would want to get to at some point—but it implies a reciprocal activity on behalf of the EU which is still not present. It is foreshadowed in the withdrawal agreement and may well come to pass. If there is a deal, we would probably expect to have a parallel process. If we will continue to operate on intellectual property on all fours, particularly in relation to data protection, this is exactly where we will have to go. That may be right in policy terms, but it marks out this statutory instrument as different from the others. I do not think that the Minister needs to give us too much of a response, because it is a fact, rather than an issue. If he confirms that this is the situation, it would be helpful to have it on the record.

Lord Adonis (Lab): My Lords, this was the famous statutory instrument which referred to consultation with,

"a small group of trusted individuals".

We had a long discussion in Grand Committee about who should or should not be trusted at the Government's discretion. This was not satisfactorily resolved. However, the noble Baroness, Lady Bowles, has continued those conversations; I am sure that her discussions were with wholly trusted individuals and that her further discussions with the Minister have led to improvements in the regime that will follow from the statutory instrument.

I would like the Minister to clarify the issue of renewal fees so that I and the people reading our proceedings fully understand it. This was raised in Grand Committee, and the noble Lord referred to it in his six and a half page letter. As I understand it, the key passage is about what happens when people need to hold two sets of trademarks, rather than one, after renewal. I want to be clear that I have understood this correctly: the letter from the noble Lord, Lord Henley, says that around 10% of trademarks which are renewed each year,

"are held by UK businesses, and so we estimate that 60% of the 1.3 million newly-created comparable UK trade marks will be renewed at an annual cost to UK business of around £2.5 million in additional renewal fees".

Are those wholly additional fees that businesses and individuals will have to pay, over and above what they would pay at the moment? Have I correctly understood that they need to pay those fees because they are very likely to need to hold two sets of trademarks—for the EU and the UK—in parallel? This has come out only through our consideration of this instrument and was not clear in the initial consultation or the Explanatory Memorandum. I am not in this industry, but this would seem to be a significant additional burden. People need to be aware. Case by case, we are seeing all of these additional burdens as a result of a no-deal Brexit. It is deplorable that we are imposing additional costs on businesses and individuals in this cavalier way.

Lord Henley: My Lords, I am very grateful to all those who have spoken. I was particularly grateful to hear the noble Baroness say—I think I have this right—the words, "job done". I hope we can get this order on the statute book. Although the noble Baroness brings great expertise to this matter, there are others—I dare say the noble Lord, Lord Stevenson, would agree—who do not have that same degree of expertise. There is to some extent the sense of cold towels wrapped around our heads and strong black coffee as we consider these difficult and technical matters. We are grateful for that expertise. Even if the noble Baroness has now retired from this area, we will continue to discuss these issues with her and other trusted individuals, with the noble Lord, Lord Adonis, and with anyone else—trusted, untrusted or otherwise—who has a relevant concern in these matters; it is very important to do so. As the noble Lord, Lord Stevenson, put it—so well, as always—there are benefits to the owners of trademarks and benefits to consumers; it is therefore appropriate that we strike the right balance between those two groups. Dealing with conflicting rights is one of the difficult things that those in government have to do.

The noble Baroness asked about representation at the EU Intellectual Property Office. The EU trademark regulation mandates that a representative must be based in an EU member state in order to represent clients before the EU Intellectual Property Office. Officials in the IPO and in the Ministry of Justice are aware of this issue and have held many discussions with representative groups. As we turn to the future

economic partnership, we will seek a comprehensive arrangement on trade and services, including professional and business services.

I want to make it quite clear, as I did in Grand Committee, that we believe it important that the guidance we offer to business is targeted and clear, particularly as the noble Baroness stressed the number of unrepresented businesses. Although the sensible thing would be to take advice from the noble Baroness's profession, clearly many people prefer to avoid those in the legal and other professions. We will ensure that the right guidance is offered and highlight the importance of searching the EU register. I am grateful to her for raising those issues again.

The noble Lord, Lord Adonis, raised the subject of renewal fees and costs and referred to some remarks from my letter. Analysis of existing UK rights shows that the average cost of renewing a comparable right will be approximately £300, due every 10 years. If rights owners do not wish to renew their UK trademark, for example because they have no interest in preserving UK protection, they do not have to pay the fee. But, as the letter makes clear, businesses will incur additional costs should they want to enforce their UK-compatible rights or defend them against a challenge. That cost will vary depending on the length of proceedings and the amount of evidence considered. However, as the letter says, the IPO estimates that the total cost to UK businesses would be around £330,000 per year. The noble Lord, Lord Adonis, can make use of that information as he wishes in any discussion of the merits or otherwise of Brexit.

On his last point, the noble Lord, Lord Stevenson, will appreciate that it is only possible for us to pass legislation affecting the UK. The withdrawal agreement will provide for reciprocal measures with the EU, when and if that is agreed. I believe I have answered all the questions put to me.

Motion agreed.

Broadcasting (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.40 pm

Moved by ***Lord Ashton of Hyde***

That the draft Regulations laid before the House on 13 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, now that we have disposed of the business expected to be brief, I am glad that we can get on to the main business.

These instruments are being made under the European Union (Withdrawal) Act 2018. They make appropriate amendments to correct deficiencies in domestic broadcasting law in a no-deal EU exit scenario. I think we can all agree that, no matter what our respective views on EU exit are, we need to ensure that television services available in the UK are regulated properly and that the public continue to be effectively protected from harmful content after we leave the EU. We also need to make sure that the same laws and rules that are currently in place in the UK continue to apply, providing continuity and certainty.

I have to stress that these draft regulations address only the necessary technical amendments to ensure that the law is operative on exit day, rather than introducing sweeping new powers into law. The Delegated Legislation Committee has been content with these draft regulations and Her Majesty's Opposition in the other place agreed that,

"this is a necessary measure that has to be taken".—[*Official Report*, Commons, Sixth Delegated Legislation Committee, 29/1/19; col. 5.]

As noble Lords may know, the European Union's Audiovisual Media Services Directive currently underpins several pieces of UK primary legislation, including the Communications Act 2003. We are therefore using Section 8 powers from the European Union (Withdrawal) Act 2018 to fix deficiencies in primary legislation to ensure that Ofcom continues to have jurisdiction over services that are available to UK audiences, or are established in the UK.

Let me summarise the main provisions of the draft regulations and why they are important. If we leave the EU without an agreement in place, the Audiovisual Media Services Directive will no longer apply. The directive—"AVMSD" as it is commonly known—establishes minimum content standards and provides for freedom of reception and retransmission for audio-visual services such as television and video on demand. Crucially, AVMSD provides that a service which is regulated in one member state can adhere to that country's rules while being available all across the EU. Services are thus allowed to operate with a single regulator's licence, regardless of where the service is received in the EU. This is known as the country of origin principle.

In the event of the UK exiting the EU without a deal, the country of origin system of authorising services would be deficient, as reciprocal arrangements created by AVMSD would no longer exist. Without the amendments carried out through this instrument, television services originating in EU member states would still be allowed to be broadcast in the UK without a licence, thereby leaving the UK with no possibility of regulating the content of such services and protecting UK viewers from harmful content. The draft regulations remedy this deficiency by introducing the country of destination principle, which will require any television service that is available in the UK, whatever its country of origin, to be licensed by Ofcom.

However, a licence will not be required for television services provided by broadcasters in those countries that have signed and ratified the Council of Europe's European Convention on Transfrontier Television, known as the ECTT, which the draft regulations would implement into UK law. The ECTT was signed and ratified by the UK in 1993, but it has not been implemented into UK law because of a disconnect clause in the convention which provides that EU member states must apply the relevant EU legislation in their mutual relations instead. The convention provides for a similar system of freedom of reception and transmission between the parties to

[Lord Ashton of Hyde]
the convention as the country of origin principle. All but seven of the EU 27 countries are parties to the ECTT.

5.45 pm

While the convention cannot be considered a full replacement for the AVMSD, the ECTT sets out some minimum content standards for cross-border services and a system of mutual co-operation to enforce the standards. Furthermore, both the AVMSD and the ECTT provide that a majority of transmission time on a television channel must be reserved for works of European origin. The AVMSD refers to the convention in its definition of European works, and this in turn safeguards the UK's status as a producer of European works, which is important for content sales and the UK production industry. This has been confirmed by the European Commission.

The draft regulations also ensure that services with Irish language content— RTÉ One, RTÉ 2 and TG4— continue to be available in Northern Ireland. The UK made those commitments in the Good Friday Agreement, and later through the European Charter for Regional or Minority Languages. This is necessary because these services are established in Ireland, which is not a party to the ECTT, so under the changes introduced through the draft regulations, they would now need to be licensed by Ofcom. However, we are making these services exempt from this requirement, to keep within the spirit of the Good Friday agreement.

The draft regulations introduce a new power for the Secretary of State, who will be able to designate regulated electronic programme guides after consulting with Ofcom. This was a necessary change because Ofcom's jurisdiction depends on whether services are available on UK EPGs. We need the power to amend the list of regulated EPGs if there are new EPG entrants into the market. Being a designated EPG does not in and of itself carry any burdens on the companies who provide EPGs. Rather, creating this category was a necessary change to ensure that the legislation around licencing continues to operate effectively.

To conclude, I believe that the draft regulations are necessary to ensure that the UK statute book works on exit and that audiences are protected from harm, and I commend them to the House.

Lord Foster of Bath (LD): My Lords, the Minister will be pleased to hear that it is not my intention to oppose to this instrument. As he indicated, in the event of a no-deal Brexit, we need to ensure that those companies that provide at least linear television services in the UK are properly licensed—whether they are based here or elsewhere—and that viewers are protected. However, I take a very different view from the Minister in describing this instrument, particularly the description we find in the Explanatory Memorandum. Paragraph 12.3, for example, explains and justifies the lack of an impact assessment on the grounds that,

"the instrument will maintain the status quo as far as possible".

It also suggests that the only inconvenience broadcasters with services available in the UK will face is the,

"need to familiarise themselves with new licensing system and guidance as proposed by Ofcom".

Both lines show significant complacency on the part of the Government and are a massive oversimplification of what will happen if the instrument is needed.

The Explanatory Memorandum states explicitly that,

"no, or no significant, impact",

on the private or voluntary sector is foreseen. Frankly, this is nonsense. When this instrument was debated in the other place on 29 January, the Minister there, Margot James, was forced to admit that at least 50 or 60 channels will for the first time be required to be licensed by Ofcom—hardly evidence of no, or no significant, impact.

Even more significantly, the Minister appeared to acknowledge that the loss of involvement with the AVMS directive regime, including the country of origin principle, should be of concern to us in this country, noting that the UK currently has a sizeable share of the entire European television market. As noble Lords will be well aware, we have something like 1,200 of the 3,000 channels across the whole of the EU. She said:

"A sector that grows at 25% more than the average rate of the economy is certainly a success. In part, that success is indeed down to the very beneficial regime, the AVMSD".—[*Official Report,* Commons, Sixth Delegated Legislation Committee, 29/1/19; col. 7.]

So the loss of that "very beneficial regime" can surely be expected to have rather more than,

"no, or no significant, impact".

The reason, of course, is that owners of the 600 or so channels currently licensed in this country but shown in other EU countries will now need to make new arrangements, not least by seeking licences elsewhere in the European Union. As I am sure noble Lords are well aware, to achieve that, they will either have to move their headquarters from the UK to another EU 27 country, or at the very least move some of their editorial staff to ensure that they have what is known as a "meaningful presence" in a different European country.

We already know that Sony is moving its headquarters to the Netherlands. We have already heard about Discovery Channel, Turner and NBC planning the movement of staff. Even the BBC is planning the movement of staff. Hardly surprisingly, Ireland, Germany and the Benelux countries—Belgium, the Netherlands and Luxembourg—are all actively targeting UK-based companies to persuade them to move to their country so that they can benefit from the AVMS directive and the current country of origin regime.

Given that we do not know yet which companies are likely to move their headquarters or their staff, and we do not know where they are likely to go, or how many staff are likely to go with them, it is difficult to be clear about precisely what the impact will be. However, I would argue strongly that there should have been a detailed assessment of the likely impact. We should have had, for example, detailed discussions with each of the potential receiving countries about what is meant in their country by a "meaningful presence" to ensure that a company would be allowed a licence in that country. Indeed, it is somewhat unclear what a meaningful presence in this country would be. Could the Minister give us a definition of what would amount to a meaningful presence here, enabling a company to get a licence here?

We know that some UK-based companies already have staff in other countries. I am not suggesting that there will be a total flood of people leaving, which would be catastrophic for the industry, but it will certainly make a significant dent in our world-beating broadcasting sector. Does the Minister believe the words in the Explanatory Memorandum—that there will be,

"no, or no significant, impact"?

Can he justify why we have not had an impact assessment for this instrument?

I am aware that when the Minister responds to my query he may refer to the convention on transfrontier television—the ECTT. He may argue, just as the instrument does, that implementing the ECTT—which, as he rightly pointed out, we signed and ratified as far back as 1993—provides a similar system of freedom of reception and transmission between the parties to the convention as the AVMS does between EU members. If the Minister uses that to justify the claim that,

"the instrument will maintain the status quo as far as possible",

I suspect he will be in significant difficulty, because there are major problems in making that claim.

The Minister said that "only seven" of the EU member states are not members of the ECTT. However, only seven is more than 25% of the EU 27, so that means that UK companies that wish to have their channels shown in Belgium, Denmark, Greece, Luxembourg, Sweden or—especially important in this regard—the Netherlands or Ireland, will have no choice but to move HQ, as I said, or at least to move some staff, to another EU country. So will he acknowledge that describing the ECTT as a "similar system" is not a widely shared view?

Indeed, PACT—a trade organisation representing, among others, UK television companies—notes that the enforcement regime of the ECTT has nothing like the same ultimate recourse to a body such as the EU Court of Justice. COBA, the Commercial Broadcasters Association, describes the ECTT as having significant limitations. Our own House of Lords EU Select Committee, in HL Paper 135, said that,

"neither the Transfrontier Television Convention nor coproduction treaties are viable alternatives for trade".

In the other place, the House of Commons DCMS Select Committee concluded just last month that the ECTT was "severely limited".

Even the former Digital Minister, Mr Matt Hancock, was forced to admit when giving evidence to the EU Select Committee, that the ECTT was agreed in 1993, and that,

"in this space, that is a long time ago".

No doubt because of that huge distance, another difference appears, in relation to how the ECTT handles advertising, compared with the AVMS directive.

If the Minister needs any further convincing, he should surely note what the creators of the ECTT itself said. What did the Council of Europe say about it? It published a paper very recently—its 2018 report, *Brexit: The Impact on the Audiovisual Sector*—which says:

"In the absence of the COO principle, UK-based companies would face new barriers when broadcasting to Europe and could choose to relocate their headquarters to another member state, with the consequent direct negative effects on employment in the UK, and additional indirect losses for the UK creative economy".

Even the creators of the ECTT do not appear to think of it as the solution to the problem. Faced with all this, does the Minister stick to the view that the ECTT is a similar system to the AVMS directive, that if we implement it there will be no, or no significant, impact, and that the status quo is being maintained? Surely he cannot agree with any of that.

I turn now to another aspect of the instrument that definitely does not meet the Government's claim to be maintaining the status quo. By waiving any UK licence or notification requirements for on-demand services other than UK-based ones, they will intensify rather than mitigate the already uneven playing field between linear and the increasingly popular on-demand services. It is already bizarre that, in relation to non-EU so-called third countries, we rely on the host country's regulator to provide a licence, and no UK licence is required, even if the services are being made available here in the UK.

Of course, I am prepared to admit that, in a sense, under the AVMS directive that is also true for on-demand service providers coming from the other EU 27 countries. But there is a major proviso: there is no formal legal dispute mechanism through the European Commission in the alternative arrangements. We will suddenly deny ourselves any formal dispute mechanism, at least for on-demand services coming to the UK from the EU 27 countries.

6 pm

The instrument makes a major change to the status quo. COBA gives an excellent example of why this is a problem by considering what would happen if we in the UK wished to introduce new rules for on-demand services over and above the standards required by the EU 27 under EU rules. It suggests considering what would happen if, for example, we in this country wished to place further restrictions on the advertising rules for foods high in fat, sugar and salt—something I believe we are very likely to do in the near future. In such a case, we would be reliant on the EU, which we will have just left, to enforce those new rules for us. That seems highly unlikely, not least when the EU 27's on-demand services are already meeting arrangements in line with EU requirements. Why would they want to accede to our wishes in those circumstances?

More generally, this instrument could have provided a vehicle to address the uneven playing field between linear and on-demand services. I regret that it did not but, to be fair, the Government acknowledge the problem. In the other place the Minister, Margot James, said:

"We recognise that after exit we may need to consider a long-term and future-proofed approach to video-on-demand regulation".—[*Official Report*, Commons, Sixth Delegated Legislation Committee, 29/1/19; col. 8.]

It is a widely held view, which I share, that this issue needs to be addressed as quickly as possible. Will the Minister go just that little bit further than Margot James and tell your Lordships' House that, after exit, the Government will develop plans for a long-term and future-proofed approach to video on demand?

It is clear that this instrument does not live up to the claims made for it in the Explanatory Memorandum. That said, it is still needed to provide protection for

[Lord Foster of Bath]
UK citizens and a degree of certainty for the providers of broadcasting services here, but I hope I have made clear that exiting the EU will be accompanied by additional burdens for our hugely successful broadcasting sector and the wider creative industries. I hope the Minister will acknowledge that this will be the case and commit the Government to doing all they can to protect our creative industries by, for example, maintaining a strong copyright regime and the existing very successful production incentives of tax breaks. Above all, would the Minister be at least willing to pick up the recommendations from my noble friend Lord Clement-Jones and many on these Benches who have been calling for a rethink on some of the elements of the proposed new immigration system so that broadcasters and others in the creative industries can continue to access highly skilled talent from the EU 27 after Brexit?

Lord Liddle (Lab): My Lords, I support that excellent speech from the noble Lord, Lord Foster of Bath. It was extremely well argued and well researched and brought out a series of very real concerns. I have sat patiently through these discussions. We are seeing how Brexit will potentially destroy some of the jewels in the crown of Britain's industrial and economic capacity. There is no more striking case of this than in broadcasting, which is one of Britain's great success stories.

My experience of this is as a member of your Lordships' Internal Market Sub-Committee of the European Union Select Committee, which did a thorough report on non-financial services and took evidence from broadcasters. At the time I was really shocked by the concerns expressed about the viability of their activities in this country. There is no doubt, whether to a greater or lesser extent, that what we are talking about will destroy opportunities for hundreds of young people who would otherwise have the chance of really fulfilling jobs in the media and broadcasting sectors.

No one I recall coming across in this field believes that the European convention is a full substitute for the EU directive. I would like to hear on what basis the Minister thinks it is. It clearly is deficient in that it is not comprehensive and does not have any means of enforcement through the Commission and the court. The fact is our industry is showing that it has no confidence in this poor substitute by the fact so many companies are relocating to the continent.

One thing about the statutory instrument really worries me. What we are doing with it—I can see why from the point of view domestic regulation—is saying that from now on we will no longer have the country of origin principle, but the country of destination principle. That will be used against us by commercial interests on the continent that want to prevent full UK access to the market. They will say, "You want to switch to a country of destination arrangement. That means we insist on the right to regulate your right to broadcast in our country". This is very bad news for the British entertainment and broadcasting sectors. The Minister has many difficult questions to answer.

Lord Pannick (CB): My Lords, I share the concerns so powerfully expressed by the noble Lord, Lord Foster. His speech demonstrates that these regulations, like so many of the exit regulations we are debating, raise fundamental policy questions. They are being presented under Section 8 of the withdrawal Act and other powers as merely transitional provisions designed to tidy up loopholes, but they are not. They raise fundamental issues of policy.

I have a specific question for the Minister concerning those broadcasters based in EU states that are not parties to the Council of Europe's European Convention on Transfrontier Television. As the Minister and the noble Lord, Lord Foster, have explained, there is currently no need for Ofcom to license them because they are based in another EU state. As I understand these regulations, and the Minister will correct me if I am wrong, broadcasters based in non-convention states, including Belgium, the Netherlands, Luxembourg, Ireland—apart from for Irish-language programmes—Sweden and Denmark will now need to be licensed by Ofcom. Is it right that they will have to apply for a licence on 30 March or before then, or will there be a transitional provision by which they will be granted one automatically by reason of the fact they were previously covered by the EU directive?

Baroness McIntosh of Pickering (Con): My Lords, I thank the Minister for introducing the instrument before the House this evening. I should declare my interest: I was the Shadow Minister in the other place for the Conservatives when the Ofcom Bill was taken through. I was an adviser to the Conservatives on the committee that covered film policy, and also devised a film policy for the Conservative Party that did not go very far but concluded that it was in their most favoured interest to have a tax break. I have been a beneficiary as a modest investor in films of which I am very proud—not many have been released in the cinema, but they have been broadcast.

The noble Lord, Lord Pannick, asked the very same question on procedure that I would have asked, but I have a very specific question for the Minister that I hope is relevant to this directive. Broadcasters and film producers have benefited from a very specific budget line, which is a legal instrument empowering finances for co-productions throughout the European Union, from which British producers and others have benefited. A number of Danish and Swedish co-productions have been shown on British television, which have been of huge interest to viewers in this country. Going forward, will we benefit from that budget line to the same extent and will co-productions still be viewed as a positive development? It will be of great interest, I am sure, to the film and broadcasting industry to know if that is the case.

Lord Adonis (Lab): My Lords, I have a very short question for the Minister again on this issue of consultation. The broader issues were raised in the excellent speech made by the noble Lord, Lord Foster. On consultation, in paragraph 10.1, it says:

"Ofcom, as the audiovisual regulator, were consulted in drafting this instrument".

Was Ofcom the sole body consulted in the preparation of this instrument? In light of the speeches that have been made in the House, I find that extraordinary, given the range of interests, companies and organisations affected. Will the Minister say why Ofcom was the only body consulted, given the broader themes that

have come out? It is extraordinary in light of the speech made by the noble Lord, Lord Foster, to read paragraphs 7.2 and 7.3 in the Explanatory Memorandum. You would think that you were talking about two entirely separate sets of proposals. Paragraphs 7.2 and 7.3 make it sound as if these changes from country of origin to country of destination are the purely technical and unavoidable dotting of commas and crossing of "t"s as a result of leaving the European Union. Only as the speech made by the noble Lord, Lord Foster, unfolded did we realise that these are fundamental changes to the whole broadcasting regime in Europe that could have extensive consequences. In that case, why was Ofcom alone consulted?

Baroness Neville-Rolfe (Con): I rise briefly to support my noble friend the Minister. It is a difficult situation in broadcasting, and I think it is sensible and creative of DCMS to make use of the Council of Europe treaty. Whatever your views on Brexit, we need to be ready for exit day. This ensures that 50 or 60 channels that will continue to come in from the EU can be regulated against Ofcom standards from 29 March, or at the end of the transition period. Along with the noble Lord, Lord Adonis, I would be interested to hear who has been consulted about the detail of this. There will be scope in the future to look at the longer-term arrangement. As an ex-Minister and ITV director, I look forward to that, including looking at the future of new broadcasting methods, video on demand, the effect of social media, and so on.

6.15 pm

Lord Griffiths of Burry Port (Lab): My Lords, this is an interesting debate and many points that we will be wrestling with well beyond 29 March have been raised in the course of it. I want to begin my remarks, as I will every time I stand on such an occasion, by bemoaning the fact that so many man and woman hours, by able civil servants, have been necessary to plough their way through successive Acts of Parliament to disentangle and extricate details that can be strung together in order to release them from a perceived enslavement to European legislation—a freeing of them, a "Fidelio" moment, that brings them into the light of day—so that they can then stand on their own feet as part of a self-defined and perfectly functioning legal system in this country. It is very regrettable that all this has had to happen. I used to do textual analysis as a favourite aspect of my studies. I promise that this would defy any of even the most complicated pieces and puzzles that I have wrestled with in the past. We are where we are, but I feel the need to say that. Again and again, hundreds of times, we are going to have to express regrets that all this energy, vitality and brilliance of mind has been tied up into producing what are effectively a strung together set of proposals that get us over the line at the end of March in the event of there being no deal.

Having said that, the second rather general thing that I want to say, which echoes things that have been said by others, relates to consultation. Again and again, that is where my eye goes first when I get these Explanatory Memoranda. Once again, I wonder that only Ofcom has been consulted, when many other bodies have been mentioned in the course of this debate as being stakeholders in all that is about to happen. Surely there might have been consultation in those cases. We are working under pressure, and impact assessments and consultations are both reduced almost to nothing, and we can only regret that. In a previous debate which I was sitting in your Lordships' House for, I overheard the discussion between my noble friend Lord Adonis and the noble Lord, Lord Warner, who is not now in his place, about what we might have expected in such pieces of secondary legislation, according to the rule book, as it were—12 weeks of consultation, a published account of the results of that, and all part of the debate going forward. Even though I stand here wanting to narrow the considerations that I address to the particular point of keeping something legitimate on the law book to allow us to take that step, I feel it necessary to express regret about the levels of consultation and openness. I do not know what my noble friend Lord Adonis thinks about those who are trustees and on the inside circle who were consulted, but I know there are people in the industry, as far as this one is concerned, who have things to say and whose voices would have been very legitimate in bringing us to this point.

When the matter was debated in the other place, there was a lot of reference to the fact that meaningful presences were beginning to appear in countries on the other side of the Channel. The Minister was asked if she could put a figure on them. She could not and did not. At the same time, we have heard that Sony has already done this, and others look as if they are going to. It is a legitimate thing to ask, regarding the impact of this proposal, to what extent we feel this is going to continue and to be a worrisome factor.

This is a way of coping. The memorandum is my main interpretive document, because while I can read complicated things, these wretched SIs are beyond complicated. No doubt the noble Lord, Lord Pannick, takes them in his stride, with his paracetamol in the morning or something. I thought it was an honest attempt, at the level of getting us from here to there, to look at all the angles that need to be looked at—in a perfunctory manner, yes. I am not an expert in picking up the details of difference between the AVMSD and the ECTT, for example, but it seems to me that the countries that are not in the ECTT, in so far as they are given six months to look at how they are going to harmonise themselves with the proposals being made, have been offered something, anyway, and Ireland seems to have been treated very properly indeed, with the reference to the Good Friday agreement thrown in.

I did not find, granted the narrow concern in front of us here, that there was much I wanted to quarrel with, but in terms of the issues we are bound to go on wrestling with when this particular dust has died down, we can only note what the noble Lord, Lord Foster, and others have said and recognise that this will not be the last word.

Baroness Crawley (Lab): My Lords, I have a very short question for the Minister. What would his advice be to UK broadcasters when it comes to working with those countries that are not party to the ECTT? I know that many broadcasters are concerned that these new regulations will not cover the areas that at the

[Baroness Crawley]
moment they just take for granted as far as European-wide broadcasting is concerned. What about those countries, other than Ireland, that are not party to the ECTT?

Lord Puttnam (Lab): My Lords, is there anything in the Ofcom response to indicate that any of these changes will benefit the UK production economy, or indeed the UK economy in general? Is there anything in the Ofcom response that suggests this is not negative?

Lord Ashton of Hyde: My Lords, I am very grateful for all those interesting points and particularly for the speed at which they were delivered. We might set a record on this SI, with any luck.

Lord Adonis: Does the noble Lord think we are going too fast? We can certainly slow down.

Lord Ashton of Hyde: I cannot always keep up with the noble Lord, but I will try. I am very grateful, as I said in our last outing, for his interest in DCMS matters, which is fairly new.

I shall start in a fairly random order with answers to some quick questions before we get on to some of the points that the noble Lord, Lord Foster, made. The noble Lord, Lord Pannick, asked whether non-ECTT EU countries would be required, therefore, to be licensed in this country. The answer is yes: we have identified 50 to 60 channels which may need a licence from Ofcom in order to continue to be received in the UK. These are mainly specialist minority channels, religious channels and adult services.

Lord Pannick: May I ask a question in relation to that? Would it not be more sensible, given that these broadcasters have been broadcasting into this country already and have been licensed in an EU member state, to grant them a licence automatically, rather than their having to apply? Then, of course, Ofcom would regulate them thereafter. If there is a problem, Ofcom may impose conditions or sanctions on them.

Lord Ashton of Hyde: If I am allowed to continue, those services that now need to apply for a licence so that they can continue to be available to UK audiences will have a grace period of six months, so they will continue to broadcast into this country. They will have six months to apply for a licence. It is necessary for them to apply for a licence because they should still be regulated by Ofcom in this country; otherwise we cannot control what they produce because we will not have recourse to the EU dispute resolution services. Of course, the six months is not a difficult problem for them because they start on the same basis—today, they are regulated by the AVMSD. We will start on an equal footing for Ofcom to begin to regulate them after the grace period of six months.

Lord Pannick: I am grateful to the Minister, but that does not address my point. Why should these broadcasters, who are already broadcasting into this country with, presumably, no difficulty at all, have to go through the administratively burdensome task of applying for a licence after six months? Why should Ofcom have to consider the details of their case and grant them a licence? Would it not be more sensible to say, "Let us continue the status quo, let us deem them to have a licence and, thereafter, Ofcom can regulate them"? Why a new licence? That is my question.

Lord Ashton of Hyde: Effectively, that is what is happening after six months. They are being allowed to continue for six months, after which they will have to have a licence. The reason Ofcom is licensing them is so that, in the future, we can make sure that the content they produce is in accordance with the licensing conditions, which we would not be able to do if we were relying only on the AVMSD.

The noble Lord, Lord Puttnam, asked about the Ofcom response and whether there was anything positive or negative. First, there was not a response per se, so it was not asked that question. It was, of course, consulted and the basis of this SI—here I have to disagree with the noble Lord, Lord Pannick—is not trying to create new policy, because all it is trying to allow is for television channels that would otherwise not be regulated to be regulated, because the method by which Ofcom regulates channels is using the AVMSD, and that will not apply any more. Where the noble Lord, Lord Puttnam, is correct is that he gets to the crux of the problem, which is that leaving the EU is the issue that may or may not create a problem for broadcasters, not the actual details of this SI.

The noble Baroness, Lady Crawley, asked what advice I would give broadcasters. My advice to them would be to read the technical notice that we published in September: it precisely answers the question of what they should do and gives such things as the order of priority for being recognised in EU countries, whether it is establishment criteria or technical criteria such as satellite uplink. That is explained there and it makes the point, which I shall come to later, that ECTT may not be the answer in every case and that they should take advice and will possibly be required to have a licence. I shall come to that in a minute. I was foolish to think this would be quick.

The noble Lord, Lord Foster, mentioned video on demand. It is true that one of the differences is that the ECTT does not cover video on demand because, as noble Lords mentioned, it is a relatively old convention. I have to echo my friend in the other place: we are aware of the need to consider a long-term approach to regulating those video on-demand services that are available in the UK, but we cannot do it in this statutory instrument. It would be new policy, to take the point of the noble Lord, Lord Pannick, if we started regulating video on demand. There are some video on-demand channels today, for example, that come from America and are unregulated. We accept that it is a problem and we will have to deal with it in the future, but not through this SI.

The noble Lord, Lord Foster, and my noble friend Lady McIntosh talked about support for the sector: I think they were talking about the creative industries in general rather than just broadcasting. There is no change in the direct impact on such things as creative sector tax relief, which will still apply because they are established in UK legislation and the cost is entirely borne by the UK Exchequer. We have provided reassurance that the Government will underwrite the

payments of awards for programmes such as Creative Europe, and have entered into a number of bilateral film and television co-production agreements with other countries, including Canada, Australia and China. I think my noble friend was talking about co-production in particular. We are also party to the Council of Europe's Convention on Cinematographic Co-production, which will continue to operate after exit. There is a new version of that convention which we are intending to sign.

Lastly, and very importantly, this SI means that, by implementing the ECTT, UK content will continue to qualify as European works. The EU Commission has confirmed that will be true, even if we leave with no deal.

6.30 pm

Baroness McIntosh of Pickering: Presumably this is potentially one of the measures in the £39 billion package that we will agree if we have a deal on leaving, because that particular line of the European budget, to which we will have been subscribed in this seven-year period, relates to co-productions. It was very specific, and has brought benefits to this country. I do not expect my noble friend to have the answer at his fingertips, but I would be grateful if he could write to me.

Lord Ashton of Hyde: I thank my noble friend. I do not have it at my fingertips—mainly because this is a no-deal SI, and that is the basis on which I have prepared—but I will write to my noble friend with that answer.

The noble Lord, Lord Liddle, mentioned in a rather pessimistic way that this was the end of the jewel in the crown of broadcasting. I was not sure whether he was talking about broadcasting or the creative industries. I have mentioned that we will continue to support the creative industries. I agree that they are a jewel in the crown. We are, of course, aware of some reports in the media about broadcasters relocating their licence to other countries. But the reports also suggest that companies are relocating only a minority of their workforce, in order to comply with the licensing requirements. There are no signs of a mass exodus from the UK. It is too early to tell, but the technical notice spells out clearly that it is not always necessary to transfer even the head office or the editorial elements of a company to qualify for an EU licence under the AVMSD. Most broadcaster satellite uplinks are in France or Luxembourg, so, if you can use technical methods such as the satellite uplink, technically you can get a licence in one of those two countries because that would bring you under the jurisdiction of the AVMSD.

Lord Berkeley of Knighton (CB): My Lords, on the question that the Minister has just addressed, have the Government made any assessment of the likely impact on the creative industries, a sector whose income they broadly welcome on a regular basis?

Lord Ashton of Hyde: This SI does not relate specifically to the creative industries; it is more to do with the broadcasting industry. There is a link between the broadcasting industry and the creative industries, but this deals with things such as production, which have historically tended to follow broadcasting. We have not made that assessment yet, because it is too early to tell, but clearly there is the possible danger that, if all broadcasters move their editorial and head offices to an EU country, production might go with them. Obviously, that would depend on where they go. It is too early to tell on that specific point, but the tax credits and other things I talked about will specifically help the creative industry, rather than broadcasters.

Lord Liddle: I am grateful to the Minister for answering the points I raised, but I am concerned about two things. First, I am a bit disturbed to hear that the Government are reading about what is happening in the newspapers, rather than being in constant consultation with this important sector of the industry. Secondly, if there were good will, the European convention might be an adequate substitute for European regulation; but in this situation we are talking about no deal, where there will be no good will.

Lord Ashton of Hyde: We are not—as noble Lords might have realised—reading about this only in the papers, although we do read them. We have had extensive consultation—not perhaps the public consultation where all pros and cons are publicised, as the noble Lord, Lord Adonis, would prefer. But noble Lords should be under no illusions: we have had extensive consultation on this situation and this specific SI, not only with Ofcom, which has been instrumental in drafting the SI to address the problems of regulation of television services—how they should be construed and defined—but with the sector. We have organised round tables at ministerial and official level. We have included AETN, AMC Networks, BBC Studios, Channel 4, Discovery Channel, Disney, ITV, NBCUniversal, Nordic Entertainment Group, Sky, Sony, WarnerMedia, Viacom and Viasat. We have met these and further broadcasters on a bilateral basis, because a lot of these discussions are commercially sensitive, depending on what they are going to do with their establishments to meet the problems of Brexit. I reiterate that this is an issue about Brexit, not about this SI, which is about the regulation—making sure that a regulatory system exists if we have no deal.

Lord Griffiths of Burry Port: I say simply that to have mentioned in the memorandum that this impressive list of people had been consulted in various ways might have allowed us to finish in record time, as the hope for that had been expressed.

Lord Ashton of Hyde: I take that point, although I would not bet on it myself. On that point, I emphasise that the ministerial round tables took place not just once but regularly between August 2016 and March 2017, led by the Secretary of State, and in March and July in 2018, led by the Minister. But I take the point about explaining that. The difference between this and the SI we talked about the other day is the commercial sensitivity of the decisions that have to be made in moving head offices, the effect on the workforce, and so on.

I will address the general issue of whether we are being complacent about relying on the ECTT. We acknowledge that it might be possible that some services will require two licences—one for the purposes of the

[Lord Ashton of Hyde]
AVMSD, and one for Ofcom—because this is the case for services which are available in both ECTT and non-ECTT countries. In the way that these services are received—by satellite—it is difficult to exclude some countries from the distribution. There are about 500 Europe-facing services out of the 1,200 that Ofcom currently licenses. To date, we are aware of about 130 licences moving. It is fair to say that broadcasters are concerned about the risk of dual regulation, and are reluctant to rely on the ECTT—it is considered an untested convention, as EU law has been in place for so long. Nevertheless, I am sure noble Lords would agree that we should not ignore conventions and international agreements that we have signed up to, nor should the other countries which have signed them.

Lord Foster of Bath: If we follow the Minister's logic, he said earlier that there are about 50 or 60 channels that are currently not EEA members but which are based there, and which will need a licence. They will get a six-month period, a point raised by the noble Lord, Lord Pannick. In view of what the Minister is saying, is it not quite likely that the number of channels that are in EEA EU countries will themselves decide to get an Ofcom licence? What assessment has he made of the number that may well choose to do that, and in considering that, is he aware that the latest information I have received is that only one company is considering basing all of its planning on the ECTT? Following from that, presumably there will potentially be a large number of people wanting licences from Ofcom, so can he also tell us how long it will take Ofcom to deal with each licence and whether it will be able to get through the requisite number in the six-month period?

Lord Ashton of Hyde: I do not agree with that premise. We have said that we will apply the ECTT, and in fact, this SI brings it into law.

Lord Foster of Bath: That was not the point I was making. The point is that I understand that it is quite likely that a number of companies that are providing services to the UK, which could rely on the ECTT to not require a licence, will, none the less, make the decision that it is in the best interests of their protection to seek such a licence from Ofcom. Presumably, they will be required to do it within the same six-month period, so there is a potential problem with the number of licences that Ofcom can handle.

Lord Ashton of Hyde: I am still not clear why, given that we have explained that we will accept ECTT countries, they think they should have to take the precautionary approach of getting a licence as well.

Lord Foster of Bath: I will give a specific example: it could be in relation to the differences that exist in the advertising regime, to pick up the point I raised earlier in my initial contribution about any changes that we might make. Given that there is not a formal legal redress system under the ECTT, they may feel it better to have a licence here and simply stick to the rules that we impose.

Lord Ashton of Hyde: Of course, that is a possibility that was not available to them under the AVMSD, and it may be of benefit to them. It is impossible to say. I agree that they may do that. I think it is unlikely, but the noble Lord is absolutely right that it is possible.

Very few services would be able to rely solely on the ECTT. First, the main broadcasters already have a physical presence in the EU, which brings them into EU jurisdiction. As I said, it is also extremely difficult to limit services to being available in purely ECTT countries because of the way that satellite transmission works. One of the problems with the AVMSD is that it does not set down any hard and fast rules about which services fall to be regulated; it talks about services receivable on standard consumer equipment, which is a benefit that the new Ofcom definition will address.

To date, we are not aware of any companies currently licensed in the UK which intend to rely on the ECTT. The smaller companies based in the UK which provide an EU-facing service only would be able to access the AVMSD market under the technical criteria, based on their satellite uplink. Therefore, I do not think we are being complacent about relying purely on the ECTT. The evidence for that is the fact that in the technical notice, we specifically said:

> "If the service is available in the EU and only available in one or more of the 20 ECTT countries noted above, freedom of reception should be permitted in accordance with ECTT. However, you should seek local legal advice to check how national law deals with ECTT obligations to permit freedom of reception of the service and what action (if any) needs to be taken … You should be aware that you may need to have two licences".

We have been clear on that.

Finally, I confirm to the noble Lord, Lord Foster, our commitment to regulate video on-demand services. Just to reiterate, a letter that my honourable friend the Digital Minister wrote to Kevin Brennan in the other place says that the Government are aware of the need to consider a long-term approach to regulating video on-demand services in the UK but that such changes cannot be introduced under the draft regulations.

I hope that I have covered most of the points that noble Lords raised. I am grateful for them.

Motion agreed.

Employment Rights (Amendment) (EU Exit) (No. 2) Regulations 2018

Motion to Approve

6.46 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 31 October 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I hope I shall speak also to the other three sets of employment rights regulations before the House on the Order Paper. These SIs are part of a package of measures that the Government have promised to introduce to make sure we are prepared in the event that we leave the EU without a deal. It is important to remember throughout this debate that these changes

will not be needed if there is a deal. The SIs in front of us make amendments to EU-derived employment law in both Great Britain and Northern Ireland.

As noble Lords know, new directives agreed in the EU are transposed into UK law. The act of the UK leaving the EU therefore does not remove these rights, as they are already in UK law. In passing the European Union (Withdrawal) Act, Parliament gave the Government the ability to ensure that necessary changes can be made to keep the statute book in proper working order. These statutory instruments make only minor changes to language to ensure that existing regulations reflect that the UK would no longer be a member of the EU. These changes are necessary to ensure that the statute book is accurate and clear. It is important that businesses, employees and citizens have clarity on their rights and responsibilities.

We are not making any changes to employment rights or employment policy through these regulations. The Prime Minister, my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy, and many other colleagues have been clear that there will be no rollback of workers' rights when we leave the EU. I wish to highlight that these statutory instruments would make some changes to the regulations for European works councils. This would be an unavoidable impact of the UK leaving the EU without a deal. I can explain these changes in more detail later.

Looking to the future, the political declaration on our future relationship with the EU states that we will build on the withdrawal agreement commitment not to reduce our shared standards—a commitment not to regress from existing EU legislation. I will now go into more detail on the amendments made by the statutory instruments. The Employment Rights (Amendment) (EU Exit) Regulations and the Northern Ireland equivalent regulations repeal four powers that the Government can use to make secondary legislation. These powers relate to parental leave, part-time work, fixed-term work and information and consulting rights. The powers that are repealed relate only to obligations that the Government would be under from EU directives. As the Government would not be under these obligations if the UK left without a deal, these powers would be redundant. We would not be able to use them even if they remained. For clarity and legal certainty, we are seeking to remove these powers. Removing them in no way changes the rights that workers enjoy, nor the Government's ability to protect workers in the UK in future.

The Transnational Information and Consultation of Employees Regulations 1999 are also amended to reflect the UK's departure from the EU. Withdrawing from the EU will mean that the UK is no longer included in the EU rules on European works councils, which is why changes are required to the legislative framework set out in those TICE regulations. Provisions relating to existing EWCs—which can continue to operate in a no-deal scenario—are maintained. These include the protections for workers and their representatives on EWCs.

I move on to the next pair of regulations—the Employment Rights (Amendment) (EU Exit) (No.2) Regulations and their Northern Ireland equivalent. These are listed first on the Order Paper, despite their numbering. The amendments made through these regulations amend the text of existing Acts to reflect the UK's departure from the EU. None of these changes affects the rights workers enjoy or changes employment policy.

The changes that may elicit the greatest interest across the House are those made to Section 38 of the Employment Relations Act 1999 and its equivalent in Northern Ireland. These relate to TUPE protections. The SIs amend the wording of the existing legislation to maintain the current scope of a power currently derived from EU directive obligations. This power has been relied on to make secondary legislation to cover situations where workers are not covered by TUPE regulations. The revised clause still retains the breadth of the existing powers for the Government to amend TUPE regulations to protect the rights of workers. The changes also protect the regulations that have previously been made under this power. These amendments do not change the rights to which workers are entitled.

There is one further point I wish to bring to the House's attention. Of course, I hope that these regulations will not need to come into effect. I hope agreement can be reached with the EU and these regulations can be revoked. However, in the event that there is no agreement—no deal—it is vital that these regulations are enacted. Failure to pass these largely technical regulations would mean uncertainty over both workers' rights and employers' obligations. This could lead to disruption for businesses and citizens, and an increased risk of litigation. This is in no one's interest. It would be unacceptable not to provide this clarity to businesses and I hope noble Lords will accept that the Government are delivering on our workers' rights commitment and that these SIs can therefore be approved. I commend them to the House and beg to move.

Lord Monks (Lab): My Lords, it is pretty obvious that these regulations were drafted—as was necessary—before the conclusion of the current talks that the Prime Minister very belatedly initiated with the TUC and others about employment rights post Brexit. I understand that talks with the Business Secretary are still going on. I hope that at the back of the Minister's mind is the thought that these regulations might well be altered in the light of any progress made in these talks. In effect, the TUC seeks a binding guarantee that existing employment rights will not just be maintained but will not fall below any levels of protection developed in the rest of the European Union and its single market.

There is a lot going on in the European Union at the moment on precarious employment, the gig economy, self-employment and protections for migrant workers. The key point in these negotiations with the Business Secretary is whether there can be any chance of a meeting of minds in these areas. So far, the Prime Minister has said to the union negotiators, "Trust me to make sure we will do the right thing". "Trust me" is not quite good enough, given the transitory nature of being Prime Minister or party leader in this country. Binding guarantees are rather better than good intentions in this area.

[LORD MONKS]

The backcloth to these regulations has been drawn to my attention by the TUC. It has circulated a brief to Members of this House, which I hope noble Lords have had a chance to read. The first point is a procedural one about consultation. I echo previous debates in the House today by asking: who has been consulted on the regulations?

I turn first to the regulation dealing with the European works councils. It is worth reminding Members of this House that there are 850 or so EWCs and UK workers are represented on 500 of them. About 10 million European workers in total are covered by European works councils. Although their performance varies, as one would expect, on the whole they have been very successful in holding companies to account on their future plans and strategies. This is an important dimension in a world where pressures from financial markets on companies not to consult, inform or discuss their plans are very powerful.

We welcome the Government's commitment to maintaining British participation in existing EWCs, but this commitment does not extend—at least as yet—to including new ones or to absorbing into UK law any changes in EWC arrangements that come into force over the next period. No new EWCs will be required to be set up under UK law after Brexit. We are worried that—at least in some cases—UK workers might lose their seats on the European works councils and therefore put British jobs at much greater risk than those of our neighbours across the channel and the North Sea. In other cases, I think there would be voluntary agreement. There are specific measures on the rights of UK worker representatives, such as paid time off to attend meetings. I note that these will be maintained after Brexit in relation to EWCs, but not necessarily to new EWCs that have a British component.

If there is no deal, most of these regulations are designed to come into force on Brexit day. What is the timetable should a withdrawal agreement be concluded? In our view, they should not come into force during a transition or implementation—or indeed a backstop—period.

I turn to the 2018 family of regulations. These are centred primarily on TUPE—the transfer of undertakings legislation—which has been valuable in handling transfers of staff due to privatisations in particular. They came in during the 1980s, under the Conservative Government at that time. The TUC is concerned that the regulations in this area lack a clear definition of what "TUPE-like protection" actually means. This is the phrase that has been adopted. I have not come across this kind of legal term before. "TUPE-like" seems to lack precision, as least to my layman eyes. Unless someone can explain the contrary to me, I think a clearer definition is very much needed.

The regulations do not extend TUPE-like protection and provisions to employee representatives, only to employees. Under the TUPE regulations, employee representatives have certain rights to information and consultation, and they should be maintained in whatever the future holds for us in this area.

Next, can we have an assurance that the regulations will not be brought into effect in any transitional or backstop period—that we would stick with the status quo? The powers under Section 13 of the withdrawal Act would hinder the UK's ability to keep up with changes in EU law during any transition or backstop period and in the event of no deal. We want to avoid workers in the UK during such a period not having the same rights and protections as workers in other European countries. Protection during a transitional or backstop period is very important.

7 pm

Baroness Burt of Solihull (LD): I thank the Minister for his explanation. These four statutory instruments have been somewhat of a revelation to me. I was not aware that Northern Ireland has a different system of rules, although it comes under the same European legislation as the rest of the United Kingdom. I hope that the Minister and other colleagues will forgive me if some of the questions I am about to ask seem a little naive: I do not have the same level of expert advice, and hope that the Government and the Official Opposition will bear with me. I also did not get the TUC paper referred to by the noble Lord, Lord Monks.

Two of the statutory instruments obviously relate to Northern Ireland, and I was surprised to discover that legislation which presumably covers the same European Union rules differs. Why, under the same general legislative EU framework, does Northern Ireland go its own way, to a degree? In what way do the Northern Ireland regulations differ?

The regulations for mainland UK and Northern Ireland cover paternity and adoption pay, fair employment tribunals, industrial tribunals, shared parenting, working time, posted workers, small businesses and so on. I saw no reference to TUPE regulations in the Northern Ireland statutory instruments. I am sure that that is my omission, but do those elements operate differently? Surely TUPE exists in Northern Ireland as it does in the rest of the United Kingdom.

I also note that the statutory instruments amend primary as well as secondary legislation, so presumably the instruments cover areas where the primary legislation is amendable by secondary legislation. Can the Minister confirm that that is correct?

I have another question on the instruments relating to England, Wales and Scotland. Paragraph 12 of the main regulation relates to statutory paternity pay where a person has worked in the EEA. Can the Minister confirm that statutory paternity pay will not be affected by our exit from the European Union for fathers working in the rest of Europe?

Finally, I get twitchy when I read examples such as in part 1 of Schedule 1, paragraph 2, which states:

"In section 79(2) (entitlement to parental leave—supplemental) omit subsection (3)"

of the Employment Rights Act 1996. There are several such examples throughout the SIs. Can the Minister assure us that no existing rights are being omitted or weakened in any of the statutory instruments we are considering this afternoon?

In discussing the withdrawal Act—it seems a long time ago now—we sought assurances from the Government that employment rights would not be weakened post Brexit. Our fears were echoed by the noble Lord, Lord Monks. We do not know what will happen; indeed, one needs a crystal ball to predict

what will happen next week, let alone after any possible Brexit. Will the Minister assure the House, as much as he can, that employment rights will not be diminished?

In conclusion, I hope that none of these instruments will ever need to apply, unless we commit the wilful act of self-destruction of leaving the European Union without a deal. The Minister alluded to that. Is he still feeling optimistic?

Lord Balfe (Con): My Lords, I draw attention to my various interests in the register to do with trade unions. I am very pleased to follow the noble Lord, Lord Monks, a distinguished former general-secretary of both the TUC and the European TUC. Many of us in this House forget that the European TUC is a very powerful body that represents workers from all over Europe and has had a decisive impact on much legislation that has covered workers.

I have also been extremely pleased recently to see that the Government, on the road to Damascus, are now again talking to the unions. It must be two and a half years since union leaders last met a Prime Minister. When I was working as trade union adviser to David Cameron, one of my jobs was to ensure that that scenario never existed. I hope that the present Prime Minister will realise that a regular dialogue with the trade union movement is for the good of Britain, because it enables trade union leaders, who have a very good bird's eye view of what is going on in Britain, to contribute to the national wealth.

We have spent most of today talking about things which we really hope will never matter—in other words, that we will not leave the EU without a deal and that therefore none of what we have dealt with today will come into force. I noticed that both of the main SIs state that they can be,

"deferred, revoked or amended".

My first question is whether consideration has been given as to which one of those three is likely to come into force. I would like them never brought into action and revoked straightaway, but the word that worries me the most is "amended". In other words, they would no longer be SIs if we leave without a deal but would be amended in some way to accommodate a deal.

My next point is on the enshrinement in law of workers' rights in the side agreement that we had with the EU. When I met Gavin Barwell, the Prime Minister's chief of staff, I specifically asked: "How strong is this agreement and how enforceable is it?". He confirmed to me that it was not enforceable. When legislation comes to this House to deal with post Brexit when there is a deal on the table, a number of Members will be looking to write those agreements on workers' rights into Bills, to make them fully enforceable.

I want to make one or two points on the documents in front of us. I will try not to copy what the noble Lord, Lord Monks, has said. However, there is concern about workers' councils. They play a valuable role and we will be looking to the British industry part of workers' councils to maintain a commitment to them—in other words, not to use the absence of Britain from the EU as a way of weakening the ability of workers from the British side of workers' councils to continue to participate in them. We will be looking for the Transnational Information and Consultation of Employees Regulations to be kept fully in force.

What will happen if an external request is made for a new European workers' council from a European country? I notice that companies that operate in Switzerland often include Switzerland within their scope and include Swiss worker representatives as EWC members. Switzerland is not in the EEA—that is one reason why I use this example—and the provisions do not appear to make provision for workers' councils continuing to include the UK within their scope on a voluntary basis. I would like to know what the Minister sees as the future in that area.

On the updating rights, the Minister can enact legislation to keep UK law in line with EU law. I would like to think that we will do our best to do that. Has he had any thoughts on that?

I turn briefly to the other regulations. I agree completely with the noble Lord, Lord Monks, that we need a much clearer definition of what "TUPE-like" means. This looks like something, but is not quite the same. I would like to see an agreement that TUPE-like means that TUPE, as practised at the moment, will be the standard to which Ministers will try to hold any future statutory instrument or legislative developments.

I thank the Minister for bringing this to the House tonight. I look forward to his responses and promise him that when labour relations matters come up, I will continue to represent the 30% of paid-up trade union members who vote for the Conservative Party.

Baroness Crawley (Lab): My Lords, I am grateful to the Minister for setting out these draft regulations. Like other noble Lords, I am concerned about any potential loss of updating rights.

Does the Minister agree that, both on the European works councils and on TUPE, these regulations remove powers currently enshrined in primary legislation, under which Ministers can enact legislation to keep UK law in line with EU law? Will removing those powers mean that it will be harder to keep workers' rights up to the same standard as EU workers' rights, as EU law develops?

May I underline the point made by the noble Lord, Lord Balfe, and my noble friend Lord Monks on the "TUPE-like" reference? TUPE has been a boon, particularly for women workers moving between jobs, especially when we see how women's pensions are often a lot less than men's pensions.

7.15 pm

Lord Stevenson of Balmacara (Lab): My Lords, it has been a very helpful and useful debate and we look forward to hearing the Minister's response. I have a number of questions that pick up on points already made by other noble Lords.

I will not delay the House too long, but I cannot let pass my normal question to the Minister, when dealing with SIs, about commencement dates. His department has a very bad record on bringing out regulations that commence on the common commencement dates. He promises to do better, but I have yet to see it.

[Lord Stevenson of Balmacara]

Unfortunately, these are not ones that I can tease him with because they are supposed to come out only if required and on exit day.

However, that is not quite the case here, is it? If we look at the Employment Rights (Amendment) (EU Exit) Regulations 2019 and the parallel regulations for Northern Ireland—which I think are numbers three and four as grouped on the Order Paper—both of them say that the regulations,

"come into force on exit day, subject to paragraph (2)".

Paragraph (2) provides that certain elements of the regulations,

"come into force the day after the day on which these Regulations are made".

When the Minister introduced the regulations, he said that we did not have to worry about them, that there was nothing in them that would need to take place, and that he was optimistic that there would not be a need for them to come into force. However, that is not true, as some parts of these regulations will come into force. In that context, could he reinforce what he said, which is that there is no diminution in existing rights as a result of the parts of these regulations that will come into force before exit day—and are, therefore, not strictly EU exit regulations in that sense, although we will pass over that, if the issue is indeed trivial, as I suspect it is, given that they seem to be corrections to earlier regulations and primary legislation that may not have kept pace with nomenclature in the EU. If that is not the case, the Minister owes it to the House to make a statement about exactly what is happening under these regulations.

More generally, several speakers—my noble friends Lord Monks and Lady Crawley and the noble Lord, Lord Balfe—have raised points about what is meant by the fact that, on the one hand, the Government are withdrawing powers which, as my noble friend Lady Crawley said, are currently in force and could be implemented to maintain workers' rights and the rights of employee representatives but, on the other, the Government intend, although there is no evidence for this apart from the assertions of both the Prime Minister and the Minister, that there should be no diminution. Where is the legislation that is going to bring forward that levelling up to the existing situation? If the Minister cannot give us an answer, will he please write to us about what the Government's intentions are? Clearly, the regulations amend Section 13 of the Work and Families Act. That amendment reduces, in crude terms, the rights of workers currently. What is the timescale for that being rectified?

On the question of what TUPE means and the definition of "TUPE-like", again the regulations remove powers that exist. Where is the regulation that is going to bring forward the parallel arrangements to make sure that that continues in UK law? The rights of employee representatives, which were mentioned in particular by the noble Lord, Lord Monks, are similarly affected.

These may not seem to be very serious comments, but I think that people across the country will be concerned that their rights are being eroded. At the same time, politicians are saying that they should not worry about it, because the Government have in mind to make sure that there is no diminution. So it is not just a question of the diminution but of making sure that, when changes are made that would have happened had we stayed in the EU, those are also replicated in UK law. I would be grateful to hear the Minister's comments on those points.

Lord Henley: My Lords, I thank all noble Lords for their comments. The noble Lord, Lord Monks, complained that these regulations had possibly been drafted before the talks were concluded. I have to say that it would be rather difficult to draft them after the talks were concluded because I suspect that they might be somewhat late. I think that to start drafting these amendment regulations at 10 minutes to midnight would not be the right way to go about it and I would be quite rightly criticised.

What I can say, and I think that the noble Lord will be pleased about this, is that the Employment Rights (Amendment) (EU Exit) Regulations were published in draft form in December 2017. That allowed for extensive consultation and allowed us to comply with the statutory obligation to consult the relevant bodies on a change made to the conduct of employment agencies and employment business regulations. We received, I think, two responses, one from the National Association of Schoolmasters Union of Women Teachers and the other from the Recruitment & Employment Confederation. I need not go into detail, but neither raised concerns about the drafting of the amendment: rather, they commented more on EU exit in general. We also, as I said, shared these regulations in draft with the TUC and with the CBI—so there was considerable consultation on them.

I shall repeat the commitment that has been made by my right honourable friend the Prime Minister, by my own Secretary of State and by Ministers throughout the Government. Now as a Parliamentary Under-Secretary of State I shall repeat it, although it has been made by people who are far important than me. We are committed not to rolling back on workers' rights, and by laying these SIs we are upholding that commitment. We already go beyond the EU minimum in many areas of employment law; that is well known. I can say to the noble Baroness, Lady Burt, that we have no intention of making any changes to statutory maternity pay. People will not be affected whether we are in the EEA or not. That is true for all the concerns that have been put forward.

Looking to the future, as my noble friend Lord Balfe invited us to do, I would remind the House of what we discussed in a Statement debate—and there will be other chances to discuss it. Our *Good Work Plan* sets out our vision for the future of the labour market and our ambitious plans for implementing the recommendations that arose from the Taylor review. That important package will ensure that workers have access to the rights and protections that they deserve in a changing labour market, with the changing technology that we face. In addition, it will create a level playing field for employers, thereby ensuring that good employers are not undercut by the small minority who seek to circumvent the law. That is worth stating at the Dispatch Box as I move these instruments.

Perhaps I may deal with one or two specific concerns, in particular the drafting points made by the noble Lord, Lord Monks, and echoed by others. He asked whether the new phrase "TUPE-like powers" provide the same scope for power. The phrase "TUPE-like provisions" is needed to maintain the current scope of the powers, and the new wording ensures that the Government will continue to have the power to enhance workers' rights as we do now. We will continue to do that and I repeat that commitment once again. The noble Lord also asked whether these statutory instruments would need to be amended following the talks that he referred to. I can make it quite clear again that these SIs are for no deal. We hope that once we have a deal they will be unnecessary.

The noble Lord also put a question about European works councils. He asked how the Government could claim to be preparing for Brexit when they did not have plans for workers to have proper representation in the absence of European works councils. We are preparing for a no-deal exit, as any responsible Government would do. UK employees will still be able to be represented on works councils—but, again, that will be a matter for the employer and employee representatives. Employees and their representatives on European works councils will retain their existing protections in all circumstances.

The noble Baroness, Lady Burt, asked about the differences as regards Northern Ireland. This is a devolved matter in Northern Ireland in a way that I do not think it is in Scotland. The TUPE-equivalent amendment in Northern Ireland is to the Employment Relations (Northern Ireland) Order 1999. However, in the continued absence of a Northern Ireland Executive, it is for the UK Government to take any necessary EU exit legislation for Northern Ireland through Westminster. However, I can give an assurance that the Northern Ireland departments have been consulted in the preparation of these statutory instruments.

The noble Lord, Lord Monks, also asked whether they would apply during any implementation period. Again I can say that they will be needed only in the case of no deal. I have dealt with the question of statutory maternity pay, which will remain the same. My noble friend Lord Balfe asked about the ability to repeal the legislation. If the SIs are no longer required on exit day we expect, as I think he quoted, to defer, revoke or amend them through further legislation in time for the end of the implementation period. Which route we take will be a matter for us to decide at the time—but, regardless of what we decide, we will uphold our commitment not to roll back on workers' rights.

With that, I think that all I need to do is to repeat the assurance to the noble Baroness, Lady Crawley, and others that these amendments do not narrow TUPE powers: rather, they ensure that the Government will continue to have the power to enhance workers' rights, as we do now. One last question was put to me about European works councils by my noble friend Lord Balfe. He asked whether we could apply the EU directive on EWCs like Switzerland. I repeat that these SIs are only for if there is no deal. Switzerland is covered by the directive under the deal that it has with the EU, so that would be a matter for future negotiations.

Lord Stevenson of Balmacara: I wonder whether the noble Lord could answer my question about the commencement date and the discontinuity between the fact that these are supposed to be brought in only on exit day although two of them refer to regulations that will come into force on the day they are passed—which presumably will be today. If the noble Lord does not have any inspiration at this moment, perhaps he could write to me.

Lord Henley: I had completely and utterly forgotten the noble Lord's obsession with commencement dates in the excitement of dealing with orders of this sort. It might be that inspiration comes to me, but it may not be the sort of inspiration that would satisfy the noble Lord. I am told that the standard practice for statutory instruments is that they have a coming into force date. If that does not answer the noble Lord's question, I will write to him.

I think that I have dealt with all the points that were put to me.

Motion agreed.

Employment Rights (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2018

Motion to Approve

7.28 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 31 October 2018 be approved.

Motion agreed.

Employment Rights (Amendment) (EU Exit) Regulations 2019

Motion to Approve

7.28 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 14 January be approved.

Motion agreed.

Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Motion to Approve

7.29 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 14 January be approved.

Motion agreed.

Fisheries (Amendment) (EU Exit) Regulations 2019

Motion to Approve

7.29 pm

Moved by ***Lord Gardiner of Kimble***

That the draft Regulations laid before the House on 4 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the instrument before your Lordships makes minor, technical amendments to primary and secondary domestic legislation in order to make domestic fisheries legislation operable, as part of having a working statute book after exiting the EU. There are no changes to policy made by this instrument; it makes the necessary corrections to ensure that our domestic fisheries law remains fully functional after we leave the EU.

Section 2.3 of the Explanatory Memorandum sets out the three pieces of primary legislation and 10 pieces of secondary legislation amended by this instrument. The amendments are laid out in detail in Annexe B of the Explanatory Memorandum and they fall into four main categories. There are, for instance, references to "an enforceable EU obligation" and "enforceable EU restrictions". These are amended to "a retained EU obligation" or "retained EU restrictions" to ensure that these remain operable as part of retained EU law. For example, Section 30 of the Fisheries Act 1981 concerns the enforcement of EU rules relating to sea fishing. Amendments to Section 30 change references to,

"enforceable Community or EU obligations and restrictions",

to,

"retained EU obligations and restrictions",

to ensure continued operability of these provisions on exit.

There is then a further category: provisions that will be redundant or inoperable in UK law after EU exit. For example, Schedule 4(5) of the Merchant Shipping (Registration of Ships) Regulations 1993 refers to an "EC Number" in the list of details to be recorded in the register of British fishing vessels—this has been removed. Likewise, a reference to euros has been converted to pounds sterling in the Fish Labelling Regulations 2013.

The third category has references to "member state or third country" which are replaced with just "third country" because, in this context, member states will be categorised as third countries when we exit. For example, Article 3 of the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 defines "third country fishing vessel" as,

"a fishing vessel which is not a Community fishing vessel".

This has been amended to a fishing vessel which is not,

"a United Kingdom fishing vessel".

Fourthly, cross-references to EU regulations are amended to bring them into line with technical amendments made to directly applicable EU regulations by other SIs. For example, in the Fish Labelling Regulations 2013, the designation of the Secretary of State to draw up and publish the list of commercial designations of fish species has been deleted because this is now provided for in Council regulation (EC) 1379/2013, as amended by a forthcoming common fisheries policy SI. This is a consequential amendment arising from the amendments made by that SI to avoid duplication of the same provision in two different pieces of legislation. Without this instrument, these 13 key pieces of domestic legislation would no longer operate effectively as part of the statute book after exit, so we would be unable to regulate these areas of UK fisheries.

This SI has been developed and drafted in close co-operation with the devolved Administrations, reflecting the devolution settlements. The amendments made by this instrument mainly extend and apply to the United Kingdom, with some exceptions, so each of the devolved Administrations was heavily involved in developing the approach. In that regard, I refer your Lordships to paragraph 4 of the Explanatory Memorandum, which sets out the extent and application of each piece of legislation. As I said, this is about technicality and operability. I beg to move.

Lord Hope of Craighead (CB): My Lords, I am grateful to the noble Lord for the way he has introduced these regulations. I confess that I came here puzzled by the way Part 2—the amendments of primary legislation—sets out the respective amendments to, on the one hand, the Sea Fish (Conservation) Act 1967 and, on the other hand, the Fisheries Act 1981 and the Marine and Coastal Access Act 2009. You have only to look at Part 1 to see that, so far as the Sea Fish (Conservation) Act 1967 is concerned, the amendment is extremely sparse. We are provided with two adjectives—one adjective is changed for another—without indicating what the altered phrase is in its extended form. In the cases of the 1981 and 2009 Acts, the draftsman has provided us with the complete phrases. For example, Section 3(4)(b) of the Fisheries Act 1981 contains an extended phrase "enforceable Community restriction" and "enforceable EU obligations". This is being substituted with "retained EU restrictions" and "retained EU obligations". I found it very difficult, looking at the two lines of the 1967 Act, to know what it was really dealing with because all we have are the two adjectives.

I am grateful to the noble Lord for drawing our attention to Annexe B where the language is expanded—the noun is attached to the adjective—and which explains the situation very well. For those who are interested in parliamentary draftsmanship, it is very interesting to see how the 1967 Act amendment—drafted, no doubt, with the guidance of the Scottish Government's draftsmen—is able to achieve so much with so few words, whereas the other two statutes have very extended amendments which require quite a lot of reading but are much more intelligible.

I offer these comments to thank the noble Lord for having explained it to me in his introduction, but also by a way of comment on two unusually differing methods of draftsmanship.

Baroness Parminter (LD): My Lords, I thank the noble and learned Lord, Lord Hope, for that point. Like him, I echo my thanks to the Minister and the team for the explanations in Annexe B, which were

provided at the request of the Secondary Legislation Scrutiny Committee. It has aided all of us to get a clearer understanding of exactly how these changes to the very discrete area of enforcement powers will accrue if we leave the European Union.

I make no substantive comment on the statutory instrument—it was to the satisfaction of the House's committees. Last week, in the other place, Minister George Eustice made it clear that there will be just shy of 100 Defra statutory instruments. This statutory instrument deals with a very discrete area of enforcement powers; I know the Minister is well aware of this issue, but there is a much bigger statutory instrument which deals with the policy issues around the many changes to policy which will happen to fisheries should we leave the common fisheries policy. It struck me and other Members as a cart before the horse situation. This is a very discrete element and it would have been helpful to discuss the two statutory instruments together.

Given that there will be some good nature required on both sides of the House to deal with this large number of statutory instruments, it would, at this stage, be wise to inform the department that it would be helpful in future—if possible—for issues which have common policy areas to be debated together.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his explanation, and for his courtesy in meeting to discuss this issue beforehand. I also thank other noble and noble and learned Lords who have raised important points during this discussion.

I begin, once again, by raising the more general issue about the process that we are expected to undertake in scrutinising such a large number of SIs in such a short time. As the noble Baroness, Lady Parminter, said, the Minister in the other place, George Eustice, confirmed that we have 98 Defra SIs to get through before Brexit day. I am sure the Minister will recognise the enormous challenge this creates to ensure proper scrutiny, given the sheer volume of legislation that faces us in the coming weeks. Of course, we would not be in this position if the Government had not insisted that a no-deal option remain on the table—an option that very few people across either House believe is sensible or workable. We continue to be concerned that by rushing through this legislation, mistakes will occur, and that in trying to deal with such a large volume of legislation, we will not be able to do justice to the scrutiny process.

I want to return to the issues we raised during scrutiny of a previous SI last week. While we welcome the establishment of the reading room to allow invited stakeholders to have pre-sight of SIs, in practice all it does is allow for a few extra days to analyse and digest them. There is little scope for any deficiencies to be addressed or to withdraw and re-lay any SIs that are identified as being flawed. Has any consideration been given to making this pre-scrutiny process more meaningful? Is it true that consideration is being given to a wash-up process before Brexit day to potentially address these deficiencies? Has any more consideration been given to the request from my noble friend Lady Young of Old Scone for parliamentarians to be given the same opportunity for earlier sight of the drafts? If not, we are being presented with a fait accompli, and can have very little influence over the wording before us.

On the subject of process, I absolutely agree with the point made by the noble Baroness. It seems very odd that we are not debating this SI with its sister SI, the Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019, particularly as the Explanatory Memorandum says that they should be read in conjunction. On the same subject, the Minister will know that in its report of 20 December, the Secondary Legislation Scrutiny Committee criticised the lack of detail in the Explanatory Memorandum and asked for a more detailed one to be produced. We are pleased that the department took this criticism seriously, but he will know that this resulted in our receiving the revised version of the EM very late in the day. I hope that that process will not be repeated.

Turning to the detail of the SI, the noble Lord knows that there was some discussion in the other place about the amendments which change "enforceable Community or EU obligations" to "retained EU obligations and restrictions". The Minister has now confirmed that the meaning of a "retained EU obligation" is as set out in Schedule 8 to the European Union (Withdrawal) Act. My question is slightly different. It is about losing the reference to the obligations being "enforceable". Are there any implications to removing the power to enforce this SI? I want absolute clarity on that, because I do not feel that the Minister in the other place answered it satisfactorily. Can the Minister please confirm who will be responsible for enforcing the retained EU obligations in these circumstances, as the SI does not seem to spell this out? This is another example of where the EU would have had the ultimate power of action, including fines, through the European Commission. Given that this has not yet been transposed into UK law, will there be the same powers of enforcement that we currently enjoy under EU law?

I want to move on to the removal of references to Article 42 and the control regulation from the Sea Fishing (Enforcement) Regulations 2018. As I understand it, this means that an inshore fisheries and conservation officer can no longer enforce Article 42, which states that fishing vessels engaged in fisheries subject to a multiannual plan cannot move their catches to another vessel unless they have first been weighed. If this provision is removed, is there not a danger that the rules on weighing catches could be evaded and overfishing allowed to take hold? Can the Minister explain why this change was made and what is being done to manage the risk of overfishing?

I want to raise the question of access to the European Maritime and Fisheries Fund. The SI understandably deletes reference to the fund, but it is worth £30 million a year to our coastal communities. Can the Minister confirm whether these payments will therefore cease on Brexit day? Following the responses given by George Eustice on this issue, can he confirm that the size of the UK fund will match that provided by the EU? Can he confirm the date from which access to these new funds will be available? In other words, will there be an access payment gap between the end of one fund and the beginning of another?

[Baroness Jones of Whitchurch]

Finally, can the Minister clarify the impact of the changes proposed to the fish labelling regulations, which he touched on? The Explanatory Memorandum now designates the Secretary of State to draw up and publish the list of commercial fish species accepted in the UK. I think I heard the Minister say that some of the arrangements for how this will work are in the forthcoming SI—which ideally would have been debated today, with this one. In the absence of that SI, can the Minister tell us by what date the Secretary of State will publish such a list? Will it be available on Brexit day? What happens in the interim if no statutory list of species is published? Is there a danger that endangered species could be fished, even for a short period? I look forward to the noble Lord's response on these issues.

7.45 pm

Lord Gardiner of Kimble: I thank all noble Lords for their contributions to the debate. I am grateful to the noble and learned Lord, Lord Hope of Craighead, for raising one of the issues that Ministers and Opposition Front-Benchers did in penetrating some of the ways in which these matters are set out. There are always lessons to be drawn out, but the drafting is apparently consistent with statutory instrument practice and guidance, applicable to all departments. But I will say to the noble and learned Lord that I am very grateful for Annexe B, which I found illuminating and most helpful.

Lord Hope of Craighead: I am grateful for that remark. It is curious, though, if it is consistent with practice, that the practice is so different. That was my point. On the one hand, you have an extremely economical presentation, and, on the other, you have a very useful but much more elaborate presentation. They are quite different.

Lord Gardiner of Kimble: I take the noble and learned Lord's important point seriously and, as one of the many things I learn from these debates, I will take it back. The noble Baroness, Lady Parminter, also mentioned the scrutiny of the committee and Annexe B.

I say to all your Lordships, and particularly to the noble Baronesses, that I understand the remarks about the extent of the legislative programme. I am most grateful for the way in which we are all seeking to deal with this responsibly. It is of course absolutely essential that there is proper scrutiny. I assure noble Lords that we have been working with business managers to ensure that the pace and flow of the statutory instruments is consistent with Parliament's capacity to scrutinise them. Indeed, Defra has drafted all the SIs in accordance with our standard practice. The drafting has been done with the full co-operation of the devolved Administrations and has been fully legally checked. Furthermore, because the SI makes amendments to primary legislation, it was necessary for the Office of the Parliamentary Counsel and the Office of the Advocate-General to check the drafting of those parts.

Clearly, as has been said—I may have alluded to it—the instrument was considered by the Secondary Legislation Scrutiny Committee and the Joint Committee on Statutory Instruments. No concerns about the regulations were raised. I value the ability to discuss, along with my officials, this or any other instrument with the noble Baronesses and any other Peers who are interested and wish to contact me before any debate. I very much hope that we will continue to do this. As I study the Explanatory Memorandum, I think it is important to highlight the contacts at the back: there is an official's telephone number if any parliamentarian would like clarification.

The noble Baroness, Lady Jones of Whitchurch, referred to the reading room. This is an online platform that was developed based on stakeholders' feedback to allow them to check the technical aspects of near-final SIs before they are laid in Parliament. It was designed with this specific audience in mind. I am always available to discuss these matters with any of your Lordships who wish to do so.

Baroness Jones of Whitchurch: Before the Minister moves on from that point, I think he used the phrase, "pre-laid" or "nearly laid"—it was something along those lines. The stakeholders feel that there is not really time for them to say, "Look, you have got this wrong or those powers wrong" and for any redrafting to take place. It would be lovely if that were the case. We appreciate the concept of the reading room, but if it does not result in a proper listening exercise and the potential to make change, it is not achieving what it set out to do.

Lord Gardiner of Kimble: I will certainly take that point back. Its whole purpose is to be constructive and helpful.

I also understand the noble Baroness's points about the number of statutory instruments on fisheries that will be laid. I entirely understand the intellectual argument. Today's instrument amends only domestic legislation. Defra has kept domestic primary and secondary legislation in this one SI and will use other SIs to amend directly applicable EU regulations. For instance, there will be one on wash-up—frankly, we could not have managed it—which amends EU regulations that have only just come into force; namely, those regulations emerging after the December Council. We will be laying that in late February.

The sister fisheries policy SI, as the noble Baroness described it, has been laid in draft. The SI and Explanatory Memorandum are available on legislation.gov.uk. We will have an opportunity to discuss that beforehand, but also in debate and future SIs.

The noble Baronesses are right. If we had had a perfect world, I am sure that all involved with fisheries could have had the opportunity for a debate on those SIs. As this one was ready, we felt—mindful of the numbers that are coming forward and as we were discussing technical and operable matters—that we could accomplish this today.

The noble Baroness, Lady Jones of Whitchurch, referred to retained EU law: enforceable Community restrictions, EU restrictions and EU obligations. Some of this came up in the other place. My honourable friend the Minister of State is responding by letter, because it appears that this is a very technical matter which relates to the different ways that the Act can

be read, depending on whether it extends to England, Wales and Scotland, or to Northern Ireland. I am assured that the statutory instrument is drafted correctly, but I will share a copy of this letter with all noble Lords who have contributed to the debate so that we are absolutely clear.

The responsibility for enforcement of fisheries in the UK will continue as it was before. This will be through the Marine Management Organisation for England and the equivalent bodies in the devolved Administrations. In England, marine enforcement officers will continue to enforce domestic fisheries legislation when the UK exits.

Much implementation and oversight will be the subject of new arrangements as proposed in the forthcoming Fisheries Bill—where we can discuss future arrangements but which is still in the other place—as well as the fisheries White Paper and the draft environment Bill, mindful of consistency with the devolution settlement. A lot of this will unfold in that discussion.

The noble Baroness, Lady Jones of Whitchurch, mentioned Article 42. This SI removes reference to Article 42 of Council Regulation 1224/2009 in the Sea Fishing (Enforcement) Regulations. Article 42, which prohibits transhipment in port, as the noble Baroness described, is deleted by the forthcoming sister SI to avoid a duplication in domestic legislation. This is because the authorisation for transhipment can already be given by way of a licence under Section 4A of the Sea Fish (Conservation) Act 1967. Consequently, the reference to Article 42 in the present SI is no longer needed. I am sorry that that is technical, but that is what the lawyers advised me.

On the very important question asked by the noble Baroness, Lady Jones of Whitchurch, about references to the European Maritime Fisheries Fund, the Government have confirmed that all EMFF projects approved before the closure date of the current programme in December 2020 will be fully funded under a Treasury guarantee. This applies across the United Kingdom. The Secretary of State announced on 10 December 2018 that after the closure of the EMFF there will be four new funding schemes to replace the EMFF across the UK. The new funding commitment will be set in the 2019 spending review, alongside decisions on all other domestic spending priorities, and will be comparable to the current programme. The devolved Administrations will lead on their own programmes.

The noble Baroness, Lady Jones of Whitchurch, asked about the list of commercial designations of fish. My understanding is that the list is currently published on GOV.UK. To be clear, the list specifies how fish species should be labelled for consumer information and does not specify which species can or cannot be sold. The list can be updated when there is a business need or a request from the sector, and that practice will continue after we leave. Any revisions need to be agreed by the Secretary of State on the basis of expert advice with a sound scientific rationale. I hope that this will reassure the noble Baroness that this is not about the Klondike: it is based on a sound rationale, science, et cetera, as well as full consultation with the devolved Administrations.

I am most grateful to all noble Lords for helping me with this SI. We will return to matters of fish by way of statutory instruments and, at some point, the Fisheries Bill. On this occasion, I beg to move.

Motion agreed.

Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019

Motion to Approve

8 pm

Moved by ***Lord Gardiner of Kimble***

That the draft Regulations laid before the House on 13 December 2018 be approved.

Relevant document: 13th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B).

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I will speak to both sets of regulations. I would from the outset like to place on record my appreciation of the work of veterinary surgeons. They undertake a wide range of tasks in our country and the profession is widely respected. With two members of my family in the profession, I am well aware of the challenges they face.

These statutory instruments aim to ensure that there will continue to be a functioning regulatory and legislative regime for the professional regulation of veterinary surgeons and farriers, and enforcement of legislation for protecting animal health and welfare for when the UK leaves the EU.

I turn first to the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019. In the UK, the veterinary profession and its standards are regulated by the Royal College of Veterinary Surgeons—the RCVS. Since 1966 the Veterinary Surgeons Act has provided a mechanism for veterinary surgeons who have qualified outside the UK to register to practise here. That mechanism, in so far as it applied to EEA and Swiss nationals, was subsequently amended to reflect the requirements of the recognition of professional qualifications directive after it was adopted in 2005.

Part 2 of this statutory instrument will ensure the operability and consistency of the system for registering EEA and Swiss qualified veterinary surgeons after we leave. Under the European system, EEA and Swiss nationals who hold degrees from veterinary schools recognised by the EU are entitled to have those degrees automatically recognised in any member state. When the UK leaves, EEA and Swiss qualified persons who wish to register to practise in the UK will still be able to do so; however, they will have to follow the same process as those who have qualified elsewhere. That process is currently set out in Section 6 of the Veterinary Surgeons Act, and requires that an applicant satisfy the Royal College of Veterinary Surgeons that they have,

"the requisite knowledge and skill",

to practise in the United Kingdom.

[Lord Gardiner of Kimble]

If the RCVS is satisfied that the degree the applicant holds meets this requirement and is equivalent to one from a UK veterinary school, there is no further assessment of their skill and knowledge. The Royal College estimates that a large majority of applicants from the EEA will meet this requirement. If the applicant does not hold such a degree, they must undertake and pass a professional examination administered by the Royal College of Veterinary Surgeons. This would help ensure consistency of approach to the regulation of veterinary standards in the future. These changes do not affect those already registered to practise veterinary surgery in the United Kingdom. Transitional arrangements also ensure that those who are in the process of registering with the RCVS on exit day are entitled to have their application considered under the current rules.

Part 3 of this statutory instrument makes a minor technical amendment to Section 29 of the Animal Welfare Act 2006. Section 29 currently provides inspectors in England and Wales with a power to enter premises to check compliance with the Welfare of Farmed Animals Regulations. Inspectors are appointed by local authorities, Welsh Ministers or the Secretary of State. This technical amendment ensures that that power of entry will continue to be available after exit day.

I turn now to the Farriers and Animal Health (Amendment) (EU Exit) Regulations 2019. This statutory instrument will ensure that the system for recognising farriery qualifications continues to function effectively after the UK leaves. This statutory instrument also amends Section 64A of, and Schedule 3 to, the Animal Health Act 1981, as well as three exemption orders under the Veterinary Surgeons Act, to ensure the operability of these pieces of legislation after EU exit.

In Great Britain, since 1975, farriers have been regulated by the Farriers Registration Council under the Farriers (Registration) Act. Interestingly, farriery is not currently regulated in Northern Ireland. Under the European system, EEA and Swiss nationals who hold farriery qualifications, or who have certificates attesting to their experience, are entitled to have those qualifications or that experience recognised in any member state. Part 1 of this statutory instrument will seek to ensure consistency of professional standards by proposing to use the same system for recognising the qualifications of farriers from the EEA as that used for farriers from the rest of the world. This means that those farriers whose qualifications and training are not equivalent to the UK standards, but who have two or more years of professional experience as a farrier, will need to undertake a professional assessment. If they have less than two years of professional experience, they will need to undertake full professional training in the UK, followed by the professional assessment, before being registered to practise in the UK. This will help to ensure consistency across the profession and will help to protect the health and welfare of horses.

We have of course discussed these proposals with the Farriers Registration Council, which is content with them. I emphasise again that these amendments do not affect the rights of those already registered to practise farriery in the United Kingdom.

I come to the powers of entry under the Animal Health Act. Part 3 of this statutory instrument makes technical changes to the Animal Health Act 1981 to ensure its operability. The amendment to Section 64A ensures that, where local authority inspectors in Great Britain currently have a power of entry and check compliance with certain legislation, that power will remain available to them after exit day. The relevant legislation includes orders regarding cattle and equine identification, vaccination in the event of avian influenza or foot and mouth disease, and the monitoring of zoonotic disease.

A further operability amendment, to Schedule 3, removes an EU obligation which will no longer apply after the UK leaves the EU, as the relevant authority will already need to be satisfied that adequate measures are in place to prevent any risk of the spread of foot and mouth disease before it can decide not to slaughter susceptible animals. This is a technical change and I emphasise that we will of course continue to co-operate with our friends and colleagues in the EU on disease control in the future. Disease does not respect borders and boundaries, and we must continue to collaborate and work together.

Three exemption orders under the Veterinary Surgeons Act 1966 all currently permit specific minor veterinary surgery procedures to be carried out in the UK by persons other than veterinary surgeons, provided that they have successfully undertaken an "approved course". In the UK, before a UK course can be approved, the Secretary of State, rightly, must consult with the Royal College of Veterinary Surgeons. As a member of the EU we were required to recognise any training undertaken in an EEA country which would allow a person to carry out that procedure there. There is no EU minimum standard for such training, no requirement that the member state in question must consult their equivalent to the RCVS and, importantly, no guarantee that the course is of the same standard as those undertaken in the UK. In the future, it will be for the Secretary of State and in some circumstances DAERA—as the responsible authority in Northern Ireland—to decide whether any non-UK course meets the appropriate standard, to ensure that there is more rigour. This will help maintain high standards of animal health and welfare in the UK.

These statutory instruments aim to ensure that there will be a functioning regulatory and legislative regime for the professional regulation of veterinary surgeons and farriers, and enforcement of legislation that protects animal health and welfare when the UK leaves the EU.

Lord Trees (CB): My Lords, I am delighted to speak on the veterinary surgeons and animal welfare regulations and I strongly support them. We are all well aware that there is some division on whether Brexit is a good or bad thing, but I respectfully suggest that this consequence of Brexit, this SI, is a good thing. It will help to ensure high standards of animal health and welfare and, most importantly, protect the public, which is the purpose of professional regulation.

Up to now, the Royal College of Veterinary Surgeons has had the power to ensure that all those whom it admits to its register to become members of the Royal

College, which is the legal requirement to practise in the UK, meet certain quality assurance standards. In particular, they have to have been trained in a professionally accredited institution. This applies to all graduates of every vet school in the world, including the UK, except those from EU member states. By virtue of EU law, all graduates of any institution recognised by the member state Government have to be automatically granted admission to the register of the Royal College of Veterinary Surgeons, whether or not that institution has been subject to a professional accreditation process. This SI will eliminate that anomaly.

There is an accreditation process in Europe, run by the European Association of Establishments for Veterinary Education, or EAEVE. Under the SI, the RCVS will be able to acknowledge graduates of EAEVE-accredited schools as meeting the RCVS quality assurance standards, thus admitting them to membership of the Royal College—and it has committed to this. However, a minority of vet schools in Europe have not been EAEVE accredited; they have either submitted and failed, or have not submitted to the accreditation process. For the first time, graduates of such schools will not be automatically admitted to the Royal College of Veterinary Surgeons register. They will have an alternative route, which is currently used by graduates of many vet schools throughout the world: namely, sitting the statutory examinations of the Royal College of Veterinary Surgeons. I would submit that all this is eminently consistent and fair.

There is a small downside. Currently, about 13% of EU vets admitted to the MRCVS register are from EU schools which are not professionally accredited in any way. Therefore, this SI may slightly reduce the number of vets able to work here. I submit that that is a small but worthwhile price to pay to assure the public that any MRCVS vet meets proper professional quality assurance standards. We face a shortage of vets in the UK and that is likely to be exacerbated by Brexit. However, lowering standards is not the way to respond to this. A new graduate stream of vets from the University of Surrey will enter our labour market this summer and a new vet school in the Midlands is planned at the Universities of Keele and Harper Adams. In the immediate future, the solution to our workforce shortage is to facilitate the employment of vets from EU or global institutions which are accredited to the satisfaction of the RCVS. Those vets are available and keen to come to work here. The Home Office needs to enable and facilitate that, and a first major step would be to restore vets to the shortage occupation list.

In summary, I strongly support this regulation. It will remove an anomaly, strengthen animal health and welfare and strengthen the assurance of the public.

Lord Hope of Craighead (CB): My Lords, I am happy to join the noble Lord, Lord Trees, in welcoming the veterinary surgeons regulation, and I also support the farriers and animal health regulations. I have just one comment, which relates to a point I raised on the fisheries regulation we discussed earlier. Our attention there was drawn to Annexe B, which summarised the effect of the amendments. I cannot help noticing that we do not have such an annexe for these regulations. I wonder whether the Minister could see if we could have such an annexe in future cases, because it is extremely helpful when one has a very telegraphic list of things, no doubt according to the usual practice. One finds that in both of these regulations; the first operative part amending the Act is a series of omissions and phrases with "or", without any guidance on what they are talking about. The inclusion of an annexe would have been extremely helpful for understanding the general effect of the proposed amendments.

8.15 pm

Baroness Morris of Bolton (Con): My Lords, I had not intended to speak, but I have enjoyed listening to the debate so far, and I declare an interest as my son's lovely girlfriend is a veterinary surgeon. I very much agree with the opening remarks of the noble Lord, Lord Trees. We hear a lot from all sides of the Brexit debate about the fear that there may be a lowering of standards. It is wonderful that this affords an opportunity to ensure that our veterinary surgeons are of the highest possible standard, which we all expect and enjoy. So I too very much welcome these regulations.

Lord Hope of Craighead: The noble Baroness reminds me that I probably should have declared an interest. My wife, who owns horses, benefits greatly from the services of veterinary surgeons and farriers.

Baroness Parminter (LD): My Lords, I am grateful to be able to participate in this debate. I agree with the comments of the noble Lord, Lord Trees, that we all wish our veterinary surgeons to be of the highest standard and it is incumbent on us in this House to ensure that the public have the highest confidence in them. However, I disagree most strongly with his position that Brexit will be good for animal welfare and the veterinary profession.

We need to reflect on the very real challenge posed by Brexit about how we will get the number of vets that we will need in future. I will come on to the specific issue of no deal, where there are particular issues about how we will get the number of vets, but I echo the comments from the noble Lord, Lord Trees, that it would be wonderful if the Government could confirm tonight that vets will be added to the shortage occupation list. This would allay some of those concerns. Given that 50% of normal vets and 95% of vets in slaughterhouses come from Europe at the moment, how we ensure that we get qualified vets in the UK in future is absolutely critical. Although the Minister and the noble Lord, Lord Trees, mentioned that, at the moment, only 13% of applicants come from colleges and veterinary schools around Europe which are not accredited, that is still a significant number and these regulations will create more barriers and fees. On top of that, if the Government keep to their stated immigration limits, there is a real risk that we will not have enough vets post Brexit.

That is particularly the case if we have a no-deal scenario. It was sobering to read the comments of the former Chief Veterinary Officer, Nigel Gibbens, who said that if we have a no-deal scenario, we will need an increase of 325% in veterinary certifications, to deal with the certification of animals and animal products at our ports. That is a major issue, which is relevant to this statutory instrument, as confirmed by the Secondary

[Baroness Parminter]
Legislation Scrutiny Committee. It asked the department how we will ensure we can get more vets should we face a no-deal scenario, with that requirement for 325% more veterinary certifications. The answer the committee received was about this new para-professional job, called a "certification support officer". This was news to me, and I have to say that, having read the information from the department, I am not really that much clearer about what these officers will do to address the huge shortfall in access to veterinary services if we leave the European Union without a deal. Defra has told the committee that it will not undertake veterinary duties, which begs the question: if these jobs are currently undertaken by vets, what administrative tasks will the new post of certification support officer be undertaking?

Is the Minister confident that these new postholders will be able to do the job? I for one am not clear what it is, but they will have to understand veterinary legislation and all the requirements for giving those certifications. Yet all they will receive is six hours of online training with an exam at the end. I understand that when the RCVS first discussed this with the department and with other departments, they were talking about post-training induction and a probationary period which would be under the direct supervision of a qualified vet. Having read some information online about the certification support officer, I can no longer find any indication of post-training induction or any probation under supervision. These certification support officers will be getting just six hours of online training, yet they will effectively be on the front line at a very important point, as the noble Lord, Lord Trees, says, where we have to assure the public that they can have confidence in public health and animal welfare.

In the supporting material the department makes it clear that it has made no estimation of how many certification support officers might be needed. Yet we know from the former Chief Veterinary Officer that there is an expected 325% increase in the need for veterinary certificates. So why has the department not done any estimation of how many new postholders we will need? Why is there not an impact assessment for this statutory instrument? That seems quite a necessary piece of information for Members of this House to have.

How many of these certification support officers do we now have in place? If we do leave in March, we are going to need these certification support officers, because we do not have enough vets to assure the public that their health, the health of people on the continent and the health of our animals are safe. That is an important point.

The noble Lord, Lord Trees, was right to raise the point about ensuring that our vets have the highest standards. I have been really proud that our country has in recent years been able to send our vets out to parts of Europe which have needed our expertise and our training to ensure that animals' lives are bettered. We are talking here tonight about how we are going to register vets from other European countries in the UK. What is unclear is how the Government are going to get EU countries to register UK vets. Our vets do wonderful animal welfare work. I remember when I was at the RSPCA—many years ago now—we regularly sent vets out to countries outside Europe but also to places such as Greece, to deal with some of their equine and canine problems. If we cannot get our vets registered, how are our UK animal welfare organisations going to be able to send out our vets to carry on their work supporting animal welfare charities in Europe? It is possible that we will have to set up 27 bilateral agreements with all the other member states, and some of those countries may not be willing to have our vets going over there.

Lord Grantchester (Lab): I am grateful to the Minister for setting out the purpose of these SIs so clearly and for meeting me and others before today to discuss the technical changes being made. I thank the RCVS and the BVA for the briefings they have sent. I declare my interest as a dairy farmer, and endorse the Minister's words of appreciation of vets and the work they undertake.

I also thank the noble Lord, Lord Trees, for his professional viewpoint and endorsement of these SIs. As the Minister is aware, Labour does not oppose these SIs, which are required to ensure that the UK has an operational system for regulating veterinary qualifications from EEA veterinary schools and to enable inspectors to enforce certain animal welfare standards following the UK's exit from the EU.

Additionally, the UK must enable the system for recognising farrier qualifications from the EEA, enforcing animal health regulations and approving courses for certain equine and veterinary procedures to remain operationally effective. Nevertheless, I have several concerns about the implications of these SIs—particularly the veterinary surgeons regulations—for business, animal health and welfare, and the public. The noble Baroness, Lady Parminter, was correct to raise concerns in her remarks.

Your Lordships' House will appreciate the central role vets play in ensuring that standards are upheld in animal health and welfare, food safety and public health. The prospect of Brexit has raised concerns that there will not be the veterinary capacity to carry out these fundamental roles. In a no-deal scenario, the UK will require more work from vets to meet the increased demands for the certifications needed for export of animals and animal products, and for pet travel. The House of Commons Public Accounts Committee warned of the risk of UK exports of animals and animal products being delayed at the borders because of a shortage of vets, and was concerned that the department was,

"cavalier about enough suitably qualified staff to take on this work being available".

An increasing shortage of vets was becoming apparent before the referendum in 2016. It is all the more worrying that, according to figures from the Major Employers Group, the veterinary profession is already reporting shortages in the UK of 11.5%. This is why we should be concerned that the changes in the SI may exacerbate an already challenging situation.

The Minister will be aware that EEA veterinary surgeons make up half of all new veterinary surgeons who register with the RCVS every year. EU nationals are critical to the UK, particularly in abattoirs, where 95% of vets are from the EU, responsible for upholding

animal health, animal welfare, public health and trade. Worryingly, recent figures from the Royal College of Veterinary Surgeons show that 32% of non-UK EU veterinary surgeons are considering a move back home and 18% are actively looking for work outside the UK, indicating that Brexit will exacerbate these shortages.

Does the Minister share my concern that a no-deal Brexit will exacerbate current shortages in the veterinary profession and create significant risks for trade, animal health and welfare, and food safety? What help are the Government providing to vets? What communication is being undertaken with them so that in six weeks' time, in the event of a no-deal scenario, they are ready for an increased demand for export health certificates for animals and animal products?

The Explanatory Memoranda for both SIs say that,

"it is no longer considered appropriate to provide more favourable treatment",

to EEA vets and farriers once reciprocal arrangements end. Can the Minister explain why these memoranda do not comment on whether, as with other EU exit regulations, there has been a policy change? Why has no consultation been undertaken with vets and businesses but only with the devolved Administrations? Indeed, the noble Baroness, Lady Parminter, drew attention to the lack of an impact assessment.

The RCVS has advised that the SI will enable it to automatically register veterinarians in its veterinary schools if the school is approved or accredited by the European Association of Establishments for Veterinary Education—EAEVE. However, the RCVS will not register graduates from certain other EU veterinary schools where the RCVS does not have sufficient assurance of educational standards. In the case of farriers, I believe it is the Farriers Registration Council that has the equivalent role.

8.30 pm

Although the change would impact only approximately 13% of EU veterinary applicants each year, the House may be concerned about the potential impact of this policy change at a time when recruitment is already challenging. Given the shortage of UK-trained vets and our dependence on vets from Europe, is immediately restricting the registration of graduates of non-EAEVE-accredited veterinary schools at this critical juncture prudent? Does the Minister share my concern that this may not be in the interests of farmers, stables, slaughterhouses and other supply-chain businesses that are reliant on vets and farriers? Can he assure the House that the increased demand for veterinary services will not lead to increased costs for UK exporters?

I would also be grateful if the Minister could advise whether the RCVS has the flexibility as a regulator to phase in the requirement in the event that the shortage of veterinary surgeons reaches crisis point under a no-deal scenario. Will he commit to monitoring the impact of the new arrangements and to publicise his department's assessment?

The next concern is about cost. I am aware that non-EAEVE-accredited applicants would still be able to join the RCVS register, provided that they pass the UK statutory membership examination, which costs applicants £2,500 to sit. Does the Minister share my concern that the cost of the exam may deter EEA vets from choosing to seek work in the UK when they can work freely in any EEA state without the need to sit an additional, costly exam? Does he think that businesses may be forced to fund the cost of an applicant's exam, if the recruitment crisis continues?

There may also be concerns regarding the RCVS's ability to manage a sudden influx in demand for examinations, especially in the event of no deal, when the UK would urgently need to recruit more vets, some of whom will not be EAEVE-approved. Can the Minister assure the House that the RCVS will have sufficient capacity to manage any increase in candidates seeking to take the statutory examination? What contingency measures are in place to ensure maximum flexibility within the system so that any unexpected spikes in demand can be managed in a timely fashion?

Given the importance of filling veterinary surgeon vacancies as soon as possible, can the Minister advise how long it would take an applicant to organise and sit the exam, and how long they will have to wait to receive their result? Delays could prevent a veterinary surgeon registering and taking up a crucial post. A non-EAEVE-approved student may be unable to travel to the UK, so can the Minister advise on whether non-EAEVE-accredited applicants will be able to sit the test outside the UK? This may be necessary to prove their credentials for visa purposes in the future.

I am grateful to the Minister for clarifying in his opening remarks that this SI makes various amendments to different parent Acts. Thus I am well aware, and content, that the regulations also maintain entry into premises for both vets and farriers, in order to perform their duties. I also thank him for clarifying that there are other Acts, as well as those mentioned in the documents, to which the instruments apply.

I am also grateful to the Minister for clarifying that, in the case of farriers, the technicality of removing the express requirement to take EU interests into account with regard to foot and mouth does not signify any change in oversight or precautions, because this is covered in other requirements to prevent the spread of disease in all situations and to every aspect of interest. It is important to recognise that not only is the scourge of foot and mouth well known but it is understood that there will be no let-up in precautions against all possibilities of an outbreak of disease.

I also have concerns regarding the reciprocal nature of arrangements between the UK and EU following exit day. This was mentioned by the noble Baroness, Lady Parminter. In paragraph 7.2 of both Explanatory Memoranda, it says that following exit,

"the EU will no longer recognise UK qualifications".

Will the Minister confirm that this will indeed be the situation from day one, affecting not only UK vets currently working in the EU but those considering various posts in the future? There is a large contingent of UK vets who undertake veterinary work in Greece, Spain and other member states. After exit it will no longer be EU member states or the Government in the UK that reciprocate access. Instead, it will be a matter of reciprocity between the RCVS-maintained standards and the EAEVE standards. I recognise that the RCVS

[Lord Grantchester]
is the authorised regulator in this regard, but can the Minister confirm that RCVS standards will be recognised as compliant with EAEVE standards, so that UK vets can continue to practise in the EU? I have every confidence in the RCVS's ability to perform the functions of the regulator, and that it will have ultimate oversight of EAEVE standards, but can any assurances be given that RCVS standards will be recognised internationally?

All this should underline for the Minister how critical it has now become to ensure that the veterinary profession has enough personnel of the commensurate standard to maintain all the necessary functions. Could the Minister confirm their status on the shortage occupation list under the new scenario drawn up by the Migration Advisory Committee? Will the Minister undertake to insist that the requirement to have sufficient vets is understood and recognised as being of the utmost national importance, to merit special status?

Finally, I refer to the new role of certification support officer. This has already been mentioned by the noble Baroness, Lady Parminter. I understand that the RCVS has approved this initiative from the APHA that certain administrative tasks can be undertaken by CSOs to reduce the burden on overstretched vets. While this further underlines the need for the veterinary profession to be on the shortage occupation list, it also brings up another point to be recognised. As I understand the role, about which the noble Baroness, Lady Parminter, has raised certain other concerns, the overall risks of the veterinary function remains with the vet, any partners and the business concerned. If the Minister confirms that I am correct, that will underline the need to monitor outcomes closely so that the department is clear whether this is a good initiative and whether it would be only a temporary scheme pending longer-term solutions.

Lord Gardiner of Kimble: My Lords, I thank all noble Lords for their considerable contributions to this debate. We are all extremely fortunate to have heard such a powerful speech from the noble Lord, Lord Trees, who obviously comes to this House with unique expertise and knowledge of the veterinary profession. He quite rightly referred to high standards and protecting the public. I want to add, and have written here, that it is also about protecting the animals.

As I do not have any horses now, I probably do not have to declare the points that the noble and learned Lord, Lord Hope, referred to about the use of a vet and a farrier, but we have all raised the importance of those professions. Again, I acknowledge the contribution of veterinary surgeons and farriers, who do so much to ensure high levels of animal health and welfare—and indeed, from the veterinary point of view, the protection of public health and food safety, and facilitating international trade. On behalf of the Government, I sincerely thank them all for the great work they do. I was very struck by my noble friend Lady Morris of Bolton's intervention as well: the veterinary surgeon profession is, as I said in my opening remarks, overwhelmingly respected. I am afraid to say that, over time, we have seen many professions lose that reputation. So many vets are ambassadors for enhancing animal health and welfare.

A number of questions were a little detailed. In particular, I might need to write to the noble Lord, Lord Grantchester, on the more intricate details of his request. I understand what the noble and learned Lord, Lord Hope of Craighead, said about the merits of annexe B. When I find SIs particularly impenetrable, the Explanatory Memorandum usually takes me back to an English version, but I will again take back and reflect on what was said about annexe B in the earlier SI being a helpful way forward.

On operability, where degrees meet our high standards due to having equivalent curriculum and training, holders of those degrees will be registered to practise. I think 87% of the EEA and Swiss nationals are unlikely to notice any changes at all, but a small number of cases have been highlighted where that will not be the case. It is right, as the noble Lord, Lord Trees, said, that those who do not have the standard of qualification should, if necessary, sit a statutory examination to prove that they can practise safely and effectively the UK. That will not affect anyone who is currently here or, as I said in my opening remarks, anyone during a transition period.

The noble Lord, Lord Grantchester, referred to mutual recognition. Indeed, the noble Baroness, Lady Parminter, referred to the great work our vets, doctors and so many people do around the world by way of support and so forth. UK nationals wishing to practise veterinary surgery in the EEA after we leave will be subject to the rules of the individual member state where they wish to practise. Although I would very much like to have vets who trained here remain here, I also understand the global reach so many of them have by going back to countries where that training is of benefit.

Almost all noble Lords mentioned veterinary surgeon shortages. The noble Lord, Lord Trees, rightly referred to the intake from Surrey and what we look forward to from Keele and Harper Adams. I assure your Lordships that Defra provided evidence to the Migration Advisory Committee strongly supporting the return of veterinary surgeons to the shortage occupation list. The MAC is due to report in spring this year.

The noble Baroness, Lady Parminter, raised the issue of official veterinarians and certification support officers. The Animal and Plant Health Agency launched a new role of certification support officer. It is designed to provide administrative support to official veterinarians, for the processing of export health certificates. The CSOs will work under close supervision of the official veterinarian so that they can continue to maintain high standards for the products we export. This will ensure that we use the valuable time of official vets more efficiently, to focus on the final assurance required to authorise and sign the EHC. As the noble Lord, Lord Grantchester, rightly said, this role was approved by the RCVS last November. There are clearly a number of preparatory and administrative aspects to issuing export health certificates—such as checking documents, identifying products or sealing containers—that a CSO can perform. We have consulted the RCVS and the BVA. The entry qualifications and curriculum have been adjusted in response to their comments, and the BVA has asked for these to be kept under review.

8.45 pm

As I said, CSOs will work under the direction of the official vet, who can judge which task can be delegated. Ultimately, the official vet must be satisfied that the required conditions have been met before signing the certificate. As the noble Lord, Lord Grantchester, again referred to, with the approval by the RCVS council at the beginning of November, the registration and training scheme went live on 17 December, free of charge to encourage uptake. Only official veterinarians can sign certificates for animal products intended for the EU, except in the case of fishery, shellfish and composite products intended for human consumption, which can be signed by a non-veterinarian, referred to as an official inspector in the certificates of those products. Certificates for an animal by-product—not for human consumption—have to be signed by an official veterinarian.

I will say to the noble Baroness that the issue of any assessment is not part of this SI. However, we are providing free training for 200 CSOs and 400 official vets, and recruiting 56 full-time staff at the Centre for International Trade to process export health certificates. We fully realise that we will clearly want to see how this proceeds. We think, given the advice we have received, that this will be sufficient, but we need to make sure that this works, and we recognise there will be an increased demand for export health certificates. Our discussions with the industry indicate that between its existing capacity, the use of CSOs and its ability to bring more vets into the market, it should be able to meet demand. Clearly, we will want to ensure that that is the case.

Turning to the 13% that will potentially be affected in the future, the first thing to mention is that, as raised by the noble Lord, Lord Trees, 10 schools in Europe do not currently meet RCVS-equivalent standards. It is absolutely possible that the 10 schools currently not accredited by EAEVE will eventually meet the RCVS standard if they make changes to their teaching curriculum. I hope that makes sense. I understand what the noble Lord, Lord Grantchester, says about recognising that we need more vets but there is, as the noble Lord, Lord Trees, recognised, an anomaly. We therefore need to reflect that we want parity of standards; that must be in the public interest and in the interests of animals.

On the issue of the exam fee, raised by the noble Lord, Lord Grantchester, I looked at this because I was interested in it myself. That fee is comparable to those of other professional regulators in terms of its purpose to recover the administrative costs of running a professional exam, including a clinical practice component. I should also say that the RCVS considers that—as I have said, we very much hope that those schools will come to the same standard—it has sufficient capacity to manage any anticipated increase in the number of candidates who may wish or need to undertake the statutory examination.

I should also say, coming from a dairy farming background, and I am grateful to the noble Lord, Lord Grantchester, for raising this, that foot and mouth is something that could not be worse news for any livestock farmer. I assure the noble Lord and others that I have, with the Chief Veterinary Officer, been in a number of practice runs with all devolved Administrations: this is something that is kept alive and very current, so that we are always fine-tuning and testing our response. Clearly, with disease, wherever it is—and there is now African swine fever in Belgium—we all need to be on our guard about biosecurity.

There were several points about details of timing and statistics, particularly from the noble Lord, Lord Grantchester. I will look at *Hansard* and reply with the best detail I can. Clearly, we are all looking forward and I think my diplomatic words were "strongly pressing" for vets to be put on that list. I assure noble Lords that the department, APHA and all of us who are engaged in this recognise the crucial role of vets. I put on record that we in the public sector owe an enormous debt of gratitude to EU nationals—we wish them to remain here and they will always be very welcome here—who have done so much to advance public health and animal health. They are crucial and I very much hope that, if there are any opportunities for any of us to meet them, as I do, we will stress the importance of what they are doing.

These are technical regulations in two very important parts of the animal health and public health arena and I think they are very important for our security.

Motion agreed.

Farriers and Animal Health (Amendment) (EU Exit) Regulations 2019

Motion to Approve

8.52 pm

Moved by ***Lord Gardiner of Kimble***

That the draft Regulations laid before the House on 13 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, for the reasons I have set out, I beg to move.

Motion agreed.

House adjourned at 8.52 pm.

Grand Committee

Wednesday 6 February 2019

Offensive Weapons Bill

Committee (3rd Day)

3.50 pm

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, we have started a little late for the obvious reason that people cannot be in two places at once. I must make the normal announcement that if there is a Division in the House, the Committee will immediately adjourn for 10 minutes.

Clause 26: Surrender of prohibited offensive weapons

Amendment 70A had been withdrawn from the Marshalled List.

Clause 26 agreed.

Clause 27 agreed.

Clause 28: Offence of threatening with offensive weapon etc in a public place etc

Debate on whether Clause 28 should stand part of the Bill.

Member's explanatory statement

This, along with amendments to Clause 29, would retain the current definition of risk for the existing offences in section 1A of the Prevention of Crime Act 1953 and Section 139AA of the Criminal Justice Act 1988, and for the new offence in Clause 29.

Lord Paddick (LD): My Lords, I have given notice of our intention to oppose the question that this clause should stand part of the Bill. I will also speak to Amendments 71 and 72. Clause 28 would change current legislation in terms of the risk that must be present for an offence of threatening someone with an offensive weapon to be proved. Currently, the person threatening must do so in such a way that there is an immediate threat of serious physical harm. The Bill changes this level of risk to what a reasonable person would think was an immediate threat of physical harm, not serious physical harm—it is only a perceived threat and not an actual threat.

In their joint briefing, the Standing Committee for Youth Justice and the Prison Reform Trust point out that the new definition is a much lower threshold for conviction. The person being threatened does not have to be present or at actual risk of harm. Previously, there had to be an immediate threat of occasioning grievous bodily harm; now, it is an undefined level of physical harm, and the "reasonable person" test is vague.

Clause 28 relates to offences in public places and Clause 29 to offences on further education premises. I question why these offences are needed at all. Section 3 of the Public Order Act 1986 states that a person is guilty of an offence,

"if he uses or threatens … violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety".

An affray may be committed in private as well as in public, and a person guilty of affray is liable to a maximum sentence of three years in prison or a fine, or both. Can the Minister explain which parts of these new offences are not covered by the offence under Section 3 of the 1986 Act?

Baroness Barran (Con): I am grateful to the noble Lord, Lord Paddick, for affording the Committee the opportunity to debate the provisions in the Bill updating the offences of threatening with an offensive weapon. It may assist the Committee if I briefly explain the provisions in Section 1A of the Protection of Crime Act 1953 and Section 139AA of the Criminal Justice Act 1988, and then explain why we have brought forward changes to these provisions. I will also cover Section 3.

Section 1A of the 1953 Act provides for an aggravated possession offence where the person in possession of the weapon threatens another person with the weapon in a public place. Section 139AA of the 1988 Act similarly provides for an aggravated possession offence where the person in possession of an article with a blade or point threatens another person with the article in a public place or on school premises.

Unlike the offences in Section 1 of the 1953 Act and Section 139 of the 1988 Act, which are simple possession offences, where a person is convicted of an offence under Section 1A of the 1953 Act or Section 139AA of the 1988 Act, the court must, in the case of an adult, impose a custodial sentence of at least six months' imprisonment, unless it would be unjust to do so. The power to make a community order is not available in circumstances where the mandatory minimum sentence condition is met.

It is an essential element of these aggravated offences that the defendant threatened the victim with the weapon,

"in such a way that there is an immediate risk of serious physical harm to the victim",

as the noble Lord, Lord Paddick, explained. However, the view of the Crown Prosecution Service is that the requirement that the defendant threatens with the weapon or article,

"in such a way that there is an immediate risk of serious physical harm to that other person",

sets too high a bar to prosecution and does not take proper account of the effect of the threat on the victim.

The noble Lord will be aware that in the 12 months to September 2018 there were just under 13,500 offences resulting in a caution or conviction for possession of an article with a blade or point and just under 7,000 for possession of an offensive weapon, but only 958 for threatening with a knife or offensive weapon. I hope the noble Lord will agree that fewer than 1,000 offences of threatening compared with more than 20,000 possession offences does not appear to be an accurate reflection of what is happening on our streets, where we are seeing one homicide a week in London as a result of knife crime. The noble Lord will be aware that this point was made by the Chief Crown Prosecutor for the north-east, Andrew Penhale, when giving evidence in another place.

[Baroness Barran]

The penalty for the offence of affray, which the noble Lord referred to, is three years' imprisonment or a fine, or both. The penalty for threatening with an offensive weapon is four years. The Government consider that that reflects the seriousness of using an offensive weapon to threaten an individual. Importantly, the Government also believe that it is fairer to the victim that the test be based on how a reasonable person in the victim's place would respond to such a threat, not on whether the victim was objectively at risk of immediate harm. The reference in Clause 28 to the effect on a reasonable person removes the element of subjectivity on the part of the person threatened. We believe that the replacement objective test is more appropriate in the context of these aggravated offences.

Striking out Clause 28 and amending Clause 29, as the noble Lord seeks to do, would maintain the current test of what constitutes risk of physical harm for these aggravated possession offences. However, I put it to the noble Lord that these offences were introduced to protect victims threatened with offensive weapons and ensure that offenders are appropriately punished. Clauses 28 and 29 will ensure that the victim's point of view is put at the heart of these offences. I hope that I have been able to persuade the noble Lord of the case for the new test and that he will support Clause 28 standing part of the Bill.

4 pm

Lord Lucas (Con): My Lords, can my noble friend say how many offences are committed annually on further education premises, which are the subject of Clause 29? Further education premises are a place where perhaps a majority of the people have an offensive weapon, as defined in the Bill, as part of what they need to do their training. If someone is spending their day with a screwdriver because they are on an electronics course and someone comes up and kicks them in the butt, and they turn round with the screwdriver in their hand, under the amended provision, they will be in chokey for it. We do not seem to have incorporated in it any defence which says that the person had the weapon for perfectly good reasons and was using it for perfectly good reasons when somebody else did something which caused the threatening situation. In public, one does not come across this often, but in an FE college it is a routine occurrence. I cannot see that we should criminalise arguments in FE colleges without there being some reasonable defence.

Baroness Barran: I thank my noble friend for his question. As we are including FE colleges for the first time in the legislation, we do not have the data as yet, but that will be captured in future. We have the data on schools and public places, which I am happy to share with my noble friend. On his last comment, there is no intention of criminalising arguments. We are talking about people in possession of an offensive weapon and threatening someone else with it in such a way that any one of us—assuming that we are all reasonable people—would assume that there was a risk of physical harm.

Lord Lucas: My Lords, if you are waving a screwdriver about, there is a risk of physical harm, which is the point of the old wording of "serious physical harm": to rule out such a random occurrence. In public places, in schools, by and large people do not handle physical, offensive weapons openly. In a further education college, a lot of people will be, because it will be part of what they are required to do. Nobody doing anything serious with a knife uses a blade that does not lock. Anybody using a screwdriver or other pointed implement will be using something that will be classified, or is capable of being classified, as an offensive weapon. We should make sure that somebody reasonably having in their hands an offensive weapon because they are using it at the moment when the flash of an argument starts does not become the cause for a mandatory prison sentence. There has to be the scope for a court to take a sensible view of what is going on. It is not like a school; it is an environment where offensive weapons are routine and where a lot effort goes into making sure that people use them safely. Common sense needs to be applied when considering whether it is an offence with a bladed weapon or just an argument taking place when one or both of the parties happen to be holding an offensive weapon, because that is what they were supposed to be doing at the time the argument started.

Baroness Barran: I hope that I can reassure my noble friend on two points: first, the spirit of the legislation is not to criminalise people in the way that he has described; secondly, the sentencing guidelines were updated relatively recently, in June last year, and give multiple scenarios for the courts to consider in sentencing—which I think would allay my noble friend's fears.

Lord Lucas: I would be grateful if my noble friend could share that.

Lord Elton (Con): My Lords, can the Minister remind us of the youngest age to which these provisions apply? I remind her that it is the effect of the legislation, not the intention, that matters.

Baroness Barran: The youngest age to which the provisions apply is 10—the standard age of criminal responsibility.

Lord Garnier (Con): My Lords, I invite the Minister to look at proposed new subsection (1A)(b) under Clause 29(2) on page 31 of the Bill, where there is reference to unlawfulness and intention.

Baroness Barran: I thank my noble and learned friend for helpfully pointing out that detail.

Lord Paddick: My Lords, I am grateful to the Minister for her explanation, most of which does not seem to hold water. She said that under the existing offence, someone can only get six months in prison, so they are unable to get a community sentence. However, an offence of affray carries a three-year sentence; therefore, you can give a community sentence to somebody convicted of affray.

The Minister also said that existing offences under the Prevention of Crime Act and the Criminal Justice Act set the bar too high, evidenced by only 958 offences of threatening and almost one homicide per week. If a knife makes contact with somebody, that is a substantive

offence, probably of grievous bodily harm or wounding, possibly with intent. Inflicting grievous bodily harm with intent carries a maximum life sentence, so the number of instances where somebody threatens but does not make contact is likely to be small, but the number of offences where somebody is found in possession of a weapon—perhaps in their pocket—and is not threatening another person is likely to be high. The number of offences of GBH or, regrettably, homicide is likely to be high. That is the plausible explanation for why the number of offences of threatening is low, rather than the evidential bar being set too high for the existing offences.

However, the only reason why the offence of affray does not provide a legitimate and reasonable alternative to the Government's proposals here is that one carries a sentence of three years and the other a sentence of four years. Of course, that could easily be amended by increasing the maximum sentence for the offence of affray. An objective test is included in the offence of affray under the Public Order Act. I am afraid that apart from the difference in the length of sentences, all the reasoning seems to fall away, bearing in mind that an offence of affray can be committed in private as well as in public so the offence would apply in FE colleges, schools and public places. However, I will not pursue the matter any further at this stage.

Clause 28 agreed.

Clause 29: Offence of threatening with offensive weapon etc on further education premises

Amendments 71 and 72 not moved.

Clause 29 agreed.

Clause 30 agreed.

Amendment 73

Moved by ***Lord Kennedy of Southwark***

73: After Clause 30, insert the following new Clause—

"Offence of threatening with a non-corrosive substance

(1) A person commits an offence if they threaten a person with a substance they claim or imply is corrosive.

(2) It is not a defence for a person to prove that the substance used to threaten a person was not corrosive or listed under Schedule 1 to this Act.

(3) In this section, "threaten a person" means that the person—

(a) unlawfully and intentionally threatens another person ("A") with the substance, and

(b) does so in such a way that a reasonable person ("B") who was exposed to the same threat as A would think that there was an immediate risk of physical harm to B.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale."

Member's explanatory statement

This new Clause would create a new offence for those threatening with a non-corrosive substance that they claim or imply is corrosive.

Lord Kennedy of Southwark (Lab Co-op): My Lords, Amendment 73 seeks to add a new clause to the Bill concerning threatening someone with a non-corrosive substance; as we have heard, it is known as a fake acid attack. My noble friend Lord Tunnicliffe first raised this matter at Second Reading in your Lordships' House.

We all know that acid attacks are horrific. They give the victim a life sentence of disfigurement, pain and mental anguish, and they need great courage and resilience to overcome that and rebuild their lives. The noble Lord, Lord Bethell, who was in the Room earlier, knows a lot about victims of acid attacks, particularly through the charity work he does.

The threat of an acid attack strikes absolute fear into a person. The person being threatened has no idea that the substance in the bottle in front of them is not real and not corrosive—that it could just be water. They feel the same distress, anguish and fear that the victim of a real attack would feel at that point. This amendment would create a new offence to deal with these fake acid attacks. While the substance itself is not dangerous, it is the fear we seek to address here. We can draw parallels with people pulling out fake guns. Most people would not know whether a gun was real—you would still be very scared if someone was pointing a gun at you. We need to look at that issue.

The offence in question would be a summary offence, and at this stage the amendment is a probing amendment, as I am very keen to hear the Government's attitude to this issue and how they think it can be dealt with. This is a real issue; fake attacks do happen. I look forward to the debate and the Government's response. I beg to move.

Lord Garnier: My Lords, I fully appreciate the intention behind the noble Lord's proposed new clause. Personally, I have a concern about filling up our statute book with more and more criminal offences, particularly when they replicate existing crimes. It is already an offence to threaten violence. I take the point he makes about replica, fake or toy guns, but might not his better route be to invite the Government to amend the law to increase the penalties for this sort of behaviour or to allow this sort of offence to be dealt with—if it is not already—in the Crown Court, where the sentencing powers are greater, rather than as a summary offence? To fill up—for no doubt worthy purposes—the criminal law with more and more offences that just replicate existing offences strikes me as unfortunate. There may be a better route than the one the noble Lord is advocating.

Lord Paddick: My Lords, I am grateful to the noble and learned Lord, Lord Garnier, for supporting what I said in the last group of amendments—albeit he has saved his comments for this group. My argument is that perfectly good legislation is on the statute book, and the additional offence concerning further education premises that the Government are creating in this Bill is unnecessary. To coin a phrase, what is sauce for the goose is sauce for the gander. Would the noble Lord, Lord Kennedy of Southwark, not agree that Section 3 of the Public Order Act, which states that a person is guilty of an offence,

"if he uses or threatens … violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety",

completely encapsulates the circumstances he is talking about in his proposed new offence? That offence, as I have said before, carries a maximum sentence of three years in prison, a fine, or both.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): I thank the noble Lord for explaining his amendment, which he went through at Second Reading. I cannot say that I disagree with the sentiment behind it, because we all know of cases where people have been threatened with fake acid. I also remember the spate of fake gun attacks a few years ago. When the person states that the substance is corrosive and it is not, that adds to the victim's distress—there is absolutely no doubt about it—and such things cannot be tolerated. But as my noble and learned friend Lord Garnier and the noble Lord, Lord Paddick, pointed out, criminal offences are already available that allow such fake acid attacks to be dealt with. Perhaps I should outline some of them.

4.15 pm

There is the offence of common assault, which is defined as any conduct by which a person causes another to apprehend immediate and unlawful personal violence. As a result, this offence could be used where a person threatens another with a substance which that person claims or implies is corrosive. There are also the offences, as the noble Lord, Lord Paddick, said, under the Public Order Act 1986. He mentioned Section 3, but Section 4 could also be used. Section 4 makes it an offence to use threatening, abusive or insulting words or behaviour towards another person with the intent of causing that person to believe that immediate unlawful violence will be used against him or another. Section 5 of the 1986 Act makes it an offence for a person to use threatening or abusive words or behaviour or disorderly behaviour which is likely to cause harassment, alarm or distress.

When noble Lords consider the distress and alarm that a fake attack could cause—whether with a fake gun or a fake corrosive substance—it is likely that such acts could be prosecuted under one of these 1986 Act offences. We should at this stage also bear in mind the motivation for some fake acid attacks. If the crime is of a racially or religiously motivated nature, the courts can impose stronger sentences. With that explanation, I hope that the noble Lord feels happy to withdraw his amendment.

Lord Kennedy of Southwark: I thank the Minister for her response. I also thank the noble and learned Lord, Lord Garnier, and the noble Lord, Lord Paddick, for their contributions to this short debate; both made reasonable points. I am not in favour of filling up the statute book with lots of laws; I have often thought that we should be consolidating more legislation. Legislation is sometimes confusing for ourselves, let alone members of the public. However, I tabled the amendment to highlight this offence. Young people in particular can often get involved in these situations without realising that they are guilty of an offence, and we must find a way of ensuring that they understand that. I will leave it at that at this stage, but I may come back to the issue on Report. I am grateful to everyone who spoke in the debate, and I beg leave to withdraw the amendment.

Amendment 73 withdrawn.

Clause 31 agreed.

Amendment 73A

Moved by ***Baroness Williams of Trafford***

73A: After Clause 31, insert the following new Clause—

"PART 5

KNIFE CRIME PREVENTION ORDERS

Knife crime prevention orders made otherwise than on conviction

Knife crime prevention order made otherwise than on conviction

(1) A court may make a knife crime prevention order under this section in respect of a person aged 12 or over (the "defendant") if the following conditions are met.

(2) The first condition is that a person has, by complaint to the court, applied for a knife crime prevention order under this section in accordance with section (Requirements for application for order under section (Knife crime prevention order made otherwise than on conviction)).

(3) The second condition is that the court is satisfied on the balance of probabilities that, on at least two occasions in the relevant period, the defendant had a bladed article with them without good reason or lawful authority—

(a) in a public place in England and Wales,

(b) on school premises, or

(c) on further education premises.

(4) In subsection (3) "the relevant period" means the period of two years ending with the day on which the order is made; but an event may be taken into account for the purposes of that subsection only if it occurred after the coming into force of this section.

(5) Without prejudice to the generality of subsection (3), a person has good reason for having a bladed article with them in a place mentioned in that subsection if the person has the article with them in that place—

(a) for use at work,

(b) for educational purposes,

(c) for religious reasons, or

(d) as part of any national costume.

(6) The third condition is that the court thinks that it is necessary to make the order—

(a) to protect the public in England and Wales from the risk of harm involving a bladed article,

(b) to protect any particular members of the public in England and Wales (including the defendant) from such risk, or

(c) to prevent the defendant from committing an offence involving a bladed article.

(7) A knife crime prevention order under this section is an order which, for a purpose mentioned in subsection (6)—

(a) requires the defendant to do anything described in the order;

(b) prohibits the defendant from doing anything described in the order.

(8) See also—

(a) section (Provisions of knife crime prevention order) (which makes further provision about the requirements and prohibitions which may be imposed by a knife crime prevention order under this section),

(b) section (Requirements included in knife crime prevention order etc) (which makes further provision about the inclusion of requirements in a knife crime prevention order under this section), and

(c) section (Duration of knife crime prevention order etc) (which makes provision about the duration of a knife crime prevention order under this section).

(9) Section 127 of the Magistrates' Courts Act 1980 (time limits) does not apply to a complaint under this section.

(10) In this section—

"court"—

(a) in the case of a defendant who is under the age of 18, means a magistrates' court which is a youth court, and

(b) in any other case, means a magistrates' court which is not a youth court;

"further education premises" means land used solely for the purposes of—

(a) an institution within the further education sector (within the meaning of section 91 of the Further and Higher Education Act 1992), or

(b) a 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010),

excluding any land occupied solely as a dwelling by a person employed at the institution or the 16 to 19 Academy;

"public place" includes any place to which, at the time in question, the public have or are permitted access, whether on payment or otherwise;

"school premises" means any land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed at the school; and "school" has the meaning given by section 4 of the Education Act 1996."

Member's explanatory statement

This Clause and the other amendments of the Minister to insert new Clauses after Clause 31 would make provision for knife crime prevention orders and interim knife crime prevention orders imposing requirements and prohibitions on defendants and subjecting them to certain notification requirements. The proposal is that the Clauses should become Part 5 of the Bill and the Bill should be divided into Parts when it is reprinted.

Baroness Williams of Trafford: My Lords, the new clauses to be inserted into the Bill by Amendments 73A to 73U introduce knife crime prevention orders. These new civil preventative orders will provide the police with the powers they need to more effectively manage people engaged, or at risk of engaging, in knife crime and help steer them away from crime.

As noble Lords in the Committee will agree, knife crime is devastating for victims, their families and for our communities. We must do all that we can to combat this epidemic. The latest police recorded crime figures, published by the Office for National Statistics in January for the year ending September 2018, show that there were 39,818 knife-related offences—an 8% increase compared with the previous year. Noble Lords will not have failed to notice the headlines in the *Evening Standard* on Monday.

The number of homicides where a knife or sharp instrument was used has increased by 10% in the last year to 276 offences. Of all recorded homicides in the latest data, over four in 10 involved a knife or sharp instrument. That proportion is higher than the previous year when the figure was 37%. Police-recorded offences involving the,

"possession of an article with a blade or point",

rose by 18% to 19,644 in the year ending September 2018. That rise is consistent with increases seen over the last five years and is the highest figure since the series began in the year ending March 2009.

The total number of homicides in London in 2018 was 134. The Metropolitan Police had the largest volume increase, accounting for 35% of the total increase. In 2017, there were a total of 116 homicides.

It is vital that the police have the powers they need to prevent knife crime and protect the public from the devastating effects of violent crime on our streets. It is already too late when we prosecute young people for knife crime. The police have asked for a new order which will help them to manage those at risk of knife crime in their communities.

Knife crime prevention orders will provide the police with the powers they need to steer people away from knife crime, where there is evidence that they carry a knife. The orders are aimed at those young people most at risk of engaging in knife crime, people the police call "habitual knife carriers" of any age, and those who have been convicted of a violent offence involving knives. Their simple purpose is to help protect the public, and to help respondents leave a dangerous lifestyle involving knife-related crime. In the case of young people, the police may have intelligence that a young person routinely carries a knife but, for a variety of reasons, they have been unable to charge them with a possession offence. Before risky behaviour escalates, a KCPO could be in place to divert a person away from a life of prolific offending.

People whom the police deem to be habitual knife carriers could also benefit from KCPOs. These are people who may have previous convictions for knife crime, or on whom the police have intelligence that they regularly carry knives. The KCPO would enable the police to manage the risk of future offending. This is the cohort that the police see as their main target for these orders. It is estimated that there are some 3,000 habitual knife carriers across England and Wales. The orders will enable the courts to place restrictions on individuals such as curfews and geographical restrictions, but also requirements such as engaging in positive interventions. KCPOs are not a punishment, but a means to support the individual who is subject to an order to stay away from crime.

It may be helpful if I explain how the order will work. KCPOs are available on application and on conviction. An application for a KCPO can be made by a relevant chief police officer to a magistrates' court or, in the case of young people, the youth court. A court dealing with an application may make a KCPO only if two conditions are met. The first is that the court is satisfied to the civil standard—on the balance of probabilities—that the defendant had a bladed article, without good reason, in a public place or education premises, on at least two occasions in the preceding two years. The second condition is that the court considers the order necessary to protect the public or prevent the defendant committing an offence. An application can be made with or without notice, but it will be made without notice only on an exceptional basis. If an application is made without notice to the defendant, the court may only make an interim order, which will take effect on service and will last until a full hearing takes place.

A KCPO is also available on conviction following an application from the prosecution, and where two conditions are met. The first condition is that the defendant is convicted of a relevant offence. This means a violent offence, or an offence where a bladed article was used by the defendant or another in the commission of the offence, or the defendant or another had a bladed article with them when the offence

[Baroness Williams of Trafford]
was committed. The second condition is, again, that the court considers the order necessary to protect the public or prevent the defendant committing an offence.

A KCPO may require a defendant to do anything described in the order, and/or prohibit the defendant from doing anything described in the order. The KCPO can include any reasonable prohibition or requirement which the court is satisfied is necessary, proportionate and enforceable. A KCPO which imposes a requirement must specify a person who is responsible for supervising compliance with the requirement. For instance, if the requirement is attendance of a knife awareness intervention, the person designated to supervise compliance may be the youth worker providing the intervention.

KCPOs will have a maximum duration of two years and must be reviewed by the courts after 12 months. KCPOs issued to under-18s are expected to be subject to more regular reviews. There are provisions for variation, renewal or discharge of KCPOs on application by the defendant or the police. There are also provisions for appeal against the making of the order. A breach of the order without reasonable excuse is a criminal offence subject to a maximum penalty of two years' imprisonment.

KCPOs are closing a gap in the law that has hindered the police in taking an active rather than a reactive approach to diverting people away from knife crime and managing the risk of knife crime offending. They provide an opportunity to take a proactive and preventive approach, re-engaging with them at an early stage and helping to protect those most at risk of using knives and, of course, of falling victim to them.

There are other civil orders available, such as gang injunctions and criminal behaviour orders, but not all individuals in the targeted cohort are gang members. Criminal behaviour orders could be used in some cases, but such orders are available only when a court is sentencing a person for an offence. It is important that the police have the right tools for the right situations and can make use of them.

Of course, the police have a range of powers to deal with knife crime, including the existing offence of possessing a bladed article in public without good reason, and stop and search powers under the Police and Criminal Evidence Act 1984. However, given the unacceptable scale of knife crime, it is important that the police have a broad sweep of possible powers to use as circumstances dictate. KCPOs will be a valuable addition to the tools available to the police to disrupt harmful behaviours, while avoiding the premature criminalisation of individuals. We expect them to be targeted at a relatively small but high-risk cohort.

This Government are determined to do all that we can to protect the public and keep people safe. This is why we are redoubling our efforts to end this senseless crime. The introduction of KCPOs has been welcomed by the National Police Chiefs Council and the Association of Police and Crime Commissioners. On behalf of the NPCC, Deputy Assistant Commissioner Duncan Bell said:

"The introduction of knife crime prevention orders will provide us with further means to help deter young people from becoming involved in knife possession and knife crime",

while West Yorkshire's Labour PCC has said that he fully supports the new knife crime prevention orders.

I commend the noble Lord, Lord Tunnicliffe, who is not in his place, for his prescience in tabling Amendment 77, which also calls for the introduction of KCPOs. I hope one of the noble Lords on the Labour Front Bench will agree that we should grasp the opportunity provided by the Bill to legislate now for KCPOs, so that we can do everything in our power to stop the tragic loss of life and serious injury caused by knife crime that is all too evident on our streets. I beg to move.

Lord Paddick: My Lords, I am grateful to the Minister for meeting me to discuss these amendments before today's debate. It will come as no surprise to her that we vehemently oppose them and will object, should she insist on them at this stage.

Noble Lords will recall ASBOs, anti-social behaviour orders, introduced by the then Labour Government in the face of an epidemic of anti-social behaviour. They were opposed for many reasons. They were an order that could be made on the basis of the balance of probabilities against very young children with no previous convictions, yet the breach of one of those orders was a criminal offence with a custodial sentence attached. In effect, the criminal burden of proof—beyond reasonable doubt—was circumvented by making the order subject only to the civil burden of proof, while a breach of the order resulted in a criminal conviction. As a result, hundreds of young people acquired a criminal record through that unfair and unreasonable route. This was rightly seen as disproportionate, and the subsequent coalition Government—in a move championed by the then Home Secretary, Theresa May—removed ASBOs from the statute book.

Other reasons for scrapping ASBOs included their ineffectiveness in curbing anti-social behaviour, the high rate of breach of the conditions of the orders, the difficulty in monitoring compliance and the resources required to ensure their enforcement. In some communities, having an ASBO was seen as a badge of honour, and peers looked up to someone if he had acquired one.

4.30 pm

Young people tend to live less structured, more chaotic lives, which meant that many young people subject to ASBOs accidentally breached the restrictions placed on them, making breach of an ASBO more prevalent among younger people. At the time, there were far more community policy officers, youth workers and people working in youth offending teams, yet monitoring and compliance stretched resources.

Some of the government amendments replicate ASBOs. No conviction is required, the case for a knife crime prevention order is made on the balance of probabilities and breach is a criminal offence with a maximum term of two years' imprisonment. The orders replicate all the wrongs of ASBOs, which this Government, in coalition with the Liberal Democrats, quite rightly did away with. Will the Minister explain the lack of corporate memory in the Government? ASBOs were in part replaced by anti-social behaviour injunctions, a civil injunction where breach is a contempt of court but the

mechanism is a civil matter and there is no criminal record. Someone can be fined or even sent to prison for contempt of court, but young people's futures are not ruined by a criminal record. Why can we not have knife crime prevention injunctions?

As the Minister explained, some of the proposed knife crime prevention orders are post-conviction—an addition to sentence—orders, similar to criminal behaviour orders, which were in part a replacement for ASBOs. A post-conviction order is imposed by the court in addition to sentence or criminal sanction, such as a fine. The important distinction is that the defendant already has a criminal record, having just been convicted of a criminal offence. We do not object in principle to this type of order, as we do to orders made in the absence of conviction on the balance of probabilities. However, there remain concerns about the kind of restrictions that can be imposed, the high likelihood of young offenders accidentally breaching the orders because young people make more mistakes, the lack of resources to provide positive activity that might be mandated for them to engage in, the lack of youth workers, the lack of resources to monitor and enforce the orders, the lack of community police officers and the lack of resources in youth offending teams, which have a statutory role to play in managing these orders. Knife crime prevention orders must specify a person who is to be responsible for supervising compliance with the requirement. The Minister gave as an example a youth worker, but presumably it could be a police officer. The question then has to be about where the resources are going to come from.

Among the restrictions that can applied in a knife crime prevention order is notifying the police within three days if the subject,

"uses a name which has not previously been notified".

Let us imagine that a 14 year-old who is subject to an order is stopped by the police. He panics and gives a false name and does not confess to the police within three days that he has given a false name. He would be liable to two years' imprisonment for breaching the order. Or let us imagine that he sees the officer the next day and says, "Actually, that's the name I'm using now, and I haven't told you before", but the officer forgets to update the records. In the Government's proposals, a defendant can give,

"a notification … by … giving an oral notification to a police officer".

Seriously? Or let us imagine that a 13-year-old is sent to stay with a relative during the summer holidays, as his parents work full time and they forget to tell the police. He would be liable to two years' imprisonment for breaching the order.

The order can require the defendant to be in a particular place between particular times to participate in particular activities. What happens if he is ordered to play football but does not want to? Two years in prison? It can prohibit the defendant from being in a particular place, being with particular people, participating in particular activities, using particular articles or having them with him. What happens if the people who he is banned from associating with follow him around? Two years in prison? These could be young teenagers, 12 year-olds even. This is a route to criminalising scores of young people.

The orders are complex—they take up 17 pages of amendments—yet the Government have tabled them in Grand Committee, after the Bill has passed through the Commons and where we cannot divide. This is not the way that we should be dealing with highly contentious legislation that the other place has not had any opportunity to debate or comment on.

The Magistrates Association has now commented on knife crime prevention orders. It says:

"We do not believe there is a clearly defined gap in existing police and court powers currently used to respond to possession of knives that would show that these orders are needed. It is unclear what situations these orders would be expected to cover, where out of court disposals, Criminal Behaviour Orders or court sentences are not currently available. Neither youth nor adult magistrates have called for additional powers, and especially in relation to Youth Court, courts already have numerous approaches that can be used in response to knife crime. We are also concerned about how these proposals will be implemented and used in practice".

The noble Baroness, Lady Lawrence of Clarendon, who lost her son, Stephen Lawrence, to knife crime, told the Home Affairs Select Committee only yesterday that she opposes these orders. If the Government will not listen to me, perhaps they should listen to her.

We need a long and detailed look at these amendments. I appreciate that the police may have asked for knife crime prevention orders and there may be a need for some form of order, but not these, with this scope. I ask the Minister to withdraw the amendments at this stage to allow further discussion.

Lord Ramsbotham (CB): My Lords, I entirely understand why the Government feel that they have an obligation to take meaningful and effective steps to protect the public from those who use offensive weapons. Even before today's letter in the *Times*, though, I already had five reasons for being extremely concerned about their proposal to introduce knife crime prevention orders, as set out in Amendments 73A to 73U. Like the noble Lord, Lord Paddick, I am concerned that the proposal should have been rushed through at such a late stage in the passage of the Bill, meaning that the proposed orders were not subject to scrutiny in the other place.

I am interested that all my reasons are shared by the Magistrates Association. First, there is no evidence that orders like these are effective at tackling harmful behaviour or will address the root causes of knife carrying, which, as many noble Lords have said at various stages during the passage of the Bill, is a symptom of wider social issues. Secondly, the orders can be imposed, on the balance of probability rather than a criminal standard of proof, on children as young as 12, which will result in the criminalisation of people who have not committed a criminal offence. Thirdly, I share the belief of the Prison Reform Trust and the Standing Committee for Youth Justice that a criminal sanction of up to two years in prison is a disproportionate sanction for a breach of a civil order. I also question the lack of any distinction between the penalty for breach by a child and by an adult, believing that a sentence of imprisonment for breach is not appropriate for children.

[Lord Ramsbotham]

Fourthly, there is no detail about how much the proposed orders will cost or how they are to be resourced. Neither is there an explanation of how the very wide-ranging requirements that will be placed on individuals made subject to orders are linked to offences with bladed articles, or how courts could know what requirements are going to be effective in reducing the risk of knife crime. The already inadequate impact assessment contains no details of cost, nor has the cost of the likely increase in custody numbers due to order breaches been factored in. The Police Federation of England and Wales has questioned the capacity of the police to enforce the orders, given the impact of cuts to police budgets and resources. Its chair commented:

"How the Home Secretary thinks we have the officers available to monitor teenagers' social media use, or check that they are at home at 10 pm, when we are struggling to answer 999 calls, is beyond me".

Fifthly, the proposed orders seem to be the very antithesis of the public health approach to the problem—the essence of the serious violence strategy advocated by Ministers both in this House and in the other place during the passage of the Bill. Furthermore, the orders are bound to increase the already alarmingly disproportionate outcomes for black and ethnic minority young people, which many noble Lords mentioned in connection with their relationship with the criminal justice system. If we could vote in Grand Committee, I would certainly vote against the amendments and I look forward to doing so on Report.

Lord Hogan-Howe (CB): My Lords, I support the amendment although I note that the noble Lord, Lord Paddick, in objecting to it, said that he would support some form of order if not this particular one, which seems in principle to suggest that something needs to be done. My reasons for supporting it are the ones laid out by the Minister. First, there is clearly a problem. Even last night, a young man was murdered in London—a 19 year-old—and it continues to be a problem. The problem has not gone away.

I do not have the same recollection of ASBOs as the noble Lord. They were a response to a moral panic. There was an issue about anti-social behaviour and for a time they provided a solution. I do not think that they were such a grave intervention in young people's lives, unless they chose to ignore the civil order that had been made by the courts. They were not criminalised by the order that gave them the ASBO, nor will this knife crime prevention order criminalise them. They will be criminalised only if they breach the order. That is an important distinction. It is then up to the court, which is unlikely always to award two years' imprisonment. There is no minimum sentence so I believe it is up to the judge to decide in each case what to award. But as part of changing the culture it is necessary.

We have sadly seen through various generations that young men in particular have used different types of weapons. The 1953 Act, for those who remember, was intended to address Teddy boys and greasers. It is a sad reality that gangs have used weapons and sometimes we have to change the law to change that culture.

The point about resources was a fair challenge—I have only just recently made the point that the police could certainly do with far more—but the police have asked for this measure. I checked before making my comments and certainly, the Metropolitan Police feel that they could police these things. Given the numbers involved and the seriousness of the offence, they think it is manageable. Of course, nobody would deny that it is an extra burden. But if the numbers are true—3,000 people in the UK, broadly—not all of them will get these orders and clearly not all of them will breach them so the measure is not entirely unmanageable.

The point made by the noble Lord, Lord Ramsbotham, about age was fair. Nobody wants to criminalise very young people, but the sad reality is that people as young as 12 are joining gangs and they are attracted by the drugs and money that go with it. I am not sure that they make a conscious, adult, mature decision to begin that process, but it is true that they can be threatening and that should be considered. In that context, I am trying to make sure that the orders are effective, rather than claiming that they are not necessary

A knife crime protection order is a non-conviction order for someone who is found carrying a bladed item on two occasions during the relevant period. What concerns me is that they could have been carrying an offensive weapon such as acid on one occasion, which presumably contributes to this concern that they may be involved in violence. If this order is intended to reduce that risk, that should be taken into account. I know why this provision tries to keep things simple—it is a bladed item, and we are all worried about knives. Sadly, they are not the only offensive weapons that young people use.

4.45 pm

On the prohibitions and requirements granted by this order, a notable exception is the power to search. At the moment, police search powers are limited by Section 1, which is a conditional power—there has to be a reason—or Section 60, which applies to a geographical area, in which case the police can search without cause. It seems odd that in this case, where someone has shown a predilection for carrying a knife—and given that the very reason for providing this order is to reduce serious violence—the police are not given an unconditional power to search. They still have to fall back on their Section 1 power, even though the person in question has been to a court, an order has been made and they have accepted that they are a risk or a threat. It seems odd that there is no search power linked to that. There is also the question whether certain minorities may feel challenged by this measure. The court has decided that that is a condition of the order. We should at least consider whether that should be available; you may decide it is not a mandatory issue.

My other points are relatively minor, but interesting. Subsection (7), introduced by Amendment 73F, sets out clearly when these orders may be given—a sentence of a court or a conditional discharge. What is omitted is breach of the peace. I am a bit obsessed by breach of the peace, an old common-law power which is still around. A breach of the peace usually indicates that there has been a threat of or actual violence. I wonder whether that might be considered as this amendment goes through.

Subsection (7), introduced by Amendment 73K, addresses when these orders start, and specifically whether someone has been sentenced to imprisonment, is serving a period of imprisonment or is on remand. Broadly, they start when the person is released. It does not refer to cases where someone is released on day or weekend release; presumably, they would not be covered. I realise this is not straightforward but it should be thought about, because some releases can be longer as someone prepares for re-entering society. Presumably, when they are eventually released, this order will apply, so there would be no lesser risk during an interim release.

Where an order lasts for one year or more, an annual review is mandated, and everyone involved will have to go back to court to make that review. In statute, that is an unnecessary burden. The person the order applies to may make that application—there is nothing to stop them at any point within the six months. As the process is annual, everyone will have to start getting ready for it—including the police and the youth offending teams—around nine months in, and I am not sure it is necessary. It is a bureaucratic burden, and the issue can be addressed through the accused's right to exercise their power to review their case.

The police continue to use stop and search. There are consequences to it which none of us like, but it is a human process. We have not invested in the technology that would help the police find knives without needing to ask people whether they have one, to check their behaviour, or to find out whether they have carried knives before. Technology is getting better, but one thing that worries me is that the scientific department, CAST, which used to help the Home Office create this type of solution, has been moved to the Ministry of Defence. I do not understand why, given that there is DSTL, and I worry that priorities for law enforcement may drop down the list. I have not heard any clarity on what technological solutions may help officers and others intervene where someone is carrying any kind of weapon other than a simple knife arch. We have had those for years and although they are not effective in mass areas, there is now cleverer software indicating where officers should target their search. I encourage the Government to look again at where those resources are being prioritised.

Lord Ponsonby of Shulbrede (Lab): My Lords, I rise to speak against this group of amendments. I note that the noble Lord, Lord Hogan-Howe, said that he supported the amendments but then went through a number of reasonable concerns. That shows that the process has not been consulted on adequately; indeed, it has been consulted on only with police forces directly and not on a wider scale with the large community of people concerned about youth crime.

Previous speakers have made the same point as the many people who have approached me, and other noble Lords, no doubt, about the possible unwanted effect—some people say that it is a certain unwanted effect—of criminalising young children who breach the order. Of course, many other forms of both statutory and non-statutory intervention are available to the courts, the police and YOTs.

I speak as a London youth magistrate who regularly sits at Highbury Corner Youth Court. I see the effects of knife crime very regularly. I welcome the noble Baroness, Lady Sater—she is a friend but I will refer to her as "the noble Baroness" for today's purposes—who sits in the same court as me. I know that she has true expertise in this matter. It would be easy for me to give a long, bloodcurdling list of the sort of offences I have had to consider in Highbury but I will make two simple points.

First, in the youth court, we deal with children. The court's primary purpose is to prevent reoffending. The offenders are still children, even when they are well over six foot tall and have committed knife offences. Secondly, a large proportion of the young knife offenders I see are also victims on multiple occasions. They are frightened, as are their families. In court, they tell me that they carry knives for self-protection. They are more frightened of being attacked with a knife than they are of the possible consequences of a court intervention of one sort or another. I understand that the Bill's purpose is to be preventive in order to break this deadly cycle of knife offences.

As I am sure most Members of the Committee have done, I read the Lammy report. Its central theme was a breakdown in trust, particularly between the BAME community and the police. I want to make a slightly different observation to that made by David Lammy. My observation of young people is that they tell adults when they feel in danger. Sometimes, but not often, they tell their parents. They tell youth workers, YOT officers and social workers. They tell people they come across in the street. If they are in school, they may tell teachers. In my experience, they even tell police officers because the officers are often—always, in fact—embedded in YOTs and tend to be very good at building good relationships with the young people who come into the YOT offices. Those officers are told when young people feel vulnerable.

This is a political forum, so it is fair to make the party-political point that the number of police officers, YOT officers, youth workers and street workers has been cut. Fewer of them are available to young people in their day-to-day lives. It is fair to say that the party opposite bears responsibility for that reduction in support for young people in Britain.

I have three questions for the Minister. In fact, she answered the first in her opening remarks, so I understand that these orders are appealable and reviewable. Secondly, are there any identifiable benefits of this order over the multitude of other orders available to us? There is no shortage of legislation. Thirdly, if this order got on to the statute book, would it be appropriate for it to be applied for after a failed criminal prosecution? We do this in other scenarios. If a domestic abuse prosecution fails, the CPS often applies for a restraining order, often against the man, and often that order is put in place. Is it possible—as far as I know, nothing prevents it—to apply these orders when there is a failed criminal prosecution?

I have received the same briefings as other noble Lords, but I thought that the one that summed up the position most succinctly and persuasively was that from the Association of YOT Managers, which made two points. First, these orders could fast-track children

[Lord Ponsonby of Shulbrede]
into having a criminal record—it will not necessarily be a sentence of two years, but a breach of the civil order will still lead to a criminal record. Secondly—all the briefing that I received says this—there may well be disproportionate effects on BAME youngsters.

The Lord Bishop of Newcastle: Before becoming Bishop of Newcastle, I was an archdeacon in south-east London. In my archdeaconry, sadly, was Eltham, where Stephen Lawrence died. I do not, therefore, underestimate the sheer heartbreak and devastation of knife crime, particularly when young people are involved. This crime is growing and growing. I have sat with families whose children have been victims of knife crime. I have officiated at a funeral where that has been the case. The circles of devastation and heartbreak just go on and on. I do not underestimate the seriousness of this problem; nevertheless, I object to this amendment and hope that it will be withdrawn, so that there is more time to reflect on it.

I wish to make two points. First, a legal process that treats children and adults in exactly the same way cannot be right. We have learned a lot as we have come to see how we were blind to what was happening in cases of the sexual exploitation of children. The girls who were involved—it is not always girls, but it often is—were just seen as bad girls, who had absconded from care and were drinking and taking drugs. These children were not seen as children in desperate need of our protection and were not seen as victims. I think about the situation in which a child of 12 is carrying a knife, probably because they are terrified, and then I look at the purpose of this measure, which is to protect the general public. Of course we need to protect the general public, but we, the general public, have a duty of care to the children in our society. We owe a duty to protect some of the children who might be caught by this legislation. We need to see what is happening when young teenagers are in this situation, where they are being seen as perpetrators but they are, as has been said, at least as much victims. I hope that we will look at the age-blind element of this proposal, as it cannot be right.

My second point is more general, although it still applies to children more than to adults. Up in the north-east, I have been seriously engaged in meeting governors and chaplains in our local prisons—HMP Durham, HMP Northumberland and HMP Low Newton, the women's prison. One thing that I have been told again and again is that sentences under 12 months are disruptive to people's lives in a completely dreadful way but serve no rehabilitative purpose. All the evidence shows that to be the case. The proposed sentences go up to two years, but that maximum may not often be applied and, as I said, a sentence of 12 months or less has no positive effect. If that is true for adults, it is even truer for young people. I hope that the sentencing structure can also be looked at again.

5 pm

Baroness Newlove (Con): My Lords, I support the amendments from the Government, because we have to send a message out there for young people. While I respect all noble Lords who talk about criminalising young people, I stand with several hats on here. I have worked with young people in prisons and with a YOT, and have gone around to find out evidence. The main thing that worries me in all this is that we can put prevention orders up—we have to send a message; we owe that to the rest of society, who do not feel safe—but I want to prevent the young people I have spoken about having to carry a knife to feel safe. We need to stop them early, saying that it is not really right for them. Some young people in gangs have said they do not want to do it but have no choice.

There are several messages here about young children. I have three young daughters who saw their father murdered by hands and feet; they have suffered and could have gone down the criminal route. It would have been justified to put them in that box and to say that there is a reason why they do it. It is the same for a knife. These young people will carry knives to protect themselves, but do not want to. So we have to have something there—a message for communities and young children to feel safe. I am very grateful for the Centre for Social Justice briefing on this. It welcomes the process of the order, but is concerned about the mechanisms of how it will be carried out.

The whole point here is protecting the child. We are hearing much about criminalising a child but not about looking after the child's welfare. I ask my noble friend the Minister, as did the noble Lord, Lord Hogan-Howe, whether we could make it a weapon-neutral offence that sends a message to all those carrying blades, knives and everything. Making it specific to a knife or blade does not really have the effect we want. We need to send a generalised message to help protect young people. I am concerned that we are not standing up here and protecting young people in the first place. We are looking at criminalising young people when they have been caught with something on them. We have to protect the people I have been speaking to, because they are really scared to come out of the school grounds. They go home to protect themselves. We are not looking at that niche of young children.

Baroness Meacher (CB): My Lords, I support many of the comments made by other noble Lords—the noble Lord, Lord Paddick, my noble friend Lord Ramsbotham and in particular the right reverend Prelate the Bishop of Newcastle. There are many problems with these prevention orders. We may need orders of some sort, but surely not these. I hope we have a really serious discussion about how to protect children. In subsection (5) of the proposed new clause in Amendment 73A, the reasons accepted as good reasons for carrying a knife do not include a fear of harm. Yet, as other noble Lords have said, this is probably the most common reason. I regard it as utterly right and proper; we do not want kids carrying knives, but if you are terrified of being attacked you should not be criminalised for carrying a knife in your pocket to protect yourself. I hope that before Report the Minister will give serious thought to including at least that—that is just one tiny bit—in the reasons accepted as good reasons.

A second problem is that, according to subsection (1) of the proposed new clause in Amendment 73C:

"An application for a knife crime prevention order … may be made without the applicant giving notice to the defendant".

The police can impose an interim knife crime prevention order, and the same requirements may be made under that interim order as under a full knife crime prevention order. Yet the defendant does not even know this is happening and has not put their side of the story or explained, for example, that they were carrying the knife only because they were petrified of the three boys who live down the road who were trying to get them involved in a gang. What is going on? I am terribly worried about that bit of it.

Others have mentioned the standard of proof—the balance of probability—when these kids go into criminality. Surely that cannot be right. However, there are many more general concerns about the imposition of yet more criminal deterrents on children as young as 12. I have read some briefings carefully and I want to refer to the one from the Children's Society. According to its *Good Childhood Report 2017*, an estimated 950,000 children aged between 10 and 17 had experienced crime. No wonder crime is often cited as the reason children carry weapons. This problem is rife and of course we all want something done about it, but are we really tackling it in the right way here? I do not think so.

We know that for two decades the Government have attempted to deter violent crime and anti-social behaviour through the imposition of criminal and punitive civil deterrents. So far, such deterrents have not had a substantial impact on reducing the level of youth crime and youth violence, but that is what we all want—we certainly do not want knife crime. Of course we want violence to be reduced, but these approaches have been shown not to work. As we know, the level of knife crime has risen sharply. There is a body of evidence to show that criminalised interventions do not lower crime rates. I referred in an earlier debate to the meeting in which we listened to Neil Woods. After years of working as an undercover officer and catching people involved in criminal gangs and so on, he realised that he was making not a jot of difference to criminality and violence. He threw it all up and has now written books on the subject. He knows that he has not made any difference, having put his whole life on the line and having been in considerable danger for many years. We need to listen to people like him.

Does the Minister accept that the Home Office needs to make targeting the adults who coerce, control and threaten these kids a much greater priority? Surely Ministers should not target these children with these orders. It just does not feel right and, to be perfectly frank, I do not understand it. Therefore, can we amend these proposed new clauses before Report to ensure that, if we are to have prevention orders—and I think that we probably need them—they focus on positive inputs for children under the age of 18 with the provision of support, treatment in the case of kids addicted to alcohol or drugs, educational guidance and help to secure the safety of the child.

When a child is considered for an order, surely they should be referred to children's social care for an assessment under the Children Act 1989 or to the national referral mechanism as appropriate. If the child is found to be at risk of exploitation, the police response surely needs to be entirely different from that envisaged in these amendments. I am not saying that there should not be a response but it should be different. As I said in relation to another amendment, we know that short-term prison sentences have very poor results in terms of reoffending. Why would we have more of them? In conclusion, I hope that the Minister will be willing to discuss how the emphasis of the amendments can be shifted from punitive, unsuccessful, short-term incarceration to something that will work. We have quite a lot of knowledge about what might work.

It is difficult to debate these proposals without reference to the huge cuts to youth services in this country. I know that it could be said that this is a political point but I do not mean it to be that at all. It is pretty desperate when £400 million is taken off those services at a time when we want these children to be referred to them for support, and £51 million has been put into the Serious Violence Strategy. That is one-eighth of the cuts—it is a peanut; it is nothing. Local authorities are facing a deficit in their budgets for children's and young people's services of £3 billion over the next five years. It seems that spending on police, courts and prisons is fine but spending on real prevention and turning young people around is something that we can dispense with. I say that because it is obvious that we should put money there rather than elsewhere. I look forward to the Minister's response.

Lord Hogan-Howe: My Lords, the noble Lord, Lord Ponsonby, said that because I had made a suggestion about how the amendment might be improved, it indicated a lack of consultation. In fact, one of the amendments was a police proposal which has not found its way into the Bill, so I am re-presenting it. It was not that it not been asked for or shared; for whatever reason, it was not there, which I found odd.

More fundamentally, we have to keep an eye on what the Bill is trying to do. Good parents of young people will either try to stop them mixing with the wrong people or stop them going to certain places where they would get into harm or cause it. That is broadly what the Bill tries to do where a parent cannot or will not: it tries to restrict where people can meet and whom they meet if they are causing a problem.

The right reverend Prelate said that she hoped the law would acknowledge the difference in age. The sad reality is that the criminal law makes no distinction about age other than by criminal responsibility. Murder is murder. Whether you are 16 or 33, it is murder. From 14 onwards, it is absolute liability; from 10 to 14, one has to prove a certain intent. We have to accept that that is true. The thing that concerns me in some of the contributions is that we seem almost to be giving a defence to someone who is terrified—which I accept—that it is therefore okay to carry a knife. That means that the offensive weapon law is useless. I understand that it is a sincere belief—I do not challenge that—but that is what everyone says. Sometimes it is true, and sometimes they are the aggressor. However, even if it is true, unless we are going to agree to people carrying guns and any offensive weapon justified by their fear about defending themselves, it is a real difficulty. It may be something on sentencing, or it may be that you can show reasonable cause—I do not think you can ever show reasonable cause for carrying an offensive weapon—the definition of an offensive weapon is something

[Lord Hogan-Howe]
intended, made or adapted to hurt people. It is important that we keep an eye on that because if we put a defence of that type in, it will be abused.

Baroness Meacher: The noble Lord suggests that some of us are saying, "It's okay to carry a knife". I want to make it clear that I am not saying that. I have a feeling that noble Lords around us are not saying it either. It is not okay for kids to carry knives. The only issue is what we do to help them not to have to carry a knife.

Lord Elton: If I may go back to the noble Baroness's speech, I am drawn to my feet simply to endorse her view of the inappropriateness of a short prison sentence and, with juveniles, of any prison sentence. For a time, I was Minister responsible for the welfare of young people, other than their health, at the DHSS, which simply meant juvenile offenders in secure accommodation and keeping them out of it. I then had three years being responsible for prisons in the Home Office. I therefore dedicated the next chunk of my life to stopping young people going to prison. You cannot do it when they are into crime; you have to do it before. You have to see that they are not frightened. They must feel safe at home, at school and on the streets, and you must see that they are not bored. The two spurs are fear—"To protect myself I must be armed"—and, "What on earth am I going to do? Let's go and make trouble. Let's take a car that does not belong to us and drive it very, very fast around Blackbird Leys in Oxford". It is the buzz they have to get. We have to provide that by means other than punitive, by pre-emptive means before the event. We have to engage them. When they are on the edge of the event, we have to try even harder. One good way is to find a group of young adults with enthusiasm for almost anything, but preferably a team sport or team activity; for example, white-water rafting, jazz playing, football, canoeing or rock climbing, give them the small amount of money necessary to set up a group to do that and the bored young and the frightened young will come there in clusters. When we did that when I was in what one might call civilian life, the people concerned learned to get £5 of funding from elsewhere for every pound that my people were able to give them.

What I am trying to preach here is outside the terms of this Bill, and I apologise for that, but we are putting the money, as the noble Baroness says, in the wrong place, too late. If only we had enough cash to do a sensible job for our young people. Many of them have no male adult role model, and it is almost impossible to get male teachers into primary education now because the dangers of being sussed as having improper relations with pupils are so great. It is a risk to cuddle a child if they fall and hurt themselves, and we have the new phenomenon of mobile phones which are distracting young adults so that they do not pay attention to children at all. All of that has got to be remedied by the community acting together to give young people things to do which excite them, in safe places with secure adult supervision. That cannot go into this Bill, but I hope nothing which puts juveniles in danger of short prison sentences will go into this Bill, because that is wholly counterproductive.

5.15 pm

Lord Lucas: My Lords, I share many noble Lords' concerns about the way in which these clauses have been drafted. I hope we will get a decent opportunity to review them, and chew through them, in a way which would have been better afforded if these amendments had been laid earlier. I received scant briefing, but they need serious attention and application of time to find out how to make this idea work.

I will raise a few detailed points. If under subsection (5) of the new clause inserted by Amendment 73A we are to expand on the definition of good reason, we are opening ourselves up to dangers, as we always do when we start doing these sorts of things. In paragraph (a) of subsection (5) we ought to say "in work", because a lot of uses are in work and not "at work". We also ought to include those reasonable uses of a bladed article which are associated with hobbies. If you are a carver, a fisherman, a sailor, let alone someone doing anything with ropes, you are going to need a knife. That that is excluded from paragraph (a) somehow downgrades those reasons for possessing a knife. We should be satisfied with the old test of good reason. Paragraph (a) introduces the danger that a lot of good reasons for having a knife are going to be downgraded.

The scope of the order is very wide, and we should be conscious that similar orders are being used quite actively. Last month, we passed a nine-month jail sentence on a rap group for singing a song in contravention of an order, so you do not have to do much to get a criminal record under these sorts of orders. Therefore, we ought to be conscious of how this lot apply to children, particularly the disruption to their already chaotic lives that can be caused by what we order them to do or not to do and the way that interferes with their education, or the beginning of their work. Indeed, who is allowed to know that they have one of these orders, and what is a school supposed to do if is knows that one of its children has one of these orders? That children's aspect needs to be more clearly worked out.

I entirely agree with the Government's sentiments in wanting to do something effective. As always, it is the role of this House to make sure that what is proposed is effective, and to not let the Government get away with it if it is not.

Lord Kennedy of Southwark: My Lords, this has been an excellent debate. As I was sitting here listening to so many excellent and knowledgeable speakers, I thought that this debate should have been in the Chamber, but that is for another day. I fully accept that knife crime prevention orders put forward by the Government today are, as the noble Baroness says, to deal with habitual carriers of knives. In that sense, we can support them in principle but there need to be some changes.

I am also clear that the present Commissioner of the Metropolitan Police, as well as the previous commissioner and the Mayor of London, support the idea of a prevention order as it could be a valuable tool in dealing with the epidemic of knife crime. It is always heart-breaking to see families destroyed when they have lost a loved one, but of course the perpetrator's

life is destroyed as well. There is a huge issue with young people carrying knives and so on. I have met one or two gang members; they can be very challenging individuals to meet. Some of the younger ones are certainly very frightened.

I was on the Wyndham estate some time ago, near where I went to school, to meet some of these young people and they offered me an escort off the estate. I said, "It's all right, I don't need an escort—I've lived round here". I was fine. I walked off with no problem at all because I am a fairly big 56 year-old bloke; I am not a 15 or 16 year-old, and I am not black. If I had walked out of there in other circumstances, I would have had a problem getting to the bus stop but, in my situation, there was no problem at all. The young people thought that I would not be safe walking on the estate, which was not the case.

The noble Lords, Lord Paddick and Lord Ramsbotham, made the point, as I think other noble Lords did, that it is a shame the way these amendments have arrived in this House. They have been tabled in Grand Committee and, as has been said, have not gone through the procedures in the House of Commons. My understanding of that House is that if these provisions had been in the Bill from the start there would have been an evidence session in the Commons with experts coming in to look at them. That has been lost and cannot happen now, which is a shame. I support the idea that they have come into the Bill very late. They were announced to the media, and here we are in Grand Committee, not the main Chamber. We will come back to them, or something like them, on Report. Having that at the end of the passage of the Bill is regrettable.

That is why we have tabled Amendment 77 in this group, which was put forward by my noble friend Lord Tunnicliffe. It attempts to insert a new clause which would require the Government within three months of the Bill becoming an Act to publish a draft Bill to bring in knife crime prevention orders. It would mean there would have to be a Bill, which I hope would start in the Commons so that it could have evidence sessions. As it would be a draft Bill, even before that there would be a Joint Committee of both Houses to look at the stuff in detail. We want to get this right. On each side of the House, we can give examples of where we have passed measures and have got them right or wrong, but most of the things that were done wrong were done in haste. If we want to sort out an issue, we all charge off and do something, and months or years later, we find that we did not quite get it right. Amendment 77 in my noble friend's name would ensure that we could do that and look at it in detail.

I am a big fan of draft Bills. When my noble kinsman Lady Kennedy of Cradley—I suppose I should refer to her as that—was on the Committee on the draft Modern Slavery Bill, I saw the work that she and other Members did. I remember the phone calls from the Home Office when the Minister talked to her—it was Karen Bradley—and a lot of detailed work went on to get that Bill right. I think we all accept that it is very good legislation. There were one or two issues—the noble Lord, Lord McColl, made efforts to improve some of the aftercare—but generally it is very good legislation. I would contrast that, as I often do, with the Housing and Planning Act, which is terrible legislation done on the back of a fag packet. It is absolute rubbish and most of the Government have quietly forgotten about it. It has been pushed to one side, so that no one ever mentions it again. I am a big fan of draft legislation, especially when it concerns sorting big issues out. The intention behind the amendment from my noble friend Lord Tunnicliffe is to do that.

This might seem a bit over the top, but we have had reports of these poor people being killed and their families destroyed. Why is COBRA not meeting to discuss this? We have COBRA meetings when we have a flood or a problem with the trains. This is about young people dying, so why is the Prime Minister or the Home Secretary not convening COBRA and getting the right people in the room to ask them, "What's going on here?"

There is an issue about youth workers, social workers and cuts to services because if we are going to have penalties to deal with the issue we need to deal with the causes as well. Why is COBRA not meeting? People are losing their lives, so I want a response on that. As I said, these are very important issues.

The noble Lord, Lord Hogan-Howe, made some excellent points as did my noble friend Lord Ponsonby with his experience as a magistrate in youth courts. He has experience of dealing with these people when they get to court. A lot of them have form. That is an important point. The right reverend Prelate also made some good points about the work that she has done in Newcastle and in south-east London. I used to go to a youth club—the Crossed Swords youth club—which was run by St Paul's, a Church of England church. Reverend Shaw used to run it. I am a Catholic, but I used to go there because it was a very good club. All the kids from the estate went there. It is important that we have those things. In many parts the country they have disappeared. Whether voluntary or local authority, they have all been lost, and the people are lost there. We need to get those things right.

The shame with this Bill is that it seeks to deal with the punishment of offenders but does not address any of the causes, which is one of the losses in this Bill. Generally speaking, I am not against the orders. They need to be looked at, refined and changed but in principle I am not against them. Noble Lords made valuable points and I hope that the Minister will take them on board.

Lord Paddick: My Lords, before the Minister responds, I did not address Amendment 77 in the name of the noble Lord, Lord Tunnicliffe, which we totally support. I did not want to stifle the debate, but it might be helpful for the Committee to be aware of the advice that I have been given, which is that if the Government insist on moving these amendments in Grand Committee and there is an objection to that taking place, the amendments will be lost and cannot be brought back on Report. I am sure that the Minister will bear that in mind in her response.

The Earl of Caithness (Con): My Lords, following what the noble Lord just said, I wonder whether my noble friend would consider this. If the amendment is

[The Earl of Caithness]
likely to be defeated, she could withdraw it and return to Committee as the first part of Report—I remember doing that with a Home Office Bill—so that given the concerns around the Committee, we could have a proper Committee stage and then very soon after that, come back on Report. In Committee, we can talk twice, and that should give the noble Lord, Lord Paddick, a chance to put down something constructive rather than the constant destructive arguments.

Baroness Williams of Trafford: My Lords, I have not found the comments destructive, although I thank my noble friend for the points that he made. I will not press the government amendments today. I take on board completely the point made by the noble Lord, Lord Kennedy, about the timing of the amendments. We will bring the amendments back on Report when again we will have a full chance to discuss them. The practice of noble Lords speaking only once on Report has fallen slightly by the wayside because noble Lords seem to speak several times in Committee and on Report.

To sum up today's debate, we all seek the same end, but the means by which we would get there differ. I thank the noble Lord, Lord Hogan-Howe, at the outset for clarifying a number of points that I did not know the answer to. He has saved me having to write to the Committee. I also thank my noble friend Lady Newlove for the very real-life experience with which she speaks and which we never fail to be moved by.

It is clear from the debate that some of the support for KCPOs is qualified. The noble Lord, Lord Paddick—and the theme was carried on by other noble Lords—said that KCPOs seek to criminalise children. As the noble Lord, Lord Hogan-Howe, said, their aim is quite the reverse. They are to prevent young people getting into criminality.

Lord Paddick: I never suggested that the aim of the orders is to criminalise young people. I said that young people being criminalised is the inevitable outcome of the orders.

5.30 pm

Baroness Williams of Trafford: My words were that the noble Lord said the orders risk criminalising children, rather than having the aim of criminalising children. The aim is to prevent that. As the noble Lord, Lord Ponsonby, and the right reverend Prelate the Bishop of Newcastle said, young people are often the victims. Other noble Lords made the same point. We have a Catch-22 situation where they are both victims and perpetrators.

The noble Lord, Lord Ponsonby, questioned the benefits of KCPOs, given his experience. Their aim is to have a preventive effect. Far from fast-tracking young people into a criminal record, the aim is quite the reverse. The orders are an alternative to prosecution. The imposition of restrictions aims to divert young people away from the criminal justice system. Of course, where a defendant is found not guilty of a violent offence, the option to give a KCPO remains open to the police, further keeping the young person out of the criminal justice system.

The noble Baroness, Lady Meacher, asked a very good question: what about the adults? Adults can be part and parcel of the problem, but can also be part of the solution. She is absolutely right that we must not forget the role of adults in all this.

At the outset, I reiterate that KCPOs are not punitive in nature. They are an additional tool for the police to help steer those subject to the orders away from knife crime. They are aimed at young people at risk of engaging in knife crime, at habitual knife carriers of any age and at those who have been convicted of a violent or knife-related offence. The Government are very concerned by the increase in knife crime, as other noble Lords have articulated. We are determined to do all we can to address it. We have set out a comprehensive programme of action in our *Serious Violence Strategy* to tackle knife crime and prevent young people being drawn into crime and violence, but we know that we need to do more. That is why we listened when the police—those on the front line of such activity, who are best-placed to know the nature of the problem and the profile of the people who carry knives—told us that they need additional powers to deal more effectively with people being drawn into knife crime.

The noble Lord, Lord Paddick, talked about the approach that the police might take when responding to a breach of a KCPO. Clearly, it would be for the police to decide what action to take where such a breach occurs. Similarly, it would be for the CPS to consider whether there is enough evidence against the defendant for a realistic prospect of conviction and whether it is in the public interest to prosecute them. The public interest will likely vary from case to case, taking into account factors such as the seriousness of the offence, the harm caused and the proportionality of prosecution in response. It has never been the rule that a prosecution will automatically take place where the evidential test is met, so prosecutors may advise on or authorise out-of-court disposals as an alternative to prosecution, which is not necessarily the end result. In addition, a person commits an offence and can be convicted only if a breach occurs without reasonable excuse. The maximum sentence is two years' imprisonment. It would be for the courts to determine the appropriate sentence in the usual way in any given case, so two years is not necessarily the end result and a community sentence is an option, too.

Unfortunately, as we have seen from the press so often recently, an increasing number of young people carry knives. Some are as young as eight. Many come to the attention of the police after teachers or youth workers have already tried to deal with the problem without reporting the incident to the police, for fear that a young person would be criminalised. However, as we have all said today, by the time that young person is prosecuted it is too late. Furthermore, I am sure noble Lords will agree that prosecution of young children is not always the most appropriate response if they are found with a knife. We have had those discussions today. KCPOs will enable the police and others to address the underlying issues and steer those young people away from knife crime through positive interventions.

The amendments contain important safeguards to ensure that KCPOs are not used inappropriately against young people under 18. In particular, the amendments

require the police to consult the relevant youth offending team before an order is made. Once made, an order must be reviewed by the courts after 12 months. The noble Lord, Lord Hogan-Howe, asked why 12 months was put in place. That is as a safeguard to ensure that a review is carried out. We fully expect the statutory guidance to provide for more regular reviews where a KCPO is issued to a person under the age of 18.

The noble Lord, Lord Paddick, asked why on orders made on application we have not adopted the approach applied to anti-social behaviour injunctions, where a breach is dealt with as a contempt of court rather than a criminal offence. In developing the KCPO, we considered that approach, but it is important to remember that we are dealing with individuals at risk of engaging in serious criminality, not simply those involved in anti-social behaviour, as debilitating as that can be for victims and communities. KCPOs will be used for individuals with a history of carrying a knife. Many will be habitual knife carriers, and we are clear that these orders will not be effective if those subject to a KCPO do not see that breaching the order would have serious consequences. They must include the possibility, at least, of a criminal prosecution and a custodial sentence on conviction. Other civil orders of this kind adopt the same approach, including sexual risk orders and serious crime prevention orders.

I am indebted to the noble Lord, Lord Hogan-Howe, for his invaluable contribution, which highlighted the operational need for these new orders. The noble Lord made a couple of very interesting suggestions: first, that the scope of KCPOs be extended to help tackle gun crime and the use of corrosives, and, secondly, on the use of electronic monitoring. Given the prevalence of knife crime, it is right that it should be the initial focus of the new orders but as we evaluate their effectiveness over time, we most certainly can explore whether they might have wider application. We can explore the possibility of adding an electronic monitoring requirement to these orders once they have bedded in.

The noble Lord asked about stop-and-search powers in relation to someone subject to a KCPO. We believe that the police already have adequate stop-and-search powers under PACE to monitor whether someone is carrying a knife. As he knows, if a police officer has reasonable suspicion that someone subject to a KCPO is carrying a knife, the officer can stop and search the individual under those existing powers. He also asked when the orders might start. The court may provide discretion that the order takes effect from release, when the defendant ceases to be subject to a custodial sentence, or if the defendant ceases to be on licence. It may take effect earlier while a defendant is on day release and subject to stringent conditions.

A number of noble Lords asked me about funding and tackling the issue locally. They will know, from statements I have made, of my right honourable friend the Home Secretary's intention to make up to £970 million available to the police next year. On a more local level, we are providing £1.5 million in 2018-19 for the community fund, which has funded 68 projects, and £1 million in 2019-20 to help communities to tackle knife crime. The Committee will have heard earlier today about the youth endowment fund, which has £200 million over 10 years to build evidence for early intervention. It will focus on those most at risk of youth violence, including those displaying signs such as truancy, aggression and involvement in anti-social behaviour.

We can take into account many of the issues raised today when preparing the statutory guidance provided for under Amendment 73S, and as part of the pilot we intend to run in the Metropolitan Police district before implementing these orders across England and Wales. As the noble Lord, Lord Paddick, has signalled that he cannot support these amendments today I will of course withdraw them, with regret. However, the Committee can be assured that I will return to them at Report.

Amendment 73A withdrawn.

Amendments 73B to 73U not moved.

Amendment 74

Moved by ***Lord Lucas***

74: After Clause 31, insert the following new Clause—

"Increased security measures for certain firearms

(1) The Firearms Act 1968 is amended as follows.

(2) Before section 5 insert—

"4B Increased security measures for certain firearms

(1) A person commits an offence if, other than at times when he or she has a weapon specified in this section on or about his or her person, it is not secured in accordance with Home Office Level 3 Security.

(2) The weapons specified in this section are—

(a) any rifle with a calibre greater than .45 inches, or

(b) any rifle with a chamber from which empty cartridge cases are extracted using—

(i) energy from propellant gas, or

(ii) energy imparted to a spring or other energy storage device by propellant gas.""

Member's explanatory statement

This amendment is intended to enable discussion of security measures for firearms generally.

Lord Lucas: My Lords, in moving Amendment 74 I shall at the same time speak to Amendment 78 in this group.

This Bill is about where we set boundaries to protect the public from the misuse of dangerous objects. This amendment gives us an opportunity to discuss where that boundary should be set in the case of rifles. In other bits of the Bill we quite clearly take the decision to ban dangerous objects for which there is no legitimate use and to control those for which there is a legitimate use. There is no perfect or absolute formula that I have been able to discover, in any country, for where that boundary should be set. Different countries come to different conclusions at different times. The use of weapons in sports is widely allowed—for example, archery, fencing, shooting, jousting, javelin and discus. It is commonplace, up to the highest level, that sports derived from martial arts—including those using our own bodies—should be allowed, and I support that. Given that, we then have to consider what restrictions we put in place. In doing that, I believe we should

[Lord Lucas]
consider what restrictions are necessary. What evidence is there that a restriction is required? We should start from a principle of allowing and then work to look for evidence that allows us to restrict.

When it comes to making firearms safe—meaning rifles rather than shotguns, for which you would have a firearms certificate—the issuing of a certificate to a holder is the principal means of protecting the public from the misuse of firearms.

5.45 pm

As has been said, we hope that the Government will get a move on in making the necessary changes and improvements to that system but, that said, it appears to work pretty well. I have not been able to find a recent record of a crime being committed with a legally held firearm that involved someone getting hurt. Obviously, there are historic examples, which have resulted in us making changes to legislation, but since then nothing has happened, as far as I can find out, to indicate that the current system is in need of improvement. Even if it were, our attention should first be focused on how we improve that system. What can we do? Can we convince ourselves that we are unable to take further measures to make the processes for deciding who should be allowed to hold firearms better? As I said, those processes seem to be working pretty well, although we absolutely need to keep them under review, up to date and effective.

The second layer of ways in which we protect the public is the requirement that firearms be kept safely. We have options to strengthen that. Level 3 security, which is that used by public servants who hold extremely dangerous weapons in private places, is generally accepted to be more effective than the level commonly required for rifles held by members of the public. We have an option, if we are concerned about particular firearms, to say that those firearms must be held using a safer method. That should be considered before we move to banning.

Then we should ask, in relation to the particular weapons that we are considering, what the actual danger is of those weapons falling into the hands of the public. The two weapons that are considered in the Bill have, as far as I can find out, never been used in a crime of any description. That is for the fairly obvious reason that they are entirely unsuited for use in crime. If you want to be a criminal and to use a weapon, you want something that you can conceal and that is easy to get out; if you want something with power, you want something that is truly automatic and not fiddly. These are not the sort of weapons that someone would go looking for if they wanted a weapon to use in crime, which is why nobody has.

We need to spend more intelligence and effort than we do on stemming the flow into this country of illegal handguns, in particular. There are things that we could do better. We are not as good as we might be in dealing with the standard flow of packets into this country. I would like us to concentrate on that, because that route allows a significant flow of dangerous weapons into the hands of dangerous people. By and large, private individuals who hold firearms for sporting purposes do not let them get stolen and, when they are stolen, they are not what the criminals want to use. The level of public danger from these weapons is very low.

We need to keep this under review. Things change from time to time. Fashions change. Ways in which people choose to commit crime change. At the moment, on the evidence that I have, and I have done my best to ask the Government to show us their evidence, although I have not got much from them, which I suspect is because they do not have much evidence—

Lord Robertson of Port Ellen (Lab): I am listening to what the noble Lord is saying and the assumptions he is making about the guns that are being talked about—or in this case, not talked about—and them not falling into the wrong hands. Why does he think the Home Secretary of this country said in the House of Commons that,

"according to intelligence provided by police and security services",

these .50 calibre guns,

"have been possessed by criminals who have clearly intended to use them"?—[*Official Report*, Commons, 27/6/18; col. 919.]

Does the noble Lord have better information and intelligence than the Home Secretary?

Earl Attlee (Con): My Lords, if I might help my noble friend, it is possible that Ministers and Members in another House have been slightly inaccurately briefed. For instance, they were told that the effective range of a .50 calibre round is 6,800 metres, whereas in actual fact, it is only about 1,800 metres.

Lord Lucas: My Lords, I was talking about the two forms of rifle which are specifically addressed in the Bill. These are not .50 calibre rifles, but lighter ones, which are adapted for use by disabled people and make it easier to reload the round using power derived from the previous shot. That is a .50 calibre, but again, the calibre alone does not tell you all you need to know about the rifle; you need to know whether a particular weapon is dangerous. The weapons used in target shooting tend to be heavy and cumbersome and the ammunition is not the same as that used in military operations.

I have asked for evidence. There may be evidence out there, but it has not made its way to me. My particular arguments are about the guns addressed in the Bill, as there is no evidence of misuse of those guns or available evidence showing that these are fundamentally more dangerous than other rifles. There is also no evidence that they cannot be properly secured through a mixture of physical security and the systems we have to ensure that firearms are only held by the people who ought to hold them.

Lord Robertson of Port Ellen: Before Hungerford and Dunblane, there had not been evidence of legally held handguns being used to massacre people. However, Hungerford and Dunblane happened, and after that, we passed legislation and the country is much safer as a result.

Lord Lucas: Absolutely. We need to keep these things under consideration. However, if one took the noble Lord's argument to its logical conclusion, we would

ban cars because they have been used deliberately to kill people. Any kind of weapon, including knives, presents a danger to the public. Because there is a legitimate use for these objects, we choose to look at how to balance the potential danger with the potential good. I hope that we will choose to do it on the basis of evidence, which says, yes, these things are dangerous, but we have systems in place which negate that danger. Rules on the weapons the public may hold legitimately, plus the safeguards we take, mean this is not the route through which weapons reach the people who will misuse them. In society as a whole, we have adopted a system which is safe and which allows us to live with the existence of those weapons. It seems to me that the evidence says that is the case at the moment. We do not have a recent history of misuse—of any degree at all—of the weapons which are currently allowed.

It is important to keep these things under review, but it is also important to be sensible. A lot of what is in our lives is dangerous. It is the business of legislators to balance that danger with utility and reach a conclusion; there are lots of different conclusions that can be reached. If we say that people are to have weapons of any description, it seems to me that the current arrangements for allowing people to have firearms are working very well. There is no evidence that incremental banning of particular types of firearm will produce any benefit at all and, as a matter of principle, we ought to take those sorts of decisions based on evidence, rather than because someone feels like it somewhere and no one quite knows why because it is buried in the decision-making processes that created this Bill.

My appeal to my noble friend is that we ought to be looking at where this process is going in the long term, at what we should be doing to make sure that firearms can be legally held, and at the security we want around that. Then, when we arrive at that conclusion, we can show that the weapons which fit within that are not a source of danger to the public, by their nature, because they are not what people who wish to commit crimes will go for.

A lot of guns are being recovered by the police, and by and large they are illegal guns because the guns that are being brought in are much more suitable for use in crime. People will not go for a hunting rifle to commit crime with. We are not talking about hunting rifles in the Bill, but the same considerations apply. If hunting rifles were being widely used in crime, we would be fussed about it, but they are not. The rifles that are the subject of this Bill are not used in crime. There is no instance of them being used in crime. There is nothing obvious about them which makes them more dangerous than other firearms in the context of the controls that we have. As a result of the deliberations in another place, our concerns about .50 calibre are under review. We ought to do the same with the other rifles that are mentioned here and come to a coherent, evidenced conclusion about where in this society we now choose to draw the line on the firearms that people may legally hold and on the purposes for which they may legally hold them. I am not saying that there is an absolute value to any particular place to draw the line; I am saying that we ought to do this on the basis of evidence, and nothing that my noble friends have been able to provide me with at the moment offers evidence that the rifles we are discussing pose any greater danger than the many other rifles that we permit people to hold. I beg to move.

The Earl of Shrewsbury (Con): My Lords, I rise to support my noble friend's amendment and to speak to my Amendments 78B, 79A and 79B. Additionally, I want to refer to an earlier comment about the Dunblane massacre and the handguns that were banned afterwards. I was chairman of the FCC at that time and remember it very well indeed. The only effect of the ban on handguns at that stage and of the incoming Government's Bill to ban other handguns below .32 calibre was to drive those handguns underground. Since then, it is fair to say that there are many fewer legally held handguns because it is illegal to hold them, but nine out 10 of the guns used in crime are illegal, and the number of illegally held handguns has ballooned over the years since Dunblane.

I wish to address lever-release and MARS rifles which are the subject also of my noble friend's amendment. They are used in general by disabled shooters who find it extremely difficult to use a standard rifle. These disabled shooters normally have big problems, such as arthritis in their fingers and hands, or mobility problems so they have to shoot from a sitting position. Prohibition of these two types of guns would cause those shooters considerable hardship and probably leave them unable to take part in their chosen target disciplines and competitions. I am certainly not aware of any evidence that MARS or LR weapons have ever been used in crime, and I feel strongly that they could easily be held on Section 1 certificates with level 3 enhanced security, which comes in guidance to the police. I have no problems with that provision whatever. These people look after their guns incredibly safely in any case. I look forward to my noble friend's views on those matters.

6 pm

The Earl of Cork and Orrery (CB): I object to some parts of the amendment. There are two or three areas where there is insufficient attention to detail for it to supersede the original Bill. For a start, there is a question about MARS and lever action which, as has just been raised, is used by target shooters in international competition. This is an important aspect of Paralympic competition and normal shooting competitions, so we do not want to catch those weapons in the amendment. Another item left out from the amendment, I suspect by mistake, relates to a prohibition on the use of .22 rimfire semi-automatic rifles, which are widely used for vermin control and the like. That certainly should be in the amendment. Another point is that although the amendment refers to,

"a calibre greater than .45 inches",

there are quite large numbers of rifles out there—

The Earl of Shrewsbury: My Lords, I do not think that .22 calibres are caught. I think the noble Earl is incorrect there.

The Earl of Cork and Orrery: As I read it, the amendment does not refer to the .22 calibre whereas a similar paragraph in the Bill does.

The Earl of Shrewsbury: My Lords, I think that may be a typographic error. It should refer to the .22.

The Earl of Cork and Orrery: Typographic error or no, it is not in there. Going back to large-calibre rifles, quite a lot of people get much fun out of remarkable things such as black-powder, muzzle-loader and Snider .577 rifles, which are far larger but have very low effects. Again, more detail is required to ensure that these sort of things can be legally held.

Earl Attlee: My Lords, I have tabled Amendments 80A to 80D in this group. If the noble Lord, Lord Kennedy of Southwark, had not tabled his Amendment 79 concerning .50 calibre rifles, he would have been best described as asleep at the wheel. I think the Committee will be grateful for the opportunity to discuss this matter and, hopefully, identify a solution. Other noble Lords have discussed the genesis of this matter. A .50 calibre rifle is clearly in a class of its own. However, I have some concerns about the quality of briefings given to Ministers and to Members of the House of Commons. It is therefore not surprising that the Government had to drop their provisions on .50 calibre rifles in the House of Commons.

While .50 calibre target rifles have some extraordinary characteristics, they are entirely dependent on the skill of the user. It is tempting to believe that all one has to do to hit the V-bull centre of the target is to line up the cross-hairs of a telescopic sight and squeeze the trigger. The reality is rather more complex. It is a great sport simply because it is so difficult, and therefore not surprising that target shooting is an Olympic sport. First, the rifle has to be held correctly and in exactly the same way for every shot. The shooter's breathing has to be controlled perfectly. If I was trying to shoot at 1,000 yards I doubt that I could keep the cross-hairs on the target, let alone the bull. Trigger action is also all-important. For instance, snatching the trigger is the cause of a lot of inaccuracy. Frankly, due to the recoil, if I tried to fire a .50 calibre target rifle I would be terrified—a 7.62 target rifle is bad enough. For all these reasons, an applicant for a firearms certificate for a .50 calibre target rifle will not be successful unless considerable skill can be demonstrated with lighter but full-bore target rifles.

It is of course exceptionally unlikely that a terrorist would have the necessary skill to use a .50 calibre rifle in the way feared by some. My noble friend Lord Lucas said that these rifles had never been used in crime.

I do not have a philosophical objection to private ownership of a .50 calibre target rifle. However, two mischiefs remain. The first is that if one was stolen it could for a while give rise to major security concerns. This might result in certain events being cancelled. The second is this. I do not have the skill to use a .50 calibre rifle effectively. However, I have the skill to incorporate one into a remote-controlled weapon system and it would have none of the marksmanship weaknesses that I have. The good news is that it is very unusual for someone with this level of engineering skill to use it for such evil and illegal purposes. It is even less likely in the case of today's radicalised terrorists, who usually have very limited skills.

In the UK, we suffer mercifully few disasters with legally held firearms. This is because we get the balance right. Ministers generally make the right decisions, taking into account advice from Home Office officials. There is one particular official who has done sterling work over many years and has briefed or worked with many of us in this Committee. I am sure that noble Lords know who I am talking about and we should be grateful for his efforts.

My Amendment 80A would build on my noble friend Lord Lucas's Amendment 74 and provide that special storage and transport conditions on a firearms certificate were mandatory in the case of a high muzzle energy rifle; that is, one with more than 13,600 joules of energy.

My Amendment 80B would give the Secretary of State an order-making power to specify the special storage and transport conditions to be included on the certificate. Of course, we could go for guidance rather than an order. I have made no provision for parliamentary scrutiny because I do not believe it to be sensible to make the security details public.

So far as I can see, the current standard gun cabinets are designed to prevent unauthorised access or opportunistic theft and they appear to do so. However, they are not designed to resist a determined attack using specialist equipment. My noble friend Lord Lucas proposes a much higher level of security and I support this. While my noble friend's amendment is clear on what is proposed, I think that there are drafting issues and I suspect that the same applies to my amendment.

I understand that some owners of .50 calibre target rifles already have the requisite secure facilities. However, some might not be so lucky and there is also a vulnerability when these guns are in transit. Currently, it is illegal to possess any of the key components of a firearm without a certificate and this includes the bolt. My Amendment 80C would allow another person to be in possession of a bolt if this was in connection with a special storage and transport condition. I would expect there to be documentary conditions involved. This provision could be useful in allowing club officials to hold the bolts for the owners of a .50 calibre rifle. It could also allow the rifle to be transported without the bolt being present with the rifle. Therefore, if a rifle is stolen but the bolt can still be accounted for, there is no security problem and no risk.

I have made no special provision about the ammunition because I do not believe that it is necessary or beneficial. This is because dealing with the rifle solves the problem and it is not particularly difficult to acquire or reload a few rounds of .50 calibre ammunition for some terrible purpose.

I am not fixed on whether we solve this problem by storage conditions or by disassembling the rifle, thus rendering it harmless except when in use on a range, or a combination of the two. It may be best to have a range of options available to suit the circumstances, and this could be provided for in the proposed order or guidance. If we want to have a disassembly option available, we need my Amendment 80C, or something similar on the face of the Bill.

If the sense of the Grand Committee is that something along the lines of my suggestion is acceptable, the Minister may be more tempted to take the opportunity

to come up with a properly drafted government amendment. The consultation could then go forward as planned and, with benefit of the consultation, the Government could implement the necessary changes by whatever means is provided in the Bill.

My final amendment in this group is Amendment 80D. The Firearms Act 1968 does not define a rifle, other than to say that the term includes a carbine. This is because there was no need. I was concerned that the prohibition of high muzzle energy rifles might catch preserved artillery and tank guns, which are currently licensed by an ordinary firearms certificate if they have not already been deactivated. I have been assured by officials that the term "rifle" would exclude artillery pieces, and this makes sense. However, if we do make the changes regarding HME rifles, an individual police officer might want to make a name for himself by claiming that an artillery piece is caught by any legislation we eventually pass. He could claim that the term "rifle" means a firearm that has been rifled. Indeed, one noble and gallant Lord has asked me to look at and raise this point. I have previously been involved with a problem arising in this way, concerning the Vehicle Excise Act, concrete pumping machines and mobile cranes—don't ask.

It would be best to define a rifle in the 1968 Act, but I would be happy if the Minister gave a categorical "Pepper v Hart" assurance that the term "rifle" does not include larger pieces of ordnance.

The Earl of Erroll (CB): My Lords, I want to make a couple of general comments about these amendments. I never think it is worth passing legislation just because it looks good. Is it going to be effective, or not? Sometimes, where there is a problem, one hits something that looks like an easy target; it sounds good, and will keep the papers and the public happy. It may not change anything in the real world, which is about trying to protect people.

Some of this legislation could be held to be against the Disability Discrimination Act, in that some people who have problems can shoot with modified rifles, take part in international competition and get a huge sense of pride and success from doing well in it. However, the rifles do need to be modified and without these amendments, it looks as if they will be excluded from competition. It would be very sad if people who cannot run, jump or do other things have the one thing they are good at taken away from them. We should think quite hard about that.

Purely defining something by its muzzle size catches a lot of things that are not dangerous at all—muzzle loaders, for example. We have not really dealt with .50 calibre properly. Although a .50 has a good range, it is not going to pierce armour and cause huge destruction unless you have a military-grade armour-piercing round for it. You are not going to get one of those very easily, and you certainly are not going to load it yourself.

Earl Attlee: My Lords, I have some bad news for the noble Earl. Even a .50 calibre ball round has very high destructive power.

The Earl of Erroll: I suppose it is destructive, but it was penetrative power I was thinking of.

Earl Attlee: Penetrative power as well.

The Earl of Erroll: I stand corrected, but there are many other things that do too. I do wonder whether we are just homing in on one particular device, when you can make yourself a mortar that can blow up a lot of people. Why would you want to choose that particular weapon? I am very sad when I see us unable to take part in international competitions on a global stage, because we are worrying about something that has not been a problem yet.

Baroness Barran: I do not want to stifle the debate but there is concern about the number of groups of amendments we have to get through. If noble Lords could keep their comments reasonably brief, that would be much appreciated.

6.15 pm

Lord Robertson of Port Ellen: I appreciate what the Minister is saying but this is a critical part of the legislation, where some strong views are held on both sides. Having sat through the debate so far, I also appreciate that we want to finish the business. I am not an expert in this field but I know that there are many experts around, who will undoubtedly contribute. This matter has excited a lot of interest outside the House.

First, I am not anti-target shooting. I was a member of the House of Commons rifle club, when it existed, and went target shooting in the subterranean depths of this building. Of course, I was Defence Secretary and then Secretary-General of NATO so I must have ordered huge quantities of guns of every description. As I said at Second Reading, I am a resident of Dunblane and became deeply engaged in the debate that took place after that shooting. I would contradict what was said about the banning of the private ownership of handguns leading to an increase in the amount of crime involving them. My colleague, the noble Lord, Lord Hogan-Howe, who has now left, also disagreed with that.

I am here to probe the issue of .50 calibre guns. In other contexts, they would be known colloquially as sniper rifles; they certainly have a destructive power over very long distances. I want to pray in aid what was said by the Home Secretary. I am not normally a great disciple of his—I think that he is running for Prime Minister at the moment, or at least leader of the Conservative Party when the vacancy eventually and inevitably occurs—but, as the Home Secretary, he has access to a lot of information that the rest of us do not. So, when he comes to the House of Commons and makes Statements, we should listen carefully.

We should also listen to what the Home Office had to say in preparation for the Bill. The department produces impact assessments—a very good innovation, whenever they were brought in, to describe the impact of legislation on costs, society and provisions on law and order. An impact assessment was done on .50 calibre rifles but, oddly enough, it is not in the Printed Paper Office. An impact assessment on the knife aspect of the Bill is available, but not one on the part about guns. If I can read its very small writing, the impact assessment which I found on the internet states:

"There is concern about the availability of .50 calibre and rapid-fire Manually Actuated Release System (MARS) rifles"—

[Lord Robertson of Port Ellen]

as mentioned by the noble Lord, Lord Lucas—

"being available to some civilian firearms licence holders. The range and penetrative power of 0.50 calibre rifles makes them more dangerous than other common firearms and were they to be used in criminal or terrorist activities would present a serious threat to the public and would be uniquely difficult for the police to control. Due to the rate of discharge MARS rifles pose a comparable risk to the public and police as other self-loading weapons already banned in the UK. The Government need to intervene to ensure the purchase, ownership or possession is illegal".

That Home Office impact assessment was delivered to the Government in preparation for the legislation.

In the House of Commons, the Home Secretary said when he presented the Bill:

"We based those measures on evidence that we received from intelligence sources, police and other security experts … According to the information that we have, weapons of this type have, sadly, been used in the troubles in Northern Ireland, and, according to intelligence provided by police and security services, have been possessed by criminals who have clearly intended to use them".—[*Official Report*, Commons, 27/6/18; cols. 918-19.]

These are not my words or an exaggeration by anti-gun campaigners, but the words of the Home Secretary. He did not resile from these comments when he withdrew the clause from the Bill, under pressure from a large number of Back-Bench Conservative MPs. All he has said is that the matter would be subject to further consultation. The danger between now and the end of the consultation is represented precisely by the Home Secretary's warning. I hope the Minister will be able to explain why the Committee should listen to outside experts when the Home Secretary of this country has given such a graphic description of the dangers presented by these weapons.

Earl Attlee: My Lords, I hold the noble Lord in very high regard, but is he saying that Ministers and their advisers are infallible?

Lord Robertson of Port Ellen: They are certainly not infallible—I speak from great experience on that—but the Home Secretary clearly did not come to the House of Commons unprepared and without checking thoroughly in advance. His statements are clearly there. His predecessor was misled and she resigned. I do not think that the present Home Secretary is likely to make that mistake again or that he has been misled; he said what he believed and what he had been told.

Viscount Goschen (Con): My Lords, I will make a brief intervention in this debate. I declare an interest as a holder of a firearms certificate and the owner of a number of rifles, none of which would come anywhere near the type of muzzle energy we are talking about.

I support the description of our firearms licensing regime given by my noble friend Lord Lucas. It is generally accepted internationally that the UK has one of the most rigorous and best informed firearms licensing regimes in the world. It is also generally accepted that the shooting community respects and understands that the holding of a firearms certificate is a privilege that can be removed. Because of that, they are a very law-abiding section of the community. They are acutely aware that their sport and activity can be curtailed should they be involved in criminal activity entirely unrelated to the use of their firearms.

With that in mind, we have to be a bit careful of banning things because they are an easy target—forgive the pun. It is easy to work out where a particular category of firearm is and remove it from circulation. I hold no particular candle for the .50 calibre rifle and I am open to arguments about where the line should be drawn, because one indeed has to be drawn somewhere. We have acted in the past regarding handguns, fully automatic weapons and a number of other eventualities, but I very much support my noble friend Lord Lucas's contention that before we ban something we have to have a closely argued, coherent case that is evidence based. Just banning something because we feel like it or because it is easy to do should not be a proper course of action.

Debate on the Bill has, on the one hand, largely been about very large numbers of people carrying knives, often using them and being closely tied up with the criminal fraternity, particularly drug dealers. On the other hand, the Bill talks about banning the use of a piece of equipment that is legally held when no recorded crime has ever been committed using a legally held rifle of such high-muzzle energy, as far as I understand it. I am open to correction by my noble friend and other Members of the Committee. We have to be very careful about that. Where do we draw the line?

I quite accept what the noble Lord, Lord Robertson, said: these are weapons of very high power and very high destructive capability. That is absolutely correct. On the other hand, their utility for criminals is much lower than that of many other sniper rifles. He described them as sniper rifles, and indeed they are. But they are not the typical sniper rifles used by the British Army, which are in calibres much closer to sporting rifles and are much smaller pieces of equipment. We have to put this in perspective and look at the actual threat.

When the noble Lord, Lord Robertson, referred to what was worrying the Home Secretary about these rifles, it occurred to me to question whether he was worried about the theft of these 130 or so rifles, a tiny number, or about one of those firearm certificate holders turning bad. Or was it really about someone purchasing one of these—in America, for example—and turning it into a small number of machinery components, putting them in a container and smuggling them in, as a vast number of illegally held pistols arrive in this country. The real danger faced on the streets is from illegally held weapons, not legally held weapons.

The Earl of Cork and Orrery: My Lords, I will add a couple of points. It is very instructive to look up "sniper rifles" on Google because you get a huge list of them, the vast majority at 7.62 calibre not .50 calibre. It is also interesting to see that three of the most popular .50 calibre rifles are made in this country and well known globally as some of the most popular sniper rifles. There are currently believed to be 200 large-calibre rifles in the UK, which is not a very substantial number. The cost of acquiring one of these .50 calibre target rifles is also not cheap—about £20,000 for the whole package, so there are never going to be very many of them.

Another point, which has already been made, is that only one of these rifles has ever been stolen in this country and it was found shortly afterwards, dumped

by the opportunist thief, who realised that there was absolutely nothing he could do with it. They weigh about 36 pounds, which means they are not exactly the easiest things to carry around, and are very substantial in length—a length from here to the end of the desk. So we are talking about a rare beast indeed.

Lord Paddick: My Lords, I hate guns, so I have no interest in promoting any cause. I do not want to trivialise firearms offences because they can be very serious, but they are relatively small in number compared with the number of knife crime offences, for example. Only 1% of non-air weapon firearms offences involve rifles. Bearing in mind the very low number of offences committed using rifles, can the Minister tell the Committee why the Government have set these hares running?

6.30 pm

Lord Kennedy of Southwark: My Lords, I have Amendments 79 and 80 in this group. They are word-for-word what was in the Bill when it was first published in the House of Commons. I am attempting to put back into the Bill the clauses put forward by the Government originally—not my usual role here as opposition spokesperson; I am usually trying to take out government clauses or change them, but here we are today trying to put them back in.

My noble friend Lord Robertson of Port Ellen set out clearly at Second Reading and again today why these weapons should be banned. They are more dangerous in terms of their penetrative power and range. My noble friend quoted the Home Secretary's comments; I shall not quote them again. The Home Secretary was very clear why these weapons had to be banned; he had had intelligence about why it was important to do that. Then we had a complete about turn and the clause was taken out between Second Reading and Third Reading. I am sure we will find out at some point what happened and why that was done. My honourable friend Louise Haigh, the shadow Policing Minister, was very clear that the Opposition backed the Government's original position and that the provision would pass through the House of Commons without any problems.

It is interesting that the Government have gone much further than what people on the Government Benches wanted. The Member for The Cotswolds, Sir Geoffrey Clifton-Brown, suggested level 3 security, but that is not here. They were not looking for the weapon to be banned but wanted enhanced security, very much along the lines of the amendment moved by the noble Lord, Lord Lucas, but there is nothing here. That security level means that the gun, the bolt and the ammunition are kept in three separate safes. At the moment the Government are proposing not to do that. They are going to leave the security as it is. That is regrettable.

I am not an expert on guns. I do not particularly like guns, but I have fired some weapons, including a sniper rifle and a few shotguns. I fired them on ranges, and when I was in the Armed Forces Parliamentary Scheme I did some stuff. I have shot only at targets and clay pigeons. I am very pleased that we live in a country where we have tough laws on weapons. I am very proud that we have them, and they are good.

My noble friend Lord Robertson was right to point out in respect of evidence that, before Hungerford and Dunblane, handguns were not generally seen as an issue. It was only after the two tragedies that Government had to act to ban them. We can never say what is going to happen in the future.

The Government were right in their original proposals, and it is shame we are here today. The noble Lord, Lord Lucas, has tabled an amendment to improve the position today. I am very pleased to see it because it is better than the Government's suggestion. It at least gives level 3 security. That will make it more difficult for weapons to be obtained illegally, and although it is not an absolute guarantee it is certainly progress. I shall not press my amendment, but I am looking forward to hearing the Minister's comments in response to the debate, because these are serious issues. As my noble friend Lord Robertson said, although the Government removed the two clauses, at no point has the Home Secretary withdrawn the remarks he made. My worry is that after we have had this review, the Government will decide that we need to ban these weapons and then will say that we have no legislation to ban them and we will have to wait until something comes along. That is the often the case with many things which we suggest in opposition. The Government aim to do things and say they will do them at some point when they find a Bill they can put them in. My worry is that we may end up there. I raised that point at Second Reading with the noble Baroness, Lady Williams. If the Government are going to do a consultation and then decide to ban these weapons, they should take a power to enable them to do that through secondary legislation. I look forward to the Minister's response.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, my noble friend Lord Lucas began by quite rightly pointing out that this is a Bill about setting boundaries. As we have heard, this group of amendments deals with what is the appropriate form of regulation for high muzzle energy rifles. We have heard a variety of views from all sides of the Committee. Some noble Lords are seeking to restore the prohibition of these rifles removed from the Bill in the Commons. Other noble Lords are seeking to go further than the amendments made in the Commons by also removing the prohibition on so-called MARS rifles, while yet other noble Lords seek to find a middle way by introducing mandatory security requirements. I will endeavour to disentangle these competing approaches by setting out the Government's considered view on the various amendments.

I begin with what is, in effect, the middle-way option, if only because my noble friend Lord Lucas's Amendment 74 is the first one in this group, but I will address my noble friend Earl Attlee's Amendments 80A to 80C as they cover similar ground, albeit from a different perspective. Amendment 74 provides us with an opportunity to test whether a requirement to apply the highest standards of security for the storage of specific firearm types when not in use might be an alternative to prohibition. The Government are not seeking to prohibit ownership of high muzzle energy rifles through this Bill, so it is relevant for us to discuss

[Earl Howe]
the merits of applying enhanced security to the storage of such firearms while they continue to be available to civilians under our firearms licensing arrangements. I know that the noble Lord, Lord Kennedy, takes the contrary view, and I will come on to his amendments shortly.

The Bill will prohibit civilian access to more rapid-firing rifles, which makes any discussion of secure storage in respect of these weapons otiose, although we will come to Amendments 78A and 79A, which would have the effect of removing that prohibition from the Bill, and Amendments 78B and 79B, which seek to make changes to the prohibition.

The Government are concerned about the potential public safety risks that more powerful and more rapid-firing rifles pose, should they fall into the hands of criminals or terrorists. It is therefore right that where any such firearms remain available for civilian use and ownership on a firearms certificate issued by the police they should be subject to the highest standards of security to prevent theft and misuse. I therefore understand the reference in my noble friend Lord Lucas's amendment to the requirements of level 3 security. This relates to different levels of security arrangements that are set out in the Home Office's *Firearms Security Handbook*, with level 3 being the highest level of security measures set out in the handbook.

The first point I want to make in respect of this amendment is that it would be something of an anomaly to specify particular security conditions in this way in the Bill. It is currently an operational matter for police forces to satisfy themselves that the security in place for any firearm held by a civilian is proportionate to the risk that the specific firearm poses, taking all relevant factors into account. The issue of the relevant firearms certificate can be made contingent on the required levels of security being in place. While it is right that we should ask the police to have due regard to the requirements of the handbook, it would, as I have said, be an anomaly to set out in primary legislation the level of security required for one specific rifle type.

While I fully understand the point behind the amendment, it is important to be aware that the *Firearms Security Handbook* is a joint Home Office and policing document, intended to guide forces. The document has no specific legal weight and can be amended administratively. In such circumstances, I contend to my noble friend, it would not be appropriate to specify level 3 security in this Bill.

Amendments 80A to 80C in the name of my noble friend Earl Atlee address the same issue, but in a different way. These amendments in turn seek to amend the Firearms Act 1968 in order to provide the Secretary of State with an order-making power to specify the conditions relating to the secure storage and transportation of high muzzle energy rifles, which must be attached to the relevant firearms certificates issued by the police. The point behind the amendments is important. Dangerous firearms held in the community must be kept and stored as securely as possible.

The Government have given a commitment that we will consult on the issue of whether high muzzle energy rifles should be subject to a general prohibition, along with a number of other issues relating to firearms safety, after the Bill has completed its passage through Parliament. But the Government recognise the strength of feeling on this issue, on all sides. I know that some, including the noble Lord, Lord Kennedy, have concerns about waiting for a further public consultation to run its course, particularly if this leads to a call for further legislation. We therefore take the point that there is a case for action in this area at this time. The Government will therefore give further consideration to the amendments tabled by my noble friends Lord Lucas and Earl Atlee ahead of Report. I cannot at this juncture give a commitment beyond that, but I assure both my noble friends that the case they put forward has landed and will be looked at seriously.

Amendments 78, 78B, 79A and 79B provide us with an opportunity to consider potential alternatives to the prohibition of the rifle types specified in Clause 32. Clauses 32 and 33 will strengthen the controls in respect of rapid-firing rifles, as defined by these clauses. As I explained earlier, these are currently available for civilian use or ownership under general licensing arrangements administered by the police under Section 1 of the Firearms Act 1968 or Article 45 of the Firearms (Northern Ireland) Order 2004. This means that at present they can be owned only by somebody who has a firearms certificate for which they have been vetted by the police. Following advice from experts in the law enforcement agencies, we consider that these rifles should be brought under stricter controls. That will be achieved by adding them to the list of prohibited firearms provided for by Section 5 of the Firearms Act 1968 and Article 45 of the Northern Ireland order. Weapons that are so prohibited are subject to more rigorous controls than other firearms and may be possessed only with the authority of the Secretary of State.

My noble friend Lord Shrewsbury and the noble Earl, Lord Erroll, argued that the proposed ban of rapid-fire rifles could discriminate against disabled shooters. That point was raised during discussion of the Bill in the other place. I have to say straight out that I am not impressed by that argument. If the prohibition has an impact on disabled shooters, those who provide shooting facilities should see what alternative assistance might be provided to disabled shooters by shooting clubs, whether by adapting other types of rifle or adapting the places where disabled people shoot. So I am afraid that I do not find my noble friend's and the noble Earl's argument particularly powerful on that issue.

It is not our intention to restrict unnecessarily or arbitrarily the lawful use of firearms by licence holders for legitimate sporting purposes, for example. The vast majority of people in lawful possession of firearms use them responsibly and it is right that any controls need to be proportionate. But at the same time, the Government are concerned about the recent rises in gun crime and the changing threats and heightened risk to public safety. All firearms are by their very nature potentially dangerous and, indeed, lethal, but the rifles specified in Clauses 32 and 33 are considered to be more dangerous than other firearms permitted for civilian ownership under the firearms legislation. These rifles can discharge rounds at a much faster rate

than conventional bolt-action rifles, which are permitted under licence and are normally operated manually with an up-and-back, forward-and-down motion.

The definition as set out in the Bill refers to the use of the energy from the propellant gas to extract the empty cartridge cases. This brings them much closer to self-loading rifles, which are already prohibited for civilian ownership under our firearms laws. The Government are therefore concerned about their potential for serious misuse and loss of life if they were to fall into the hands of criminals or terrorists.

6.45 pm

If I understand my noble friend Lord Shrewsbury correctly—he will correct me if I am mistaken—his Amendments 78B and 79B are intended to alter and narrow the definition of rapid-fire rifle, as set out in Clauses 32 and 33. The definition currently includes rifles that employ the manually actuated release firing system, which uses propellant gas to assist in swifter reloading through a second pull of the trigger, and those that employ the lever-release system, which makes use of a lever operated by the user's thumb allowing the bolt to be released, thereby chambering a fresh round. I take it that my noble friend's amendments seek to exclude the latter from the prohibition. It is the Government's view that both these rifle types can discharge rounds at a much faster rate than other rifles and, for the reasons I have already set out, we believe that both types should be captured by the intended prohibition.

I turn to Amendments 79 and 80 in the name of the noble Lord, Lord Kennedy. The effect of these amendments would be to re-insert measures in the Bill to strengthen the controls on particularly powerful high muzzle energy rifles. These rifles are currently available for civilian use or ownership under general licensing arrangements administered by the police. The Government's reasons for seeking to prohibit civilian access to these rifles received much scrutiny during the Bill's passage through the House of Commons. We heard arguments to the effect that the weight and cumbersome nature of these rifles means that they would not be the weapon of choice for criminals. We also heard that there are currently limited numbers of these weapons in private ownership and, as I have already touched on, we heard arguments to suggest that heightened security to ensure the safe storage of these weapons could lessen law enforcement agencies' concerns about the availability of these rifles on licence.

The Government continue to have concerns about the potential for serious misuse and loss of life if these rifles were to fall into the hands of criminals or terrorists, for exactly the reasons articulated by the noble Lord, Lord Robertson, when he cited the words used by my right honourable friend the Home Secretary. The noble Lord, Lord Paddick, asked why we have set hares running, as he put it, on this subject. That makes the Government's position sound a little capricious, which I assure him it is not. The UK's law enforcement authorities have flagged their concerns to us about the risks that these rifles would pose to public safety if they were to get into the hands of criminals or terrorists, as I have described. The action that we sought to take originally in the other place was pre-emptive and preventive in its intent. However, we are now in a different place.

We recognise that there are a range of views on this issue and that the debate is a complex one. My noble friend Lord Goschen expressed powerful views in arguing against a ban on high muzzle energy rifles, as did the noble Earl, Lord Cork and Orrery.

Viscount Goschen: My Lords, I said that I was open to hearing the arguments. I was saying that we should have a powerful case before we move to such a ban, if that is the direction that Her Majesty's Government seek to take. The airing of these issues in this House and in another place are very helpful, but we need to follow the spirit of evidence before any action.

Earl Howe: That is extremely helpful. I agree with my noble friend. That is exactly why the Government felt that a longer public debate about this issue was appropriate.

In the light of representations made by representative firearms bodies and others during the passage of the Bill, the Government sought advice from the National Crime Agency on whether heightened security standards governing the safe storage of these rifles would be sufficient to reduce the concerns expressed to us. In the light of the advice received, we took the view that we should look again at options for enhancing the security requirements associated with these particular rifles, rather than push for their prohibition under the firearms legislation at the present time. That is why the provisions to prohibit high muzzle energy rifles were removed from the Bill on Report in the Commons.

It is the Government's view that we should not proceed with prohibition without considering further the views of the police, relevant shooting organisations and members of the public. As was announced in the Commons, it is the Government's intention to launch a full public consultation on this and on the firearms safety issues that have arisen during the Bill's progress. That will provide an opportunity fully to consider the views of all those involved or with an interest and to make a better assessment of whether enhanced security, as proposed by my noble friends, would be sufficient to address the risks set out by the police and the NCA.

Finally, Amendment 80D in the name of my noble friend Lord Attlee seeks to make a change to the definition of "rifle" in Section 57 of the Firearms Act 1968. The purpose of that definition is to make it clear that the ordinary definition of "rifle" includes carbines, a particular type of long gun firearm with a shorter barrel than a normal rifle, which is classified as a rifle for the purposes of firearms controls. As he helpfully set out, my noble friend's purpose in tabling the amendment is to make it clear that when we talk about rifles, including for the purposes of Clauses 32 and 33, we are talking about hand-held rifles, specifically those that are fired from the shoulder. My noble friend is clear that he wants there to be no confusion with artillery or guns fitted to tanks. The Government are not persuaded that this change to the Firearms Act is necessary. "Rifle" will continue to carry its normal

[Earl Howe]
meaning. I understand that this might have been a concern had we been talking about rifled weapons, but we are not.

In the light of the explanations I have provided and my commitment to consider further Amendments 74 and 80A to 80C, I hope that my noble friend Lord Lucas will feel able to withdraw his amendment.

Lord Kennedy of Southwark: In my contribution, I made a point about the Government taking out amendments then putting them back in. Like the noble Baroness, Lady Williams, at Second Reading, the Minister referred to consultation. Today, the Minister told us that the Government remain very concerned about these weapons and their power. I worry that we will have the same problem as with the rogue landlords database. We wanted to make the database public through the Housing and Planning Act. We won the votes in the Lords, but they were overturned in the Commons. A year later, the Government changed their mind. Now, of course, the noble Lord, Lord Bourne, is saying, "The Government want to make the database available. We need primary legislation but we cannot find anything to tag it on to". I worry that the Government will decide in the end that they want to ban these weapons but will say that they cannot find the legislation. Will the Government consider a precautionary power so that if they decide to, they could do that very quickly through secondary legislation?

Earl Attlee: My Lords, the noble Lord, Lord Kennedy, could achieve his objective by supporting my amendment, or at least the concept behind it, slightly more strongly.

Earl Howe: It was in an endeavour to address the general concern put forward by the noble Lord, Lord Kennedy, that I undertook for the Government to consider seriously my noble friend Lord Attlee's amendment and my noble friend Lord Lucas's arguments. However, I take his point. I am sure that it will not be lost on Home Office Ministers or officials. Of course, we will give that further consideration.

Lord Lucas: My Lords, I am grateful for my noble friend's calm and consideration, as ever. He would make an excellent target shooter. I will try to persuade him to join the Lords' team for our battle against the Commons in July. I am grateful for what he said about Amendment 74, but when it comes to what my noble friend referred to as rapid-firing rifles, I would be grateful if he could share with us the evidence on which the Government have based the conclusion that the lever release rifle, in particular, is in practice a rapid-firing rifle.

I am not trying to pose as an expert in these things, but in terms of the evidence I have seen from people outside government, that matter is in question, and that is what lies behind my noble friend Lord Shrewsbury's amendment. If my noble friend felt able to share the information or opinions on which that conclusion was based before Report, I would be immensely grateful.

Earl Howe: My Lords, in so far as the security classification of the advice that the Government have received is not confidential, I would be happy to see what information we can release to my noble friend.

Lord Lucas: I am always very grateful to my noble friend and I beg leave to withdraw the amendment.

Amendment 74 withdrawn.

Amendment 75

Moved by ***The Earl of Shrewsbury***

75: After Clause 31, insert the following new Clause—

"Implementation of firearms licensing guidance

(1) The Secretary of State must, within the period of six months beginning with the day on which this Act is passed, publish a report on how the Government's Guide on Firearms Licensing Law (April 2016) is being implemented.

(2) A report under subsection (1) must be laid before both Houses of Parliament.

(3) The Secretary of State must include in a report under this section—

(a) an assessment of the number of encoded reminders that have been placed on the patient records of firearms licence applicants following the grant or renewal of a firearms licence,

(b) an assessment of the fees charged by General Practitioners to provide medical information to support a firearms licence application, and

(c) an assessment of the number of General Practitioners who have refused to provide medical information to support a firearms licence application, and the reasons for those refusals."

Member's explanatory statement

This new Clause would place a duty on the Secretary of State to report within six months of the passing of this Act on how the Government's Guide on Firearms Licensing Law is being implemented, particularly in relation to medical information.

The Earl of Shrewsbury: My Lords, in Amendment 75 I address the medical information that is requested by police forces when someone applies for a firearms certificate or a shotgun licence, both on original grant and on renewal. This issue affects every firearm and shotgun certificate holder in England and Wales. I mentioned all this in my speech at Second Reading.

Paragraph 2 of Article 5 of the EU firearms directive mandates a medical assessment of every applicant for a certificate. In England and Wales, there is no consistency of practice between police forces nor is there any consistency in the fee charged to the applicant by his or her GP for a medical assessment. By way of an example, I was looking on the internet the other day and I saw—no names, no pack drill—a GPs' practice that stated quite plainly that they were conscientious objectors and that they would not take anyone on who was applying for a shotgun or coterminous or firearms certificate or had any interest in shooting—I find that strange, but there it is. I suppose if you were told that by your GP you would go elsewhere—but their charges were slightly different as well. The conscientious objectors said on the next page, "But we will charge you £200", and on the next page it was £360, so that does not quite make sense.

What is required is: first, a compulsory and once-only medical records check by the general practitioner in response to a police inquiry about the physical and mental health of the applicant; secondly, an enduring marker should be placed by the GP on the patient's medical records noting that he or she may be in

possession of firearms or shotguns in order to ensure that thereafter the GP is reminded to draw to the police's attention any future adverse change in the patient's health, including mental health, which may have a bearing on their abilities safely to possess a firearm or shotgun; thirdly, there should be an agreed, reasonable fee for the GP's original medical records check and the placing of the enduring marker; fourthly, there should be an extension of the life of firearm or shotgun certificates from five to 10 years, which would reduce pressure on licensing departments and police forces; and finally, there should be protection of the confidentiality of applicants and certificate holders' data.

To shooting sports bodies, the APPG on Shooting and Conservation, the police and, I hope, the Home Office, that should all make perfect sense. It serves to secure and enhance the safety of the public. It is high time that the Home Office moved forward on this. I beg to move.

7.00 pm

Earl Attlee: My Lords, I am grateful to my noble friend Lord Shrewsbury for raising this issue. I agree with everything he said. My noble friend Lady Barran suggested that we ought to be economical with the time, but we are discussing primary legislation and will take as long as we need.

I am increasingly disappointed by the attitude of the BMA, and the medical profession generally, in respect of statutory medicals necessary to protect the public. I need a regular medical to keep my HGV driving entitlement. Of course, I can afford the fee, but for a poorly paid lorry driver, it can be a problem. The cost may also discourage experienced drivers from maintaining their entitlement when they no longer use it. It seems blindingly obvious that the doctor best placed to determine if an individual is safe to hold an HGV licence or a firearms certificate is the applicant's general practitioner. The GP is paid by the state to look after the health of all their patients; they are also the person most likely to be aware of any problems at home.

We are rightly proud of our firearms licensing system, which we have got about right. However, I would make one observation about some police forces deliberately making the process as difficult as possible to deter applicants. For a few months in early 2003, I was running around in the Middle East on Her Majesty's Service with a loaded Browning Hi-Power pistol in my holster, so someone must have thought that I was a reliable person. When I returned to the UK in June that year, I realised that the land around my house in the middle of Lincolnshire was infested with rabbits, which were no doubt having an adverse effect on agricultural output. I could have done with a bolt-action .22 sporting rifle, but I did not bother applying for a firearms certificate as I was deterred by the deliberate difficulties I knew I would encounter. It was not important to me. Nevertheless, someone with an unhealthy interest in firearms will do whatever is necessary to secure a firearms certificate, so we are having precisely the opposite effect to the one we desire. An unco-operative medical professional would have been just one more difficulty to deter me. I therefore wish my noble friend success with the points he made.

The Earl of Caithness: My Lords, I put my name to this amendment and support it. As my noble friend Lord Lucas said on the previous amendment, the safety of the public is of paramount importance when we talk about shooting; the way we ensure that is by licensing rifles and shotguns.

I have no interests to declare. I do not have a firearms certificate and I do not own shotguns, but this is of great importance to me. It is sad that my noble friend Lord Shrewsbury and I had to table the amendment. It would not have been necessary if the Home Office had got on and dealt with the problem earlier. It has known about it and promised consultation in this area, but it has dragged its feet continuously. The consultation should be well under way by now and the results known so that we could debate it.

Returning to the Minister's old department, what action is the Department of Health taking to encourage GPs to obey the guidance agreed in 2016? Clearly, as demonstrated by my noble friend Lord Attlee, both GPs and the police are not following the guidance. They want to charge fees when it was agreed that no fees would be charged on initial application.

On another point, in declaring something of an interest, can the Minister confirm that the mental health check will apply to everybody with access to the gun cabinet? It is hugely important for not just the person who owns the rifle or shotgun but for anybody with access to the cabinet as well. People often store other things in those cabinets. In my personal experience, we stored my wife's jewellery in the shotgun cabinet. It was the safe lock-up. She therefore had access to it and to a gun to commit suicide—she was not going to kill anybody else. I do not believe that her suicide could ever have been prevented, but it would not have happened with a shotgun if she had had to undergo a medical test. Can my noble friend confirm that point for me?

Lord Ribeiro (Con): My Lords, I apologise for not having been present for Second Reading and for speaking from the wrong side of the Room.

I will give you a medical perspective, as medicine has been mentioned and is very much part of this. I am holding a letter I got from the Hampshire Constabulary when I applied for my firearm renewal. It says:

"Thank you for your application for the renewal of a firearm and shotgun certificate. In your application you have disclosed that you have glaucoma.

To suffer from a medical condition of any kind does not preclude you from possessing a firearm. When considering application for Firearm or Shotgun Certificates the Chief Officer of Police has a statutory responsibility to ensure that people wishing to possess firearms can do so without being a danger to public safety or to the peace.

To enable the application to progress we require a medical report from your General Practitioner … detailing the background to your condition, the effects it may have and a description of the medication or treatment you received and are currently receiving".

That is pretty clear on what the police require. It goes on to say:

"Any physical or mental condition that may affect your ability to possess and use firearms safely should be declared".

Here it diverges slightly from the nine conditions listed in the 2016 Act, in that it includes,

"mental health disorder, epilepsy, stroke, stress related illness, depression, alcoholism, substance use or dependency",

[Lord Ribeiro]

which are all in the nine conditions, but it then mysteriously adds heart disease and cancer. I could not really see the relevance of that. It goes on to say:

"This list is not definitive".

I read that out because we already have a pretty stringent process with the police.

In answer to the question about the cabinets, I remember that when I had my cabinet inspected by the police, they came to the house, had a look and asked, "Who has responsibility for and possession of the key? Does anybody else have access to this key? Yes, you can put your wife's jewellery in there"—I do from time to time—"but technically she should not know where the key is". That addresses that point.

I have permission from my GP to give noble Lords some idea of the process that GPs go through in doing this. First, the GP will see you—my GP is a senior practitioner in her practice. All the requests are initially screened by the administrative staff, who then pass them on to the GP. The GP makes time to review the patient's records and checks the history and the paper records—increasingly, these are electronic—for any relevant correspondence or letters that come through and any prescribed medication. The GP then has to make a judgment as to whether there is a risk. If no risk is identified, a relevant code is added to the notes. Administration then takes over the case. It is filed away and an invoice is made—in my case, for £15; we have heard the variations in the cost. If a risk is identified, a report is produced and sent to the police. GPs inevitably get the blame if the application fails. The patient's record is flagged with an encoded reminder or marker. Should a relevant medical condition occur over the five years of the licence's term, there is a visible reminder that the patient has a firearm or shotgun certificate.

My GP notes that although this should be straightforward, many reminders relating to other data collections come into their systems and must be dealt with, and that GPs must cope with an element of reminder fatigue. From time to time, an alert may go unnoticed; that is human error but it does happen. I know that the BMA is reported as being against flagging notices, citing a lack of clear protocol for their removal, but the 2016 firearms licensing law requires GPs to place that reminder code in the patient's notes. That is a very clear statement and GPs should be doing it.

My GP also noted that in the context of extending the period to 10 years for those with mental illnesses, which is being mooted at the moment, GPs would like much more prominent markers so that they can associate a developing mental illness with the person holding a firearm or shotgun certificate. Mental illness is the one real area of concern for general practitioners here. GPs want a much more prominent marker to be flagged up on their screens when this situation arises.

The firearms licences and medical evidence factsheet being produced identifies who should pay fees and when that payment should be made. Where the applicant has declared a medical condition on the application form, as I did, a fee would be expected. If a further medical report is required, the police must pay. During the normal course of validating a certificate, the GP initially checks the patient's records. There is no current expectation of a fee being submitted, but as noble Lords will know, there has been variability in the amount of fees charged. In some cases, the charging of fees as high as £200 for just an initial check has been reported in Scotland. We must address that lack of conformity now. We should suggest a standard fee equivalent to the charge for a heavy goods vehicle licence, as mentioned by my noble friend Lord Shrewsbury, right across England and Wales.

Providing firearms reports for the police is part of a GP's job but not of their core general medical services, so they have freedom to charge if they wish to. GPs are under considerable pressure to get this right. The system is in place and is effective. We need clear systems for flagging up critical medical problems to which GPs can respond. I support the amendment.

Lord Lucas: My Lords, as I have said before, it is crucial that the Government get this right. I hope that they will put some energy behind it. I say to my noble friend that the answer to a plague of rabbits is not a .22 rifle but a pack of Sporting Lucas terriers.

Lord Kennedy of Southwark: My Lords, I will speak very briefly. The amendment is clearly a good addition. We certainly want consistency on medical checks, police checks and how people look at this issue. Without that, we will have problems. That cannot be right. We want to ensure that people's suitability to have a weapon is assessed, and to know that this is done to the highest possible standards. We are all clear on that. Where we have inconsistency, we have problems. I support the amendment and I hope that the Minister will respond positively to the issues raised.

Earl Howe: My Lords, I am grateful to my noble friend Lord Shrewsbury for raising this issue. His amendment would place a duty on the Secretary of State to,

"within the period of six months beginning with the day on which this Act is passed, publish a report on how the Government's Guide on Firearms Licensing Law (April 2016) is being implemented".

The Home Office has published guidance on firearms licensing law for many years. The latest edition was published in 2016 and is currently undergoing revision to take account of recent legislative changes. It is an important document as it assists police forces in applying firearms law.

The Government want to ensure consistency of approach and high standards for police firearms licensing, and for this reason, we introduced the power to issue statutory firearms guidance in the Policing and Crime Act 2017. The new statutory guidance will apply to issues such as background checks, medical suitability and other criteria aimed at protecting public safety. We will be holding a public consultation shortly on the introduction of the new statutory guidance.

The amendment moved by my noble friend indicates a particular interest in the medical aspects of the firearms guidance, and in the engagement by GPs with the information-sharing arrangements which were agreed and introduced in 2016. These arrangements were brought in to help ensure that police would have sight

of relevant medical information about certificate holders and applicants, to safeguard both licensed gun holders and other members of the public.

7.15 pm

My noble friend would like to see an assessment of the response from GPs, specifically in relation to those who refuse to provide medical information, together with an assessment of the fees being charged and of the number of encoded reminders, or firearms markers, placed on the patient record. The statutory guidance which is being introduced, and which will set out the medical arrangements for firearms, will apply to the police, but not to GPs. In answer to my noble friend Lord Caithness's question, the Home Office cannot, for example, direct GPs to charge a particular fee for medical information being supplied. Whether a charge is levied by a GP, and the level of any fee, is ultimately a matter between the firearms applicant and their GP, as GPs are, as we are all aware, independent practitioners.

Nevertheless, we recognise that there is variation in how GPs respond to police requests for information, in the fees they charge for such information and in the approach they take to the placing of the firearms marker on patient records. When the 2016 voluntary arrangements were introduced, it was recognised that these would need to be reviewed and that further measures might be necessary. Therefore, the Government are continuing to engage with representatives of the medical profession about how to improve the information-sharing arrangements between GPs and the police so that they operate as effectively as possible.

In his speech at Second Reading, my noble friend Lord Caithness referred to proposals made by the All-Party Parliamentary Group on Shooting and Conservation about the medical arrangements. I can reassure him that those proposals will be considered, together with the views from the police, medical professionals and others. The Government will be holding a consultation shortly on the draft statutory guidance, including the medical content, and we will take into account the evidence received about the engagement of GPs in the information-sharing arrangements. I encourage my noble friend, and indeed all other noble Lords who have an interest in this issue, to respond to the consultation.

My noble friend Lord Caithness also proposed that the police should request medical information not only about the applicant, but about anyone who has access to the relevant gun cabinet. The current position is that firearms and shotguns must be held securely so that only the certificate holder has access. However, I understand the point made by my noble friend, and we will consider whether it is an appropriate issue to include in the consultation. In view of this forthcoming consultation, I hope my noble friend will agree that his amendment is unnecessary in practice, and that he will therefore be content to withdraw it.

The Earl of Caithness: I thank my noble friend for what he said, particularly on the point I raised. I want to press him on the consultation. We have been told "soon", "shortly" and "in the near future". Can he give a specific date? It would be helpful if a date could be announced before Report.

Earl Howe: I have a partial answer for my noble friend. The consultation will be launched after Royal Assent, but I am sure that the spirit of that undertaking is as soon as possible after Royal Assent.

The Earl of Shrewsbury: I am most grateful to my noble friend for his response. I am somewhat disappointed because this has been hanging around for a long while and action needs to be taken. I find it incredible that, in a modern country such as ours, the Home Office and general practitioners cannot come to some sort of agreement for a level playing field on fees. It seems such a simple thing to do. Most people in commerce and industry would try to agree this sort of thing every day. I will read my noble friend's words and I reserve the right to talk to him again about this, but I beg leave to withdraw the amendment.

Amendment 75 withdrawn

Amendment 76

Moved by ***Lord Kennedy of Southwark***

76: After Clause 31, insert the following new Clause—

"Impact assessment of section 31

(1) Section 31 may only come into force if a Minister of the Crown has laid before Parliament an assessment of its impact on different racial groups as defined in section 9 of the Equality Act 2010 (race).

(2) The impact assessment must be conducted by a body independent of the Government following consultation with representatives of different racial groups."

Member's explanatory statement

This new Clause would require an independent assessment of the impact of searches in schools and further education premises on different racial groups.

Lord Kennedy of Southwark: My Lords, Amendment 76 would add a new clause to the Bill which would require a Minister of the Crown to lay before Parliament an assessment of the impact of Clause 31 before it comes into force. This is important because Clause 31 gives the police powers to search schools or further education premises for corrosive substances. That is an additional power for the police.

The worry is that this will disproportionately affect BAME children and young people who we know are already more likely to be stopped and searched, and that is something we must be aware of before the measure comes into force.

The equality statement on the policy does not appear to contain any specific analysis of the likely equality impact of the extension of the investigative and enforcement powers. Perhaps the Minister will comment on that in her response. This is about getting the balance right. We must get things in proportion and take care not to damage relations between the black community and the police. I beg to move.

Baroness Barran: My Lords, we need to ensure that the police have appropriate powers to deal with threats on school or further education premises involving corrosive substances. Given the significant harm that corrosive attacks can cause and the fear that they can

[Baroness Barran]
instil, it is important that we ensure that the police have sufficient powers to be able to take swift and preventive action.

We know that there are around 800 attacks per year in England and Wales, and we need to ensure that action can be taken not just to deal with actual attacks but with threats to use a corrosive substance. Clause 31 is designed to ensure that the police can effectively enforce the offence of threatening with a corrosive substance in a private place as it applies to schools and further education establishments.

The noble Lord, Lord Kennedy, has explained his concerns that this new power will be disproportionately used against black, Asian and minority ethnic pupils and students. I appreciate and understand the noble Lord's concern, which should be taken seriously. It is, however, important to recognise that this power can be used only in circumstances where a police officer has reasonable grounds for suspecting that someone has been threatened by another person with a corrosive substance. Reasonable grounds might include a report from a teacher, a parent or a pupil.

It is also important that we ensure there are sufficient protections in place for our schools and further education premises to deal with any situations where a pupil or student may threaten to throw or squirt a corrosive substance over another student or a teacher. The police need to be able to enter and search a school or further education premises and any person on them to prevent an actual attack. That said, I have indicated that the noble Lord has raised a perfectly proper concern.

While I do not consider this amendment to be necessary, I can give your Lordships an undertaking that we will consult relevant school and further education bodies, including teaching unions, local authorities and other associations, on the implementation of this power before we bring the clause into force. With that assurance, I hope the noble Lord will withdraw his amendment.

Baroness Hamwee (LD): My Lords, before the noble Lord replies, I had read this clause as primarily directed to the power to enter and search premises—in fact you have to do that—as well as a person. Can the Minister assure the Committee that, as well as the consultation she has mentioned, information and statistics will be kept that show the BAME profiles? I should not use the word "profile", but the Minister will understand what I am saying. This is an issue we have brought up at other points in the Bill.

Baroness Barran: I am glad to be able to reassure the noble Baroness that that will be the case.

Lord Kennedy of Southwark: I thank the Minister for her response, which was very helpful. At this stage, I am happy to beg leave to withdraw the amendment.

Amendment 76 withdrawn.

Amendment 77 not moved.

Clause 32: Prohibition of certain firearms etc: England and Wales and Scotland

Amendment 78 not moved.

Amendment 78A had been withdrawn from the Marshalled List.

Amendments 78B and 79 not moved.

Clause 32 agreed.

Clause 33: Prohibition of certain firearms etc: Northern Ireland

Amendments 79A to 80 not moved.

Clause 33 agreed.

Amendments 80A to 80D not moved.

Clause 34 agreed.

Schedule 2 agreed.

Clause 35: Surrender of prohibited firearms etc

Amendments 80E to 80J not moved.

Clause 35 agreed.

7.30 pm

Amendment 80K

Moved by ***The Earl of Shrewsbury***

80K: After Clause 35, insert the following new Clause—

"Payments in respect of converted or deactivated firearms other than bump stocks

(1) This section applies to firearms of the kind referred to in—

(a) the paragraph to be inserted into section 5(1) of the Firearms Act 1968 by section 32(2), or

(b) the sub-paragraph to be inserted into Article 45(1) of the Firearms (Northern Ireland) Order 2004 (SI 2004/702 (NI 3)) by section 33(2).

(2) A person making a claim and who was entitled to have in their possession on or immediately before 20 June 2018, by virtue of a firearm certificate held by them or by virtue of being a registered firearms dealer, a firearm described at subsection (1) above and who—

(a) opts to retain it after either modification into bolt action form or deactivation, and

(b) provides documentary evidence within one month of the start of the surrender period to the Chief Officer of Police who issued his or her firearm certificate of the transfer of the rifle to a registered firearms dealer with an appropriately conditioned section 5 authority, and

(c) on completion of the modification or deactivation, provides documentary evidence thereof to the Chief Officer of Police who issued his or her firearm certificate,

shall receive payment from the Secretary of State equivalent to the cost of modification or deactivation."

Member's explanatory statement

This amendment is intended to provide compensation to those who opt to have modified to straight-pull bolt action form, or to have deactivated, MARS and Lever-Release rifles prohibited under this Bill.

The Earl of Shrewsbury: My Lords, Amendment 80K deals with compensation. My intention with this amendment is to ask my noble friend the Minister two things. First, will he confirm that in the event of MARS and lever-release rifles becoming prohibited compensation will be paid, as stated in the Government's policy statement? Secondly, will compensation will be provided to cover the cost of modifications for those who modify to straight-pull bolt action or deactivate? I beg to move.

Earl Attlee: My Lords, if I may make an observation, if we still had the Firearms Consultative Committee, which was so well-chaired by my noble friend Lord Shrewsbury, and before that by Lord Kimball, we would have identified that we had a problem with the MARS and lever-action release system. The problem could have been snuffed out fairly early on by the committee advising the Home Secretary to ban them. The Home Secretary could then have made a Written Ministerial Statement saying that they were to be banned, and that compensation would no longer be payable for anything bought after that Statement was made. Will my noble friend the Minister consider reinstating the Firearms Consultative Committee, or something similar, so that we do not have a similar problem? Officials are shaking their heads, so I suspect that I will get a negative answer.

The Earl of Shrewsbury: Well you must be right then.

Earl Howe: My Lords, it is fair and right that owners of previously legally-held firearms, who voluntarily hand these weapons over to the police for safe disposal, should be properly compensated. The purpose of the surrender and payment provisions in the Bill are directed to that end.

Amendment 80K seeks to extend these compensation arrangements such that compensation would be payable to owners who choose to modify their rifles, or indeed deactivate them, so that they may lawfully retain them. The reason for the payment scheme in the Bill is to rightfully compensate owners for the value they lose when surrendering these rifles to the police. My noble friend Lord Shrewsbury has suggested that owners may look to modify their rifle to a straight-pull bolt action function and therefore retain it on a section 1 certificate. We are not against this; individuals are perfectly within their right to do so. However, it is one thing to compensate owners of these weapons where they are deprived of their property, and quite a different proposition to expect the state to pay for their conversion or deactivation. We are seeking to remove these potentially dangerous rifles from our streets, and it is right that the Government should use public money to compensate only those individuals who surrender their prohibited rifles.

The arrangements covering compensation payments for firearms made unlawful by the Bill will be set out in regulations. I hope noble Lords will have had an opportunity to read the draft regulations which my noble friend Lady Williams circulated late last week. These regulations will be subject to the affirmative resolution procedure, so in due course they will have to be debated and approved by both Houses before they can take effect.

There is clearly a balance to be struck here, taking into account the proper use of public funds. It is the Government's view that compensation should only be paid to those who surrender firearms prohibited by the Bill. If an owner instead chooses to modify or decommission one of these firearms, such that it may continue to be lawfully held, that is a matter for them, but it would not be right for such modifications or decommissioning to take place at taxpayers' expense. Given that explanation, which I am sure will come as a disappointment to my noble friend—I am sorry about that—I ask him to withdraw his amendment and support Clause 36 standing part of the Bill.

The Earl of Shrewsbury: My Lords, at least I get 10 points for trying. I am most grateful to my noble friend the Minister for what he said, and I understand it all. Having been around at the time of Dunblane, and through other guns being prohibited and compensation being given, I understand where he is coming from. If I may ask one further question, with compensation being paid for the guns which are to be handed in—if the Government go ahead and ban them—does this include compensation on manufacturing equipment for the businesses that manufacture these guns? I know that it does not include ammunition, but does it include manufacturing and the stock held?

Earl Howe: My Lords, I am advised that the compensation will embrace ancillary equipment unique to the weapons concerned.

The Earl of Shrewsbury: My Lords, I am most grateful. I beg leave to withdraw my amendment.

Amendment 80K withdrawn.

Clauses 36 to 38 agreed.

Clause 39: Interpretation of sections 32 to 38

Amendments 80L and 80M not moved.

Clause 39 agreed.

Amendments 81 and 82

Moved by ***Baroness Barran***

81: After Clause 39, insert the following new Clause—

"Enforcement of offences relating to sale etc of offensive weapons

(1) A local weights and measures authority may enforce within its area a provision listed in subsection (2).

(2) The provisions mentioned in subsection (1) are—

(a) section 1(1) of the Restriction of Offensive Weapons Act 1959 (penalties for offences in connection with dangerous weapons),

(b) section 1 of the Crossbows Act 1987 (sale etc of crossbows to persons under 18),

(c) section 141(1) of the Criminal Justice Act 1988 (offensive weapons),

(d) section 141A of that Act (sale etc of bladed articles to persons under 18),

(e) section 1 of the Knives Act 1997 (unlawful marketing of knives),

(f) section 2 of that Act (publication of unlawful marketing material relating to knives),

(g) section 1 of this Act (sale of corrosive products to persons under 18),

(h) section 3 of this Act (delivery of corrosive products to residential premises etc),

(i) section 4 of this Act (delivery of corrosive products to persons under 18),

(j) section 17 of this Act (delivery of bladed products to residential premises etc), and

(k) section 20 of this Act (delivery of bladed articles to persons under 18).

(3) For the investigatory powers available to a local weights and measures authority for the purposes of enforcing a provision listed in subsection (2), see Schedule 5 to the Consumer Rights Act 2015.

(4) Nothing in this section is to be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.

(5) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 (duties and powers to which Schedule 5 applies), at the appropriate place insert "section (Enforcement of offences relating to sale etc of offensive weapons) of the Offensive Weapons Act 2019"."

Member's explanatory statement

This new Clause would confer the investigatory powers in Schedule 5 to the Consumer Rights Act 2015 on Trading Standards for the purposes of enforcing various existing and new offences relating to offensive weapons.

82: After Clause 39, insert the following new Clause—

"Application of Regulatory Enforcement and Sanctions Act 2008

In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 (relevant enactments for the purposes of relevant functions to which Parts 1 and 2 of that Act apply) at the appropriate places insert—

"Criminal Justice Act 1988, sections 141(1) and 141A";

"Offensive Weapons Act 2019, sections 1, 3, 4, 17 and 20";

"Restriction of Offensive Weapons Act 1959, section 1(1)"."

Member's explanatory statement

This new Clause would apply Parts 1 and 2 of the Regulatory Enforcement and Sanctions Act 2008 to enforcement of the provisions listed in subsection (2) of the first new Clause to be inserted after Clause 39, to the extent that Part 1 or 2 of that Act does not otherwise apply in relation to those provisions.

Amendments 81 and 82 agreed.

Amendment 83

Moved by ***Lord Kennedy of Southwark***

83: After Clause 39, insert the following new Clause—

"Advertising offensive weapons online

(1) A person or company commits an offence when a website registered in their name is used to advertise, list or otherwise facilitate the sale of any weapon listed in Schedule 1 to the Criminal Justice Act 1988 (Offensive Weapons) Order (SI 1988/2019) or any offensive weapon capable of being disguised as something else.

(2) No offence is committed under this section if the website removes the advertisement or list within 24 hours of the registered owner of the website being informed that the advertisement or list includes a weapon listed in Schedule 1 to the Criminal Justice Act 1988 (Offensive Weapons) Order (SI 1988/2019) or an offensive weapon capable of being disguised as something else.

(3) A registered owner of a website who is guilty of an offence under subsection (1) is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine or to both;

(b) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale."

Member's explanatory statement

This new Clause would place responsibility on website owners to prevent the sale of weapons.

Lord Kennedy of Southwark: My Lords, Amendment 83 would insert a new clause into the Bill to make the owner of a website, be that an individual or a company, responsible for ensuring that weapons listed in Schedule 1 to the Criminal Justice Act are not advertised on their site. The Bill places responsibilities on shop workers, delivery people and others; making website owners responsible for their content should be welcomed by the Government. I asked a similar Question today about anonymous accounts and the noble Lord, Lord Forsyth, made the point that when people are made responsible, things happen. If they are not responsible, they will do nothing. There should be consequences. In some ways, this is in a similar area.

Subsection (2) of the proposed new clause would provide for the owner to have committed no offence if, within 24 hours of being notified of the advertisement, they arrange for it to be removed. Then there would be no problems whatever. In some cases, there is a defence under Section 19 of the Electronic Commerce (EC Directive) Regulations 2002, but that depends on the facts of the case. I accept entirely that there can be jurisdictional issues if the provider is based overseas.

This is only a probing amendment to highlight an issue that is part of a much wider problem, which I asked a Question about today: how we control what is on the internet and how we deal with such issues. These are serious matters. I hope that the government White Paper will deal with some of them, but I seek to include a clause in the Bill to make owners responsible for the content on their site and the adverts they place. I beg to move.

Lord Paddick: My Lords, I understand what the noble Lord, Lord Kennedy of Southwark, is trying to do with the amendment. It raises again the issue of websites that are hosted overseas and the lack of territorial reach to apply the suggested offence to overseas website owners. That creates an imbalance, as we discussed on previous elements of the Bill, between UK and overseas sellers of knives and corrosive substances, for example. I see some practical difficulties with this but I understand what the noble Lord is trying to achieve.

Baroness Barran: I am grateful for the amendment moved by the noble Lord, Lord Kennedy, which seeks to make it a criminal offence when,

"a website … is used to advertise, list or otherwise facilitate the sale of any weapon listed in Schedule 1 to the Criminal Justice Act 1988 … or any offensive weapon capable of being disguised as something else".

We can all agree on the spirit of the amendment. Indeed, in preparing my remarks, I spent five minutes googling what I could buy online. The noble Lord makes a good point: some very shocking weapons are easily accessible online. However, I hope to persuade him that his amendment is not needed.

We are satisfied that there is no gap in the law and that legislation addressing the criminal behaviour outlined in the amendment already exists. Indeed, the noble Lord alluded to that in his remarks. The Minister for Crime, Safeguarding and Vulnerability wrote to the Public Bill Committee in the other place to set out the legal position on online platforms that advertise or sell offensive weapons in contravention of Section 141 or Section 141A of the Criminal Justice Act 1988. It may assist your Lordships if I set out the position.

Section 141 of the Act states that,

"any person who manufactures, sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person, a weapon to which this section applies shall be guilty of an offence".

A list of such weapons is set out in Schedule 1 to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988. Section 141A of the 1988 Act makes it an offence to sell certain articles with a blade or point to anyone aged under 18. Clause 1 of the Bill will make it an offence also to sell corrosive products to a person aged under 18. As is clear from these provisions, anyone who sells, hires, offers for sale or hire, exposes or has in their possession for the purpose of sale or hire any of the weapons to which the 1988 order applies—whether online or otherwise—is guilty of an offence. This would apply to individuals, but "a person" can include a body corporate or unincorporated, such as a company.

Where the user of a website places advertisements or listings for anything contained in the 1988 order on that website, the service provider may rely on the defence in relation to hosting under Regulation 19 of the Electronic Commerce (EC Directive) Regulations 2002, as mentioned by the noble Lord, Lord Kennedy. Whether Regulation 19 applies will depend on the facts of the case. As the noble Lord mentioned, there may also be jurisdictional issues if the service provider is based overseas. I assure noble Lords that the sites I found were all based overseas. Regulation 19 will not apply where the provider of the website is offering the items for sale directly and where the provider had actual knowledge of the unlawful activity and upon obtaining that knowledge did not act expeditiously to remove or disable access to the information.

We therefore consider that the provider of a website who sells items on it directly would likely be caught under the wording of the legislation. Where the provider of the website is enabling advertisements to be placed by others, the defence under Regulation 19 may be available. We have discussed the matter with the Crown Prosecution Service, which is of the view that these provisions can be used to prosecute where appropriate. In the light of this explanation of the existing law, I hope that the noble Lord will be content to withdraw his amendment.

Lord Kennedy of Southwark: I thank the Minister for her helpful response. I tabled the amendment to highlight the problems in this area. It was good to hear that there are already provisions in place to deal with these matters. I look forward in due course to the Government's White Paper on the wider debate on the internet, the good that it does and how we deal with its bad side. At this stage, I am happy to withdraw the amendment.

Amendment 83 withdrawn.

Committee adjourned at 7.45 pm.

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