Vol. 795
No. 253

Tuesday
12 February 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Royal Assent....1735
Questions
Farming: Carbon Emissions....1735
Yorkshire: Devolution....1737
Police: Recruitment and Retention....1740
Prisoners: Acquired Brain Injuries....1742
Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018
Motion to Approve....1744
Cairncross Review
Statement....1765
Leaving the European Union
Statement....1773
Air Services (Competition) (Amendment) (EU Exit) Regulations 2019
Motion to Approve....1786
Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019
Motion to Approve....1798
Motor Vehicles (Wearing of Seatbelts) (Amendment) (EU Exit) Regulations 2018
Motion to Approve....1798
Motor Vehicles (International Circulation) (Amendment) (EU Exit) Order 2019
Motion to Approve....1802
Environment (Amendment etc.) (EU Exit) Regulations 2019
Motion to Approve....1810
Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019
Motion to Approve....1818
Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019
Motion to Approve....1824
Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019
Motion to Approve....1838

Grand Committee

Offensive Weapons Bill
Committee (4th day)....GC 427

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2019-02-12

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

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

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

House of Lords

Tuesday 12 February 2019

2.30 pm

Prayers—read by the Lord Bishop of Salisbury.

Royal Assent

2.36 pm

The following Acts were given Royal Assent:
Finance Act,
Voyeurism (Offences) Act,
Counter-Terrorism and Border Security Act,
Tenant Fees Act,
Crime (Overseas Production Orders) Act.

Farming: Carbon Emissions
Question

2.37pm

Asked by ***Baroness Jones of Moulsecoomb***

To ask Her Majesty's Government what plans they have to achieve net zero carbon emissions in farming.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register. Agricultural emission statistics are calculated by a team led by Rothamsted Research. Since 1990, emissions from agriculture have fallen by 16% and overall by more than 40%. We need to go further. The clean growth strategy, 25-year environment plan and the clean air strategy set out specific commitments to reduce emissions. We are working on an emissions reduction plan for agriculture as part of our long-term vision for a lower-emissions agricultural sector.

Baroness Jones of Moulsecoomb (GP): My Lords, I thank the Minister for his reply, and I am very glad to know that work is happening. However, the NFU website states that the challenges of Brexit are as a "drop in the ocean" compared with the climate emergency which is unfolding on our planet and that agriculture is still a large producer of greenhouse gases. Farmers are going to find it very expensive to move over to any sort of zero emissions. What sort of financial incentives are the Government going to offer them?

Lord Gardiner of Kimble: My Lords, in the context of our own emissions, agriculture is about 10%. We clearly need to work with the farming industry on its production of food and its maintenance of the countryside. There are so many reasons why we need to work with the farming community. With the environment Bill and the Agriculture Bill, we will bring forward an environmental land management scheme where mitigation of and adaptation to climate change are going to be so important. Therefore, public money for public good is part of what we are providing, along with specific schemes to reduce, for instance, ammonia.

Viscount Hailsham (Con): My Lords, while I welcome what the Minister has said, does he agree that it is very important not to impose on British farmers obligations that are not met in competitor countries? Life is going to be hard enough post Brexit for the British farmer. I declare my interest as in the register.

Lord Gardiner of Kimble: My Lords, clearly we believe that the production of high-quality food and enhancing the environment are eminently compatible. I absolutely understand what my noble friend has said. It is essential that, in all that we want to do, we work with farmers because they look after 70% of the land and we want them to help us produce food and enhance the environment.

Lord Grantchester (Lab): My Lords, the whole food supply chain needs a partnership approach with research to relate to practical outcomes, on a similar model to that undertaken by the 10 sustainable farming groups set up by Tesco to build long-term relationships with farmers. What steps are the Government taking to ensure that the UK's agricultural research is directly connected and translates to on-farm operations, with ambitious climate change measures, enabling farmers and the wider rural economy to benefit?

Lord Gardiner of Kimble: My Lords, research is essential, whether it is agritech or research into tackling endemic disease, which obviously affects livestock. For instance, we want to deal with bovine viral diarrhoea and salmonella in poultry and pigs. All the research will help us to reduce emissions, whether it is through low-emission fertilisers or whatever. In all that, we need to collaborate strongly.

Lord Teverson (LD): My Lords, just as, in the energy sector, energy efficiency is the best way to reduce emissions, surely in agriculture one of the best ways to reduce emissions is by reducing food waste. What action are the Government taking to reduce the one-third of food waste there is in the supply chain, particularly when in this country we have food banks looking for food, for all the reasons that we know?

Lord Gardiner of Kimble: The noble Lord is absolutely right about another key strand of work, which is reducing the extraordinarily high amount of food waste produced by many households. That is happening with retailers through WRAP and the Courtauld commitment, but we need to change how we conduct ourselves and reduce food waste, because it is highly inefficient unnecessarily to produce food.

Lord Krebs (CB): My Lords, the Minister will be aware of the climate change committee's 2018 progress report to Parliament, in which it states that not enough progress has been made in reducing emission from agriculture and land use in comparison with other sectors of the economy. It particularly highlights the failure of voluntary measures to achieve reductions. Does he therefore agree that in future, if we are to move towards net zero in agriculture, there will have to be more mandatory legislation to encourage farmers to comply?

Lord Gardiner of Kimble: My Lords, clearly we want to work in partnership with the farming community, and we have supported the industry-led *Greenhouse Gas Action Plan*, but we are waiting to hear from the Committee on Climate Change's advice, including setting a net zero target beyond our 2050 target. We will clearly need to work with the industry, but it is essential that we reduce emissions from agriculture.

The Lord Bishop of St Albans: My Lords, one point that the NFU made is that our wonderful British beef farmers are already two and a half times more efficient than the world average and four times more efficient compared with the beef from South America, so surely one of the most important things that Her Majesty's Government could do is to put their weight behind British beef farming. What plans do they have for that sector post Brexit?

Lord Gardiner of Kimble: My Lords, the right reverend Prelate is absolutely right about our impressive productivity. For example, in pork, there are 36% fewer emissions; in dairy, 7% fewer. We will continue to work with industry on breeding programmes to improve the efficiency of feed conversion in beef. Clearly, all that and the £90 million investment in the transforming food production challenge is about finding better techniques to ensure that we have great products at home and abroad.

Baroness Byford (Con): My Lords, going back to the original Question, what strategies are the Government using to move this issue forward? Will it go out to consultation? If so, what is the timetable for that? Secondly, I remind the Minister of the great benefit of grass-grazing animals in this country. There is a double bonus there.

Lord Gardiner of Kimble: My Lords, that is undoubtedly true. I have already declared my interest as a farmer. Having grass on the farm is a great way to have diversity in our countryside and produce food. As I said, we need to work with the farming industry to ensure that we can achieve the low emissions we all need and that farms continue producing food. For instance, under the farming ammonia reduction grant scheme, the funding of slurry store covers will reduce emissions during storage by up to 80%, so there is a lot we want to do with farmers.

Yorkshire: Devolution

Question

2.45 pm

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what plans they have to respond to recent proposals for devolution in Yorkshire.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, my right honourable friend the Secretary of State wrote to Mayor Dan Jarvis and the 18 local Yorkshire leaders today, saying that while,

"the One Yorkshire proposals do not meet our criteria … we are prepared … to begin discussions about a different, localist approach to devolution in Yorkshire",

for example, by considering proposals by the Leeds City Region, York and North Yorkshire and the Humber estuary, provided the Sheffield City Region deal is completed.

Lord Wallace of Saltaire (LD): My Lords, at last we have an answer from the Government. I hope my Question helped to push them a little. The devolution deals were supposed to respond to local wishes. As the Minister said, the clear position in Yorkshire is that 18 of the 20 local councils, people from all parties, the CBI and the TUC all agree that One Yorkshire recognises that Yorkshire as an economic and social entity makes the most sense. Why are the Government not prepared to work on that basis when they said that they would listen to local authorities in approaching devolution?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord for welcoming the clarity of the approach we have announced today, as I believe he did. I recognise that he is not totally happy with our response but this is not just about listening to local authorities, although that is part of the issue. The One Yorkshire deal would not be consistent with our approach to other metro city mayors as coherent economic entities, as I am sure the noble Lord would see if he looked at our approach there. The fact that that makes more sense crystallised the thinking behind the letter that went out today.

Lord Blunkett (Lab): My Lords, does the Minister agree that it would be perverse in the extreme for a group of authorities that agreed to a devolution deal and an elected city mayor, then reneged on it and found out that authorities to the north were already talking about working together on their own deal, not to go back to their original commitment and draw down tens of millions of pounds of public money to invest in local services and infrastructure, at the same time as building an incremental approach to any future One Yorkshire deal?

Lord Bourne of Aberystwyth: My Lords, I find myself in total agreement with the noble Lord. I agree that it makes perfect sense for the Sheffield City Region authority to progress. I understand that it is due to meet a week on Thursday to look at this matter; I very much hope that it processes the issue and moves forward because £900 million over a 30-year period is attached to the Sheffield City Region project. I hope it goes ahead and I hope that other parts of Yorkshire follow, in the way I suggested to the noble Lord, Lord Wallace.

Baroness Warsi (Con): My Lords, I echo the concerns of the noble Lord, Lord Wallace. There is a lot of cross-party agreement on the One Yorkshire deal at a local level; it is supported by the CBI, the Federation of Small Businesses and the TUC. However, is my noble friend concerned that a balkanisation approach in Yorkshire may result in certain parts of that region being left behind? Does he agree that there may be some merit in considering a much broader One Yorkshire deal?

Lord Bourne of Aberystwyth: My Lords, my noble friend takes a very different approach to the issue. I read the article on balkanisation to which she may have been referring. Many people have addressed this issue, saying that it would be wrong to cut across existing economic entities. For example, the Select Committee chairman, Clive Betts, the honourable Member for Sheffield South East, takes the view that a One Yorkshire deal would be wrong. We need to look at this issue in terms of where economic ties and cohesive agreements already exist and proceed on that basis. I understand the emotional pull of Yorkshire but we must look at the economic issues as well.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I first declare an interest as a vice-president of the Local Government Association. I am aware of the letter sent to Dan Jarvis, and I thank the Minister for sending me a copy. Can he give the House some more details of the timescales proposed here? It appears perverse that the Government are straightaway ruling out an option that clearly commands a lot of support in Yorkshire and are prepared to discuss only options that seem to have less support.

Lord Bourne of Aberystwyth: My Lords, I first thank the noble Lord for his comments, but on simply ruling it out he will be aware that copious documents have gone forward from the Yorkshire leaders. Some 100 pages of complex analytical documents on this have been studied, so it is not the sort of capricious decision he was perhaps suggesting. A lot of thought has gone into this. If he looks at the other metro mayors, he will see that they represent much smaller, more appropriate, cohesive economic regions—around the West Midlands, Manchester and Liverpool—than a county. Also, historically Yorkshire has never been a single devolved entity in its administration. As the noble Lord will know, it was split into ridings, for example, so perhaps the Government's thinking is much more reflective of the economic units that used to be in place in Yorkshire.

Lord Kirkhope of Harrogate (Con): My Lords, I am one of those who have been very much involved in devolution proposals for Yorkshire for a long time now. Can my noble friend confirm that, while there has been a lot of unity of purpose, parts of the region, particularly the southern parts—Sheffield is the city concerned—have not been able to get their act together and have disagreed, originally intending to leave Yorkshire altogether in their proposed union with Derbyshire? Now they have changed their minds about four times. That does not help us get a settlement. Would the Minister urge the South Yorkshire representatives, including the mayor, to get their act together and to come around the table with the other 18 authorities to discuss the matter further?

Lord Bourne of Aberystwyth: My Lords, in all fairness, I think the mayor has been very keen to get this moving, and his actions have reflected that. He is very much committed to ensuring that we implement the Sheffield city deal. I hope this now goes forward a week on Thursday, when the meeting is due. It is much more complex than some would suggest, in that some parts of the economic entities are outside the historical county of Yorkshire—he has mentioned Derbyshire and the same could be said of parts of north Nottinghamshire, which look towards Sheffield and the South Yorkshire area. Also, looking at Humberside, for example, north Lincolnshire would be an appropriate part of any deal there. So it is not simply a case of looking at Yorkshire and building a deal around Yorkshire.

Police: Recruitment and Retention

Question

2.52 pm

Asked by ***Baroness Lawrence of Clarendon***

To ask Her Majesty's Government what progress they have made towards implementing the recommendations on the recruitment and retention of police officers in the report of the Stephen Lawrence Inquiry, published in February 1999.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the police workforce is more representative in gender and ethnicity than it has ever been. The recommendations made by the Stephen Lawrence inquiry report on police recruitment and retention have been implemented. However, the Government are absolutely clear that there is more for forces to do to ensure that the police workforce reflects the diversity of the communities that it serves.

Baroness Lawrence of Clarendon (Lab): I thank the Minister for her Answer. This month marks the 20th anniversary of the inquiry. There were 70 recommendations but I will ask the Minister about only recommendation 64, which addresses the recruitment and retention of minority officers and staff. It says that the Home Secretary and police authorities' policing plans,

"should include targets for recruitment, progression and retention of minority ethnic staff",

that the Home Office should,

"facilitate the development of initiatives to increase the number of qualified minority ethnic recruits",

and that HMIC should include,

"in a thematic inspection a report on the progress made by Police Services".

I find it really difficult to find any report giving me an update. Can the Minister give the House an update on recommendation 64 on recruitment and retention since the report was published?

Baroness Williams of Trafford: I pay tribute to the noble Baroness and all that she has achieved on some of the recommendations that have come out of the report. On the three recommendations she talked about, there are several things going on. She will have seen the race disparity audit, which is published by the Government and continually updated on the government website to show exactly where the disparities lie and where improvements need to be made. Last year, the NPCC produced a diversity, equality and inclusion strategy led by Chief Constable Gareth Wilson. It attempts, across all areas of the police, to increase

[Baroness Williams of Trafford]
inclusion and diversity. The superintendents' association and college have a mentoring and coaching scheme precisely to improve the recruitment of BME staff. The figure has improved, but the noble Baroness is right to ask the question because we have much further to go.

Lord Paddick (LD): My Lords, I am told that, recently, almost 50% of all black and minority-ethnic officers of superintendent rank and above in the Metropolitan Police were under investigation of one kind or another. It is also alleged that a recent promotion selection process in the Metropolitan Police contained a test that was known to be culturally biased, and that some BME officers who passed every other part of the assessment were failed because they did not pass the culturally biased part. Will the Minister look into what appear to be allegations of institutional racism?

Baroness Williams of Trafford: My Lords, these are very serious allegations indeed and I will of course look into them. If officers are under investigation, it may be more difficult for me, but the allegation that 50% of BME staff at superintendent rank or above are under investigation is very concerning.

Lord Hogan-Howe (CB): My Lords, I support the bid from the noble Baroness, Lady Lawrence, to increase the recruitment of minority-ethnic officers. By the time I left the Met, one in three of our recruits was from a minority, but I am still worried. For the past three years we have seen no recruitment because of lack of resources. This means there has been a pause in the change in make-up of all our police forces. I encourage the Minister and the Government to consider the Northern Ireland approach, as instigated by the noble Lord, Lord Patten of Barnes. It did not change at all the standards for recruitment—people were offered a place in order of ability, but also in order of their representation in society. In the Northern Ireland context, therefore, unionists got jobs later and Catholics tended to get them earlier. I seriously think it is worth considering this in a UK context, given that we still see underrepresentation in our police service, as in many public services.

Baroness Williams of Trafford: I certainly agree with the noble Lord that positive action is absolutely necessary. I take his point about less recruitment happening in recent years. Now is the moment to put that positive action into place and encourage people from BME backgrounds to come forward and apply for roles in the police.

Baroness Berridge (Con): My Lords, in recent years television programmes have taken seriously the issue of role modelling: look at the BBC's "Luther" and ITV's DS Sunny Khan in "Unforgotten". But these role models cannot be just fictional. Will the Minister outline the statistics for those in the senior ranks of our forces from a black and minority-ethnic background?

Baroness Williams of Trafford: My noble friend points to an area where we are doing very badly: the senior ranks. In 2017-18, 27% of new recruits to the Met Police were from a BME background. To get people from BME backgrounds through to the senior ranks, we need new recruits as the pipeline for the future. She talked about role models, and I take this opportunity to give my good wishes to the brother of my right honourable friend the Home Secretary as he proceeds up the ranks of the police.

Baroness Osamor (Lab): My Lords, the recommendations in the inquiry begin by talking about:

"Openness, accountability and the restoration of confidence",

and the need:

"To increase trust and confidence in policing among minority ethnic communities".

What level of confidence is there in policing among the black and ethnic-minority communities?

Baroness Williams of Trafford: My Lords, it is certainly something that we have to work on and that the police have to work on. Whether you are talking about a democratic system or organisations such as the police, you need recruits from BME backgrounds because it is important that they look like and are in tune with the communities that they serve.

Prisoners: Acquired Brain Injuries

Question

3 pm

Asked by ***Lord Ramsbotham***

To ask Her Majesty's Government, in the light of the findings of the Disabilities Trust and Royal Holloway University that 65% of women in HM Prison Drake Hall had suffered from an acquired brain injury, what plans they have to make assessment for such injuries compulsory for all prisoners on reception into prison.

Lord Ramsbotham (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and declare an interest as chairman of the Criminal Justice and Acquired Brain Injury Interest Group.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, all children and young people within the secure estate are screened for brain injury through the comprehensive health assessment tool. If an adult prisoner presents with a significant brain injury, a specialist neurological referral is made. We have formed a cross-government group to develop a more strategic picture of ABI within the criminal justice system.

Lord Ramsbotham: My Lords, I thank the Minister for that somewhat disappointing reply. This is not new; indeed, I have been campaigning for assessment of head injuries for 20 years. In addition to the horrifying figures for women prisoners that the Disabilities Trust has just produced, it has proved that 40% of males and 47% of young offenders are suffering from acquired brain injury. The point about an assessment is that, if you know which part of the head has been hit or damaged, you can predict behavioural outcomes. Unfortunately, the Prime Minister dropped the prisons part of the Prisons and Courts Bill, in which we hoped to have made the assessment of head injuries compulsory. I ask the Minister whether he will make it so.

Lord Keen of Elie: My Lords, the NHS England prison healthcare national standards service specification requires providers to screen individuals where it is suspected that they may have an acquired brain injury. Clearly, we want to take this further in light of the recent report from the Disabilities Trust. We have now formed a cross-government group with the Department of Health and Social Care, NHS England and the Prison Service to develop a more strategic picture of acquired brain injury within the criminal justice system. We hope to be able to report to the group chaired by the noble Lord by the end of March.

Baroness Burt of Solihull (LD): My Lords, I am very heartened by the Minister's response. This shocking finding explains the possible source of many difficult and counterproductive behaviours one sees in the prison population, which can seriously hamper the ability of prisoners to cope inside and outside prison and of professionals to help them. The brain injury screening index provided by the trust is freely available, and its use and effectiveness among prisoners at Drake Hall is tremendously encouraging. Will the Minister agree to add his voice to the Disabilities Trust's demand that all prisons should adopt it?

Lord Keen of Elie: Clearly, we are reviewing this matter with a degree of urgency, and to that extent I add my voice. There is an issue about the extent to which we can apply particular test criteria in the context of prisoners. These cannot be over-complex because of the nature of the people we are dealing with, so this has to be a matter for further consideration. However, we are looking not just at those already in prison but those who come into contact with the criminal justice system. It is equally important that they, too, should, where possible, be assessed for the sort of vulnerabilities referred to by the noble Baroness.

Baroness Corston (Lab): My Lords, as I understand this survey, 62% of the women reported that their brain injury was sustained as a result of domestic violence, so these women are not only domestic violence survivors, they are brain-damaged and are locked up for ridiculously short periods. Does that not beg the question of whether they should be there at all?

Lord Keen of Elie: I cannot say that it begs the question of whether they should be there at all, given that the nature of their offences may vary quite widely. But clearly, the findings of the Disabilities Trust are extremely disturbing and give cause for concern. That is why we have made them the subject of a review.

Baroness Finlay of Llandaff (CB): My Lords, I declare my interest as chair of the National Mental Capacity Forum. Do the Government recognise that many people have had head injuries in their pre-offending behaviour? They are in touch with social workers, yet poor social work training does not include functional assessment of them. Ordinary assessments of capacity do not pick up the functional impairment that results in their later offending behaviour.

Lord Keen of Elie: I am not in a position to say what the scope of social work training is with regard to that point, but I quite accept the observation made by the noble Baroness. However, where it is anticipated that someone will be subject to imprisonment, or where they have come into contact with the criminal justice system, NHS England has commissioned liaison and diversion services aimed at identifying those who are vulnerable. It is anticipated that by 2020-21, that service will cover the whole of England.

Lord McColl of Dulwich (Con): Does the Minister agree that much more serious than head injuries is the high incidence in these prisons of obesity? Obesity cannot be blamed on poverty: it is due to prison authorities feeding prisoners too many calories. Will the Government look into that?

Lord Keen of Elie: I am not aware of any serious issue of obesity within our prisons, but there may be some limitations on exercise, including cross-country running.

Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018

Motion to Approve

3.07 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 28 November 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, these regulations will be made using powers in the European Union (Withdrawal) Act 2018 and will be needed if the UK leaves the European Union without a deal. This draft instrument corrects three EU regulations that provide an important consumer protection regime for passengers travelling by air. It also makes some changes to the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012, which were amended recently to implement elements of the package travel directive.

The three EU regulations are: Regulation 261/2004, which establishes the rights of passengers, including their right to compensation and assistance if they are denied boarding against their will, or if their flight is cancelled or delayed; Regulation 1107/2006, which establishes the rights of disabled passengers and those with reduced mobility to access air transport, and establishes their right to receive free-of-charge assistance; and Regulation 2027/97, which harmonises the obligations of Community air carriers regarding their liability for injury to passengers and damage to baggage, in line with provisions in the 1999 Montreal Convention.

The package travel directive provides for consumer protection in relation to package holidays and other linked travel arrangements. The directive is implemented in the UK primarily by the Package Travel and Linked Travel Arrangements Regulations 2018. Corrections to these regulations so that they continue to work after

[Baroness Sugg]
exit day have already been made through the Package Travel and Linked Travel Arrangements (Amendment) (EU Exit) Regulations 2018.

Provisions under the directive relating to insolvency protection are implemented in part through the Air Travel Organiser's Licence—ATOL—scheme. The directive provides for the mutual recognition among EEA member states of insolvency protection regimes. This instrument makes changes to the ATOL scheme to reflect that this mutual recognition will no longer apply to the UK after exit day in a no-deal scenario.

The withdrawal Act will retain the three regulations I have just listed in their entirety in UK law on exit day. The draft instrument we are considering makes corrections to these retained EU regulations as well as the 2012 ATOL regulations to ensure that the statute book continues to function correctly after exit day. This means that air passengers can continue to benefit from the rights and protections set out in EU legislation.

On Regulation 261/2004, the substantive rights of passengers to assistance, rebooking and compensation in the event that they are denied boarding or subject to long delays or cancellations remain the same. The EU regulation sets out that these rights apply to passengers travelling on a flight departing any airport in the EU, and flights departing an airport in a third country to an airport in the EU, if the carrier is an EU carrier. This instrument makes changes to the scope of the retained regulation to reflect that the UK will no longer be part of the EU after exit day. The retained regulation will apply in relation to all flights departing an airport in the UK and flights departing an airport in another country if the carrier is a UK carrier.

To ensure full continuity on the routes in relation to which passengers can benefit from the rights and protections set out in Regulation 261/2004, the retained regulation will also apply in respect of flights into the EU from countries other than the UK, if they are operated by a UK carrier. It will also apply in respect of flights from third countries to the UK if they are operated by an EU carrier. Other changes the instrument makes reflect that the UK will no longer be part of the EU, and include converting compensation amounts set out in euros in the EU regulation to pounds sterling.

Finally, the instrument ensures that the CAA is fully and effectively able to enforce the retained regulation. It sets out that provisions relating to complaints, and domestic legislation containing criminal offences for persistent breach by air carriers of provisions in the retained EU regulation, apply to the same routes—

Lord Foulkes of Cumnock (Lab Co-op): My Lords, on a previous occasion, the Minister was not able to say how many extra staff the CAA has taken on to deal with this extra responsibility. Is she now able to give us that figure? How much will it cost?

Baroness Sugg: If the noble Lord will wait, I will come on to CAA resourcing. Obviously, we work very closely with the CAA to ensure that it is sufficiently resourced.

Lord Foulkes of Cumnock: Did the Minister say she will tell us how many extra staff are required and how much this will cost at a later stage in the debate? I did not quite catch that.

Baroness Sugg: I will come on to CAA resourcing at a later stage in this speech, if the noble Lord will give me a minute.

Finally, this instrument ensures that the CAA is fully and effectively able to enforce the retained regulation. It sets out that provisions relating to complaints and domestic legislation containing criminal offences for persistent breach by air carriers of provisions in the retained EU regulation apply to the same routes and air carriers as the retained EU regulation itself.

On Regulation 1107/2006, the rights that disabled passengers and persons with reduced mobility are able to benefit from when travelling by air also remain unchanged. These include the right to assistance at airports without additional charge and the right to assistance by air carriers without additional charge. Once again, this instrument ensures full continuity for consumers by making certain that the retained regulation—Regulation 1107/2006—will apply after exit day to passengers using or intending to use commercial passenger air services on departure from, transit through or arrival at UK airports.

Certain provisions will also continue to apply in relation to flights departing from a third-country airport to the UK if the flight is operated by a UK air carrier. Like Regulation 261/2004, these provisions will also apply to flights into the EU from countries other than the UK if the flight is being operated by a UK carrier and flights from third countries to the UK if the flight is being operated by an EU carrier. These provisions set out that: air carriers and tour operators cannot refuse travel to passengers on the grounds of disability or reduced mobility; that if it is not possible for an air carrier, agent or tour operator to accommodate a passenger with a disability or with reduced mobility on the grounds of safety or the size of the aircraft or its doors, the passenger shall be reimbursed or be offered rerouting; and that air carriers are required to provide assistance without additional charge, such as allowing assistance dogs in the cabin of the aircraft and arranging seating suitable to meet the needs of the individual.

The third regulation covered by this instrument is Regulation 2027/97, which sets out provisions relating to the liability of air carriers in relation to the injury or death of passengers, as well as damage to or loss of baggage. Most of the provisions in this regulation implement elements of the 1999 Montreal Convention, and the changes that this instrument makes to the retained regulation are limited to those needed to reflect the fact that the UK will no longer be an EU member state after exit day; for example, substituting references to "Community air carrier" with references to "UK air carrier".

3.15 pm

This instrument also makes a small number of consequential changes to existing domestic legislation to reflect these changes. Further elements of the 1999 Montreal Convention in relation to insurance

were implemented by EU Regulation 785/2004, and the SIs making the necessary corrections to those regulations have already been debated and approved by the House.

Finally, this instrument makes changes to the 2012 ATOL regulations because, in a no-deal scenario, the mutual recognition of insolvency protection regimes under the package travel directive will no longer apply to the UK after exit day. One of these changes is to require businesses established in the EU or EEA, and their agents who wish to sell in the UK, to hold an Air Travel Organiser's Licence. This ensures that consumers who have purchased a package including an element of air travel continue to be protected if mutual recognition of insolvency protection regimes between the UK and EU or EEA member states ceases in the event of a no-deal exit.

The instrument also removes the requirement for UK companies to hold an ATOL in respect of sales in EU or EEA member states. This reflects that without mutual recognition, these companies would already be required to comply with the insolvency protection regime of the member states they are selling in, and would otherwise be required to hold duplicate protection.

Lord Adonis (Lab): My Lords, the Minister is talking about EEA-registered operators that operate in the UK. An issue was raised in the House of Commons about whether there would be full ATOL protection in respect of people purchasing packages in the UK under those EEA-registered operators. The Minister there was not able to give an answer but said that he would write to MPs. I have not seen a copy of that letter—could the Minister tell us the answer to that specific point, which of course will be quite significant if there is no deal?

Baroness Sugg: I hope I can answer the noble Lord's question. Those EU and EEA companies which sell package holidays in the UK will need to be covered by the ATOL scheme. They will need to apply for an ATOL from the CAA. We believe that there are only about 13 such companies.

Lord Adonis: Is the Minister saying that that will be a requirement under these regulations? Is she saying that there will be full ATOL protection for all passengers and purchasers of package holidays in that eventuality?

Baroness Sugg: Yes, that is what I am saying. As I said, at the moment there are only 13 EEA-established businesses currently selling to the UK that would be affected by the requirement, and the CAA is used to processing around 1,000 cases a year. Therefore, in answer to the question put by the noble Lord, Lord Foulkes, the CAA is confident that it is fully resourced to achieve this.

Lord Foulkes of Cumnock: My question is not whether the CAA is fully resourced. My question—which I asked in Grand Committee a number of weeks ago, so the Minister has had plenty of notice of it—is how many extra staff is the CAA taking on, and how much extra is it going to cost? She said she was going to answer it later in her speech. Could she please answer it now?

Baroness Sugg: I am afraid I will have to come back to the noble Lord on the exact number of staff who have been taken on. As he will understand, this is a moving feast, and the CAA is taking on extra people to deliver all the requirements that will be placed on it in the event of a no-deal Brexit. But I will endeavour to come back to the noble Lord later in the debate with a specific answer on the latest figure for the number of new staff at the CAA.

Lord Deben (Con): I want to explain to my noble friend why this question is important. Every time we discuss one of these statutory instruments, we do not have the figures for the cost. My concern is that in each individual case it is said, "Well, it is not all that much and somebody is doing some arrangement", and all the rest of it. But if you start to add them up, you possibly have a very significant cost. That is why it is important that we understand precisely what the figures are.

Baroness Sugg: I entirely understand my noble friend's point of view. Of course it is important that we understand the full costs of this. The CAA is taking on a number of new responsibilities and functions after EU exit. As I said, we have confidence in its preparations. Regarding ATOL—I mentioned the figures before—we think the current level of staff will be able to provide this service, so we do not expect to see a significant increase in workload from this SI. The latest figure for the number of new staff is around 59, most of whom will carry out safety functions. The House will debate another SI on safety, which will have cost implications. I will ensure that I am able to provide actual cost implications for future aviation SIs. In this case, there are none, as we are expecting only a small number.

The best outcome for the UK is to leave the EU with a deal, and delivering a deal negotiated with the EU remains the Government's top priority. However, as a responsible Government, we must make all reasonable plans to prepare for a no-deal scenario. This instrument ensures that, in the event of a no-deal exit from the EU, passengers travelling by air can continue to benefit from the same rights as they currently do, and that the aviation industry and consumers have clarity about the regulatory framework which would be in place in a no-deal scenario. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I have two brief questions on this statutory instrument. My noble friend the Minister has stated that compensation will be paid in pounds, converted from euros. What if the pound to euro ratio changes substantially over, say, the next two years? Is this something that her department and the Government are likely to keep under review?

I tried to follow the Minister's explanation as closely as I could. If I have understood correctly, there is one category of flight that UK passengers will no longer be compensated for. I dealt with this myself when I was an MEP and, at one stage, rapporteur on civil aviation in the European Union. I would just like her confirmation that this category of flight is covered. These are flights where passengers start with a UK carrier out of London Heathrow, Gatwick or Stansted,

[Baroness McIntosh of Pickering]
but change at an airport within the EU, such as Amsterdam, to a connecting international flight operated by, for example, Singapore Airlines or Delta Airlines—both of which my husband worked for at separate times—to a destination such as New York or Singapore. Is my noble friend saying that, under these regulations, or in the event of no deal, a UK passenger who is denied boarding that flight in a third-country airport such as Amsterdam will no longer be compensated?

Lord Berkeley (Lab): My Lords, I share the concerns of the noble Lord, Lord Deben, and my noble friend Lord Foulkes about the costs associated with Brexit. I recall the debate in this House yesterday about Seaborne Freight. The Minister said, and I am sure she is right, that,

"no taxpayer money has been transferred to the company".—[*Official Report*, 11/2/19; col. 1704.]

However, the cost of dredging is probably several million pounds. Apparently it was being done by the Ramsgate harbour authority. I do not know where it will suddenly get the money from; I am sure it was not budgeted for. It was mentioned in another place yesterday that Slaughter and May had been paid £600,000 to advise the Government on how to write these contracts, which turned out to be non-existent. The Minister should commit to giving the House the total cost, rather than hiding behind, "We are not paying it directly because the dredging is being done by somebody else", or something like that.

I should like to follow up on some of the questions the noble Baroness, Lady McIntosh, just asked because this SI is very confusing. The first question is: who is a UK carrier? Where will companies such as easyJet and British Airways be registered, and does that matter when defining what is a UK carrier—something that comes into quite a lot of these regulations? Could the Minister tell us not just what is happening today but also how the Government will tell members of the public who is a UK carrier—assuming that it matters? It seems to me that it matters.

On these regulations, there seem to be three different parties: the location of the airport, which may be in this country, the European Union, or a third country—maybe it does not matter; the air service or airline, and whether it is registered in the UK, the EU or a third country, as the noble Baroness mentioned; and who the passenger is. Are they a UK resident, an EU resident, or a third-country resident? There then seem to be different rules for whether you are going out, coming in or getting a return ticket. I do not know whether I am making myself clear—it is probably as unclear as the regulations. The Minister will have to tell us how all these different parts of the regulations I have discussed apply to all those different groups and combinations of groups.

What attracted me to this worry was the phrase,

"if the carrier is a UK carrier",

in paragraph 7.3 of the Explanatory Memorandum and, in reference to paragraph 7.5, the question of who enforces these regulations. The CAA cannot enforce regulations on airlines from third countries that do not fly into this country at all, but if the CAA does not do it, who will? All these things should affect every traveller who will move by air after 29 March, and I can see some of them getting into real trouble and worrying about this unless there is some clarification. I look forward to hearing the Minister's response.

Lord Deben: My Lords, I am sorry to continue this but various people have an interest in this SI. First, there are customers, who I doubt will read this—if they did, I doubt they would get very far with it for the reasons the noble Lord has just adumbrated. Secondly, there are the airlines, and I am very concerned about what our definition will be—not only here but elsewhere—of, for example, a UK-based airline.

I understand that there are airlines such as British Airways which have a direct association—it owns Iberia. British Airways has said that it may well transfer its base of ownership to Spain. I will not make a statement about Brexit—it manifestly gets stupider and stupider as we move on to discuss the matter—but the truth is that this is a real issue. If British Airways decides that that is the decision it has to make because we have been so damaging to our future that that is the best place for it to be, is it any longer a UK-based carrier? We then have a situation in which we are passing an SI that does not actually apply to the largest airline with a single, dedicated terminal at our largest airport. This is a serious issue. I am sure there is a very easy answer to the question, but it is not one that lies to hand in the SI. What happens when or if it changes, and how do we deal with those changes? That also seems important to me.

3.30 pm

Then I come to the question that the noble Lord just asked, which is about how things are enforced and interpreted. Is it the CAA that decides whether such an airline is a British-based airline, or somebody else? Who is that someone else and how do they apply the information to the CAA? Does the CAA have to accept what that someone else tells it, or can the CAA say, "We do not agree. Yes, it should be accepted as a nationally based airline", or, "No, it shouldn't"? I want to understand what, at the very heart, affects this. If I say I am a nationally based airline, even if most of my shareholders are elsewhere, am I? Or do I have to prove myself in some way? To turn it round the other way, do the Government have to prove that I come under that category or not? I know that these sound rather surprising questions but we have to ask them, because I do not believe that this information is readily available. Without it, I do not see how we can sensibly approve these regulations. We do not really understand who we are talking about, how they get to where they are and what happens if they cease to be where they are and become something else.

The last point I want to make to the Minister concerns the fact that national policies about airlines are, by their very nature, pretty barmy. The whole point about airlines, with very few exceptions, is that they are international; they go from one place to another. So while the document suggests that all this does is to move this into national law, as if that is not very important, it is of course very important, because we are pretending that it is all the same—that if you are not part of the European Union, all you have to do

is pretend to be part of the European Union and take these regulations into your own law. That is not what happens. You take the regulations into your law, but nobody else takes them into their law and you have no possible view of whether your regulations will be recognised by anyone else.

Once again, we come back to the fundamental problem. I am very sorry that my noble friend has to argue these cases; it is very unfair to put her in this position, but we have to do it because she is here, putting this forward. Once again, we come to exactly the same issue: this is a pretence. It is to suggest that, if we were to leave the European Union without any agreement, we can simply slip off one pair of shoes and put on another that will be as comfortable and as serviceable as the ones out of which we have slipped. The truth is that they will pinch us at every single point. We will find it extremely difficult to walk and there will be no relief from this. So I say to my noble friend, even if we pass these regulations, I hope we will do so in the very deep understanding that they are hugely damaging to every air passenger, to every company running an airline and to this, the country we all love.

Lord Foulkes of Cumnock: I do not want to follow the noble Lord, Lord Deben, and his pedestrian metaphor dealing with an aviation statutory instrument, although it was very good. I share his sympathy with the Minister, who has to deal with it, although he might agree with me that she will deal with it far more competently than the current Secretary of State would be able to. I hope she will take that as a compliment.

In the last debate on this issue, the noble Lord, Lord Strathclyde—probably the most loyal of loyalists on the other side—castigated me, my noble friend Lord Adonis and others for taking up too much time with scrutiny. I challenged him on why no Conservatives are asking questions on any of these statutory instruments—with the one exception of the noble Lord, Lord Deben.

A noble Lord: What about the noble Baroness, Lady McIntosh?

Lord Foulkes of Cumnock: I apologise. The noble Baroness, Lady McIntosh, is also doing so. My argument is falling apart here.

I asked why the noble Lord, Lord Strathclyde, and others were not doing it. He said, "Because we accept without question what the Government are putting forward". To do so under normal legislative circumstances would be bad enough, but when they are rushing through statutory instruments by the hundreds, it is even worse. As I said then, what else are we here for? What is the purpose of the House of Lords? Our only substantive purpose is to scrutinise primary and secondary legislation. If we do not do that, then we all might as well stay at home. I am sure that Mrs May, Mrs Leadsom and others would love that.

The noble Lord, Lord Deben, spoke about the customers. Any customer or passenger listening as carefully to the Minister's introduction as I did—this is the second or third time I have heard this explanation—may be as baffled as I am. There are still questions; my noble friend Lord Berkeley has asked some of them, and my noble friend Lord Adonis intervened with some about a whole range of things concerning UK carriers. They arise in particular with British Airways and Iberia. As I understand it, the headquarters of the latter are already in Madrid. I do not know whether they count. My noble friend Lord Whitty, who is an expert on aviation and vice-president of BALPA, is nodding. Iberia is a Spanish company, not a British company. Any passenger listening to the Minister will find it very difficult to know exactly what their rights are and how they will manage to get flights in the event of no deal. It will be chaotic, there is no doubt about that. We saw in the debate about which I have spoken how there will be chaos in healthcare if we leave with no deal. Our 27 million EHIC cards will no longer be valid throughout the European Union. We could go through area after area of problems.

We are going through all these SIs and Bills. I heard Andrea Leadsom, Leader of the House of Commons, say on Radio 4 this morning that, "There will be no problem getting all the legislation through by the end of March". She was accused in the other place of lying, and the leader of the SNP had to withdraw. But he was absolutely right.

Lord Adonis: If my noble friend will forgive me, is he aware that the Prime Minister said two hours ago in the House of Commons that the Government would enact all the consequential legislation on a deal—if a deal is agreed—by means of emergency legislation? Whatever period of time is left at the end of March, which could be as little as two or three days, it will all be rammed through. Does he share my acute concern at the idea that this House might be faced with emergency legislation procedures to carry through some of the most significant legislation in the history of Parliament? Does he agree that some of us might think this unsatisfactory, and will certainly not be party to such an abuse of the constitution?

Lord Foulkes of Cumnock: My noble friend has stolen my peroration. He is absolutely right and said it much better than me. It is a frightening prospect that if nothing is agreed, nothing is approved, by the end of March we will face emergency legislation.

Lord Deben: I just wanted to give the noble Lord a chance to rewrite his peroration. Can I ask him very simply, is this what he would define as taking back control?

Lord Foulkes of Cumnock: That is an even better peroration. The whole campaign of the leavers was to take back control—if I remember—to the British Parliament, not the British Government. It is not the Government or even the Cabinet, but one person who seems to be ramming it through with some kind of stubbornness and determination. That was not what it was supposed to be about. It was supposed to bring the power back to this Parliament.

I say to my noble friend Lord Adonis, if they try to push it through by emergency legislation that will be a real test of the mettle of every Member of this House, particularly the Cross-Benchers. Are they going to stand up for Parliament, or be subservient to our autocratic Government? That will be the test.

[Lord Foulkes of Cumnock]

I think I have gone a little bit wider than the statutory instrument and I am grateful for the fact that the Lord Speaker does not have the same powers as the Speaker in another place; otherwise, I might have been ruled out of order by now. I am sorry to be slightly flippant; it is a very serious matter. Coming back to relevance, this one statutory instrument is illustrative of the kind of thing we face in this Parliament at the moment, and it is quite frightening.

Lord Balfe (Con): My Lords, I am sorry that I am going to destroy even more the statement from the noble Lord, Lord Foulkes, by being the third speaker from this side of the House to raise questions. I saw in the paper this morning that apparently, on 1 September 1939, between 6 pm and midnight Parliament passed six pieces of emergency legislation—all three Readings—and rose before midnight, so it is possible to put through emergency legislation. But I wonder whether this is the sort of parallel we would like to draw.

I have heard many justifications for leaving the EU but I have never yet heard job creation as being one of them. However, it seems that virtually every time we come here we are creating more jobs—59 extra jobs, I am told. That must be at least a couple of million pounds on public expenditure. How much of the vast amount of money we were going to save is going to be spent? I suppose that since the Government's priority is to create jobs, this is a partly a way of doing that.

Lord Adonis: The Minister talked about 59 jobs in the CAA, but about a third of the staff of the Department for Transport are currently working on Brexit-related issues and about a third are clearing up successive messes of the Secretary of State. That leaves very few members of staff actually doing the job of the Department for Transport at the moment.

Lord Balfe: The noble Lord makes a true point. One of the things that I find very unsatisfactory at the moment is the huge amount of public service energy going into this. Indeed, we are told that this SI will be unnecessary if there is no deal. We are told by the Government that they want a deal. I feel very sorry for the civil servants spending all their lives working on something that the Government do not want to happen. That is not a very good way of boosting morale.

What happens when the EU updates the regulations? We seem to think that we are looking at a picture that is static for all time. But anyone who knows how the European Commission and Parliament work will know that there is a constant process of review of legislation. Even if this SI is unnecessary, there will come a point, if we leave, where we will have to take over the legislation.

3.45 pm

The crucial thing is, what will happen when the legislation diverges from what is in our statutory instrument—when, for instance, the European Union decides to update the compensation arrangements, which it might do just in line with inflation? It might say, "Inflation has been 10% in the three years since this regulation was brought in—we're going to update it". This will pose a real question to government: how much power will we have taken back if we say that we will mirror the legislation, and how much will we disadvantage British consumers if we say we will not—in other words, that we will drift apart? This SI is of value only on day one. It will then start to diverge, which will be a major problem. Can the Minister say whether consideration has been given to what will happen as regulations which we have taken into our law are then updated in Community law? That is quite a serious point.

Baroness Randerson (LD): I am sure the noble Lord has noted that the Government have conveniently—from their perspective—translated the euro rate of compensation into pounds using the current exchange rate. The noble Lord makes the good point that that could become distorted if, for example, we have the kind of significant change in exchange rates that the MP David Davies, for example, referred to last week.

Lord Balfe: I did not raise that point about the translation, but purely because my noble friend Lady McIntosh had already raised it. I was making the point about the change in regulation, which I am concerned about, not the change in internal things within it.

My second point is on the interpretation of regulation. When the European Court of Justice interprets a regulation, if we are following and providing the same rights, and the CJEU makes a judgment which interprets the regulation so that it is no longer in line, to what extent will we accept the judgment of the court? In other words, how real is this alignment when, not on day one but on, say, week six or month six down the line, things have started to diverge? Presumably we will not have an SI every week; what mechanism do the Government see being used to maintain the alignment between our regulation, which they say will follow the EU statute book—that is fine—and changes in the EU statute book? This question will come up, whether it is on this regulation, if we do not leave, but it will also come up if we leave. How dynamism plays its way through the legislative process will be quite a fundamental point for consumer rights, as it will be for trade union rights, which we will come on to in another debate.

Lord McNally (LD): My Lords, as this debate has unfolded I have watched the noble and learned Lord, Lord Keen, looking pensive. I suspect he has probably been thinking, "When I finish this job, I might go into travel consumer law". When the Minister comes to read *Hansard* tomorrow, she will probably find that she can check off almost every known troublemaker in this House as having intervened. However, that is what this House is here to do: to make trouble when Ministers bring forward flawed or defective legislation.

Listening to the various queries and questions makes one think very hard about the process that we are going through. The Minister had a baptism of fire over drones a few weeks ago, but that will be as nothing compared to a situation in which this legislation proves defective when it comes to the test and we find that all the sweet and honeyed words about the smoothness of the transfer from EU to domestic legislation throw up faults and weaknesses. There is nothing that makes

the British public angrier than being interrupted on their holidays. Woe betide the Minister who is left holding that particular baby if that comes to pass. Of course, the noble Lord, Lord Deben, is right: we are stronger within the EU, and the protection given to consumers is far stronger when we work and speak from within the EU rather than when the CAA is acting alone.

Has any impact assessment been made on the effect of Brexit on Heathrow as an international hub? We have already heard of the possible British Airways transfer to Spain, but Heathrow is one of our vital assets as a major hub airport of the world. If leaving the EU and operating under CAA rules leaves us open to competition from Schiphol or Paris or others that can give flight operators greater assurances, that is a real downside of what we are doing. The noble Lord, Lord Balfe, made the valid point that EU law is not static, but is developing. We must face the fact that in this case, as in so many others, we will not be at the table to speak up for British interests and consumers when that development takes place—so much for sovereignty.

Given the complexities that have been revealed by this, is there any plan for a public information campaign to explain to the public what has happened? They need to be informed about their guarantees and where there are dangers because—make no mistake—good as our travel industry is, we will find scams, additional charges, problems with transfers from the EU, tax put on holiday costs and so on. There will be a need for some concerted consumer protection during this process. I look forward to the Minister's reply.

Lord Warner (CB): My Lords, I had not intended to speak in this debate, and I do not really wish to be added to the Minister's list of troublemakers. However, I want to emphasise the point made by the noble Lord, Lord McNally, at the end of his speech. I do this as someone who always tries to cheer up his Februaries by reading the travel supplements in the Sunday newspapers. This Sunday's newspapers were glowing about places where, if I hurried, I could actually book the hotel, the flight or even the two flights that I might need to get to the place. These changes might be in separate countries. I scanned through the travel supplements of both the *Sunday Times* and the *Times* on Saturday and could see nothing about whether people's summers might be disrupted in any way whatever.

Lord Adonis: I am very grateful to the noble Lord for giving way. He probably is not—but he may correct me—a regular listener to Spotify. If he were, he would know that Spotify is now running ads advising people to take precautions in the event of a no-deal Brexit. The precaution that they should take is to log on to the GOV.UK website, where information is available on what arrangements will be made in the event of no deal. In respect of travel, which we are discussing this afternoon, it says that you should check with your carrier. So having gone through the GOV.UK website, you are then expected to go to your carrier. When I logged on to the British Airways website to find out what passengers should do in respect of no deal, it said that you should refer to GOV.UK, on the grounds that the Government are setting up what should happen. I say in response to what the noble Lord, Lord McNally, said about a public information campaign that millions are being spent on a public information campaign which tells the public precisely nothing except to be very, very concerned.

Lord Warner: My Lords, I am an old-fashioned ex-Minister who usually used the media to project messages if I wanted the public to read them. We might do something in a newspaper or we might do something on a broadcaster. The only streaming I am aware of is from my nose, sometimes, during the winter, so I am not a great Spotify fan. I was trying to make the point that any member of the public who had read the Sunday supplements and was thinking about booking a holiday and had then turned on the parliamentary channel and listened to this debate might have second thoughts about doing so. The Government do not seem to have done anything to give the public any serious pause for thought before they took out their chequebook or electronically transferred their money to reserve their holiday for this year.

Will the few members of the Minister's department who are left after dealing with the problems that the noble Lord, Lord Adonis, spelled out earlier engage in a proper public information campaign using more of the traditional channels, to tell the people who are booking these holidays—who, in many cases, tend to be from the upper age groups with high disposable income—what dangers they may face in the coming months of 2019 if they peak too early in their summer bookings?

Lord Adonis: My Lords, I think it was Seneca who said that anger is a form of temporary madness, which is an injunction that I usually observe, but it is very difficult when wading through these no-deal regulations not to be genuinely angry at what the British state is about to inflict on the British public if this comes to pass. It is not just the known facts about a no-deal Brexit, which are bad enough; it is, as has come through this debate, all of what Donald Rumsfeld called the known unknowns. We do not know the precise litany of catastrophes and problems that there will be down the line, but we know that they will be there. We know that there will be problems with the exchange rate; there will be problems with dodgy carriers which seek to game the system; there will be problems, as the noble Lord, Lord Balfe, said, with changes in regulations over time. It will be no surprise when all this happens; this is what should be expected in the evolution of legislation and behaviour of private and public sector organisations.

We also know, taking the point made by the noble Lord, Lord Balfe, and my noble friend Lord Foulkes, that the state machine, even before no deal has happened, is overwhelmed by preparations for Brexit. I can tell the House as a former Minister in the best department of state, the Department for Transport—I know this because people tell me—that most of the staff at the Department for Transport are being allocated to special contingency duties and units in the case of no deal. They are the units that will be needed to keep the ports operating and to deal with the fact that the M20 will become the largest car park in Europe. Can noble

[Lord Adonis]

Lords imagine what the switchboard of the CAA will be like once any of these contingencies comes to pass?

That point is important for these debates because from what the Prime Minister said this afternoon, it is clear that she will take this down to the wire. Her strategy is clear: she will present the next version of her deal, with some tweaks to the Irish backstop, to Parliament after the European Council on 21 March, offering a "take it or leave it" vote on her deal or no deal. I hope that Parliament will be strong-minded and realise that there is a third option: seeking an extension to Article 50 without adopting her deal. That is the situation we will face.

4 pm

A few weeks ago, with nods and winks from the Government Front Bench, we thought that we would not need to worry about scrutinising all these regulations too much because no deal could not happen. Indeed, I notice that the ministerial script has changed subtly. It used to say "in the unlikely event", "in the extremely unlikely event" or "the extremely remote prospect". We no longer hear the same thing. I look forward to hearing what the Minister has to say—perhaps we will hear the same routine—but the truth of the matter is that no deal is becoming increasingly possible. We have only six weeks—45 days—until all these regulations come to pass.

My criticism is that Parliament has paid not too much but far too little attention in debating these matters. Indeed, I reproach myself for being not nearly diligent enough in my duty to scrutinise these regulations, because their impact on the public, who we are here to protect, is so far-reaching should any of this happen that we will be held deeply culpable for the ensuing catastrophe. In the inevitable public inquiry, which will embrace the Civil Service and Ministers in a significant way, I fear that Parliament's role will be held to account too.

These issues are very serious; indeed, a lot of them are still largely unresolved. Every day, a new one becomes apparent; for example, what will happen to international driving licences and the right to drive on the continent from 29 March? How will this be handled in the medium term, even with immediate reciprocal rights? The international travel industry is deeply worried about insurance, where many issues remain unresolved. Handling those matters will be extremely difficult. My noble friend Lord Foulkes mentioned the EHIC—a huge issue for British travellers abroad because it deals with a large part of their insurance requirements. Nobody is sure what the arrangements will be in the case of no deal; even if the rollover provisions are immediate, what will happen when they end?

Transport is, by its very nature, international. As a former Secretary of State for Transport, I am highly conscious of the constant crises and difficulties in this area. As many of your Lordships will remember, when I was Secretary of State, I had to deal with the Icelandic volcano with an unpronounceable name that inconveniently chose to go off three weeks before the 2010 general election and left a quarter of a million British travellers stranded abroad. There were no European regulations on acceptable levels of ash in jet engines. We had to make them all up in 10 days through ceaseless meetings—I practically took up residence in Brussels at the time—in the margins of European Council meetings. With all due respect to the noble Baroness, who is an excellent Minister, she will not be present at such meetings so we will not have this forum for seeking to resolve these issues. I can say with near-certainty that if we had not been present at those meetings in 2010, it would have been much harder to resolve the crisis and British passengers would have been inconvenienced even more significantly.

Obviously, we will approve the regulations. We have a duty to see that provisions are in place in case of no deal. A lot of issues have been raised but it is still unclear to me, from what the Minister said, exactly how robust the reciprocal protections for UK and EU operators will be. A lot depends on what the EU and the EEA choose to do, which we cannot control. The point of no deal is that there will be no deal. The arrangements that EEA and EU operators and travel companies choose to put in place are beyond our control. A lot of issues are essentially unresolved in these regulations. All we can do is put protections and continuity arrangements in place for UK companies and EU and EEA companies registered here.

I am reassured by the point the Minister made that EEA businesses registered and operating in the UK will be required to offer full ATOL protection. The question is: what happens to those that are not which British consumers choose to access more widely in Europe? That is going to be an unresolved issue.

Lord Berkeley: I am grateful to my noble friend. Does he agree that the prudent thing for the Government to do would be to advise people to think very carefully before booking any flight that leaves after 29 March?

Lord Adonis: On the government website, GOV.UK, it does say that. What a message for the state to send out to the people of this country. What advice is that? Does it mean that you should think very carefully and go about your normal business, or think very carefully and not go about it? This is so unacceptable a way for Her Majesty's Government to proceed that it beggars belief that we could even be having these debates and conversations.

I make no apology for this, because it is a crucial matter. I want to say a few words about consultation. These are huge issues—just those we have been debating in the past 58 minutes, and there are many others—so it is reasonable to expect that the Government would properly consult the companies, the wider industry and the consumer and passenger groups affected. Yet, again, no such consultation has taken place. Indeed, I have noticed—because I am now a connoisseur of the consultation processes that have been gone through on these statutory instruments—that, whereas most of the early statutory instruments had a heading that said, "Consultation" and then usually said something like, "No formal consultations have been undertaken", that heading has mysteriously been omitted from more recent statutory instruments, I think for the reason that it is somewhat embarrassing for the Government to publish the fact that no formal consultations have taken place. If he is looking for new plotlines, the

noble Lord, Lord Dobbs, would keep his readers entertained for years on end with the plots and stories that one could write about no deal.

What is happening on consultation is that the Government are now simply omitting to describe the consultation. What we get instead—we have it on this statutory instrument—is simply a heading saying, "Consultation outcome", which is intended to elide the lack of consultation with the outcome of a lack of consultation. Of course, your Lordships are not fooled by such elision. What is entered under the heading "Consultation outcome" exhibits the fact that there has been no consultation. Paragraph 10.1 of the Explanatory Memorandum to this statutory instrument, "Consultation outcome", says:

"Department for Transport Ministers and officials have regular engagement with the aviation industry, travel industry and consumer representatives".

It would be pretty astonishing if that were not the case, though with the current Secretary of State perhaps it does need to be explained that he has some engagement with members of the human race. It goes on:

"Through specific meetings and workshops on EU Exit, and at long-established stakeholder forums, a number of issues related to the UK's withdrawal from the EU have been addressed".

Well, what are the meetings, who are the people who have been at these long-established stakeholder forums, and what are the issues relating to the UK's withdrawal from the EU that have been addressed? What did the stakeholders say and what is the Government's response? These are all basic questions about public consultation in the Cabinet Office rules on conducting public consultation.

As I look around the House, about a quarter of us have been Ministers of one kind or another and have gone through these as a matter of form. As a Minister, I was once reprimanded by the Cabinet Office for allowing only a 10-week rather than a 12-week consultation. In the case of all these regulations, there has been no consultation whatever. We are expected to legislate for extreme situations, and to understand the impact on the industries concerned and on consumer groups, on the basis that no public consultation has taken place, with no description of the private consultation that has taken place and with no response from the Government to the points raised in that private consultation.

Lord Berkeley: Is my noble friend aware that the next SI we are due to discuss has word for word the same text on consultation as that which he has outlined?

Lord Adonis: It is clearly a cut-and-paste exercise—that is what is going on with most of these regulations. I hope that the statutory instrument committees are drawing attention to this. To be frank, in my view this alone is a reason for your Lordships declining to agree the regulations.

Lord Deben: The noble Lord has not pointed out that, in this particular SI, there is no discussion as to whether the people consulted were "selected" or "trusted". In previous SIs, some of them were "trusted" and some of them "selected", but none appears to be both "trusted" and "selected".

Lord Adonis: As the noble Lord is aware, because we debated it at some length in Grand Committee, in one SI the consultees were "selected" and "trusted", but that has not appeared in others. It is not clear in this case who did the selection and whether they were trusted—perhaps the Minister can tell us.

I want to pose to the Minister the obvious questions. Who has been consulted on these regulations? What were the "long-established stakeholder forums" which were consulted? What issues relating to the UK's withdrawal from the EU were raised by the consultees? What was the Government's response to each of those concerns?

I do not serve on the statutory instrument committees but, when I meet noble Lords leaving those meetings with a haggard expression, they tell me there are hundreds more SIs to come and that apparently they are getting longer—some of them are hundreds of pages. I hope that, in these committees, noble Lords are asking questions of the Government as to what these processes are. It would be very helpful to us if these statutory instruments came to the House with a description of which "trusted" and "selected" groups were privy to the Government's consultations.

Baroness Randerson: Is the noble Lord aware that, in some of the forums that the Department for Transport brought together to discuss EU and Brexit issues, those who took part were required to sign non-disclosure agreements?

Lord Adonis: So it is not just Seaborne Freight that had to sign a non-disclosure agreement; it turns out that people who turned up to meetings in the department also had to. Perhaps the Minister would like to clarify whether non-disclosure agreements were involved. Indeed, I am told there was an attempt to try to get your Lordships to sign non-disclosure agreements on the ground that, if we debate these issues openly and start expressing our concerns, people might become alarmed—as the noble Lord, Lord Warner, said, there are some members of the public who observe our proceedings.

This is worse than deeply unsatisfactory and is no way to make legislation. It is totally unacceptable and should not be happening. There is nothing the noble Baroness can say that will meet the substantial points, but perhaps she can at least give us some basic information on how consultation has been conducted and what the results were.

Baroness Altmann (Con): My Lords, I have a quick question for my noble friend. I echo the remarks of condolence that she is in this position—I am sure she does not wish to be. Can she clarify how these regulations might relate to passengers on flights that have a code share? Many transatlantic and international flights are code shares. Which of the airlines that are part of that codeshare would be considered the principal airline for the purposes of these regulations?

4.15 pm

Lord Tunnicliffe (Lab): My Lords, I rise wearily to my feet. The first thing I would like to register is my objection to being here. Once again, we are here to discuss a statutory instrument which addresses the issue

[Lord Tunnicliffe]
of what we do if we leave without a deal. It is a deeply depressing pastime, discussing statutory instruments to lead this country into a catastrophic situation.

It is also depressing that the Government, if they wanted to hang on to what might be an intellectually narrow point, that any responsible Government should prepare for the worst scenario, if they had truly believed that, then surely they would have started the process much earlier so that we are not shovelling SIs through this Chamber by the shovelful, for want of a better way of doing it.

One of the problems of the sheer volume is that I certainly am not having enough time to give the level of scrutiny that I think is appropriate. Therefore, one tends to have to use short methods. The first that one is left to have to use is looking at the regulation itself, which is usually impossible. You need a very expensive lawyer to go through the regulations, see what they amend and what the effects are. The only thing a reasonable amateur such as myself can do is to go to the Explanatory Memorandum and see if it makes sense. If one does that, one comes to paragraph 2.3, which is "Why is it being changed?" I will read it because it is so reassuring:

"This instrument makes the changes needed to retained EU legislation on air passenger rights and domestic legislation made to implement the UK's obligations under the Package Travel Directive. These changes ensure that the legislation continues to function correctly after the UK has left the EU. They also ensure that there is continuity in terms of the passenger rights that apply to air travel and that consumers will continue to be protected if there is no mutual recognition of insolvency protection regimes after exit day".

Now, I think that says it is going to be all right, but I am required to scrutinise, so I did my best, and I have worked my way through the document. I confess I did not pick up the ownership point, and I look forward to the Minister's response on that. If that statement is right, one works through the Explanatory Memorandum, and it puts in changes and does things to make that right. If it is right, can the Minister answer this question: in the event of a no-deal situation and this SI then becomes operative, is there any group of passengers or consumers whose rights and protections are diminished or lost after exit day?

The second question I have relates to the optimistic scenario, where there is a deal and this SI will not be required. One constantly looks for a sunset clause in these SIs which would allow that to operate. Could the Minister explain how we will handle this SI and the others that we are going to face today if there is a deal? Experience has taught me that one of the few things you have to go to in these SIs is the commencement provision. That says that Regulations 5(1) and 5(2) will be commenced 22 days after the regulations are made. That, I assume, will be somewhat before exit day. At present, it seems that the decision on whether we have a deal will be very close to exit day, so, if there is a deal, how is this SI going to be stopped from being enacted without a mechanism within it?

Baroness Sugg: My Lords, I thank all noble Lords for their consideration of these draft regulations. I am grateful for the scrutiny provided by noble Lords. These are important pieces of legislation, and it is right that they are properly scrutinised. I would not class the noble Lord, Lord Warner, or indeed any other noble Lord as a trouble-maker. I will attempt to get to all the questions, but if I do not manage to cover them, I will respond in writing.

On the point made by my noble friend Lady McIntosh, the Explanatory Memorandum sets out the exchange rate used to calculate the amounts. It is the average for the year to 31 December 2017, which has been used across the statutory instruments. There are currently no plans to change that.

In response to the noble Lord, Lord Berkeley, let me say that this regulation will cover all carriers with a UK operating licence. That is issued by the CAA, so that is how we define who will be covered by these regulations in the event of a no-deal exit. The requirements of the operator's licence are set out in the operation of air services regulations, which we debated last year.

On enforcement, if it is a UK carrier—that is, one with a UK operating licence—the CAA will enforce it. If it is departing from an EU member state, that member state will enforce it, and if it is a UK carrier departing from a third country, the CAA will again enforce it. So the example that my noble friend Lady McIntosh used of a flight departing from the UK will be enforced by the CAA, and the flight which then departs from the EU will be enforced by that relevant member state—I cannot remember which member state she referred to.

Baroness McIntosh of Pickering: My question was about those UK passengers who board the next leg of the flight in Amsterdam or what would be a third country with an international carrier. Does the regulation now exclude them from denied boarding rights and other privileges that they would otherwise be entitled to?

Baroness Sugg: I should first point out that these regulations apply to everyone who travels on a plane regardless of nationality, so actually the nationality is not important. The important part is the carrier that operates the flight. In that example, as I said, the flight leaving the UK would be covered by the CAA and the flight leaving Amsterdam, regardless of the nationality of the passenger, would be covered by the existing EU regulations, so that would not change.

Lord Berkeley: Will the Minister explain what would happen in the reverse direction? Say you are flying Nigerian Airways from Lagos to Amsterdam with a through ticket to London with another carrier. What is the enforcement on the compensation rules there?

Baroness Sugg: They will remain the same. The flight operating into the UK from a third country will be enforced by the CAA, and a flight operating into the EU would be covered by that EU member state. I understand that this is a little complex, so I will list exactly what will be covered.

But before doing that, on code sharing, asked by my noble friend Lady Altmann, the carrier operating the flight will be liable under the regulation, irrespective of who sold the ticket.

I will attempt to be a little clearer than I was in my opening speech. This regulation will apply to: all flights departing a UK airport; flights to the UK from a

country other than the UK if on a UK air carrier; flights to EU airports from a country other than the UK if on a UK air carrier; and flights to UK airports from a country other than the UK if on an EU air carrier. That applies to passengers of any nationality.

So in answer to the question asked by the noble Lord, Lord Tunnicliffe, about who will be disadvantaged by this, in short no one will be adversely affected. The aim of this SI is absolutely to maintain continuity after exit day. In the event of no deal, passengers will retain the same rights as they have today. In the event of a deal, which will obviously get us to an implementation period, this SI along with many others will be amended or revoked.

I take the point made by my noble friend Lord Deben that all things aviation will not stay the same in the event of no deal. That is why we are trying to avoid that. But in the case of this SI, the rights will stay the same—

Lord Adonis: The Minister says that no one will be adversely affected. I accept that in response to all carriers or travel businesses that are registered in the United Kingdom, but if a UK resident buys a ticket or a package from a company or carrier that is registered only in the EU or EEA, they may well suffer diminution of their rights. Is that correct?

Baroness Sugg: All EEA and EU companies which sell in the UK will be required to have an ATOL scheme licence.

Lord Adonis: If, after a no-deal Brexit, a UK citizen buys a package or flight from an operator which is in the EU or EEA but which is not registered in the United Kingdom, we have no guarantee that there will be reciprocal continuation of ATOL rights.

Baroness Sugg: Each member state has its own version of ATOL, and the companies which sell in that member state are obliged to follow it. In the event of no deal, there will not be mutual recognition; that is simply one of the consequences of no deal. Those companies will be covered by the EU regulations. I said that no one is affected, but some of the companies which sell into the UK will need to get an ATOL licence. However, for air carriers, airports and passengers, there is no change to the routes on which the regulations apply. After exit day, in the event of no deal, the combined scope of UK and EU legislation on air passenger rights will be the same as under the current EU regulation. I hope that is a slightly simpler explanation than the one in my opening speech.

My noble friend Lord Balfe is right that, in the event of no deal, this simply takes a snapshot in time. I agree with him and the noble Baroness, Lady Randerson, that what happens in the EU in future will affect the UK, whether that is a change in currency exchange or EU law. However, that is something for the future; it may well depend on a future aviation agreement, if we end up with no deal. I am afraid I cannot predict the future, so I cannot say how we may respond to any future change in EU law. What I can say is that this statutory instrument does not contain any powers to make further SIs, and any future changes are likely to require primary legislation and would therefore have sufficient parliamentary scrutiny. However, I take the noble Baroness's point that changes in the EU regime will have an effect on us.

On the issue of confidence in booking flights, we are completely focused on ensuring that there is no disruption of aviation, as this would be in nobody's interest. In our technical notices last summer, we confirmed that we envisage granting permits to EU carriers to operate in the UK, and we have seen the EU take similar steps to avoid disruption. There were Commission communications on the EU's preparedness in November and it has said it intends to bring forward measures to allow UK air carriers to continue to fly to the EU. Most recently, this includes its no-deal contingency plan, which was published on 19 December. Detailed EU regulations are being discussed in the Parliament and the Council at the moment. We welcome those proposals, which will ensure that flights between the UK and the EU are maintained. There are a number of pieces of clear evidence that both sides in aviation are determined to ensure we maintain air connectivity.

We work very closely with the aviation industry, which shares our confidence that arrangements will be in place to avoid disruption to flights. I take the point from the noble Lord, Lord Adonis, that many conversations about aviation—those that he has had and those that others will have in future—take place at a European level and, indeed, an international level, at ICAO. We hope to continue our close relationship on aviation with all our European partners, regardless of how we leave the European Union.

On the noble Lord's point about consultation, the noble Lord, Lord Berkeley, was quite right to say that the same text is used here and in the next SI. As you would expect, I meet people from across the aviation sector very regularly, whether from airlines, airports or industry groups such as the Airport Operators Association and Airlines UK. We have not had meetings specifically about single SIs—there are quite a few of them—but we are discussing our SI programme with the aviation sector and sharing our plans with it. Throughout our SI programme, and certainly in aviation, we are replicating the current situation so that there will be no change. The compensation is perhaps not universally popular among our airlines, but they accept that the important thing is to maintain continuity, so that passengers and airlines understand what will happen. That is what we have been trying to do.

On communications, I agree with the noble Lords, Lord McNally and Lord Warner, that it is really important that we keep consumers informed. The noble Lord, Lord Adonis, highlighted one of those adverts on Spotify; there are others. We have a cross-government campaign putting out the information that is available on GOV.UK, and we are also working very closely with airlines and consumer groups to ensure that the right information is available. For example, Thomas Cook has a very good Q&A section around Brexit on its website. We are trying—

Lord Warner: I am grateful to the Minister for giving way. Just to go back to my earlier exchanges with the noble Lord, Lord Adonis, the government website seems to be telling people to be careful about making bookings after 30 March. However, in this

[Lord Warner]
debate the Minister is spreading balm and harmony about the fact that people would not have any of their rights and protections diminished. If there is no diminution of rights and protections, why does the Government's website urge people to be careful about making bookings after 30 March?

Baroness Sugg: I am not sure that the Government's website uses the word "careful". As I said, we are confident that flights will be maintained. There is an EU regulation going through the EU Parliament and EU Council at the moment to confirm that. In the same way that this statutory instrument has not yet been passed, that regulation has still not been passed. We are confident that flights will continue, but we say that customers should contact their air carrier and check their terms and conditions in order to ensure they are fully aware of all the information that they need.

On the rights and protections, as I have said, this SI continues them; we are confident that, should noble Lords choose to pass it, we will be able in the event of no deal to ensure that consumers still have the same protections.

While we are working to agree a deal with the EU that is supported by Parliament, we think it is responsible to continue to make preparations in the absence of an agreement so that there is a functioning statute book. This SI, and the others that we will debate later and in the coming weeks, are a key part of those preparations. Both the UK and the EU have set out their clear intention to put in place arrangements to ensure that planes can continue to fly to and from the EU in the event of a no-deal exit. Both sides want to avoid any disruption to flights, as that would be in no one's interests.

Our contingency preparations, of which these regulations are just one element, should provide reassurance to industry and consumers that, even in the event of no deal, passengers will continue to benefit from the same rights as they currently do. They ensure that our legal and regulatory framework for aviation is set up for flights to continue, whatever the outcome of negotiations. I beg to move.

Motion agreed.

Cairncross Review
Statement

4.33 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I see that the noble Lord, Lord Foulkes of Cumnock, has decided to take flight. With the leave of the House, I will repeat a Statement made in the other place by my right honourable friend Jeremy Wright, the Secretary of State for DCMS:

"With your permission, I would like to make a Statement about the publication of the Cairncross review. I would like to thank Dame Frances Cairncross for leading the review, along with the expert panel and officials who have worked with her to develop it.

This review comes at an important time. In her report, Dame Frances paints a vivid picture of the threat to high quality journalism in this country. There are now around 6,000 fewer journalists than there were in 2007. Print circulation of daily national papers fell from 11.5 million in 2008 to 5.8 million in 2018.

In this same time period, circulation for local newspapers has halved. As the review makes clear, there are many reasons for this, but the main driver is a rapid change in how we consume content. The majority of people now read news online, including 91% of 18 to 24 year-olds. As this shift takes place, publishers have struggled to find ways to create sustainable business models in the digital age. As the review sets out, between them, Google and Facebook capture the largest share of online advertising revenue and are an increasingly important channel for the distribution of news content online. Not only this but they hold an array of data on their users that news publishers cannot possibly hope to replicate, which further strengthens their position in the digital advertising market.

This combination of market conditions threatens to undermine the future financial sustainability of journalism. Even publications that have only ever been online are struggling, and this should concern us all. Dame Frances notes that, while high-quality journalism is desirable, there is one type of journalism that society and democracy cannot do without, and that is public interest journalism. This is the type of journalism that can hold the powerful to account and is an essential component of our democracy. It helps us to shine a light on important issues—in communities, in courtrooms in council chambers and in this Chamber. This type of journalism is under threat, especially at the local level. The review cites numerous examples of what happens to communities when a local paper disappears. So Dame Frances' report comes at a vital time, and I welcome her focus on public interest journalism.

This is clearly an important issue and I wanted to set out to the House today how the Government intend to respond. There are many substantial recommendations in this review. There are some areas where we can take them forward immediately, and other more long-term recommendations on which we will be consulting with stakeholders about the best way forward.

First, I will deal with the recommendations we are able to progress immediately. Online advertising now represents a growing part of the economy and forms an important revenue stream for many publishers. But this burgeoning market is largely opaque and extremely complex, so it is at present impossible to know whether the revenue shares received by news publishers are fair. The review proposes that the Competition and Markets Authority conduct a market study into the digital advertising market. The purpose of this study would be to examine whether the online marketplace is operating effectively, and whether it enables or prevents fair competition. It is right that policymakers and regulators have an accurate understanding of how the market operates and check that it is enabling fair competition, and I have today written to the CMA in support of this study. I will urge Professor Jason Furman to treat the review as additional evidence as part of his ongoing inquiry into digital competition in the UK, which is due to be published in the spring. I also recognise that online advertising has given rise to a wider set of

social and economic challenges. My department will therefore conduct a review of how online advertising is regulated, starting in the coming months.

The Cairncross review also cites concerns from publishers about the potential market impact of the BBC on their sustainability. They argue that the BBC's free-to-access online content makes it harder for publishers to attract subscribers. The review also questions whether the BBC is straying too far into the provision of softer news content, traditionally the preserve of commercial publishers, and suggests this might benefit from the scrutiny of Ofcom. Let me be clear that the Government recognise the strong and central role of the BBC here. As the review states,

"the BBC offers the very thing that this Review aims to encourage: a source of reliable and high quality news, with a focus on objectivity and impartiality, and independent from government".

However, it is right that the role of the BBC, as a public service broadcaster, be appropriately transparent and clear. The review recommended that:

"Ofcom should assess whether BBC News Online is striking the right balance, between aiming for the widest reach for its own content, and driving traffic from its online site to commercial publishers, particularly local ones".

Of course, some of these questions were addressed as part of the charter review process, but I have written today to ask Ofcom to look carefully at the review's recommendations and identify if there are any new concerns deserving attention. For instance, there may be ways in which the BBC could do more to drive traffic to commercial sites, particularly the local press.

Another recommendation from the review was a proposal for two separate forms of tax relief for news publications, one of which is intended to bolster the supply of local and investigative journalism by enabling it to benefit from charitable status. The review noted that in the USA, philanthropic donations provide, on average, 90% of the total revenues of non-profit news publishers. Although we have a different media landscape, as the review sets out, charitable status could reduce the costs for those producing this essential public interest reporting, and pave the way for a new revenue stream through philanthropic donations. I recognise that this avenue has been explored previously and that some hurdles will have to be cleared, but I believe we should pursue it, so I have written to the Charity Commission and look forward to hearing how it can help move this forward.

As I set out earlier, there are also areas where we will need to consult further and respond in further detail. First, Dame Frances recommended the establishment of an institute for public interest news to promote investigative and local journalism. The review proposes that this institute would act as a convener for those organisations with the means to support public interest news, including the BBC and online platforms. It would also be tasked with generating additional finance for the sector, driving innovation through a proposed new fund, and supporting an expansion of the BBC's Local Democracy Reporting Service. This BBC-funded scheme is a shining example of what can be done. The first of its kind in the industry, it has embedded 150 journalists within local publishers to produce local democracy reporting, particularly relating to local councils. I met some of these reporters last week and they have produced 50,000 stories so far between them—all stories that may not otherwise have been heard. The Government will explore, with others, what more can be done here.

The review also calls upon the Government to do more to incentivise the publishing industry's transition to digital. It proposes extending the current scope of VAT exemptions so that they apply to online payments for all news content and not simply print news content, and new tax relief for public interest news providers. I am aware that there is passionate support for this within the publishing sector, and we share its ambition for a healthy and sustainable industry. As this House knows, the Government always keep taxes under review, and any decision to amend the UK tax regime is, of course, a matter for the Chancellor of the Exchequer as part of the annual fiscal cycle. I will be discussing this matter further with industry and my colleagues at the Treasury.

I want to highlight two recommendations in the review that cover similar ground to work already taking place within government. One is the review's sensible proposal that the Government develop a media literacy strategy, working with the range of organisations already active in this space. Evidence suggests that there is also a correlation between media literacy and greater propensity to pay for news, so improving media literacy will also have an impact on the sustainability of the press. Making sure people have the skills they need to separate fact from fiction is the key to long-term success in tackling this issue, and I welcome the focus that Dame Frances has placed on it. We welcome this recommendation, which relates closely to the Government's ongoing work to combat disinformation. Last month, my honourable friend the Minister for Digital and the Creative Industries hosted a round table on media literacy, and the Government are actively looking at what more we can do to support industry efforts in this area.

The other recommendation is the review's call for the creation of new codes of conduct between publishers and the online platforms which distribute their content. These would cover issues relating to the indexing of content on platforms and its presentation, as well as the need for advanced warning about algorithm changes likely to affect a publisher. The development of these codes would be overseen by a regulator.

The review also proposes that regulatory oversight be introduced as part of a 'news quality obligation' upon platforms. This would require that platforms improve how their users understand the origin of an article of news and the trustworthiness of its source. Dame Frances recognises that platforms are already starting to accept responsibility in this regard. These two proposals deserve the Government's full consideration and we will examine how they can inform our approach. This includes our work as part of the online harms White Paper, due to be published shortly.

This report sets out a path to help us put our media on a stronger and more sustainable footing. However, Dame Frances is clear that her review is just one contribution to the debate. We cannot turn back the clock and there is no magic formula to address the systemic changes the industry faces, but it is the role of

[Lord Keen of Elie]
any responsible Government to play an active part in supporting public interest journalism. We will consider this review's contents carefully and engage with press publishers, online platforms, regulators, academics, the public and Members of this House as we consider the way forward. I remain open to further proposals that may go beyond the recommendations or scope of this review.

I know that this issue is of great concern to Members across the House, and today's review is an important milestone. At the heart of any thriving civil society is a free and vibrant press. The Government—and, I have no doubt, the House—are committed to supporting it through changing times and ensuring that it can continue to do its job. I commend this Statement to the House".

4.46 pm

Lord Griffiths of Burry Port (Lab): My Lords, I am very grateful to the Minister for repeating the Statement and I guess we begin with the remark at the very end, which indicates that the genie cannot be put back into the bottle: we are where we are and we must look at this matter from here. I cannot, for my part, look at a consideration of this kind other than from the point of view of small local communities whose service—the service they receive from local press—will be radically affected by recent developments; indeed, it has been already. While the genie cannot be put back into the bottle, we should not hide from view, or fail to prioritise in our consideration, those communities whose cohesion is being reduced by the developments we are talking about.

Dame Frances has done a splendid job. I went to one of the consultation sessions she held here in Parliament and it is clear that she has these concerns too. Written journalism, in print or online, supplies the largest quantity of original journalism and is most at risk: the figures have been quoted. The reduction in public interest reporting, which again was particularly concentrated on in the report and in the Statement, seems to have an effect on community engagement, and that concerns me greatly. Local democracy, such as voter turnout and the accountability of local institutions, has been particularly undermined. The operation of the market that has taken so much advertising away from traditional local newspapers can easily be identified as a contributing factor—indeed, an overriding factor—in this demise. The report sets out some concrete proposals about how we might look at the question. I have not yet found myself able to intellectualise what can be done about the fact that advertising is being taken away through these platforms, even through the BBC's local news availability projects, and how it can be restored, other than perhaps finding some way of taxing, controlling or regulating the way the market is operating—and we know that that is a difficult concept for many people.

The digital revolution has not just affected how people arrive at news online; it has also changed their habits and their attitudes to news. This, of course, is the problem. As it says in the report, people now skim for their news or scroll for their news; they passively absorb news. An increasing percentage of those who take news in whatever form are worried about "fake news". People read material shown to them by platforms largely based on data analytics and algorithms. There is something terrifically unnerving about that. In this and other debates, week after week, we have heard concerns of this kind expressed from a number of directions.

We are told that editors no longer pay attention to how stories are ranked. They no longer take much time to consider how to display stories on their homepage. Instead, they are led by the study of the market, habits, customs and conventions. They let their news follow the way things are in the marketplace. In addition to that, mergers and acquisitions by digital giants have meant that more than half of all digital advertising revenues are now hoovered up by just two companies. In the light of all this debilitation—and there is so much more that could be rehearsed—I ask the Minister how we can redress the balance.

I began my working life as a reporter on a local newspaper. Every week, I was responsible for the front page of the *Burry Port Star*. It was an organ of considerable influence—

Noble Lords: Hear, hear.

Lord Griffiths of Burry Port: Now your Lordships are rising to the bait, which I appreciate. It was, of course, the same newspaper in Llanelli—and in Llangennech and Llwchwr—but the front page was different. When somebody had moved out of a house, a boat had sunk, somebody had passed the 11-plus or there was to be a flower-arranging display in one of the local chapels, it was my job to tell the community about it.

Community cohesion is undergirded by an active press. None of us should simply take for granted that its disappearance will not have effects. How can the Government address this? The BBC has embedded reporters into local areas, which is brilliant. How much more of this can we hope to do? What about the idea of a regulator, which was picked out from the report by the press this morning? How effective will such a regulator be? What will his or her terms of reference be? Will there be teeth to the job that that person is asked to do?

There are so many questions, but above and beyond them is a very real concern. This is a matter which belongs to Parliament as a whole—and to bipartisan approaches—and is a real problem at a local level. I conclude my remarks by emphasising once again the levels of concern, the health of communities and the need for instruments such as a local newspaper to forge an identity for a locality. Burry Port was never Llangennech, and Llwchwr was never Llanelli, because the press helped us give expression to a real sense of identity. How on behalf of the Government will the Minister—and how will we as a Parliament—make practical proposals to achieve these noble ends?

Lord McNally (LD): My Lords, the noble Lord, Lord Griffiths, paints a romantic and nostalgic picture of the local press, and he is right to do so. But, in trying to solve the problems that face us in somehow helping the *Burry Port Star*, we must beware. The press owners have come with a begging bowl. They earlier proclaimed their resistance to any government

interference, but quite ready to dip their hands into the public purse are very large and rich companies, many of which have delivered redundancy after redundancy to local papers in favour of their shareholders.

That is one of the reasons why local journalism is in the state that it is in. I also suggest that the National Union of Journalists might be added to the list of people to consult that the Minister read out. There is a serious challenge to local media. Dame Frances set it out very bleakly in her report and the Minister repeated it. There is massive technological change and that impacts on how news is received and—particularly with the under-25s—how it is digested.

I welcome some of the actions announced by the Minister to refer some of the recommendations to relevant bodies. However, the ambitions of the Government and newspaper proprietors would be more credible if they had not been so eager to bury the Leveson report and ignore its call for the establishment of a regulator set up by royal charter which could do many of the tasks called for in this report.

As I said, freedom from Government does not seem to stop the press barons from dipping into the public purse. Therefore, although I welcome the recommendations on digital and media literacy, online advertising and news quality obligations, we should be hard-nosed about how and where tax relief and innovation fund money is spent. It is not there simply to line the pockets of Newsquest, JPI Media and Reach, which are all big, profitable companies that have taken the lion's share of the existing Local Democracy Reporting Service, which costs the BBC £8 million.

Some of the powers advocated in this report could be taken on by the Press Recognition Panel, the independent body established by Parliament under royal charter. The recommendations on how to bring the FANGs within the rule of law go wider than the issues covered by this report but its recommendations on new codes of conduct for online platforms are to be welcomed.

But what do we find in the report? As usual, it is a quick dive to try to weaken the BBC. In almost 40 years of being involved in this I have explained to various media proprietors that 90 years ago a Conservative Government had the common sense to nationalise the BBC as a public service broadcaster with a mandate that consciously distorted the market in favour of public service broadcasting. They want to have a go at the BBC online because it carries the same credibility and weight as the broadcast BBC. I hope that although the Minister has asked Ofcom to look at this, Ofcom will be very sceptical about trying to weaken one of the strongest public service journalism outlets in this country, one which should be defended.

I hope also that the Minster will use his good influence to secure a full day's debate in this House. This is an important report; so is the one published today by the Press Recognition Panel. This is an ongoing debate and the knowledge that exists in this House would be of benefit in taking a very wide agenda forward.

Lord Keen of Elie: I thank the noble Lords. I entirely concur with the observations of the noble Lord, Lord Griffiths of Burry Port, and the emphasis that he laid on local journalism and its impact on and importance to local democracy and indeed to wider societal issues that arise at a local level. To that extent, I believe that we are all pleased with the steps taken by the BBC with regard to the Local Democracy Reporting Service, which has been effective. The conundrum now is how to redress the balance. I believe that a starting point is for the CMA, which has experience and expertise in this area, to look at how the market is working. That will not be a solution in itself but it will give us a starting point from which we can work. As regards a regulator, that is a medium-term or longer-term ambition. Again, we will have to look at how we can develop that, but we are conscious of its importance.

The noble Lord, Lord McNally, made the perfectly valid point that many of our printed press corporations remain profitable. The difficulty is the disparity between the profitability in some areas and the poverty in others, as illustrated recently by the demise of one of the largest publishers of local newspapers in the country. In so far as the press industry seeks to, as the noble Lord put it, put its fingers into the tax pot, it is fair to say that he can anticipate that the Treasury will be pretty hard-nosed about that. We will seek to ensure that any benefits that can be provided go to the right place for the development of public-interest journalism.

I do not see this as an attempt to weaken the BBC, although there might be issues there that we will look at. I appreciate the importance of the BBC as a source of reliable journalism, but perhaps there are areas where it goes where it would not have gone before. I am not sure that it is necessarily in the public interest to have "Love Island" news online—although I may be corrected by some. It seems to me that these are areas where, for example, more commercial enterprises might be allowed into the market. I will just raise that as an issue.

I welcome the comments that have been made. We will want to review matters. The noble Lord raised the question of a debate. Of course, we have the forthcoming White Paper as well, and it may be that, in the light of that, a wider debate will be appropriate.

5.02 pm

Lord Birt (CB): My Lords, I spent much of my career in broadcast journalism in a period characterised by high-volume, high-quality journalism, well resourced both in broadcast and in print. There is still some good journalism in all media, but let us recognise that the bus left long ago and that there has been a vast reduction in the volume of quality journalism and a vast reduction in the necessary resources that are always needed to produce journalism of high quality.

In the last hour or so I have quickly scanned this ambitious report with its far-reaching conclusions and recommendations, not all of which immediately strike me as right. I echo what the noble Lord, Lord McNally, said. There are few matters as important for this House as those set out in this report, and this issue cannot be dealt with here in a few moments of questions and answers—so I too ask the Government to consider setting aside a serious and substantial amount of time to deal at length and properly with these issues.

Lord Keen of Elie: I thank the noble Lord for his contribution. As I have already indicated, I understand why this House is asking for further time to consider the detail of this report. It appears to me that that might be appropriate once we have the White Paper that I referred to earlier and when we have made progress on the initial stages of implementing the recommendations of the report, perhaps setting out a plan for how we intend to take forward its longer-term recommendations. However, I am sure that those responsible for the time of this House will have heard the observations. It is beyond my pay grade but I am confident that they will have listened.

Lord Black of Brentwood (Con): My Lords, I join my noble and learned friend in congratulating Dame Frances on producing a compelling report, which sets out both starkly and boldly the real commercial pressures which are facing all publishers. I declare my interest as deputy chairman of the Telegraph Media Group. Given the scale of the challenges and the punishing pace of change in the industry, which come over so clearly in this report, does my noble and learned friend agree with me that speed is now of the essence and that the most important thing is to move urgently to implement, where possible, some of the review's major recommendations, particularly in areas such as VAT and taxation, which could bring immediate commercial benefit and allow publishers to invest in the quality investigative journalism that the report highlights?

In other areas, there is much for the CMA and Ofcom to undertake. Does my noble and learned friend believe that the CMA has the capacity to deal swiftly with issues surrounding the advertising market in view of its post-Brexit responsibilities, and does Ofcom have the powers needed to review the BBC online without the need for further legislative change?

Lord Keen of Elie: My Lords, I can advise that my right honourable friend the Secretary of State has written today to the chair of the CMA, inviting him to respond as quickly as possible as to whether it is the view of the CMA that it can take on these issues, and he has also written today to the chair of the Charity Commission—so we are intent on taking these issues forward as swiftly as we can.

5.07 pm

Sitting suspended.

Leaving the European Union

Statement

5.12 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Prime Minister in another place:

"With permission, Mr Speaker, I would like to make a Statement on the Government's ongoing work to secure a Brexit deal that honours our commitments to the people of Northern Ireland, commands the support of Parliament and can be negotiated with the EU.

On 29 January, this House gave me a clear mandate and sent an unequivocal message to the European Union. Last week, I took that message to Brussels. I met President Juncker, President Tusk, and the President of the European Parliament, Antonio Tajani, and I told them clearly what Parliament wanted in order to unite behind a withdrawal agreement: namely, legally binding changes to the backstop. I explained to them the three ways in which this can be achieved.

First, the backstop could be replaced with alternative arrangements to avoid a hard border between Northern Ireland and Ireland. Yesterday, my right honourable friend the Secretary of State for Exiting the European Union met with Michel Barnier to discuss the ideas put forward by the Alternative Arrangements Working Group, comprising a number of my honourable and right honourable friends. I am grateful to that group for its work and we are continuing to explore its ideas.

Secondly, there could be a legally binding time limit to the existing backstop or thirdly, there could be a legally binding unilateral exit clause to that backstop. Given both sides agree that we do not ever want to use the backstop, and that if we did it would be temporary, we believe it is reasonable to ask for legally binding changes to this effect. As expected, President Juncker maintained the EU's position that it would not reopen the withdrawal agreement, and I set out the UK's position, strengthened by the mandate that this House gave me, that this House needs to see legally binding changes to the backstop, and that can be achieved by changes to the withdrawal agreement. We agreed that our teams should hold further talks to find a way forward, and he and I will meet again before the end of February to take stock of those discussions.

So our work continues. The Secretary of State and the Chancellor of the Duchy of Lancaster are today in Strasbourg, and last week the Attorney-General was in Dublin to meet his Irish counterpart.

Following my visits to Brussels, Northern Ireland and Ireland last week, I welcomed the Prime Minister of Malta to Downing Street yesterday, and I will be speaking to other EU 27 leaders today and throughout the week.

The right honourable gentleman the leader of the Opposition shares the concerns of this House on the backstop. I welcome his willingness to sit down and talk to me and I look forward to continuing our discussions. Indeed, Ministers will be meeting members of his team tomorrow.

I think there are a number of areas where the whole House should be able to come together. In particular, I believe we have a shared determination across this House not to allow the UK leaving the EU to mean any lowering of standards in relation to workers' rights, environmental protections or health and safety. I have met trade unions and Members from across the House, and my right honourable friend the Business Secretary is leading work to ensure that we fully address all concerns about these vital issues. We have already made legally binding commitments to no regression in these areas if we were to enter the backstop, and we are prepared to consider legislating to give these commitments force in UK law.

In the interests of building support across the House, we are also prepared to commit to asking Parliament whether it wishes to follow suit whenever the EU changes its standards in these areas. Of course, we do not need to automatically follow EU standards in order to lead the way—as we have done in the past under both Conservative and Labour Governments. The UK has a proud tradition of leading the way in workers' rights, while maintaining a flexible labour market that has helped deliver an employment rate almost six percentage points above the EU average. Successive Governments of all parties have put in place standards that exceed the minimums set by the EU.

A Labour Government gave British workers annual leave and paid maternity leave entitlements well above those required by the European Union. A Conservative-led Government went further than the EU by giving all employees the right to request flexible working. I was proud to be the Minister for Women and Equalities to introduce shared parental leave, so that both parents are able to take on caring responsibilities for their child—something that no EU regulation provides for.

When it comes to workers' rights, this Parliament has set a higher standard before and I believe will do so in future. Indeed, we already have plans to repeal the so-called Swedish derogation, which allows employers to pay their agency workers less, and are committed to enforcing holiday pay for the most vulnerable workers—not just protecting workers' rights, but extending them.

As I set out in my Statement two weeks ago, the House also agrees that Parliament must have a much stronger and clearer role in the next phase of the negotiations. Because the political declaration cannot be legally binding and in some areas provides for a spectrum of outcomes, some Members are understandably concerned that they cannot be sure precisely what future relationship it would lead to. By following through on our commitments and giving Parliament that bigger say in the mandate for the next phase, we are determined to address those concerns. The Secretary of State has written to all members of the Exiting the EU Committee seeking their view on engaging Parliament in this next phase of negotiations. We are also reaching out beyond this House to engage more deeply with businesses, civil society and trade unions.

Everyone in this House knows that the vote for Brexit was about changing not just our relationship with the EU but how things work at home, especially for those in communities who feel they have been left behind. Addressing this and widening opportunities is the mission of this Government that I set out on my first day as Prime Minister, and I will continue to work with Members across the House to do everything we can to help build a country that works for everyone.

One area where the right honourable gentleman the leader of the Opposition and I do not agree is on his suggestion that the UK should remain a member of the EU customs union. I would gently point out that the House of Commons has already voted against this. In any case, membership of the customs union would be a less desirable outcome than that which is provided for in the political declaration. That would deliver no tariffs, fees, charges or quantitative restrictions across all sectors, and no checks on rules of origin. Crucially, it would also provide for the development of an independent trade policy for the UK that would allow us to strike our own trade deals around the world—something the Labour Party once supported.

On Thursday, as I promised in the House last month, we will bring forward an amendable Motion. This will seek to reaffirm the support of the House for the amended Motion from 29 January—namely, to support the Government in seeking changes to the backstop and to recognise that negotiations are ongoing. Having secured an agreement with the European Union for further talks, we now need some time to complete that process. When we achieve the progress we need, we will bring forward another meaningful vote, but if the Government have not secured a majority in this House in favour of a withdrawal agreement and a political declaration, the Government will on Tuesday 26 February make a Statement and table an amendable Motion relating to the Statement; a Minister will move that Motion on Wednesday 27 February, thereby enabling the House to vote on it, and on any amendments to it, on that day. As well as making clear what needs to change in the withdrawal agreement, the House has also reconfirmed its view that it does not want to leave the EU without a deal. The Government agree but opposing no deal is not enough to stop it. We must agree a deal that this House can support. That is what I am working to achieve.

I have spoken before about the damage that would be done to public faith in our democracy if this House were to ignore the result of the 2016 referendum. In Northern Ireland last week, I heard again the importance of securing a withdrawal agreement that works for all the people of this United Kingdom. In Belfast, I met not just politicians but leaders of civil society and business from across the community. Following this House's rejection of the withdrawal agreement, many people in Northern Ireland are worried about what the current uncertainty will mean for them. In this House, we often focus on the practical challenges posed by the border in Northern Ireland but for many people in Northern Ireland, what looms larger is the fear that the seamless border between Ireland and Northern Ireland, which helped make the progress that followed the Belfast agreement possible, might be disrupted. We must not let that happen. We shall not let that happen.

The talks are at a crucial stage. We now need to hold our nerve to get the changes this House requires and deliver Brexit on time. By getting the changes we need to the backstop, by protecting and enhancing workers' rights and environmental protections, and by enhancing the role of Parliament in the next phase of negotiations, I believe we can reach a deal that this House can support. We can deliver for the people and the communities that voted for change two and a half years ago, whose voices for too long have not been heard. We can honour the result of the referendum and set this country on course for the bright future that every part of this United Kingdom deserves. That is this Government's mission. We shall not stint in our efforts to fulfil it. I commend this Statement to the House".

5.22 pm

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the Leader of the House for repeating the Statement. I listened carefully but I do not think that any of us are any the wiser having heard it for a second time. I am not clear about the purpose of today's Statement. As we have come to expect, the Government have precious little to report.

Like many noble Lords, I remember the days when Prime Ministers made Statements of substance that genuinely updated Parliament and provided new information—Statements that showed true leadership. In today's Statement, the Prime Minister has not told us anything that we do not already know. We already know that in opening the negotiations, Mrs May set out a series of unhelpful and unrealistic red lines; for example, in ruling out a new comprehensive and permanent customs union. We already know that she sought legally binding changes to the backstop, replacing it with alternative arrangements to prevent a hard border—but the only reason for the backstop is that the Government were unable to identify any viable alternative arrangements. We already know that the EU emphatically rejected reopening negotiations on the agreement signed by the Prime Minister in November. We already know that Mrs May consistently and irresponsibly refuses to rule out leaving the EU without a deal, even though her own Government's economic analysis shows that this would be hugely damaging.

Today's Statement confirms that the Prime Minister has made no progress other than holding a series of further meetings to debate the exact same issues she has been debating for nearly two years. If media reports are accurate, the EU is totally bewildered that she seeks to return to the negotiating table while refusing to budge even one inch from those Lancaster House red lines. How many deadlines has the Prime Minister now missed? The agreement was supposed to have been reached in October; the original vote was pulled in December; and now there is not even a guaranteed vote on the revised deal before the end of the month. Each week MPs are told to expect a meaningful vote the following week, only for it to be delayed again and again.

Having seen off most of the amendments that she considered unhelpful last time, the Prime Minister's request for another two weeks might just about give her Whips something to work with. But that all too familiar mantra that the only way to avoid leaving the EU without a deal is to support her deal points to a strategy to just run down the clock until the only options are her deal or no deal. As I and other noble Lords have said countless times, that is grossly irresponsible. The Prime Minister tells others to hold their nerve while she engages in her favourite pastime—it used to be played in the playground when I was 12—of kicking the can down the road. While she tells business and industry to hold their nerve, they are losing patience and being forced to make decisions factoring in the worst possible scenario—as we have seen from the Nissan decision on investment in Sunderland.

Part of me really wants to believe that the Prime Minister, a former Home Secretary, is simply too smart and too patriotic to be responsible for a catastrophic crash out of the EU, but we all know—though it is not in the Statement—that intense and expensive preparations are now being made for a crash-landing no deal. Can the Leader remind us of the Government's budget for no deal? Can she tell us how many meetings she has personally attended with other Ministers and/or officials where no-deal preparations have been discussed? Can she confirm that, despite there being just 45 days to Brexit, with firms hired for no-deal contingencies being stripped of their contracts and police forces hiring personnel for crisis centres, this topic was not even discussed in any detail at today's Cabinet meeting? Can she tell us why the legislation that the Government tell us is so necessary, deal or no deal, is being held up by the Government? The Report stages of the Agriculture and Fisheries Bills have not even been scheduled in the House of Commons, despite the Government cancelling the February Recess.

The Opposition have provided a clear alternative that we believe could gain the support of a majority of MPs and find favour with the EU. It is all very well the Minister laughing, but his alternative proposals—the proposals from his Government—have been soundly rejected by the House of Commons, and nothing further has come back from the Commons that can gain the confidence of Parliament. This is far too serious to be laughing about the situation.

Let me repeat that. We have provided an alternative that we think could gain the support of a majority of MPs and find favour with the EU—despite the Minister's smirks. The Prime Minister has ruled out that alternative in favour of her rejected deal and the hopeless aim of reopening a closed legal agreement. This is my final question to the Leader of the House: if the EU 27 refuse to shift and the Prime Minister is unable to get agreement from Parliament for her deal, what will she do then? Will she accept the need to extend the Article 50 period, or will she simply march the country off the cliff edge?

Lord Newby (LD): My Lords, given that we are now only six weeks from the date on which we are due to leave the EU, this is a most remarkable Statement. It basically says that, despite her trips to Brussels and Ireland, her hard stare at Juncker and dinner with Varadkar, the Prime Minister has made no progress whatsoever in offering—far less negotiating—credible new terms on which we might leave the EU.

The Prime Minister's cricketing hero is Geoffrey Boycott, who had a test average of 47.7. By comparison, I am afraid, the Prime Minister's Brexit negotiations average is close to negligible. It seems that, rather than the somewhat pedestrian Boycott, her real hero comes from Dickens. I wonder when she first read about Mr Micawber and his optimistic but desperate philosophy that disaster would be averted simply by something turning up. This has clearly been adopted by the Prime Minister as her guiding principle. Of a more positive agenda there is no sign, and in two areas in particular this calamitous lack of leadership is seriously irresponsible.

First, it is now clear that it is impossible to get through all the necessary Brexit-related legislation by 29 March. Even if a deal were eventually agreed by the Commons, an extension of the Article 50 period would

be necessary, if only to get this legislation through. By all accounts, the Prime Minister realises this. But instead of being open and asking for an extension herself, she is waiting to be defeated on this in the Commons, at which point she will go to Brussels, blame the Commons, and ask for one then. She is adopting the example of the French revolutionary leader, who, pursuing the mob, exclaimed, "I am their leader. I must follow them". It is a complete and abject abrogation of leadership.

Secondly, there is the impact that lack of any certainty is having on the business community. Noble Lords may have read in the *Sunday Times* of the Wiltshire-based cheesemaker who sells a third of her product to Canada, and who is now having to suspend further shipments because she simply does not know on what basis they might be allowed into Canada after 29 March. Hers is one of thousands of businesses in the same boat. Talking of boats, there are ships ready to sail to and from the Far East which are not due to reach their destination until after 29 March. What advice on tariffs, labelling and standards are the Government giving those contemplating putting their goods on these ships?

More generally, the impact of the Government's indecision is crippling the economy. Yesterday's GDP figures, the fall in manufacturing output, the collapse in investment and the inevitable worsening of the public finances mean that you can forget windy rhetoric about the end of austerity. The public finances will inevitably weaken now, whatever Brexit path is chosen.

The only suggestions which the Prime Minister took to Brussels were either non-negotiable, such as a legally binding time limit or exit clause to the backstop, or non-specific: the so-called alternative arrangements. There was zero chance of these being acceptable to the EU. At one level, therefore, it is no surprise that she is putting off meaningful votes for another fortnight—there is nothing new to vote on. It is, however, somewhat depressing that it looks as though the Commons will not seek to force any of the issues on Thursday of this week. The clock will simply continue ticking, ever louder, for another fortnight. With 29 March so close, this brinkmanship is damaging and dangerous.

The Prime Minister, and I am sure the noble Baroness the Leader of the House, will be well aware that Geoffrey Boycott had a reputation for running out his batting partner in order to save himself. It seems that the Prime Minister is willing to leave the country stranded in order to save the Tory party. It is a demeaning strategy and one which deserves to fail.

Baroness Evans of Bowes Park: I thank the noble Baroness and the noble Lord for their comments. The noble Baroness asked about no-deal preparations. I stress again that this is not what the Government want to do, but any responsible Government must prepare for it. Since 2016, the Government have spent around £4 billion preparing to leave the EU. I have attended numerous meetings—she asked about this—at which preparations for no deal were discussed. That is the responsible thing to do. I have also spent many hours in this Chamber talking about the benefits of the deal that the Prime Minister has negotiated, a deal we continue to work on.

The noble Lord and the noble Baroness asked about legislation. I remind the House that we should not underestimate the amount of legislation we have already scrutinised this Session; in the past fortnight alone, we have considered three Brexit Bills. However, I accept that there is still a significant amount of legislation to be passed. We will continue to work with the House to ensure that it has the time to do that. We will work constructively across the House on both primary and secondary legislation to ensure that that happens.

Once again, the noble Lord asked about extending Article 50. I can only reiterate what I have said on numerous occasions: Article 50 cannot be extended by the UK alone; it has to be done in consultation and agreement with the EU. It is unlikely simply to agree to extend it without a plan for how we are going to prove a deal that it knows can get through the House of Commons. That is the reason the Prime Minister is working so hard to achieve that.

The noble Lord and the noble Baroness mentioned uncertainty for business. Again, that is why we are committed to getting a deal and why we have negotiated an implementation period. The noble Baroness specifically mentioned Nissan. She is right that it is deeply disappointing that the extra jobs that would have come from building the X-Trail will no longer be created. However, it is important to remember that Nissan has confirmed that none of the current 7,000 jobs at the plant will be lost and that it remains committed to the United Kingdom. I remind the noble Lord, Lord Newby, that the UK is currently enjoying the longest unbroken quarterly growth streak of any G7 nation and has outperformed the OBR forecast of 1.3% growth in 2018.

The noble Baroness talked about the Labour Party's position. As the Statement made clear, we believe that membership of the customs union is a less desirable outcome than that provided for in the political declaration. The political declaration explicitly provides for the benefits of a customs union but recognises that we can develop our own independent trade policy, which we are committed to doing.

Finally, the Prime Minister is committed to getting this deal through the House of Commons. She is totally focused on getting support. We want a deal. That is what we are working for.

5.37 pm

Viscount Hailsham (Con): My Lords, if I may, I say to my noble friend that this is a deeply disappointing Statement. Instead of asking Parliament to hold its nerve, which is an exercise only in procrastination or party management, surely the Prime Minister should say to Parliament that staying in the European Union on existing terms is far better than any deal she can negotiate. Surely that should be her recommendation to Parliament and to the country in a further referendum. She may fail and she may fall, but if she does that, she would be doing right by her country and would earn a great deal of respect.

Baroness Evans of Bowes Park: The Prime Minister is committed to implementing the result of the 2016 referendum. She has negotiated a deal and we are now

[Baroness Evans of Bowes Park]
seeking legally binding changes to the withdrawal agreement to deal with the concerns on the backstop, while guaranteeing no hard border between Northern Ireland and Ireland, in order that we can get the House of Commons to agree a deal that is in the best interests of both the UK and the EU.

Baroness Quin (Lab): My Lords, I support strongly the point made by the noble Viscount, Lord Hailsham. The Statement makes a great deal about a guarantee of social, environmental and other rights. That sounds very good but is it not true that in reality, constitutionally, no Parliament can bind its successor? Further, those of us with longish memories recall how the Government fought tooth and nail against the so-called job-destroying Social Chapter—but when the Labour Government brought it in, we saw a rise in employment and a rise in prosperity.

Baroness Evans of Bowes Park: We have been very clear that we are committed to improving workers' rights. Indeed, as the Statement makes clear, we are prepared to commit to asking Parliament whether it wishes to follow suit whenever the EU changes its standards in relation to workers' rights and environmental standards, which will of course be going forward.

Lord Hannay of Chiswick (CB): My Lords, does the Leader of the House not recognise that it is a bit rich to tell us all to keep our nerve when we are strapped in the back of a car which the Prime Minister is driving towards a cliff? I wonder if she would like to comment on, and perhaps take some remedial action on, the fact that in the whole of this Statement there is not one word about the role of your Lordships' House—not one word. The Prime Minister says she is reaching out to business, to trade unions and to civil society. She is not reaching out to this House, apparently. She notes that the other place has voted to reject leaving without a deal. She does not seem to have noticed that this House rejected that twice. Could the noble Baroness perhaps exert her efforts to persuading the Prime Minister that we do still exist?

Baroness Evans of Bowes Park: I am happy to reassure the noble Lord that the Secretary of State for Exiting the EU is indeed writing to members of the EU committee in the same way that he has written to members of the House of Commons committee to seek views on engaging Parliament in the next phase of the negotiations. I can assure the noble Lord that the voice of your Lordships' House will be heard. Of course, Ministers regularly attend and give evidence to our committees, which are considered very important. Certainly the views of your Lordships' House are well heard.

Lord Wigley (PC): Can the noble Baroness confirm that if, on 27 February, another meaningful Motion is before the House of Commons and is amended to rule out a no-deal Brexit, the Government at that time would be bound by such a decision?

Baroness Evans of Bowes Park: I am obviously not going to prejudge what the House of Commons does, but the Motion that will be brought forward will be an amendable Motion, and obviously amendments can be put down and voted on, and we shall see what the House of Commons decides.

Baroness Ludford (LD): My Lords, would it not be more honourable for the Conservatives to acknowledge that it was the Liberal Democrats, especially Jo Swinson MP, who championed rights such as flexible working and shared parental leave as well as equal marriage, and that we had to fight like terriers against the Tory Beecroft review, which wanted to even abolish unfair dismissal rights? As for agency workers, what has stopped the Government from announcing the pay derogation before now? Why should anyone believe that the Tories have seen the light and are to be trusted on employment or environmental regulations?

Baroness Evans of Bowes Park: I am sorry about the churlish tone that the noble Baroness has decided to take. We are committed to workers' rights and environmental standards. We have made that clear regularly. Governments of all hues have done a lot of work in this area, and, as I have said, we have plans to repeal the Swedish derogation, which allows employers to pay their agency workers less. We are committed to enforcing holiday pay for the most vulnerable workers. We will continue to ensure that this Parliament champions workers' rights, and that is something we are all proud of.

Lord Lamont of Lerwick (Con): My Lords, I welcome what the Statement says about the Good Friday agreement. Of course, this is not the first time that the Government have emphasised this point—they have done so many times. But is it not all the more regrettable that Mr Juncker and the Taoiseach saw fit to parade a poster in public saying that Britain did not care about peace in Northern Ireland? Will she join with me in hoping that in future the negotiations will be conducted in a much more constructive spirit?

Baroness Evans of Bowes Park: I am happy to reiterate our commitment to the Belfast agreement and indeed the commitment of the Irish Government and the EU. What we need now is to work constructively together. We are at a critical time of the negotiations and have some difficult discussions ahead. I think that we all want to move forward in a constructive manner and make sure that we can get a withdrawal agreement and the changes we are seeking that mean that the House of Commons will approve this deal and we can all move forward to talk about our bright relationship.

Lord Pearson of Rannoch (UKIP): My Lords, I hope I detect a chink of light in this Statement where it says:

"Given both sides agree we do not ever want to use the backstop, and that if we did it would be temporary, we believe it is reasonable to ask for legally binding changes to this effect".

Does the Leader of the House agree that if the EU refuses to agree such legally binding changes, that would confirm that it remains in bad faith, and it regards the backstop as a device to stop us ever getting our sovereignty back, even eventually?

If that turns out to be so, why do we not offer the people of Europe continuing reciprocal residence and continuing free trade, but under the WTO, and, if that is not accepted, just go it alone under the WTO anyway, which holds no fears for us?

Baroness Evans of Bowes Park: As both we and the EU have made clear, we do not intend to use the backstop. The Prime Minister, as I have said, is looking at three options in which the House of Commons has expressed an interest. These are alternative arrangements, such as technological solutions, a legally binding unilateral exit clause and a legally binding time limit. President Juncker and the Prime Minister had a conversation and have agreed that further talks will begin, and they will take stock later this month. We look forward to that having a successful outcome.

Lord Butler of Brockwell (CB): My Lords, is it not clear, despite what the noble Baroness has said, that it is quite impossible for Parliament to pass the primary and secondary legislation needed to have a comprehensive system of law if we leave the EU on 29 March? What is the Government's proposal for dealing with that?

Baroness Evans of Bowes Park: I say again, we are making good progress. As of today 424 Sis have been laid; we are making good progress. Since we returned in January we have debated more than 50. We have passed numerous pieces of legislation, and, as I said, in the last fortnight alone we have considered three Brexit Bills. Of course, in tabling legislation in this House we discuss it with the usual channels to ensure that we can give this House time to scrutinise legislation as it wishes. We will continue to do that in a constructive manner.

Lord Howell of Guildford (Con): My Lords, Her Majesty's loyal Opposition obviously have a key part to play in this whole business, and I think many of them wish it could be a responsible part. Could we ask, through the Leader of the House, where they stand now? If they are against the withdrawal deal—which they are, and if they are against no deal—which we all are—are they still in favour of bringing the whole thing to a general election, as I think they were earlier on? Could we just find that out?

Baroness Evans of Bowes Park: I am not sure that I am the best person to ask, but what I can say is that the Prime Minister in her Statement made it clear that she welcomed conversations with the Leader of the Opposition. I believe that Members on both sides are speaking again tomorrow and will continue to do so. What we want is a deal that has the support of the House of Commons across the House of Commons because we want a future relationship with the European Union that is positive and progressive. That is something that I believe everyone on all sides of both Houses wants to see happen.

Lord Wallace of Saltaire (LD): My Lords, I ask the Minister to explain a phrase which I find rather confusing:

"There could be a legally binding unilateral exit clause".

I am not a lawyer, but I studied international law and I have worked with a number of international lawyers. My understanding is that it is a form of negotiation leading to contract, and just as you negotiate a contract you also have to negotiate the end of that contract. The idea that something could be legally binding in international law but that one of the parties could withdraw whenever it likes seems utterly contradictory, if not nonsensical. How can a unilateral exit clause be at the same time legally binding? If it is legally binding, does it mean that the EU can withdraw from any parts of the withdrawal agreement that it wishes in return?

Baroness Evans of Bowes Park: I am sure that the noble Lord will be delighted to know that the Attorney-General is leading on these matters. He is a great expert, and I have every confidence in him.

Baroness O'Loan (CB): My Lords, the noble Baroness referred to a number of statutory instruments which have been laid—400-plus. I draw the attention of the House, having just come from the Secondary Legislation Scrutiny Committee, to the fact that only 150 or so have been scrutinised, let alone debated in your Lordships' House. There is a huge amount of work left to do.

The second thing I want to ask the noble Baroness has to do with whether we crash out on 29 March, and time is so short that I am becoming increasingly fearful of this. The DVSA says on GOV.UK, "If the UK leaves without a deal, you might need ECMT permits to transport goods in the EU and EEA from 11 pm on 29 March 2019". This is our transport industry trying to transport goods, and the supply chain and so forth across Europe. Social media is now running with the fact that people are applying for these ECMT licences and being refused. That will lead to economic instability of a greater nature in Northern Ireland because lorries transport goods across that border on a daily basis.

We know that economic instability leads to political instability and political instability leads to terrorism. We all have to support a process through which we get a backstop which is workable, which will not lead to a hard border and which is flexible. There is no sign that I have heard of how that will work. Can the Minister explain to us how it might work?

Baroness Evans of Bowes Park: As I said, the Prime Minister has had conversations with President Juncker and she has seen the Taoiseach to talk about the changes that she believes will be needed to the backstop in order for that withdrawal agreement to get through the House of Commons. Those discussions are ongoing. I am afraid that I have not seen the specific issue that she raises on transport and social media, but I will make sure that the department is aware of it.

Lord Hain (Lab): My Lords, is not the Statement a space filler rather than a scene shifter? On the Irish border, I urge Parliament to stick by the agreements that the Prime Minister made with the European Union on the question of the backstop. It is the only insurance policy available to keep that border open. The Prime Minister has come up with no practical alternative, I venture to suggest, because there is no practical alternative other than both sides of that

[LORD HAIN]
border keeping the same customs and single market arrangements. Otherwise, it is actually impossible to keep that border completely invisible and open with all the identity issues at stake in the Good Friday agreement. We should say that we agree the backstop because there is no practical alternative, and then seek to negotiate a future trade policy.

Baroness Evans of Bowes Park: I assure the noble Lord that there will be an insurance policy for Northern Ireland. Current discussions are about the form that it takes and how we get an arrangement that gets the support of the other place. It rejected the withdrawal agreement with that backstop in place. But I agree that the backstop that we have negotiated gives the whole of the UK tariff-free access to the EU market without free movement of people, without financial contributions, without having to follow most of the level playing field rules and without giving access to our waters. That is not something that the EU wants to happen. It is a backstop that was negotiated but the House of Commons decided it did not support it, so the Prime Minister is going back to have further conversations to try to get some changes that mean that the House of Commons can support it.

Lord Dobbs (Con): My Lords, do you not just love the wonderful whooshing sound that deadlines make when they whizz past all the time, as we hear yet again? We have heard a lot today about the use of the term "boycott" from the noble Lord, Lord Newby. Of course, the term takes us back to a much darker time in our relations with Ireland. The seamless border about which the Statement talks is not just a border: it is part of a growing psychological and emotional union that has come about between our two peoples to put those times of boycott behind us. Could the Minister be a little more robust in joining with the point made by my noble friend Lord Lamont of Lerwick about the extraordinary remarks associated with President Juncker during the week about Ireland? I cannot think of anything more unhelpful to reaching an agreement on these matters than those and it raises the question of whether President Juncker actually wants an agreement.

Baroness Evans of Bowes Park: I believe that both the EU and the UK want an agreement. We want a good deal and a strong relationship going forward. That is what everyone is working towards. Everyone needs a cool head. We need to negotiate and discuss and bring back a deal that the House of Commons can support so, as I said, we can move on to discussing the strong, future partnership that we all want between the UK and the EU.

Lord Campbell of Pittenweem (LD): My Lords, this Statement is both vacuous in content and indeed in language. The truth is that the only important sentence is the one that reads:

"As expected, President Juncker maintained the EU's position that they will not reopen the withdrawal agreement".

Where is the hard evidence that the European Union is willing to depart from that position? If it were persuaded to do so, what concessions will the Government be willing to make in return?

Baroness Evans of Bowes Park: As I have made clear, both sides have agreed to hold further talks to find a way through.

Lord Empey (UUP): My Lords, the Prime Minister visited Belfast last week and I must bring her back to the definition of backstop. The Minister has just been trying to sell and drawing attention to the good parts, as she sees them, of the backstop that has just been rejected. But is the Prime Minister talking about replacing the existing backstop with another one—an alternative—or is she talking about inserting something new into the existing backstop? Or is she talking about a completely different proposal altogether? The one thing that is missing in all of this is that there has been no attempt whatever to use the institutions of the Belfast Good Friday agreement as part of the solution —an Irish solution to an Irish problem. I believe that there is huge potential in there if somebody would pay the slightest attention to it.

Baroness Evans of Bowes Park: In terms of the three options, one is for alternative arrangements, so something different using technological solutions, for example. The other two are legally binding changes to the backstop, such as a unilateral exit clause or a legally binding time limit. So there are three different options, two of which relate to changing the backstop that exists and one that is looking at alternative arrangements.

Lord Beith (LD): My Lords, the Prime Minister believes that she will get an agreement even if it is at the eleventh hour. There must be a draft withdrawal agreement Bill. Has the Leader of the House seen the Bill? I am sure that she has. How many clauses and schedules does it have and how will this House deal with it if it comes to us within days or even hours of having to implement an agreement?

Baroness Evans of Bowes Park: Noble Lords will obviously see the withdrawal agreement as soon it is ready and agreed. Obviously, the agreement will go through the House of Commons first and there will be time for noble Lords to look at it before it comes to us. But as I have said, the Chief Whip and I will work constructively with the usual channels across the House to ensure that noble Lords have sufficient time to scrutinise this important legislation. I have heard very clearly all of your concerns, believe me, and we will work together in order to make sure that we can pass this important legislation. But obviously the timing of that depends on the decision of the House of Commons. It is not in the gift of your Lordships' House.

Air Services (Competition) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.57 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 5 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, if it is convenient, I will speak to both the Air Services (Competition) (Amendment) EU Exit Regulations 2019 and the Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019. These instruments will both be made using powers in the European Union (Withdrawal) Act 2018 and will be needed if the UK leaves the European Union without a deal.

The two draft instruments will correct the following retained EU regulations: Regulation 868/2004, which is intended to provide protection for Community air carriers against injury caused by subsidisation and unfair pricing practices relating to air services between EU member states and third countries; and Regulation 95/93, which sets out the process for the fair and transparent allocation of airport slots—the right to use a bundle of facilities at airports for landing or take off of an air service at specific dates and times; for example, runways, stands and terminals where the demand at congested airports exceeds the available infrastructure.

I turn first to the draft air services competition instrument. The EU regulation sets out the process and requirements for imposing redressive measures in the form of tariffs or fines where it has been demonstrated that subsidies or unfair pricing practices by third-country bodies and air carriers, with respect to routes between EU member states and third countries, have caused injury to the EU aviation industry. This EU regulation has never been used and is currently in the process of being replaced. However, the effect of Section 3 of the European Union (Withdrawal) Act 2018 is that any direct EU legislation which is in force and applicable on exit day will automatically become part of the UK's statute book. Therefore, the instrument that we are considering today simply makes those corrections necessary so that the version of Regulation 868/2004 brought into UK law by the EU withdrawal Act is, in principle, legally operable after exit day.

This instrument makes only technical corrections to the retained Regulation 868/2004, meaning that the substantive requirements for assessing whether there has been subsidisation, unfair pricing practices or injury to industry remain exactly the same. The corrections include ensuring that the scope of the retained EU regulation is correct once the UK has left the EU; for example, substituting references to "Community" with references to the "United Kingdom". This has the effect that the retained regulation applies where there has been injury to the UK aviation industry. Instead of applying where there are unfair pricing practices by "non-Community" air carriers on certain routes to and from the EU, the retained regulation will apply where "non-United Kingdom" air carriers have engaged in unfair pricing practices on certain routes to or from the UK. Similar changes apply in relation to the subsidisation provisions in the retained EU regulation.

This instrument also transfers functions currently carried out by EU institutions to appropriate bodies in the UK. For example, it transfers the function of carrying out investigations covering subsidisation and/or unfair pricing practices from the European Commission to the Civil Aviation Authority.

Finally, this instrument transfers the function of imposing provisional or definitive redressive measures to the Secretary of State. As the EU regulation sets out that the process for this is through further regulations, this instrument also sets out that any provisional or definitive redressive measures would be imposed by the Secretary of State through regulations.

I turn next to the draft airports slot allocation instrument. The EU regulation applies at congested airports where the availability of adequate infrastructure is insufficient to meet demand. The regulation sets out conditions that must be met for an airport to be "schedules facilitated" on a voluntary basis or subject to "slot co-ordination". A thorough capacity analysis must first be carried out, which must be done within six months, if air carriers representing more than half of the operations at an airport or the airport authority consider capacity to be insufficient for actual or planned operations, or upon request from the European Commission, in particular if new entrants encounter serious problems in securing slots.

The regulation also specifies that any decision that an airport should be subject to slot co-ordination should be taken following thorough capacity analysis and consultation with users of the airport and that an independent slot co-ordinator should be appointed by the relevant member state. The following airports in the UK are currently subject to slot co-ordination: Birmingham, London City, Gatwick, Heathrow, Luton, Manchester and Stansted; and Bristol Airport is partially co-ordinated for the summer season. Airport Coordination Limited, or ACL, has been appointed as the slot co-ordinator for UK airports, and has been performing this function for some time.

Under the regulation, slots are allocated to air carriers that held the slot in the previous season and have demonstrated use of the slot at least 80% of the time during that season. The remaining unused slots are returned to what is known as the slot pool, alongside any newly available slots; 50% of the slots in the slot pool are available to new entrants. The regulation also makes provision for member states to reserve certain slots for essential domestic services, such as public service obligations, and for slots to be exchanged between carriers or transferred between different routes or types of service.

Finally, the regulation contains provision for reciprocal action, to ensure that Community carriers requesting slots in non-EU countries are treated fairly.

Once again, the draft instrument we are considering makes only minor changes to ensure that the retained EU regulation, Regulation 95/93, continues to function correctly once the UK has left the EU, alongside the domestic Airports Slot Allocation Regulations 2006 which were made to implement the EU regulation. Most of the changes the instrument makes are to ensure that the scope of the retained regulation is correct; for instance, reflecting that the retained regulation will only apply to airports in the United Kingdom after exit day, removing references to "Community law" and EU treaties, and removing or amending references to member states, as these will no longer include the UK after exit day.

[Baroness Sugg]

Through the 2006 implementing regulations, the UK has fulfilled the requirements for member states to appoint a body or person to carry out functions such as designating an airport as schedules facilitated or co-ordinated, and appointing a schedules facilitator. The UK conferred these functions on the Secretary of State through the 2006 regulations. This instrument corrects the provisions in the EU regulation so they read consistently with the 2006 implementing regulations, reflecting that the UK has already fulfilled its obligation to confer these functions on an appropriate authority. Other roles for EU institutions, such as the European Commission's role of carrying out investigations, are removed or replaced.

The instrument also makes corrections to some of the definitions contained in the EU regulation; for instance, substituting the definition of a "Community air carrier" with a definition of a "UK air carrier". For the purposes of allocating slots from the slot pool, the EU regulation defined "new entrant" as including air carriers with few, if any, slots which requested slots for scheduled services between two Community airports where at most two other carriers operate that route. This instrument amends that part of the definition to provide for continuity, so that it captures both air carriers requesting slots for passenger services between two UK airports and carriers requesting slots for services between a UK airport and an airport in an EEA state.

The regulations provide that a proportion of slots can be reserved for PSOs. This SI amends the definition of a PSO in line with the corrections already made to provisions in EU law on PSOs, through the Operation of Air Services (Amendment etc.) (EU Exit) Regulations 2018. This means that, instead of being open to Community air carriers, "qualifying air carriers" will be eligible to operate PSOs in the UK. This will include UK air carriers and carriers from other countries that have cabotage rights in the UK—the right to fly between two points within the UK. As is currently the case, any PSO can be limited to one carrier by the Secretary of State only after a tender process has been followed. This change has no effect on the PSO routes already operating in the UK.

In terms of reciprocity, this instrument amends the provisions in the EU regulation so that, instead of the Commission being able to take action to ensure that Community carriers requesting slots in non-EU countries are treated fairly, the provisions give powers to ensure that UK carriers requesting slots in another country are treated fairly in the allocation of slots at that country's airports. This instrument therefore sets out that it is the Secretary of State, rather than the European Commission, who may wholly or partially suspend the operation of the retained Regulation 95/93 in relation to air carriers from a non-UK country, with a view to remedying discriminatory behaviour of that country. The EU regulation currently provides for this action to be taken through a regulation and this instrument transfers that function to the Secretary of State, who could carry this out through regulations.

Finally, this instrument makes some minor changes to the 2006 implementing regulations, for instance removing the requirement for co-ordination committees at airports to invite the European Commission to meetings. It also makes a change to Annexe XIII to the EEA agreement, which requires parties to the agreement to inform the European Commission about serious difficulties encountered by UK air carriers in obtaining airport slots in third countries. This provision will not apply to the UK after exit day in the event of no deal, as we will no longer be a party to the EEA agreement, so it will be removed by this instrument as it will be redundant.

As I said during the debate on the previous SI, the best outcome for the UK is to leave the EU with a deal, and delivering a deal negotiated with the EU remains the Government's top priority. However, as a responsible Government, we must make all reasonable plans to prepare for a no-deal scenario. These instruments ensure that, in the event of a no-deal exit from the EU, the legislative framework for aviation, in particular relating to the allocation of slots at congested airports in the UK, continues to work effectively, and that the aviation industry has clarity about the regulatory framework in which it would operate in a no-deal scenario. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, this is designed to be helpful, so I hope that my noble friend will not put me in the "troublemaker" category. I will start with a couple of questions on the airport slots allocation. What will happen to the current grandfather rights, in particular those that might be enjoyed by EU carriers? Will they continue to be enjoyed after exit day? If that is the case, and this regulation comes into effect, what will happen to the grandfather rights currently enjoyed by UK carriers in EU airports?

On the civil aviation competition regulations, paragraph 7.2 of the Explanatory Memorandum states—my noble friend clearly said it in her opening remarks too—that it is not expected that this regulation will come into force. That begs a question. I cannot believe that there have been no unfair pricing practices and no cases of subsidy; if there have, what legislation has been used? There are some very worrying issues about this regulation and the European Commission regulation on connectivity which is going through the EU institutions at the moment.

My noble friend raised the question of cabotage rights in the UK currently enjoyed by EU carriers. Of much greater concern is that the market access proposals in the EU regulation currently before the EU institutions set alarm bells ringing, for me and I am sure for many of the UK carriers, when they were set out in December. It is my clear understanding that cabotage rights and fifth freedom rights will be lost.

I declare my interest; I was one of those in the European Parliament at the time who campaigned for years to get cabotage and fifth freedom rights. When I met my husband, who was at the time working for Delta Airlines, my opening line was, "Why will the US Government not allow cabotage and fourth and fifth freedom rights for European carriers in the US?", which I think is currently not the case. If UK and EU carriers are going to retain only third and fourth freedom rights, how can that be in the interests of the UK airline sector?

I am sure that my noble friend is more aware than anyone of the importance of the UK airline sector. It turns around £52 billion a year, exports £26 billion, supports almost a million jobs and clearly supports the economy, whether it is Leeds Bradford Airport or any of the London airports. All international airports support their local economies as well. Therefore I would be grateful if my noble friend could say what the impact will be on UK airlines of the loss of cabotage and the loss of fifth freedom rights in the EU, whether or not there is a deal, because I understand that will be the position anyway, whether it is this regulation or another regulation going forward.

I understand that there will also be an impact on capacity. Obviously airlines such as Ryanair are currently going through difficulties. I am not a shareholder in any airlines. I almost lost my shirt on British Airways, so I am currently not investing in any airlines, but it is fair to say that Ryanair has the potential to expand, as do easyJet and a number of other UK carriers. Did the Government therefore have any input into the decision that has been taken—namely, that UK carriers will be allowed to operate in the EU only at the level that is frozen to 2018 levels? Presumably what is before us would be a temporary regulation, so that if there is a deal then these regulations would not come into play. However, I am extremely concerned that in future we will be locked into the 2018 frequency levels, affecting UK travellers who desire to travel within the European Union and UK airlines that desire to expand. Is there anything the Government or this House can do to reverse that?

At the end of March, the summer season schedules will be published. What are those timetables for flights going to look like? Will they be as full as they were last summer? Will they be provisional and will they have to be revisited?

There is some toing and froing according to press reports as well, and the Government face a deadline imposed by the European Commission of seven months to decide on the make-up and composition of an EU airline. As touched on in an earlier debate, this has severe implications for this regulation—no doubt it will for other regulations as well. It has ramifications for Ryanair, which we imagine is based in Dublin but which has a large number of non-EU shareholders, but of more concern is the UK flag carrier, British Airways, which is now under the umbrella of the IAG. Are we going to face the fact that British Airways under the IAG might not be recognised as an EU carrier?

6.15 pm

I have two more brief points. This regulation and the slot allocation go to the heart of competition and unfair pricing and subsidies, but are the Government minded to make an application to join EASA in the event of no deal, and to look at sharing the position of air traffic control? Since 80% of all north Atlantic traffic passes through the UK's airspace, it would be interesting to know what percentage of it also uses our main airports and hubs.

I obviously welcome the regulations before us this evening, but they raise a number of very difficult issues.

Lord Bruce of Bennachie (LD): My Lords, I also have some questions. One of them arises from the comment made earlier by the noble Lord, Lord Deben, which suggested that some of this is theoretical or even fanciful rather than real, since replacing "EU" with "UK" sounds like a very simple thing. But it is fundamental to the fact that over the years we have developed a UK aviation industry and an EU aviation industry with open skies and much more flexibility in the choice of airlines operating, which could all be about to come to an abrupt halt.

I have questions in relation to domestic issues as well as international ones if we pass this instrument. For example, on the issue of allocation of slots, clearly at the moment the EU can have some exercise, even on slots operating within the UK and between UK domestic airports. As someone who has flown regularly for over 30 years, using many of the UK's airports internally and externally, and who has represented an airport, I have been very exercised by slots which come and go, which are offered and then not used and where actual sanctions against the airlines to maintain a service seem to be ineffective.

Let me slightly bore the House with two of my own experiences from the last two weeks. For the first time in the 30-odd years that I have been commuting from Aberdeen to London, I was unable to get a flight that would get me here on time for the sitting of the House, either this week or next week. This was because British Airways decided not to use its full slots, claiming there is not the demand, despite the fact that every flight is overbooked. Indeed, it is telling us two weeks ahead that there are flights which are no longer available, even for wait-listing, because they are overbooked two weeks in advance, yet it has reduced the slots with no sanctions. Does this regulation have any effect on whether or not that could be done? The Minister will tell me it is a matter for the Civil Aviation Authority. It may well be, but I hope the Government will recognise that it is a matter of public interest if people cannot get the flights they would reasonably expect.

On the issue of what will happen to UK airlines seeking to maintain flights to the EU after 29 March, we know that easyJet has already resolved that situation for itself by relocating its headquarters to Vienna. There is a serious possibility that British Airways may have to relocate its headquarters to Barcelona or Madrid, since the EU appears to be saying that it does not recognise the IAG as an EU company because its headquarters are within the UK. I see the Minister shaking her head. I would be interested to know whether she has any updated information as to whether BA can resolve this issue without having to relocate its headquarters out of the UK. It would be somewhat ironic if our flag carrier was headquartered in Madrid or Barcelona.

The other issue relates to when airlines merge. For example, at present we have limited competition between Aberdeen and London, operated by Flybe. Flybe has sold itself for £1 or £1 million—I cannot remember which, but it was a very small amount—although this is being disputed. The question we are left with is what guarantees there would be for those slots if Virgin and its partners took over Flybe. Would it come under UK law?

[Lord Bruce of Bennachie]

Would there be any EU intervention—or would there have been—and how would it be enforced? So, although the Minister said that the competition regulation has never been applied within the EU, if the UK becomes a third country, could it not then be used by the EU as a discriminatory weapon against us if we are seeking reciprocal rights?

For example, the UK Government may well say that on 29 or 30 March all airlines will be free to continue operating into the UK on exactly the same terms as they do currently. We can do that, but is there any obligation on the EU to reciprocate? If there is not, does this mean that we will be offering free access to all our airports for continental airlines but UK-registered airlines will potentially be denied all access to theirs? Facing this kind of uncertainty is pretty catastrophic 45 days out from Brexit. So of course people are wondering whether they should book flights. I have rashly booked flights to the continent in May and August, mainly because if you do not book them in time they are not available—but they are subject to uncertainties that may or not be resolved.

The Minister needs to answer some basic questions. To what extent will we be in the same situation as we are now? To what extent will the ability to change the rules and regulations unilaterally be open to the UK? If we do it, what will be the implication for our relationship with the EU? Or are we simply saying that we are transferring the law by replacing "the EU" with "the UK" but have absolutely no comment to make on how the EU is going to operate, what sanctions or otherwise it may impose or what redress we may have. I may have read it wrongly, but this reads to me as an entirely unilateral operation by us, with no guarantees that the EU will reciprocate any of it.

Lord Balfe (Con): My Lords, the Chamber is much emptier now than it was for the earlier SI. I am intrigued that we are replacing the air services competition regulations, which apparently have never been used, with an SI which we hope will never come into force. This is almost comedy stuff. The Explanatory Memorandum states that,

"this instrument makes the corrections needed for it to function as domestic UK law after Exit day".

What is the position regarding the replacement? If negotiations on it are going on at the moment, presumably the Department for Transport is involved in them. I would be interested to hear where they have got to. Are they on the point of producing the replacement or is it some way down the line? If it is on the point of being replaced, do the Government envisage bringing forward another SI to reflect the new regulation? Or will this be the first instance when we are seriously at variance with Europe: in other words, when it adopts a new regulation but we are still working on an old one? This picks up the point I made earlier this afternoon when I asked about divergence between Community and UK law. It needs to be addressed.

One always learns things in these debates. I was fascinated to learn that my noble friend—and good friend—Lady McIntosh began her romantic life by talking about cabotage. I found something else to talk about when I first met my wife, but we do not need to go into that. Looking at the slot allocation regulations, the question that keeps coming to me is: why should any airline stay based in the United Kingdom at all? What advantages are we going to offer them? I can see the advantage in being in a union of 27 countries where there is a common base and common legislation, but what will be the advantage of being a UK airline? I can see none at all. Britain cannot do without airlines. We are not going to stop them flying here, but at the same time we have nothing to offer them that will be better, in any way, than what they will be getting from the EU. The Commission will no longer have a role in relation to airports.

According to the explanatory statement, article 9 says:

"Instead of any invitation to tender to operate a",

public service obligation,

"route being open to Community air carriers only, this will be open to all air carriers with traffic rights to operate services within the UK".

Is not the logical corollary that our rights to bid for public service obligation slots in the rest of Europe will be withdrawn? If we are going to open up and say that non-EU airlines can bid for these slots, surely the natural reaction would be to say that we are changing the whole basis of things. So this is not bringing EU law into UK law; it is bringing it in with one quite fundamental change, by opening it up to all air carriers with traffic rights to operate services within the UK. What is the thinking behind this? Why have we inserted this into a regulation that is supposed to bring EU law into line with our law, while making a big divergence by letting non EU-registered airlines bid for these slots? I would welcome the Minister's observations on why this has been done.

Baroness Randerson (LD): My Lords, the services SI is about unfair practices. It allows penalties to be imposed on air carriers guilty of unfair practices against the UK industry. Since these powers have apparently never been used at an EU level, it is probably right, just for once, to say that this is purely technical—although the Minister forbore to say so. However, the concept of an EU-wide approach, which is what we are abandoning here by replacing "EU" with "UK", would be much more likely to be an effective deterrent against such practices than the UK operating on its own. The noble Lord, Lord Balfe, has just wondered out loud why an airline would base itself in the UK in future. This is another example of how we are opening ourselves up to being in a much more vulnerable position through our future isolation.

In her introduction, the Minister said that these EU regulations were being replaced. Will she clarify whether the Government intend, in due course, to replace this SI with an updated version when the EU has updated its regulation—or are we going to be stuck in a time warp with outdated legislation?

6.30 pm

As my noble friend has made clear, the allocation of slots is a controversial subject in some quarters, and it is hugely important for our busiest airports. This SI confers powers on the Secretary of State, subject to international guidelines from organisations such as IATA. Given that the current laws are controversial in a number of ways, could the Minister explain to what

extent international regulation and current EU legislation guide the slots allocation process? There are issues of planes flying empty in order to maintain slots, and there are very expensive auctions of slots. The noble Lord, Lord Popat, who is not in his place, has run a lively campaign highlighting how difficult it is for new companies to acquire slots and, therefore, open up new markets. I am interested in hearing from the Minister how exactly—or whether to any extent—there might be a change in the approach to the allocation of slots.

The SI also includes reference to public service operations, which in future will be open to all carriers operating in the UK, not just EU carriers. I wonder about that process in the way the noble Lord, Lord Balfe, did—are the Government really happy to open this up on a worldwide basis? These are highly prized contracts. They are, after all, subsidised. They are on routes which are really important for keeping remote areas linked, both socially and economically. Do the Government intend to continue with the same stringent rules which have been imposed under the EU, or are they planning a different approach in the future?

I finish with the point I made before—the Minister will be well aware of the issue. In Paragraph 7.15 of the Explanatory Memorandum, says:

"With exit day less than six months away"—

if only.

Lord Tunnicliffe (Lab): My Lords, I shall speak very briefly on these two instruments—there is no way we will oppose them. The first one is on competition. One's enthusiasm for scrutinising in depth was somewhat killed by the first sentence in paragraph 7.2 of the Explanatory Memorandum, which says:

"The powers in the EU regulation have never been exercised and it is unlikely that they ever will be".

At that point, I gave up detailed examination. This boils down—if there ever is a dispute in this area—to us having moved from a big gang called the EU to a little gang called ourselves. That is why I am not keen on crashing out of the EU without an agreement, because being part of the EU is, broadly speaking, a good thing when it comes to aviation.

I have some experience of the slots issue. The trouble is that it is 30 years old, so things may have changed, but I doubt it. In a sense, the general public do not realise what an airline is. An airline is, first and foremost and overwhelmingly, a timetable—you attach airplanes, crews and marketing to it, but you start with the timetable. In fact, I chaired one of BA's internal committees which oversaw the process of developing the timetable, and the slots are a key part of it. They work, frankly, because there is an international consensus between airlines, airports and regulating authorities that the various slot allocation committees at various airlines will be co-ordinated on a worldwide basis to make the system work. This system has been fiddled with, but it has been pretty robust for 50 years. I take comfort from the Explanatory Memorandum, which says, as it should:

"The system relating to slot allocation at UK airports will remain unchanged",

by this SI. Providing the Minister reaffirms that, it will have my support.

We have heard some comments. These would require policy changes to meet the challenges that the comments are directed at. I remind noble Lords that the one thing you cannot do under Section 8 of the European Union (Withdrawal) Act 2018 is introduce any policy changes. In so far as that is the instruction to government in generating these SIs, I have to support the fact that, as far as I can tell, they have followed that instruction.

Baroness Sugg: My Lords, I thank noble Lords for their consideration of these draft instruments. On the slot allocation system, we are not moving to operate on our own. The current system of slot allocation, including the EU regulations, is based on guidelines produced at an international level by IATA. Those guidelines are not affected by EU exit. The system for slot allocation at UK airports will be the same after exit day as it is today, except that the role of the EU Commission will no longer apply.

The noble Lord is quite right to point out that slot reform in general has been around for some time, but there is an international consensus around this and we are considering it in our consultation strategy, *Aviation 2050: The Future of UK Aviation.* We set out a number of potential issues with the current process for slot allocation affecting competition in the aviation markets, such as historic grandfather rights and retiming, but there is a long-standing international system, so we will work very closely with the industry, IATA and countries with which the UK has aviation links to discuss that.

My noble friend Lady McIntosh asked whether current grandfather rights will be the same. Again, those will remain the same after exit day. As the noble Lord, Lord Tunnicliffe, pointed out, this does not change any policy on this and those rights that UK carriers have at EU/EEA airports will also not be affected.

On the point about the replacement of the competition regulation, raised by the noble Baroness, Lady Randerson, and my noble friend Lord Balfe, the UK has participated fully in the legislative process regarding the replacement regulation; it is now ready to be put to the European Parliament and the Council of Ministers, and it is intended to serve the same purpose as the current regulation—ensuring fair competition. But the powers, as I said, and as highlighted by my noble friend Lady McIntosh, have never been exercised and it is unlikely that they ever will be. The EU has reviewed the regulation, but the vast majority of our bilateral air services agreements have articles governing fair competition, and these are what we use to ensure that there is a level playing field in the operation of international air services. That is why it has not been used and we do not expect it to be used.

My noble friend Lord Balfe asked, as he did previously, about our future plans. We keep our legislation under ongoing review and will continue to do so after exit day to make sure that it meets our policy objectives and legal obligations. While we would not be under an obligation if we left without a deal, if we chose to implement the replacement regulation it would be through primary legislation. Again, my noble friend is right to point out that, of course, in the event of a no-deal exit the EU's statute book will continue to move on and we will need to be flexible about ours.

[Baroness Sugg]

My noble friend Lady McIntosh asked about timetables. Airlines have already published their timetables for flights post March 2019 and tickets are being sold. The noble Lord, Lord Bruce, asked about Aberdeen and the allocation of slots. As I mentioned before, slots are allocated through ACL and the EU: the Government have no role in the allocation of slots and airlines determine how they are allocated on a commercial basis. Of course, if a carrier does not use its slots 80% of the time, they will be returned to the slot pool for allocation. We have the option of PSOs if needed, but the decision about specific slots will be down to the commercial airline.

My noble friend Lady McIntosh asked about the EU regulations. She is right to point out that they were published in December. There has been many a conversation on those, through industry and through member states. We are seeing some proposed changes, particularly on a capacity freeze, as my noble friend pointed out. I agree with her that the aviation sector is incredibly important to this country, which is why we are working hard to ensure that the industry can continue to grow sustainably. She is right that there are issues around ownership and control. We have not seen the headquarters of easyJet move but we have seen easyJet take on a Swiss air operator certificate. There is no immediate issue, as my noble friend pointed out, but, as one might expect, EU carriers are working closely with the Commission on that.

We are seeking continued participation in the European Aviation Safety Agency. That will help us continue trade as well as flights. We have played a significant role in EASA over the years and we very much hope to continue to do so. PSOs will be open to qualifying carriers—those with cabotage rights in the UK—and that has already been fixed in the operation of air services SI. Those carriers with cabotage rights could include those from the EU and other countries, so there will be the same requirements for PSOs going forward.

I hope that I have answered most of the questions. If I have not, I will follow up in writing.

Baroness McIntosh of Pickering: On the question of the damage to UK carriers arising from the loss of cabotage rights and freedom rights, do we have any estimate of what that will be?

Baroness Sugg: We are working very closely with the Commission on that. Obviously, there are implications both ways. We remain committed to working with the Commission on the regulation to avoid that. Of course, there are UK airlines which fly cabotage in the EU, in the same way that there are EU airlines flying cabotage in the UK. That is another example of how it is in our mutual best interests to ensure that we continue the market access we have today. Those discussions are ongoing and as soon as I have an update on them I will be happy to share it with noble Lords.

While we are working to agree a deal with the EU that is supported by Parliament, we need to continue our responsible preparation. Both the UK and EU have set out their intention to put in place arrangements to ensure that planes will continue to fly; none the less, these instruments are essential to ensure that we have a legal framework, particularly in respect of the allocation of airport slots, that continues to work effectively in the UK from exit day. That will help ensure the continued smooth operation of air services, irrespective of the outcome of the negotiations. I beg to move.

Motion agreed.

Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019

Motion to Approve

6.44 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 10 December 2018 be approved.

Motion agreed.

Motor Vehicles (Wearing of Seatbelts) (Amendment) (EU Exit) Regulations 2018

Motion to Approve

6.45 pm

Moved by ***Baroness Sugg***

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

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, these draft regulations are made under the powers conferred by the European Union (Withdrawal) Act 2018 and will be needed if the UK leaves the European Union without a deal. They amend domestic seat belt-wearing legislation to ensure that it continues to work following withdrawal in the event of no deal. They make technical changes and do not alter policy. In Northern Ireland, seat belt-wearing legislation is a transferred matter. Of course, the Government remain committed to restoring devolution in Northern Ireland, but with exit day six weeks away, and in the continued absence of a Northern Ireland Executive, in the interest of legal certainty the Government will take through the necessary secondary legislation at Westminster for Northern Ireland. This has of course been done in close consultation with the Northern Ireland Civil Service.

Compulsory seat belt wearing has been in place for 36 years. Subsequent obligations have been placed on front and rear seat passengers domestically. The purpose of this statutory instrument is to correct technical deficiencies that would arise domestically if we were to exit without a deal. This will enable us to maintain a functioning statute book and retain the clarity that might otherwise be lost. The instrument maintains the status quo in terms of seat belt and child restraint use obligations and the recognition of medical exemption certificates. It does not diverge from the robust legal framework we already have in place. The current EU Directive 91/671/EEC sets out the requirements for compulsory seat belt wearing. There are exceptions and caveats but the basic position, stemming from the directive and incorporated in domestic law, is that for

cars, vans and lorries, seat belts must be worn where fitted. Children must also use a suitable child restraint system, and children under three cannot be transported if there is no safety system in the vehicle.

Drivers and passengers who have a medical condition making it inadvisable for them to wear a seat belt can be issued with an exemption certificate. The Road Traffic Act 1988, The Motor Vehicles (Wearing of Seat Belts) Regulations 1993, and The Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993 require drivers and passengers to wear adult belts, including those approved in "another member State", and recognise child restraints approved in "another member State". They also recognise medical certificates exempting a person from the requirement to wear a belt issued in "another member State". The Road Traffic (Northern Ireland) Order 1995, the Motor Vehicles (Wearing of Seat Belts) Regulations (Northern Ireland) 1993, and the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations (Northern Ireland) 1993 have the same effect in Northern Ireland. This draft instrument makes the necessary changes so that the regulatory regime in place after exit continues to operate as it does now.

The regulations remove existing powers and duties in the Road Traffic Act 1988 and the Road Traffic (Northern Ireland) Order 1995, which exist to make subordinate legislation for implementing an EU directive. The powers and duties that are being removed relate to the implementation of the EU seat belt directive. Once the UK has exited the EU, it would no longer be appropriate to retain the powers and duties to implement the obligations imposed by a European directive. We will retain existing domestic powers in the Road Traffic Act 1988 and the Road Traffic (Northern Ireland) Order 1995 to enable Government to maintain, and amend where necessary, the existing legal framework governing seat belt wearing. This SI replaces the duty to provide an exemption from wearing a seat belt for any person holding a certificate issued in an EU member state with a power to do so.

The regulations replace the term "another member State" with "a member State" where it occurs in domestic legislation. This is necessary to ensure the law remains clear and continues to have its current effect. Without these changes, the relevant provisions might be rendered ineffective. Changing this terminology will ensure that medical certificates issued to drivers and passengers in EU member states who cannot wear seat belts because of a medical condition continue to be recognised in the UK.

The change in terminology will also ensure that passengers are obliged to wear an adult seat belt even when the only belt available was approved by an EU member state and is not otherwise compliant with use in the UK. That is important because there is an exemption from the requirement to wear a seat belt if a compliant seat belt is not available. If such seat belts ceased to be compliant by virtue of our not making this technical change, then their non-use would no longer constitute an offence. We want to be clear that, in simple terms, if a seat belt is available then it must be worn. After exit day, any lack of clarity over what constitutes a compliant seat belt could lead to confusion, which would clearly be neither a safe nor a sensible policy.

It is similar with child restraint systems. The final effect of the change in terminology is to ensure that driving in the UK with a child restraint system that would meet the requirements of the law of an EU member state, but that would not otherwise meet the requirements of domestic legislation on seat-belt wearing, does not become an offence. That is to try to avoid confusion for any family travelling to the UK over whether that child restraint is legal.

We have in place a robust legal framework in respect of seat-belt wearing which aims to improve road safety. In the interests of safety, we want that framework to continue after exit day. The Government want to ensure that domestic seat-belt legislation continues to work in a way that retains good travel, tourism and business access from EU member states following the UK's exit. For this to happen, we need to ensure that the legislative basis is sound and that the statute book functions properly. I beg to move.

Baroness Randerson (LD): My Lords, I will begin by pointing out that Paragraph 7.8 of the Explanatory Memorandum says:

"With exit day less than one year away".

I keep repeating this because I want to know where these SIs have been all this time. Someone clearly did the work on them a long time ago, and we are now rushing them through this House. Why have they been left to this late stage?

That is my complaint over with. Turning to the issues in this SI, as the Minister has said, it is a simple transposition. But it is an important topic, because hundreds of thousands—probably millions—of British people travel abroad to Europe every year. A very large number of them take their car, and could therefore start off with perfectly legal seat belts only to find themselves in an illegal situation by the end.

This SI basically says "If it is legal in the EU, it will be legal in the UK. If you are exempt in the EU, you will be exempt in the UK". What about UK drivers going to the EU in the situation I have just explained? Has the EU indicated what it intends to do in the event of a no-deal Brexit? On some transport issues, it has given a fairly clear—if not always desirable—indication. Has it made any comments on this at all?

Those who are in favour of Brexit, including the Secretary of State, want the freedom to develop our own standards. If we do, will we be guaranteed that, when we go to Europe with, say, our child's bumper seat—which people often take with them on holiday—it will be legal when we get there?

There has been a lot of coverage lately of the end of the EU medical insurance system as it applies to UK residents. Is there a set format for the medical certificates referred to in this SI? Is there a particular form or list of medical professionals who can sign these certificates? My point is, how easy will it be in future for UK citizens to get a certificate of medical exemption that will be instantly recognised as authentic and acceptable, even by someone who perhaps does not speak English? To reverse that, if there is an EU format, then we will clearly be used to it, and the authorities in Britain coming across someone with a medical exemption would know about it.

[Baroness Randerson]
I am trying to tease out the way in which British people will be treated in future when they drive in the EU.

Lord Tunnicliffe (Lab): My Lords, leaving the EU without an agreement is a thoroughly stupid thing to do, but if it happens, this SI is thoroughly sensible and we will not oppose it. My understanding, which I think is the same as that of the noble Baroness, Lady Randerson, is that it is not symmetric: that it does nothing for UK drivers in the EU but sensibly addresses the issue of drivers who would unknowingly be breaking the law were this SI not completed. It produces a sensible environment in which friends—as I would call them—from the European Union can drive in the UK.

Baroness Sugg: My Lords, I thank noble Lords for their consideration of these draft regulations. As the noble Baroness pointed out, these regulations are important—seat belts save lives. In 2017, 27% of car fatalities involved people not wearing a seat belt, and we need to ensure that as many people as possible wear them. That is what these regulations are designed to do.

I take the noble Baroness's point on the Explanatory Memorandum. The drafting of some of these has been a lengthy process—with consultation, legal checks et cetera—but I take her point, and we will endeavour to do better for future as we get closer in.

Both the noble Baroness and the noble Lord mentioned reciprocity. This SI only makes provision for continuity of current practices in so far as visitors from the EU to the UK, and drivers in the UK, are concerned. It does not address what will happen in the EU; that will be decided by the European Union.

There will be no legal obligation on member states to recognise medical certificates issued in the UK. In the event of no deal, we will recognise medical certificates. We think that is far and away the easiest way to do it. But no reciprocal agreement has been confirmed by the EU, so we advise anyone holding such a certificate to check the position with any country to which they intend to travel. There is a current format which we provide to GPs—it is essentially a GP certificate. They are responsible for issuing them, and we will ensure that that format is consistent when we leave the EU. We cannot guarantee that they will be recognised, but we would like very much to think that they would be in the same way that we will recognise theirs, although the EU has not yet confirmed that.

There is no change on seat belts. The EU directive requires drivers and passengers to wear them, if they are fitted, so the position there will stay the same. At the moment, the standards for child restraints are set at UNECE—the United Nations Economic Commission for Europe—which, despite having the word Europe in its name, as we discussed in the Automated and Electric Vehicles Bill, is an international body. It will continue to set those standards, and we will continue to follow them. Child restraints which meet the UNECE international requirements will be recognised by the EU; the vast majority of UK child restraints meet those requirements.

I think I have covered most questions. Again, if I have missed one, I will follow up in writing.

In conclusion, this SI will ensure that the domestic seat-belt wearing legislation continues to work as at present. The point of the SI is to maintain the status quo, both in terms of seat-belt and child restraint use obligations and in the recognition of medical exemption certificates from EU member states. The Government's objective is to maintain the status quo to avoid difficulties that would be encountered by drivers and, indeed, enforcers if existing legislation remained untouched. I hope noble Lords will agree that this is sensible in respect of laws relating to the wearing of seat belts.

Motion agreed.

Motor Vehicles (International Circulation) (Amendment) (EU Exit) Order 2019

Motion to Approve

7 pm

Moved by ***Baroness Sugg***

That the draft Order laid before the House on 19 December 2018 be approved.

Relevant documents: 14th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, this draft order will be made under the powers conferred by the Motor Vehicles (International Circulation) Act 1952 and is needed in all EU exit scenarios—thus differing from many of the SIs we have discussed—as the UK has ratified the 1968 Vienna Convention on Road Traffic. The order amends the Motor Vehicles (International Circulation) Order 1975, which sets out the powers of the Government to issue international driving permits—IDPs—to ensure that UK motorists can exercise their international legal right to drive overseas.

As I have said before, the best outcome for the UK is to leave the EU with a deal, and delivering a deal is the Government's top priority. In the event of no deal, the Department for Transport is working to achieve an agreement on mutual recognition of driving licences with EU member states. If we do not have a deal that will be by far the preferred scenario but, as a responsible Government, we must make all reasonable plans to prepare for a no-deal scenario and prepare in case we do not achieve mutual recognition.

While UK nationals will not be required to purchase an IDP if we achieve those agreements, this amendment is still necessary as the Vienna conventions come into force on 28 March 2019, irrespective of whether a deal is reached. Therefore, the 1968-format IDP is still required to guarantee licences when driving in over 75 countries outside the EU.

The EU is a popular destination for UK licence holders. Millions of UK motorists drive to Europe every year using ferries or Eurotunnel, whether for business or leisure, and many UK holidaymakers want the option to hire cars while abroad. Although we are still in the process of negotiating with the EU, we are committed to minimising disruption to UK motorists following exit and the department has taken the appropriate measures to achieve this goal.

The 1968 Vienna convention facilitates international road traffic and increases road safety through consistent traffic rules. In preparation for exit day, the UK ratified the 1968 Vienna convention on 28 March 2018. This international agreement will come into force on 28 March 2019 regardless. Following exit day, this convention will guarantee the recognition of UK vehicles and driving licences in 23 EU member states, plus Norway and Switzerland, and over 70 other countries globally. The earlier 1926 and 1949 conventions also remain in place, guaranteeing UK licences in four EU member states—different member states have helpfully ratified different conventions—plus Iceland and over 40 countries globally, including Japan and the USA, if the motorist presents the supporting IDP with their driving licence.

The draft instrument we are considering is necessary so that the Motor Vehicles (International Circulation) Order 1975 continues to function correctly after exit day. This is needed to provide certainty for UK motorists driving in the EU following exit day in case of a no-deal scenario if mutual recognition of licences is not agreed.

This SI will amend provisions of the Motor Vehicles (International Circulation) Order 1975 to implement provisions of the 1968 convention. These amendments will extend the 1975 order to the 1968-format IDP, and the power to charge a fee for the issuing of IDPs will extend to IDPs issued under the 1968 convention, in addition to those issued under the earlier 1926 and 1949 conventions. The 1968-format IDP will cost £5.50 and will be valid for three years. This amendment therefore ensures that UK motorists can exercise their international legal rights to drive in the countries party to the 1968 convention. If passed, this statutory instrument will become the main legislation on IDP issuing.

The existing SI on IDP issuing is the International Driving Permit (Fees) (EU Exit) Regulations 2019. This temporary measure has been in place since 1 February 2019—it came as a negative SI—and was required to allow charging for the issuing of IDPs under the 1968 convention from 1 February. We brought that in so that people were able to apply before exit day for these IDPs, should they be needed. Once the international circulation amendment comes into force, a separate negative SI will be required to revoke the 2019 IDP fees regulations.

These amendments also provide for the recognition of a 1968 IDP issued to non-UK residents who are temporarily visiting the UK by another country which is party to the convention. While the UK has announced that we will continue to recognise both EU and non-EU driving licences for non-residents driving for up to 12 months in the UK, IDPs may help provide legitimacy if the licence is not printed in the Roman alphabet or is in a different language.

It is also important to stress that even though Ireland is a party to the 1949 convention, UK driving licence holders should not need an IDP to drive in Ireland from 28 March 2019. Ireland, like us, does not currently require IDPs from holders of driving licences from non-EU countries. This means that IDPs will not be required when driving between Ireland and Northern Ireland.

While we are still seeking agreements with member states on licence recognition and exchange, this SI will ensure that we can issue IDPs to provide certainty for UK motorists if they want to travel in the EU following exit day. IDPs have been issued for many years under previous international conventions, so while the concept may not be new, this SI will expand the number of countries that an IDP can be used in and will enable us to issue and charge for this document. The 1968-format IDP actually has a longer validity period and therefore reduces the frequency of reissuing. I beg to move.

The Earl of Dundee (Con): My Lords, can my noble friend comment on a few points? First, the European Union general safety regulations are expected shortly, before the end of March. Can she reassure noble Lords that post Brexit these standards will be observed and matched by the United Kingdom? Secondly, regarding reciprocal arrangements affecting uninsured drivers after EU withdrawal—and not least if there should be no deal—what protection would there be for a driver insured in the United Kingdom who has a collision in France with an uninsured vehicle, for example? Thirdly, post Brexit the desired aim is to make it as simple as possible to get hold of and use an international driving licence. In response to questions in another place the Government have already undertaken to reduce unnecessary complications, in particular by seeing whether there can be an international driving permit app for mobile phones, thereby avoiding the inconvenience of paper copies. What progress has been made on this?

Baroness Randerson (LD): My Lords, it is important to start by mentioning that a special report by the Secondary Legislation Scrutiny Committee drew attention to deficiencies in the Explanatory Memorandum and to the fact that this is an important policy issue. There are many controversial aspects to it, so I am very disappointed that there was no proper consultation. This could seriously inconvenience members of the public. In fact, if they are not familiar with what is now required of them, or could well be required of them in the event of a no-deal Brexit, they could end up with a conviction abroad that could have serious consequences—even for their careers.

As the Minister has explained, there are two sorts of IDP: one based on the 1968 Vienna convention, which the UK Government have only recently ratified and which will come into force on 28 March; and one relating to the 1949 convention. I draw attention to paragraphs 7.2 and 7.6 of the Explanatory Memorandum. If you read them without full attention—even five times—they are extremely complex and confusing. If that is the sum of the Government's efforts at explaining the arrangements, the average casual observer is unlikely to understand what is going on.

As a result of reading the Explanatory Memorandum several times, I believe that there are two types of international driving permit. Twenty-three EU states plus Norway and Switzerland abide by the 1968 convention IDP, and Cyprus, Ireland, Malta and Spain abide by the 1949 convention IDP. Of course, you could easily need both to go on holiday. If you want to go on holiday to Spain and plan to drive down through France, you will need both.

[Baroness Randerson]

Until now, international driving permits have been provided by the AA and the RAC. For no clear reason the Government have decided to abandon that arrangement and to use post offices instead. I am very keen on using the Post Office but I wonder whether now is the time to abandon a well-worn system and to start all over again with a new one. I would feel better about using just post offices if we were going to use all post offices—but the Government will be using only 2,500 of them, and I was not terribly reassured by the point made by the Explanatory Memorandum that most people will be within 10 miles of an issuing post office. Ten miles is an awfully long way to go to get a document.

According to the report from the Secondary Legislation Scrutiny Committee, under the new arrangements Northern Ireland will have only two post offices issuing permits. I would like the Minister to clarify that the Government have had second thoughts about that and that it is no longer the case. My concern is that there is no online system and that the Government have abandoned the previous mail order system operated by the AA and the RAC. Saying that you can get a permit only by going into a post office and queueing up is a really 19th-century approach.

Another point that really concerns me is that there are no arrangements for issuing IDPs abroad. I declare an interest: my son lives and works abroad with his family. What about people like him who are already there? Will he have to come home to collect an IDP from the Post Office in order to continue to be able to drive legally in Europe in the event of a no-deal Brexit?

The Minister clarified one of my other questions, which was the legal basis for the Government taking over the issuing of IDPs on 1 February through a negative instrument.

My other concern is about the lack of publicity. There is something on the government website, but that is for those who spend their leisure time looking through GOV.UK for fun. Publicity is needed that tells people to go to that website to find out which sort of IDP they need. It is no good relying on just putting something on the website. That is where you get clarity once you know that there is a problem. Therefore, what are the Government's plans for publicity to build up public understanding, knowledge and awareness of this issue? It is not simple; it is complex. It appears that one form of IDP lasts for three years—unless your driving licence does not last that long, in which case it might last for less time—and the other lasts for only a year. Supposing that you go regularly to Spain on holiday, you might be able to plan ahead for three years with one of your IDPs but you will need to apply every year for the other one. This is not a simple situation.

7.15 pm

A huge issue is the resources being devoted to this matter. I remember the National Audit Office estimating that it could involve up to 7 million permits. The Government dispute that and I accept what they say, but it could easily be the case that millions of IDPs will need to be issued. The Government do not seem to have put in the resources to provide enough post offices to issue the permits, to set up an online system or to provide the necessary publicity. I remember the time, prior to EU membership, when we needed IDPs to travel abroad. That was an age when an annual week's holiday abroad was exotic, and it was confined to relatively few people. It was an age when the idea of hiring your own car was very adventurous. Nowadays, people pop over to Europe for a weekend for a city break or whatever. They make up their mind at the last minute, and they book their hotel and car hire online.

Thanks to this Government, it seems that we are being taken back to those days in the early 1970s before it was easy to drive abroad and before we had the internet to help us book our holiday. The Government have to come up with something better. They have to dig themselves out of the 1970s and develop a modern system, and they have to provide the resources that are needed for the public to understand this. I can understand why the Government regard it all as a bit of an embarrassing secret, but they have to tell people about it in order to prepare them.

Lord Tunnicliffe (Lab): Well, once again we have in front of us an SI that brilliantly illustrates why we should not leave the EU without a deal. I gather that it rests on two treaties. I commend the noble Baroness, Lady Randerson, for the depth of her research on this issue. Mine was a little more superficial. I quite like the 1968 treaty, which we agreed to ratify 50 years later. I know that it is 50 years because I got married in 1968, and I can tell noble Lords that 50 years is a long time.

The SI creates a messy situation around IDP availability. This will be necessary for UK motorists, so, despite all the caveats, it is sensible that it is being brought forward. It recognises overseas motorists' IDPs, which, again, is a good thing, and the arrangement is reciprocal.

Lord Steel of Aikwood (LD): I have come to show a proper interest in European matters.

Lord Tunnicliffe: Good. I share the concern expressed by the noble Baroness, Lady Randerson, about the resources that have been devoted to this. I shall be very happy to be told that I have misinterpreted this, but it seems to me that the day after this treaty becomes active—that is, 29 March 2019—we will have a cliff-edge situation. If we crash out without a deal, motorists will arrive in overseas countries illegally. The estimate of 7 million might be too high but, as I read the situation, technically an awful lot of people will need an IDP on the very first day. Can the Minister try to convince us that the processes necessary to meet such a sudden demand, and the plans for publicity so that the motoring public know, can be put in place so that we do not see many British motorists arriving overseas and finding themselves prosecuted?

Baroness Sugg: My Lords, I thank noble Lords again for their consideration of the draft regulations—the last of ours today. In the event of no deal, we remain confident that we will achieve mutual recognition and exchange agreements for driving licences with the EU and member states. As I said, we recognise EU and non-EU driving licences and very much hope that EU member states will also do so, which will remove the complexity

of the system. But, obviously, until we have that agreement we must be prepared for all scenarios, so it is important to ensure that we can issue IDPs under the 1968 Vienna convention to provide that certainty for UK motorists driving in the EU.

I will respond to some of the questions raised. My noble friend asked about uninsured drivers. We intend that the UK should remain part of the green card-free circulation zone, and we are working towards that. We are seeking reciprocal arrangements to ensure that UK drivers who are hit by an uninsured driver, for example in France, can obtain compensation from the French national insurers' bureau. On safety regulations, we have one of the best road safety records in the world; I am not familiar with the specific document which my noble friend referred to, but I assure him that we will work to continue and maintain that good safety record.

On the IDP format and the idea of an app—a new one on me, but I like the sound of it; you could perhaps called the IDP look "traditional"—the format is specified in the UN conventions, and at the moment an app or electronic document is not applicable. However, I agree with my noble friend that we should consider that in order to modernise and to enable permits to be applied for more easily.

On consultation, obviously this affects a huge number of people. We did a lot of consultation around the 1968 Vienna convention, which brought this in, we have held many discussions with motoring organisations such as the AA, the RAC and the RAC Foundation, and we have also had separate engagements with consumer associations, which are helping us to provide guidance to people.

On the communications point, I agree that the Government's duty is to ensure that UK licence holders are provided with the correct and sufficient information to make sure that they are ready for the changes. As I say, we hope that they will not be needed. We have published guidance on GOV.UK, which covers everything, such as the type of IDP you will need in each member state—the noble Baroness was right to point out that you will need different IDPs if you are driving from France to Spain, which, just to add to the confusion, are valid for different amounts of time. The Post Office website also provides information on your nearest IDP-issuing branch, and which countries you will need which IDP for, and it will continue to update this guidance as we progress, I hope, with achieving bilateral agreements.

We have a public information campaign that ensures that UK nationals have all the information and advice they need to continue to plan and book their travel to Europe. It includes radio adverts, Spotify adverts and social media. As I say, we are in no way complacent that we will achieve this deal and IDPs will not be needed—that is why we are bringing forward these SIs. However, if we do not get a deal—I agree with the noble Lord that this is a very good example of why we need a deal—there is still the option of the mutual recognition of driving licences, which we are moving towards, especially as we are 45 days out. If we are closer to exit without this agreement and it looks less likely that we get it, I absolutely agree with the noble Baroness that we need to do all we can to ensure that we communicate that.

Baroness Randerson: Can the noble Baroness specifically address the issue of people living abroad—there are millions of Britons live abroad—and how they would obtain an IDP, and whether specific publicity will be aimed at them?

Baroness Sugg: The noble Baroness was right to point out that, sadly, we are not able to issue these abroad, in the same way that we are not able to issue driving licences abroad, which obviously gives expats in particular specific problems. We are working actively with the Foreign Office to communicate with UK nationals who live overseas, using the normal consular routes to provide information on that. We are encouraging UK licence holders already resident in EU or EEA countries to exchange their licences ahead of exit day, which will avoid the potential for them to have to retake tests. IDPs are designed for visitors, not people who are resident in another state, so we are providing clear advice to people who are resident in another state that they should exchange their licences ahead of exit day.

Baroness Randerson: I am grateful to the noble Baroness for giving way again. The concept of "resident in another state" is in itself quite old-fashioned. People go to work for six months, three months, even a year. They will not want to change their driving licence to make life even easier for them in that period of time; they will want an IDP for a short time. Of course, they have not had to bother about all this up to now.

Baroness Sugg: I agree with the noble Baroness. This is why we recognise EU and non-EU driving licences for a period of up to 12 months, for people to drive if they are not resident, because of the changing nature of how people live and work. That is why we very much want to achieve mutual recognition. However, if that is not possible, we will be in a situation where people will have to apply for IDPs before 1 March.

On resourcing, which both the noble Baroness and the noble Lord brought up, as did the SLSC, we have expanded the turn-up-and-go service for issuing IDPs from 89 originally to 2,500 post offices, which means that 90% of the UK population live within 10 miles of an issuing branch. We have also optimised that branch network to ensure that there is a good level of availability at locations that are points of departure for UK motorists, such as ferry ports and airports. The noble Baroness is quite right to point out that there were not enough post offices in Northern Ireland that could issue IDPs; that has significantly increased from two to around 100. We have had confirmation that all the staff have been trained on how to issue all three different formats, and, while this will be demand led, should demand increase, we have the facility to expand the services to an additional 2,000 post offices, which will mean that 90% of the population will live within three miles of an issuing branch.

It is difficult to quantify how many of these we will need, given that we do not have clear data on individual journeys and what licences people who undertake

[Baroness Sugg]
those journeys have. So far, we have issued an average of 2,500 IDPs a day since 1 February—about one per relevant post office per day. The DVLA has printed 2 million IDPs across all three formats to prepare for the increase in demand. However, as I say, if we see an increase in demand, we have the possibility to expand it. On staffing levels, we do not believe that we will need further staff for the Post Office. It takes around five minutes to apply for an IDP and get it issued. I very much hoped to be able to be a mystery shopper and get down to a post office myself, but, sadly, I ran out of time before this debate. We remain confident that the Post Office will be able to deal adequately with this request. Back in the day when tax discs were issued over the counter, it delivered 30 million transactions across 4,000 branches for the DVLA, so we think it has the capacity.

The noble Baroness asked about the change to the issuing of IDPs, as they are now issued by the Post Office and not online. At the end of 2017, we looked at four different options: to continue and extend the existing arrangements, which you could do by post—that was with the AA and the RAC; to give responsibility to the DVLA to issue IDPs, via the Post Office or another supplier; the possibility of an online system but with the physical document provided by someone else; and we looked at a DVLA online direct supplying system. We decided to reject the option to continue and extend the existing arrangements, as it would not have been possible to continue that under the current government procurement rules. There was also considerable uncertainty about the volume which was needed, which continues, and we thought that would be difficult for potential suppliers to be able to quote accurately. We did consider the possibility of an online system, but ultimately that was rejected. We thought that there would be a significant risk of a wasted investment on that. Moreover, such a system would not have been available to the 5 million licence holders who are without a photo card licence—although, obviously, the vast majority have one.

I return to the point that we are hopeful of achieving mutual recognition on this if we do not get a deal, but I agree with the noble Lord and the noble Baroness that this is a complex system—a messy one, as the noble Lord called it. We do not want to be in a situation where IDPs are necessary, and that is why we are trying to achieve a deal with the European Union; I very much hope that we will reach agreement on a deal soon, but the issuing of IDPs is a sensible contingency approach in the event of a no-deal scenario. It is the only way to absolutely ensure and guarantee that our licences will still be recognised after exit in the event of no deal. It relies on the international arrangements that are outside the control of the EU, but we hope to agree a deal or mutual recognition, which is obviously in the control of the EU and we will continue to press ahead with that.

This SI is essential to ensuring that UK motorists will be able to drive in the EU following exit day. The option of purchasing an IDP provides drivers with that certainty for driving in the EU under all potential scenarios.

Motion agreed.

Environment (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

7.31 pm

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

That the draft Regulations laid before the House on 5 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, in line with the European Union (Withdrawal) Act 2018, these regulations make technical, legal amendments to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable. The regulations will also, where appropriate, prevent the otherwise automatic incorporation of EU legislation into our national law. The SI presents no changes of policy.

The regulations consist of three main components. The first set of amendments, in Part 2, are to three environmental Acts: the Environmental Protection Act 1990, the Environment Act 1995 and the Pollution Prevention and Control Act 1999. Because these regulations amend primary legislation, they have undergone additional legal scrutiny by the Office of the Parliamentary Counsel.

Regulation 2 amends the Environmental Protection Act 1990. This Act contains references to the UK's obligations under EU law, which will no longer work legally after exit, and we are replacing them with references to "retained EU law" and "retained EU obligations".

Regulation 3 amends the Environment Act 1995 and makes similar amendments to those in Regulation 2. It also includes adjustments to powers in the Act to make directions and regulations for the purposes of implementing EU law, so that they can instead be made for the purposes of retained EU obligations following exit. There are also amendments to the power for appropriate agencies—for instance, the Environment Agency, the Natural Resources Body for Wales or the Scottish Environment Protection Agency—to impose charges in relation to retained EU law.

Regulation 4 amends the Pollution Prevention and Control Act 1999 and makes similar amendments to those in Regulation 2. It also adjusts the power in the Act to make regulations under Section 2 of the Act for the purposes set out in Schedule 1 to the Act. That power can currently be used in relation to EU directives, which Ministers designate from time to time. Regulation 4(3) removes this power to designate but lists the directives which have already been designated, preserving our existing ability to change and improve the relevant environmental regulations. If we did not do so, the reduction in the scope of the power could mean that we would have to use primary legislation to make the necessary changes to maintain and update environmental standards.

Part 4 of these regulations addresses existing directions and regulations made using powers under the Environment Act 1995. We are providing for them to continue for

what will be domestic purposes. This will ensure, for example, that the recent air quality directions to English local authorities, requiring them to prepare local air quality plans, remain in force.

Part 3 of these regulations makes amendments to three cross-cutting environmental statutory instruments: the Contaminated Land (England) Regulations 2006, the Environmental Noise (England) Regulations 2006 and the Environmental Damage (Prevention and Remediation) (England) Regulations 2015. These instruments make similar references to EU law to those made in the Acts I have already mentioned, and for the same reason need to be amended. The instruments apply to England only; devolved Administrations are addressing separately any similar issues in devolved legislation. The amendments in these regulations make no changes to policy and these instruments will continue to operate substantively as they do now.

There is a type of EU legislation that is directly applicable. This is law that applies in the UK without any further legislation by our Parliaments, and includes EU regulations and decisions. These will automatically be brought into national law by the European Union (Withdrawal) Act, as part of retained EU law. In some cases, however, that is not appropriate. When we are no longer a member state, the UK will no longer be allowed to authorise participation in the EU's Eco-Management and Audit Scheme—EMAS—or the EU's Ecolabel scheme. Existing EMAS and Ecolabel registrations with UK bodies will no longer be valid. These regulations do not bring about this change: it is a result of our leaving the EU. These regulations make appropriate legal amendments to reflect the situation.

The EU EMAS regulation establishes the Eco-Management and Audit Scheme. Participation in this scheme is entirely voluntary, and there are only 17 UK-registered organisations. ISO 14001, a similar scheme established by the International Organization for Standardization, has more than 16,000 UK-registered participants. The EU Ecolabel regulation establishes another entirely voluntary scheme, under which producers, importers and retailers can apply for the EU Ecolabel for their products. Again, uptake in the UK has been low. In fact, a European Commission fitness check of EMAS and Ecolabel across member states in 2017 found that the schemes were substantially limited by levels of uptake.

The Government nevertheless attach importance to voluntary schemes that encourage businesses to improve their environmental performance. In our resources and waste strategy, we recognise that providing transparency of information can help those consumers or organisations that want to make environmentally friendly choices to do so. Guidance is also provided on how to look after their products and dispose of them at end of life. We will develop options for domestic eco-labelling before consulting more widely.

In the meantime, businesses holding existing EMAS registrations and Ecolabels will still be able to sell their products in EU member states, and they can apply to rejoin these schemes through other member states offering the service. We have published and circulated information notes on EMAS and Ecolabels to affected businesses. If we do not act, the European Union (Withdrawal) Act will bring EMAS and Ecolabel regulations into our national law. For the purposes of good public administration, and to avoid any confusion for businesses wanting to join such schemes in the future, these regulations stop that happening.

Finally, there are further EU decisions included in the schedule to these regulations, which refer to EU environmental action programmes. These EU decisions are either already out of date or will serve no ongoing purpose after we leave the EU. We will be making these amendments for the same reasons as with EMAS and Ecolabels.

These provisions apply to the whole of the UK and have been agreed between all four nations. The amendments in these regulations will ensure that UK law continues to operate smoothly when we leave. They represent no change in policy and the regulatory impact experienced by businesses and the public will not change as a result of these regulations. I beg to move.

Baroness Byford (Con): My Lords, I thank my noble friend for introducing this section of statutory instruments and have listened carefully to what he said: there is no change in policy. Indeed, it is important that we pass these statutory instruments to maintain the existing regulations that we have been connected with.

My noble friend also talked about sustainability in the long term but recognised that the current audit and labelling schemes will no longer be valid. Perhaps I might press him a little more on that because clearly we will have to introduce a scheme to replace the existing ones. Is he able to tell us a little more about that and how the department will approach it? Also on that issue, I think he said that we were going to be consulting more widely. Again, it is a matter of timeframe: how soon that will happen? Clearly, that would help us in dealing with this statutory instrument.

Lastly, my noble friend mentioned that some aspects of existing EU law have become out of date and we would need to transfer powers to a new set of regulations. Can he give us any indication of how many of the changes taking place are to regulations that are considered out of date?

Lord Whitty (Lab): My Lords, in general, this is obviously a sensible regulation. However, I have a number of queries, one of which is exactly the same as that of the noble Baroness, Lady Byford. There are references to redundant and inappropriate regulations, but there is no list, as far as I can see, of which regulations they are or whether further regulations might be deemed to fall within that category. I may have misread the rather complex way in which the regulations are presented, but there may be a whole batch of regulations which, down the line, Defra officials may decide are redundant and use the power under the Act to take off the statute book.

My other two questions are these. It is true that EMAS and Ecolabel have been a bit of a slow burn, but, nevertheless, there is a degree of consumer recognition and take-up. Is the Minister saying that in no circumstances could we use those terms under British law to continue to reflect the qualities that some consumers have now come to recognise, or will his consultation be directed to providing an entirely new

[Lord Whitty]
British scheme—which, by definition, will require a further educational and informational period before it begins to be recognised? Even in the more benign context of a deal of some sort, would it not be sensible for some mutual recognition and continued use of the existing labels to operate post the UK leaving the EU?

Finally, I declare my presidency of Environmental Protection UK, one main concern of which has been air pollution and air quality. The Minister referred to that in passing. The problem with the air quality regulations is that, hitherto, the effective enforcement of those regulations has depended substantially on the Commission's intervention and on campaigners—ClientEarth, mainly, in this case—taking the British Government through the courts on the basis of EU law.

In both those respects, I am not entirely sure what mechanism replaces that. Is it the much-heralded but still unclear new environmental statutory body, which will presumably appear in the environment Bill when we eventually get it, or is it simply to be enforcement of these new regulations, having become British law, or retained EU law, enforceable through the British courts? The problem hitherto has been that it has been government bodies at local and national level which have failed to meet, for example, the provisions on maximum NOx levels for air quality. Unless we stipulate in the new regulations who will enforce equivalent standards to the European standards, we may well have something on the statute book but we will be unable to enforce it.

7.45 pm

Baroness Parminter (LD): My Lords, clearly this is one of the less contentious SIs under the Defra brief, but important scrutiny still needs to be undertaken. I put on record my gratitude to the staff who, this morning, when I had particular points on which I wanted clarification, were able quickly to reassure me on some of them. I thank them. They were about the Ecolabel issue. I was not clear what would happen if there were not a no-deal scenario.

It is clear from the Explanatory Memorandum what happens if there is no deal and a British company which operates both in the UK and in other parts of Europe wants to continue using the Ecolabel: it can do so as long as it registers in a member state elsewhere. The logo would still be usable in the UK in the event of no deal. I press the Minister on what would happen if we do get a deal. I want to be absolutely clear that if we get a deal with our European partners in the foreseeable future, the scheme, with the very distinctive Ecolabel—which looks very European and, as the noble Lord, Lord Whitty, said, is gaining traction among consumers in an important area—the regulations, the processes and the scheme will carry on exactly as they do now, maintaining what is to many of us an important initiative for businesses to help us deliver our environmental objectives.

Baroness Young of Old Scone (Lab): My Lords, I thank the Minister for his exposition of the statutory instrument. I know that it has made his brain hurt, so he is in common with all of us. I will focus on some specific issues and particularly tax him on one of its more arcane elements. This SI is one of those known as a jumbo regulation, because it sweeps up so many provisions in a high-level way, but it has one oddity. Regulation 5(4) dives into the detail of the Northumbria and Solway Tweed river basins. Can the Minister explain this arcanity in his response?

In a more mainstream way, I want to focus on some other issues. The Schedule to the regulations stops the EU legislation on the environmental action programme, EMAS and the Ecolabel from being brought into UK law. Personally, I am sad that we will no longer have the framework of the environmental action programmes, which were, at a minimum, the forum for EU member states to come together to express ambition for the environment. In my experience, EU Ministers and the Commission working together were braver and bolder than they would be individually when they came back home and were faced with conflicting pressures against the environment. That is another loss that we will suffer from leaving the Union.

I turn to EMAS, the European Management and Audit Scheme, of which we will no longer be a part when we leave the EU. The Minister kindly provided a briefing session involving him and a veritable army of Defra civil servants; I think of the £4 billion costs so far of exiting the EU. We were rather surprised to learn at the briefing that, as he outlined, only 17 organisations in the UK have adopted EMAS, compared to 16,000 which perform to ISA 14001, which is the global standard.

The Minister confirmed that the Government are, therefore, not planning to develop an EMAS-type scheme for the UK after Brexit. EMAS has some benefits in its approach which are beyond ISA 14001. It delivers not just continuous improvement in environmental performance and credibility—it is externally validated—but, most importantly, it promotes much greater transparency, with publicly available information on environmental performance by businesses and organisations. I ask the Minister to consider how this virtue of greater transparency could be applied to environmental performance schemes in the UK, post Brexit. What arrangements will be made for promoting continuous improvement in the environmental performance of businesses and other organisations?

At the Minister's briefing sessions, we also heard that only 50 UK organisations use the EU Ecolabel. Ecolabels—for they are many and varied—help the public make informed purchasing choices in products and services with a reduced environmental impact. The Government made a commitment, through the waste and resources strategy, to look at developing a UK ecolabel. I say commitment, but the strategy actually says that the Government will consult key stakeholders, consult "more widely", consider whether ecolabelling makes any difference to the public's buying habits, consider how to encourage the public to use label information in purchasing, then decide whether a statutory scheme is needed at all. Perhaps business could just do it.

This all seems a bit "jam tomorrow". I know that Defra is the department for food, farming and rural affairs, but tomorrow's jam is the only food it seems to concentrate on these days. I assume that all this considering and consulting cannot happen before 29 March, so we have another example of a gap in the environmental

governance framework post Brexit, with no clear timetable for the introduction of a UK alternative ecolabel. Can the Minister tell us the timetable for the introduction of a UK ecolabel and whether it will cover simply waste and resources issues or the wider environmental impacts of products and services?

Of course, as was pointed out by the noble Lord, Lord Whitty, it will be important for us to maintain alignment with the EU Ecolabel scheme if we want to trade with our nearest neighbours. What assurances can the Minister give that importers and exporters will not have to operate with different labels for the home market and the export market? In the midst of all that, how will he ensure that ecolabelling is kept as simple as possible for consumers?

While we are talking about tomorrow's jam, the major hiatus concerns who will monitor, enforce, sanction and handle complaints about the way the new arrangements are carried out by UK authorities. We are not talking about inconsequential matters: this SI alone covers serious environmental issues contained in the Environmental Protection Act, the Pollution Prevention and Control Act, and regulations on contaminated land and environmental noise—to name but a few. The Government promised us the office for environmental protection to fill some of the gaps left by the substantial remedies we currently enjoy as an EU member, which will disappear as we leave the EU. For example, in instances where government and public bodies fail to perform, cases can be referred to Europe, with remedies through the infraction and fining process and, ultimately, the judgments of the European Court of Justice. However, we have no timetable for the legislation needed to create the office for environmental protection—the environment Bill—or its establishment in practical terms. We have no clarity yet about the real weight of its powers.

The talk on the streets is that, bearing the legislative timetable in mind, the OEP is unlikely to be fully operative until the end of the transition period, if we have one. Can the Minister confirm his understanding of the timetable? He very kindly wrote to me to say that there would be interim arrangements in the meantime but that he could not yet tell me what they might be. We are only six weeks away from potentially needing such arrangements. Either Ministers know what they are planning, and arrangements are under way behind the scenes but they are unwilling to be open with Parliament, or they do not know and no arrangements are being planned. Which is worse: being secretive or being unprepared? It is a case of one or the other; I leave noble Lords to choose one.

The environment and the people of this country are at risk from this potentially protracted governance gap. Is the Minister in a position yet to provide a timetable for the permanent and interim solutions? Can he give the House details of, or even a broad clue about, the interim solution? I hope that he accepts these comments and questions as a constructive contribution, as they are intended.

Lord Gardiner of Kimble: My Lords, I will say from the outset that I consider all the contributions made in the debate immensely constructive. If I am not in a position to answer any questions concerning precise detail, I will address them in due course. I was struck by the exchanges between my noble friend Lady Byford and the noble Lord, Lord Whitty; I have been in other skirmishes with them when they put their heads together, knowing that they dealt with the water Bill or whatever, so I know that I am in difficult territory. I can confirm that my noble friend Lady Byford is absolutely right that there is no change of policy.

Noble Lords raised ecolabelling and EMAS immediately. As I said, we are not in a position to continue with those schemes because we are leaving the EU. However, if we get a deal, such arrangements and schemes would continue during the implementation period; everyone seems to be working extremely hard on that. Of course, how those schemes could continue would then be open to further phases of negotiation. The question concerns how we would proceed given that, as the EU has conceded, uptake across the European Union for such schemes has been low. I was struck by the number of participants in ISO schemes compared with European ones: thousands of organisations in EU countries are registered with the ISO, but only a comparatively small number are registered with EU schemes. I do not wish to denigrate the EU Ecolabel or EMAS in any way, but it is worth considering that the number of UK-based registrants to ISO schemes is substantial.

A number of questions were asked about our vision. Noble Lords have heard this before but our vision is for environmental standards to be not only maintained but enhanced. Our waste and resources strategy recognised that information transparency is essential. As I said, we will develop options for domestic ecolabelling before consulting more widely. I am not in a position to outline the precise timing for that, but we wish to develop those options as part of our strategy. I suspect that if we get a deal—I hope we do—the ISO scheme, which runs in parallel with the ecolabelling scheme, will continue. I am sure that we would welcome noble Lords' views about how best to ecolabel.

One issue is particularly important. I sympathise with noble Lords and say that we have a lot of ambition for primary legislation. We wish to enshrine in the environment Bill the 25-year environment plan and the establishment of the Office for Environmental Protection, which will be independent and will hold the Government to account. It is a matter of parliamentary timing. We said that legislation would be brought forward in the second Session, and we are absolutely clear that it will have teeth. It will ensure that all the areas referred to by noble Lords who have concerns about governance are addressed.

I wrote to the noble Baronesses, Lady Jones of Whitchurch and Lady Young of Old Scone, about interim arrangements. I am not in a position tonight to say precisely what they are. I do not recognise what the noble Baroness, Lady Young of Old Scone, said, because we have said in public that we are considering interim arrangements. I am simply not in a position to say tonight. I know that it is being worked on, because it has come from colleagues that this matter is being worked on. I have promised to tell both noble Baronesses, as well as all noble Lords in this debate, as soon as there is some announcement about what the interim arrangements are.

8 pm

The noble Baroness, Lady Young of Old Scone, referred to Northumbria and the Solway Tweed. When I did research into this I was intrigued, and I am afraid I have to give a technical reply. Regulation 5 amends references to the water framework directive to refer instead to the domestic legislation that implemented the directive. These references would not work satisfactorily after exit day without modifications, and it is more straightforward to restructure the provision and refer to the domestic legislation instead. Your Lordships will note that there are some references to the river basin districts of Solway Tweed and Northumbria. These are cross-border districts falling partly in England and partly in Scotland, so are dealt with by specific legislation. All other districts in England are dealt with by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. I am glad the noble Baroness asked that question, because it was one that I too was intrigued by. These matters sometimes take us into territory that is intriguing but perhaps a little distinct.

The noble Lord, Lord Whitty, referred to lists of regulations and their redundancy. Paragraphs 6 and 22 in Part 1 of the Schedule relate to EU action programmes, are already out of date and will be legally redundant. Parts 2 and 3 of the Schedule cover designation orders for directives, which are also legally redundant as a result of the changes in these regulations. I say to the noble Lord that I will study that a little more carefully and, if there is any further information that makes it more readily agreeable and understandable, I will oblige.

The noble Lord, Lord Whitty, rightly referred to new enforcement mechanisms. We are committed to ensuring that future environmental standards are at least as high as those currently in place. There are no changes in enforcement measures as a result of this SI. As I said, in this SI there are absolutely no changes in policy. The Government absolutely want standards to be as high as possible. This is why the environment Bill will enshrine in law the 25-year environment plan, the clean air strategy, the resources and waste strategy and the clean growth strategy. They are all top-line and important, and what we need—I know noble Lords wish this—is action to put them into place. So, in terms of timing, I am as anxious as anyone here for us to get as many of these points advanced as possible.

I will look at *Hansard*, because a number of distinct questions were raised. On the ecolabelling and EMAS labelling issues, it seems to me that at the moment there is not a great deal of traction within the EU, and I suspect that that is something which will need to be considered in the longer term. On the ISO standards, I wish I had the exact figure, but it is over 300,000 registrations across the world, with many of the major EU countries using ISO in far greater numbers than EMAS. It is important to say that we will consider how best to encourage the consumer to understand about environmentally friendly products and the producer and manufacturer to have confidence that they have something of a standard that we can all be proud of in terms of enhancing the environment. Again, I will look at *Hansard*, because there are a number of detailed points on timing that I hope I will be able to furnish your Lordships with.

Baroness Byford: I wonder if my noble friend might give way. Is it possible to find out what body or who will be responsible before the new environmental body is set up? The difficulty is that it could be many weeks or months; we really do not know how soon that will come in. Therefore, the natural question is: after 29 March, if things are not going as we hope, where does the buck stop? Who is responsible in the meantime? It may well be that his own department takes that on, but I did not think it was clear in the statutory instruments we have just been debating. I would be grateful for some clarification.

Lord Gardiner of Kimble: I have to say that that area is not what this statutory instrument is about. I can say that we will bring forward measures so that there is no gap in environmental governance in the event of a no-deal Brexit. We fully realise that the independent environmental body will not be complete; we have to have primary legislation for that. But I can say—I hope it provides some reassurance—that once the office comes into effect it will have the power to review and take action on any breaches that occur from the day of us leaving. There will therefore be no period of time during which government actions cannot be held to account by an enforcement agency. I hope that is an assurance that the Government's bona fides on this are very strong and that we do not want there to be an environmental governance gap. I am not sure that I can add anything further, but I look forward to the noble Baroness's intervention.

Baroness Young of Old Scone: I thank the Minister for giving way. I just express a slight nervousness about the provision, which I absolutely recognise is necessary, for the new body to be able to take action on complaints that arise from the day of exit, whenever that is. If we were to leave without a deal and the new body did not come into being for 18 months or two years, which is quite possible under the current timetable, I would not like to think of this growing pile of complaints mounting up as the new body comes into being, so that its first act is facing a huge backlog.

Lord Gardiner of Kimble: I entirely accept what the noble Baroness has said. It is our duty as a Government, whoever is in office, to ensure that we enhance the environment. That is the whole purpose of the 25-year environmental plan, but I am very conscious of what the noble Baroness has said. In the meantime, I commend this instrument to the Committee.

Motion agreed.

Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

Motion to Approve

8.07 pm

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

That the draft Regulations laid before the House on 8 January be approved.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the instrument before your Lordships makes technical amendments to maintain the effectiveness and continuity of retained direct EU legislation that would otherwise be left partially inoperable, so that the law as of today will continue to function properly following exit. There are no policy changes made by this instrument.

The purpose of these regulations, in line with the European Union (Withdrawal) Act 2018, is to provide for public authorities in the UK to exercise a series of legislative functions currently conferred by EU legislation on the European Commission. In each case, the legislative function was conferred on the EU Commission so that it can interrogate the technical details of a specific EU regime and adapt them to changes without the frequent need to refer back to the EU Council and EU Parliament. These powers are clearly defined and strictly limited to technical and administrative matters. They are not the kind of matter for which we would generally, in the domestic context, require primary legislation. Rather, they would be suitable to be dealt with by secondary legislation or administratively.

Examples of these functions include specifying the forms to be used, amending technical annexes to reflect advances in scientific and technical knowledge, and updating annexes to reflect requirements under international agreements. We need the UK authorities to be able to continue to update such technical details for ongoing domestic purposes to ensure that the legislation can keep pace with change, including technological developments and our international commitments, without the need for primary legislation every time a change in such matters is required.

Parliaments and Assemblies in the UK have, until now, had little input into how these powers are exercised. In each case, these regulations set out the procedure for the exercise of these legislative functions in future. With two minor exceptions, the powers will be exercised through secondary legislation that will be subject to the scrutiny of our Parliaments.

This SI makes a number of adjustments. These represent no changes in policy, nor will they have any impact on businesses or the public.

Regulation 2 confers functions under the EU regulation on persistent organic pollutants, or POPs. These include a power to amend POPs waste concentration limits for the purpose of adapting to scientific and technical progress, and to ban, restrict or modify the use of POPs in accordance with international agreements.

Regulations 3 and 6 confer functions under the EU regulations on illegal timber and timber products. These include a power to recognise licensing schemes in partner countries to form the basis of licensing, and to amend the list of timber products to which the licensing scheme applies.

Regulation 4 confers functions under the EU regulation establishing a European pollutant release and transfer register. These include a power to take measures to initiate reporting on releases of relevant pollutants from diffuse sources where no data exists, and to adopt guidelines for the monitoring and reporting of emissions.

Regulation 5 confers functions under the EU regulation on transfrontier shipments of waste. These include a power to establish and amend technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information.

Regulation 7 confers functions under the EU regulation on the Nagoya protocol on access to genetic resources and the fair and equitable sharing of benefits. These include a power to establish and amend procedures for monitoring user compliance and for recognising best practice.

Regulation 8 confers functions under the EU regulation on mercury. These include a power to specify the forms to be used for export and import restrictions, and to set out technical requirements for the environmentally sound interim storage of mercury, mercury compounds and mixtures of mercury.

Regulation 9 confers one legislative function contained in an EU directive relating to industrial emissions. The power relates to determining best available techniques for preventing or minimising emissions from activities covered by the directive.

Regulations 10 and 11 confer functions under the EU regulations governing the use of leghold traps and the import of pelts and goods. These include a power to grant derogations from the ban on the import of pelts and other products, and to determine the appropriate forms for certification of imported goods incorporating pelts of listed species.

Regulation 12 confers functions under the EU regulation implementing CITES. These include a power to establish restrictions on the introduction into the UK of listed species, and to provide for derogations from certain provisions.

As I have explained, in future we will exercise these powers through laying statutory instruments before Parliament. However, I draw your Lordships' attention to the two minor cases where administrative procedures will be used, rather than secondary legislation. These relate to POPs and leghold traps. In the first case, the administrative function being conferred concerns the determination of the format for the provision of information by the competent authority; in the second, it concerns the publication of model forms for use by importers.

In addition, the regulations also amend the retained direct EU legislation in the context of the provisions conferring these legislative functions where that is necessary to make it function properly after exit. An example of such an amendment is changing references from "Community legislation" to "retained EU law".

8.15 pm

These regulations extend and apply to the whole of the UK and deal with both reserved and devolved matters. In the case of reserved matters, the legislative function is conferred on the Secretary of State to exercise on behalf of the whole of the UK. We have consulted extensively with the devolved Administrations on legislative functions that relate to devolved matters and, where appropriate, they have consented to our proceeding by means of these regulations. Where matters are devolved, functions are conferred on the Secretary

[Lord Gardiner of Kimble]
of State and Ministers for the devolved Administrations. The default position is that each Administration will be able to exercise a function separately. However, where devolved Administrations consent on a case-by-case basis, the Secretary of State will be able to exercise functions on their behalf.

The amendments in these regulations ensure that UK law will continue to operate smoothly. They are the minimum required to achieve their objective and make no changes in substantive policy content. To the extent that they affect devolved matters, the devolved Administrations have given their consent to both the policy and wording of the regulations. I beg to move.

Baroness Parminter (LD): My Lords, this SI introduces to us a number of important protections which we are presently receiving from the European Union. It is very encouraging that the Government are maintaining parliamentary scrutiny through the majority of SIs. However, I would like just to pick up on the issue of leghold traps.

Can the Minister be a bit clearer, and give a bit more detail, about why we will not be going down the route of parliamentary scrutiny on this issue, which is quite controversial? I appreciate that there may be administrative reasons, but if you look at all the pieces of legislation where it is being suggested that we will be maintaining parliamentary scrutiny, leghold traps are an issue that I think that the public would have a particular interest in. They may know very little about mercury or POPs, important though they are, but quite a few people have a view on leghold traps. They might want to know in a little more detail why they will not be getting the treatment of parliamentary scrutiny through secondary legislation.

The other point I wish to make on this SI, which seems entirely proportionate, is that it brings to the fore the issue of how we are going to align our policies with our partners in future. I particularly cite the issue of CITES—the Convention on International Trade in Endangered Species—where it is critical that we have an alignment of regulation, given the huge issue of wildlife crime, to which I know the Government have made some very welcome commitments. I am sure there is nothing in this SI in terms of changing the regulations about how the Government wish to manage that, but it affords me the opportunity to raise the issue of how the Government are going to maintain a very clear alignment with our colleagues in Europe on particularly important issues around wildlife crime.

Baroness Young of Old Scone (Lab): My Lords, these regulations will allow UK authorities to exercise legislative functions in the UK after exit day in a range of areas, including, as has already been outlined, persistent organic pollutants, importation of timber products and derogations from certain CITES provisions.

The Explanatory Memorandum says that this statutory instrument does not make any substantive policy changes, but the UK public authorities exercising these newly transferred functions could immediately make changes that would have significant environmental impacts. So these regulations open up the way for significant policy changes. In view of the scale and importance of the powers being transferred to the appropriate public authority, can the Minister give assurances on the following concerns?

Will these powers remain with the Secretary of State and the equivalent in the devolved Administrations and not be delegated further? Bearing in mind the comments made during the debate on a previous SI, on the governance gap and the lack of an oversight and sanctioning body, how will these public authorities be held accountable? How will complaints against their operation of these new powers be handled?

The SI does not include mechanisms for enabling access to the necessary expert and technical advice. Do the appropriate public authorities have access to sufficient expert or technical input, and will that be sought and published on every change proposed? How do the Government intend to access the wealth of scientific and technical expertise and data available across the EU which might not be replicable within the UK? What access will the UK have, during the implementation period and after EU exit, to the EU's systems for tracking and sharing relevant data?

Turning to the issue of consultation, what commitment will the Government make for consultation on the future exercise of these powers and proposals for changes by the appropriate public authority? The statutory instrument lays out, at Regulation 9(10), limited consultation arrangements in one specific area under the powers to make decisions on best available technique—BAT—but not on any other powers. Can the Minister assure the House that wide consultation will be the norm, with stakeholders, NGOs and the public?

I now turn to devolution. These amending regulations, as the Minister has explained, cover legislation in areas where all four nations are currently bound by the same EU requirements. The Minister very kindly at his briefing session assured us that the regulations have been discussed and agreed with the devolved Administrations, and the degree of devolution in transferring the powers to an appropriate public body has been designed on the basis of whether the matters are reserved matters. That was fine where the policy framework and the standards were EU-wide while implementation was devolved to the four nations. In the future, when policy and implementation are devolved to the nations, divergence in standards could happen quite quickly. This would have an impact on businesses operating across the four nations and on their ability to trade with our EU neighbours.

Let me give an example from Part 3 of the statutory instrument. BAT—best available technique—is one of the foundations of environmental regulation covering industrial emissions and is the basis of the regulation of things such as cement plants, steel works, power stations and chemical works that create emissions. If we have four different versions, potentially, of best available technique across the four nations, how would UK-wide regulated companies cope? How would they trade their technologies to our European neighbours, which might be regulating against a fifth version of best available technology? This cannot be sensible. That is only one example of how diverging standards across the four nations would not be good for British business and possibly not good for the environment as well.

I welcome the confirmation from the Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs on 28 January in the other place of the Government's,

"intention to work towards a common framework for a number of different regulations".—[*Official Report*, Commons, First Delegated Legislation Committee, 28/1/19; cols. 7-8.].

Can the Minister tell the House when this common framework will be published and when it will come into effect? What regulations will it cover?

Lord Gardiner of Kimble: My Lords, I thank the noble Baronesses for their contributions to this debate.

I hope that I can clarify immediately for the noble Baroness, Lady Parminter, the issue of leghold traps. Perhaps I should have referred to it, but in my opening remarks I said that Regulations 10 and 11 confer functions under the EU regulations governing the use of leghold traps and the import of pelts. I went on then to talk about the distinct two elements, which are in effect about forms and the format of forms. By way of reassurance, it is not that there will be no requirement for statutory instruments on leghold traps but that, candidly—proportionately—most people would think it unreasonable to have a statutory instrument on the format of a form. I hope that I can immediately take that concern out of the way.

On CITES, we are considered a very strong participant in CITES and we take our international obligations extremely seriously. I was at the conference in London during the passage of the Ivory Bill and many countries there recognised what our country is doing. We are a party to CITES in our own right. We have higher protections than mandated by that convention, and we will comply with all international decisions made at the CITES meeting in May this year. Clearly, it is important that there is alignment not only among us in Europe but across the world to ensure the importance of looking after wildlife around the world. Certainly, our commitment in terms of our international obligations is very strong. Whatever arrangements there are, we will want to work very closely with partners in the EU and internationally.

To answer the noble Baroness, Lady Young of Old Scone, if this statutory instrument is passed today, we will be in a position through statutory instruments to make changes. These are distinct technical areas that we are taking forward, but more generally I hope that I can reassure the noble Baroness and noble Lords that we wish to enhance rather than retreat. There may be changes, but this particular statutory instrument deals with those technical points that we are drawing back.

The issue of expertise is hugely important. The Government rely on the best experts available. We will use our consultation principles requiring relevant expert advice to be sought where appropriate, and those affected by any policy must be properly consulted. The noble Baroness is absolutely right that, in the case of these regulations, Regulation 9(10) explicitly requires the Secretary of State, or DA Ministers as appropriate, to consult bodies and persons likely to be affected. Of course, many of the obligations relevant to these regulations derive from our participation in international conventions such as the Stockholm convention on POPs and the CITES convention and will continue to involve us directly in multilateral expert dialogues. But the noble Baroness is right. Clearly in this area we will want to seek the views of experts and we will want to consult.

Access to EU systems will clearly be a matter for negotiation. We are all working for a deal, but I very much hope that, in terms of access, the importance of mutuality across the continent will mean that we continue to work collaboratively together.

I do not have in front of me a precise note of timings on the common framework, but the noble Baroness is absolutely right. The discussions that we have had with the devolved Administrations on this matter and others show that, for all the political knockabout, it makes sense in so much of this to work together on a UK basis. That is why, although some of the matters are devolved, we have worked extremely collaboratively and productively with the devolved Administrations. The whole purpose of the common framework is to acknowledge exactly what the noble Baroness said. We all agree mutually that any divergence should be the exception in something like this because I am sure that we all—in England in the UK Government and in the devolved Administrations—want to work positively for the environment. As soon as I am in a position to clarify anything further about the common framework I will, but all I can say is that I hear very positive signs of what I think we would all suggest was a common-sense way forward on such important matters.

I will study *Hansard* and if there are any particular points that I have not covered, I will of course write. In the meantime, I beg to move.

Motion agreed.

Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019

Motion to Approve

8.29 pm

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

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

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I will speak also to the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019, with which this instrument has been grouped.

Plant protection products, commonly called pesticides, are currently regulated by means of EU Regulation (EC) 1107/2009 of the European Parliament and the Council, concerning the placing of plant protection products on the market, and the associated Regulation (EC) 396/2005 of the European Parliament and the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin. These two regimes, on plant protection products and maximum residue level regulatory regimes, are closely related to each other and both rely on centralised EU processes and mechanisms.

[Lord Gardiner of Kimble]

These statutory instruments make technical adjustments. There will be minimal modification of the current EU regime and these represent no changes of policy; nor will they have any significant impact on businesses or the public. Although the regime relies on EU processes to take and implement decisions which need to be corrected, much of the business of the regime already operates at a national level. Decisions at EU level are taken on the basis of evaluations and assessments undertaken by member states, such as by our own Health and Safety Executive. In future, these evaluations will inform a national decision, rather than informing UK input into an EU decision. This means that much of the infrastructure and expertise that we need is already in place within the UK. This will provide a good degree of continuity when we implement the UK-wide regime.

On the plant protection product regime, the main corrections made by this instrument include the following adjustments. All decision-making functions and powers are repatriated from the EU to national level, including approval of active substances and a number of other related functions. We will be able to continue to draw on the considerable scientific and technical expertise of the Health and Safety Executive, which will continue to operate as our expert national regulator on behalf of the UK Government and the devolved Administrations. The Chemicals Regulation Division, or CRD, of the HSE already has around 150 staff working on pesticides—a considerable resource. This means we are well placed to operate a national regime that maintains the highest standards.

A mechanism is established to give effect to national decisions by listing approved active substances on a new statutory register, in the form of a publicly available online database. This replaces the EU mechanism whereby these decisions are given effect by a constant flow of EU tertiary legislation. Other EU tertiary legislative powers will be repatriated to national level to convert them into a power to make regulations by statutory instrument, therefore keeping them on a statutory footing, with just minor exceptions where it is more appropriate to undertake very minor or frequent functions administratively.

EU processes set out in the regulations are replaced with new national processes. The functions are retained where they remain relevant in the national context, for instance: consideration of specific technical issues specified in the regulations; public consultation on active substance applications; provision for consultation with independent specialists where appropriate; and final decision-making. National arrangements for independent scientific advice and assurance are in place. We already have existing independent advisory committees of experts and academics—the Expert Committee on Pesticides and the Expert Committee on Pesticide Residues in Food—which are busy preparing to be ready to meet our changed advice needs after exit day. The EU regime's power to establish a rolling active substance renewals programme will be replaced with a power to establish a national renewals programme. In the meantime, we will be able to take renewals decisions as necessary.

Some elements of the current regime which rely on EU membership will no longer be able to operate; for example, the mutual recognition provisions for fast-tracking product approvals between member states in the same zone are no longer relevant. However, the UK will be able to take account of relevant assessments by other countries' regulators in our own national assessments.

Similarly, parallel trade permits rely on the sharing of information between member states and will no longer be relevant. Current parallel trade permits at the point of exit will remain valid for a period of two years after exit or until the extant expiry date—whichever is sooner. Transitional measures have been put in place ensuring that changeover to the national regime is smooth; for example, ensuring that all current approvals and authorisations remain valid after the point of exit, and making provision for handling applications which are in train at the point of exit.

The second instrument makes corrections to the pesticides maximum residue levels regime, and many of the corrections repeat the changes I have just set out for the first instrument. All decision-making functions and powers are repatriated from the EU to national level; for example, the setting of maximum residue levels. A mechanism is established to give effect to national maximum residue level decisions by listing them on a new statutory register in the form of a publicly available online database. EU processes set out in the regulations are replaced with new national processes. The functions are retained where they remain relevant in a national context, such as evaluation functions specified in the regulations. As I said, national arrangements for independent scientific advice and assurance are in place with two highly respected expert committees.

The requirement for reviews of EU maximum residue levels to ensure that they are set at appropriate levels has been replaced with a provision for reviews at national level. The power to establish an EU residue monitoring programme has been replaced with an equivalent national power to put in place a national monitoring programme. The current EU programme looks three years ahead, so the UK's obligations under this programme for the next three years are retained. This will ensure that the same standards of protection are maintained after exit. Again, transitional measures have been put in place, ensuring that changeover to the national regime is smooth; for example, all maximum residue levels in place at the point of exit will be carried over.

There has been a constant flow of EU tertiary regulations on plant protection products and maximum residue levels—typically several each month—giving effect to decisions on active substances and maximum residue levels. Within this regulation on maximum residue levels, which was laid before Christmas, two minor transitional provisions relating to Regulation (EC) 396/2005, which converts EU maximum residue levels into our new statutory register, have become redundant, due to amendments made to that regulation by the EU in January.

We have today laid the miscellaneous EU exit environment amendments and revocations in draft, which, among other amendments, will revoke these two transitional provisions. Both SIs will be made

together once the draft instrument laid today has passed the sifting process. This will ensure that our regulations are linked correctly to retained EU law as it is on exit day. The miscellaneous amendments will deal with the fact that there had been a change in the EU in January. Again, I shall ensure that noble Lords are kept in the picture on that, but I wanted to make that clear, as I heard about it only today and did not want any ambiguity or feeling that there had been any secrecy in these matters.

I hope I have expressed sufficiently that the Government take these matters extremely seriously, and that continued levels of protection for human health and the environment, as well as making matters straightforward for businesses to put products on the market, are a given and essential. Without these corrections, the plant protection product and maximum residue level regimes would be inoperable and would not provide a functioning regulatory regime; for example, we would be unable to take action in response to new evidence on environmental or health risks, or to adjust maximum residue levels, approve new active substances or even renew approval of current ones.

These instruments will establish a UK-wide plant protection products and maximum residue level regime and ensure that a stable regulatory framework is in place. I am pleased to report that again we have worked very closely with the devolved Administrations to develop the instruments and they have consented to them being made on a UK-wide basis. These statutory instruments will put in place, when the UK leaves, an independent, UK-wide regime enabling us, most importantly, to protect human health and the environment. I beg to move.

Baroness Parminter (LD): My Lords, these two statutory instruments are probably the most important ones we have had from Defra to date. The products are widely used in agriculture and industry and in people's gardens and homes. As the Minister has rightly acknowledged, they can do serious damage to human health and the environment. It is important that these SIs give people the confidence that, if we are to leave the European Union, the protection is going to be as good, if not better, than what we have at the moment. Reading the statutory instruments, I am not entirely reassured. I have three questions which I will come to in a moment. I hope that the Minister will be able to answer these and to give me more satisfaction, given the importance to the general public of this issue.

These SIs show very clearly what we are losing if we leave the European Union. At present, we have a fully formed, established regime which works and protects human health. If we end up with no deal that will be lost. Equally, there will be significant additional costs to businesses if they operate across the European market both in the UK and on the continent. The impact assessment does not include those costs because it looks only at the costs for the UK regime, but there will be significant costs for most of the companies, such as Bayer and Syngenta, which work right across the continent. I found out what the fees are at the moment in a footnote somewhere. Each individual application costs in the region of £150,000 per product, irrespective of the cost of administering the application. Companies will be expected to find not insignificant sums of money if they have to follow the regime in the UK and also stay within the European regime if they wish to sell the products across Europe.

What concerns me not quite the most but nearly is that the Government's proposed regime is somewhat sketchy. In the Explanatory Memorandum, they say:

> "The EU regime sets out decision making processes in considerable detail".

The EU has done; I only wish that the British Government had done the same in setting out the proposals before us tonight. There is quite a lot to be taken on trust. They talk about setting up a statutory register, but there are no details. They talk about a process for taking independent scientific advice, but again there are no details. They talk about proposals for a renewal and that is where I get particularly worried. Paragraph 7.7(E) of the EM says:

> "We will … establish the national renewals programme in a way which maintains effective protection but enables the UK to ensure it has a manageable and proportionate workload for one country alone".

That is quite open-ended and does not guarantee the protections that we have at present.

It is baffling that neither the EM nor the impact assessment sets out how many applications the Government would expect to see per year if we have a no-deal situation. I scoured them in detail and could not find any, and yet it sets out, quite clearly, that the EU has 50 additional regulations a year, so how many applications are the Government expecting to process?

8.45 pm

Although there is an impact assessment which says that these options will present "additional costs" to both government and business, there is absolutely no indication of what those costs to the Government will be. Equally, there are no costs identified for businesses and whether they will go up, as opposed to the regime that they are presently having to work to. I ask the Minister: what are the costs to the Government of administering this new regulatory process, and for the decision-making and taking the advice? It is absolutely critical that we get a figure. If another impact assessment has this phrase, this House is being treated poorly. As I said, there is no indication in the impact assessment of the costs to our Government of administering this regulatory process. It says on page 5:

> "These additional costs need to be weighed against any savings from no longer being part of the EU".

That is a really poor comment when we do not have a clear indication of the costs the Government will face in terms of staff, access to scientific advice and the IT database.

What worries me most about the statutory instruments before us is what they do not say about the overall government approach to taking decisions on these pesticides. I know this is an issue that the noble Baroness, Lady Young of Old Scone, has referred to in the past, but the impact assessment says that they will take decisions based on the evidence. It does not go on to confirm that the process which is in place—the precautionary principle—will be upheld and maintained by the Government. The Minister has said previously

[Baroness Parminter]
there will be a commitment in the environment Bill and that it should talk about the precautionary principle in there, but all this statutory instrument talks about is taking an approach on risk based on the evidence. We know that, in the past, there have been issues about how much evidence is needed, and that can be used to delay making decisions.

The very last page of the impact assessment says that there might be marginally different opinions between ourselves and other EU decision-makers when presented with the same evidence and criteria as another group because they will, obviously, be making specific judgments. That leads me to this point which, again, we have touched on in relation to other statutory instruments: the power to make decisions will be in the hands of the Secretary of State. We may all have confidence in the current Secretary of State, but in the past we have had Secretaries of State looking at issues such as neonicotinoids, which is a classic example of a pesticide that might need looking at again in the future. There is no guarantee that a degree of political judgment may not be taken by the Secretary of State, and therefore there is a question for the Government: is the advice given by those scientific bodies binding on the Government? I think that is difficult for them to say, but then there has to be a question mark about who holds the Government to account for the decisions they make and how that is achieved. If, for example, the Secretary of State makes a decision on a pesticide in the future which is not in agreement with the advice being given to them by the scientific experts, who holds them to account? There is a governance gap, unless I am missing something.

There are some significant issues around costs, on whether the precautionary principle will be upheld, and on how we will hold the Secretary of State to account on an issue which is of such importance to human health and the environment.

Lord Whitty (Lab): My Lords, I have a fairly fundamental objection to this set of regulations. I am sure that most of the detail is absolutely correct and necessary and I cannot say that I have read every sentence of these two regulations, but I have long held, going back to my days as the Minister in Defra, that the current regime for the regulation of pesticides, both at British and European level, has been inadequate for a number of reasons, some of which have already been touched on by the noble Baroness, Lady Parminter. I am rather afraid that the "solution" of leaving the European Union is going to aggravate that position.

Most of the issues I have approached the department on in recent years have related to human health, but it is a much wider issue than that. I believe that the totality of the approach to pesticide regulation does not take into account the widespread effects of misuse of pesticides, the lack of enforcement on the way pesticides are used and the relative ease with which new pesticides and modified pesticides come on to the market. In some cases, the EU regulation has actually been held back by previous British interventions. Like the noble Baroness, Lady Parminter, I commend the current Secretary of State on neonicotinoids, but in general it is the Brits who have held back and there has been a lot of pressure—corporate pressure, one has to say—on the totality of the system. This could reinforce that tendency.

I understand, and I have been in some contact with the department about, the need to introduce provisions on chemicals broadly—on REACH provisions. These regulations tend to mirror, in a sense, the broader regulation structure of REACH. In the main, I think it is very sensible to maintain the success of the REACH provisions, but pesticides are different. They are different because they have a serious and often unacknowledged human health impact. More particularly, I want to emphasise tonight the effect they have on the environment in general: the effect of pesticides on the air, the water and the soil.

Soil has been degraded as a result of the overuse of pesticides. Pesticides in the air have affected both human and particularly insect life: this week we have seen very serious effects in the form of the worldwide reduction in insect life, some of which has been caused by pesticides here and elsewhere, and on the water system. One of the successes, to some extent, of the water framework directive has been to reduce that effect; nevertheless, there is still a very serious problem in our water supply, as the effect of pesticides comes through the soil, into the water and has an effect on insect life and on whatever you call those creatures that crawl on the bottom of our rivers—I am sure that my noble friend Lady Young can name them all, but I cannot—and therefore on our diversity. A lot of those are affected by the misuse or overuse of pesticides.

It is true that successive Governments have attempted to rationalise and pinpoint the use of pesticides more effectively in terms of agricultural use. However, unlike the industrial chemicals that will be covered by the transposition of arrangements on REACH, the use of pesticides—this particular form of chemical—is a matter not so much of industrial use but of agricultural use: its effect on the environment, on land management, on soil management and on air quality. I therefore find it somewhat surprising that we are to retain the HSE rather than an environmental body to oversee this. I know that the HSE has access to significant scientific information, and the transfer of a separate pesticide arrangement into the HSE probably was an improvement, but would I argue that if we are going to move to a new regime post Brexit, the appropriate body is actually the Environment Agency, because it has responsibility for agricultural practice and land use; for air, water and soil.

That is where, together with human health, pesticides have an impact. I am therefore disturbed that the whole rationale for these arrangements is to assign that role to the HSE and not to the Environment Agency and devolved environment agencies. I ask the Minister to think about that; it is not necessary, but we are moving into a new era, and the responsibility ought to be with an environmental body rather than with one which deals with the industrial use of other chemicals.

Baroness Jones of Whitchurch (Lab): My Lords, I refer to my interests as set out in the register. I thank the Minister for his introduction and for his courtesy in meeting us before this debate. I also thank the two

noble Lords who have raised a number of important issues about these SIs, all of which I agree with. They both made very powerful points.

These SIs go to the heart of our concerns about the transposition process. This goes right back to our earlier discussions on the amendments to the European Union (Withdrawal) Act 2018. The use of pesticides is of huge public interest—a point made by the noble Baroness—and they present significant environmental and public health challenges. It is an issue where the use of the precautionary principle is vital—supported of course by strong scientific evidence and detailed scrutiny of the potential impact of the new products.

At the moment, we have in the EU a thorough process of evaluation of products. The responsibilities for risk assessments are shared out across member states. There are clear decision-making roles for the European Food Safety Authority, the rapporteur member state, individual member states and the European Commission. All this is supported and backed up by access to the best scientific advice. While no process is perfect, there is considerable assurance that within the EU a detailed assessment of the risks has been carried out and cross-checked.

These proposals are intended to replace all of this with an assessment by the Health and Safety Executive and a decision in the hands of one person, the "competent authority" as described in the text—otherwise known as the Secretary of State. Under these proposals, full power to make, amend or revoke guidance, principles and regulations for the UK rests with the Secretary of State and the devolved Ministers. There is a major loss of scrutiny, checks and balances, and audit powers.

This really is not good enough. It does not represent an accurate transposition of the current EU provisions into UK law. It also reopens our argument about the need for an independent environment watchdog to oversee the application of these new rules. This is a point other noble Lords have made—my noble friend Lady Young made it very eloquently in the earlier debate. That watchdog clearly needs to be in place from day one. I know that the Minister has said he cannot be precise about the timetable for this, but it would be helpful if he could reassure us again that the watchdog will be in place from 1 April, and that there will be no delay.

There is another big issue about what we will lose when we transpose to the UK. How can it be acceptable that the only reporting mechanism on national decisions for new active substances will be to publish the information online, when the previous EU regime required a report to be made to the EU Commissioner and a proper process of scrutiny and approval?

It also raises once again the fact that, by leaving the EU, we are cutting ourselves off from access to a huge resource of scientific data and analysis. Should we not be taking urgent steps to agree with the EU that we will continue to share this data for mutual benefit? For example, we will no longer have access to the advice of the European Food Safety Authority and will therefore have to pay considerable sums of money to try to replicate its advice. Would it not make sense to negotiate a mutual recognition agreement with the EU so that decisions taken in the EU and the UK continue to be mutually honoured? Can the Minister say whether discussions are taking place to create a shared register of approved pesticides and a mutual recognition scheme across the EU and UK, and what the timescale is for the outcome for those discussions?

9 pm

I now address the arrangements set out in the SI for a transitional period. This is crucial if we are to leave on 29 March without a deal. It seems clear that none of the structures proposed in the SI will be in place by that date. We will need an interim decision- making process for new products coming on stream. The references to transitional arrangements in the SI are relatively brief but, as I read it, they account only for current product authorisations to remain valid and, in some cases, to be extended. They also allow for parallel trade permits to be in place for up to two years and for the use of seeds authorised by other member states for three years. They do not make clear what happens on, say, 30 March when a pesticide manufacturer wants to seek approval for a new product.

The Explanatory Memorandum makes it clear that the EU currently produces in the order of 50 new regulations a year, so we can expect new UK regulations needing to be processed within weeks of Brexit day. Can the Minister explain the process that will be in place to process these new applications on day one? Is it not also the case that the level of scrutiny will be pared back in the longer term? Paragraph 7.25 of the plant protection Explanatory Memorandum states that the renewal programme will,

"need to be proportionate for one country alone to deliver".

It also says that,

"current approvals may be extended using existing powers".

This inevitably means that we will not be applying the latest scientific advice because we will be letting these products exist on the market for longer and longer periods. It also creates a loophole under which extensions on approvals could become indefinite. This is not the rigorous system we were promised in the withdrawal Bill debates.

I now turn to the detail of the proposals and their implication for business. Again, the noble Baroness, Lady Parminter, touched on some of these issues. The SI makes clear that an impact assessment has not been produced. Instead, we have a document that assesses the impact but is not an impact assessment. I think it is the same thing. That document sets out the arguments for a new stand-alone UK pesticides regulatory regime. It suggests that the new regime will be beneficial to business. But given that the vast majority of pesticide manufacturers will be multinational companies, why is it any benefit to business to have to go through a separate evaluation and approval process unique to the UK? Instead of cutting red tape, this just adds to it. Indeed, is there not a danger that some companies will choose to miss out the UK altogether because of the added bureaucracy and concentrate on marketing to EU countries where applications are uniform?

We do not really know what business thinks about the proposal because there was no consultation. As the EM spells out, businesses and other stakeholders were summoned to a contingency planning workshop and told to make themselves ready for a no-deal exit. Does the Minister really think this was adequate

[Baroness Jones of Whitchurch]
consultation given the scale of regulatory change proposed? Does he agree that there should be a requirement set out in the SI to consult stakeholders formally in the future for the making, amending or revoking of guidance and principles?

The impact assessment then sets out the cost to government of setting out a separate regulatory function. This includes making the ultimate decisions on active substances, liaising with other regimes, reporting to the WTO, managing boundaries with the EU and managing relationships with stakeholders. There will be an extra cost to Defra.

Then there are the additional functions for the Health and Safety Executive as the regulator, the Environment Agency for environmental monitoring and Natural England for policy and scientific advice. This is estimated to cost in the region of an extra £10 million. The noble Baroness said that she could not find a figure for it, so it would be helpful if the Minister could clarify what the extra cost will be. Can he also say what assessment has been made of the other options available, rather than just assuming that this will be the way forward? Can he say, too, how quickly these organisations will be able to staff up for these new responsibilities, and whether the additional funds that have been earmarked have already been made available to allow these additional appointments to be made?

Perhaps I may also ask the Minister for more specific information on the additional scientific advice that will be necessary. Each time we deal with an SI, it brings new responsibilities on to the shoulders of our UK scientific community. I am sure that it is well able to deal with the intellectual challenge that this entails, but what assessment has been made of the overall capacity of the scientists? Has a proper appraisal been made of the additional number of people who will be required and the time it will take to ensure that they have the additional skills? What additional funds have been earmarked for the extra responsibilities set out in this SI and the many others that we will be dealing with in the weeks ahead? If such a document exists, I would be grateful if the Minister could make it available to us.

We are also concerned that these two sets of regulations place no requirement for the Secretary of State to seek independent scientific advice. They enable the advice to be sought but do not make it compulsory. There is much use of the word "may" rather than "must" in terms of seeking advice. Again, that really is not acceptable. The SI should spell out the specific independent role that the scientists should be required to play; otherwise, there is a real danger that, when budgets are cut in the future, the lack of scientific capacity will be used to short-circuit this requirement and put even more power in the hands of the Secretary of State. This is particularly vital given that there are plans within the document to extend the times for which pesticides are authorised before they are reviewed, meaning that the scientific advice applied might not even be the most up to date available. We need to be assured that it is required and on the face of the statute.

Given that the Secretary of State has so much individual power in determining the future authorisation of pesticides, does the Minister not accept that a formal role for scientific advice should be sought and published, and that it should be on the face of the SI? Would that not go some way towards giving comfort to consumers and environmentalists? As my noble friend and the noble Baroness have said, they would no doubt be concerned if they knew the extent to which the powers had been watered down in these proposals. I look forward to the Minister's response.

Lord Gardiner of Kimble: My Lords, I am most grateful to all noble Lords for their contributions. I do not think that I will be in a position to satisfy the noble Lord, Lord Whitty, in that, in the whole process of bringing these matters back, the HSE is deemed to be the relevant body in this country. However, I obviously note his observations about the UK and the EU, and the concern that he raised about both EU and UK regulation. As far as this SI is concerned, I take his general point, but I am dealing with the fact that the HSE is our regulator.

I want to open with the precautionary principle—a matter raised by the noble Baronesses, Lady Parminter and Lady Jones of Whitchurch. I suspect that, as with a lot of the issues relating to these statutory instruments, one needs a dossier to understand how everything is pitched. However, I reassure noble Lords that the precautionary principle is expressly a part of the plant protection product regime. It is specifically referred to in Article 1 of EU Regulation 1107/2009 as the underpinning basis of the provisions of the regime in protecting health and the environment. This statutory reference will be retained in UK law after leaving the EU. The precautionary principle is not mentioned in this particular instrument simply because it is not being amended, so nothing in our instrument affects it. I am most grateful for the opportunity to give that reassurance.

A number of points were made on the issue of decision-making, which the noble Baroness, Lady Parminter, raised. We will be taking our own independent decisions under the UK-wide regime but the instruments carry across all the statutory requirements on standards of protection unchanged. All the considerable body of EU technical guidance which has been officially noted under the EU regulations, and which sets the standards to be met in informing decisions, is carried across by these instruments and will remain the basis for the national regime.

I am parking the point that the noble Lord, Lord Whitty, made. On the capacity of the regulator, it is important that I should emphasise that the national regulator, the HSE, is recognised across the world as having considerable expertise, and it has a very strong scientific standing. It currently covers a substantial share of the workload under the EU regime and is by some way the best-performing national EU regulator in terms of meeting timescales. For that reason, many international companies have chosen to make their applications under the EU regime via the HSE, due to its excellent record. The HSE's considerable capacity will be redeployed to deliver the national regime.

Much of the scientific work under the current regime already takes place at national level, so there will be a good degree of continuity.

I can confirm to the noble Baronesses, Lady Parminter and Lady Jones of Whitchurch, that extra public funding will be required from government for the national legislative framework for pesticides, plus the related policy and regulatory capability to operate a UK-wide regime. While budgets for future years have not yet been finalised, this will vary depending on the exit scenario. However, additional costs will be broadly in the order of £5 million per year, with slightly more in the set-up phase over the first couple of years. The costs relate primarily to additional staff in Defra and the HSE to manage the additional responsibilities that will fall at national level but also—I hope this will please the noble Lord, Lord Whitty—to a lesser extent the Environment Agency.

In developing our national renewals programme, we will need to look at issues such as how best to collaborate internationally. Again, I emphasise that obviously so much of these matters may be—we hope it will be—the subject of negotiations and the deal that is achieved, which we also fervently want. But on all these matters, both in the European and UK prisms, collaboration is always best.

The noble Baroness, Lady Jones of Whitchurch, raised a point about independent scientific expertise. Independent advice and assurance are invaluable; in my experience of dealing with these matters, and certainly when we came to the neonicotinoids issue, we relied on the best scientific assessment available. While I have been at Defra, that has been the mantra for all these matters. Perhaps one of the current Ministers is a scientist by background but certainly I am not, so scientific evidence and independent scientific experience is vital.

I emphasise that our existing independent advice arrangements primarily draw on the expertise of the UK Expert Committee on Pesticides. The ECP is chaired by Professor William Cushley of the University of Glasgow and has a broad range of important expertise. Its membership includes academics with expertise in ecotoxicology, toxicology, the fate of pesticides in the environment, and pesticide residues in food. In other words, these are experts who are most vital to providing us with the right advice.

9.15 pm

Working with the committee, we are also preparing to meet any changed advice needs after leaving. I should say to the noble Baroness, Lady Jones of Whitchurch, that we have undertaken extensive work with the committee, looking at its workload, particularly in the event of no deal—although we hope that there will be a deal—including an assessment of the impact of the additional functions that it will take on from the EU. I understand that, for instance, there are about seven active new substances a year: that is the sort of figure I am hearing, and I think that would be digestible. We established that the committee has the appropriate expertise to take on the required additional functions, but any responsible Government would obviously want to continue to monitor those matters. That is what we have established so far.

The noble Baroness, Lady Jones of Whitchurch, raised mutual recognition. Clearly, in negotiations that we hope will be taking place that is an area in which I hope there will be productive results. I reassure noble Lords that the functions set out in the EU regime, including those of the European Food Safety Authority, remain relevant in the national context and are being repatriated to the national regime. These will be carried out mostly by the HSE, which will, for example, produce reasoned opinions on maximum residue levels and undertake public consultations on active substances, alongside the independent advice that will be provided by the ECP.

I stress that other UK bodies with scientific expertise will also play a role in ensuring that the system is robust and sound. Input goes wider than just the HSE. For example, the Food Standards Agency will continue to take an overview of food safety that will encompass pesticides residues in food. FERA will continue to undertake the UK's comprehensive residues-testing programme on behalf of HSE, which currently monitors much more than is required by the current EU monitoring regime. In replacing the EU active substance decision-making processes with national processes, we have made it explicit that the decision-maker must take account of environmental monitoring information submitted by the Environment Agency and its devolved equivalent bodies.

The noble Lord, Lord Whitty, referred to the existing regime. These regulations do not change any existing policy. The approach in the withdrawal Act is to bring policy across into retained EU law unchanged. Any future changes to respond to concerns raised would be for a future Parliament to deal with. On the role of the EA in pesticides management, the HSE is the current competent body, as I mentioned before, and we need to build on its expertise. We need to develop its role and resource and we are also investing in additional capacity for staffing the EA to support the pesticides policy. That is very important.

The noble Baroness, Lady Parminter, raised the issue of future divergence. We are committed to maintaining high levels of protection for people and the environment in our decision-making. In particular—I know that in considering the previous statutory instrument we had a debate about the interim arrangements for the OEP, but I emphasise this again—the OEP's role in terms of the regulator or Minister would trigger if there had been non-compliance with the law. I will include discussions on this matter when I write about interim governance arrangements as well, but that is terribly important.

I mention to the noble Lord, Lord Whitty, declaring my farming interests, the advances we have seen in recent years, the investment in agritech and the fact that many of us involved in farming are actively engaged in integrated pest management. I am responsible for pollinators in Defra and assure the noble Lord that I am very proud of the two beehives we have at the department's headquarters. Bees' Needs Weeks and the pollinator work are bearing fruit. Pollinators are much more stable than they were before, but there is much more to do, and we need to look at how we

[Lord Gardiner of Kimble]
develop pesticides or alternatives that are much more friendly to the environment and much more selective. It is important to stress that.

As for burdens on business, obviously we seek to minimise the impact of having a separate national regime. For example, the information required will be the same and the documentation will be in the same format as the status quo. We do not want to place any undue burden. Indeed, the fees for applications are small compared to the cost of developing a pesticide and bringing it to the market—which is, all too often, hundreds of millions of pounds. I should also say that the instrument makes no changes to fees.

Again, it is hugely important that the national renewals programme ensures that we have all our arrangements properly in place, with safety always in mind and to maintain effective protection to ensure that we have a properly focused work programme. I have taken considerable note of what the noble Baroness, Lady Parminter, said on the matter.

I referred to capacity and resources in terms of what we need to do and extra investment to have in place. I will look at any other points made during the debate, but on the point raised by the noble Baroness, Lady Jones of Whitchurch, about new applications from day one, the HSE will be able from day one to assess applications for new active substances in order to take decisions. If it has been involved in assessment before we leave, it will have the information to move this forward quickly. For new applications, it will be able to start the process. We know that some pesticide manufacturers are already discussing with the HSE which applications they would wish to make.

I so endorse what was said: that this area is of the utmost importance not only to public health but to the environment. If the environment is in a bad state, it does not help public health, so the whole thing is a circular matter.

I hope that I have reassured your Lordships that under this Government, and, I must say, I think, any future Government—I am sure that this applies to the noble Baroness opposite, when she has the privilege of serving in government, and I hope that happens at some point; it is a great privilege—the regulation of pesticides will be of the utmost importance not only for public confidence but because of the pressures on this country and this planet from not looking after the environment. Yes, there is the report today about insects and what we do in this country, whether through Defra, countryside stewardship, environmental land management or payment for public goods for public benefit. All of us contributing to this debate share all that territory, and we must roll it all out. I am well aware of Defra's considerable workload. No one is more anxious than I am to put these fine words into action. On this occasion, it is important for us to bring these regulations into our national arrangements; indeed, we must do so.

Motion agreed.

Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

9.25 pm

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

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

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I raised the same points in the previous debate. I beg to move.

Motion agreed.

House adjourned at 9.25 pm.

Grand Committee

Tuesday 12 February 2019

Offensive Weapons Bill

Committee (4th Day)

3.30 pm

The Deputy Chairman of Committees (Lord Rogan) (UUP): My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Amendments 84 to 87 not moved.

Clauses 40 and 41 agreed.

Clause 42: Extent

Amendment 88

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

88: Clause 42, page 39, line 30, at end insert—

"(ja) section (Enforcement of offences relating to sale etc of offensive weapons)(5);

(jb) section (Application of Regulatory Enforcement and Sanctions Act 2008);"

Member's explanatory statement

This amendment is consequential on the Minister's amendments to insert new Clauses after Clause 39.

Amendment 88 agreed.

Amendments 89 to 92

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

89: Clause 42, page 39, line 38, at end insert—

"(za) section (Sale etc of bladed articles to persons under 18)(1);"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause before Clause 14.

90: Clause 42, page 39, line 45, at end insert—

"(ca) section (Enforcement of offences relating to sale etc of offensive weapons)(1) to (4);"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert the first of two new Clauses after Clause 39.

91: Clause 42, page 40, line 11, leave out "(3)" and insert "(2A)"

Member's explanatory statement

This amendment is consequential on the Minister's amendment at page 28, line 10.

92: Clause 42, page 40, line 12, leave out "(3)" and insert "(2A)"

Member's explanatory statement

This amendment is consequential on the Minister's amendment at page 28, line 10.

Amendments 89 to 92 agreed.

Amendments 92A and 92B not moved.

Amendments 93 and 94

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

93: Clause 42, page 40, line 29, after "25(8)" insert ", (8A), (8B)"

Member's explanatory statement

This amendment is consequential on the Minister's amendment at page 28, line 40.

94: Clause 42, page 40, line 31, at end insert—

"(aa) section (Sale etc of bladed articles to persons under 18)(2);"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause before Clause 14.

Amendments 93 and 94 agreed.

Clause 42, as amended, agreed.

Clause 43: Commencement

Amendments 95 and 96

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

95: Clause 43, page 41, line 13, at end insert—

"(ca) section (Sale etc of bladed articles to persons under 18)(1);"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause before Clause 14.

96: Clause 43, page 41, line 25, at end insert—

"(ca) section (Sale etc of bladed articles to persons under 18)(2);"

Member's explanatory statement

This amendment is consequential on the Minister's amendment to insert a new Clause before Clause 14.

Amendments 95 and 96 agreed.

Clause 43, as amended, agreed.

Clause 44 agreed.

The Deputy Chairman of Committees: My Lords, that concludes the Committee's proceedings on the Bill.

Committee adjourned at 3.33 pm.

Volume 795
No. 253

Tuesday
12 February 2019

CONTENTS

Tuesday 12 February 2019