Vol. 795
No. 252

Monday
11 February 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 11 February 2019

2.30 pm

Prayers—read by the Lord Bishop of Salisbury.

China: Uighur Muslims

Question

2.36 pm

Asked by ***Lord Ahmed***

To ask Her Majesty's Government what assessment they have made of the allegations of human rights abuses committed against the Uighur Muslim community in the Western Province of China.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we remain seriously concerned about the human rights situation in Xinjiang, including the use of political re-education camps and widespread surveillance and restrictions targeted at Uighur Muslims and indeed other minority groups. Our diplomats recently visited Xinjiang. We believe strongly that everyone everywhere should enjoy equal rights and protections under the law. That is why we are promoting and defending human rights, including the right to freedom of religion or belief, which is a fundamental part of the UK's foreign policy.

Lord Ahmed (Non-Afl): I thank the Minister for his reply. As he has already confirmed, according to media and social media reports, concentration camps, mass surveillance, forced disappearances, torture and the banning of religious practices are all happening there. Will the Minister join me in condemning these gross violations of human rights by the Chinese authorities, and will he demand the closure of these concentration camps and access for UN representatives to confirm that the detainees have been released and the camps have been closed down?

Lord Ahmad of Wimbledon: The noble Lord rightly raises important issues and concerns. Reports have also indicated that even basic expressions of religious symbolism, such as the growing of a beard or the wearing of a headscarf, are used as indicators to target particular communities. I assure the noble Lord that we are working on this, including with the UN, which he mentioned. We have clearly asked the Chinese authorities to implement the full recommendations of the UN Committee on the Elimination of Racial Discrimination, and we have reminded them both bilaterally—as the Foreign Secretary did last year in his meeting with the Chinese Foreign Minister—and in the Human Rights Council that our concerns about the camps and the reports from our diplomats in Beijing require action. On human rights more generally, I assure the noble Lord that I am specifically looking at the next meeting of the Human Rights Council in March to see how we can not just lobby on this issue but build stronger alliances.

Lord Dholakia (LD): My Lords, the noble Lord is right to raise his concerns about the abuse of human rights of the Uighur community in Xinjiang province. Today, Turkey has made a formal protest to the United Nations, asking it to investigate what is going on in that part of the world. Have we made formal representations to the United Nations, and have we warned the International Criminal Court to keep an eye on what is happening in some of these camps?

Lord Ahmad of Wimbledon: My Lords, as I said, the United Kingdom has taken a very serious stance on this issue. I mentioned the Human Rights Council. At the latest UPR last November, we raised not the general issue of human rights but specifically the plight of the Uighurs and the detention camps. I assure the noble Lord that we will consider all avenues at our disposal to raise these issues bilaterally with China and through building international alliances. It is because of the strength of our relationship with China, which is an important one, that we can raise these issues in a candid manner.

Baroness Berridge (Con): My Lords, there have been consistent reports from within these re-education camps that Uighur Muslims were forced to give DNA tissue and blood, and consistent allegations that Falun Gong followers have been subject to forced organ harvesting. Have we spoken to the Chinese about our worries about those tests and their purpose, and whether they are in any way connected to the recent worrying reports of rogue gene editing in China?

Lord Ahmad of Wimbledon: My noble friend makes some important points. On organ harvesting, I am fully cognisant of the issue of Falun Gong, which I know the noble Lord, Lord Alton, has raised several times. As my noble friend may be aware, Sir Geoffrey Nice conducted a report on this matter, the preliminary findings of which have been made available; the final report is still due. Foreign Office officials attended the launch of the preliminary report and will attend the follow-up meeting. On the other issues she raises, let me assure her that in all our interactions with the Chinese Administration, we have made it very clear that their actions are disproportionate, discriminatory against particular communities and, indeed, counter-productive in the longer term for China as it seeks to establish its position on the world stage. I assure my noble friend that we will continue to raise these issues through all avenues.

Lord Alton of Liverpool (CB): My Lords, in the aftermath of the death in detention of the Uighur poet and musician, Abdurehim Heyit, how does the Minister respond to the Turkish Foreign Ministry—referred to by the noble Lord, Lord Dholakia—calling on China to close the camps, alleging, in its words, "torture and brainwashing" and calling them "a shame on humanity"? Can we expect to see the United Kingdom Government not only press again the human rights point with the Security Council but raise with China the danger to its whole belt and road initiative, which is in jeopardy if many countries with large Muslim

[Lord Alton of Liverpool]
populations decide to follow Turkey's lead and start imposing sanctions, preventing the development of those capital projects?

Lord Ahmad of Wimbledon: Like the noble Lord, Lord Dholakia, the noble Lord raises the issue of Turkey and other countries. I assure them that we are working with all international partners on this important priority. I agree with the noble Lord about the camps. First, China claimed that they did not exist. Now the claim is that they are there for re-education. About 10% of the whole Uighur community is being held in these camps. It is clear that the camps are extrajudicial and are held so that people can change their faith. We are aware of the various reports and we will act to ensure that they are verifiable. That does not mean that we are sitting back and doing nothing; we are working with all like-minded partners. As I said in response to the noble Lord, Lord Ahmed, I shall seek to take this up during Human Rights Council meetings as well.

Baroness Kingsmill (Lab): My Lords, will the Government consider making representations to the Trump Administration in respect of the human rights of the hundreds, possibly thousands, of children currently caged, it would appear, many of whom have been lost in the system? There is a real breach there. They are our allies. It would be helpful if representations were being made.

Lord Ahmad of Wimbledon: My Lords, the noble Baroness raises a number of issues, including the allegations of children being caged. All these matters are very much on our radar. Specifically on the American question, I am in regular contact with Sam Brownback, the US ambassador for freedom of religious belief. I hope to meet him very soon and I assure the noble Baroness that we will discuss this issue.

Lord Collins of Highbury (Lab): My Lords, there are pictures of these camps on the BBC website. They are huge and the idea that they are somehow for educational purposes is just crazy. Can the noble Lord tell us more about building alliances, because the international response to this crisis has been muted? What is he doing, specifically with other Muslim countries, to try to build up a much stronger response so that China does listen?

Lord Ahmad of Wimbledon: I too have seen those images and anyone who has cannot help but be appalled by them. The noble Lord raises the issue of building alliances. I have talked about the Human Rights Council and my meeting with the US ambassador for freedom of religious belief. However, this is not just about Muslim countries. As I often say, I defend the rights of Christians and people of no belief, not despite being a Muslim but because I am a Muslim—as anyone of any faith would protect the rights of others. That is the British Government's approach, which I know is shared by the noble Lord and, indeed, across the House. That is how we will approach this issue.

Parking on Pavements

Question

2.45 pm

Asked by ***Lord Lennie***

To ask Her Majesty's Government what plans they have to prevent motor vehicles parking on pavements.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, in Greater London there is already a general ban on pavement parking. Across the rest of England, local authorities can implement local bans using traffic regulation orders. In recent months the Department for Transport has carried out a review of pavement parking, gathering evidence on the effectiveness of current legislation and the case for reform. That review is now complete and we are considering its findings.

Lord Lennie (Lab): I thank the Minister for that Answer. Do the Government accept the views of Guide Dogs, the RNIB, the Living Streets charity campaign, all wheelchair users and all parents pushing a pushchair along the pavements, as well as all the local authorities that have to repair them after they have been damaged, that legislation should move to a default position, as is the case in London, of no parking on pavements unless designated otherwise, rather than just discouragement, which is currently the case?

Baroness Sugg: My Lords, a recent survey by the RNIB of more than 500 blind and partially sighted people found that 95% of them had collided with a street obstacle in the past three months. A vehicle parked on a pavement was the single most reported obstacle, so I do agree with the noble Lord that pavement parking is a problem. There are calls for the Government to introduce a law that bans all pavement parking across England, and the roads Minister is keen to make the process as simple as possible. However, before seeking new primary legislation we are evaluating the effectiveness of the current legislation. We want to understand the issues that have prevented councils taking action already.

Lord Holmes of Richmond (Con): My Lords, does my noble friend agree that this is a curious Alice in Wonderland situation, where pedestrians have to go into the road because of cars that are already on the pavement? Some 69% of the public and 78% of local councillors support a new law. Are they right?

Baroness Sugg: My Lords, we have heard a lot of concern from interested groups, the general public, those with disabilities, the elderly and, of course, mothers with pushchairs about the incidence of pavement parking outside London. We have gathered evidence to try to understand the effectiveness of the current legislation. We are considering those findings carefully and we will make an announcement in due course.

Lord Low of Dalston (CB): My Lords, I recently heard about someone who was knocked down on a pavement by a powered mobility scooter. She fell and broke her wrist. Does the noble Baroness agree that there is a need for tighter regulation of vehicles on pavements?

Baroness Sugg: My Lords, this is something that we are looking at. With the advent of new technology we are seeing new vehicles on the pavement. That will be one of our considerations when we look at the law on this.

Lord Bradshaw (LD): My Lords, the Traffic Management Act 2004 imposed a duty on local authorities to manage their own road networks. The same Act also provided for traffic officers to be appointed to enforce these powers. However, Part 6 of the Act, which makes provision for penalties, has never been enacted. That leaves local authorities in a position where they have duties which they cannot carry out because they have no revenue streams from penalty notices to pay for enforcement. Will the noble Baroness look carefully at the Act, which, as I say, has never been properly brought into effect, but which does contain the powers that she is talking about? It would enable much more efficient management of both highways and pavements.

Baroness Sugg: My Lords, since the Traffic Management Act 2004 came into force, more than 93% of local authorities in England have taken up the powers. On the specific point about enforcement, I will have to follow it up with the department and write to the noble Lord.

Lord Berkeley (Lab): My Lords, I am sure that the Minister will be aware that her colleague Jo Johnson wrote a circular letter in the autumn to local authorities, praying in aid—about penalties for persons committing nuisances while riding on footpaths—that people shall not,

"tether any horse, ass, mule, swine, or cattle, on any highway, so as to suffer or permit the tethered animal to be thereon".

This came from the Highway Act 1835. Is it not about time this legislation was updated?

Baroness Sugg: My Lords, I was interested to find that cycling on a footway is also an offence under Section 72 of the Highway Act 1835. Obviously, it has been updated with various pieces of secondary legislation. As I say, we are looking carefully at the issues around vehicles on pavements and will respond in due course.

Lord McColl of Dulwich (Con): My Lords, is the Minister aware that this practice can be lethal because of the glass and steel grids on pavements that allow light to underground structures? If a lorry goes over them, the whole thing can collapse and crash down and would kill anyone underneath.

Baroness Sugg: My Lords, I know that street furniture, including lamp-posts, also inhibits people in confidently navigating their way around the streets. Pavement parking can cause damage to paving stones and perhaps glass objects—so we are looking carefully at the evidence we have gathered.

Child Refugees

Question

2.52 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government how many refugee children have arrived in the United Kingdom from Jordan, Lebanon and Turkey under the Vulnerable Children's Resettlement Scheme, since its launch in April 2016.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as of September 2018 a total of 1,075 refugees have been resettled through the Vulnerable Children's Resettlement Scheme. Over half of those resettled were children. Most refugees settled have been from Lebanon, Turkey, Jordan, Iraq and Egypt, although—following UNHCR's urgent appeal—we have accepted approximately 50 unaccompanied children from Libya via Niger.

Lord Dubs (Lab): My Lords, I am grateful to the Minister for her Answer. Will she agree that while the conditions in the camps in Jordan, say, are physically better than in the camps on the Greek islands or in northern France, there are still many people there who are stuck and have no hope of any future unless countries such as Britain show a bit of humanity and bring more of them here. Could we not speed up the process?

Baroness Williams of Trafford: My Lords, this country is not just bringing people here. We are also helping people out in the region, as the noble Lord will know. He will also know that the then Prime Minister significantly increased our contribution to help those people out in the region, many of whom could not actually make the journey over here. I think that is to be commended. It is also much more efficient to help people out in the region when hopefully peace will come at some point soon.

Baroness Stroud (Con): Can my noble friend the Minister tell the House how many of the children who have come to the United Kingdom have gone missing in the care system and what steps will be taken to find them, bring them back into care and ensure they are not further exploited?

Baroness Williams of Trafford: I thank my noble friend for asking a very important question. Those children are particularly vulnerable when they come here, and people who would wish to exploit children have an ideal opportunity to do so when those children arrive. I can assure my noble friend that local authorities—which are, of course, the corporate parents of these children—are doing all they can to ensure that they do not go missing and, when they do, to ensure their safe return. I cannot give her numbers, but I will try to write to her if I have those numbers.

Lord Anderson of Swansea (Lab): My Lords, Christian refugees from the region, including children, face a double handicap: first, as refugees, and, secondly,

[Lord Anderson of Swansea]
because they are not welcome as Christians in the camp. In spite of the warm words of the Foreign Secretary just before Christmas, we received no Christian refugees from the region in the first six months of last year. Has the situation improved?

Baroness Williams of Trafford: In assessing whether refugees need our help, we do not do so by what religion they are but by where their vulnerability lies. I do not know whether the situation has improved—it is probably over to my noble friend to follow that up. However, I hope the situation has improved. As I said, we do not differentiate by religion.

The Lord Bishop of Salisbury: The youngsters who have made the journey across Europe are among the most courageous young people in the world. You do not leave home unless you live in the mouth of a shark. What are the Government doing with those who arrive and, as the Minister said, are vulnerable? The Children's Society recently published evidence of a high level of self-harm and suicide among these people. What is happening with the introduction of independent guardians, as is the case in Scotland and Northern Ireland? What other provisions can be made? What can be done for these young people to have permanent leave to remain when they reach adult age?

Baroness Williams of Trafford: The right reverend Prelate is absolutely right: any child who makes that journey is in an incredibly vulnerable position from the moment they leave their country of origin to the moment they arrive here, whether it is to people traffickers who bring them across dangerous seas, the dangerous seas themselves or the exploitation they might face during the journey or when they arrive here. Local authorities will provide wraparound care through the various agencies that might be involved with these children. The right reverend Prelate is right to say that psychological trauma is one of the main things that these children suffer. The message is that children should not be sent across these dangerous regions and across the sea to get here. They should be helped in the region or become refugees, at which point this country will give them the security that they need.

Baroness Hamwee (LD): My Lords, 1,075 is a drop in the ocean given the appalling situation in the region. Last week, the Minister assured the House that the Home Office takes very seriously the importance of quality assurance, and that must include efficiency. To give just one example, in October, the Court of Appeal described as patently inadequate the Home Office's dealing with unaccompanied asylum-seeking children. Is the Minister satisfied that quality assurance really is embedded in the Home Office?

Baroness Williams of Trafford: My Lords, 1,075 is not the definitive number: it is 1,075 who have been settled through the Vulnerable Children's Resettlement Scheme. In addition, there is the vulnerable persons settlement scheme, under which we have resettled almost 14,000 people, half of whom were children. I am confident that quality assurance is in place, and I expect it to be in place given that we are dealing with probably the most vulnerable children who settle in this country.

Lord McConnell of Glenscorrodale (Lab): My Lords, on trafficking and those who the Government quite rightly say should be deterred from travelling to the Mediterranean if at all possible, the reality is that thousands of people are still being trafficked and sent—not necessarily voluntarily. They then go on to boats on the Mediterranean and make that most dangerous of crossings. There are now no rescue boats whatever available on the Mediterranean because of the actions of the Italian Government, supported by the European Union and others. When people do find themselves in the sea, they are drowning. What actions are the Government taking to put pressure on the Italian authorities and the European Union, in these last few weeks of our membership, to rectify the situation?

Baroness Williams of Trafford: Whether we are a member of the European Union or not, we will take seriously our responsibilities to help those people in need. The noble Lord will appreciate that there is a fine balance to be struck between encouraging people to make dangerous journeys and wanting to help them take refuge from some of the terrible situations they have come from.

Equal Pay
Question

2.59 pm

Asked by ***Baroness Prosser***

To ask Her Majesty's Government what plans they have to amend the Equality Act 2010 in relation to equal pay.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government remain fully committed to the equal pay protections in the Equality Act 2010 and to the fundamental principle of equal pay for equal work.

Baroness Prosser (Lab): I thank the Minister for that reply. It is disappointing, but not surprising. We were all pleased with the measures taken by the Government last year to require employers of more than 250 people to make public their gender pay gaps. We welcomed that information because it gave us a picture of where the problems lay, but will we simply receive it as though there is nothing more that can be done?

Change will not come about by osmosis. Action will have to be taken. For a start, the law could require companies to break down the data to give us a better picture by age, ethnicity and so forth. Plus, the Government could legislate to require employers to develop positive action programmes—maybe establishing women-only training schemes, for example—or to provide more decent-quality part-time jobs. Will the Minister consider such initiatives as those, which would help to close the gender pay gap and bring the Equal Pay Act into the 21st century?

Baroness Williams of Trafford: My Lords, it is a good idea to say at this point that the gender pay gap and equal pay are two different things, although both may exist in the same organisation. The noble Baroness is absolutely right that work needs to go on to encourage organisations to improve their gender pay gaps where they are wide. The EHRC and the Government are working with organisations that want to improve their situation. This is not something that has just been left on the shelf. The gender pay gap is at its lowest, but we still have further to go.

Baroness Burt of Solihull (LD): My Lords, the Resolution Foundation has estimated that Britain's 1.6 million black, Asian and minority ethnic employees are losing out to the tune of £3.2 billion a year in wages compared with white colleagues doing the same work. We welcome the consultation that the Prime Minister launched in October to seek views on whether there should be mandatory reporting of ethnic pay gaps at work. We know that the diversity of the workforce is good for business, so does the Minister agree that the time has now come to introduce ethnic and minority pay gap reporting?

Baroness Williams of Trafford: Organisations can indeed do that if they wish, but the noble Baroness raises an important point. Actually, gender pay gap reporting was the first step in what will be a long process. It had never been done before and we wondered before organisations reported what the compliance rate would be. As the noble Baroness will know, it was 100%. It is not that organisations do not want to go further—they do—but she is right that a gender and ethnically diverse workforce makes for a better workforce.

Baroness Boycott (CB): My Lords, if we really want to have women working in this country and therefore being equal, as a country we need to take childcare seriously. I have been campaigning for this since I was 21—I am obviously way past the need for it now—but we still do not have it. Have the Government ever considered the scheme that Quebec introduced in 1997 whereby universal childcare was subsidised? You paid about 10 quid a day. It was found that very soon the increased revenues from women's earnings paid for the measure through the taxation system. If we want women to work and to be equal, surely the state must take a role in doing some of women's work, which is rearing and looking after children.

Baroness Williams of Trafford: I am very interested to hear about Quebec's scheme, and I thank the noble Baroness for that. This Government introduced 39 hours of free childcare for working parents and have encouraged shared parental leave, which is possibly not as good as it should be. We can certainly learn from other countries, such as Sweden, in that regard.

Baroness Afshar (CB): My Lords, would the Government consider home-based working as working so that people working at home are recognised and valorised as workers? That would allow a lot of home-based textile workers who are employed by their kin to be entitled to the privileges to which other workers are entitled.

Baroness Williams of Trafford: Home-based working is a very good idea. Certainly organisations see it as beneficial to have some flexibility in the way that their employees work. It is to be encouraged.

Lord Dubs (Lab): There is a simpler answer to all these inequalities, particularly discrimination against women. I ask the Minister not to dismiss it out of hand, which she has done before. If we put all income tax returns into the public domain, as has been done in some countries in Scandinavia, we would see what incomes are and what tax dodging takes place, and we would then see the real nature of inequality.

Baroness Williams of Trafford: The noble Lord has mentioned this to me before and I have rejected it. The equal pay legislation and the gender pay gap audits that we have asked organisations to undertake are starting to lift the lid on where inequality lies in our workforces.

Baroness Gale (Lab): My Lords, in April companies will be required for the second time to publish their pay gap data, and I hope we will see some improvement in closing that gap. Does the Minister agree that, for that to be effective, companies should be required to publish action plans and that civil penalties should be issued to companies that do not comply with the law? If the Equality and Human Rights Commission could be given powers and resources to carry out enforcement activity, that would have more immediate impact because at present no action seems to be taken when companies fail to deliver.

Baroness Williams of Trafford: My Lords, it is good practice for companies to publish action plans. One of the requirements for companies not publishing their gender pay gap figures is that they carry out a gender pay gap audit. That did not come to pass because all companies complied. It certainly is good practice and some companies are doing it.

Animal Welfare (Service Animals) Bill

First Reading

3.07 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Crime (Overseas Production Orders) Bill [HL]

Commons Amendments

3.09 pm

Motion on Amendment 1

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

That this House do agree with the Commons in their Amendment 1.

1: Clause 1. page 1, line 20, leave out subsections (5) and (6)

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as noble Lords will know, the purpose of the Bill is to sidestep the bureaucratic barriers that we currently face in investigating and prosecuting serious crime. The Bill allows law enforcement agencies to access content data directly from communication providers based overseas using an overseas production order.

Briefly, before turning to the amendments to the Bill made in the Commons, I know from conversations with the noble Lords, Lord Rosser and Lord Kennedy, that there were some concerns surrounding extradition. I put on the record and reassure noble Lords that this Bill has nothing to do with extradition. Overseas production orders are about seeking stored communications content data from overseas providers for the investigation and prosecution of UK criminal matters; it does not provide any new avenues for extradition, which is entirely out of scope of this Bill.

I turn to the amendments made in the other place. Orders under the Bill can work only when a relevant international agreement is in place between the UK and another country. As the majority of the CSPs are based in North America, we expect the first such agreement to be with the United States. Amendments 1, 13 and 15 relate to death penalty assurances in any such international agreement.

Amendment 13A, proposed by the noble Lord, Lord Paddick, would amend the Bill to oblige the Secretary of State to seek and secure a death penalty assurance in any future international treaty. I make it absolutely clear: if noble Lords vote in favour of this amendment, they will be tying this and all future Governments' hands in negotiations that are never entirely under our control, whether they be with the US or any other country with which we wish to enter into an agreement. Live international negotiations do not work in this way. If we are unable to secure a relevant international treaty, this Bill and its powers will be rendered entirely pointless.

As I have stated throughout the passage of the Bill, it is our duty to give our law enforcement agencies the tools that they need to fight and prevent serious crime, and our prosecution authorities the tools that they need to bring offenders to justice. Current delays in accessing content data held and stored by companies based outside the UK make their job much harder. Delays prevent criminals being brought to justice. If we do not successfully conclude this Bill and the US agreement, child abusers will be able to continue their heinous crimes while the police wait for up to two years for the relevant evidence to be transferred from abroad, or worse still, drop investigations because they simply cannot afford to sit through long delays.

The reality is that the majority of communication service providers are in the US. It is a fact that we need access to data held in the US a lot more than the US needs access to data held in the UK. The UK holds only 1% of the data that we need to prevent and catch sexual abusers of children, meaning that 99% of it is stored abroad. The level of child sexual abuse reported by US service providers has increased, and continues to increase, in horrific quantities—by 700% since 2012. There is a clear inequality of arms from the outset, and to restrict Ministers' discretion in negotiations could jeopardise the US agreement and result in serious criminals being able to continue their abuse.

Of course the US treaty will have some form of death penalty assurance associated with it, but the exact details and practicalities of this assurance have not yet been negotiated. That is why Parliament will, rightly, have its say on any treaty put before the Houses during designation and prior to ratification. Members can then decide whether the contents of the treaty and its death penalty assurances are acceptable to the House.

In recognition of the concerns raised by noble Lords, the Government have amended the Bill so as to mandate the Secretary of State to seek death penalty assurances in connection with all relevant international agreements. For the first time, this puts into primary legislation policy that reflects the overseas security and justice assistance brought in under the coalition Government in 2010. The outcome of such negotiations will be implicit in the international treaty necessary to give effect to this Bill. The Government will commit to make a Statement, in both Houses, when the relevant treaty is put before Parliament in the usual way. Indeed, this Government and previous Governments are familiar with the need to obtain death penalty assurances when providing evidence to other countries. We do this in line with OSJA, a fundamental piece of long-standing policy that recognises that negotiating with another country is complex and does not attempt to dictate the outcome of any particular negotiation. Governments of all colours have agreed with and used the approach set out in OSJA.

The Government's amendment, in line with OSJA, is therefore a sensible compromise that does not jeopardise law enforcement agencies' capabilities. I ask noble Lords to support Amendments 1, 13 and 15, to let the Government continue our negotiations with our international partners as we have done for so many years, and to exercise powers of scrutiny—both prior to ratification of the agreement under CRaG and when secondary legislation comes to be laid—to assess whether the terms of any death penalty assurances are acceptable.

3.15 pm

Lord Paddick (LD): My Lords, Amendment 13A in this group is in my name. I make it clear from the outset that we support this Bill, which is why at Third Reading in the other place we did not vote against it. What we did—and what Labour did in the other place—was to vote against the Government's Amendment 13 proposing a new clause after Clause 15, because it does not go far enough. It does not ensure that death penalty assurances are secured from foreign states to make sure that data provided by the UK, whether by law enforcement agencies or private companies, does not lead to someone being executed. The Government claim to have come a long way in their amendment, but it requires only that a Secretary of State seek death penalty assurances, not that any agreement is dependent on death penalty assurances being received.

The UK is a signatory to the European Convention on Human Rights, which is incorporated into UK law by the Human Rights Act 1988. It is also a signatory to Protocol 13 to the convention. Article 2 of the convention states:

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law".

Article 15 states:

"In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law".

Article 57 states:

"Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision".

However, the UK is also a signatory to Protocol 13 to the convention, Article 1 of which states:

"The death penalty shall be abolished. No one shall be condemned to such penalty or executed".

Article 2 of the protocol states:

"No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention".

Article 3 states:

"No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol".

In other words, there should be no death penalty in any circumstances whatever. That is our international legal obligation.

The UK has been clear—until this Conservative Government took office—that it will campaign to remove the death penalty wherever it exists in the world and will never facilitate the execution of anyone in any foreign state. The difficulty with the type of agreement covered by this Bill is that data provided by the UK to an American law enforcement agency, for example, could result in someone in the US being sentenced to death, contrary until recently to both the UK's international obligations and its declared intention to do all it can to eradicate the death penalty wherever it exists in the world.

I say "until recently" because, in a High Court case in October last year, it was revealed in correspondence from the Home Secretary to the then Foreign Secretary that, in the case of two ISIS terrorists, evidence was going to be supplied to the US without a death penalty assurance. His letter said that,

"significant attempts having been made to seek full assurance, it is now right to accede to the MLA"—

mutual legal assistance—

"request without an assurance".

The then Foreign Secretary replied that in this,

"unique and unprecedented case … it is in the UK national security interests to accede to an MLA request for a criminal prosecution without death penalty assurances"—

a unique and unprecedented case to provide evidence to the US that may lead to executions. The Bill as drafted allows the Government to enter into a data exchange agreement where potentially there would be no death penalty assurance in any case. The Government's new clause requires the Secretary of State only to seek such assurances; it does not bar the Secretary of State from entering into the agreement without death penalty assurances.

The Government will say that not entering into an agreement with the US could potentially allow terrorists and paedophiles to be a threat for longer. We say that we will not stand in the way of such an agreement provided that it does not result in UK data resulting in people being sent to the electric chair. The first thing to say about what the Minister said in her opening remarks is that these agreements are about securing legal authority to enable data to be provided that can be used in evidence in criminal proceedings. It is about giving legal cover for the handing over of data. It should not prevent the arrest and detention of dangerous suspects while that formal legal authority is obtained, and it can still be obtained through existing MLA arrangements, as in the case of the ISIS suspects. It may delay the trial, but it should not prevent the arrest and detention. Even if there were circumstances that I cannot personally envisage where the arrest and detention of a dangerous criminal were delayed, if the US says it will not sign an agreement containing death penalty assurances then it is the US that is prepared to allow the threats from terrorists and paedophiles to go on for longer by having to rely on the current MLA system.

I shall summarise our position using someone else's words:

"Our amendment would prevent authorities in this country sharing data with overseas agencies where there is a risk of the imposition of the death penalty. More than 50 years ago parliament as a whole passed a law which 'opposes the death penalty in all circumstances'. That is the law of the land. It means we do not co-operate with any government if the consequence could be capital punishment. Parliament has for a long time believed that the death penalty is so abhorrent, and the risks of a miscarriage of justice so awful, that we outlaw it. Our ban applies to all countries where the death penalty is still on the statute books. But government Ministers are desperate to cosy up to Donald Trump's administration in the US, where the death penalty is still imposed. Our amendment simply blocks data sharing co-operation with all countries if the death penalty is a risk".

I have just quoted, word for word, the shadow Home Secretary Diane Abbott from her column in the *Daily Mirror* on 28 January this year about the Labour amendment that was replaced in the Commons by Amendment 13. However, Amendment 13A is designed to have the same effect as the Labour amendment passed by this House.

The opposition parties have worked together on this issue from the beginning, but this should not be a party-political issue; it is a question of fundamental human rights. Again, the Minister will correct me if I am wrong, but essentially this Government are willing to sacrifice people to the electric chair in America if that is what it takes to secure the kind of agreement that the Bill covers. Asking us not to tie the hands of those negotiating the deal really means, "Do not ask them to insist on death penalty assurances".

The question is: do we stand by Article 2 and Protocol 13 of the European Convention on Human Rights, and do we oppose the death penalty in other countries, or do we not? If we are prepared to see

[Lord Paddick]
people being executed on the back of evidence provided by the UK, then noble Lords should support the government amendment rather than Amendment 13A. This is a question of principle, a question of conscience and a question of human rights, and we should support it on all sides of this House.

Lord Hope of Craighead (CB): My Lords, I have been struggling to understand what the Government's position might be. I think I picked up the Minister saying that the amendment concerns prosecutions in the United Kingdom only. With great respect, if that is right, I do not understand how that fits in with the language of the statute and the amendment itself. I will explain where I am coming from.

Section 52 of the Investigatory Powers Act 2016—the section being amended—is headed "Interception in accordance with overseas requests". We are contemplating a situation where a request comes from another country, presumably for prosecution in that country, on the basis of information that we have obtained via intercepts. The whole point of Section 52, without the amendments, is to authorise the making of interceptions in accordance with that request.

My understanding is that subsections (6) and (7) of Clause 1 deal with a precaution against the kind of point that the noble Lord, Lord Paddick, was talking about—our international obligations. I agree almost precisely with the background which the noble Lord traced for us, set against Article 1 of Protocol 13 of the European Convention of Human Rights, which provides that sentencing to death is a violation of the right to life under Article 2 of the convention. If one applies Article 1 of Protocol 13, it would seem to be a breach of our convention obligations to provide information to a foreign country that would lead to somebody being sentenced to death. I do not know whether that has ever been tested in a court, because I do not think the issue has been brought before a court—I am not aware of that happening. However, there seems to be a strong prima facie case that if the Secretary of State was proposing to do that, he could be stopped on the grounds that it would be in breach of this country's international obligations.

I am puzzled about whether the Minister is right that the purpose of this section is to enable us to prosecute in our own country, where we have no death penalty. The idea of an international agreement is, I think, that it should be reciprocal; it would be a bilateral agreement with a particular country—let us assume it is the United States—and there would be obligations on both sides. We would seek the benefit of the agreement to obtain information for us to prosecute cases of child abuse, which the Minister referred to; one would very much want to secure an agreement which would enable that information to come to us. However, in the context of Section 52, the thrust seems to be the authorisation of intercept information by us to provide for prosecution abroad. I am having difficulty seeing how that fits in with what the Minister said earlier.

Let us assume that the noble Lord, Lord Paddick, is right that this is really dealing with provision of information to go abroad. Then one comes right up against Article 1 of Protocol 13. What mechanism does one install to prevent a breach of the article? I think I am right that the mechanism of an assurance is well established in international law. In fact, in 2006 the United Nations produced a very helpful note, *Diplomatic Assurances and International Refugee Protection*, which traced the mechanisms that had been established to protect people who were being sent abroad by a country in answer to a request. The message in the United Nations paper is that one can protect oneself or one's country against a breach of the international obligation by obtaining an assurance. However, the emphasis is on obtaining the assurance, because an assurance is given by the requesting country to the country from which the information to go abroad is being requested.

There was sometimes some doubt about whether that mechanism was reliable in a case where the threat abroad was of torture, because some countries are really not capable of preventing torture being perpetrated by all manner of officials, so an undertaking in that sort of situation is not really reliable. The paper goes on to say that if one is dealing with the kind of problem that we are contemplating—the risk of a death penalty being imposed—that is easily verifiable and an assurance could be relied upon as a secure protection against a breach of the international obligation.

3.30 pm

Of course, all this assumes that the assurance is actually given in answer to the request. I suppose that the question comes down to whether it is necessary to put "received" into the amendment or whether one can simply assume that it is implied. I am inclined to think that it is implied because that is the background against which the whole amendment was drafted. There is no point in simply seeking an assurance because that in itself is not enough to protect this country against a breach of the international obligation.

There is a possible further point to be considered: the various stages at which this process is pursued. In the first place there is a negotiation stage, which I think the Minister was talking about, which involves making the agreement to get it in place. Secondly, there is the CRaG process, whereby if the negotiation is successful, the treaty has to be approved. Thirdly, there is the process of giving effect to whatever requests come in under the treaty once it is established. As I understand the Minister's position, we are at stage one—the negotiation—and the Government are seeking authority to enter these negotiations without being too restricted at that stage. I am inclined to give some leeway to the Government's wish, so long as it is understood that when we come to the point of actually releasing information the assurance would have been given in response to the request.

I hope that I have not made things too complicated. One needs to understand, first, whether we are talking about the provision of information to go abroad, which I think is the correct reading of the statute. Secondly, there is the question of which stage these amendments are contemplating. If it is the initial stage of negotiation, so that we can get the benefit of the other side of the agreement—provision of information

to us—the amendment may be unnecessary or premature. The background, however, goes back to the point made by the noble Lord, Lord Paddick: ultimately, we have to be extremely careful that we do not run ourselves into a situation where we are in breach of Article 1 of Protocol 13 of the convention.

Lord Pannick (CB): My Lords, I am far less clear than the noble and learned Lord, Lord Hope, that it would be a breach of our obligations under the European Convention for us to supply information abroad in circumstances where it may be used in a prosecution that may lead to a death penalty. As he well knows, all the cases concern extradition. They concern circumstances in which this country is removing a person to face possible trial abroad where that person may be executed. The European Court of Human Rights has repeatedly made it clear that that is a breach of our obligations. I am far less clear on whether the same would apply where all we do is provide information, which is under the control of the authorities in this jurisdiction, to assist a prosecution abroad.

A particular reason why I am far less clear is that the noble Lord, Lord Paddick, mentioned the one example where there was a challenge to the decision of the Secretary of State to do precisely this: to provide information abroad to the United States in circumstances where it was said, accurately, "These people may face prosecution which may lead to the death penalty". My recollection, which I would be grateful if the noble Lord or the Minister could confirm, is that the Home Secretary's decision was the subject of a legal challenge and—again, please confirm whether I am right or wrong—the High Court rejected that challenge. It held that it was lawful for the Home Secretary to act in that way.

Baroness Williams of Trafford: The noble Lord is correct.

Lord Pannick: I am very grateful. I do not have immediate access to that judgment, but perhaps the Minister can provide the House with some assistance in relation to it. Can the Minister also confirm what I understood her to say: no information will be provided abroad under the Bill, unless and until there is an agreement with the relevant state—here the United States? My understanding—again, I think the noble Baroness said this, but I should like her to confirm—is that before any such agreement has practical effect, it must be put before this House and the other place for approval. Ratification cannot take place unless and until, under CRaG 2010, Parliament has had that opportunity. It seems that is the time at which both Houses of Parliament can consider whether they wish to approve such an agreement, if it does not contain the sort of assurance that the noble Lord, Lord Paddick, is seeking.

Lord Hope of Craighead: I can respond to two of the noble Lord's points. First, I am happy to agree with him about the stages in which we are moving, which was my earlier point: we are at the preliminary stage of negotiation, rather than the CRaG stage. As for whether the provision of information over which we have control is a breach, that is still open to question. That is why I said that I realised it had not been tested. I was certainly thinking about the very point that the noble Lord makes. It is quite different if you have an individual—that is absolutely plain—but if you are gathering information nevertheless, it runs up to the big question of whether that is a breach. It is an uncertain point, so we have to be very careful.

Lord Pannick: I am entirely in agreement with the noble and learned Lord. All I was saying was that I would not wish to assert to the House that it would be a breach of our international obligations under the European Convention on Human Rights to provide information to another state in circumstances where we are not extraditing a person to that state. The courts and the European court may take a different view. I have no doubt that in the legal proceedings arising from the case referred to by the noble Lord, Lord Paddick, one of the grounds of challenge would have been that this is a breach of the human rights of the individual concerned, who, as a consequence of our providing the information, may face a death penalty. That is why I should like the Minister to give any further assistance to the House on what the court said.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I make clear at the start that we support the Bill, as noble Lords throughout the House have. My party and I oppose the death penalty. I fully accept that the Government and the noble Baroness have moved forward, and in that sense the new clause before us today is welcome. The noble Lord, Lord Paddick, has set out the treaties, conventions and obligations that we have signed, which underpin the intention and support of the British Government to oppose the death penalty.

This House has many important functions, and asking the Government to think again is one of them. It is right to do so again here: we need to look at this issue once more. I have expressed concern many times from this Dispatch Box about this risk; particularly around Brexit, whatever else we do, we must never allow a situation where we are helping criminals or terrorists. I ask the House to think again. It is not about helping criminals or terrorists; it is about ensuring that we support the things that we, as a country, believe are right. It was the Labour MP Sydney Silverman whose Private Member's Bill in 1965 abolished the death penalty for murder. For treason and other offences, it was not until 1998 that it was finally abolished completely.

The noble and learned Lord, Lord Hope of Craighead, set out some serious legal matters about where we are going with this. In the context of those, and the points made by the noble Lord, Lord Pannick, it is right for this House to ask the Government to think again. I entirely accept that when the Bill is passed nothing will happen until the treaty is signed, but it is not wrong, at this stage, to ask the Commons to look at it once more. I also understand that the amendment is about information going to other countries.

In conclusion, this is an important amendment. If the noble Lord divides the House, we will support him.

Baroness Williams of Trafford: My Lords, the central point here is whether or not we are in breach of the European Convention on Human Rights. My view is that we are not. Article 1 of the 13th protocol does not prevent member states providing assistance to a third country, where that assistance contributes to the use of the death penalty by that country. Even if the amendment related to the use of the designation power, under Section 52 of the 2016 Act—which would be the gateway for the flow of information from the UK—it would still not prevent designation in the absence of assurances about the use of our material. That is not to say that we will be sharing information for the pursuit of the death penalty. Noble Lords have heard, on many occasions, that I am not going to pre-empt our negotiations with the US, but this shows that not only is the amendment unnecessary but it may not do what its sponsors hope.

The case of the foreign fighter, which the noble Lord, Lord Paddick, talked about, shows that we are compatible with the ECHR, for the reasons outlined by the noble Lord, Lord Pannick. The noble and learned Lord, Lord Hope, and the noble Lord, Lord Pannick, said that any agreement would have to be put before Parliament. That is absolutely the case. The noble and learned Lord, Lord Hope, talked about this being the negotiation stage. I would put it further back than that: it is the pre-negotiation stage. It is a framework Bill, on the basis of which treaties would be negotiated and made.

Lord Paddick: My Lords, will the Minister confirm that, when a treaty is put to Parliament, if the House of Commons approves it, then it does not matter what the opinion of this House is; the treaty is ratified even if this House votes against it? I obviously agree with the noble and learned Lord, Lord Hope of Craighead, that whether this is a breach of the European Convention on Human Rights has yet to be tested in court—certainly not at the European level. Will the Minister explain why the then Foreign Secretary had to say that seeking death-penalty assurances in the ISIS case was unique and exceptional, if the Government were not concerned about people executed on the back of evidence provided by the United Kingdom?

Baroness Williams of Trafford: My Lords, the noble Lord is absolutely right. The treaty would be put to the Commons; the Lords could certainly have a view but that might not be taken into account by the Commons. That is nothing unusual. The Commons quite often exerts its supremacy.

Motion agreed.

Motion on Amendments 2 to 12

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

That this House do agree with the Commons in their Amendments 2 to 12.

2: Clause 4, page 5, line 25, at end insert—

"(5A) The judge must be satisfied that there are reasonable grounds for believing that all or part of the electronic data specified or described in the application for the order is likely to be relevant evidence in respect of the offence mentioned in subsection (3)(a).

This requirement does not apply where the order is sought for the purposes of a terrorist investigation."

3: Clause 4, page 6, line 15, at end insert—

"(9A) For the purpose of subsection (5A), "relevant evidence", in relation to an offence, means anything that would be admissible in evidence in proceedings in respect of the offence."

4: Clause 6, page 7, line 19, at end insert—

"(ba) does not require the person to do anything that (taking into account the existence of the overseas production order) would result in the person contravening the data protection legislation, and"

5: Clause 6, page 7, line 20, after "effect" insert ", subject to paragraph (ba),"

6: Clause 10, page 9, line 28, at end insert—

"(1A) Subsection (1) does not authorise the doing of anything that contravenes the data protection legislation."

7: Clause 12, page 10, line 16, leave out subsection (1) and insert—

"(1) This section applies to an application for an overseas production order if there are reasonable grounds for believing that the electronic data specified or described in the application consists of or includes journalistic data."

8: Clause 12, page 10, line 23, at end insert—

"(2A) Where this section applies, notice of the application must be served on— (a) the person against whom the overseas production order is sought, and

(b) if different, the person by whom, or on whose behalf, the journalistic data is stored.

(2B) But a judge may direct that notice of an application need not be served on a person falling within subsection (2A)(b) if the judge is satisfied that—

(a) serving notice on the person would prejudice the investigation of an indictable offence or a terrorist investigation, or

(b) it is not reasonably practicable to establish the person's identity or to make contact with the person so as to enable service to be effected."

9: Clause 12, page 10, line 27, leave out subsection (4)

10: Clause 12, page 10, line 39, at end insert—

"(6) In determining for the purposes of subsection (5) whether or not a purpose is a criminal purpose, crime is to be taken to mean conduct which—

(a) constitutes one or more criminal offences under the law of a part of the United Kingdom, or

(b) is, or corresponds to, conduct which, if it all took place in a particular part of the United Kingdom, would constitute one or more criminal offences under the law of that part of the United Kingdom."

11: Clause 12, page 10, line 39, at end insert—

"(7) Subsections (8) and (9) of section 4 apply for the purposes of subsection (2B) of this section as they apply for the purposes of subsection (3)(a) of that section.

(8) In this section, "terrorist investigation" has the same meaning as in the Terrorism Act 2000 (see section 32 of that Act)."

12: Clause 15, page 13, line 12, leave out "section 4(3)(a)" and insert "sections 4(3)(a) and 12(2B)(a)"

Motion agreed.

Motion on Amendment 13

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

That this House do agree with the Commons in their Amendment 13.

13: After Clause 15, insert the following new Clause—

"Designation of international agreements for purposes of section 52 of Investigatory Powers Act 2016

(1) Section 52 of the Investigatory Powers Act 2016 (interception of communications in accordance with overseas requests) is amended as follows.

(2) In subsection (3), at the end insert "(see further subsections (6) and (7))". (3) After subsection (5) insert—

"(6) Subsection (7) applies where an international agreement provides for requests for the interception of a communication to be made by the competent authorities of a country or territory, or of more than one country or territory, in which a person found guilty of a criminal offence may be sentenced to death for the offence under the general criminal law of the country or territory concerned. Such an offence is referred to in subsection (7) as a "death penalty offence".

(7) Where this subsection applies, the Secretary of State may not designate the agreement as a relevant international agreement unless the Secretary of State has sought, in respect of each country or territory referred to in subsection (6), a written assurance, or written assurances, relating to the non-use of information obtained by virtue of the agreement in connection with proceedings for a death penalty offence in the country or territory.""

Amendment 13A (to Amendment 13)

Moved by ***Lord Paddick***

13A: Line 19, after "sought" insert "and received"

3.45 pm

Division on Amendment 13A (to Amendment 13)

Contents 188; Not-Contents 207.

Amendment 13A (to Amendment 13) disagreed.

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Palumbo, L.
Pannick, L.
Patten of Barnes, L.
Patten, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Randall of Uxbridge, L.
Rawlings, B.
Reay, L.
Redfern, B.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Russell of Liverpool, L.
Ryder of Wensum, L.
Sassoon, L.
Sater, B.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Smith of Hindhead, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stirrup, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Trefgarne, L.
Trenchard, V.
Trevethin and Oaksey, L.
Trimble, L.
Tugendhat, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Wei, L.
Wellington, D.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Young of Cookham, L.
Younger of Leckie, V.

3.59 pm

Motion agreed.

Motion on Amendments 14 and 15

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

That this House do agree with the Commons in their Amendments 14 and 15.

14: Clause 17, page 14, line 20, at end insert—

""the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);"

15: In the Title, line 1, at end insert "and about the designation of international agreements for the purposes of section 52 of the Investigatory Powers Act 2016"

Motion agreed.

Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

4 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 10 January be approved.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the changes being made by this instrument relate to the Companies Act 2006 and supporting secondary legislation. In some cases, the changes will have no impact on business; they simply tidy up provisions in the legislation to reflect Brexit. Other provisions will have an impact on business. These provisions are mainly to ensure that certain EEA-based entities will be treated in the same way as other third country entities after exit day. This is an approach that has been taken in many statutory instruments that this House and the other place have considered over the last few months. These changes are made only when necessary to ensure that the UK does not breach the World Trade Organization's most favoured nation rule upon exit.

I will set out these changes and the impact on companies, but first I would like to briefly highlight two provisions that remove access to EU-based processes and systems. The first is that this instrument revokes the Companies (Cross-Border Mergers) Regulations 2007. This allows the merger of two or more companies or partnerships based in at least two EEA member states. There have been approximately 400 cross-border mergers involving UK companies and a company in another EEA jurisdiction since 2010, around 50 a year. After exit, companies seeking a merger with another company outside of the UK will need to transfer assets and liabilities using contractual arrangements. This already happens now between UK and non-EEA companies, so many businesses will already be familiar with it.

The second provision is that after exit the UK will no longer be part of the Business Registers Interconnection System. This tool connects business registries across Europe. Much of the information that Companies House makes accessible on BRIS is openly available on the UK company register via GOV.UK. Many other member states do the same on their registers for business transparency reasons.

I turn now to how the provisions in this instrument deal with certain EEA entities and EEA—regulated markets. The main practical impacts are around filing changes. EEA companies that have registered with Companies House under the overseas companies regulations will need to provide additional information. This will align the information required from them with that required from non-EEA companies. The additional information is minor, such as the address of the registered office and the law under which a company is incorporated. The same group of companies will also be required to provide more detail in customer-facing material. This includes the location of the company's head office, its legal form, liability status and whether it is subject to insolvency proceedings.

While these are minor administrative details, they are important for corporate transparency and very useful for the clients and customers of foreign companies with UK operations. These changes apply only to EEA companies that are already registered as overseas companies in the UK. We have provided companies with a three-month notice period to provide the additional information and Companies House will inform them of the requirements. The forms to update their details will be available on GOV.UK on exit day. Further changes affect UK companies which have an EEA corporate appointment—that is, a director or company secretary that itself is an EEA company. Any UK company with this type of appointment will need to provide Companies House with two pieces of additional information within three months of exit. This aligns the filing requirements for EEA and non-EEA corporate appointments.

Another change ensures that EEA credit reference agencies and credit and financial institutions are treated in the same way as those from third countries. After exit the registrar of Companies House will no longer be able to send protected information that they hold on directors to these companies.

I would also like to explain the definitions of the phrases "UK regulated market" and "EU regulated market" within these regulations. These definitions were inserted in the Companies Act 2006 by the Accounts and Reports (Amendment) (EU Exit) Regulations 2019 and are consistent with the definition in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, which we debated in December last year. The definition confers preferential treatment on certain entities listed on EEA-regulated markets such as the London Stock Exchange and the Frankfurt stock exchange. In most instances we have inserted,

"UK regulated market or an EU regulated market",

to maintain the status quo. However, in two places we have restricted the provisions to companies listed on a "UK regulated market" to avoid breaching WTO rules. The first is the exemption to the prohibition on subsidiary companies owning shares in a parent holding company. This exemption will be available only to companies that have access to UK-regulated markets. The second provides that only companies listed on a UK-regulated market will be able to benefit from some relaxations on controls on their distribution of profits. We are providing a one-year transitional period for those affected.

Overall, these amendments do no more than is necessary, are broadly technical in nature and will ensure that a clear and coherent company law framework is in place after exit. I commend these regulations to the House.

Lord Fox (LD): My Lords, I thank the Minister for bringing this SI to the House. It is another episode in the unravelling process. I have four comments, along with one pro forma comment on consultation.

The Minister mentioned the Business Registers Interconnection System. My understanding is that that is already part of Companies House. Can the Minister assure your Lordships' House that there is no change in the information available—in other words that the information that was available on BRIS remains available on the new Companies House system?

That takes me to my second point. There are a number of mentions of a role for the company registrar in this instrument, and a lot of them are time-limited over the three months post exit day. What level of capacity will be needed to handle what will be a surge of registration, inquiry and people wanting to know what to do? What level of information will go out to inform companies that they are required to do these things? Who will hold the buck for putting that information out there? It is not clear how companies will find out about this or whether there will be the capacity within Companies House to handle the three-month surge. I would like to know what kind of risk analysis has been done by the Government and what level of communication they are planning.

Thirdly, as the Minister set out there are a number of technical changes around cross holdings of shares between EEA and UK companies. It is not clear to me how many companies this would affect. What intelligence do the Government have on how many companies will be affected in this shareholding? Obviously, there is time for these companies to change that. Does that

[LORD FOX]
significantly change the shareholder profile of many companies in this country? If so, how? Does it have any effect overall on market liquidity? What kind of analysis of what this means has gone on?

The final substantive point is on cross-border mergers. The Minister mentioned those in his introduction. He did not explain what the implications are if there are cross-border mergers already under way now or at the time of exit. What regime are these cross-border mergers governed by?

All of this is regrettable, because we have a functioning system that works very well. I am co-operating in so far as I think it is important that we have some sense of where this is going in the regrettable event of exit day. My final point is this: can the Minister outline what level of consultation has gone on? Again, it looks like none. What is the justification for no consultation?

Lord Adonis (Lab): My Lords, I want to pick up on consultation, the final point of the noble Lord, Lord Fox. A theme running through our consideration of all these statutory instruments is either non-existent or totally inadequate consultation, which in any other context would not be regarded as acceptable. Since these are changes in the law that affect significant parts of our economy and significant organisations, it is totally unacceptable that there was no proper consultation.

The blather in the Explanatory Memoranda, which varies by statutory instrument, amounts to the same thing: all this planning was done in secret. It is only at the last minute that this cascade of orders has been presented to the House. Because, I presume, the Government did not want to indicate to the EU that we were engaged in such intensive no-deal planning, there is a straightforward admission that practically no consultation has taken place at all.

The noble Lord, Lord Fox, asked what the level of consultation was. We are told in paragraph 10.1 of the Explanatory Memorandum:

"We have not been able to publicly consult in order to minimise sensitivities in advance of negotiations with the EU".

But these negotiations had been going on for two and a half years when this order was laid before Parliament. Can the Minister tell us what the sensitivities were in advance of negotiations with the EU, which meant us being told that an entirely technical set of changes concerning access to Companies House databases could not be consulted upon with the relevant business communities? It seems to me that the only thing that is sensitive is not the content of these regulations but the very fact that the Government were engaging in no-deal planning. But it was hardly a secret that the Government were engaging in no-deal planning—it was widely known. After all, the Prime Minister told us that no deal would be better than a bad deal. The arguments are entirely implausible and unacceptable.

What really happened, as we are seeing time and again in these orders, is that the Government had no idea of the scale of the changes that would be required. This was all done in a massive rush in the run-up to Christmas, when the no-deal planning was accelerated. It was not that there were sensitivities—there were no sensitivities at all in respect of these orders. Having read the debates on the orders in the other place, I cannot see a single sensitivity. Indeed, the Government's own argument that these changes are technical answers the point about there being sensitivities.

The reason there was no consultation is that there was no time to consult. And the reason there was no time to consult is because this whole thing has been done in a massive rush. That is why—having had a quick glance at the Order Paper—we have this week some 30 statutory instruments being considered one after another and we are not being given a recess.

While these changes themselves appear entirely technical, the continuing declaration by the Government, order by order, that there has been no meaningful consultation whatever is unacceptable. It is only right that the House should put that on record. As we get to the end game of this terrible period, that will weigh on the House as we consider whether it is right to extend the Article 50 negotiating period so that we are not faced with what will otherwise happen—a massive rush of ill-considered orders with almost no time to consider them at the end.

I have one specific question for the Minister. Paragraph 10.1 states that informal consultation took place with the Law Society, but it does not mention any business-related organisations. It does not say whether the CBI or the Federation of Small Businesses were consulted, even informally. Those are the organisations that represent the business community, so will the Minister tell us why, in this informal consultation, only the Law Society was consulted? What is the special status of the Law Society in relation to this statutory instrument, which in fact affects companies and the operation of Companies House? Why were the CBI and the FSB not consulted?

Since this instrument has been published, of course, business organisations have had a chance to come forward. Will the Minister tell us whether the CBI, the Federation of Small Businesses or any other business-related organisation made any informal or formal responses to the Government, and what those responses were?

4.15 pm

Lord Stevenson of Balmacara (Lab): My Lords, the points made by the noble Lord, Lord Fox, and my noble friend Lord Adonis are very important and I hope that the Minister will be able to respond to them. I have a couple more questions to add that the Minister might wish to respond to when he sums up. To add to the comments made by my noble friend Lord Adonis about the consultation, will the Minister also confirm that, if the Law Society was the only body consulted, why were the CBI and the FSB and others not consulted and can he give adequate reasons for that?

Paragraph 7.22 of the Explanatory Memorandum refers to,

"permitted disclosures to credit reference agencies, credit institutions, financial institutions",

and the current legislation giving "preferential treatment" to EEA agencies. I take the point made in the Explanatory Memorandum that there seems to be no particular

reason for that, but will the Minister comment on whether that raises an issue about data protection adequacy? The Government are on record as saying that they want to ensure that movement of personal data between the UK and the EEA is uninterrupted. If a distinction is to be made in terms of access, does that not bear on adequacy? If so, will the Minister comment?

Secondly, paragraph 7.24 refers to political parties and expenditure. My understanding—I may be wrong and I look forward to the Minister's comments—is that shareholder authorisation is required for donations to political parties, organisations and candidates by any companies established in the UK to ensure that their intentions in relation to those activities are transparent. I take the point that, if we are crashing out of the EU and becoming an independent body, there is a question about the relevance of payments made to political bodies operating in the EU, but that does not take the trick in relation to transparency. Surely, shareholders of UK companies should know whether their companies are making payments to political parties whether or not they are in the UK, particularly if they are operating in the EU. I would have thought that was of interest to shareholders.

I am not in any sense saying that there is anything wrong with what the Government are doing, but it would be helpful if the Minister could explain their rationale. If it is a transparency measure, it is not relevant to exclude payments made to political parties and organisations for referendums and other things, wherever they take place, simply because we are no longer in the EU. That information would be of value to shareholders. I look forward to the Minister's response.

Lord Henley: My Lords, I thank all three noble Lords for their contributions. I was not surprised that there was comment about the consultation. I repeat that, as we made clear in the Explanatory Memorandum, we were unable formally to consult on the provisions in the statutory instrument. But as my honourable friend Kelly Tolhurst said in the other place:

> "On consultation, as I outlined, we have consulted, worked with and used the expertise of Companies House to ensure that we are making the best provisions to enable UK companies to implement the regulations that we require for them to be legal if we leave the European Union without a deal".—[*Official Report*, Commons, Delegated Legislation Committee, 4/2/19; col. 8.]

We extensively engaged with Companies House—I think it is the right place, initially—on the changes that will impact EEA and UK businesses. In addition, impacted businesses—I will get on to numbers in due course—were notified of many of the changes in this instrument through the publication of the *Structuring Your Business If There's No Brexit Deal* technical notice published in October, including filing changes, the route of access to BRIS and the revocation of the cross-border merger regime.

The noble Lord, Lord Adonis, seems to think that we did not consult the CBI, the FSB and other similar bodies. I shall give him an assurance that applies not just to this order but to a range of other orders and orders that will cover other departments. The CBI, the FSB and others—I could go through a whole list of them—are in the department on a weekly basis seeing the Secretary of State. The noble Lord will find that they are also in the department on a regular basis seeing officials and making officials aware of their concerns. I can give a cast-iron guarantee that any concerns they have will have been noted and we will have been made aware of them. As I said, this applies not just to this order but to a range of orders. We are the Business Department. My right honourable friend the Secretary of State has made it clear that his door is always open to representative organisations, just as I made clear last week when dealing with the intellectual property regulations how recently I saw, for example, the ABPI and the BIA. Irrespective of Brexit or whatever, it is important to us to have regulations. The noble Lord, Lord Adonis, is an old hand and has been a Minister. He will have done that in the various departments in which he served, and he knows that those engagements go on with great regularity.

I shall now start working through the various points and questions that the noble Lord, Lord Fox, put. I shall start with his concerns about BRIS. It will continue to be open to scrutiny by all non-UK interests after exit. In addition, most EEA registries are open and can be accessed through the relevant websites in the EEA states, but that will have to be a matter for where the company is based. GOV.UK lists those websites for the EEA and the rest of the world. There are no changes in the information available.

The noble Lord then asked how many would be affected and whether Companies House has the capacity to deal with these matters. I can assure him that we are in constant touch with Companies House and it assures us that all is well. The impact will be small. For example, there are only five companies in scope of the change around intermediaries being a member of their holding companies and we found no companies in scope of the change to investment in companies' distribution of profits. Going a bit further, in relation to the filing changes, we reckon there are about 1,900 companies in scope of the changes which will have three months to update their information. Again, I am assured that there are no problems in that area.

The third point made by the noble Lord was about technical changes in relation to cross holding. He asked what analysis we have done. We have made only two changes, which relate to intermediaries dealing in securities being a member of their parent holding company and how investment companies can distribute profits. The regulations will ensure that, after exit, only intermediaries that are members of or have access to a UK-regulated market will benefit from this exemption, and certain investment companies will no longer benefit from some relaxations on controls of their distribution of profits unless they are listed on the UK market.

The noble Lord's final point was on cross-border mergers. I have a note on that which has been temporarily misplaced. I apologise to the noble Lord; I might have to write to him on that.

I turn to the concerns relating to political parties raised by the noble Lord, Lord Stevenson. The regulations amend Part 14 of the Companies Act, which sets out the shareholder authorisation required for a company's donations to political parties, organisations or candidates for electoral office. Under the current legislation, that reflects that the UK is part of an integrated European

[Lord Henley]
political system. In practice, that means that the same authorisations are required whether the political expenditure relates to the UK or other member states. After exit, these authorisations will apply only to donations and expenditure relating to UK-based political parties, organisations and candidates for electoral office. We are making these changes because, after exit, it will no longer be appropriate for the UK to set shareholder authorisations on donations outside the UK, as the UK will no longer form part of the wider EU political system.

Lord Stevenson of Balmacara: It was very helpful of the Minister to read out what is already in the Explanatory Memorandum. However, that was not my point; I was asking why the Government are making the change. If the regulations are there in the first place for reasons of transparency of political contributions, it does not really matter where they are.

Lord Henley: As I said, we have to get the statute book in the right place in the event of no deal, and therefore that small change had to be made. I do not think that I need go any further than that, unless I have misunderstood the noble Lord. I will look carefully at what he has said and will possibly write to him.

The final point that I wanted to deal with related to cross-border mergers. The noble Lord, Lord Fox, asked what happens to mergers that are in progress now. Mergers between UK and EEA companies may not be recognised by the destination member state after exit. We informed stakeholders of the change via the *Structuring Your Business If There's No Brexit Deal* technical notice, which was published in October and to which I referred earlier. In that, we told them what they ought to do and what advice the impacted companies ought to take.

I believe that I have answered all the points. I will write to the noble Lord, Lord Stevenson, if I have misunderstood him.

Motion agreed.

Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2018

Motion to Approve

4.28 pm

Moved by ***Lord Henley***

To move that the draft Regulations laid before the House on 19 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the purpose of this statutory instrument is to ensure that, in the event of the UK exiting the EU without a withdrawal agreement, the system for the recognition of EEA and Swiss professional qualifications in the UK for the purpose of access to regulated professions continues to function effectively, and that existing recognition decisions for EEA and Swiss professionals remain valid. The effect of the statutory instrument is to create a system which retains the best aspects of the current system while providing regulators with more freedom to rigorously check the standard of qualifications prior to granting access to a profession. The instrument will provide certainty to individuals with recognised EU professional qualifications already working in the UK, and the businesses and public sector organisations employing them. Furthermore, it will ensure that the future supply of professionals into the UK in certain key sectors can be maintained. The instrument makes changes to existing regulations using the powers conferred by Section 8 of the European Union (Withdrawal) Act 2018.

Before I turn to the detail of the statutory instrument, I will provide noble Lords with some relevant background on European Union directive 2005/36/EC, which I will now refer to as the directive. The directive sets out a reciprocal framework of rules for the recognition of professional qualifications across borders. It applies to the EU member states, as well as to EEA EFTA states and Switzerland. The directive provides several routes for recognition of qualifications, including automatic and general systems for the purposes of establishment and a mechanism for those who want to work on a temporary or occasional basis. The directive covers a very large number and wide range of regulated professions.

The directive is implemented in UK law by a number of pieces of legislation, including the European Union (Recognition of Professional Qualifications) Regulations 2015, the earlier European Communities (Recognition of Professional Qualifications) Regulations 2007 in respect of Switzerland, and a number of pieces of sector-specific legislation for certain professions. Following the UK's withdrawal from the EU, the directive will no longer apply to the UK and the domestic legislation implementing it will not operate effectively because it will place obligations on UK regulators that they will not be able to fulfil outside the EU. It is necessary to lay this statutory instrument to ensure that the domestic legislation underpinning the recognition system operates properly.

I will now set out the effect of the statutory instrument in more detail. First, it will protect recognition decisions already made before EU exit and allow applications for recognition which have been made before exit to be concluded under the pre-exit rules, as far as possible, after exit. Secondly, it will also enable professionals who have started offering services on a temporary or occasional basis before EU exit to complete this service provision. Thirdly, it will enable qualifications to be recognised in the future. The changes we are making will retain a version of the general system for recognition, where UK regulators will be required to recognise EEA and Swiss qualifications which are of an equivalent standard to UK qualifications in scope, content and level.

However, it should be noted that some things will change under this statutory instrument. First, we are amending the scope of the existing regulations so that the basis of recognition will be determined by where the qualification was obtained as opposed to the nationality of the applicant. Secondly, UK regulators

will no longer be obliged to offer compensation measures and partial access to professions in circumstances where EEA and Swiss qualifications are not deemed equivalent to UK qualifications. Thirdly, we are also removing the obligation on UK regulators to offer EEA and Swiss professionals a mechanism for providing services on a temporary and occasional basis. Finally, farriers and certain health and care professionals, such as physiotherapists, will no longer be in the scope of the amended 2015 regulations. These professions will now be addressed in related sector-specific legislation, to which I now turn.

It is important to note that this statutory instrument and the amended 2015 regulations do not apply to nurses, midwives, doctors, dentists, pharmacists, architects and veterinary surgeons, who are entitled to automatic recognition on the basis that their qualifications meet the EU's minimum training conditions. The systems for qualification recognition for these professions are currently implemented by legislation that is, fortunately, the responsibility of Ministers in other government departments.

In conclusion, the statutory instrument is vital to maintain the operability of the framework for the recognition of professional qualifications and provide certainty to businesses and professionals. The impact of this SI on businesses and the public sector will be minimal. I look forward to listening to noble Lords' comments. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I welcome the regulations but I will ask a number of questions. The first is, obviously, what are the reciprocal arrangements for the rights of British professionals affected by the terms of these regulations in other EEA countries and Switzerland? Is that matter currently ongoing in the Minister's department and the other relevant departments for those professions to which he has referred?

There is a reference on page 4 of the Explanatory Memorandum to the situation of lawyers. I must declare an interest because I practised in two separate firms in Brussels as an EU lawyer, as I would call it, with the qualification that I had then as a member of the Scottish Bar—I am now a non-practising lawyer. Could the Minister confirm that the Explanatory Memorandum refers on, I think, page 4 to the statutory instrument relating to lawyers that has already been adopted? What is the exact relationship between the SI that we have already adopted and the regulations before us? What is the position overall of European lawyers from EEA countries and Switzerland wishing to practise here and of British lawyers wishing to practise post Brexit in other EEA countries and Switzerland?

The position of teachers has long posed a particular problem in countries such as Germany. In the consultation that I am sure my noble friend and his department will have done, were any issues raised about reciprocal rights for teachers, and have any issues been raised by existing EEA-national or Swiss-national teachers currently practising their profession in this country? I think my noble friend has answered this question, but the Explanatory Memorandum says that such issues will be the duty of others—for example, paragraph 17.9 says that the Department of Health will look at EEA and Swiss doctors, nurses, midwives and dental practitioners who wish to come and work here. If I have understood that correctly, what will the position be regarding the recognition of EEA and Swiss professionals in Northern Ireland, with there currently being no devolved government there? Is that something his department will look at? For example, the Explanatory Memorandum says specifically that farriers in Northern Ireland will not be covered. I would be very grateful if he would help me to understand particularly how farriers will be dealt with in that regard.

Lord Hunt of Kings Heath (Lab): My Lords, I remind the House of my membership of the board of the General Medical Council. I want to follow the noble Baroness by focusing on doctors in discussing this SI. As far as the GMC is concerned, the SI provides welcome legal clarification and certainty on the supporting framework governing how EEA-qualified doctors will enter the UK medical register if the UK leaves the EU on these terms—in other words, under a no-deal Brexit. We hope it will help to manage any potential disruption to the NHS medical workforce in those circumstances.

However, can the Minister confirm—I think he did so by implication in his opening remarks—that the regulations will be of only limited application to the medical profession? They will apply only in so far as they make transitional provisions for applications made or actions taken before exit day and which have not been fully determined by then.

The Minister will be aware that there is continuing anxiety in the health service about the uncertainties caused by the current state of negotiations. Given the reaction of many EU nationals working in the NHS to the climate of opinion in this country, I think we have to be really concerned about future staffing and the workforce pressures that will come around the corner very quickly.

Lord Fox (LD): My Lords, before going into detail, I acknowledge that the General Medical Council, the Law Society, the Institute of Chartered Accountants in England and Wales and the Engineering Council have welcomed these proposals. I suspect this is more in sorrow than anything else, since this is better than the uncertainty that would exist without them.

My understanding of secondary legislation and its role—I fear I am treading into Adonis country here—is that it should be about technical, non-controversial issues. When you consider that the 2005 directive paves the way for free movement, you realise that this is actually quite a controversial instrument. In essence, it is here to make up for the fact that, outside the EU, we can no longer treat the European Union as a most favoured nation under WTO rules and will have to strike out the movement opportunities of EU 27 citizens. I understand that; that is why I tabled Amendment 66 to the Trade Bill. I know the Minister was not the beneficiary of that debate or speech but, for the sake of completeness, I am sure he would like to consult *Hansard* from about this time last week. He will see

[Lord Fox]
that free movement has important benefits and this SI tries to mitigate their removal. For that reason, I would say that this is not non-controversial and it is not, strictly speaking, just a technical piece of legislation. Therefore, we should probably not be using this instrument to discuss it, but here we are again.

I am sure the Minister has had a chance to look through *Hansard* for the other place; his colleague Richard Harrington, the Under-Secretary of State, piloted the debate through that House. A number of issues came up, which have already been touched on. One of these was about the Internal Market Information System, or IMI, of which we will no longer be members after exit. This is an important registry of skills and the way they relate to each other. It is not clear what we will replace it with—an Excel spreadsheet, perhaps—or who will hold it and be accountable for its veracity. I suspect it will be the Minister's department, but this is not clear.

Reciprocity was raised by the noble Baroness, Lady McIntosh. The debate in the other place seems to indicate that there is no guarantee of reciprocity or process by which it is being sought or managed. If that is the case—it seemed to be the view of the Under-Secretary of State—why not? What are the Government doing to protect the interests of British citizens?

Baroness McIntosh of Pickering: I am most grateful to the noble Lord. We managed to get it on the record from my noble and learned friend Lord Keen that there is no reciprocity. Reciprocity remains a matter for negotiation. Perhaps the Minister could confirm this, but my understanding is that all those professionals who happen to be British and wish to practise, or continue to practise, in EEA countries and Switzerland will not be subject to reciprocity. This will have to be negotiated at some future date.

4.45 pm

Lord Fox: I thank the noble Baroness for her intervention, as that seemed to be the tone of the debate in the other place.

More importantly, at that time the Minister was asked how many British citizens are affected and what was being done to inform them. He then gave a series of off-the-cuff answers. There has been time now for the department to get to some substance, given that that debate occurred some time ago. Perhaps the Minister can tell us how many there are or how one can go about finding out how many are involved. What level of the information process is going on? As we know, the European Union has said that individuals currently practising abroad on this basis will have to register with the relevant bodies within the European Union. This is worrying, and worrying for British citizens. The Minister should take this seriously and explain what is going on.

The issue regarding the medical profession will be very important indeed. It is about making sure that we do not just continue to recognise the qualifications of current employees in the health service, but have a smooth and seamless way in which future employees can be qualified to operate in it.

On the subject of farriers, it is not clear to me why farriers are included, but in another off-the-cuff comment the Minister in the other place made a joke. He said that one Member of the other place who was a qualified accountant was lucky because he was not a farrier. That seemed to imply that farriers were providing a second-class service to that of chartered accountants. Perhaps the Minister can dispel that myth.

Lord Adonis (Lab): My Lords, the noble Baroness and the noble Lord, Lord Fox, have raised a number of significant issues. The first point to make about the issues involved, which are to do with the recognition of professional qualifications or the potential non-recognition of them in what will be only six weeks' time, is that it seems impossible to say that these issues are purely technical. There is nothing technical about whether people's professional qualifications are or are not going to apply, and whether they will or will not be able to work in a matter of months. The noble Baroness said, rightly, that the response of the Government is that further negotiations should take place on this. We are six weeks away—six weeks—and I doubt that the Minister is going to pretend, since his honourable friend in another place did not, that these matters can be resolved in the next six weeks.

Baroness McIntosh of Pickering: The noble Lord follows these issues even more closely than I do. Does he share my anxiety that from what we learned this afternoon of what the regulations set out, there will have to be separate statutory instruments for all the professions that fall under different departments, such as doctors, vets, architects and so on?

Lord Adonis: That is a very good question. My understanding—but I am not the Minister and he will have to tell us, since it is hard enough for us to understand without my trying to answer for him—is that the provisions of this statutory instrument give all the relevant regulatory bodies dealing with professional qualifications the power to determine whether those bodies will admit EEA and EU nationals and their qualifications. If the noble Baroness is right, it is much more complicated than I thought. I had thought that this one statutory instrument simply conferred all those powers, in so far as they are granted by the state, but if in fact further statutory instruments will be required that will be of huge concern to many professionals.

We are told that all these statutory instruments are technical. I emphasise that there is nothing technical about these issues at all. Indeed, the scale of the issues became apparent to me only on reading the debate in another place, which was referred to by the noble Lord, Lord Fox. If I may, I will read quite a chilling exchange between my honourable friend Chi Onwurah and Richard Harrington, the Business Minister, on this very important question of what will happen to UK nationals who have jobs on the continent which, at the moment, depend upon the automatic and mutual recognition of qualifications. We are saying, quite properly, that we are going to immediately roll over the recognition of qualifications of EU nationals here

and we have the power to do so—of course, we have no power to do so and enforce this in respect of UK nationals who practise on the continent. The House can imagine the concerns that they have.

I will read the exchanges from the other place. My honourable friend asks the Minister,

"given that British citizens living in the European Union will be required to regularise their professional qualifications, does the Minister envisage that there could be circumstances in which they would not be able to continue working without doing so?",

to which the Minister replied:

"I envisage that there could be those circumstances … the only way that that could not happen is for there to be no crashing out … the hon. Lady has made valid point; I would not say it was a ridiculous point".—[*Official Report*, Commons, Sixth Delegated Legislation Committee, 4/2/19; col. 11.]

This is a matter of huge concern. This Parliament is not in a position to be able to guarantee that—we do not even know the number.

Lord Fox: The noble Lord is completely correct, but the Minister was incorrect in saying that by voting for the current deal this would not be an issue. The political declaration says that free movement of people will end. Therefore, this issue remains on the table whether or not there is a deal, whether we crash out or have a deal.

Lord Adonis: The noble Lord is absolutely right. What makes it even more extraordinary is that we are debating this as some kind of technical change, when in fact it is potentially fundamentally affecting the livelihoods of UK citizens abroad, which Her Majesty's Government have a duty to protect. That is one of the fundamental duties of the state: to protect the interests of citizens going about their lawful business. The Government do not even know the numbers. The Minister for Business in another place said:

"I do not know how we would know which UK nationals were working abroad".—[*Official Report*, Commons, Sixth Delegated Legislation Committee, 4/2/19; cols. 11-12.]

If this was being properly prepared for, it is within the resources of Her Majesty's Government to be able to make estimates to consult with the relevant professional bodies and invite those affected to make representations. However, all the preparation of these instruments has happened in secret, so there has been no opportunity to do so.

With the situation we are facing in respect of this instrument it is fundamentally irresponsible for us to be proceeding down this course. I doubt whether the Minister will be able to keep a straight face and say that this is purely technical—it clearly is not a technical matter that Her Majesty's Government are not in a position to guarantee the right of UK citizens to continue in their employment on the continent after 29 March. I anticipate that he will say that he has no choice because if we crash out there is no alternative. But there is an alternative: for us not to crash out on 29 March. The Government should do what they have been resisting for months; in the event of us not having a deal by the end of March—and the Government are running down the clock now, deeply irresponsibly—they should, in good order, apply for an extension of Article 50 so that we do not crash out.

This statutory instrument brings into very sharp relief the reasons why it is so much the duty of the Government and the state to do so. We are not in a position otherwise to guarantee the fundamental and legitimate rights of UK citizens, unless we have a continuation of the current regime of European law. We have no basis to do so; Ministers have accepted that. Because we have good relations with our European neighbours, we are hoping that they will not start imposing new requirements or that their relevant professional bodies will not start nit-picking or introducing new requirements.

Not only do we not have a guarantee—the noble Lord, Lord Fox, used the word "guarantee"—we do not even have any assurance. I can understand that it might not be possible to guarantee it, but because there has been no time to have any of these discussions, we have no assurances whatever that the existing qualifications of UK citizens on the continent will be recognised. Nor do we have any assurance that there might not be sudden changes. Let us make some fair assessment of what will happen. I will be astonished if existing employers try to turf out UK citizens from their jobs on 29 March. However, it is perfectly possible.

Some of us are acquainted with professional bodies on the continent. They are sticklers for their processes. Sometimes they can be a tad nationalistic in their approach to these issues, which is part of the reason for our being in the EU. They can decide to start protecting their own, and they will have an absolute right to do so once we do not have these rules in place. Profession by profession, in all kinds of technical and perhaps even surreptitious ways, I can easily see them start changing the rules, which will quite rapidly close down options for UK citizens to be able to take jobs on the continent. These are not technical issues; these are fundamental issues.

Lord Fox: Does the noble Lord agree that if we allow our regulators sector by sector to supervise the application process and grant access or stop access on the basis of their rules, that is exactly what will happen in all the countries of the EU 27? The danger of restrictive practice such as he suggests is very real.

Lord Adonis: The noble Lord makes a very good point, because, yet again, there has been no proper process of consultation. I am becoming a bit of a connoisseur of how consultation has been conducted under these statutory instruments and I can tell your Lordships that this one is unique in that it does not even have a paragraph that says what the consultation was. Paragraph 10 of the Explanatory Memorandum is simply headed: "Consultation outcome". It continues:

"Consultation between Devolved Administration officials and Government officials, supported by Government Legal Advisers, took the form of regular meetings and engagement specific to the amendments made by this instrument".

It does not say what that consultation was, with whom it was conducted, what the results were, or anything. However, I note that quoted by my assiduous honourable friend Chi Onwurah in the debate in the other place was the briefing given to her by the Institute of Chartered Accountants in England and Wales, which said—I suspect there have been many such representations:

[Lord Adonis]

"'Elements of the SI are open to interpretation. A UK regulator could refuse an EEA applicant by saying the EEA qualification is not equivalent in some way. There is a chance that EU members states will notice this and potentially do the same in their provisions for considering UK nationals/UK qualification holders'".—[*Official Report*, Commons, Sixth Delegated Legislation Committee, 4/2/19; col. 7.]

That goes to the fundamental point made by the noble Lord, Lord Fox, which is that Her Majesty's Government have no means of requiring our professional bodies to continue recognising the qualifications of EU nationals. Indeed, the Institute of Chartered Accountants, which represents one of the most numerous and significant professions in the country, says—it is not us scaremongering—that under these regulations regulators could choose to vary their requirements in respect of mutual recognition and that, if they do so, the legitimate expectation is that regulators on the continent do tit-for-tat responses in respect of their countries.

Let us be clear—we are debating this statutory instrument some six weeks before it comes into effect: we are talking about hundreds of professions, thousands of professional qualifications and 27 other countries, all of which will have discretion to act as they see fit in the matter of these regulations after 29 March. This is profoundly irresponsible. It is just one facet of the whole business of crashing out with no deal, but I could not conceivably be a party to agreeing it today. If the noble Lord, Lord Fox, chooses to divide the House on it, I shall certainly not support the regulations.

Lord Dykes (CB): My Lords, I feel strongly about these matters along the lines sketched out vividly by the noble Baroness, Lady McIntosh, and the noble Lords, Lord Fox and Lord Adonis—as I think will a number of other Members across the House—because of the chaos behind these SIs and the way in which the Government are presenting them: inadequately and sometimes improperly drafted, and without proper explanation of the provisional import of their content and detail. There are many other examples.

5 pm

It is even worse in this example, because of the humanitarian effect on British citizens in the EU, and citizens of other EU countries coming to work here, in the future if this is wrong. The Government have failed to reassure opinion. I notice that this matter is beginning to get into the press. Secondary legislation rarely attracts the attention of our newspapers, particularly the more right-wing ones, which are more like comics. The serious ones, such as the *Daily Mirror*, the *Financial Times* and the *Guardian* have not tended to reflect these matters in the past, because all they have time and space to write about is the central Brexit crisis, rather than detailed secondary legislation and instruments.

I thank the noble Lord, Lord Adonis, who has had time to study a lot of these documents. He and other noble Lords have found the weaknesses in them. The Government must face up to and explore this serious matter. They must reassure the House with more detail, not just on this instrument but on the ones coming later this week and next. There will be a general all-day debate on Wednesday on a review of the Brexit negotiations. That will be an opportunity for the House to consider the impact of inadequate and improperly written secondary legislation.

I am concerned that the Government will begin to say that they have started to reassure people, that people over here feel better about it and that nothing will be too difficult. That is simply not true when you consider the expert opinion on these matters found overseas in the English language idiom. I live in France as well, because I thought it was important to live in an EU country. I am glad that I did it many years ago. It is now even more important to live in another EU country, in case disaster strikes us at the end of March. This country faces an awful fate with this ridiculous, self-harming nonsense of Brexit. There are now more and more comments about the need for an extension to Article 50 and for us to stay as members of the European Union.

Living in France I have the pleasure and privilege of frequently reading the well-known monthly English language newspaper, the *Connexion*, and its supplements on these complicated matters. To judge by articles and readers' letters, British citizens living in other EU countries are far from being reassured. It is simply not true that the tone is gentler and the anger has subsided. The anger continues to grow in those people, many of whom are highly qualified professionals. They live mainly in the bigger EU countries, but also in eastern European ones and elsewhere, working hard and contributing enormously to the local economy. You read lots of comments about how they now feel abandoned by this Government, not reassured, and are worried about the future. Their anger is equal to that felt by people who, having been in those countries for more than 15 years, were not allowed to vote in the flawed and dodgy referendum.

The Government must now reassure the public about this document and in more general terms.

Lord Stevenson of Balmacara (Lab): My Lords, we have covered a lot of ground in the last half hour or so. One important point which has not been made follows on from those made by the noble Lord, Lord Adonis, and other noble Lords. It is puzzling that the Government have chosen to ignore the question of how our important services trade will survive, both in the event of a no-deal Brexit and, more generally, if and when we leave the EU. This SI in some senses plays to that concern.

In the Trade Bill, which is currently paused in your Lordships' House and may reach Report shortly, there is virtually no mention of trade relating to services at all, yet that is 80% of our GDP and consumes a huge amount of our resource and activity. At the heart of services activity is the General Agreement on Trade in Services, which we are members of through our WTO membership and which will apply to us once we leave the EU. However, without any statement at all in the Trade Bill and no confirmation that the Government understand and support the very important services work that relies so heavily on professionals and their

ability to move and support their work, knowing exactly where the Government are coming from is a bit puzzling.

My noble friend Lord Adonis is right to raise the connection here between the right to free movement of persons and the freedom of establishment, which are key pillars of the GATS deal. He is also right to ask why the opportunity was not taken in this SI—as, indeed, it has not been taken in the Trade Bill—to support those who must deliver services in this country, in the EU and wherever they trade to generate the return and income we will need if we are to continue to enjoy our current standard of living. In that sense, the idea that somehow, through this statutory instrument, we will encourage non-tariff discrimination and barriers seems perverse. I hope that the Minister will have some answers to that question when he responds.

Paragraph 7.16 of the Explanatory Memorandum sets out the issue but then ducks out of it, for all the reasons given by others in this debate. It is not just about farriers, although it is a curious feature of life that they are not regulated in one part of our United Kingdom but they are in the other three. Discriminating against the rights of free movement, persons and services and the freedom of establishment to provide those services is one thing. However, we currently enjoy a system—whether through the EPC or through the EU's general regulatory arrangements—whereby established regulated professionals in professions with established training standards automatically qualify to trade wherever they are able to do so. We are trading that for the system we are introducing, which will be devolved to professional bodies. Admittedly, some of these are of great stature and longevity and will, I am sure, act in the first instance. However, because it is not a national system and will not be subject to national standards, it is bound to be variable and to raise the concerns mentioned by my noble friend and raised in the other place of a possible tit-for-tat arrangement under which regulations made in this country—regarding accountants or lawyers, for example—are seen as unsatisfactory by others in the EU, who may introduce tit-for-tat regulatory change to prevent our nationals qualifying. That seems an extraordinary situation to open up and I would be grateful if the Minister would respond to that point.

The underlying issue is the approach we will take if we leave the EU—with no deal or with a deal—to protect the way our citizens are treated. My noble friend Lord Adonis is right: it would be a strange Government who set out deliberately to devalue the possibility of their citizens earning a living and a valuable income for this country in the way this instrument appears to suggest. This is probably not the place to raise all the wider issues mentioned by the noble Lord, Lord Dykes, but he certainly has a point when he asks why we are going through the pain to achieve something that does not seem in any sense optimal for those involved in it. Clearly, minimal consultations were carried out and were mainly focused on whether these regulations will apply in Scotland, Wales and Northern Ireland without difficulty.

I would be grateful if the Minister would respond to this statement towards the end of the Explanatory Memorandum:

> "Devolved Administrations have confirmed their agreement for UK Parliament to lay this legislation UK wide".

That is what this statutory instrument does. It goes on to say:

> "This has been sought under the terms of the Intergovernmental Agreement".

I am not sure which intergovernmental agreement that refers to, but if the Minister could write to me with the details, I would be grateful.

Lord Henley: My Lords, as the noble Lord, Lord Stevenson, put it, this is not about farriers—I will not deal with that question, unfortunately; my noble friend Lord Gardiner will possibly have to deal with it on some other occasion—or about why they are not regulated in Northern Ireland but are regulated in England, Wales and Scotland. I do not think anyone knows the answer to that question, and I will not try to answer it, just as I do not know why, for example, hairdressers are regulated in Italy but not here. In France, they are doubly regulated; you find that if you want to be a hairdresser who makes home visits you must have one form of qualification, and if you want to operate from a shop, you must have another. Again, we do not consider that necessary, but obviously we have to make provisions for UK citizens who want to work abroad to do so when that is possible.

However, before anyone thinks it is all sunshine out there under the current system—the noble Lords, Lord Fox and Lord Adonis, in their little exchange seemed to imply that as a result of these regulations we would get further restrictive practices—I remind noble Lords of the restrictive practices that happen already. One has only to look at the position of UK ski instructors—to take one example from the 600 or so professions that can be affected—and the problems they have had trying to operate in France, where, for some reason, throughout these wonderful years restrictive practices have always come into effect to try to exclude UK ski instructors from operating.

Lord Fox: Does the Minister believe that this statutory instrument will improve the lot of British ski instructors trying to get a qualification in a continental country, or will it make it harder?

Lord Henley: No, it will not, but we are making it quite clear that we believe that we will offer that unilateral ability to operate over here—not that there are that many ski instructors here, although I believe there are north of the border. The noble Lord should welcome the unilateral nature of these regulations.

We will talk about no deal; as I said, we hope that with a deal we will be able to cover all the other 600 or so professions or quasi-professions that are covered. However, I make it clear that I will not deal with other professions, which are, quite rightly, a matter for other departments. Therefore I will not answer the point made by the noble Lord, Lord Hunt, about doctors, because that will be a matter for regulations from the Department of Health and Social Care that either

[Lord Henley]
might have already gone through or will go through, and the same is true of my noble friend Lady McIntosh's concerns about legal services. The legal services SI and the BEIS SI are separate legislation, laid by the Ministry of Justice, and are an effect of the legal services directive and the establishment directive. These alternative routes for recognition of lawyers exist now and, as I said, that is a matter for them.

I shall start off with numbers—the noble Lord, Lord Adonis, and other neighbourhoods, expressed concern about numbers. As the noble Lord will be aware, the European Commission maintains a database of the number of qualification recognition decisions awarded to most professions across the EU, the EEA and Switzerland. It does not tell us exactly how many professionals are working in the European Union at any given time, but it gives an indication in the form of the number who have sought recognition of their qualifications. That database tells us that in the 10 years from 2008 to the end of 2017, approximately 20,000 UK professionals have successfully had their qualification recognised in the EU, the EEA or Switzerland, and of those 20,000 decisions, about 12,000 related to qualifications in the scope of this statutory instrument. Further, I can tell the noble Lord that the top five professions having their UK qualifications recognised are: secondary school teachers, with approximately 3,400; lawyers, with approximately 1,600; doctors, with approximately 1,500; primary school teachers, with about 1,500; and, going back to Italy and France, 1,400 hairdressers.

5.15 pm

The European Commission has said that decisions on the recognition of UK qualifications in EU countries before exit day are not affected, so if those decisions have been made, that is fine. Following the UK's exit from the EU in a no-deal scenario, UK citizens who have not yet had their qualifications recognised in their host member state will have to follow the rules applicable to third-country nationals in that member state; some member states may implement transitional agreements.

I turn to the perennial question about consultation. The noble Lord, Lord Adonis, is right to raise it. I always want to ensure that, even where there has been no formal consultation, departments always follow the appropriate advice: we follow the existing Cabinet Office principles, and details of any consultation are explained in the Explanatory Memoranda accompanying the statutory instruments—though obviously not in this case, as the noble Lord has spotted. We have, however, engaged regularly with all the UK regulators. I repeat what I said to the noble Lord in the debate on a previous SI about how often those regulators are in the department and how often they talk to us. We have also talked to the various professional trade associations and the UK National Recognition Information Centre regularly while drafting the statutory instrument.

The views of stakeholders have been mainly positive. They welcome the plan for continuity in the event of no deal and many of the competent authorities are also very positive about the changes we propose. For example, they are happy that they have to make a choice about whether to offer compensation measures or whether they are not obliged to do so.

Lord Adonis: I am very grateful to the Minister for giving way. He is talking about the consultation that took place with UK regulators and professional bodies. What consultation has there been with UK nationals who work on the continent, who could well be affected by the lack of reciprocal recognition of qualifications? It is their interests that are entirely unprovided for in the statutory instrument.

Lord Henley: I do not think it will be possible to consult them in the way that the noble Lord suggests. I accept that they are affected. We are making the order—a one-sided order—so that those coming to the UK can benefit from it. Obviously, UK citizens abroad are in a different position, but I hope they will take appropriate advice.

Lord Reid of Cardowan (Lab): I am very grateful to the Minister. He mentioned that 12,000 UK citizens were awaiting professional recognition abroad and that 20,000 had thus far had their accreditation accepted in the European Union, as if to imply that that was an inevitable and inexorable acceptance which would continue. Does he accept that for all the 32,000 UK citizens working abroad, according to his estimates, should a reciprocal decision to that taken here be taken by European Union countries—to allow their professional organisations to make the decision—all those 32,000 UK citizens could be subjected to changes in the accreditation system in future, thus threatening the jobs, positions and livelihoods that they hold at present?

Lord Henley: I think the noble Lord has misunderstood what I said. Over the past 10 years, according to the EU's database, 20,000 qualified professionals have had their qualifications recognised in the EU or the EEA. Of those 20,000—it is not a question of adding the two figures together and getting 32,000—12,000 related to qualifications within the scope of this statutory instrument, the implication being that the other 8,000, whether they were farriers from Northern Ireland, doctors or whatever, were not within the scope of this SI; they were within the scope of another. We are talking about 12,000 UK citizens who at some point over the past 10 years have gone to work in the EU. I am advised that the largest proportion of them are teachers, and the same is true of those coming back here. I have given figures for secondary school teachers and primary school teachers. Lawyers and doctors are not within the scope of this SI. I mention also hairdressers, where we can never have reciprocity because, as the noble Lord will be aware when he goes to his barber, we do not regulate hairdressers and barbers, whereas that is the case in Italy, France and no doubt in Luxembourg and other countries. I do not have the precise details of which of the other 27 countries regulate such things.

Lord Reid of Cardowan: I do not know whether my barber is regulated or unregulated but, looking at the outcome of his work, I suspect he is unregulated. I thank the Minister for clarifying his figures, but will he now address the substantial point that the 12,000 who have previously been accredited and are employed in jobs, presumably across the European Union, could in the future, if the EU does the same as the Government are doing, which is to pass the power of accreditation down to the professional organisations on the continent, find themselves without accreditation for their livelihood because the professional associations in Europe may well be tempted into what would be the equivalent of a trade war by protecting the interests of their own members vis-à-vis those who come from the United Kingdom? That is precisely the point that people in this Chamber are worried about.

Lord Henley: I am not going to comment on the noble Lord's barber. However, the position of all 12,000—should they still be there and working, because that was over a period of 10 years—will be perfectly all right and they need not worry.

Baroness McIntosh of Pickering: My Lords—

Lord Fox: My Lords—

Lord Henley: There is no point in my giving way every time the noble Lord speaks because I must try to answer the points.

Lord Fox: It is only one point.

Lord Henley: I apologise to the noble Lord.

There has been guidance from the European Commission on this matter. Decisions on the recognition of our qualifications made by another EU member state before exit will not be affected by our withdrawal from the EU. That is what the Commission has said. Therefore those 12,000, should they still be there, will be perfectly all right. Obviously, for any new person it will depend on what arrangements come into effect. We are dealing with our own arrangements for people coming into the UK. I hope that finally answers the noble Lord's point.

Baroness McIntosh of Pickering: My Lords—

Lord Henley: Can my noble friend wait just a minute? In the event of no deal, people seeking recognition of their qualifications after 29 March will be assessed under the host member nation state rules. I shall now give way to my noble friend.

Baroness McIntosh of Pickering: I am grateful to my noble friend. I hope he will come on to respond to the precise point about reciprocity. I think that what the noble Lord was trying to say was the question I put to my noble friend earlier. We are proceeding ahead of our European partners. We are ahead of our EEA and Swiss partners for the purposes of this statutory instrument. I think my noble friend will confirm that those new applicants will not have reciprocity because it is a matter for negotiation. Is that the case?

Lord Henley: My noble friend has it. We are saying to the large number of French ski instructors who want to come here that they can. It will be up to the French skiing authority. I mention ski instructors because this is just one area where what the noble Lord seemed to think was working perfectly quite obviously was not. I use that, possibly flippantly, just to make that point. French ski instructors will be able to come to Aviemore and qualify. That is what these regulations are about.

Lord Winston (Lab): I remind the Minister that in 1938 that is exactly what we did in Britain. I had a number of colleagues who became great scientists and medics and who were refused their qualifications when they came to this country as refugees. For example, my boss worked as a housemaid for three years before she was able to start looking down a microscope. This is a real issue, not just for ski instructors but for people who are highly qualified as well.

Lord Henley: The noble Lord hits the point absolutely on the head. That is what the regulations are doing. That is why we are saying we will recognise their qualifications. Obviously I cannot say that France will recognise the qualifications of a UK ski instructor, or something more important. That has to be a matter for the French authorities, and we hope they will follow what we are doing.

Can I move on to deal with just one or two of the other points? I see that the House is filling up and, I think, wants to move on to other business.

Lord Adonis: Perhaps it does not.

Lord Henley: Perhaps it does not. I will continue.

I have already mentioned the guidance from the Commission. The noble Lord, Lord Adonis, was concerned that existing qualifications would be recognised, and I mentioned what the Commission said in published guidance about the recognition of other qualifications. We have every faith in that. The noble Lord, Lord Fox, complained that this should be technical and non-controversial—

Lord Adonis: My Lords, I am very grateful to the Minister for giving way. These are extremely serious matters. These figures are huge: 20,000 professionals currently have their qualifications recognised, which means that many thousands more will want the same in due course. The Minister referred to what the Commission said. Richard Harrington, the Minister in another place, said:

"In a no-deal scenario, the recognition of qualifications"—

UK nationals' qualifications on the continent—

"will be assessed under host member state rules. In that scenario, after exit day, our nationals will not be able to provide temporary and occasional professional services as they previously could under the directive, but that will be subject to their host member

[Lord Adonis]

state's laws and regulatory frameworks".—[*Official Report*, Commons, Sixth Delegated Legislation Committee, 4/2/19; col. 11.]

Those words could not be clearer. We have no basis whatever for being able to offer assurances, let alone guarantees, to UK nationals that their qualifications will continue to be recognised for the purposes of new employment after 29 March. I need hardly point out to the House that what the Minister, Richard Harrington, said will come to pass in six weeks' time. Any responsible Government would not be putting regulations of this kind to the House unless they had made proper provision in that respect.

Lord Henley: My Lords, we are bringing these forward in the event of no deal. We are saying, "We will take in all your qualifications". The Commission, as the noble Lord acknowledges, has said that it will recognise existing qualifications from UK nationals out there.

Lord Fox: My Lords—

Lord Henley: The noble Lord will have to wait until I have finished answering this point. He can then interrupt me if I decide to give way, but I think I ought to be allowed to answer a point fully before I take another one.

I will now quote from a letter that my honourable friend wrote to his opposite number following the debate on these regulations in another place:

"Therefore, UK citizens living in EU countries who are working in regulated professions or under protected titles, and who are doing so under a recognition decision under the MRPQ directive, will not have their recognition decisions affected by our withdrawal from the EU and they will not seek further recognition in order to be able to continue working or using their title".

I will now give way to the noble Lord.

Lord Fox: I thank the Minister for giving way and apologise for being so enthusiastic. Richard Harrington said in the other place that,

"the Commission has advised holders of UK qualifications living in the EU to obtain recognition in an EU27 member state before exit".—[*Official Report*, Commons, Sixth Delegated Legislation Committee, 4/2/19; col. 11.]

Is the Minister saying that that is wrong or is he saying that his colleague in the other place is right?

Lord Henley: My honourable friend is always right. On this occasion, he wanted to clarify his thoughts a little, and that is why I am quoting from the letter he wrote. I hope that response answers the noble Lord's question.

Baroness McIntosh of Pickering: My noble friend is being incredibly generous and I am most grateful to him. I asked what his department is doing on a reciprocal basis, given that this is a matter of negotiation. The example given earlier was of a biomedical scientist, which falls within the scope of this directive, but it could equally be a clinical dental technician or a dental nurse. What is the department doing to ensure that there is two-way traffic and that we quite rightly ensure that EEA and Swiss nationals can carry on or make new applications here? Will he put our minds at rest that that is precisely what the Government and his department are doing for our nationals in the EEA, Switzerland and the EU?

Lord Henley: I assure my noble friend that my department and the other relevant departments—this does not just affect BEIS—will seek reciprocity. We cannot offer reciprocity in a no-deal situation. What we are trying to offer in that situation—which is all these regulations are about—is protection for those who want to come into the UK. It is a one-way offer and one would hope others will take it up.

Lastly, I want to deal with the point of the noble Lord, Lord Stevenson, as to whether there is a GATS risk. The current system is based on the nationality of the professional rather than the nationality of the qualification. To keep in line with WTO rules, we have to change that at exit day to avoid being in breach of them. WTO members can recognise professional qualifications gained in other countries provided certain conditions are met. This recognition can be gained unilaterally but it must not operate in a discriminatory way, so we cannot retain a system that provides preferential treatment simply on the basis of a professional's nationality—it has to be on the qualification.

I believe that I have answered most of the questions put to me. These regulations are important and it is necessary to get them on the statute book.

Motion agreed.

Seaborne Freight

Statement

5.33 pm

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, with the leave of the House, I will repeat in the form of a Statement the Answer given by my right honourable friend the Secretary of State for Transport to an Urgent Question in the other place. The Statement is as follows:

"In December, following a collective government decision and a procurement process involving my department and the Treasury, we contracted three shipping companies to provide additional ferry capacity as part of contingency planning for a potential no-deal EU exit. Let me start by being absolutely clear that, in the event of a no-deal Brexit, the Government's priority is to ensure the smooth operation of both the Port of Dover and the Channel Tunnel, and we are putting in place measures at the UK end to contribute to this.

However, any sensible Government plan for all eventualities. That is why we agreed contracts worth around £100 million, with the bulk of the award, £89 million, going to DFDS and Brittany Ferries to provide services across seven separate routes. Built into those agreements are options to add capacity on two other routes from those companies should they be required. This capacity could be required to guarantee the smooth flow of some key goods into the UK,

particularly for the NHS. It is worth reminding the House that, in the event of no deal and constriction on the short straits, this capacity would be sold on to hauliers carrying priority goods.

In addition to the £89 million-worth of contracts with DFDS and Brittany Ferries, the Department for Transport entered into a £13.8 million contract with Seaborne Freight to provide ferry services from the Port of Ramsgate to Ostend. At the time of the award, we were fully aware of Seaborne's status as a start-up business and the need for Seaborne to secure vessels and port user agreements to deliver a service. However, the shorter distance between the two ports meant that the route could provide us with shorter journey times and lower cost, making it a potentially attractive part of the package.

Seaborne's proposition to the department was backed by Arklow Shipping, Ireland's biggest and one of Europe's largest shipping companies. For commercial reasons I have not been able to name Arklow Shipping or mention its involvement to date. But its support for the proposition from the outset, and the assurances the department received, provided confidence in the viability of this deal. Arklow confirmed to me that it intended to finance the purchase of ships and would be major shareholders in Seaborne. It also confirmed to me its view that the Seaborne plans were, 'both viable and deliverable'. These assurances included clear evidence about the availability of suitable vessels from the continent and about the formal steps which Seaborne, via Arklow, had taken to secure these vessels.

However, releasing this information into the public domain could have significantly driven up the cost of the vessels and might even have resulted in them being removed from the market, where supply is extremely scarce. I have therefore had to refrain from saying anything publicly to date about this.

My department monitored closely the progress of Seaborne towards meeting its contractual commitments. By last week, the company had secured firm options on ships to operate on the route, and had reached provisional agreement with Ostend and was close to doing so with Ramsgate. However, late last week, despite previous assurances, Arklow Shipping suddenly and unexpectedly withdrew its backing from Seaborne. In the light of this, and after very careful assessment, I took the decision to terminate this contract. My department concluded that there were now too many major commercial issues to be resolved to enable Seaborne to establish alternative arrangements and finance in the time needed to bring ferries and ports into operation.

As I have repeatedly made clear, not a penny of taxpayers' money has gone or will go to Seaborne. The contracts we agreed with the three ferry companies are essentially a commitment to block book tickets on additional sailings after the UK leaves the European Union, so actually we have taken a responsible decision to make sure that taxpayers' money is properly protected.

I can confirm that the contracts with DFDS and Brittany Ferries remain on track and will provide us with valuable additional freight capacity into the UK in the event of disruption following EU exit. We also have contractual options to replace the Seaborne capacity with additional capacity on routes in the North Sea, and this is an option we will be discussing across government in the coming days.

While the focus of this Government is to secure a deal with the European Union, as a responsible Government we will continue to make proportionate contingency plans for a range of scenarios. That is the right thing to do".

5.38 pm

Lord Rosser (Lab): I thank the Minister for repeating the Statement. On 8 January, my noble friend Lord Tunnicliffe was told by the Government:

"With Seaborne, the proposal was subject to technical, financial and commercial assurance".—[*Official Report*, 8/1/19; col. 2127.]

What were the financial assurances received and from whom? Were the financial assurances given specific, firm, unqualified and in writing, or were they only in the form of an intention or a consideration of giving financial support, as the Statement suggests?

Why was no reference made in the Statement of 8 January to the extensive involvement on the financial side of the Irish company Arklow Shipping? The Government said it was for commercial reasons. What commercial reasons were so important that they overruled the public interest and transparency on a Brexit issue? Perhaps instead it was because the Secretary of State was so determined to have the involvement at all costs of a British shipping company, to avoid the embarrassment of having to rely exclusively on European companies to help us out of a no-deal mess, that he reached this questionable agreement with Seaborne Freight without competitive tendering and then knowingly did not disclose in the Statement that even British Seaborne Freight was dependent on financial backing materialising from an EU-based Irish company? If that is not the case, why was the agreement not reached directly with Arklow Shipping, one of Europe's largest shipping companies and clearly the intended real power behind Seaborne Freight?

Baroness Sugg: My Lords, we have listed the checks carried out as due diligence on the operational suitability of all the bids submitted as part of the department's procurement of additional freight capacity. They were director searches and basic counterparty financial solvency checks, with technical support provided by Mott MacDonald. Two high-level technical reviews were completed. The first related to the ferry tender and submission compliance within the DfT evaluation process and the second to the technical feasibility of the tendered ferry intervention. Financial analysis was carried out by Deloitte to assess the financial robustness of operators, and price benchmarking by Deloitte to examine the prices offered to DfT in comparison with market rates to enable the assessment of value for money as part of the procurement process.

I explained earlier in the Statement the reasoning behind not mentioning Arklow before. It was for commercial reasons. It would have adversely affected the cost of ships in order to procure the contract. We contracted directly with Seaborne because it was the company that had been working for over a year to provide the service between Ramsgate and Ostend.

Baroness Randerson (LD): My Lords, we now know that the Government's own estimate is of an 87% reduction in cross-channel trade for three to six months if there is no deal. Given that the whole point of Brexit no-deal preparations is to minimise risk, why did the Department for Transport approve the contract with Seaborne when it was known that there was a high risk that the company would not be able to fulfil the contract? When we spoke about this on 8 January, the Minister gave me solemn assurances that the financial backing for Seaborne was good. How did that situation change so dramatically overnight?

What the Minister did not tell me on 8 January was who will pay for the dredging of Ramsgate harbour. The Minister told us today that no public money will be put forward to Seaborne, but who will pay for the dredging of the harbour, given that we now know that no company could provide ships in time for a no-deal Brexit to use that harbour?

Baroness Sugg: My Lords, we went ahead with the contract with Seaborne on the understanding that it was a start-up company and did not currently provide the service. As I explained, this was a shorter and therefore cheaper route, which was why we were keen to make use of it. But we have enough capacity in the remaining contracts for prioritised goods.

The DfT is not party to the dredging work at Ramsgate, but of course we will continue conversations with a number of stakeholders, including Thanet Council, over any plans to re-establish ferry services at the Port of Ramsgate.

Lord Campbell-Savours (Lab): My Lords, the dredging started five weeks ago on 3 January, so accounts must have been submitted or Thanet Council will be aware of what the bill is. Have the Government been told how much that bill is? Will the Government pay that bill at the end of the day? How much is the bill to Slaughter and May, Deloitte and Mott MacDonald, to which the Minister referred, for the assessment of Seaborne's business plans? Finally, in the Statement on 8 January, the Minister told us:

"We are concerned that in the event of no deal, there will be disruption at the Port of Dover … which is why we are making these contingency plans".—[*Official Report*, 8/1/19; col. 2128.]

What replacement contingency plans are now being considered to deal with the disruption at Dover, which the Minister herself predicted?

Baroness Sugg: My Lords, as I said, the DfT is not party to the dredging work. I am not able to comment on the value of contracts held by entities other than my department. Dredging of the port is the responsibility of the relevant port authority and continues to form part of the ongoing discussions. As I said, the DfT will continue conversations with a number of stakeholders, including Thanet Council, over plans to re-establish the ferry service.

On the money paid around the Seaborne contract, the contract awarded to Seaborne was part of a broader procurement exercise to secure additional freight capacity after Brexit, and as part of that the three contracts were awarded. Extensive third-party due diligence was carried out on these so a cost would have been attached to the process even if we had never entered into an agreement with Seaborne.

Lord Birt (CB): My Lords, the Minister has told us that substantial commercial due diligence was done on this deal, yet the Secretary of State's Statement says clearly says that Seaborne,

"was backed by Arklow shipping".

It goes on to say that Arklow offered support for the proposition, and finally that Arklow,

"provided confidence in the viability of this deal".

Will the Minister explain more clearly than she has so far what the backing was, what the support was and what the assurances were?

Baroness Sugg: My Lords, I take this opportunity to remind the House that no taxpayer money has been transferred to the company and the Government stand by their robust due diligence carried out on Seaborne Freight. Perhaps it would be helpful if I read out some specific reassurances that Arklow provided to us. It said:

"Arklow Shipping has been working with Seaborne for twelve months in connection with Seaborne's proposals to develop new freight services between the UK and continental Europe. Arklow Shipping is therefore familiar with Seaborne's agreement with Her Majesty's Government to provide additional freight capacity … In support of the current proposals to develop the shipping route … Arklow Shipping intends to provide equity finance for the purchase of both vessels and an equity stake within Seaborne which will be the operating entity of this project … Seaborne is a firm that brings together experienced and capable shipping professionals … I consider that Seaborne's plans to deliver a new service to facilitate trade following from the UK's departure from the EU are both viable and deliverable".

That is from Arklow Shipping, which, as I said, is Ireland's largest shipping provider and one of Europe's biggest. That letter has now been published on the GOV.UK website.

Lord Howell of Guildford (Con): My Lords, I should like to say a word on behalf of the trade union of ex-Secretaries of State for Transport, of whom there are several in your Lordships' House. This case really confirms that the portfolio is a no-win situation because everybody is a critic and nobody is your friend. But in this particular case, are we to understand therefore that when the contract was first made, although it could not be revealed for commercial reasons, it was in fact being made to a combine that had dozens of ferries and enormous ferry experience? I know it had to be cancelled later when Arklow pulled out, but I am waiting to hear a flicker of recognition from those shoot-from-the-hip critics who rushed forward to criticise at the original time when they did not know the full facts. Would it not have been wiser to become a little more informed before the usual crowd gathered to criticise the Secretary of State?

Baroness Sugg: I thank my noble friend for those comments. The contract with Seaborne was specifically designed in recognition of the risk posed by contracting with a new operator and it protected the taxpayer, as it was always designed to do. As I said, no taxpayers'

money has been paid to Seaborne. My noble friend is quite right to point out the assurances that we received from Arklow Shipping. Noble Lords would expect a responsible Government to ensure that we are able to deliver capacity for critical goods in the event of no deal and that is what we are doing.

Baroness McIntosh of Pickering (Con): May I press my noble friend?

Lord Berkeley (Lab): My Lords—

Baroness McIntosh of Pickering: No we have had two speakers from that side.

A noble Lord: This side.

Baroness McIntosh of Pickering: No. They have had two.

A noble Lord: Lord Berkeley!

Lord Berkeley: The Minister seeks to blame Arklow for this withdrawal, but the *Irish Times* says something rather different. It states that Arklow was never "a backer", did not have "any formal agreement" with Seaborne and was not "a contract partner". Who is telling the truth?

Baroness Sugg: My Lords, the contract was with Seaborne Freight. I have read out extensively the reassurances provided by Arklow, which are set out in the letter published on GOV.UK. The contract, however, was with Seaborne and we entered into that given the reassurances that we had.

Universities: Financial Sustainability

Statement

5.50 pm

Viscount Younger of Leckie (Con): My Lords, with the leave of the House, I will now repeat an Answer to an Urgent Question given by my honourable friend the Minister of State for Universities, Science, Research and Innovation in the other place today:

"I thank the honourable Member for the opportunity to discuss the higher education sector today in my first Urgent Question. This Government recognise the importance of the higher education sector and the massive contribution it makes to this country.

We recognise the multiple challenges the sector is facing and that these will require institutions to adapt to a more competitive and uncertain environment. It is true that the current context presents significant challenges to institutional management, efficiency and financial planning in the HE sector, but it is wrong to characterise the HE provider sector as teetering on the brink of financial collapse. In its final annual report on the financial health of the sector, published in March last year, the Higher Education Funding Council for England, the Office for Students' predecessor, concluded that the HE sector overall continues to be in a sound position financially.

The new regulatory framework under the Office for Students brings a risk-based approach to monitoring financial viability and sustainability in order to protect students' interests. Financial sustainability is a condition of registration. This means that the OfS, as regulator, will pay greater attention and, importantly, require more specific action where there is greater institutional vulnerability. Where the OfS identifies particular risks to a provider's financial sustainability, it will indeed take action. This may include enhancing its monitoring or imposing a specific condition of registration on a provider to improve its financial performance. It may also require a provider to strengthen its student protection plan. This will enable action to be taken before a provider faces major financial difficulties.

The Department for Education would also work closely with the OfS to understand the sector's wider financial risk in worst-case scenarios. We are also working with the OfS, other departments and other relevant national partners to develop a full contingency plan to deal with unforeseen or major higher education provider failure. This will set out roles, responsibilities, triggers and actions to be associated with instances where an HE provider market exit falls outside the normal "business as usual" approach of the OfS implementing its regulatory framework and requires government action. Ultimately, the financial viability of universities, as autonomous bodies, is a matter for the leadership of the HE providers.

The post-18 review terms of reference led by Sir Philip Augar include a focus on ensuring choice and competition across a joined-up post-18 education and training sector. The review will look at how it can support a more dynamic market in provision, while maintaining the financial sustainability of a world-class higher education and research sector. We have been clear that the review recognises the need to preserve and protect the existing strengths in the system, and the stability of providers is key to a strong system.

In conclusion, the HE sector faces challenges, but we are confident that universities will rise to these challenges and will continue to be providers of world-class higher education".

5.53 pm

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for repeating the Answer to the UQ in the form of a Statement. Two impending great unknowns have combined to leave many universities feeling vulnerable. The first is, of course, that the Augar review, whose publication date remains shrouded in mystery, seems likely to recommend a significant cut in tuition fees. Can the Minister give a commitment that should that be the case, it will not lead to a reduction in university funding? The more serious problem facing universities is the uncertainty after we leave the EU, particularly if that should happen without a deal, which the Prime Minister has consistently refused to rule out.

Now we learn from media reports that at least four universities have serious financial problems. I hope the Minister will tell noble Lords how many institutions his department understands to be at risk of insolvency. Reading we know of, but it seems the Government do

[Lord Watson of Invergowrie]
not have a handle on the situation there because when the Urgent Question was heard in another place this afternoon, the Universities Minister suggested that Reading should contact the Office for Students, even though the university has said that it did so last week.

The Minister caused some astonishment in the Urgent Question exchanges when he stated:

"There is an expectation that providers may, in a small number of cases, exit the market altogether as a result of strong competition".

It was almost a throwaway remark. The Government seem not to have considered that not the least important factor when a university finds itself in financial difficulty is the potential knock-on effects in the local community, because it is a matter of concern not only for students and staff at the institution but for the local area in which it is based.

There also remains some doubt about the fundamental role of the Office for Students in this situation. Is it merely the regulator or is it a player? Last year, its chair, Sir Michael Barber, stated unequivocally that the OfS would not bail out any institutions that found themselves in financial trouble, yet soon after we learned that an unnamed institution had been provided with an emergency loan when it ran out of cash at the start of this academic year. Will the OfS remain a lender of last resort? That question, I fear, may be put to the test in the not-too-distant future. Will the Minister clarify government policy on this?

Finally, last week the Universities Minister said that the DfE was working with the OfS towards establishing student protection plans. Earlier today in another place, the Minister said he hoped to complete reregistration by the end of the year. If that is the case, it is not very reassuring to people who need reassuring at this time. Will the Minister say how many universities and students are currently covered by student protection plans and how many are not? These questions have assumed even greater importance over the past few days.

Viscount Younger of Leckie: I thank the noble Lord for multiple questions. I shall first address the Sir Philip Augar review. As the noble Lord would expect, I cannot comment on what might come out of the review, but I say again that it is ongoing and more information on its outcomes will be available in due course. When that happens, the Government will be in a position to respond.

The noble Lord also asked about reports in the papers of some universities with serious financial problems. We are certainly aware of them, but I am not in a position to speak about any universities that have these issues and do not want to do so. The OfS continues to say that it will not bail out providers. That is not its role. The noble Lord asked about student protection plans. I will need to write to him on the number of universities with protection plans in place. The noble Lord raises a very important point. One of the most important aspects of the reforms that we brought forward in the Act was to ensure that students have proper protection plans in the unlikely case that providers do not make any.

Lord Storey (LD): The problem of funding is compounded by the financial issues arising from pension liabilities that universities face. The Government are offering additional funding to schools and colleges to cover the shortfall created by the revaluation of the teachers pension scheme. Will the Minister tell us why not universities too?

The thread of Brexit runs through the problem of funding. Vice-chancellors warned as far back as 2017 that British universities were already losing out on millions of pounds of funding from, for example, the Horizon 2020 programme, as a result of the outcome of the Brexit referendum. Will the Minister tell us how far the UK's share of funding from that programme has fallen since the referendum? What additional moneys will the Government put into scientific research this year, given the assurances made about underwriting scientific research funding?

Viscount Younger of Leckie: I shall first answer the question about the pension scheme. The noble Lord may know that Her Majesty's Government have a consultation on the teacher pension scheme changes which closes on Wednesday—in two days' time. The Department for Education has limited financial resources and can afford to fund only part of the increase in employer contribution costs relating to the TPS. Schools, further education colleges and other publicly funded training organisations are in great need of additional support for those costs. The live consultation seeks views on the proposal's impact on higher education institutions. We will finalise funding decisions once that consultation has concluded.

On the Horizon programme, the noble Lord may know that negotiations are ongoing. As he said, it is important that we continue to engage in that programme, and we very much hope that will be the case.

Lord Howell of Guildford (Con): My Lords, does my noble friend agree that some university funding might be made easier if the whole process of receiving bona fide students from overseas were made somewhat less complicated? Does he agree that that in turn would be much easier if we took the student immigration figures out of the overall immigration figures and dealt with them carefully and sensibly in a separate way, and that this would be particularly beneficial for links with the Commonwealth, and especially with India?

Viscount Younger of Leckie: My noble friend would expect me not to agree with that point, but I think the whole House would agree it is very important that we continue to attract students from overseas—from EU and non-EU countries. It is very encouraging that the number of applicants from the EU has increased by 1% to 43,890. There is still a lot of work to do in that respect but, in terms of students being included in the migration figures, we have had much discussion in the Chamber about that, and I do not want to go into it today.

Lord Blunkett (Lab): My Lords, I declare an interest as listed in the register. Perhaps the noble Viscount would contemplate how we can provide much greater

certainty as a global player in higher education. It is not just a question of the Augar financing review, Brexit, the pension fund or even the very temporary drop in the demographic in relation to early entry to university; it is also a question of our place in the world. Will he speak to the Secretary of State and, for that matter, to the Chancellor about the critical importance of retaining our reputation and removing uncertainty, which would undermine the willingness of students to come from abroad and undermine the reputation of our universities worldwide?

Viscount Younger of Leckie: There are a lot of uncertainties around, and the noble Lord makes an extremely good point. One of the most important points coming through, perhaps as a result of the reforms that we are making, is the opportunity for current and new providers to market themselves effectively. There are a lot of issues connected to this, including the teaching excellence framework. As we know, we are beginning to look more at how subjects can be assessed, so that students from abroad can see with much greater transparency and clarity what courses are available and what their ratings are like, and hopefully choose Britain rather than other countries to come to and study.

Lord Adonis: My Lords, two very specific questions were asked by my noble friend on the Front Bench which the noble Viscount did not reply to. When precisely will the Augar report be published, and can the noble Viscount give an undertaking to the House that its recommendations will not diminish funding for our universities?

Viscount Younger of Leckie: I answered the question by saying that I cannot give a precise date for when the Augar review will report, but I have said consistently that it will do so very shortly, and here we are early in 2019. I am not going to be drawn into speculating on what the Augar review will say; we will have to wait. When the report is published, the Government will want to make a full response.

Lord Tugendhat (Con): My Lords, does the noble Viscount agree that when he uses the word "marketing", in this context it is a rather dangerous word? One reason why some universities are in trouble is that they have been marketing a great deal too hard and getting into debt as a result. Does he accept that it will now be necessary for the regulatory agency—the OfS—and others to keep a very close eye on the finances of universities, and to ensure that rumours that spring up about one do not spread to others? There is a danger here of a contamination effect.

Viscount Younger of Leckie: My noble friend is right. When I mention marketing, I stick to my view that universities, just like employers, need to market themselves and explain what they do and who they are. Equally, he is right that the Office for Students, with the greater teeth that it has been given, must look ahead with the strong level of provider registrations that it is operating at the moment. Part of that is being sure it can keep an eye on the viability of each and every registered provider, anticipating rather than reacting to any issues that might crop up.

Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2019

Motion to Approve

6.04 pm

Moved by ***Lord Bates***

To move that the draft Regulations laid before the House on 16 January be approved.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I shall speak also to the Tax Credits and Guardian's Allowance Up-rating Regulations 2019, and I will explain the changes that the two sets of draft regulations would bring.

These social security regulations make changes to the rates, limits and thresholds for national insurance contributions and make provision for a Treasury grant to be paid into the National Insurance Fund if required. These changes will take effect from 6 April 2019.

First, I will outline the changes to employee and employer national insurance contributions, referred to commonly as class 1 NICs. On class 1 primary NICs for employees, the lower earnings limit will rise in line with inflation from £116 to £118 a week, and the primary threshold will rise with inflation from £162 to £166 a week. The upper earnings limit is aligned with the UK's income tax higher rate threshold, which will rise from £892 to £962 a week in 2019-20. On class 1 secondary NICs for employers, the secondary threshold will rise with inflation from £162 to £166 a week. The level at which employers of people under 21 and of apprentices under 25 start to pay employer NICs will rise from £892 to £962 a week.

I now move on to the self-employed, who pay class 2 and class 4 NICs. The rate of class 2 NICs will rise in line with inflation from £2.95 to £3 a week. The small profits threshold will rise from £6,205 to £6,365 a year. On class 4 NICs, the lower profits limits will rise with inflation from £8,424 to £8,632 a year. The upper profits limit, which is also aligned with the higher rate threshold, will rise from £46,350 to £50,000 a year.

Finally, class 3 contributions allow people to voluntarily top up their national insurance record. The rate for class 3 will increase in line with inflation from £14.65 to £15 a week.

The regulations also make provision for a Treasury grant of up to 5% of forecasted annual benefit expenditure to be paid into the National Insurance Fund, if needed, during 2019-20. A similar provision will be made in respect of the Northern Ireland National Insurance Fund. I trust that this is a useful overview of the changes we are making to bring rates of support and contributions to the Exchequer in line with inflation.

[Lord Bates]

I now turn to the Tax Credits and Guardian's Allowance Up-rating Regulations. As noble Lords may know, the Government are committed to a welfare system that is fair to the taxpayer while maintaining our protection for the most vulnerable in society. To put the regulations in context, the Welfare Reform and Work Act legislated to freeze the majority of working-age benefits, including child tax credit and working tax credit, for four years—that is, up to 2020. This helped to put our welfare system on a sustainable long-term path. Specifically exempt from the freeze were the disability elements of the child tax credit and working tax credit. The guardian's allowance was also not affected.

As per previous years, we are now legislating to ensure that the guardian's allowance and the disability elements of child tax credit and working tax credit increase in line with the consumer prices index, which had inflation at 2.4% in the year to September 2018. Therefore, alongside our commitment to fiscal discipline through such measures in the Act, the Government are equally committed to protecting those who are most in need of it.

In practice, the regulations mean that we maintain the level of support for families with disabled children in receipt of child tax credit and disabled workers in receipt of working tax credit. They also sustain the level of support for children whose parents are absent or deceased. Increases to these rates are part of the Government's wider commitment to supporting the most vulnerable people in our society.

This proposed legislation makes changes to the rates, limits and thresholds for national insurance contributions, makes provision for a Treasury grant, and ensures that guardian's allowance and the disability elements of working tax credit and child tax credit keep their value in relation to prices. I hope noble Lords will join me in supporting these regulations, which I commend to the House.

Baroness Janke (LD): I thank the Minister for his introduction to the orders. The freezing of working age benefits means that tax credits increase benefits only for workers and children who are disabled. This excludes a whole range of benefits which are crucial to many of the poorest people and families. The Resolution Foundation states that the four-year freeze on working age benefits has been,

"one of the most vivid examples of austerity in recent years as it represents a … real-terms cash loss for millions of low-income families".

Among the poorest families, the average single parent will be £710 worse off, which amounts to between 3% and 7% of their income. The freeze looks set to cost working-age families £4.4 billion in 2019-20.

I noticed from the Explanatory Memorandum that no consultation was thought to be needed. Last year when these orders went through, the Minister was asked about an impact assessment on child poverty but he said that there was no need as this was done when the freeze was announced. However, we are now entering the fourth year of the benefits freeze. Is it not time an impact assessment was made in relation to the most vulnerable and poorest groups? This is particularly important, first, because the circumstances of these groups need to be taken into account when the migration to universal credit takes place and, secondly, in the light of the evidence of so many reports—for example, by the Resolution Foundation, the Joseph Rowntree Charitable Trust, the Trussell Trust and many others—which draw attention to the poverty and suffering being caused to people and working families at the lower end of incomes.

Does the Minister consider that disabled workers who benefit under the second statutory instrument will be at risk when the Government migrate them to universal credit? Will the Government look at the risk of that process to this vulnerable group? Will they use the forthcoming test-and-learn pilot of managed migration to trial a system where benefit claimants are moved automatically to universal credit so that their income is protected?

Baroness Sherlock (Lab): My Lords, I too thank the Minister for that introduction. As we have heard, the purpose of the first set of regulations is to make changes to the rates, limits and thresholds for national insurance contributions and provide for a Treasury grant to be paid if necessary. Given the impact of inflation on household incomes, coupled with the poor wage growth over the last decade, we are of course supportive of measures that will ensure that NICs thresholds increase in line with inflation.

But I want to spend a bit longer on the second of these measures, whose purpose, as we have heard, is to uprate the guardian's allowance and the few elements of tax credits fortunate enough to have escaped the brutal benefit freeze which has been applied across the board—that is, the disability elements for families with disabled children who get child tax credit and disabled workers in receipt of working tax credit. These are to be uprated by CPI, the 12-month measure which was 2.4% to last September. Obviously, that increase is welcome but, as we have heard, it does not cover all the major elements of child tax credit or working tax credit. It does not cover the single parent, couple or 30-hour elements of working tax credit or the child or family element of child tax credit, which is the bulk of the money—all these are frozen. Many of the people who get the tax credits that are being uprated are also in receipt of other benefits such as child benefit, JSA, ESA or housing support, which are frozen as well. This is really quite damaging.

We should not allow an occasion like this to pass without establishing for the record that this is not the way that Parliament traditionally goes about doing this business. The reason that social security benefits and tax credits are indexed to inflation is so that they keep their value. Before 2011, they were linked to the RPI or Rossi, a variant on RPI. When the Government decided to shift that and link them to CPI, it saved the Treasury a lot of money; of course, it cost the same amount to those who were on the benefits. That shift was strongly contested, but at least it retained the aim of ensuring that the value of the benefits stayed at the level determined by Parliament. When the Government made the switch, they claimed it was because CPI was

a better measure. But the report published last month by the Economic Affairs Committee of this House pointed out that the Government are not above inflation-measure shopping. For example, when the Treasury is paying out benefits and tax credits, it uses CPI; when consumers are paying student loan repayments or facing increased rail fares, it uses RPI. The coalition Government ditched even CPI, limiting most working age tax credits and benefits to a 1% annual increase from 2013-14. The current Government went further still and froze those tax credits and benefits at their 2015-16 levels until 2020.

6.15 pm

The effect of the decision to cut the value of some of the core benefits—which, contrary to what the Minister said in his introduction, go to some of the poorest, most vulnerable people in our country—has been causing huge hardship. Inflation has been running ahead of what was anticipated when the Welfare Reform and Work Bill was passed, which introduced this freeze. That impact assessment cited the OBR forecasts for CPI inflation for each year of the freeze period; the forecasts ranged from 0% to 1.9%. The forecast for 2019-20 was 1.8%; in fact, the relevant CPI rate is 2.4%. That is good news for the Exchequer, which scores a much higher saving than was predicted. Adam Corlett of the Resolution Foundation estimates that the full freeze will now save the Government around £4.4 billion a year, which is half a billion more than originally forecast, and a large part of that saving—a £1.5 billion cut—will effectively begin in April 2019. As Adam Corlett notes:

"So much for 'the end of austerity'".

When introducing the rationale for this freeze, the Minister mentioned the importance of fairness, sustainability and fiscal discipline. When the equivalent regulations were introduced last year by the noble Lord, Lord Young of Cookham, he offered a series of justifications for the freeze. These included the claim that the growth in welfare spending had contributed to a record level of debt and was unsustainable, and that it was necessary to make sure work paid. He also mentioned that the Government had taken other steps such as increasing the minimum wage and tax allowances.

These are familiar refrains. Since 2010, Ministers have been telling the country that they cannot afford to pay benefits and tax credits at decent levels. The coalition Government famously said that,

"those with the broadest shoulders should bear the greatest burden".

Yet a detailed study by Ruth Lupton et al of the coalition Government found that,

"the poor bore the brunt of its changes to direct taxes, tax credits and benefits".

Meanwhile, with the exception of the richest 5%, those in the top half of the distribution were net gainers from the changes. The researchers found:

"Perhaps surprisingly, overall the 'welfare' cuts and more generous tax allowances balanced each other out, contributing nothing to deficit reduction".

In other words, the coalition austerity cuts were not needed to reduce the deficit but to pay for tax cuts. And the tax cuts did not go to those who needed the help most. If you increase the personal tax allowance, someone earning, say, 70 grand a year gets the benefit of all of it. A single mum working 35 hours per week during school term-time at minimum wage does not earn enough to benefit at all.

If the aim were to incentivise work, why include working tax credit and child tax credit, which are paid to people in work? Those people in work are finding not only that their wages have been squeezed, but the system that is meant to top up their household incomes has been slashed just when they need it most. It is not true that all sick and disabled benefits are exempted, because the ESA for those deemed not fit for work but who are in work-related activity have been frozen as well, as have benefits paid to mothers of young babies whom even the Government does not expect to work.

So I would like to ask the Minister some questions. Will he tell us the rationale for these cuts, given what I have said? I am interested to hear his response to the question he was asked about the impact assessment. Also, what assessment have the Government made of the impact that the freeze has had on poverty levels? What is the Government's latest estimate of the savings to the Exchequer of this four-year freeze in tax credits over and above the amount originally scored? If he cannot tell me that, could he write to me? Will he commit to return to annually uprating all benefits and tax credits by inflation from 2020?

Lord Bates: My Lords, I thank the noble Baronesses, Lady Janke and Lady Sherlock, for their questions on these important orders. I do not dissent at all from the assessment by the noble Baroness, Lady Janke, that we are talking here about some of the most vulnerable people in society, and therefore that our approach should be extremely focused.

Nor, though, would I want the accusation to stand that we have been somewhat impassive to the needs of people in the circumstances in which they find themselves, because one of the greatest routes out of poverty, as we all know, is that of employment. This may not be very helpful, but the noble Baroness referred to my noble friend Lord Young taking these orders through last year. At the time he mentioned the increase in employment, which is now at record levels—I am sure that she, being fair-minded, would recognise that as being something that is helping the poorest in our society immensely; the reform of benefits to ensure that work always pays; and some of the important measures that have been taken, not least the national living wage, the increase in which by 4.9% to £8.21, significantly above CPI, will mean an increase in full-time wage workers' annual earnings of over £690. Unemployment has fallen by over 1.1 million since 2010.

At the time when my noble friend took the orders through, we made a serious point and there was a rationale for the arguments being made for welfare reform. From 1997-98, welfare spending rose by £84 billion in real terms—

Baroness Lister of Burtersett (Lab): I am sorry to interrupt, and I am sorry that I missed the beginning of the Minister's statement. Before we move on to the

[Baroness Lister of Burtersett]
more general question about spending, I do not think he has addressed my noble friend's point. Given that paid work is supposed to be the best route out of poverty, why are the Government freezing the tax credits paid to people in paid work?

Lord Bates: That decision was taken through the 2016 Act that I mentioned in my introduction. It was taken then as part of the need to get our public finances into the right order. That was the rationale for it. I say to the noble Baroness, who is someone else who cares immensely and focuses on these areas, that that was the rationale that we used at the time.

On the specific questions, I turn to the point about CPI that was raised by the noble Baroness, Lady Sherlock. She said the previous Government had announced in the Summer Budget of 2010 that CPI would be used for the indexation of benefits and that they would review the use of CPI for the indexation of taxation and duties. Consistent with that, the default indexation assumption is CPI. RPI is no longer recognised as a national statistic.

The noble Baroness, Lady Janke, asked about the impact of the benefit freeze. The Government are committed to taking action to help the most disadvantaged, with the focus on tackling the root causes of poverty. Our welfare reforms are incentivising work and supporting working families. Since April 2016, the universal credit childcare element has covered up to 85% of eligible childcare costs. We will be investing over £6 billion a year in childcare by 2020. Since 2010, 300,000 fewer children are living in absolute poverty and 630,000 fewer children are living in workless households—a record low. We are committed to helping lone parents to find work that fits around their caring responsibilities. We have extended free childcare for three to four year-olds for working families to 30 hours a week, with over 340,000 children benefiting in the first year.

The noble Baroness, Lady Sherlock, asked some specific questions, which she very kindly said that she would give me the opportunity to answer in writing. If that is acceptable, I will write to her and copy in the noble Baronesses, Lady Janke and Lady Lister, who have also spoken in the debate.

Motion agreed.

Tax Credits and Guardian's Allowance Up-rating Regulations 2019

Motion to Approve

6.25 pm

Moved by ***Lord Bates***

To move that the draft Regulations laid before the House on 16 January be approved.

Motion agreed.

Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019

Motion to Approve

6.25 pm

Moved by ***Lord Bates***

To move that the draft Regulations laid before the House on 8 January 2019 be approved.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, as this instrument has been grouped, with the leave of the House I will speak also to the draft Financial Conglomerates and Other Financial Groups (Amendment) (EU Exit) Regulations 2019 and the draft Insurance Distribution (Amendment) (EU Exit) Regulations 2019.

The Treasury has been undertaking a programme of legislation to ensure that, if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime for financial services in the UK. The Treasury is laying SIs under the European Union (Withdrawal) Act to deliver this, and a number of debates on these SIs have already been undertaken in this place and in the House of Commons. The SIs being debated today are part of that programme and have been debated and approved by the Commons.

These SIs will fix deficiencies in UK law on the prudential regulation of insurance firms, the distribution of insurance products, and financial conglomerates, in order to ensure that they continue to operate effectively post exit. The approach taken in this legislation aligns with that of other SIs being laid under the EU withdrawal Act, providing continuity by maintaining existing legislation at the point of exit but amending where necessary to ensure that it works effectively in a no-deal context.

Three SIs are being debated today: the financial conglomerates and other financial groups regulations, the insurance distribution regulations and the draft amendments to the Solvency II regulations. The financial conglomerates and other financial groups regulations set prudential requirements for financial conglomerates or for groups with activities in more than one other financial sector. The insurance distribution regulations set standards for insurance distributors regarding insurance product oversight and governance, and set information and conduct-of-business rules for the distribution of insurance-based investment products.

Solvency II sets out the prudential framework for insurance and reinsurance firms in the EU. Prudential regulation is aimed at ensuring that financial services firms are well managed and able to withstand financial shocks so that the services they provide to businesses and consumers are safe and reliable. Solvency II is designed to provide a high level of policyholder protection by requiring insurance and reinsurance firms to provide a market-consistent valuation of their assets and liabilities, understand the risks that they are exposed to and hold capital that is sufficient to absorb shocks. Solvency II is a risk-sensitive regime, in that the capital that a firm must hold is dependent on the nature and level of risk

that a firm is exposed to. In a no-deal scenario, the UK would be outside the EEA and outside the EU's legal, supervisory and financial regulatory framework. The Solvency II and insurance regulations, the financial conglomerates and other financial groups regulations and the insurance distribution regulations therefore need to be updated to reflect that, and ensure that the provisions work properly in a no-deal scenario.

I shall start by addressing the changes to the financial conglomerates and other financial groups regulations. Under the EU financial conglomerates directive, a financial conglomerate is defined as a group with at least one entity in the insurance sector and at least one in the banking or investment services sector. One of these must be located within the EEA, while the others can be located anywhere in the world. This statutory instrument will amend the geographical scope of the definition so that one entity must be located within the UK rather than the EEA in order to be subject to the UK regime. This statutory instrument also amends the definition of a competent authority, so that it no longer includes regulators based in the EEA.

In line with the approach taken for other statutory instruments, this instrument transfers several functions from the EU authorities to the UK regulators. For example, the EU financial conglomerates directive requires EU authorities to publish and maintain a list of financial conglomerates. This function will now be carried out by the Financial Conduct Authority and the Prudential Regulation Authority. In addition, the responsibility for developing binding technical standards will pass from the European supervisory authorities to the appropriate UK regulator.

6.30 pm

As is the case for the statutory instrument that amends the Solvency II regulations, which I will discuss later, this instrument removes obligations for the EU competent authorities to share information. If the UK leaves the EU without a deal, it will no longer be appropriate to require UK regulators to share information with EU regulators. However, the UK regulators will continue to be able to use their discretionary powers to share information where this might be necessary to ensure that supervisory responsibilities are carried out effectively.

I turn now to the amendments to the insurance distribution regulations. Again, this is an instrument which fixes deficiencies in the regulations, which mostly relate to removing inappropriate cross-references to EU bodies and legislation. This instrument transfers to the Financial Conduct Authority the power to make technical standards regarding a template for presenting information about general insurance policies. This is a standardised document to help consumers compare policies and make informed decisions. This power is required, as it enables the Financial Conduct Authority to update this document in the future to ensure that it continues to deliver useful information for consumers. This instrument also transfers relevant legislative functions to HM Treasury. These give HM Treasury the powers to make regulations about conflicts of interest, inducements, assessments of suitability, appropriateness and reporting to customers, and specifying principles for product oversight and governance.

Finally, let me turn to the amendments to the Solvency II regulations. These first remove references to the European Union and EU legislation and replace them with references to the UK and UK legislation. It is important to stress that the high prudential standards of Solvency II are not being altered. Changes are being made to ensure that the Solvency II regime continues to operate as originally intended, once the UK is outside of the EU. Secondly, preferential risk-charges for certain assets and exposures that originate from within the EEA, and which are held by UK insurance and reinsurance firms, will be removed. A UK firm's exposures from the EEA will now be treated in the same way as exposures from any third country. The EU has confirmed that it will treat UK exposures as third country exposures if we leave the EU without an agreement.

Thirdly, this statutory instrument alters the arrangements for the regulation of cross-border EEA groups of insurance and reinsurance firms that provide services in the UK. As in other areas of EU regulation, insurers and reinsurers are currently subjected to the EU's joint supervisory framework. This enables the requirements of Solvency II for a cross-border EEA insurance or reinsurance group to be applied to the group, with one EEA supervisor allocated lead responsibility for supervision of the group in addition to supervision of solo firms by their respective EEA supervisors. Supervisory co-operation takes place through a "college" of supervisors in which all interested EEA supervisors take part. After exit, in a no-deal scenario, the EU has confirmed that it will treat the UK as a third country and that the UK will be outside the joint supervisory mechanisms which are part of the basis for the current treatment of groups in the EEA. Therefore, cross-border groups may become subject to group supervision by both UK and EEA supervisory authorities in the absence of equivalence decisions.

Fourthly, this statutory instrument removes obligations for EU competent authorities to share information with each other. If the UK leaves the EU without a deal, it will no longer be appropriate to require UK regulators to share information with EU regulators. However, the UK regulators will continue to be able to use their discretionary powers to share information where this might be necessary to ensure that supervisory responsibilities are carried out effectively.

Fifthly, this statutory instrument will transfer responsibility for a number of important technical functions from the EU authorities to the UK. Most significantly, responsibility for setting the risk-free rate—the rate that insurance and reinsurance firms must use to value their liabilities—will be transferred from the European Insurance and Occupational Pensions Authority to the Prudential Regulation Authority. The Prudential Regulation Authority is the most suitable UK body to undertake the technical function of compiling the risk-free rate. It will also take on responsibility to publish this rate. In addition, responsibility for making binding technical standards, which are currently developed and drafted by the EU supervisory agencies, will be transferred to the Prudential Regulation Authority, in a manner consistent with the approach taken in the other statutory instruments that we are laying under the European Union (Withdrawal) Act 2018.

[LORD BATES]

Finally, this statutory instrument will transfer responsibility for making equivalence decisions in relation to third-country regimes. Currently, a third country's regulatory and supervisory regime may be deemed by the European Commission to be equivalent to the approach set out in Solvency II. After the UK leaves the EU, HM Treasury will make equivalence decisions for third-country regimes.

The Treasury has been working closely with the Prudential Regulation Authority and the Financial Conduct Authority in drafting these instruments. It has also engaged the financial services industry on these and will continue to do so going forward. In late 2018, the Treasury published these instruments in draft, along with explanatory policy notes, to maximise transparency to Parliament and industry.

In summary, this Government believe that the proposed legislation is necessary to ensure that insurance and reinsurance firms, insurance distributors and financial conglomerates continue to operate effectively in the UK and that the legislation will continue to function appropriately if the UK leaves the EU without a deal or an implementation period. I hope noble Lords will find that explanation helpful. I commend these regulations to the House.

The Earl of Kinnoull (CB): My Lords, I declare my interests as set out in the register, especially those in respect of the insurance and reinsurance industries. I will speak briefly to two of the three statutory instruments: the Solvency II and insurance regulations and the insurance distribution regulations.

Turning to the Solvency II and insurance regulations, and thinking about the near term, I congratulate the drafters of the statutory instrument; I know the ABI has been sitting with Treasury and PRA officials. First, it gives great comfort to the board of an insurer or reinsurer in the near term—I was thinking about how I would analyse it. It gives certainty on capital required, rollover for capital models and the ability to use reinsurance as temporary capital, and the asset values in an insurer's balance sheet are unaffected. Secondly, I think the mutual equivalence regime is clever. It would have been possible to put equivalence for EU countries in the statutory instrument, but instead it is left to the Treasury to decide what to do. I think that is important because otherwise it would be possible for us to grant equivalence and then find that our Lloyd's market had no equivalence granted back to it in the EU, which would be quite wrong. Mutuality of interest is preserved by that. Finally, I think the selection of measures designed to reduce that horror for all insurers, multiple regulation of the same action, is as good as can be done in the circumstances, so I congratulate the drafters on that.

However, thinking about the longer term, I put a question to the Minister. Solvency II—which came into force on 1 January 2016, for those who did not know, and is a regulation dating from 2009—is very much a one-size-fits-all solution to the problem of having the right amount of capital in your insurance market. Accordingly, it was not designed for the British situation. If you look at equivalent regimes in other jurisdictions—I am particularly familiar with the Bermuda jurisdiction, which is equivalent to the EU, but there are others such as Japan, Australia, Canada and the US, which is of course 50 jurisdictions in insurance terms—it seems that some changes could be made.

Your Lordships might well ask for some examples and I can think of two. There is a lot of gold plate around; that can go away. But one dynamic that has always surprised me is that over the last 15 years or so a large number of insurers and reinsurers have been set up, notably in Bermuda, while I do not think any have been set up here in the UK, the home of insurance. A review could properly investigate that dynamic. There are many reasons for it but I hope a review could address them because, to be competitive, I hope that new insurers and reinsurers will be born here, and soon. I would like to hear the Minister's views on whether a review is warranted and can be expected.

I turn to the insurance distribution regulations. The directive on insurance distribution came in during 2016 and was the update to the 2002 insurance mediation directive. Insurance brokers were then hit by a regulation in 2017, which expanded on the directive, and in 2018 were hit by GDPR. A substantial series of changes have thus been made to how they need to operate, and a period of stability for them would be quite important. I come from the insurance underwriting world but I know the absolute necessity of having a healthy insurance intermediary world to feed our insurance underwriters.

One statistic that is a little worrying is that when the FSA, as it then was, took over the regulation of brokers there were 8,000 insurance brokers in Britain. Britain now has a bigger economy and we are down to under 5,000 of them, which does not feel right to me. I know that it is extremely difficult to found new insurance businesses. Does the Minister feel that, in the longer term, a review would be warranted here? It could seek out gold plate—insurance brokers are sure, and I am convinced, that the cost of regulation in this country is far greater than in other EU countries—but also look at why we have a shrinking number of brokers and why it is so difficult to start up a new broking business. A good review there would certainly give us a fitter and healthier insurance industry.

Baroness Bowles of Berkhamsted (LD): My Lords, I too thank the Minister for his introduction. When I was involved in legislation in Europe, Solvency II was perhaps the first time that I discovered that I could be right while the Treasury was wrong. When I chaired the committee that gave me the confidence to trust my own judgment and to have few, if any, disagreements with the Treasury.

As it was originally done, Solvency II did not manage to cater for everything that the UK needed. In particular, we forgot about annuities; so did the ABI and the Treasury. I have to tell your Lordships that Parliament did not forget about annuities, but we were not strong enough to work out what to do about that because there was a big row going on, particularly between the UK and France, on equities and volatility. When I came back and discovered that I was to chair the committee, one of the first things on my agenda was Omnibus II, which aimed to sort things these out. We had the volatility adjustment for France; we had extrapolation for bonds in the eurozone, which were

desperately needed by Germany; we also had the so-called matching adjustment, which we needed because otherwise the fact that insurance companies naturally tried to match the term of the assets that they collected to their liabilities would have been forbidden. They were supposed to account for their assets separately from assessing their liabilities, which in the business of annuities is a pretty stupid thing to do. Because we were having to box and cox with three other things, that meant that the solutions were probably less than perfect in the end, so in the fullness of time it might perhaps be made a little more perfect.

6.45 pm

When Andrew Bailey was at the PRA in 2015, I had exchanges with him about why we were gold-plating on longevity over and above Solvency II. The answer was that we were not gold-plating; we had previously gold-plated and were just continuing it, so it did not make sense to row back from a position on longevity that the UK had held prior to Solvency II. Likewise, the UK did not believe that the volatility adjustment could be dealt with in a forward-looking way, even though other European countries were doing it. It was ruled out in the UK and I think I sent back a comment that two wrongs did not make a right, because UK insurance was dealt a double whammy by those two things.

There were lots of criticisms on that basis but we should remember that it was the UK which invented Solvency II. There used to be a page on the Bank of England's website where Mark Carney explained that, but I looked last night and could not find it any more. The fact is that, although it was conceived by the UK, the group support part of it, which was supposed to be a financial benefit, did not come to pass. It would have required moving regulatory capital around the group, which would have been of economic benefit. But that got chopped out, making it less attractive, which may be part of why it often gets a bad press.

This is very important legislation and obviously, going forward, we will have to match where we are at the moment. However, it has not been reflected in the rest of the world—and that was reflected in what the Minister told us with regard to the college. There are not the same kinds of international colleges and there is now a difference in the dual regulation, which does not reflect what happens in banking. In the course of time, one might want to have a look at that and see how it works.

When it comes to jurisdictions, the noble Earl, Lord Kinnoull, mentioned that if we look at the United States, insurance is on a state basis there. It is quite important to be able to recognise equivalence with a state, rather than with the whole of the United States. The EU could not do that under its own rules, although I invented a temporary mechanism which was allowed to be used to do that—I will not go into how that came about but I think the Commission may not have been paying full attention. The advantage of having recognition there is that it comes back to the insurers from the UK that are trying to compete.

I have no complaints about how the powers are transposed. From our dealings with it in the past, the Treasury knows very well how to turn the handle on this. There is an issue with the risk-weighting of sovereign debt, so that no longer will everything have zero-risk weight if it is in the EU. This presumably means that UK insurers will have to take on board a slightly higher risk weight, because the internal models dealing with these things do not seem to generate very high risk weights. It would be interesting to know whether there is any kind of global figure for the holdings of EEA sovereign debt—minus the UK—so that one could get at how much of it is the EEA's versus, say, gilts and the rest of the world. How big a problem is that?

I am relatively happy with the transposition, but it is a question of where we go with Solvency II. I am sure that we have to roll in with that what happens regarding the long-term equivalence, or something like that, with the UK. We are to blame for a lot of what is in it, and the problems.

To briefly mention FICOD, I looked at this and thought, "My goodness, has that not been updated yet?" I seem to spend a lot of time trying to get it updated. I think we made some little tweaks somewhere. There were always deep suspicions that there was a double counting of capital in the European bancassurance model. I am not sure whether the Minister can reassure me whether we managed to get that loophole closed in the end, but I remember there was always muttering about some sort of foul play going on in the depths of the Treasury. Otherwise, again, the way the statutory instrument transposes over to the UK regime is as one would expect. I can only say that is the same for the insurance distribution. I spent some time on Solvency II because I want to set this record straight that it was not the fault of the EU.

Lord Deben (Con): My Lords, I point out my declaration of interest, particularly as chairman of PIMFA, the wealth management and independent financial advisers organisation. My noble friend will know that these SIs are not very acceptable to me because they are based on a number of hypotheses that are quite difficult to deal with. I will not repeat what I have said before on that, but I just want to remind my noble friend of those facts. However, there are some particular ones that I am concerned about.

The first is that anyone who deals with these issues is concerned about costs. Once again, we have a new system that means there is more work for the financial regulators. Every time we talk about that, no one tells us how much it will cost and quite how it will be paid for. Each time my noble friend explains with charm and elegance that there is not an awful lot of cost just here and that the FCA and Prudential Regulation Authority are both happy that they will be able to deal with this within their present resources.

The trouble is that I have heard that so often now that I am not sure this really works. There does not seem to be a position in which we have added these costs up. I have a suspicion that if we are not careful we shall end up with a lot more costs. One of the issues about people saying how much we pay into the European Union and how much we get out of it is that we forget an awful lot of things which, if you do them together,

[Lord Deben]
are much less expensive than if you do them apart. When I was Minister of Health and Safety I remember how useful it was that there was only one authority that tested ladders. We did not all have to test them ourselves. I am afraid we are in that situation here. I would like my noble friend to tell me whether these bills have been added up and how they will be paid. What sort of assurances can he give us that we will not find ourselves with significantly greater regulatory costs as a result of this?

The second point I want to raise is, in a sense, to pick up something raised by the noble Earl, Lord Kinnoull, about gold-plating. I think he and I are on the same side here. I do not think we disagree, but it is terribly important to say that most of the gold-plating I have ever found has been put there by the British. Gold-plating is a mechanism that happens in our system particularly. Having been a Minister in these circumstances, I know how it happens. A civil servant arrives and says, "Minister, we thought that if you do it this way round then somebody could find this answer, and it would be better therefore if we make sure that we close off all possible ways of avoiding whatever it is we're talking about. Better not leave it until we discover—better do it first".

Therefore, almost all our regulations, way outside the financial services area, are much more expensive regarding time, regulation and the rest of it than many other European countries. So the noble Earl was right to say that quite a lot could be done here about the reduction of gold-plating, but we could do that anyway because this is our gold-plating. There is no advantage in leaving the European Union to do this. The sad thing is that we have not done it before, and how we have managed to organise it.

There may be some things that we can do that we could not otherwise, but that leads me to my third point, which worries me considerably. In dealing with each of these SIs the Minister used the fascinating phrase—I would love to know who produced it—that were we to leave the European Union without a deal we would no longer have to inform the other authorities in the European Union of what is happening here. However, it will be discretionary to whatever the British regulator is to share this information, if that would be sensible, regarding our own regulation.

I am worried about this word "discretion". Who decides that the discretion will be used? Is it something that the Government will press on these regulators? What do we mean by using "discretion" if this were, in the particular circumstances, valuable to regulation? Do we mean merely to our own regulation, or that we will be in a friendly situation because the regulation of others nearby will have a great effect on us? Is this really a cover word for saying what we do now together, because we are in the same organisation, we will sort of do in the future but pretend we are not doing and call it "discretion"? It seems that is precisely what is really happening here. This is a mechanism of recognising the need to do things together, but not actually putting ourselves into a position in which we have to do things together. Therefore it will be much less good, we will have to do a good deal of it and it will be much less possible to run regulation properly.

The last of my four points is simply that we are now creating a whole new language in which quite a lot of words are used without any clear meaning. The one I want to press my noble friend on is "equivalence". It is a very useful word but I suspect it does not mean anything very precise. When we want to say that we will not be difficult with our neighbours, that we will recognise that markets, particularly financial markets, are very much interlinked, then we talk about the search for equivalence—no doubt we shall use discretion to search for that equivalence. I would very much like to know exactly the definition of "equivalence" as used with reference to these three SIs, because it matters quite a lot. If my noble friend could answer my four relatively simple questions, I would be most pleased.

7 pm

Baroness Drake (Lab): My Lords, I rise to comment on the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations, applying in the event of a no-deal departure from the EU. My concern is from the perspective of the policyholder. Unlike the noble Lord, Lord Deben, I am keen to keep hold of some of the gold-plating that may exist in the current regulatory framework.

The driving intent of the Solvency II directive was policyholder protection, achieved by insurers complying with risk and capital requirements. The benefits are so important to both businesses and individuals that it is not surprising that the Government believe that provisions need to continue after Brexit.

The statutory instrument transfers responsibility for important technical functions from the EU authorities to the UK. The PRA will assume hugely important decision-making powers. Significantly, the risk-free rate—the rate that insurance and reinsurance firms must use to value their liabilities—will be transferred from the European Insurance and Occupational Pensions Authority to the Prudential Regulation Authority.

The PRA will take on responsibility for making binding technical standards. There must be robust checks and balances on how it exercises those functions. Similarly, the Treasury will be given power to make regulations dealing with the system of governance and risk management and methods and assumptions used in valuations and risk modules.

The UK insurance market attracts business from across the world. An efficient UK insurance sector is essential to businesses and individuals, allowing them to manage their risks. The sector is of systemic importance to the functioning of the real economy and individuals' ability to manage their lives, but in a no-deal scenario there is a risk of the sector moving into uncertain territory.

Given the systemic importance of the insurance industry, continued confidence that capital requirements are sufficient to protect insurers and policyholders against insolvency is essential. There is a risk, and a growing fear, that in a no-deal scenario the Government will allow regulatory standards to drop in this area. My question is simple: can the Minister give an assurance that there will be no weakening of the standards of regulation, governance and capital requirements on exit from the EU?

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for introducing these three SIs. However, once again, it gives me no pleasure to be here; these various SIs have ruined yet another weekend and are in pursuit of an outcome which all sane people believe is stupid and potentially catastrophic. It need not have been this way. Even with the excuse of taking responsible action in case of a no-deal scenario, had we started the whole process earlier we could have been considering these SIs at a more modest rate and perhaps giving them more scrutiny than they are inevitably able to receive—certainly, from me.

Before turning to my own concerns, I want to comment on what other noble Lords have referred to. The noble Baroness, Lady Drake, and the noble Lord, Lord Deben, spoke of responsibilities presently held by EU bodies being transferred to UK bodies. There are two problems here. One is that the sheer complexity necessarily involved in doing that leaves the possibility of unintended mistakes having been made in the transfer. Secondly, the noble Lord mentioned costs. I am not too worried about costs; I am much more worried about resources. Do the FCA and the PRA have the resources to take on this burden? It has been explained to me that they will get their money from the industry and so on, but will the people involved be good enough, given the complexity of the situation that we are addressing?

The noble Baroness, Lady Bowles, talked about the generality of Solvency II. From my standing-start understanding of this area, which began on Friday night, I accept that there is some debate about Solvency II. On the solution suggested by the noble Earl, Lord Kinnoull, that the changes be introduced through this instrument, the Minister knows that I would be the first person to jump down his throat if he tried to do that.

The Earl of Kinnoull: I am sorry for having confused the noble Lord, but I certainly did not suggest that changes be introduced in the instrument. I suggested that Solvency II was a one-size-fits-all regulation with a number of things in it. The noble Baroness, Lady Bowles, must have known how difficult were the negotiations, taking place over such a long period and spanning a large part of the world, because of the interaction between the global insurance markets. I suggested merely that it might be wise to have a review and asked the Minister for his view on that. I apologise for any confusion.

Lord Tunnicliffe: I thank the noble Earl for that explanation and apologise for misunderstanding him.

The task we have is under Section 8 of the European Union (Withdrawal) Act, which is a very narrow task. My concerns are perhaps quite small and detailed, but I think that there is a fundamental concern about the process. There is a generality in political activity whereby what politicians do should be understood by a reasonably intelligent amateur—I am at least an amateur—and there is disquiet about the complexity of these three SIs. They are remarkably difficult to understand if one is not part of the industry. It is impossible to read the raw instruments. Much of them relates to FSMA 2000, which has been amended so many times that the original document is indistinguishable. Trying to understand the measure from the Explanatory Memorandum, in which I must trust because I have no other way of examining it, was difficult.

The Opposition will not oppose these instruments. As I read through them, they seem in general to do similar things, so I have no points to raise. However, paragraph 7.12 of the Explanatory Memorandum states:

> "The European Commission's responsibility for developing legislation will be transferred to HM Treasury which will be given power to make regulations for certain matters previously dealt with under Solvency II, e.g. the system of governance and risk management, methods and assumptions used in valuations and risk modules".

That seems to be a pretty sweeping power which has been transferred. Does the Minister believe that is compatible with the withdrawal Act, particularly Section 8? What scrutiny, if any, will Parliament have of the exercise of these powers by HM Treasury? As set out here, they seem to be unrestricted.

Paragraph 7.13 says:

> "EU assets and exposures held by UK insurers will no longer be subject to preferential risk charges when setting capital requirements for insurers that use the Standard Formula".

At first sight, that sounds as though we are taking something away from the EU, that we are being beastly to them. It was only when I did further research that I realised that it has the opposite effect. As I understand it—I hope the Minister will be able to confirm this—the effect will be to increase the capital requirements for UK insurers, which will certainly reduce their profitability. As we know from previous debates, the objective of the withdrawal Act was to not introduce new policy. In his introduction, the Minister said that these instruments aligned with previous SIs. I do not think they do because, in order to stop cliff-edge changes in value, previous SIs have always had some sort of transition regime. If the effect is higher capital requirements, does that mean that UK insurers have been operating unsafely, with insufficient capital? If not, we will be introducing an increased burden on them. If my interpretation is right, why is there not a transition regime in order to make sure there is no cliff-edge change to that requirement?

Further on, in the section on impact, paragraph 12.3 states:

> "UK insurers which use the Standard Formula for calculating capital requirements will be impacted by the removal of preferential treatment for EEA risk-weighted assets and exposures. Such insurers could face higher capital requirements unless they divest themselves of such assets and exposures. However, the government intends to legislate to provide regulators with powers to introduce transitional measures to phase in on-shoring changes to reduce the immediate impact on exit.

That hints that the Government are going to introduce a transitional regime through the regulators. Is that a proper interpretation of the paragraph? If so, when will the legislation alluded to, giving these powers to the regulators, come before the House? Why has this not been part of the SI?

Paragraph 7.15 of the insurance distribution instrument says:

> "Regulations 6 and 12 of this instrument also transfer relevant legislative functions of the European Commission contained within Articles 25(2), 28(4), 29(4) and 30(6) of the IDD to HM Treasury. This includes the powers to make regulations about

[LORD TUNNICLIFFE]

conflicts of interest, regulations about inducements, and regulations on assessments of suitability, appropriateness and reporting to customers, and specifying principles for product oversight".

That seems to be a big bunch of powers. Will they be subject to any parliamentary scrutiny?

Finally, I was somewhat exhausted by the time I came to look at the conglomerates SI—we amateurs do have to work hard—but reassured by paragraph 7.12 of the Explanatory Memorandum which says:

"In practice this change will not have a material effect on financial conglomerates already operating in the UK".

With that assurance, I have no questions on that SI.

Lord Bates: I thank noble Lords for their questions and of their scrutiny of these important SIs. I am sorry to have ruined the noble Lord's weekend. I hope he got a chance to see the rugby.

Lord Tunnicliffe: I did.

Lord Bates: I hope that cheered him up a bit.

These are very detailed SIs but in your Lordships' House there was a wealth of ability to understand them and raise some pertinent questions. The noble Earl, Lord Kinnoull, began by paying tribute to the parliamentary draftsmen and officials at the Treasury and the way they have worked with the ABI. I have witnessed that close working relationship and am grateful to the noble Earl for recognising it in his remarks. I do not have a note relating to his question about the insurance industry on the number of insurance brokers relative to the growth in the economy, and whether there is something about the competitiveness of the UK insurance market that we need to learn from. Those are interesting points and I will take his suggestion back to John Glen, the Economic Secretary to the Treasury and brilliant Cities Minister, who is looking at issues of competitiveness. I will then write to the noble Earl.

Most of the questions related to Solvency II, so I will group those and deal with the other ones as I go through. The noble Lord, Lord Tunnicliffe, asked about insurance distribution and why the Government need the additional powers in the SI. The instrument also transfers relative legislative functions of the European Commission contained within the insurance distribution directive to the Treasury. Any changes made to regulations by the Treasury would have to be approved by Parliament. I hope that that offers some reassurance.

The noble Baroness, Lady Bowles, asked whether the financial conglomerates regulations had resolved the problem of double gearing in the insurance model. FICOD has created new supervisory powers which increase standards of governance and oversight for the largest financial groups. This has helped address gaps that arise from the sectoral supervision of individual firms in a group, in particular the risk of double gearing, which can arise in the absence of robust, group-level policies on capital governance. As I was reading that, I wondered if it answered the question of whether the problem has been resolved. I think the answer may be yes, but I will say that we are working on it and I will write to the noble Baroness. I thank her for raising that point.

The noble Lord, Lord Tunnicliffe, asked about the transitional power referred to in the Explanatory Memorandum to the Solvency II regulations. This power can only be used to phase in the EU exposures changes that the noble Lord is concerned about; it cannot be used to avoid a cliff-edge impact. The power will complement transitional arrangements already approved by Parliament, including the temporary permissions regime. The noble Earl, Lord Kinnoull, asked whether we should have a review of Solvency II. The UK is putting in place all necessary legislation to ensure that, in the event of a no-deal exit in March 2019, there is a functioning legal regime. The Act does not give the Government the power to make policy changes beyond those needed to address deficiencies. That means, as far as possible, that the same rules apply. Let me extemporise a bit: the noble Baroness, Lady Bowles, made the point that the record of UK regulators in leading on Solvency II was widely acknowledged. I think that that is to be encouraged. In all likelihood, if our world-class regulators spot deficiencies in the new regime, they will keep that under review.

The noble Baroness, Lady Drake, asked whether we will be weakening standards. In many ways, as I have alluded to already, our intent—the Chancellor and many others have put this on the record—is to recognise that the UK's reputation in financial services is earned because we have high standards, not because we have low standards. In a sense, there is a tension between the claim that we are going to be lowering standards and my noble friend Lord Deben asking whether we are going to be gold-plating standards, a question I will come to in a second. My noble friend asked about the definition of equivalence. The definitions that operate for each EU equivalence regime will not change and we will use the same criteria for making equivalence decisions in the future as the EU uses now.

My noble friend asked whether the regulators will have adequate resourcing for a no-deal scenario, a question picked up by the noble Lord, Lord Tunnicliffe. Figures on resources and any new costs are for the regulators to publish in their annual reports, which are laid before Parliament. I remain confident that the regulators are making adequate preparations and effectively allocating resources ahead of March 2019. They have actively participated in a wide range of groups in developing technical policy and regulatory rules and have chaired a number of committees and task forces, bringing their considerable experience in implementing EU legislation to bear.

The noble Baroness, Lady Bowles, asked whether there is a figure for EU holding of gilts compared to the rest of the world. To the best of our knowledge, there is no reliable data on EU firms' holding of gilts; however, analysis by the regulators suggests that the capital impact of this change should not be significant.

My noble friend Lord Deben asked about gold-plating by the UK. Solvency II is a maximum harmonisation directive—I do not know whether that is another phrase my noble friend will pick me up on. There must be a level playing field across the EU and we are preserving these rules as much as possible. He also asked whether the instruments reduce the need for the

PRA to co-operate and share information. The UK fully expects a high level of co-operation to continue after exit, as is currently the case with countries such as the United States.

The noble Lord, Lord Tunnicliffe, asked whether too much power has been transferred to the PRA. In the longer term we will need to review the regulatory framework in the UK, including the role of regulators and how far they should be accountable. He asked why we are increasing capital requirements under Solvency II —whether the current requirements are not adequate— and worried about what the past situation was. The prudential standards in Solvency II are not being altered. The capital standards that apply now are entirely appropriate and will be largely unaffected by exit. There are only two situations in which a firm may be required to hold more capital once outside the EU's joint supervisory framework for group supervision. Some EU groups operating in the UK may be subject to an additional layer of supervision by UK regulators. He asked why we are giving new legislative powers on Solvency II to the Treasury. The EU withdrawal Act explicitly provides for EU functions to be transferred to UK bodies, which is what we are doing.

I will, as with previous secondary legislation, review the record of the debate with officials. Should I find that any points have not been covered adequately, I will write to noble Lords and copy in other Members. In the meantime, I commend the regulations to the House.

Motion agreed.

Insurance Distribution (Amendment) (EU Exit) Regulations 2019

Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019

Motions to Approve

7.25 pm

Moved by ***Lord Bates***

To move that the draft Regulations laid before the House on 19 December 2018 and 17 January 2019 be approved.

Motions agreed.

Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019

Motion to Approve

7.25 pm

Moved by ***Lord Bates***

To move that the draft Regulations laid before the House on 15 January be approved.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, as with other instruments we have debated today, these have been laid under the EU withdrawal Act. This instrument is part of the Treasury's legislative programme to ensure that, if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning UK legislative and regulatory regime for financial services.

In December 2017, the Treasury announced that legislation would be brought forward to establish a temporary permissions regime enabling EEA firms operating in the UK to continue their activities here for a limited period after withdrawal. At the same time, it was also announced that legislation would be brought forward to ensure that contractual obligations not covered by that regime could continue to be met, helping protect the interests of UK customers of EEA financial services firms. The legislation setting out the temporary permissions regime for firms that passport under the Financial Services and Markets Act 2000 was debated and passed by this House last autumn, in the form of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

Separately, legislation for temporary regimes for non-UK central counterparties, EEA payments and e-money institutions, and trade repositories has also been debated and passed by your Lordships' House. This instrument therefore delivers on the second commitment: to ensure that those financial services contracts not captured by the temporary permissions regime can continue to be serviced. It similarly ensures continuity for customers of financial services providers that do not enter other temporary permissions regimes, or that exit these temporary regimes without full UK authorisation or recognition. Specifically, this instrument makes provision for passporting EEA firms, non-UK central counterparties, EEA payments and e-money institutions and trade repositories to wind down their operations in an orderly manner. It will apply to those firms that no longer wish to operate in the UK, and to those that exit the temporary regimes without permission from UK authorities to carry on new business here. The approach taken in this instrument aligns with that of other statutory instruments being laid under the EU withdrawal Act. It delivers on the Treasury's commitments and is vital to the financial services sector and its UK customers.

Turning to the substance of the instrument, many noble Lords will be familiar with the EU law that allows EEA firms, non-UK central counterparties and trade repositories to provide regulated services in the UK on the basis of being authorised in their home member state, or recognised or registered by the relevant EU authority. In a no-deal scenario, the UK would be outside the EEA and outside the EU's legal, supervisory and financial regulatory framework. Once the EEA frameworks providing for passporting rights, recognition of central counterparties and registration of trade repositories fall away, we will need to avoid widespread disruption to the provision of financial services, which would ultimately affect UK businesses and consumers. This instrument inserts provisions into the existing temporary regimes to allow for orderly winding down

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of existing contractual obligations or services, providing continuity and certainty for UK customers of those firms that do not enter the temporary regimes, or that exit them without full UK authorisation, recognition or registration.

Specifically, these draft regulations establish four distinct run-off regimes related to four different temporary regimes, covering EEA firms passporting under the Financial Services and Markets Act 2000, non-UK central counterparties, EEA payments and e-money institutions, and trade repositories. This instrument is necessary to minimise disruption to users and providers in the UK financial services sector in a no-deal scenario. The temporary regimes which have been established go a long way towards mitigating the risks of disruption and uncertainty. Without the additional wind-down provisions, however, some UK businesses and consumers could nevertheless see disruption to their existing contracts or services.

7.30 pm

In these provisions, we are giving firms that will not be permitted to carry out new business in the UK enough time to allow most existing contracts to reach their natural conclusion, while also providing sufficient time for firms to make alternative arrangements for any long-term obligations. This instrument will allow firms with pre-existing contractual obligations to continue to meet these obligations, providing certainty and fairness to both providers and users, and showing that the UK remains open for business and that it takes legal certainty and business continuity seriously.

The Treasury has been working very closely with the Bank of England, the PRA and the Financial Conduct Authority in drafting this instrument. It has also engaged with the financial services industry, which has supported this measure, and will continue to do so. On 17 December, the Treasury published the instrument in draft, along with an explanatory policy note to maximise transparency to Parliament and to the industry.

The measures in this instrument are a pragmatic response to ensuring service continuity if the UK leaves the EU without a deal. The importance of the provisions in this instrument is reflected in the announcement of December 2017, which made it clear to the industry well in advance of exit day that the Treasury would put forward legislation to deliver these regimes.

In summary, the Government believe that the proposed legislation is necessary to ensure that existing contractual obligations can continue to be met, thereby avoiding disruption and losses for UK businesses and consumers in the event that the UK leaves the EU without a deal or an implementation period. I hope that this explanation is helpful and that noble Lords will join me in supporting this measure, which I beg to move.

Baroness Bowles of Berkhamsted (LD): My Lords, I thank the noble Lord, Lord Bates, for his introduction. Just in case, I will declare my interest as a director of the London Stock Exchange Group plc; obviously, this would not affect the exchange, but I guess that it could be relevant to some of our competitors. Perhaps it would have been useful if we could have had one of those flow diagrams like the ones you make when you are trying to create your algorithm, to see the way through this. I will try to do that in my own little way, but it will have to be with words.

It seems that any passporting firm that provides services at the moment can continue by going into the temporary permissions regime, and then it can either become authorised or can bounce out of that regime because it will not go for a permanent authorisation; that has been contained mainly in things that we have dealt with previously. When we come to this provision, which is quite useful, those that are not intended to continue to be authorised indefinitely can either go into the supervised run-off, which does what it says on the tin in that they continue to be supervised here, or they can go into the contractual run-off, which relies on their home member state because they do not have an entity here. So you go into the supervised one when there is a branch here and you go into the contractual one if you do not have a branch here. That is clear.

However, I wonder what is going on when you might start to yo-yo between one and the other. It says that you can go from the SRO into the CRO; I suppose I could understand that if the branch closed down, so that it was going to be doing it remotely—is that how it is envisaged? What would cause the regulator to move it from the SRO into the CRO? Obviously, if there is a branch and you are in a run-off, there may come a point at which you say, "Hey, I want to close this branch and disappear"—so that seems to be one reason why you might need it. I was not quite clear why you might want to go the other way, from the CRO into the SRO, if there is no entity here to regulate—I cannot see that a branch would be invented. I could not quite understand why one would go in that direction.

Then there seemed to be a carve-out of some of the more important organisations, such as fund managers, trustees and depositories, and I can understand that they have to go into the temporary permissions regime—I agree with that. We are then probably dealing here on the markets side with smaller organisations. However, I was not quite sure how long they could be hanging around for. It says that it could be five years after entry into the regime; then it says that that is whether they enter on exit day or enter after having been in the TPR. So if they have been in the TPR, which is a year but which can keep on being extended, is there an end stop? Could some of these be hanging around for about 10 years, if the TPR was extended a few times and then they went into the SRO and the CRO for another five years? That seems a long time; I would have thought that five years for the combination might have been enough.

I was thinking that when of course I got to the parts such as those on the trade repositories and CCPs, where the PRA is in charge. There it is a much stricter regime, and quite rightly so, because you are looking here at market infrastructure and potentially bigger effects. However, there it will be a non-extendable period of one year or, in the second scenario, if they have been in the temporary permissions previously,

the recognition may be adjusted—but, again, it will be no longer than one year. So it looks like they have been thinking around the problem I have related with regard to the market side of things. So that was in sharp contrast. My only concern was for how long as a maximum an organisation could be in the TPR and then in one of the run-off situations, because it does not make that clear.

Apart from that, I have no particular comment, and obviously it seems to be a very sensible provision to have made for the benefit of the stability of business that is going on in the UK. It would be very welcome if we knew that there was reciprocity in the rest of the EU for this, and it would be even better if we did not have to do it at all—but I suppose it is making the best of things in the circumstances.

Baroness Kramer (LD): My Lords, I have just one quick question to follow on from the comments of my colleague, who is so much better versed in this than me. It struck me that we seem to have one timetable proposed by the FCA and a different one proposed by the PRA, without an awful lot of logic as to why one takes one approach and the other takes another. Are these two regulators working completely independently and sending over their various paragraphs that then get incorporated into the statutory instrument, or is there some coherent framework? If the regulators are not working together, what can we do to make sure that they will? It will be complicated enough for business without trying to work out which regulator is thinking which way. I would assume—I do not know—that some entities find that they face both regulators. Why the difference under the new rules that each regulator is bringing forward?

Lord Tunnicliffe (Lab): My Lords, it may have been exhaustion, but when I got to this SI, I concluded that it was all really quite straightforward. Having listened to the previous speeches, I am not so sure.

The SI seems to be summed up in paragraph 2.8, and it seems to me to be about run-offs in various areas. As far as I could see, the promises in paragraph 2.8 were carried through in the references to the various areas.

I, too, have some second-order questions about why the time limits were different, but I must admit that I comforted myself with the sure and certain knowledge that if any of them became in the least bit difficult, the Government would introduce an SI to change them anyway, so I did not overburden myself with that.

Paragraph 12.6 states that an impact assessment will be published alongside the Explanatory Memorandum. It has escaped me if it has, so I should be grateful if the Minister would tell me whether one has been published. If it has, I suppose it is my responsibility to find it; if it has not, a further apology on this matter will be gratefully received.

Lord Bates: I thank noble Lords for their questions. It might be for the ease of the House to know that I have the advantage—I think—of having a flow diagram in front of me. It must be one that I can release; I am sure it is. It has something printed on the top which probably tells me that it should not be released, but I am happy to make this diagram available. I do not want to reopen the debate about whether the *Official Report* should be able to capture diagrams and schemes; that would be a heresy that would cause a debate way above my head and pay grade, so I shall stay way out of it. I will circulate that diagram to noble Lords and place a copy in the Library. I will also, if I may, write in detail on the points raised by the noble Baronesses, Lady Bowles and Lady Kramer. Perhaps the same letter could be used to do that.

On the points raised by the noble Lord, Lord Tunnicliffe, about the impact assessment, I can confirm that one was published on 8 February. On the point made by the noble Baroness, Lady Bowles, about the maximum time for extension of terms, the regime can be extended by no more than five years at a time.

Lord Tunnicliffe: I think 8 February was Friday, and I do not do Fridays.

Lord Bates: But the noble Lord was just telling us how he was working over the weekend. He does Fridays, Saturdays and Sundays. The Opposition Chief Whip is here, so he should not undersell himself. He is one of the most diligent Members of this House. We will certainly look at that point.

On why the CCP regime is non-extendable, the Bank will remain in close contact with CCPs to inform them of expectations during the run-off period. This task is expected to be manageable, given the relatively small number of CCPs that can be expected to be in a run-off.

The noble Baroness, Lady Bowles, also asked under what circumstances a firm may be moved from a supervised to a contractual run-off. The FCSR makes provisions allowing a firm to be moved from the contractual run-off to the supervised run-off and vice versa. For this to happen, a regulator would have to consider the matter specified by the FSCR, including whether the move is necessary for the protection of consumers. Only the regulators can move a firm between the SRO and the CRO; firms cannot choose whether to move.

I appreciate that there will be other points relating to this but, as I have given a commitment to write to noble Lords, I will conclude my remarks there for the time being, and commend the regulations to the House.

Motion agreed.

House adjourned at 7.45 pm.

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