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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

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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

Thursday 7 February 2019

11 am

Prayers—read by the Lord Bishop of Lincoln.

Prosperity Fund: Sustainable Development Goals

Question

11.06 am

Asked by ***Lord Collins of Highbury***

To ask Her Majesty's Government what steps they are taking to ensure that the Cross-Government Prosperity Fund is being used to achieve the United Nations Sustainable Development Goals.

Baroness Stedman-Scott (Con): My Lords, the prosperity fund's primary purpose is to contribute to the UN sustainable development goals by addressing barriers to growth, most relevantly, but not exclusively, SDG 8—promoting sustained, inclusive and sustainable economic growth. Programmes undertake robust design and assurance processes demonstrating how they meet this purpose. Each has a clear reporting indicator linking to the goals, and external contractors carry out rigorous monitoring and evaluation. The prosperity fund is also contributing towards the UK's SDG voluntary national review.

Lord Collins of Highbury (Lab): I thank the noble Baroness for that response, but the simple fact is that the Independent Commission for Aid Impact, the International Development Committee in the other place and many NGOs have raised the fact that the prosperity fund is failing adequately to focus on supporting economic development that contributes to poverty reduction. Can the noble Baroness tell the House exactly how the Government are addressing the concerns of both ICAI and the IDC?

Baroness Stedman-Scott: As I have already said, the prosperity fund's main focus is to support economic development, and in doing so we hope and are determined that this will have a big impact in reducing poverty. Extreme poverty has been reduced by 50% due to the increased focus on trade and economic growth, and while with aid we must help people in terrible conditions, we believe that by investing in activities which drive economic growth is the best way to reduce poverty and increase economic growth.

Baroness Boycott (CB): My Lords, sustainable development goals 2 and 3 are to end, or reduce to zero, hunger and to promote good health and well-being. Every report lately has pointed to the increased food insecurity among so many people. We currently have 4 million kids who are not sure if they are going to get a decent meal today. What are the Government doing to address these incredibly important goals in SDGs 2 and 3?

Baroness Stedman-Scott: The noble Baroness raises a very important point. Nobody wants to see children starve, and our aid budget and the agencies that we work with—the NGOs—are doing everything they can to get food to these children to ensure they do not struggle in this way.

Lord McConnell of Glenscorrodale (Lab): My Lords, that is one of the clearest answers we have had yet from Ministers on the link between these funds and the sustainable development goals, and I welcome it. But will the Government take the opportunity, during the UK's voluntary national review to the United Nations this summer, to publish that detail in terms of monitoring and evaluation of these expenditures in relation to the goals? Will it do so not just for the prosperity fund but for the other funds that are being spent by departments outside of DfID?

Baroness Stedman-Scott: The noble Lord raises a very important point. Transparency is critical, and I do not believe there is any desire not to be transparent on these matters. The CSSF is working hard to increase transparency and has made major progress. Over the past 18 months, the CSSF has listened to feedback and worked on publishing more information on its programmes, its objectives and how its programmes are performing. I have no doubt that if the noble Lord still does not think we are up to scratch, he will let us know.

Lord Wallace of Saltaire (LD): My Lords, how far do the Government see prosperity and sustainability as going together or as different and sometimes contradictory goals? I am conscious that, as climate change sweeps across the developing world, there may be water shortages. For example, I saw an estimate recently that several million people in Iran are going to have to move because of water shortages as the water table goes down. How much attention is being paid to the really difficult sustainability issues which so many developing countries now face from climate change?

Baroness Stedman-Scott: The UK's aid investment is creating a safer, healthier and more prosperous world, but on the point of sustainability I feel I may do best by gleaning some more information and writing to the noble Lord to make sure I have got it correct.

Baroness Berridge (Con): My Lords, the website for the fund also states that it has programmes to tackle barriers to prosperity for certain excluded groups, particularly rural women, young people and people with disabilities. Will the Minister please outline how the fund is being used to tackle the barriers to prosperity that exist for many minority religious or belief groups, who face high or very high levels of discrimination in over two-thirds of the countries in which DfID seeks to work?

Baroness Stedman-Scott: The answer to that question is perhaps a cross-departmental range of activities. My noble friend Lord Ahmad is working on freedom

[Baroness Stedman-Scott]
of religion, and a great deal is going on to ensure that women and children are helped to achieve their potential so that they can play their full role in the countries where they live.

Lord Judd (Lab): My Lords, the sustainable development goals are there to eliminate world poverty. The poorest people in the world have to be brought to a point at which they can play their part in the world economy. This is why aid is so important in building up their self-sustaining ability to play that part. If British industry and investment can play a role in this, good, but does the Minister not agree that the top priority within the 0.7% context is always to keep our eye on the poorest and how they might be brought to the point at which they can play a part in the world economy?

Baroness Stedman-Scott: I am very happy to confirm to the noble Lord that it is the poorest that we want to help. We want to help them in their development and their recovery from their poverty. While 97% of this fund goes to aid, a small proportion of it gets invested in projects which help people in creating jobs, creating better homes for them and creating for them a better life. All I know is that some of these poorest people have a deep history of pain and being very uncomfortable, and this fund will give them a destiny rather than a history.

Brexit: Food Imports

Question

11.14 am

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government how many additional food inspectors will be put in place to ensure that food imports from the European Union are checked at transit ports in the event of a no-deal Brexit.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, there will be no additional controls on food and feed originating from the EU. However, non-EU high-risk food and feed consignments transiting the EU to the UK will be subject to controls, and will enter the UK at ports with the required facilities to undertake those controls. Following analysis to determine the possible number of such transits, there are sufficient inspectors at UK ports with those facilities to undertake all relevant import controls.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that reply. He will know that the Department for Transport has agreed a number of new freight routes from the EU to smaller UK ports as part of the contingency planning. Meanwhile, the Government seem to be relying on existing staff in existing ports to carry out food inspections, despite the fact that they will not have access to the EU quality assurance documentation that they have had in the past. Is the Minister not concerned that some unscrupulous EU and third-country food exporters will exploit those new routes and offload their second-rate or even contaminated food when they know that they are unlikely to be checked? What guarantees can the Minister give to UK consumers that food imports will continue to be safe to eat in the event of no deal?

Lord Gardiner of Kimble: My Lords, we have been working closely with the Food Standards Agency on all these matters. Careful consideration has been done with the APHA, the Food Standards Agency and HMRC precisely to ascertain whether the ports and their health authorities have the appropriate facilities to accommodate the 6,000 additional checks that we think would be required because of those transit goods, but—

Baroness McIntosh of Pickering (Con): My Lords—

Lord Gardiner of Kimble: I had better stop now.

Baroness McIntosh of Pickering: My Lords, I apologise. Will my noble friend satisfy those of us in this place and food inspectors that the regulations required to be in place will be passed before 29 March? What is the timetable for bringing them forward?

Lord Gardiner of Kimble: My Lords, obviously, we need to be ready in this case for transit goods—which I take it is the subject of the Question—and the 6,000 additional checks. Imports will have to be pre-notified. Work is well advanced with importers and agents. It is clear that those items that would not be inspected within the EU must be inspected and checked at UK points of entry. That is precisely what we have been working on and the Border Delivery Group has insisted on it.

Lord Harris of Haringey (Lab): My Lords, I understand that Ministers have taken a decision to instruct those operating at the border to prioritise flow and throughput over all other considerations for all goods. What assessment has been made of the risk posed by that to public safety and what assessment have the Government made of the consequences of that decision and those recommendations for those operating at the border?

Lord Gardiner of Kimble: My Lords, I do not identify with that. Biosecurity and human health are paramount. That is why the Food Standards Agency was very clear about there being no need on day one for additional controls for goods coming in the EU—precisely because the same EU standards are required and will continue. The point of the additional checks that will be undertaken is to ensure that our food is safe. As I said, the port health authorities have said that they have adequate facilities to enable that to happen.

Lord Dykes (CB): My Lords, the noble Lord is renowned for being a moderate and sensible Minister in this Government. Apart from perhaps considering proposing President Tusk for the Charlemagne Prize in view of his sensible remarks, which have been

described as bullying when they are not at all—they are very wise advice, albeit a little late—will he consider now the total insanity of the Government's list of intended leave measures? An alternative is still available to the Government: to pause, think again and decide to stay in the European Union.

Lord Gardiner of Kimble: My Lords, my responsibility to the House is to answer the Question. I assure your Lordships that all work is being undertaken to ensure that, whatever its source around the world—and we welcome good-quality food—food is safe for human consumption. That is the responsibility I am addressing this morning.

Baroness Jolly (LD): My Lords, the Minister has spoken of additional checks and new systems at the borders using the current inspectors, so will he tell the House what training those inspectors have had for the new systems and checks?

Lord Gardiner of Kimble: My Lords, that is a very helpful question. There are currently about 91,000 consignments arriving from third countries and the additional 6,000 consignments I mentioned should be looked at in the context of that 91,000. The port health authorities are confident that they have adequate facilities and personnel, but if at any time in the future there were a need to look at this, of course that would be the responsible thing to do. We are working very closely with the world-renowned experts at the Food Standards Agency and the Animal and Plant Health Agency.

Baroness Nicholson of Winterbourne (Con): Does the Minister agree that the United Kingdom has the competence and capacity to produce 80% of our foodstuffs, even for our widely diverse population, because we are such superb farmers? Would it not be right for the Government to stress firmly that the National Farmers' Union and Britain's farmers deserve all our support and we do not need all these controls on imports? Others want to buy our food, rather than the other way around.

Lord Gardiner of Kimble: My Lords, I should first declare my farming interests, as in the register. Of course, we should champion domestic production: we have some of the best agricultural land in the world to produce the food that we do. But certain items that we all enjoy and are good for our health come from abroad. We need to ensure that all the food that comes from abroad is safe for people to consume—that is why we have the Food Standards Agency and the APHA—but we have very good food in this country too.

Brexit: Counterfeit Medicines

Question

11.22 am

Asked by ***Baroness Walmsley***

To ask Her Majesty's Government what plans they have to protect patients from counterfeit medicines after the United Kingdom has left the European Union.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, if we enter an implementation period, the UK will remain part of the EU-wide system, with arrangements beyond that subject to negotiation. In the event that the UK leaves without a deal, we will review options for an alternative to the new EU falsified medicines system. In the meantime, patient safety remains our priority. As the lead enforcement authority, the MHRA will take a pragmatic approach to ensure supply during the initial phase of operation.

Baroness Walmsley (LD): I thank the Minister for her reply and welcome her to Oral Questions. Under the falsified medicines directive, UK patients can have the confidence that their medicine is a genuine product and has not been tampered with, but if we have a hard Brexit we will have only seven weeks either to recreate the barcode system at great cost, which is impossible in the time, or agree a fee to remain part of the system. Has the UK had any preliminary negotiations about such an agreement? If so, is there an estimate of what it would cost to be part of the system as a third country? Is this not yet another cost of Brexit that the people were not told about in 2016?

Baroness Blackwood of North Oxford: I thank the noble Baroness for her Question. As stated in the response to the MHRA's recent no-deal consultation, it is expected that stakeholders would no longer be able to comply with the requirement to verify and authenticate medicines, so legal obligations related to this would be removed. In this scenario, we have committed to evaluate options for a future falsified medicines regulatory framework, taking into account investment made by stakeholders. It is important to note that the majority of the FMD was already implemented in 2013, and also that the MHRA has 30 years of experience as a world-leading regulator of more than 3,500 medicines. We expect that patients will remain safe and that there will be continuity of supply so that we can have confidence in medicines and safety for patients.

Lord Clark of Windermere (Lab): My Lords, I congratulate the noble Baroness on her appointment. As she knows, the European medicines verification system becomes effective this Saturday, I believe. Is she confident that we have sufficient personnel and procedures to implement it immediately? Will she also say whether, if the Commons were to approve the Prime Minister's preferred agreement, this protection would be included?

Baroness Blackwood of North Oxford: I thank the noble Lord for his question. We are committed to meeting the 9 February deadline for the launch of FMD safety measures. We expect all stakeholders in the UK's supply chain to be aiming to comply with the requirements. We know that much of the supply chain is already prepared, but it is a complex chain, setting up medicine supply across the EU. The main challenges concern error messages; several member states—including Denmark, Portugal, the Netherlands and Ireland—have noted, unrelated to Brexit, that there will be challenges

[Baroness Blackwood of North Oxford]
in implementation. The MHRA has notified the supply chain that we will be taking a pragmatic approach to implementation. This is appropriate, to ensure patient safety and a continuation of dispensing.

Lord Patel (CB): My Lords, does the Minister agree that, with the implementation of the falsification of medicines regulation, which also goes with the European register for the verification of medicines, it would be rather unusual if the UK—even in a no-deal Brexit—did not have access to the European medicines register? That would mean it would not be possible for the decommissioning of any medicine to go on the register; any medicine that is dispensed in this country has to be decommissioned. I hope the Minister agrees that the MHRA will have to work with the European Medicines Agency to achieve this.

Baroness Blackwood of North Oxford: I thank the noble Lord, Lord Patel, for his question; obviously he has great expertise in this area. The Government have been clear that life sciences is a key sector for the United Kingdom, and have stated in the political declaration that we want to have close alignment with the European Union, and to continue close collaboration between the EMA and the MHRA going forward. This will be subject to negotiation, depending on the outcome of the exit. However, the MHRA is a world-leading organisation. We can be proud of its expertise in licensing, devices, inspections, batch release and pharmacovigilance. It is globally recognised and respected, and we want to ensure that shared experiences continue, for the benefit of both UK and EU patients.

Baroness Nicholson of Winterbourne (Con): I congratulate my noble friend the Minister. Perhaps I might ask her to stress that the privatisation of our medicines agency, which is the most successful on the globe and which everyone else follows, enables us to sell widely and to contract with other member states in the EU and elsewhere. Our standards are global, and they can now buy in to us. It is a tremendous advance.

Baroness Blackwood of North Oxford: My noble friend is absolutely right that the MHRA is globally recognised, and that it has set the standards worldwide. We want to ensure that as we go into EU exit those standards continue, and that our reputation is maintained internationally.

Lord McConnell of Glenscorrodale (Lab): My Lords, can we be assured that, in these and other areas where legislative responsibility is shared between the UK Government and the devolved Governments, that there are appropriate arrangements in place behind the scenes—despite the political disagreements—fully to engage the devolved Governments in discussions on preparations for any scenario over the next few weeks?

Baroness Blackwood of North Oxford: The noble Lord is absolutely right. There is strong representation of life sciences in all four nations of the United Kingdom, and engagement has been going on across the devolved Administrations and will continue to do so.

Venezuela

Question

11.28 am

Asked by ***Lord Garel-Jones***

To ask Her Majesty's Government what steps they are taking to assist Venezuela in holding a free, fair and democratic presidential election.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, on 4 February my right honourable friend the Foreign Secretary announced that the United Kingdom recognised Juan Guaidó as the constitutional interim President of Venezuela until credible presidential elections can be held. The United Kingdom, alongside its international partners, is committed to working to secure a peaceful solution to this crisis and prevent the risk of further violence. Our focus is on supporting the democratically elected parliament of Venezuela to resolve the current crisis to the benefit of the Venezuelan people.

Lord Garel-Jones (Con): My Lords, I commend the Government for joining Germany, France, Spain and others in Europe in rejecting the failed Administration of Maduro. As soon as possible, will the United Kingdom Government provide aid for the humanitarian crisis facing that country? Furthermore, when we get a democratically elected Government, will Her Majesty's Government make representations to the IMF and other international lenders to get the huge debt that will be inherited from the failed Administration renegotiated? Lastly, have the Government had any indication that the leader of the Opposition in another place has had a change of heart, or does he continue, along with Russia and China, to support the failed Maduro Administration?

Lord Ahmad of Wimbledon: My Lords, first, on the issue of humanitarian aid, I think we have all watched pictures on the television showing the desperate plight of the Venezuelan people. I assure my noble friend that DfID is working very closely with my right honourable friend the Minister for the Americas, Sir Alan Duncan. We are already working through UN agencies to provide essential funding, particularly to the more than 3.2 million people who have fled Venezuela since the crisis began. On his second, very pertinent question, on the IMF, I assure my noble friend that we recognise that reconstruction in Venezuela will require support from international financial institutions and that, when the time is right, the UK will work closely with those and all like-minded international partners with the aim of getting Venezuela's economy back on track.

On my noble friend's final question, on the position of Her Majesty's Opposition and, in particular, the leader of Her Majesty's Opposition, while I have not heard directly from him, I followed the speech of the shadow Foreign Secretary, who answered a question on Venezuela yesterday. I am sure the noble Lord, Lord Collins, is taking note—

Lord Collins of Highbury (Lab): Will the Minister give me a chance to speak?

Lord Ahmad of Wimbledon: I will, but I am answering the question first. I was struck by the fact that the shadow Foreign Secretary said that we should be led by the countries of the region. Well, the countries of the region who have recognised the interim President—let us leave the US and Canada aside—are Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Panama, Paraguay and Peru. If she wants to follow the lead of the region, I suggest that Her Majesty's Opposition look at that list very carefully.

Lord Collins of Highbury: I really must intervene. The noble Lord has used this Question as a Statement. The Statement is not being repeated in this Chamber. Let me make it absolutely clear: the position of the Opposition is that democracy has failed in Venezuela and the sooner we get free and fair elections, the better. We want from the Government, as the noble Lord said, a clear commitment to work with the international community to ensure that the humanitarian and economic crisis in Venezuela is addressed, because we know that Trump will not address it.

Lord Ahmad of Wimbledon: I ask the noble Lord again. We are addressing it and I have given a clear indication of what the Government are doing, but the Opposition need to step up to the mark. If you ask the people of Venezuela one question—what is the freedom they are fighting for?—they say they want free and fair elections. Maduro has not given them; it is time that Her Majesty's Opposition recognised the interim President.

Baroness Northover (LD): My Lords, given that Maduro has not given up and that the army has not deserted him, what action can we take to warn him to respect the right of the Venezuelans to demonstrate peacefully without risk to life and limb? Can the Bank of England take action to hold Venezuelan funds, which Maduro is apparently trying to access at the moment?

Lord Ahmad of Wimbledon: The noble Baroness raises an important point about the Bank of England. I am sure that, with its independent role, the Bank will abide by all rules and is looking at the situation in Venezuela very closely. She raises a very pertinent point about peaceful resolution. That is why, along with like-minded nations including leading European nations, we believe that recognising the interim President is an important first step, and we now call for Maduro to step aside and announce the appropriate date when presidential elections can take place.

Viscount Waverley (CB): My Lords, I remind the Minister that I have some related unanswered Questions, which he will no doubt answer in due course. Can he confirm whether gold assets are being held by the Bank of England on behalf of the central bank of Venezuela? Has there been any request to effect a transfer of any part of those assets? Are the Government empowered to block future requests for anything other than a proven legitimate reason?

Lord Ahmad of Wimbledon: With any matters relating to the Bank of England, it is appropriate for the Bank of England, in terms of confidentiality, to respond. The noble Viscount's point is important. In making a request for a client, I am sure that the Bank of England would look at the appropriateness and legitimacy of both the client and the request.

Lord Howell of Guildford (Con): My Lords, like others, I welcome the decision of Her Majesty's Government to support other allies and democracies in support of Juan Guaidó. Does the Minister accept the urgent need to encourage all democratic parties—across parties; this is not a party issue—to condemn the socialist despot, Mr Maduro, and his pitiless Administration? As a democracy, surely all parties in this nation should roundly support that cause.

Lord Ahmad of Wimbledon: My noble friend makes an important point. As I said, along with other nations in the region and our European partners, we have asked Maduro to step aside. In terms of the economy and the suppression of freedom of speech and freedom of the press, the current situation in Venezuela is dire. That needs to be recognised, and all parties in this House and beyond need to recognise the interim President.

Mobile Roaming Charges

Statement

11.36 am

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer to an Urgent Question in another place. The Statement is as follows:

"Delivering a negotiated deal with the EU remains the Government's top priority. This has not changed. However, I am sure the House will agree that we must prepare for every eventuality, including a no-deal scenario. We have taken a number of steps as a Government, working with businesses, consumers and the devolved Administrations, to make sure that we deliver the best possible outcome for mobile users in the event of no deal.

The Government will legislate to make sure that the requirements on mobile operators to apply a financial limit on mobile data usage while abroad is retained in UK law. The limit would be set at £45 for each monthly billing period, which is the same limit as the one currently in place. We will also legislate to ensure that customers receive alerts at 80% and 100% of data usage. These measures would mean clarity and certainty for consumers and would make sure that they are able to plan their spending and usage accordingly.

I know that there is also concern on the island of Ireland, and in some other areas, about the issue of inadvertent roaming. This is when a mobile signal in a border region is stronger from the country across the border. So, the Government also intend to retain through UK law the EU roaming regulation provisions

[Lord Ashton of Hyde]
that set out how operators must make information available to their customers on how to avoid inadvertent roaming.

The Government are working hard to make sure that everyone is prepared and ready for all outcomes. I encourage all businesses to read our technical notice on mobile roaming in the event of leaving without a deal, which we published last summer. This is one of 106 technical notices to help businesses understand what they would need to do in a no-deal scenario so that they can make informed plans and preparations.

However, we should be clear that surcharge-free roaming for UK customers may continue across the EU as it does now, based on operators' commercial arrangements. Leaving without a deal would not prevent UK mobile operators making and honouring commercial arrangements with mobile operators in the EU—and beyond the EU—to deliver the services their customers expect, including roaming arrangements. The availability and pricing of mobile roaming in the EU would be a commercial question for the mobile operators. However, many mobile operators, including Three, EE, O2 and Vodafone, which cover more than 85% of mobile subscribers, have already said that they have no current plans to change their approach to mobile roaming after the UK leaves the EU.

I hope that the steps I have set out will reassure the House that as a Government we are committed to a smooth and orderly transition as we leave the EU. In our telecoms sector, just as in all sectors, we are putting the right plans in place for all outcomes as we leave. That is the role of a responsible Government and that is what we will continue to do".

11.39 am

Baroness Smith of Basildon (Lab): Well, my Lords, that sounds extraordinarily complacent and very much, "Not me, guv". Has the Minister seen the report on the *Huffington Post* UK website about proposals from his department that pave the way for major increases to mobile phone bills for UK citizens travelling in Europe post Brexit? Our businesses, manufacturing firms, struggling SMEs and new start-ups are already having to prepare for how they will do business in Europe post Brexit. This will be a bitter blow for those companies marketing their products or looking for investment in the EU.

Is this not just another cost to British businesses from the Government's mishandling of Brexit? In effect, it is a trade tax. Given the similar proposals in the statutory instrument on credit cards forcing higher charges on UK businesses, does the Minister really understand the impact that this double whammy is going to have on UK enterprise? Will he commit today, in the interests of UK plc, to withdraw both of these orders and think again?

Lord Ashton of Hyde: My Lords, I think that there may be some misunderstanding about this. The *Huffington Post* commented on an SI that was laid which is a no-deal SI. The best way that noble Lords and Members of the other place can prevent these changes happening is to agree a deal. However, if there is no deal we have to face the inevitable consequences of that. A lot of the issues that have arisen not only with this subject but with other SIs stem from not distinguishing between the effect of the SI itself and the effect of leaving the EU. In this case, it is not fair to say that we have not prepared for that. In fact, the technical notice that outlined all these considerations was issued in September. It is not a question of simply withdrawing the instrument; if we are no longer in the EU, we will not be able to prevent EU operators increasing charges to UK operators. They will then have to accept those higher charges, which inevitably will be passed on to consumers. The issue is that if we leave the EU we will not be able to participate in the harmonised wholesale roaming prices, so I do not accept the analysis of the noble Baroness. That is why it is not possible to withdraw the SI, if we are acting responsibly in the event of no deal.

Baroness Ludford (LD): My Lords, the best way to avoid these changes is of course no Brexit. Surely the Minister will agree that the slashing of mobile roaming charges in the EU is one of the biggest successes for British consumers, travellers and businesses? British Ministers and MEPs played a big part in this triumph to stop rip-offs and nasty surprises on bills. Now the Government intend to steal this benefit from British citizens, even though they think it likely that costs will be passed on to consumers through the choice they have made. Why have the Government chosen—and it is a choice—not to impose a retail roaming price cap? Is this deregulation policy a foretaste of the Government's intentions in other sectors? What estimate have the Government made of the total extra costs for a British holidaymaker arising from the reintroduction of roaming charges, the loss of the EHIC card, likely increases in the cost of travel insurance and EU fees for a visa-lite? Should the Government not put this choice back to the British people so that they can decide whether they want to Brexit at all?

Lord Ashton of Hyde: I do agree with the noble Baroness on one thing: this has been a great benefit since it was introduced 18 months ago. Of course, it did not exist until then. When we decided to leave, there were inevitable consequences. What I do not understand from her question is how she thinks, within the powers available to the UK, we could do something different. If we set a retail price cap, UK operators will have to accept all the increased charges and as sure as anything, those will have to be passed on to all consumers. The difference is that she would penalise all consumers, while this measure affects only those who roam in the EU.

Lord Kirkhope of Harrogate (Con): My Lords, I think it fair to say that over many years, British MEPs were involved in this progress for the consumer. It is one of the great benefits we got—however else people might feel about this—from our membership of the European Union and the work that was done in the European Parliament. I know there are some restrictions on what my noble friend can do. However, great powers are available to the Government in their dealings with the telecommunications companies—most of which are international, based not just in Europe but here in

this country—to make it clear that we do not expect them to penalise those who have these hard-fought-for benefits, to make up for which other allowances have been made to the telecommunications companies.

Lord Ashton of Hyde: I agree with my noble friend, and that is why we are retaining in UK law the requirement for them to notify their customers about the amount they spend on roaming per month at the same limit expressed in pounds sterling as is currently available, putting into law that they have to notify their customers when they reach 80% and 100% of their data usage and requiring them to take reasonable steps to prevent inadvertent roaming. We understand that they have responsibilities and that it is a consumer benefit, but that is why we are doing that. We have had constructive discussions with the telecoms industry. Partly because of the competition environment in this country, unlike in some others, consumers have a choice. At the moment, as I said, those that cover 85% have said that, despite the changes that would happen in a no-deal Brexit, they have no plans to increase. They will accept the increased costs while they can.

Lord Rooker (Lab): My Lords, as my noble friend on the Front Bench said, this is exactly analogous to what is in a statutory instrument waiting somewhere in this House on credit card use outside the UK. When that issue came before sifting committee B a few weeks ago, we noticed that the restrictions on charges were only for UK use. Our advisers had already been back to the Government to check why this was the case. We were told it was a conscious decision by the Treasury to allow extra charges on UK citizens using their credit cards in Europe. In other words, it could be stopped. This is exactly the same situation, and it is not good enough for the Minister to say, "Oh well, we will see competition". The fact of the matter is that the idea was to transfer EU law for our citizens to be exactly the same on 30 March as on 29 March. In this case, it is not. We are deliberately allowing people to be ripped off, and it is a conscious decision by the Government. We were informed of that, and in due course we will get the chance to debate the credit card issue.

Lord Ashton of Hyde: First of all, I point out that this did not appear at the sifting committee, because we made the conscious choice to allow this to be an affirmative SI when it could have been a negative one, so we are not trying to evade—

A noble Lord: Very generous.

Lord Ashton of Hyde: I am glad the noble Lord, from a sedentary position, admits we have been generous on that. I have not noticed a lack of scrutiny from him on other SIs. Moving on, it is not true to say that this is a conscious choice to penalise consumers. If we are not able to participate in the EU harmonisation of wholesale prices, there are inevitable consequences of that. This SI therefore tries to retain the benefits for consumers that are able to be put into UK law, which we are doing, bearing in mind that we will no longer be part of the EU single market.

Lord Hain (Lab): My Lords, surely the Minister could agree that "no plans to"—his words—is not the same as a guarantee. In the EU we have a guarantee of no additional data roaming charges or voice roaming charges outside our bundle. He is not providing any guarantee at all, and it is about time he did.

Lord Ashton of Hyde: That is based on a fundamental misunderstanding of the position. Currently, we have a guarantee because we are part of the EU single market. If we leave the EU single market, which is what this SI is about, we will not be able to provide that guarantee. Therefore, I am incapable of giving the noble Lord the guarantee that he asks for. We have been completely open about that. That is why I said that the four companies have no plans for increases. Of course there is no guarantee about that, and we would not be in a position to command it if we are not in the EU. The issue is not about the SI but about the consequences of leaving the EU.

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

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

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

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

Motions to Approve

11.50 am

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

That the draft Regulations laid before the House on 10 and 12 December 2018 be approved. *Considered or debated in Grand Committee on 29 January.*

Motions agreed.

Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

11.51 am

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

That the draft Regulations laid before the House on 29 November 2018 be approved. *Debated in Grand Committee on 23 January.*

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde): My Lords, I thank noble Lords for their contributions to the extensive debate in Grand Committee on Wednesday 23 January. I committed then to provide further information concerning the engagement with stakeholders that had occurred, especially with the UK Competitive Telecommunications Association. I wrote to all noble Lords who participated in the debate and placed a copy in the Library on 29 January. I hope that that was acceptable to noble Lords and I beg to move.

Lord Foster of Bath (LD): My Lords, we had a full debate in Grand Committee on this statutory instrument last week and I place on record my gratitude to the Minister for the comprehensive letter that he sent to many of us following our deliberations on that occasion. I am sure that it will be a great pleasure to the Minister to know that I do not intend to revisit all the points that I raised on that occasion, with the exception of one, which is very important.

A general point has been occupying and concerning Members of your Lordships' House in relation to our leaving the European Union, not least during a debate on 30 January on the Trade Bill. There was much discussion about the vital importance, following our exit from the European Union, of remaining as close as we possibly can to all the various organisations within the European Union that determine the rules on which trade between the UK and the European Union will depend.

The Minister will be well aware that, in relation to the specific business and trading arrangements that will occur between the UK and the EU, with this instrument we are talking about the broadband and telecoms industries. I note with great interest, in light of the debate that we have just had on roaming charges, what the Government said in their technical notice issued on 13 September last year, which stated that,

"irrespective of the outcome of the negotiations between the UK and the EU, we do not expect there to be significant impacts on how businesses operate under the telecoms regulatory framework and how consumers of telecoms services are protected".

But we have just heard in relation to roaming charges that that simply does not stack up and that there will be serious implications for our telecoms and broadband sectors. They are very important to the economy of this country. For instance, telecoms has revenues of something like £40 billion. There are going to be significant impacts.

The Minister was very clear in relation to roaming charges that because we are leaving the European Union we cannot participate in harmonised roaming arrangements. We have to accept that we have to face the consequences of a no-deal situation. I suggest to the Minister that there is one area in which we could try to do what we can to mitigate some of the consequences that will occur following exit, in relation to the way in which we seek to participate in the very body that will determine the rules under which our telecoms and broadband organisations will have to operate. As the Minister well knows, as we have debated this on many occasions, that body is BEREC. It brings together all the relevant regulators, including our highly regarded UK regulator Ofcom, to discuss all the rules that will affect everybody.

The House will be well aware that very recently the European Union introduced the new Electronic Communications Code, which will have a significant bearing on how all the industries throughout the 27 and within the UK operate in future. In future there will be further changes to those rules, and it is therefore very important that we do everything in our power to remain involved. I accept that there will not be the opportunity to be a full member with voting rights, but it is important that we remain as close to BEREC as possible. That view is shared by many organisations, not least Ofcom. It has pointed out that in future BEREC will be hugely influential in, for instance, changes to the European Electronic Communications Code, and in any new guidelines on international roaming, net neutrality and many other issues. It said:

"Even if the UK is not bound to follow EU laws, the approach taken at EU level on these issues will continue to be relevant to the UK and to many of the companies we regulate, many of whom also have operations in other EU countries or are subsidiaries of international telecoms groups that have substantial operations in other countries".

It gives the examples of Telefónica, Three, Virgin Media, Vodafone, and goes on to say:

"There are also more general benefits from participation in EU networks since they provide a forum in which we can cultivate and sustain bilateral relationships with our EU peers, at both senior and working levels, to exchange experiences and share best practices".

It is clear that Ofcom believes it is important to remain as close as it can to BEREC. I believe it is important for our telecoms and broadband industries in the UK, and I am delighted that the Government seem to share that view: in the other place on 7 January the Minister, Margot James, said that,

"the Government recognise that Ofcom would benefit from the continued exchange of best practice with other regulators, and from the exchange of information about telecoms matters more generally".—[*Official Report*, Commons, Delegated Legislation Committee, 7/1/19; col. 6.]

Given that we are all agreed, the question is: how is that going to be achieved? When we debated this in the Moses Room, the Minister said very clearly that he was confident that, because Ofcom is such a highly regarded regulator, BEFEC would be very keen to involve it. One would hope that that would be the case.

However, the Minister is also aware that he is part of a Government who have signed up to the withdrawal agreement, which contains within it at Article 128 a very clear statement that our bodies and expert groups, such as Ofcom, will not be able to participate in gatherings such as BEREC. It is clear that they cannot do that, or can do so only in certain circumstances—I suspect the Minister is about to get up and give the exceptions; if he wants to do so rather than me, I am happy to give way.

Noon

Lord Ashton of Hyde: That is kind of the noble Lord. Is he aware that this is a no-deal SI and that therefore the withdrawal agreement does not apply?

Lord Foster of Bath: I absolutely accept that; my point is that we need to look at the attitude of the Government towards their relationship with bodies

such as BEREC. If, even without a no-deal situation—that is, even within the withdrawal agreement, where it is hoped there will be a deal—the Government are supporting a mechanism that they have written themselves, which makes it difficult for Ofcom to be involved in BEREC, then we should have some real concern.

I have drawn attention—I will not repeat the detail in your Lordships' House now—to how Article 128 makes it difficult for Ofcom to be involved in BEREC. During the debate on the Trade Bill, the Minister concerned gave a very different interpretation of that situation. He made it clear that he thinks it will be perfectly possible for Ofcom to be involved. I challenged that Minister, the noble Lord, Lord Bates, on whether he agreed with my interpretation or with that of his noble friend. I was somewhat surprised by the answer he gave. He said:

"The noble Lord, Lord Foster of Bath, made an interesting point about the reputation of Ofcom, which of course we all recognise as a world-leading authority. He then offered me a pretty difficult choice of choosing between his persuasive speech and the words uttered in Committee by my colleague in government, my noble friend Lord Ashton of Hyde. Given that I speak from the Government Benches, I am afraid that I must side with my noble friend Lord Ashton in this regard".—[*Official Report*, 30/1/19; col. 1156.]

So two Ministers now have disagreed with my interpretation of whether we will be able to participate closely with BEREC. I end with a simple question for the Minister today: will he give a clear assurance that, in the event of no deal, it will be the Government's intention to take all necessary steps to ensure the maximum co-operation between Ofcom and BEREC?

Lord Griffiths of Burry Port (Lab): My Lords, I rise to wish the Minister well. We had a good debate in Grand Committee. We shared very frankly a number of views. There were questions relating to what kind of consultation had taken place; others were raised persistently and clearly by the noble Lord, Lord Foster of Bath, and he has continued to pose them this morning. I was reassured by the letter that we received, which took up and dealt with a number of the questions that we had been struggling with.

Once again, as I said from the Dispatch Box yesterday, I am trying to make a clear distinction between what needs to happen to the statutory instrument laid before us—I am sure the matters arising from it have now been adequately aired—and the questions that will go on worrying us after this instrument has been passed; as we move into the next phase, we will be debating substantive issues that certainly have not been answered in a debate of this kind. For the purpose of dealing with the piece of business directly before us, I am happy to give our accord from these Benches, but not if that should be supposed to cancel, diminish or sideline the issues that have been raised from the other Benches.

Baroness Neville-Rolfe (Con): Unfortunately we do not have a satisfactory or agreed Brexit deal and we need a no-deal SI here and indeed in a number of other areas, so I support the Government on that. However, I would like to pick up a point made by the noble Lord, Lord Foster, on roaming, which I understand is broader than this SI. If this is to be a commercial decision in future for the mobile operators in the event of no deal, as we heard earlier, can the Government seek voluntary assurances from them that they will continue to incorporate overseas calls and internet access into their contracts? I have that facility from Three and it includes the EU and indeed the US, and I do not think the company is planning to change that. However, in addition to the consumer triggers that are being introduced and the very good provision on inadvertent Republic of Ireland roaming, I think Ofcom could require the operators to make a clear statement of their intentions in this area on such calls in the EU, and I think it should look at the ability of consumers to switch from deals that turn out to be bad as a result of the change.

Lord Pannick (CB): My Lords, I support the noble Lord, Lord Foster, in the concerns that he has raised. It is not just the Minister in the other place who says it is important for Ofcom to benefit from the continuing exchange of best regulatory practice; it is in paragraph 7.35 of the Explanatory Memorandum:

"However, the Government recognises that Ofcom would benefit from the continued exchange of regulatory best practice with other national regulatory authorities and the exchange of information about electronic communications matters more generally".

The memorandum goes on at paragraph 7.36 to note that,

"the BEREC Regulation presently allows BEREC to invite observers to attend its meetings, and that the new BEREC Regulation is expected to provide that the Board of Regulators, the working groups and the Management Board should be open to the participation of regulatory authorities of third countries"—

which of course would include us in the event of no deal—

"where those countries have entered into agreements with the EU to that effect".

My question is therefore about whether it is the intention of the Government that, in the event of no deal, Ofcom should urgently seek from other EU states an agreement that will allow Ofcom to have such observer status so that Ofcom can benefit from the continuing exchange of best regulatory practice, and indeed the regulators at BEREC can benefit from Ofcom's expertise.

Lord Foster of Bath: Does the noble Lord agree that if he wishes to achieve that which he seeks—I entirely agree with him—there will have to be a change to Article 128 of the withdrawal agreement? That article specifically says that any invitation to attend will be exceptional and only in specific circumstances—namely, as it says in paragraph 5(a) and (b), that,

"the discussion concerns individual acts",

or individuals within the UK, or, and this is critical,

"the presence of the United Kingdom is necessary and in the interest of the Union",

and so on. So it is very clear that even if we sought that invitation to attend, it would be in limited circumstances unless changes are made to Article 128.

Lord Pannick: I share the noble Lord's concern. It is all very puzzling. That agreement is of course a premise that contradicts the premise of these regulations. As

[Lord Pannick]
the noble Lord says, these regulations are entirely on the premise that there is no agreement. What is puzzling is that if there is an agreement, the circumstances in which Ofcom would be able to participate in BEREC appear to be very restrictive indeed. There is therefore real concern that, in the event of no agreement, it might be said by BEREC that the circumstances in which Ofcom could participate could not be greater than the circumstances if there were an agreement. That is why I ask the Minister to confirm that it is the Government's intention that Ofcom should be able to participate, which is obviously sensible and desirable for everybody. Has there been any discussion with our European colleagues on whether that can and will be secured in the event of no deal?

Lord Ashton of Hyde: My Lords, I thank noble Lords for their questions and comments. If I may, I will restrict myself to the matters which pertain to this SI which, as the noble Lord, Lord Pannick, has just outlined, is a no-deal SI. I thank noble Lords, especially the noble Lord, Lord Griffiths, and my noble friend Lady Neville-Rolfe for their comments—I omitted to thank my noble friend for supporting me last night and I am glad she is doing so again, despite that.

It is worth touching briefly on the issue raised by the noble Lord, Lord Foster. He said in Grand Committee that he expected to raise this again, so I thank him for that warning. He has quoted me a number of times, referring to what I and my honourable friend the Minister have said, and alluded that there was a problem between us. There is not. He neglected to mention that in Grand Committee, I also said that Ofcom,

"does not have the right to do these things".

We were talking about membership of BEREC and attending meetings. I continued:

"That is not surprising, because we are leaving the EU. Why should it have the right?"—[*Official Report*, 23/1/19; col. GC 97.]

I made the point that as we leave the EU, there is no right to do that. However, that does not mean that we would not wish to pursue this, so let me address the points the noble Lord made about the potential difficulties.

The main purpose of BEREC is to ensure the consistent implementation of the EU regulatory framework. That is significant, not least in influencing the development of EU soft law. On the UK's position, it is true that Ofcom has been a member of BEREC since 2010, and has been actively involved in that time. It is a well-respected, national regulatory authority. As I said, on leaving the EU—which is what we are dealing with here—it will not be possible for Ofcom to retain its membership automatically. That is right, as we will not participate in the EU regulatory framework. In the event of no deal, Ofcom's ability to participate will be governed by the BEREC regulations themselves, as the noble Lord, Lord Foster, said.

The new BEREC regulation provides that BEREC should be open to the participation of regulatory authorities from third countries, where those countries have entered into agreements with the EU to that effect. There has to be a bilateral agreement, as I said, but that agreement need concern only the observer status of BEREC; it does not have to be a future economic framework, or a data adequacy agreement. The noble Lords, Lord Pannick and Lord Foster, asked whether we have done anything to ensure that. They also asked about our future intentions on trying to become an observer of BEREC. We are doing what Switzerland, which is in a similar position to us, is doing. Ofcom has already had conversations with BEREC; it is keen to have observer status and the Government encourage that. We will have to see how that develops.

The questions the noble Lord, Lord Foster, raised about Article 128 of the withdrawal agreement do not pertain to this. However, if they do, that will be in the context of a deal and that is the best way of encouraging co-operation. We want to get a deal and I hope that we do. The Government encourage Ofcom in its attempt to be an observer. As I said in Grand Committee, we think it would be of mutual benefit and that it would be of benefit to BEREC, apart from anything else; we encourage Ofcom in its endeavours.

Motion agreed.

Human Fertilisation and Embryology (Amendment) (EU Exit) Regulations 2019

Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019

Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019

Motions to Approve

12.15 pm

Moved by ***Baroness Manzoor***

That the draft Regulations laid before the House on 19 November 2018 be approved. *Debated in Grand Committee on 9 January*.

Motions agreed.

Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018

Market Abuse (Amendment) (EU Exit) Regulations 2018

Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019

Motions to Approve

12.16 pm

Moved by ***Lord Young of Cookham***

That the draft Regulations laid before the House on 29 November, 6 December and 13 December 2018 be approved.

Relevant document: 11th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A). Considered in Grand Committee on 23 January

Lord Tunnicliffe (Lab): May I just refer back to our previous exchange on this matter? When we last discussed credit rating agencies, I asked what would happen if

there was a deal and I got a somewhat amorphous answer. Can the Minister be clearer than he was in his original answer on this point? I have asked this question in every SI debate that I have attended and I have received a slightly different answer from each Minister concerned, so it would be good to know whether the Government have a unified position on this.

Looking at the Explanatory Memorandum, which was discussed in Grand Committee, there is the registration process and the three bullet points. The first two points were that there would be a conversion regime with automatic registration, and that the registration regime would be available to new legal entities. The third, however, which nobody seemed able to understand, was that the automatic certification process would enable certified CRAs established outside the EU to notify the FCA of their intention to extend the certifications to the UK. Like the conversion regime, these notifications must be made before exit day. The Minister's answer, which I checked again in *Hansard,* was again a little woolly.

Finally, there is the whole issue of how the law relates to the staff of credit rating agencies. We have improved the control of financial services and banks by having a senior management regime. I understand that that regime does not extend to credit rating agencies. The Minister went on to say that other regulations do, but I believe that those other regulations have the same sort of weak reservations that were there in 2008 and allowed the shambles in the money market. It seems somewhat deficient, because what happened in that period, as we know, and the reason nobody was prosecuted, is that everyone said, "It's not me, guv". There was not a clear single point of responsibility for the various exceptions to be made.

Lord Young of Cookham (Con): I am grateful to the noble Lord, who has maintained his reputation for holding the Government to account on statutory instruments. I understand exactly why he sought to raise these issues. He referred to my comment that we would "switch off" the SIs in the event of a deal. It is a phrase that appears in some of the briefing for Ministers, so I hope it was not the wrong thing to say. To help the noble Lord, I will set out in more detail the process of switching off.

As we set out in the White Paper on the EU withdrawal agreement Bill, that Bill will amend the European Union (Withdrawal) Act 2018 so that the conversion of EU law into retained EU law takes place at the end of the implementation period instead of on exit day. While the UK remains subject to EU law, and before the conversion of EU law into UK retained law, there is no requirement for most instruments relating to our exit from the EU to be enforced. I come to the question the noble Lord asked: the intention, therefore, is that the EU withdrawal agreement Bill will contain provision to delay all relevant SIs—including these—that enter into force on exit day until the end of the implementation period. The Bill will also ensure that Ministers can revoke or amend the SIs as appropriate so that they deal effectively with any deficiencies arising from the end of the implementation period. Some provisions may remain in effect, such as powers that allow us to prepare for the end of the implementation period.

The noble Lord raised two other issues in the Moses Room on 23 January. One question was on the process of CRAs registering before exit day. The CRA SI includes an automatic conversion regime for UK-based CRAs with an existing ESMA registration, and a temporary registration regime, or TRR, for CRAs establishing a new legal entity in the UK. To enter the conversion regime, a CRA will simply need to notify the FCA 20 days prior to exit day. A CRA that meets the criteria will enter the TRR if it has submitted an advanced application that has not yet been determined to the FCA prior to exit day. Basically, these regimes will help to ensure there are no gaps between the UK leaving the EU and UK-based CRAs not being registered with the FCA. The FCA will be provided with powers to start the preparatory work for registering UK CRAs prior to exit day.

The third issue the noble Lord raised is another that he touched on in his intervention in the Moses Room. He asked about the senior management structure of credit rating agencies and whether individuals could be held responsible. As I said then, it is a good question. The senior managers and certification regime does not currently apply to credit rating agencies. One of the reasons is that they do not actually handle customers' money, which banks and other agencies do. Regulation 22 of the SI applies Section 400 of the FSMA, which provides that if an offence committed was,

"with the consent or connivance of an officer",

of the body corporate, or due to neglect on its part, the individual as well as the corporate is guilty of an offence.

Lord Tunnicliffe: Part of that answer jarred a little with me then and jars now on repetition—the part that says it is because they do not handle customers' money. Looking back at the disaster of 2008, one has to recognise that the credit rating agencies were a substantial part of that disaster. The fact they were giving very high ratings to essentially junk stock was one of the issues that compounded the crisis. As a minimum, I would be grateful if the Minister would take this issue back to the Treasury and recognise that it might be an unfortunate hole in the legislation.

Lord Young of Cookham: I understand why the noble Lord is pressing me on this. As I said, the senior managers and certification regime does not currently apply to credit rating agencies. The noble Lord makes a good point; I hope he is now satisfied with some of the answers I have given. In answer to his last intervention, although the regime does not currently apply to CRAs, we will of course take his suggestion on board and see whether in future that might be amended. I beg to move.

Lord Tunnicliffe: I thank the noble Lord for his courteous replies and his help.

Motions agreed.

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

Motion to Approve

12.25 pm

Moved by ***Baroness Barran***

That the draft Regulations laid before the House on 13 December 2018 be approved. *Considered in Grand Committee on 29 January.*

Motion agreed.

Finance (No. 3) Bill

Second Reading (and remaining stages)

12.26 pm

Moved by ***Lord Bates***

That the Bill be now read a second time.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I thank the Economic Affairs Finance Bill Sub-Committee for its close consideration of the draft version of the Bill before the House today and its subsequent reports on HMRC powers and making tax digital. The sub-committee's findings made for very informative reading, and the Government have carefully studied each of the recommendations. On 22 January, the Financial Secretary to the Treasury wrote to the chairman, my noble friend Lord Forsyth, setting out a comprehensive response to these reports. My noble friend is disappointed that he is unable to attend this debate but he is ably represented by other members of the sub-committee, who we will have an opportunity to hear from. I am pleased to confirm to the House that the Government have accepted the majority of the sub-committee's recommendations in whole or in part.

Before I turn to the main measures enacted in the Bill, I shall briefly set out the broader economic and fiscal context. In October, the Chancellor delivered a Budget which reflected the Government's commitment to build a stronger, fairer and more resilient economy. The economy has grown every year for the past eight years, and it is expected to continue to grow every year of the OBR's forecast. There are 3.4 million more people in work since 2010 and employment is at a record high of 32.5 million. We have higher employment and lower unemployment in every region and every nation of the United Kingdom. Since 2010, almost 75% of the fall in unemployment has been outside London and the south-east, with the biggest fall in Scotland. Real regular wages have risen for eight consecutive months, and wages are now growing at their fastest pace in over a decade, putting more money into the pockets of hard-working families, supported by the national living wage.

We understand that the only sustainable way to improve real wages and living standards is through boosting long-term productivity. At the Budget, the Chancellor set out a number of measures to support that ambition, including, as I will come to, a new structures and buildings allowance which will be enacted in this Bill. The Government's commitment to restoring the health of public finances is stated and we have now reached a turning point. The deficit has been reduced by four-fifths from its post-crisis peak and debt has begun its first sustained fall in a generation. Borrowing and debt are both lower in every year of the forecast than they were in the spring and, at the Budget, the OBR forecast that the Government met both their interim fiscal targets in 2017-18, three years early. However, debt remains too high. It is around £65,000 for each household, so it is important that we continue to take our balanced approach to fiscal policy, which has enabled debt to fall while supporting public services, keeping taxes low and investing in Britain's future.

At the heart of the Government's economic and fiscal policy is a desire to improve living standards for ordinary people. That is why we have taken concrete steps to help hard-working taxpayers by allowing them to keep more of their own money. At the Budget, the Chancellor announced that the Government would deliver on their manifesto commitment to increase the personal allowance and higher rate tax threshold a year ahead of schedule. The Bill enacts that change, introducing a tax cut for 32 million people and increasing the personal allowance and higher rate threshold to £12,500 and £50,000 respectively. This means that a typical basic-rate taxpayer will pay £130 less in income tax in 2019-20 than during this tax year.

The Government also announced that the living wage will increase by 4.9% from this April. The Bill takes further steps to keep living costs down for hard-working people by freezing fuel duty for the ninth year in a row, and by delivering a freeze on the duty on beer and spirits and a real-terms freeze on air passenger duty for short-haul flights.

The Government continue to champion home ownership and are committed to making housing more affordable for first-time buyers through direct spending and changes to the tax system. In the previous Finance Bill, the Government legislated for a first-time buyers' relief on stamp duty. This has already been used to help first-time homeowners in more than 120,000 transactions. In this Bill, we will help take this a step further by expanding that relief to first-time buyers who enter a shared ownership arrangement, and will backdate this relief to benefit those who entered into their purchase on or before the date of the Budget.

The Bill also enacts new measures to encourage business investment and ensure that the UK maintains its status as one of the best places in the world to start a business. The Government have consistently backed business, including by cutting corporation tax to 17% in 2020. The Bill builds on that foundation, continuing to support businesses by introducing key allowances to important tax reliefs. The new structures and buildings allowance, which came into effect from Budget Day, will provide a vital tax break for those businesses investing in new commercial property. The annual investment allowance will be increased from £200,000 to £1 million for the next two years, ensuring that companies have an additional incentive to invest. Businesses will also benefit from a new good will relief in the intangible fixed assets regime.

The Bill also introduces a new transferable tax history mechanism for late-life oil and gas fields. This will support businesses, jobs and expertise in our vital deep-sea oil industry.

The Bill supports the Government's commitment to a fair and sustainable tax system by introducing new measures to tackle tax avoidance and evasion. The Government have always been clear that taxes should be low, but they must be paid. This is what has been delivered. Since 2010, we have secured and protected over £200 billion by clamping down on tax avoidance and evasion, and have reduced the UK's tax gap to less than 6%, which is one of the lowest in the world. The Bill continues that commitment to clamping down on avoidance, evasion and non-compliance. Specifically, it enacts provisions to ensure that non-residents pay tax on capital gains they make on UK commercial property and targets more contrived avoidance and evasion by clamping down on those who artificially lower their tax bill through profit fragmentation, whereby companies reduce their tax burden by artificially shifting their revenues around. The Bill also strengthens our diverted profits tax, which has already brought in and protected £700 million since 2015. These measures and others like them demonstrate the Government's enduring commitment to ensuring that tax is paid, protecting essential revenue for our vital public services.

This Government have made real progress since 2010 in building a stronger and more resilient economy, but we recognise that there is still more to do. We remain committed to supporting our businesses, boosting productivity, reducing living costs for hard-working people and ensuring that tax is paid where it is due. The Bill supports the Government in these ambitions. I commend it to the House and I beg to move.

12.35 pm

Lord Tunnicliffe (Lab): My Lords, our discussion on this Finance Bill takes place at one of the most interesting—we must not lose sight of the fact that that is a Chinese curse—and unpredictable times in British politics in living memory. During our debate on the state of the economy late last year, the noble Lord, Lord Higgins, noted that he had spoken on 60 Budgets. He observed that the Statement from which the Bill derived took place in the most uncertain economic situation of them all. If he thought that things were uncertain three months ago, I am not sure how he would describe the current situation.

We have a Government in paralysis, having been consumed by Brexit. This has been apparent on legislation for some time, but it is unusual to see that paralysis extend to a Finance Bill. Indeed, having lost a Minister after the Culture Secretary overruled her policy on maximum stakes for fixed-odds betting terminals, the Chancellor was forced to perform another of his Budget U-turns. Having alienated Back-Benchers and partners in the DUP, Government Whips accepted multiple opposition amendments rather than risk losing votes at a critical point in the Brexit process. Having failed to rule out a chaotic no- deal Brexit, the Government were defeated on a Finance Bill measure for the first time since 1978. As the *Times* journalist Matt Chorley likes to remind us, this is not normal.

There are plenty of other reasons why these are not normal times. The Government opted to use a rare parliamentary procedure—used just six times in the past century—to restrict the right of MPs to table amendments on Budget announcements that are not covered by specific tax changes. As my Commons counterpart, Peter Dowd, commented at Second Reading, the Government's timetable for the Bill required amendments to be tabled before the legislation had even been published. Printed copies of the Explanatory Notes were provided to MPs only on the day of the debate. Several MPs called this an abuse of power. I am sure noble Lords will agree that this is not how financial matters should be handled. Thankfully, we have had more time to consider the Bill's contents and to reflect on its passage through the other place.

Before I turn to the tax measures in the Bill, I want to say a quick word about the broader approaches of both this Government and your Lordships' House when it comes to legislation. Over the past year, your Lordships' House has spent many hours discussing the Government's attempts to hoard hitherto unseen delegated powers in order to deliver Brexit. This Bill, like almost every other we have considered during the current Session, seeks to take vague and far-reaching powers to amend laws—this time, in the event of a no-deal Brexit.

The Government's approach has been labelled an unprecedented transfer of powers to the Executive, but to take wide-ranging powers to amend taxation without proper representation truly is without parallel. We are therefore pleased that the amendment in the name of Yvette Cooper was passed at Commons Report stage. While it does not rule out a no-deal Brexit, it ensures that the Government have to seek parliamentary approval for such an outcome should they wish to utilise the Clause 90 powers. Importantly, the vote demonstrated that there is no Commons majority for falling off a cliff edge in seven weeks' time.

During the past eight years, we have become accustomed to the Chancellor—whether Mr Osborne or Mr Hammond—extolling the virtues of prudence. But last October, the British people were assured that,

"their hard work is paying off, and the era of austerity is finally coming to an end".—[*Official Report*, Commons, 29/10/18; col. 653.]

Despite these warm words, and an overdue injection of cash into the NHS, the autumn Budget marked no such turning point. As my noble friend Lord Davies of Oldham and other noble Lords observed in November, the 2018 autumn Budget can be more accurately described as Mr Hammond's tearing up of his predecessor's long-term economic plan.

The Office for Budget Responsibility noted that, having missed their original target for eliminating the deficit, the Government's new aim of balancing the public finances by the mid-2020s,

"appears challenging from a variety of perspectives".

Forecast GDP growth, while up on March 2018, is "modest by historical standards" and in any event, only the result of a Budget giveaway. It is worth reminding ourselves that the OBR forecasts were predicated on an orderly Brexit, something that is far from certain at the present time. Indeed, the Government's

[Lord Tunnicliffe]
own economic analysis suggests a no-deal Brexit would have a catastrophic impact on the UK economy. It is a course of action that no Chancellor should support.

While the Cabinet insists that austerity is over, departments continue to have their budgets squeezed. While it is true that there is a spending review to come, there is little prospect of that exercise pleasing dedicated public servants working in the prison service, local government, schools, social care, the police or the Armed Forces. Reforms to universal credit which return just one-third of the scheduled cuts will do little to improve the lives of benefit claimants. Britain deserves better.

Not only did the Budget fail to end austerity, it failed to crack down on tax avoidance and evasion too. Before elaborating, let me first thank the Economic Affairs Finance Bill Sub-Committee for its work on this Bill. The sub-committee published two helpful reports on the Government's failures in relation to making tax digital for VAT and the need for HMRC to adopt a more sophisticated approach to those who choose not to pay their fair share of tax. This Bill is a series of half measures. It provides no evidence that Ministers will honour their commitment to introduce a full public register of beneficial owners ahead of the 2020 deadline. While the loan charge introduced in 2017 is a means of tackling certain tax avoidance schemes, HMRC has targeted individuals who joined such schemes in good faith rather than those who enabled their very existence. I therefore welcome the Government's decision to accept a cross-party amendment to review the effects of changes made by Sections 80 and 81, including comparing them to the provisions in Schedules 11 and 12 to the Finance (No. 2) Act 2017.

This Finance Bill resulted from a Budget full of positive rhetoric but short on workable solutions. It does not take an observer long to conclude that the Government are so consumed by Brexit that they are unable to deal with other major issues of the day, such as tackling climate change and tax avoidance. The Bill therefore amounts to a missed opportunity. Nevertheless, the political situation in the Commons means that it has come to us in slightly better shape than anticipated. With opposition amendments inserted into the legislation, it is now for departments to undertake a series of important reviews. Ministers must listen to and implement their findings.

12.43 pm

Lord Morrow (DUP): My Lords, in the time available to me, I would like to address an amendment tabled by some 20 Members of Parliament on Report in the other place. The amendment asked the Chancellor to review the effective marginal tax rate placed on low-income families in the UK. The amendment was not selected or debated, but I hope that by raising it today I can give expression to a matter that the other place clearly wanted to address in relation to the Bill. In doing so, I note that this is a matter which has caught the attention of noble Lords from other parties who would have liked to be here today to speak to it.

The effective marginal tax rate is the amount of any additional pound that someone would earn on top of their current income that would go to the Exchequer in the forms of tax, national insurance and lost benefits. It is a key measure of aspiration. If you know that if you work harder you will keep most of the additional money that you earn, there is an incentive to do so and take your family to better things. If, however, you know that most of the additional money you earn will go to the Government, the incentive to earn your way to better things will be substantially eroded.

It is always good to run an economy in which hard work is incentivised. This, however, becomes an imperative when dealing with low-income working families. Of all people, these are the ones we want to aspire and know that hard work can deliver. Indeed, they are the very people to whom the Prime Minister pledged herself on the steps of Downing Street in July 2016. It is therefore of huge concern to me that it is this income group in particular that our current fiscal arrangements do more to deprive of aspiration than any other.

The CARE and Tax and the Family report, *The Taxation of Families— International Comparisons 2017*, which was published last year, and the Manifesto to Strengthen Families report, *Making Work Pay for Low-Income Families*, published by MPs this year, show that low-income families in receipt of tax credits face a marginal effective tax rate of some 73%. This means that the families in question get to keep just 27 pence from every additional pound earned, with 73 pence going to the Exchequer in the form of tax, national insurance and lost benefits. A low-income family in receipt of tax credits, housing benefit and council tax benefit meanwhile faces a staggering effective marginal rate of 96%, meaning that they get to keep just four pence in the pound, with 96 pence going to the Exchequer in tax, national insurance and lost benefits.

If we placed a higher rate of tax of 73%, or—perish the thought—of 96%, on the rich, there would very properly be a national outcry. This, however, is the effective marginal tax rate that we place on low-income families. Rather than empowering these working families to raise themselves up, we push them down and trap them in relative poverty. Of course, I appreciate that some regard has been given to this problem and that under universal credit the 96% rate will come down to 80%. However, I find no comfort in this at all. Eighty per cent is higher than anywhere else in the developed world, and the 73% rate actually increases to 75%.

At this point some might say, "Hang on, is the effective marginal rate not just the inevitable consequence of providing benefits? If you don't like the effective marginal tax rate, the simplest solution would be to abolish benefits". I am absolutely not advocating that.

While I acknowledge that if you give benefits you create a marginal rate as income rises and those benefits are withdrawn, the problem I seek to highlight today is that our effective marginal rates are much higher than those anywhere else in the developed world. If we use OECD data to compare the way in which all OECD countries treat a one-earner married couple with two children on 75% of the average wage, the marginal effective tax rate that they face in the UK—that 73%, the lowest of the above rates—is already the highest of any country anywhere in the developed world. The

OECD average is just 33%. This poses a very important question that I would like to set before the Minister today. If other developed countries—all of which have effective benefits systems—can have an average effective marginal tax rate of 33%, rather than 73%, so can we. As Fiona Bruce, the Member of Parliament for Congleton, urged recently in another place, "So must we".

Interestingly, the 73% figure is also very high in the history of the UK. In 1990, the effective marginal rate on such a family was just 34%, practically the same as the OECD average marginal effective tax rate on such families today. The Manifesto to Strengthen Families report concludes that our unusually high effective marginal tax rates are the result, first, of Mrs Thatcher's failure to accept the proposal of the noble Lord, Lord Lawson, for fully transferable allowance for married couples, and then Gordon Brown's decision to remove the additional person's allowance and married couple's allowance in 2000. The effect was that, from that point onwards, the income tax system made no provision for family responsibility and had to compensate for that by inflating benefits. It is the withdrawal of those inflated benefits, on top of an income tax rate that ignores family responsibility, that creates our confiscatory marginal rates as the inflated benefits are withdrawn.

One response to this problem would be for the Government to try to find more money to further reduce the universal credit taper rate. While that would be welcome, a recent Centre for Policy Studies report shows that for those earning above their personal allowance, it would reduce the effective marginal tax rate to only 66%. This would mean that low-income families would continue to lose more of every additional pound earned to the Exchequer than they would take home. While I would not oppose attempts by the Government to look for more money to reduce the taper rate, I submit that this strategy does not really address the presenting problem.

Rather than looking for new money to help these low-income working families, what is really required is to look at distributing the current money allocated to help those families in a different way, so that it comes partly through the tax system rather than wholly through the benefits system. This would create two mutually reinforcing downward movements on the effective marginal tax rate. First, the income tax element of the effective marginal tax rate would fall as a result of households with family responsibilities being taxed less. Secondly, the benefits element of the effective marginal tax rate would fall as a result of there no longer being a need to inflate benefits, because of the prior change in the tax rate on those families. This would mean that when benefits were withdrawn, they would not create the confiscatory effective marginal rates experienced at present.

This is the central conclusion of the Manifesto to Strengthen Families and the *Make Work Pay* report. It is a conclusion to which the Government must now give their urgent attention because, ironically, although the very highest effective marginal rates will fall slightly under universal credit, people will become more aware of our confiscatory marginal rates than they were under tax credits. Under tax credits, if someone works overtime this month or takes a second job, it will affect their tax credit entitlement only next year and will not be clearly identifiable with the increased income. By contrast, under universal credit, working more hours or taking another job will affect the amount of credit received next month. The link between working more and receiving less will therefore be much more immediate and apparent. This will make our marginal rate problem much more difficult to sustain.

I am very glad that, although this matter was not debated on Report in the other place, it was the subject of a 90-minute debate a week later. I am delighted that in responding to the debate, the Financial Secretary to the Treasury, Mel Stride, the Member of Parliament for Central Devon, said:

> "I will respond directly to the overarching request made of me this morning, which is that I go back to the Treasury with the report and the comments made in this debate and look genuinely and deeply at the issues raised. I can give an unequivocal commitment to do precisely that".—[*Official Report*, Commons, 16/1/19; col. 399WH.]

I put on record in this place that, although I should have preferred the amendment moved on Report on effective marginal tax rates to have been accepted, I very much welcome that commitment. Can the Minister advise the House on what stage that promised investigation has reached? If it has not yet been concluded, there are those in this House who are also eagerly awaiting the outcome of those reflections. This is a matter requiring the Government's urgent attention.

12.55 pm

Baroness Quin (Lab): My Lords, I am pleased to take part in the debate, although it must be said that the wider context, described so well by my noble friend Lord Tunnicliffe, is dramatic and alarming.

Brexit hangs like a pall over everything, not least over this Budget and the previous two. To fund Brexit, £3 billion was announced in the 2017 Budget and £1.5 billion in the previous Budget. The Chancellor warned that austerity would continue for five more years if Britain leaves the European Union with no deal and that an emergency Budget would be needed in that situation. Given this, I implore the Government to take no deal off the table—particularly given the views of industry and trade unions, as well as the clear views expressed through Motions passed in this House and the passing of the Spelman/Dromey amendment in the other place. Like my noble friend Lord Tunnicliffe, I welcome the fact that during the course of its Budget deliberations, the Commons passed the amendment tabled by Yvette Cooper. Obviously, that is now on the record.

However, I want today to raise a narrow specific point of which I gave the noble Lord, Lord Bates, prior notice, having met him earlier this week to raise my concerns. Obviously, I know that we in this House cannot amend the Budget, but by raising this issue I hope that Ministers will look sympathetically on ways to resolve it. I am pretty confident that if the full implications had been known earlier, it would have been raised by some honourable Members in the other place.

The issue relates to the museums and galleries exhibition tax relief brought in by the Government. Overall, it is a good scheme, but the way it is written is

[Baroness Quin]
also a good example of unintended consequences. Before I continue, I declare a relevant interest in the register as the chair of the strategic board of Tyne & Wear Archives & Museums, one of our major regional arts organisations. I am proud to be associated with such an innovative and entrepreneurial organisation. It does great work in Tyneside schools in some of our least well-off areas, and has an excellent management team with whom it is an absolute pleasure to work. In accordance with the government-commissioned Mendoza review on the functioning of museums, and very much in accordance with the Government's express wish to see museums form partnerships with other organisations, Tyne & Wear Archives & Museums set up TWAM Enterprises to manage exhibitions. The organisation is funded by four Tyneside local authorities, with Newcastle University operating as a charity.

However, in adopting this structure, TWAM has found itself, much to its surprise, ineligible for museums exhibition tax relief. I should stress that TWAM had changed its structure before the tax relief regulations came into effect. It had done so because it was a good thing to do and because it felt that that would accord with government priorities. Ironically, TWAM took part in the government consultation which took place before the museums exhibition tax relief regulations were brought in. As the Minister knows, but perhaps the House as a whole does not, the regulations stated that for an organisation to benefit, it either had to be funded by a local authority or by a charity. Unfortunately for TWAM, it was funded by both a local authority and a charity. In some ways you could say that it was doubly eligible for tax relief, but so far it has been deemed ineligible for such relief.

We have had discussions with officials from the Treasury and HMRC, and DCMS, which is obviously concerned about this issue. They were all were sympathetic when we raised a number of possibilities in our meetings, such as using the Interpretation Act 1978, which I certainly was not familiar with before this issue was raised. The Act gives guidance on interpreting how legislation should be implemented:

> "In any Act, unless the contrary intention appears … words in the singular include the plural".

We wondered whether that might mean that, given that TWAM is funded by a local authority and a charity, it could be covered by the 1978 Act.

Incidentally, as far as I am aware, no other organisation has inadvertently fallen foul of the regulations in the way Tyne & Wear Archives & Museums has. However, if the regulations are unamended, that might inhibit other museums in forming the kind of partnerships they have said they are in favour of. That point needs to be borne in mind. Certainly, this seems an absurd situation that is contrary to common sense.

It could be said that TWAM should change its structure again. However, that would be a time-consuming and costly process, involving legal advice and so forth. Given that TWAM is funded by public money, it seems crazy to have to spend that money on changing its structure when TWAM clearly fulfils the spirit—if not the actual letter—of the regulations. To have to do that at a financially challenging time is very hard. I do not want to widen the argument to the whole issue of local government finance, but since 2010 TWAM has seen a 60% reduction in funding from local authorities. It is because the organisation is innovative and recognised as such by the Arts Council that it has continued to build on the excellent service it provides to our area.

In conclusion, I know that the Minister is fully aware of the importance of museums and the cultural sector generally to the north-east economy. He knows too how successfully our museums have engaged with the different communities in the area. I am sure that he does not want difficulties to be imposed on museums, so I hope he will be able to respond positively to my remarks.

1.03 pm

Lord Turnbull (CB): My Lords, the principle of financial privilege means that this House has no powers in relation to the structure of tax, its rates and its incidence. It can, however, examine the way in which the tax system is administered, its governance and the compliance burden on different types of taxpayers. This time last year the Economic Affairs Committee, of which I am a member, through its Finance Bill sub-committee, looked into the plans to roll out Making Tax Digital. We found that, while HMRC might have been ready, a lack of communication and testing meant that many taxpayers would not be, especially to meet the requirement to submit returns quarterly. We recommended that the plans be reduced in scope and taken more slowly. To their credit, the Government took our advice and confined the first phase only to VAT and only to businesses with a turnover greater than £85,000. It was promised that there would be no further changes before 2020.

In my view, we helped to avoid a train wreck that would have damaged relations between HMRC and small traders and unincorporated businesses. It might have been nice if Treasury Ministers had said: "Do you know what? You did us a good turn there". What remains is the undertaking not to extend the scheme before 2020. This is now only about 13 months away—not much time to digest the lessons of progress to date and to get taxpayers and software suppliers ready. The danger is that in next month's Budget there will be an announcement simply reintroducing in their original form the proposals that were delayed. Instead, the EAC recommended delay until 2022 and the publication of a long-term plan setting out the next phases of this important initiative.

HMRC needs to look again at whether all the information it is seeking—not just total revenue and total spending but the invoices behind them—is really needed and needs to be submitted quarterly, even by very small businesses. The original turnover threshold was £10,000—less than the personal allowance—which, in my view, made no sense whatever. The estimate of costs to the taxpayer provided in the original plans carried no conviction and was strongly criticised by many witnesses to our inquiry. We are still waiting for those costings to be updated.

Two areas in the Finance Bill now before us raise issues about HMRC powers. As well as looking at them specifically, the committee decided to look at the

balance of powers more generally, and in particular at whether the balance between clamping down on avoidance and treating taxpayers fairly remained appropriate. Many concerns have been raised, particularly by individual, unrepresented taxpayers. HMRC has been tasked by Ministers and Parliament with collecting more of the revenue that is due. The committee endorses this, although many people are struck by the contrast between a tougher approach for individuals and the more leisurely pace of progress on the taxation of the giants of the digital world.

If HMRC is to be equipped with greater powers and to take a more robust approach, it should logically follow that governance and safeguards should keep pace. In fact, we found the opposite. Paragraph 14 of the EAC's report observes that the 2016 changes to the charter under which HMRC operates,

"increased taxpayers' obligations and reduced HMRC's".

For example, accelerated payment notices and follower notices have no right of appeal to a tribunal. The committee observed:

"Whenever a new power is introduced or an existing power significantly extended it should be accompanied by a right of appeal against the exercise of the power, not just against the underlying tax liability ",

Where taxpayers wish to challenge the lawfulness of HMRC's decisions and there is no right of appeal, they may do so only through the High Court in judicial review, which makes proceedings much more expensive. The committee recommended legislation to give the First-tier Tribunal for tax the power to conduct judicial reviews.

The first extension of powers in the current Bill is to require records to be held for up to 12 years where offshore issues are involved. The justification for this large extension is weak and poorly targeted. Drawn into its scope may be compliant taxpayers with small pensions from time spent working abroad or with overseas properties. The committee considered this proposal to be unreasonably onerous and disproportionate to the risk.

The most contentious issue raised with the committee was the loan charge: a proposal to claw back tax lost from disguised remuneration schemes. I should make clear that the EAC supports the efforts to drive out artificial DR schemes. We rejected the arguments put forward to us that, so long as each step in a scheme was legal, no tax would be payable. This means that we accept HMRC's argument that, where a series of transactions is contrived and artificial and has no purpose other than to produce a tax advantage, it should not be regarded as effective in reducing tax.

Taking action to bring DR schemes to an end from now on is entirely right. The issue is about how much back tax should be reclaimed. Many taxpayers feel that reclaiming unpaid tax from any past years is retrospective in effect. Mr Mel Stride, the Financial Secretary to the Treasury, vigorously denies that there is retrospection. He argues that tax was always due and still is, and that, using the great mantra of the day, "nothing has changed". The tax payable is simply being collected.

There are two problems with this argument. First, if the tax was payable, why did HMRC make no effort to collect it at the time? There are many cases where taxpayers informed HMRC that they were in DR schemes, and cases where HMRC raised no queries and closed the return for the year. I am no lawyer, but I understand that there is a principle in law called estoppel, where a person is precluded from asserting facts or rights that are contrary to their previous actions. Perhaps that should apply to HMRC, which had opportunities to require tax to be paid but failed to act on them.

The second problem is that HMRC's approach fails to take account of the circumstances in which many taxpayers found themselves in DR schemes. They were not affluent, well-advised celebrities who should have known better, but staff whose employers, some even in the public sector, transferred them to different employment contracts that required them to enter into loan schemes. There is resentment that HMRC seems to be targeting individual taxpayers rather than the employers and promoters of such schemes.

The loan charge was approved by Parliament—the other place—in 2016: another example of legislating in haste with inadequate thought to the consequences. The realisation that all is not right has now dawned on the other place, which is evidenced by the amendment to this Bill on Report by Sir Edward Davey requiring the Government to report back by 30 March on the effects of the loan charge scheme. I hope that the Government will use the opportunity created by the amendment to take up the EAC's recommendation to exclude from the charge loans in years when a taxpayer disclosed their participation in a scheme to HMRC, and for years that otherwise would have been closed. To reduce the likelihood of retrospection, the committee recommended that HMRC should make a clear public statement as soon as it begins an investigation into a potential tax avoidance scheme.

I will end on a more positive note. The final recommendation of the EAC's report, accepted by the Government, was that there should be a new powers review, so I hope we can restore a better balance between HMRC and the taxpayer and provide a better system of oversight and accountability in how HMRC uses its powers.

1.12 pm

Viscount Chandos (Lab): My Lords, I thank the Minister for his courteous introduction to the Second Reading of this Bill, which follows on from the debate on the Budget report in November—perhaps a rather more popular event in the calendar of your Lordships' House than today's proceedings. I also draw the attention of noble Lords to my entries in the register.

Even if the principal measures in the Bill and the economic issues surrounding them have therefore already been extensively debated, I welcome the chance for noble Lords to review them again while the Bill enjoys its rapid passage through this House. It is undoubtedly right, as the noble Lord, Lord Turnbull, has just said, that as a money Bill it should not be capable of amendment by your Lordships. I cannot help thinking that the Government Front Bench, based on its expressions of outrage that other legislation is subject to proper detailed scrutiny and amendment by your Lordships,

[Viscount Chandos]

may believe that the convention covering money Bills should also apply to the avalanche of Brexit-related legislation that threatens to bury Parliament in the weeks—or, more likely, months—to come.

This is a modest Bill from a Government with very much to be modest about—a holding measure designed to mark time while we pass through the maelstrom of Brexit. There is,

"no sign of a long-term strategy",

concluded the IFS in the immediate aftermath of the Budget. This is nevertheless also an historic Bill in one respect, as my noble friend Lord Tunnicliffe has already said. It is the first Finance Bill for more than 40 years on which the Government have been defeated—through the amendment moved by my right honourable friend Yvette Cooper, which is now included in Clause 90(7). Like many other Members of your Lordships' House, I welcome this important, if perhaps symbolic, expression of Parliament's determination to ensure that our departure from the EU is not a disastrous crashing out. Even if that was not as strongly reinforced by the House of Commons' votes last week as it could have been, I am confident that the wisdom and judgment of the majority of Members of that House will ensure that we will not leave the EU without a deal.

Even though the Prime Minister today returns to Brussels for, in all likelihood, another pummelling in her misconceived attempt to renegotiate the withdrawal agreement to satisfy the unsatisfiables in her party, today in your Lordships' House we can have a day off from the relentless grind of Brexit—but only up to a point, Lord Copper, since even if Brexit is not in the foreground of this Bill, it is an inescapable gloomy background to our economic situation.

Advocates of a hard Brexit—members of the Donald Tusk mutual admiration society—persistently argue that the prospect of Brexit has had no adverse economic effect on the UK. This claim is as suspect as their nonchalant dismissal of the economic impact of crashing out. The UK slipping from being one of the fastest-growing G7 economies to the slowest has been widely highlighted, yet the Government have proudly boasted of a fractional increase in the projected growth in GDP in 2019 from 1.3% to 1.6% while lowering some long-term projections to a depressing and monotonous sequence of 1.4%, 1.4%, 1.5%, 1.6%, all based on a presumption of an orderly exit from the EU.

We should remember that these figures are for overall GDP. Since 2005, the UK population has been growing at a rate of 0.6% to 0.8% per annum, and this trend is expected to continue, whatever changes there may be to the immigration regime, so GDP per capita is forecast to come in at under 1% per annum year in, year out. That is hardly a scenario in which it is possible to be confident about any increase in disposable income for most people who have suffered 10 years of stagnant earnings or for any increase in spending on public services. The independent commentator IHS Markit has written that it is the,

"weakest growth spell for six years",

and at the same time it estimated that growth in the fourth quarter of 2018 could have fallen to as low as 0.1%. How confident is the Minister that even these dismally low projected growth rates from 2019 to 2023, on which the Finance Bill is based, will be achieved?

In January, the purchasing managers' index for manufacturing fell to 52.8%, the second-lowest level since July 2016, while even more ominously, in the light of the Government's casual neglect of the services sector in its proposed future relationship with the EU, the equivalent for services was announced last Friday to have dropped to 50.1% against consensus expectations of 51%. That is a hair's breadth away from implying negative growth in what is 80% of the UK's economy.

Of course there are other factors that lie behind this economic malaise, of which a decade of stalled productivity growth from an indifferent starting point is foremost. Despite the Minister's protestations, there is little or nothing in the Bill that begins to address the scale of this problem, particularly in relation to the even more depressing position on productivity growth in most regions and nations outside of London and the south-east. I feel a degree of ambivalence about pressing the Minister further on the actual or likely deterioration of economic indicators since the Budget Statement and your Lordships' debate in October; I fear giving the Government any encouragement to reverse their declared "ending of austerity"—even if that is more in their fevered imagination than something being implemented where economic deprivation is at its most acute.

A clear understanding of where we are and accurate figures for the national accounts are an essential starting point for good policy decisions, whatever level of confidence may be felt in this Government's ability to make good decisions even with accurate figures at their disposal. Will the Minister confirm that the implications of the ONS's decision in December to change the accounting treatment for the student loan book will not lead to any tightening of fiscal policy, at least in the short term, since the underlying position has not changed? The cynical manipulation by the Government of both the carrying value of loans and the treatment of outrageously high interest charges was a case of creative accounting of which even the board of Patisserie Valerie would be embarrassed. The estimated impact of the accounting changes proposed by the ONS would be to increase the deficit in the current year from £40 billion to £52 billion and by 0.6% per annum of GDP thereafter. However regrettable the Government's past treatment of student loans has been, the overdue correction of the accounting treatment must not cause harm either to the UK economy as a whole or, vitally, to the position of the higher education sector.

I end by drawing the attention of the Minister to the point made from his own Benches by the noble Lord, Lord Horam, during the November debate on the Budget report, to which he made no response. As the noble Lord pointed out, there are an estimated 1,200 different tax reliefs, costing the Exchequer up to £400 billion per annum. I have highlighted in previous debates in your Lordships' House the indefensible reliefs in the area of inheritance tax, on which the Office of Tax Simplification is due to report in the next few months. Will the Government will take a

much more concerted and focused approach to examining the effectiveness of these tax reliefs and the scope for a substantial increase in revenue for the Exchequer?

1.23 pm

Baroness Kramer (LD): My Lords, this is one of those occasions when much of the work has been done for me by the excellent preceding speeches. If we go back to the Budget that underpins this Finance Bill, I agree completely with the noble Viscount, Lord Chandos, that it was not an announcement of the end of austerity; that was some clever PR language. If we look, we can see that it comprised a number of short-term fixes for crises in social security and social care, and a scattering of money for potholes, schools and the police. Past cuts in universal credit from 2015 were only halved, not removed, and further welfare cuts were left in place. Other than for the protected budgets of the NHS, defence and overseas development, every department continues to face cuts of the equivalent of 3% per person up to 2023. Austerity is definitely ongoing; the Budget was not an end of austerity by the greatest stretch of the imagination. Even though core protected areas such as the NHS got additional money, that was a completely lost opportunity to put in a dedicated future source of revenue for the NHS with something like the 1p in the pound that we called for in hypothecated financing for the NHS and social care. There was so much that the Government could have done and nothing like the end of austerity that they advertised.

In that Budget and the Finance Bill I very much support the cuts in the threshold for low-income earners but, as I said at the time, I find it incomprehensible that the threshold has been raised for the kick-in of the higher rate of tax, in effect giving a break to higher-income earners. I do not understand why the Government thought it was either necessary or important, because everyone I have talked to who is going to benefit from that increase in the higher-rate threshold—I suspect that many people in this House know individuals in the same situation—would much rather that funding had gone to help people who are homeless on our streets in extraordinary numbers, or who have been suffering from universal credit. I have friends who have suffered enormously from the five-week hiatus before they get their first payment, practically living on handouts. We have so many fundamental issues in this country that to make a cut such as that at this point in time seems incomprehensible. I even noticed that Westminster Council—a Conservative council if ever there was one—is asking band H ratepayers on a voluntary basis to double the amount of council tax that they pay in order to help homeless people in crisis in Westminster. That basically says to the Government that they have completely misunderstood where the British public are on an issue such as this.

I agree completely with the noble Baroness, Lady Quin, and the noble Viscount, Lord Chandos. The noble Baroness talked about the pall that Brexit hangs over everything. We will undoubtedly have a new Budget and Finance Bill at some point in the near future, no matter what happens, other than a decision not to proceed with Brexit. Whatever form of Brexit that we proceed with, as discussions earlier today made clear, it is having such a wide impact on the economy as a whole that this issue will have to be completely revisited shortly, which makes this debate frustrating because we know that change is coming very rapidly.

I endorse every aspect of the speech of the noble Lord, Lord Turnbull. I also have the privilege to be a member of the Finance Bill Sub-Committee of the Economic Affairs Committee and to pursue its two investigations into making VAT digital and into the powers of HMRC, and I am glad that there will be an opportunity to debate those in great detail in this House. Because of that, I am not going to add anything more on making VAT digital, other than to say that it is beyond me why HMRC has not understood the plight of SMEs facing the changes that are coming upon them with pretty much no warning, no testing and relatively limited opportunity to even be able to cope. In the long term it is actually a very sensible change, but implementation matters—something that this Government frequently miss—and implementing badly, too early and without proper preparation undermines even the most sensible of policies.

I shall focus for a couple of minutes on the loan charge. I share what I read as the outrage of the noble Lord, Lord Turnbull, on this issue. That outrage is widely felt, with more than 120 Members of the other place—completely cross-party; there is no partisan aspect to this—signing an Early Day Motion in protest, and then the Motion tabled by my colleague in the other place, Sir Edward Davey, to force the Government into reviewing the impact of what they are doing.

People do not entirely understand that the massive impact of the loan charge action by HMRC stems from the move in the UK towards outsourcing. Local government, government departments including HMRC, and public bodies such as the BBC, under pressure, sought to cut their costs by no longer employing people on a range of tasks but outsourcing the work to self-employed contractors. They did not do it because they were going to change the people doing these activities but because they saw there was a tax arbitrage. They would be freed from paying national insurance contributions and those who were self-employed could take advantage of a variety of tax schemes, which meant that they could reduce their hourly rates because they reduced their tax liability. In that way, local government and government departments, including HMRC, the BBC and others, were able to bring down their costs.

It is absolutely outrageous that the Government are now turning on these individuals, who basically had no option but to follow the pattern offered to them in order to continue to work. If you were a social worker, you were made redundant and were told that you could continue to be a social worker, provided that you signed up with one of three agencies and signed the forms it gave you. You could have the same job back on Monday and do the same activity for the same take-home pay. None of those people knew they were being put into some kind of disguised remuneration scheme. The real question is: why did their employers not know this? Consider the IT consultants who work for HMRC; anybody who was not part of one of these

[Baroness Kramer]
loan schemes would price themselves out of the opportunity to win the work. The situation is absolute nonsense.

To me, this is a very good example of a weakness that occurs because Finance Bills are not properly scrutinised in this House. When these schemes were identified as disguised remuneration in 2011, the change—the prohibition, in a sense—was initially to be forward-looking, which makes absolute sense. I agree with the noble Lord, Lord Turnbull, that these schemes were not appropriate and I think we all agree that they should have been brought to an end. However, in 2017, with almost no scrutiny or discussion and with pretty much nobody in the other place realising what they were doing, the change in the language effectively allowed the Government, or HMRC, to behave retrospectively. I know it says this is not retrospective, but I think it is, by any definition.

People are now being told that they owe taxes for the past 20 years, which are all to be paid in one year. If they manage to negotiate a deal, they might have five years to pay. For most, the sums they owe are bigger than their entire income. They certainly do not allow them to continue to pay a mortgage or to eat; many of the people are retired. We are in the most extraordinary circumstances. These are small people and the Government must take this opportunity to take the burden off those folks. According to the Loan Charge Action Group, there are 100,000 ordinary people, who we would know and recognise, who work in our communities, who suddenly find themselves falling foul of this law.

What makes this even more outrageous is that if people appeal against this process and reach the end stage—getting a final notice from HMRC and trying to appeal that—they might find themselves paying not only the back tax or penalty but a 60% surcharge on the penalty. To discourage appeals, if you appeal and lose, you pay HMRC a penalty for having brought the appeal in the first place. This is absolutely outrageous and needs to be fixed, so I hope that everybody here, including those on the Government Front Bench, will put a great deal of pressure on Mel Stride to recognise the problem and deal with it promptly.

1.33 pm

Lord Davies of Oldham (Lab): My Lords, this has been an excellent debate, although the participation numbers are a long way below the usual ones. That is a reflection of the exhaustion which Brexit has brought on noble Lords as we have discussed whether we can see the future of the economy with any accuracy at all in the context of that issue. I think a number of noble Lords are holding their weapons ready for the point which the noble Baroness, Lady Kramer, referred to; we cannot be far off another Budget and a clear economic Statement which will take account of whatever deal the Prime Minister succeeds in bringing back to the nation before 29 March.

The Minister sought to put a number of issues in context—a context that I could scarcely recognise. When will the Government face up to the many failures in their economic strategy of nearly a decade? Their long-term economic plan disappeared as a concept embraced by their Members of Parliament and noble Lords, but a great many of its characteristics have persisted. In particular, the Government still follow a broad strategy of considering austerity to be good for the nation. It was directed, in the first instance, at clearing up the deficit, which was meant to be cleared by 2015. The latest target date appears to be somewhere around 2025. However, the OBR and a number of interest groups in the country think that remains a challenging target. It is a measure of the Government setting out a clear objective and falling many years short of reaching it.

The Government have presided over the slowest recovery since the 1920s. The key indicators of investment, growth and productivity still place us among the lowest of the advanced economies. The Minister referred to the growth rate of 1.6%. My goodness, what an achievement. It is lower than in any other advanced country and a long way below the levels of economic growth to which we had been accustomed before the financial crash. The Government have had nearly a decade to recover from that calamity, but have precious little to show for it.

We consider that the alternative strategy is obvious. We need to borrow in order to invest, so that instead of being starved of resources—particularly in respect of the regional imbalance of resources from the Government—our economy will be able to get the resources necessary for growth. There is no doubt that austerity is not yet over. This Bill offers tax cuts for the richest members of our society and welfare cuts for the less fortunate. We are facing the challenges of Brexit with low investment, low wages and low productivity. The Minister mentioned the recent increase in wage rates, but that is the first year in which the Government have been able to say that for a decade. It is quite clear that the Government's progress is very slow.

Meanwhile, our public services are suffering. Our Armed Forces have had severe cuts; our police numbers are drastically down, while violent crime is up. But contrast the restrictions on public sector pay with what happens in the private sector. Last year, the chief executives of FTSE companies averaged an 11% pay increase on what was a pretty big number beforehand. When will the Government face up to the fact that they cannot expect to build a good society unless they build a fair society? In the real world, outside the FTSE top earners, homelessness has doubled, use of food banks has increased significantly and the number of rough sleepers has increased, and not just in our northern towns and cities, where it is sometimes suggested so many are neglected, but in London itself. Even Westminster has seen growth in these numbers.

The report of the United Nations special rapporteur on extreme poverty and human rights condemns the UK as a two-speed society, where the very richest flourish yet there are many in poverty. Two-thirds of children growing up in poverty are in households where there is at least one earner. That says something about the payment of wages at the lower end of society. I suggest it will not do for the Government to do anything other than take considerable responsibility

for creating this situation. The rapporteur went on to say that it was absolutely scandalous for so many children to be poor in a 21st-century economy. It reflected "a social calamity" for our country and "an economic disaster".

That is what we think in Her Majesty's Opposition. We will halt the rollout of universal credit, which has been identified so accurately by noble Lords in this debate; particularly the noble Lord, Lord Morrow, who identified for the Minister some pretty challenging figures on how the Government address low-income families and those dependent on benefits. I hope the Minister will respond to what was, after all, an extremely detailed and significant contribution.

The Government's record shows little success in improving productivity. I have stood at this Dispatch Box for the past 10 years opposite a succession of Ministers, including Ministers who certainly knew what they were talking about on productivity. They were not able to persuade their Governments and their colleagues to do anything about the appalling levels of British productivity that have sustained through to today. It means that, although the Government have put money into apprenticeships—there is much criticism in industry and commerce about the nature of these apprenticeships and the funding for them—they also slashed the improvement of vocational skills, for which they were directly responsible, and hammered the further education colleges. Although we have seen universities make considerable progress in tackling the tuition fees issue, FE colleges have had a devastating onslaught from this Government. It is clear that they are the biggest losers in education spending.

That is to say nothing of the fact that schools are stressed by inadequate resources. In an economy which needs new schools, it is depressing that adult learners—people who recognise that they need to improve their skills and change the potential of their economic role in society—are down from 5.1 million to 1.9 million. The Government should be ashamed of that figure. If the Government is serious about the tax take, it is clear we need a well-resourced HMRC.

I very much enjoyed the contribution of the noble Lord, Lord Turnbull. He asked specifically about loan charge schemes, and he also identified that the digitisation of tax was misdirected when it expected organisations with such small turnovers to be able to cope. The whole position needs to be rethought. We have a report coming out shortly, to which the noble Lord, Lord Turnbull, referred, but nevertheless, this is pretty obvious incompetence by the Government in this area.

The Government also have a very poor record on climate change. Their response has been to cut support for solar energy and slash the subsidies for onshore wind. This is done against a background where we all know that climate change is going to make big demands on the resources of our society. We are also all obliged to look through a glass darkly on the question of Brexit and its implications for the economy.

I am not expecting the Minister to respond on the Brexit issue at great length today. In the other place, they are going to get another dose next Wednesday. Many noble Lords have indicated that they have said pretty much all that can be said about Brexit. But we still have not entered the final act and cannot, at this stage, predict exactly what it will be. The one prediction we all hope will not be fulfilled is to crash out of the European Community without agreement.

My noble friend Lady Quin asked a specific question of the Minister on the taxation position of a museum. Having been a Member of the other place, she knows as well as anyone here that it is not within the power of this House to render a ready solution to this by any direct action we can take. Nevertheless, I hope the Minister can give some response.

I thank all noble Lords who have participated. I particularly appreciated the contributions of my noble friend Lord Chandos. He did what I thought was necessary at this stage in the debate: he looked at the wider issues to which the Government need to respond. The Minister has got quite a lot to answer, and I am sure he is looking forward to the opportunity as much as we are looking forward to listening to him.

Lord Bates: What a kind invitation from the noble Lord. I hope not to disappoint.

The noble Viscount, Lord Chandos, expressed the hope that we might get a day off from the relentless grind of Brexit. I am afraid that we were not quite able to deliver. Brexit was mentioned in the contributions of the noble Lords, Lord Tunnicliffe, who opened, and Lord Davies, as he wound up, and in between by the noble Baronesses, Lady Quin and Lady Kramer. They talked about the uncertainty of the times and the noble Lord, Lord Tunnicliffe, said that these were not normal times—to which the answer, which they have heard many times, is therefore to remove the uncertainty and back the deal, so that we can move on to negotiating the future economic relationship with our friends in the European Union. We could also then remove the necessity to plan for no deal, Yet, so long as no deal remains even as a possible option, it would be remiss of any Government acting responsibly not to plan for that eventuality—although we hope with all our hearts that that outcome does not occur.

This has been an excellent debate and I therefore want to use what time I have available simply to address some of the points raised during the course of it. First, the noble Lord, Lord Davies, talked about income inequality. I should say that income inequality is now lower than it was in 2010 and lower than at any point under the previous Labour Government, in which he was a distinguished Minister. Compared with 2010, there are 1 million fewer people, including 300,000 fewer children, in absolute low income. Moreover, in the context of this legislation the Government's policy continues to be highly redistributive. In 2019-20, households in the lowest income decile will receive over £4 in public spending for every £1 they pay in tax, while those in the highest income decile will contribute on average over £5 in tax for every £1 that they receive in public spending.

The noble Viscount, Lord Chandos, asked about the reclassification of student loans and its impact. After its review of the treatment of student loans in government finances, the Office for National Statistics has decided that some of the spending on student loans will be included in the deficit when the money is

[Lord Bates]
first lent to students. This is a technical accounting decision by the ONS and, although the noble Viscount was very critical of it, I stress that we operate on independent advice in this respect. We support the independence of the ONS and commend its diligence in recognising this.

The noble Baroness, Lady Kramer, talked about Making Tax Digital. I will come back to some of the points raised by the noble Lord, Lord Turnbull, in this respect. She focused on the specific impact on SMEs, on behalf of which she has been a consistent advocate. As the noble Lord, Lord Turnbull, mentioned, that is why only businesses with a taxable turnover above the VAT threshold, which is currently £85,000, will be in the scope of Making Tax Digital. The noble Lord is of course a former distinguished Permanent Secretary at the Treasury, among other things, and he talked about the work done by the committee. He said—I think I have this right—that it would be nice if a Minister were to say, "You did us a good turn there" when the committee advised on making changes and delaying implementation. Having been given that invitation, I am very happy to say that it did a good job there. It did a good turn not just in giving advice to the Government but for small businesses, in terms of how they will be affected.

With respect to all noble Lords, I think that the House will have found the technical analysis of marginal tax rates by the noble Lord, Lord Morrow, very thought-provoking. I will want to take that away and reflect further on it with colleagues. However, the Government are committed to making work pay. The noble Lord said that hard work should be incentivised, and we can all echo that. He said that it was a key measure of aspiration; again, I think we would echo that. In fact, it was part of the rationale for the introduction of universal credit.

The Budget announced that the personal allowance would be increased to £12,500. We are also investing an additional £1.7 billion per year in universal credit to increase the work allowance for working families and disabled claimants. The national living wage will rise to £8.21 from April 2019. In total, it will have delivered a pay rise of £2,750 for a full-time minimum wage worker since its introduction in 2016.

I am hesitant about reading out more such responses, not because they are not right but because I sense that the mood of the House and, certainly, our mood on the Front Bench—my noble friend Lord Young is with me—is that the noble Lord's analysis is worthy of further consideration. I am delighted that the Financial Secretary to the Treasury and Paymaster-General said in response to the Budget debate that he would write substantively and reflect on that matter. I will take back to him the noble Lord's contribution today to ensure that that response encompasses some of the points which he has raised.

A number of comments were made on the health of the economy. The noble Viscount, Lord Chandos, talked about the wide range of allowances and then criticised me for not responding to my noble friend Lord Horam in the Budget debate on his point about the 1,200 allowances which exist. Allowances have been used by successive Governments to incentivise right behaviour in certain areas. This Budget is no different, because it increases the annual investment allowance to £1 million for two years, thus significantly increasing the amount of relief given to businesses that do the right thing by investing in their own businesses and therefore increase our productivity—which the noble Lord, Lord Davies, was concerned about—and increase our tax revenues and growth.

One of the allowances referred to related to the issue raised by the noble Baroness, Lady Quin, whom I thank for giving me advance notice. She declared her interest as the chair of the board, but I should declare an interest as having been a beneficiary of the museums of Tyne and Wear as a child and as an adult. I am a frequent visitor to the Shipley Art Gallery, which is a fantastic treasure trove of different art, from old masters to modern, contemporary and regional art, as well as crafts and ceramics. I have enjoyed that since I was taken there as a child at school—education is a key part of it. Anything which enhances the wonderful town of Gateshead, which she and I care for, and its cultural heritage—which is not just the Shipley but the Baltic Centre for Contemporary Art, the Sage, a music centre and the Angel of the North—is welcome. It really is becoming a cultural centre.

The noble Baroness came up with some innovative suggestions as to how the Interpretation Act 1978 could be invoked in the matter that she raised. We have looked carefully at that, and my advice is that the existing legislation is unambiguous and cannot be interpreted in any other way. Any changes would require primary legislation. However—the former Permanent Secretary will be watching carefully what I say here—I think that the spirit and intention behind that measure were clear. Manifestly, it was intended that organisations such as the Tyne & Wear Archives & Museums should be able to benefit from it. The challenge I ask her to leave me with—I have already commenced informal discussions with the Financial Secretary to the Treasury—is how we go about correcting that. Clearly, if it requires primary legislation, which is the current advice, that limits our options as to how quickly we can move, but if there are other ways to do it, we would want to do so. I know that the noble Lord, Lord Davies, echoed his support for efforts in that area and I give her a commitment that it is an anomaly that we want to resolve.

The noble Baroness, Lady Kramer, talked about local authorities. I am conscious that time is short, but loan charges is a hugely important issue that was also raised by my noble friend Lady Noakes in the Budget debate. I wrote to her, and copied in the noble Baroness, Lady Kramer, having gone back to the department and looked again at it. There is no requirement on an individual who is not an employee to use a disguised remuneration loan scheme. The tax system expects people to take responsibility for their own tax affairs and if an arrangement looks too good to be true, then it probably is. Hundreds of thousands of people work and pay tax as self-employed workers or through their company without using highly contrived tax avoidance schemes.

The noble Lord, Lord Turnbull, drew attention to what was new Clause 26. The Government chose to accept new Clause 26 during the passage of the Bill and will lay a report in line with the requirements of that new clause no later than 30 March—that is probably going to be a busy day in Parliament. The report will include a comparison with the time limits for the recovery of lost tax relating to disguised remuneration loans. HMRC is working to help people put things right but can only help those who come forward, so we encourage people to come forward. For those people who settle, there are schemes, depending on the income threshold, whereby people can make those tax settlements over a five to seven-year period. As for why taxpayers do not have the right to appeal against advance payment notices and follower notices, Parliament granted HMRC these powers to discourage tax avoidance. Advance payment notices prevent tax avoiders gaining an economic advantage by holding money during the time it takes to complete lengthy tax litigation. Importantly, these rules in no way affect a taxpayer's right to appeal their tax liability.

The noble Baroness, Lady Kramer, and the noble Lord, Lord Turnbull, spoke about future plans for Making Tax Digital. The Government set out a vision for modernisation of the tax system through Making Tax Digital in 2015 and our vision remains unchanged. There will be no further Making Tax Digital mandation until the system has been shown to work well. The sub-committee recommended an independent review of HMRC's powers. The Government agree that HMRC has to balance the collection of tax with important taxpayer safeguards—again, this was raised by the noble Baroness, Lady Kramer, and the noble Lord, Lord Turnbull. The powers review was a major project designed to support the merger of Her Majesty's Customs and Excise and the Inland Revenue. It took seven years and concluded in 2012. There has been no such fundamental change to the department since which might justify a further review. However, the Government keep the tax system under review and note the sub-committee's recommendation to update the power review in line with principles about the digital age.

I have tried to address noble Lords' questions. I will review the record of the debate, which has been of a very high quality with lots of points of insight, and if I have missed anything, I will follow up in the usual way and write to those who spoke in the debate. I beg to move.

Bill read a second time. Committee negatived. Standing Order 46 having been dispensed with, the Bill was read a third time and passed.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

Statement

2.05 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, with the leave of the House I shall repeat a Statement made in the other place by my right honourable friend the Lord Chancellor and Secretary of State for Justice. The Statement is as follows:

"I should like to make a Statement to inform the House that we have concluded our post-implementation reviews of Parts 1 and 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012—better known as LASPO—as well as the outcome of our inquests review. Earlier today I laid all three reviews for consideration by both Houses, alongside a new legal support action plan, which sets out how we will build on those findings.

After an extended period of expansion that resulted in an annual spend at the time of over £2 billion, the coalition Government brought in Part 1 of LASPO to make significant changes to the scope of, eligibility for, and fees paid under, legal aid. This was essential to bring spending under control and target limited resources available at the most vulnerable and highest-priority cases. The extent of the changes LASPO introduced meant that the Government committed to carrying out the comprehensive review I have published today.

Throughout a year-long process of extensive evidence-gathering and analysis, we have engaged with more than 100 different stakeholders, professionals, providers and, of course, many in this House and in the other place, drawing together a wealth of research and evidence to inform this detailed review. We have heard that the legal aid system has for too long focused solely on delivering publicly funded advice and representation, at the expense of understanding how we can help people find early resolutions and avoid court disputes. Legal aid is, and will remain, a core element of the support on offer, and last year the Government spent £1.6 billion on legal aid funding.

We want to move forward with a new vision, focusing on the individual and their needs—be that through legal aid or otherwise. We will provide a breadth of support that is tailored to people and increases our ability to intervene earlier and catch their problems sooner, before they escalate. We must deliver a system that enables people to receive the type of legal support that is right for them, at the right time.

I am therefore delighted to publish, alongside this review, our new legal support action plan. The action plan responds to the evidence heard and includes immediate action to ensure that vulnerable people, particularly children, can access legal aid when it is needed. We will launch a review of the legal aid means-testing framework, specifically focused on the thresholds and criteria in place for someone to qualify for legal aid. We will simplify the exceptional case funding scheme to ensure it works effectively. We will expand the scope of legal aid to include immigration matters for unaccompanied and separated migrant children, and to cover all special guardianship orders in private family law cases. And we will reinstate immediate access to face-to-face legal advice in discrimination, debt and special educational needs cases.

But we also need to collect further evidence on what works and at what stage. We will invest up to £5 million of funding to encourage and support providers to develop new and innovative services; double support for litigants in person to £3 million for the next two years; launch several support pilots that will test how effective legal support at an early stage can help people

[Lord Keen of Elie]
avoid the escalation of problems; and test and evaluate the benefits of early advice in an area of social welfare law. Elsewhere, I am also announcing today that we will continue to support dedicated criminal legal aid practitioners by completing a comprehensive evaluation of the criminal legal aid fee schemes and structures.

Separately, I want to make the House aware that I have published the Government's review of the changes made by Part 2 of the LASPO Act. Part 2 introduced a number of changes recommended by Sir Rupert Jackson, aimed at reducing costs in civil litigation. The evidence gathered indicates that these objectives have been met. Fewer unmeritorious cases are being taken forward, and access to justice at proportionate cost is generally being met.

Lastly, today I have also published the outcome of a separate year-long review of the provision of legal aid for inquests. The review was commissioned in response to a number of key independent reports and their recommendations. The final report is the culmination of this thorough review, undertaken with senior coroners, the legal profession and other key stakeholders, as well as—most importantly—bereaved families themselves. It considers a number of specific concerns, and looks at where we can make further improvements, including improving guidance and advice and ensuring that the inquest process is more sympathetic to the needs of bereaved families, looking into further options for the funding of legal support at inquests where the state has state-funded representation, and working closely with other government departments.

The publications that I launch today mark not only the completion of hard work already undertaken, but the beginning of more to do to meet our challenges. I place on record my thanks to everyone who has contributed evidence and expertise to these three reviews. It is essential to me that this engagement continues and that we collect more evidence, exploring with our partners and stakeholders innovative ways to support people to access the justice system and placing early intervention firmly at the heart of legal support".

I commend the Statement to the House.

2.11 pm

Baroness Chakrabarti (Lab): My Lords, I am grateful to the Minister for repeating the Statement. Sadly, I am not grateful for its content, which offers very little very late. The Government wasted two years investigating their own devastating cuts, perpetrated by the coalition Government on so many ordinary people in this country, for whom access to justice is no longer a reality. The review is a missed opportunity to restore legal support to people facing rogue landlords, debilitating family breakups and the Government's hostile environment to not just migrants but poor people and people living on benefits.

There have been 99% cuts to benefits legal aid for some of the most vulnerable people in our society, which is completely unacceptable. The Statement's accompanying documents include an action plan that is incredibly disappointing, in many cases offering just more reviews rather than the action that the term "action plan" would normally suggest. Legal aid has been slashed by hundreds of millions of pounds. Even the Government's target of saving £410 million was exceeded by £200 million. Is that a record of which the Ministry of Justice can be proud?

On many occasions technology, as with the Northern Ireland border, is offered as a panacea to replace real lawyers offering people early advice and subsequent representation where necessary. That is what anyone would want when dealing with a difficult dispute in their life, and it should be available to everyone—rich or poor.

Cuts to public services and austerity are always political choices, but when the cuts are to the legal advice and representation at the heart of our rule of law, they become particularly ideological. All the exquisite legislation brought forward and scrutinised in your Lordships' House remains a dead letter in a closed book without adequate legal aid. That is the situation in the United Kingdom—one of the wealthiest countries on earth—at this moment in the 21st century. To my mind, this is a national disgrace.

This year marks the 70th anniversary of the Legal Aid and Advice Act 1949. That piece of Labour legislation, of which we are proud, was as important in the post-war settlement as healthcare or universal education. I am sad to say this because I think that matters concerning the rule of law should be cross-party and bipartisan, but I have come to the view that only a Labour Government will restore access to justice, advice and representation for all.

Lord Marks of Henley-on-Thames (LD): My Lords, after a delayed process that took an entire year, we now have the post-implementation review of LASPO. I will focus on legal aid.

Of its four stated objectives, the MoJ claims success in just one: significant savings have been made. Well, we know that. As the noble Baroness, Lady Chakrabarti, pointed out, the savings wildly exceeded what was expected. However, on each of the other three objectives—discouraging unnecessary and adversarial litigation at public expense; targeting legal aid at those who need it most; and delivering better overall value for money for the taxpayer—the answer is an unimpressive "Don't know", dressed up in weasel words such as, "It is impossible to say with certainty". I suspect that an independent review would have come to clearer conclusions.

The review identifies six themes echoing the experiences of all of us involved in the justice system. First, these changes in the scope of legal aid undermine value for money, particularly by preventing early intervention. Secondly, financial eligibility and operational requirements limit access to legal aid too harshly. Thirdly, the exceptional case funding scheme is not working well. Fourthly, legal aid fees are now so low that future provision by practitioners is at risk. Fifthly, increasing numbers of litigants in person increase costs and risk the perception of a two-tier justice system. Finally, advice deserts across our country threaten access to justice.

The legal support action plan seeks to address those issues, at least in part. I am more hopeful than the noble Baroness in saying that the action plan is welcome. Among the Government's pledges, some of

which were mentioned in the Statement, they promised to review eligibility requirements, increase public awareness of how to access legal aid, broaden the scope of legal aid in some immigration and family cases—that will not go nearly far enough—improve the exceptional case funding scheme, review criminal legal aid, widen access to the telephone gateway, increase support for litigants in person and examine complementary ways of providing legal support. Both those pledges and the others made must be kept and implemented soon. We will have further demands for improved support. We will hold the Government's feet to the fire.

Can the Minister do two things today on this vital topic? Together, the four documents represent a massive report. Will he please use his influence to secure a debate, with adequate time and soon, on the reports and the action plan? Secondly, will he reassure us that where the promises in the action plan are not backed up by implementation dates—and some are—the MoJ will treat them with urgency?

Notwithstanding the warnings in the paper and in the Statement that all this cannot be delivered overnight and is the first step in the process, the rescue of our legal aid system and the improvement of our legal support system needs more urgency than was ever accorded to this review.

Lord Keen of Elie: My Lords, I thank the noble Baroness, Lady Chakrabarti, and the noble Lord, Lord Marks, for their contributions. I am a little disappointed by the response of the noble Baroness. These reports have been welcomed in many quarters, although not universally and not without qualification. However, that is hardly a surprise because, let us be clear, this is a difficult and controversial area.

Let us look for a moment to the background. We had a financial crash in 2008. It is easy to say that austerity is a political choice but essentially it is not; austerity is a consequence. Furthermore, after that financial crash, which impacted right across our society, we had the party manifestos for the election in 2010. The Labour manifesto said explicitly that it would be necessary to address the cost of legal aid provision, and that was its intent—the cost was too high. That was recognised by other parties and indeed by the coalition Government themselves, who brought forward the LASPO Act to try to bring some degree of control over the ever-spiralling actual financial cost of legal aid. The noble Lord, Lord Marks, acknowledged this.

We not talking just about the immediate cost of legal aid but about the wider issue of access to justice and the means by which we can ensure that there is legal assistance as well as legal aid for all in our society, but particularly for the most vulnerable, who truly require it. That is why I am thankful that the noble Lord has welcomed the action plan which is designed to look not only at the provision of financial resources for legal advice and assistance but the manner in which we can deliver legal support for people at the right time and in the right place. To do that, we want to see the development of web-based products, for example. We want to see proper signposting and advice for people. Moreover, we want to encourage that sort of advice and signposting at an early stage because there is a belief that if we can do that, we can help resolve people's issues before they develop into major and costly litigation. All of that is to be considered.

In addition, we are going to test the impact of early legal advice by promoting certain pilots, particularly in the area of social welfare law, to see what results can be secured. I note the observation of the noble Lord, Lord Marks, about the need for implementation at pace, and indeed we are committed to the implementation of all of these recommendations as soon as we can. For example, we will be looking at the financial levels for qualification for legal aid and we intend to bring that to a conclusion by summer 2020 so that these matters can be addressed as soon as possible.

There are areas where we face difficulties with regard to the provision of legal advice. The noble Lord referred to legal advice deserts. In fact, in the areas of housing and debt, we are generally well covered across England and Wales so far as advice is concerned, but I accept that there are still gaps which have to be filled by, for example, telephone advice, which is not the ideal. Indeed, one of the reasons we want to roll out the web-based access that I mentioned earlier is to address the demand for legal advice and assistance in rural areas and other areas outside urban centres where that is more readily to hand. That is certainly part of our proposed action plan,

On the assurances the noble Lord sought, he readily appreciates that it is not in my power to secure a debate in this House, but no doubt the usual channels will have heard his observations. I concur with his reference to the depth and breadth of these reports, and perhaps the need to look at them in more detail to figure out just where we are going forward and how quickly we should go forward on these issues. As I sought to reassure him earlier, we are concerned to ensure that there is implementation of these proposals as soon as it is possible to secure it.

2.25 pm

Lord Low of Dalston (CB): My Lords, the Minister referred to early advice in the area of social welfare law. He will understand my interest in this area, given the review of advice and legal support in the area of social welfare law that I chaired. Could he tell us more about what is envisaged from the pilots in this area and perhaps say something about the Government's thinking about public support for sustainable advice services generally?

Lord Keen of Elie: I am obliged to the noble Lord. Looking more generally at advice and assistance, we want and propose to look at how we can engage with people at a very early stage, so that we can evaluate their legal problems—and, indeed, sometimes problems that are not entirely legal but that lead on to legal issues if not addressed quickly enough.

In the specific area of social welfare law, we will seek pilots that evaluate various technological solutions and look at the cost benefits of trying to approach matters in that way. I mentioned earlier the idea of web-based material and the development we have seen in digital access to legal advice. For example, we have already instituted such digital access in the areas of uncontested divorce and debt, so that people can,

[LORD KEEN OF ELIE]
without the need for legal advice, be guided through what should be a relatively straightforward process for the resolution of certain legal issues.

Lord Garnier (Con): My Lords, in thanking my noble and learned friend the Minister for repeating the Lord Chancellor's Statement, I declare an interest as a member of the private Bar, albeit I do not do any legal aid work.

The Minister said he was disappointed by the reaction of the noble Baroness and the noble Lord to the Lord Chancellor's Statement. I was the Opposition spokesman in the Lord Chancellor's Department from 1997 to 1998, and then variously shadow Attorney-General throughout the Blair and Brown Governments. I can assure my noble and learned friend that I made exactly the same sort of speeches as the two opposition Peers made just now. This is a continuing and almost intractable problem, and it is of course a question of judgment and priorities when resources are scarce. But there is much to commend in what my noble and learned friend has said, albeit I would like to see plenty more done.

I welcome the £3 million support for litigants in person. However, it is fair to say—I agree with the noble Lord, Lord Marks—that the increasing presence in our courts of litigants in person not only makes our court system more sclerotic but feeds into the lessening of morale in the judiciary. Although not immediately germane to the post-implementation review, that is a factor that needs to be thought of within and outside its scope.

Finally, and most gently, I urge my noble and learned friend to see whether the Secretary of State and the Treasury can do something more—I know they have been doing some things—to assist in the funding of the criminal legal aid system. If there is one aspect of the criminal justice system that most worries me, it is the underremuneration of criminal legal aid lawyers, both solicitors and barristers.

I daresay that many will say, "Here's one fat lawyer seeking to protect other fat lawyers", but it really is not like that. I urge my noble and learned friend to do what he can to enhance the remuneration of legal aid lawyers in the criminal justice system. They have taken a pay cut of 10% or 20% over the last few years. Until that is recovered, our criminal justice system will be much hampered and hindered.

Lord Keen of Elie: My Lords, we recognise the importance of a viable, properly trained and effective criminal Bar in order to maintain suitable access to justice for all. That is demanding in the present circumstances. Quite recently, as my noble and learned friend Lord Garnier will know, we have increased the level of fees for criminal justice work. That was done in discussion with the Bar Council in order that it could be suitably targeted to the areas where it was most needed. But I will not suggest that no more needs to be done. I quite understand the observations made about the need to maintain a viable, effective criminal Bar in that respect.

We are conscious of the issue of litigants in person, particularly of the need to avoid the simple matter of cost transferring: in other words, you relieve one area of costs by reducing legal aid provision only to find that you increase costs elsewhere because of the demands on the court system and the judiciary, because with an increasing number of litigants in person, we may find that court hearings take longer and are more demanding. We are conscious of that when looking at this overall. I reiterate that legal aid provision as such is only one aspect of a wider ecosystem that is designed to ensure access to justice.

Lord Judd (Lab): My Lords, it is not so long ago in history that Mr Nabarro claimed to the nation, after a rather sensational motoring case, that British justice was unequalled in the world so long as you could afford to pay for it. We have come a long way since then, or we had. We can summarise the exchanges that have already taken place by saying that the quality of justice is essentially related to access to justice. Therefore, the priority for all Governments must be ensuring that access is equal and it is not just the administration endeavouring to be equal.

There has been reference to criminal law, and I am very glad that the noble and learned Lord opposite made the point about the dedicated work done in this sphere by insufficiently recognised lawyers. We also ought to bear in mind the tremendous amount of work done in this area by voluntary organisations and the rest, which strive to cover the gaps that are there. We should not have this exchange without recognising that work—by people who are really dedicated to the cause of equality in justice. It is rather important that we get this right as urgently as possible, at a time when we are parading around the world the concept that we cannot possibly operate with the European Court of Justice because our entire system is so perfect. I do not see our system as perfect at all while this problem remains.

Lord Keen of Elie: I thank the noble Lord, Lord Judd, for his observations. I certainly acknowledge the point he made about the contribution of the voluntary sector in this area. Citizens Advice and other bodies make a very material contribution and we seek to support them in that endeavour. In addition, we are expanding the funding available for advice to litigants in person. Again, I hope that that will help some of the more vulnerable.

The design of legal aid is to ensure that it is targeted at the most vulnerable in our society. That is essential. Indeed, very often we hear complaints not from the most vulnerable but from those who would be perceived to have a relatively comfortable income who find that they are called upon to make payment in respect of legal support—legal defence in some circumstances—where 10 or 20 years ago that would not have been the case. I refer in that context to, for example, the recovery of defence costs in the context of criminal trials, which are now the subject of limitations that did not exist many years ago. The intent here is to target legal advice, legal assistance and legal cost at the most vulnerable in our society. We have sought to expand that by improving access to legal aid, and by seeking to improve the exceptional case funding system and to simplify it for parties seeking to use it.

House adjourned at 2.35 pm.