Vol. 795
No. 258

Wednesday
20 February 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

House of Lords

Wednesday 20 February 2019

3 pm

Prayers—read by the Lord Bishop of Chichester.

Human Fertilisation and Embryology: Frozen Eggs Storage

Question

3.06 pm

Asked by ***Baroness Deech***

To ask Her Majesty's Government whether they have plans to review the compliance with human rights law of the 10-year limit for storing frozen eggs in the Human Fertilisation and Embryology Act 1990.

Baroness Deech (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare my interest as former chair of the HFEA.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, the Government reviewed all the provisions of the Human Fertilisation and Embryology Act 1990 in 2006-07, which led to the 2008 Act and associated regulations, including the 2009 storage regulations. I have been informed that the Government have no plans to formally review the relevant provisions in the Act on gamete storage at this stage. The department's legal advice is that the current law appears to be compatible with the relevant human rights law.

Baroness Deech: Does the Minister appreciate that this lack of compassion and misunderstanding of the law is going to bring defeat in the courts soon? The storage period of 10 years for frozen eggs was set when little was known about the science, so women either exercise that option when they are at the best age—say, 25—and have to have them destroyed at 35, when really needed; or wait until a less optimal age and still have to have them destroyed when most needed, the entire exercise having cost thousands of pounds. Will the Government not enact a simple regulatory change, costing nothing, which will end this interference with private and family life under human rights law—and the indirect discrimination—and give hope to thousands of women?

Baroness Blackwood of North Oxford: I acknowledge that there have been societal changes which have led to women having children later, and technological advances in fertility treatments and freezing. However, I do not agree that the regulatory route that the noble Baroness proposes would be appropriate, as it was not envisaged at the time of the legislation. The strength of this regulation is that it had clinical, parliamentary and public support; given that this is such sensitive legislation, I hope we can continue that going forward. That is why the Government and I believe that continuing with primary legislation is appropriate.

Baroness Thornton (Lab): My Lords, does the Minister realise that if a medical condition is the determining factor and has left a woman prematurely infertile, the eggs can be stored for up to 55 years, as is the case with sperm? Therefore, the science has changed. The Government need to recognise that 10 years is an arbitrary and unfair limit. If eggs can be stored for longer, surely this situation is unfair and cruel to women who wish to use those eggs after the 10-year period, for a variety of reasons. Will the Minister ask for a review of the law, and if primary legislation is needed, could it be included in the next Queen's Speech?

Baroness Blackwood of North Oxford: The noble Baroness is right: the 2009 regulations were not just concerned with fertility options for people who are already adults. The 55-year limit is intended for those who become infertile through serious illness or side-effects, which can happen in childhood. I understand the concerns about the 10-year limit—there was no consensus during the 2009 review—but it is being continually reviewed and will remain under review by the department.

Baroness Chisholm of Owlpen (Con): Can my noble friend the Minister say what the Department of Health and Social Care is doing to publicise the fact that it is preferable for women under the age of 35 to harvest their eggs, because after that age the effect is not as good? I realise that some women do not have a choice, but some private firms take a lot of money from women as they get older without telling them of the disappointments they might face.

Baroness Blackwood of North Oxford: My noble friend makes an important point about the success rate of fertility treatment through the freezing of eggs, which is roughly comparable with IVF at 26%. It is important that false hopes are not raised and that women are not exploited in these very sensitive situations.

Baroness Walmsley (LD): My Lords, the Minister has just claimed that the current law has public support. Can she say how recently that was explored and what the result was? Also, does the time limit have any effect on a woman's decision whether and when to have her eggs harvested, and when to use them? Has any research been done on that and if not, why not?

Baroness Blackwood of North Oxford: The noble Baroness is absolutely right that it is important that we continue to support the Bill. I was trying to clarify that I did not think it appropriate to bring forward a change of this nature under regulations. If we were to introduce a change that had a broad effect, it would be appropriate to do so in primary legislation with appropriate parliamentary scrutiny, consultation and clinical support.

Lord Patel (CB): My Lords, if I may, in the absence of the noble Lord, Lord Winston, I will take his perch—as long as nobody tells him that. The question of the science has been referred to. As far as we know, 26 years is the longest that an embryo that was subsequently born managed to survive. However, nobody

[LORD PATEL]
really knows—we know only of the ones that have been reported. As for how long an embryo might survive, a study that measured the cumulative index of background radiation in mice suggested that when the mice embryos were subjected to increasing levels of cumulative radiation, they survived up to the equivalent of 2,000 years. Therefore, a 10-year limit has no scientific basis. Does the Minister agree?

Baroness Blackwood of North Oxford: I would never argue with the noble Lord, Lord Patel, on any scientific matter. My information is that there was no scientific or biological basis for the 10-year limit. It was based on debate and discussion of societal, ethical and cultural considerations, and on the concern that without a maximum limit, there would be questions about storage banks. Vitrification techniques are far more effective now than the slow-freezing techniques, so it is appropriate that these scientific questions are taken into account as this remains under review in the department.

Baroness Boycott (CB): My Lords, is this not just a case of discrimination? Practically every man in this room could still father a child, but none of the women could. This is very similar to when the pill was brought into our lives. This is about extending women's rights to their fertility, women's rights to work and women's rights to plan their lives. As we have heard from many noble Lords, the science is with us; it is only the culture and the politics that are against us.

Baroness Blackwood of North Oxford: I have a great deal of sympathy with the position the noble Baroness has just presented. As I say, the 10-year limit remains under review but I do not think that replacing it through regulation in the simple way the noble Baroness, Lady Deech, suggested would be appropriate. It would need to be dealt with in primary legislation and we would need to make time for that in the House. At the moment, that is not a realistic prospect.

Brexit: Legislation

Question

3.15 pm

Asked by ***Lord Beith***

To ask Her Majesty's Government how many bills and statutory instruments which have not yet completed their parliamentary process will require to be passed or approved before the United Kingdom leaves the European Union; and how many further bills and statutory instruments needed by the time the United Kingdom leaves the European Union they plan to introduce.

Baroness Goldie (Con): My Lords the progress of all Bills currently before Parliament can be tracked on parliament.uk. We will need to introduce the withdrawal agreement Bill once a deal has been approved by Parliament. Similarly, the progress of all SIs laid by the Government to date can be found on Parliament's dedicated SI tracker, again on parliament.uk. We remain confident of ensuring a functioning statute book for when we leave the EU.

Lord Beith (LD): My Lords, perhaps I can help the Minister with the information that seems to be absent from her brief, which is that there are four major Bills, three of them still in the Commons, including the Agriculture Bill, and probably about 400 statutory instruments—all to be got through in 21 sitting days. Then, of course, if there is a deal at a very late stage there will have to be a withdrawal agreement Bill, which will, among other things, repeal most of the statutory instruments I have just referred to. When are the Government going to face the fact that they cannot do it this way? They will either have to seek an extension of Article 50 or they will be adopting the President Trump approach of bypassing Parliament by the use of emergency powers.

Baroness Goldie: I have known the noble Lord for a long time but I have never known him to be so defeatist. The record to date may not suit him but it is impressive. If we look at primary legislation to date, we have passed the Nuclear Safeguards Act, the Haulage Permits and Trailer Registration Act, the Sanctions and Anti-Money Laundering Act and the Taxation (Cross-border Trade) Act. These have all been properly enacted in both Houses, scrutinised and passed. On the matter of the SIs, again it may uplift his clearly wilting heart to learn that we have laid, to date, 458 exit SIs in total. We actually expect to lay fewer than 600, so we are well over three-quarters of the way there. I think that both our neighbours in the other quarter and we in this House have demonstrated a capacity to do a very good job under pressure and do it well, and I am sure that that will continue.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, since the Minister is so much wiser than the noble Lord, Lord Callanan, will she explain what he meant when he said that it is only the necessary legislation in this long list that needs to be passed by the end of March? What is that necessary legislation?

Baroness Goldie: I would not dare to compare my wisdom with that of my noble friend Lord Callanan, particularly when the arbiter is the noble Lord, Lord Foulkes. We are very clear that we are engaged upon a very serious legislative programme, in relation to both primary and secondary legislation, and I pay tribute to the work being done in this House in these respects. We do not want, when exit day arrives, our statute book to look like a Gruyère cheese. What we are doing, both next door and here, is all the necessary work to ensure that that does not happen.

Baroness Hayter of Kentish Town (Lab): My Lords, I am glad that the Minister has a sense of humour: I think she is going to need it. She says it was very easy to get the trailer Bill through. I think we have to be aware—I am looking at the Chief Whip—that the trailer Bill will be a tad easier than such Bills as the immigration Bill and, indeed, the withdrawal agreement Bill, which, if I understand the letter from David Lidington, will have to repeal large parts of the withdrawal Act we have already passed, because we are not now,

as I understand it, going to have all those statutory instruments by exit day but by the end of the transition period. Will the Minister perhaps think a little more about how this House is going to deal with rather more complicated legislation than the trailer Bill, important though I am sure that is?

Baroness Goldie: If I may correct the noble Baroness, I did not say that any of that legislation was easy; I merely pointed to examples of Bills that have been passed. Yes, the legislation is challenging and, yes, the timetable is challenging, but I am absolutely satisfied that this Chamber will continue to do its job well, as it has been doing. It has been a very impressive example of a scrutinising, revising Chamber. On the matter of what may happen, assuming that we agree the deal and we get an EU withdrawal agreement Bill through, the majority of SIs are relevant whether there is a deal or no deal. If there is a situation where SIs need to be deferred, the withdrawal agreement Bill can make provision to defer those SIs to the end of an implementation period if they are not actually needed on 29 March.

Lord Wallace of Saltaire (LD): My Lords, if I understood the Minister, there are 150 SIs still to be tabled. If I also understand SIs, they need to be laid at least three or four weeks before they come into effect—so we have two weeks for 150 more SIs to be laid. Am I correct?

Baroness Goldie: The House and the noble Lord are familiar with the mechanisms and procedures that attach to secondary legislation. No one is pretending that this is easy. It is challenging. What I am saying is that this Chamber has a marked sense of responsibility. If we agree a deal and come forward with a withdrawal Bill to enact, there will be a desire right across the Chamber to do everything necessary to ensure that we depart in an orderly fashion and that our statute book is not riddled with holes.

Lord Cunningham of Felling (Lab): My Lords, the reality of the numbers is that more than 400 statutory instruments—as the Minister correctly said—have been tabled. Some 188 have been the subject of scrutiny to date, as of yesterday. There is a big difference—as I have said in this House before—between laying the instruments and getting them scrutinised. I emphasise that the reason for the delay is not the committee chaired by the noble Lord, Lord Trefgarne, or the committee that I chair, but the failure of government departments to expedite the laying of the instruments in the first place. Next week 71 instruments will be considered by the two committees. More than 50% of them come from one government department—Defra. The point has already been made that the Government are running out of time. Laying instruments from now on will not meet the requirement of 40 days to pray against them, as we are fewer than 40 days from the leaving date. If the Government want to expedite this, will the Minister please insist that government departments get on with the job?

Baroness Goldie: The noble Lord may be surprised to learn that I have a lot of sympathy with what he has said. All government departments are now on red alert to do just that. They realise that their feet are to the fire and there is an obligation on all departments to do whatever they can to facilitate the promulgation of properly drafted instruments and to ensure that the job of scrutiny is then as easily processed as it can be, not only by the other place but by this Chamber. I repeat the figures that I referred to. I think there is a very healthy indication that departments have been listening and have heard these messages.

Retirement Age: Women

Question

3.23 pm

Asked by ***Baroness Bryan of Partick***

To ask Her Majesty's Government how much in additional contributions has been paid into the National Insurance Fund as a result of the extension of the retirement age for women born in the 1950s.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, I can confirm that between October 2017 and September 2018 there were 1.4 million women aged 60 and over employed in the UK. However, I am unable to say how this equates to national insurance contributions. This is because some women may earn under the primary threshold and therefore not pay national insurance contributions and, conversely, others may choose to pay voluntary national insurance contributions but are not working.

Baroness Bryan of Partick (Lab): I thank the Minister for that Answer. When the previous Chancellor of the Exchequer accelerated the equalisation of the state pension age for women he congratulated himself by saying:

"I've found it one of the less controversial things we've done and probably saved more money than anything else we've done".

I assume he had a rough idea of what he was going to get in. It was less controversial because at that point the women who would be affected had not actually been told and the WASPI campaign had not got off the ground. Does the Minister think it is fair that these women, many of whom sacrificed their pension rights to bring up families and who are often excluded from workplace pensions, should be making a disproportionate contribution to reducing the deficit while those who helped cause it got off scot free?

Baroness Buscombe: My Lords, since 1995, successive Governments, including the Government of the party opposite, have gone to significant lengths to communicate these changes using a range of formats, communication methods and styles, including communication campaigns, leaflets and information online. But it is also important to emphasise that there is no link between the balance of the National Insurance Fund and the decision to introduce changes to the state pension age. Changes to

[Baroness Buscombe]
the state pension age have been introduced by successive Governments since 1995 to address a long-standing inequality in the state pension age.

Lord McKenzie of Luton (Lab): My Lords, the Government have stated that they are committed to supporting people aged 50 and over to remain in or return to work, which is in part in mitigation of the changes to the state pension age. Can the Minister say what in practice is on offer under that heading and how many older persons' champions are now in post in Jobcentre Plus districts?

Baroness Buscombe: My Lords, given that people are living longer, which of course we welcome, it is right that arrangements for the state pension system reflect changes in average life expectancy. We are doing much to focus on the need to ensure that we support people who are working longer. The Government are committed to improving the outlook for older workers, including women, affected by increases in the state pension age. The latest figures show that the employment rates for older workers have been increasing: there are 10.4 million workers aged 50-plus in the UK, which is an increase of 1.3 million over just the last five years, and 2.4 million over the last 10 years. But to enable people to work for longer, we have removed the default retirement age, meaning that people are no longer forced to retire at an arbitrary age, and have extended the right to request flexible working to all, which means that people can discuss a flexible working requirement to suit their needs.

Baroness Burt of Solihull (LD): My Lords, I declare my interest as a woman born in the 1950s. We know that many WASPI women and other women have made complaints to the ombudsman, and that has now been referred to judicial review. It has been a long time, and we will still have to wait until next June to get a result. These women have waited for justice for a long time, they are suffering, and many are set to suffer even more with the rollout of universal credit. So will the Minister commit today to implement the findings of the judicial review without delay as soon as they are published?

Baroness Buscombe: My Lords, I think the noble Baroness will appreciate that I am not able to make any comment on the judicial review. However, it is important—I can say this as someone who also was born in the 1950s—that this has a lot to do with not only the fact that we have an increase in life expectancy but with the equalisation between the pension ages for men and women. The fact is that between April 2010 and April 2018, the basic state pension has risen by £660 more than if it had just been uprated by earnings since April 2010, which is a rise of £1,450 a year in cash terms, and that by 2030, over 3 million women will stand to gain an average of £550 per year through the recent state pension reforms. However, we have to think about having a sustainable welfare system that means that generations to come can enjoy a state pension.

Baroness Altmann (Con): My Lords, I congratulate the Government on all the work they have done to achieve a higher employment rate for older workers, and in particular for older women. That is important in supporting our economy. I also congratulate them on all the work they are doing in jobcentres to try to help older people back to work. My concern for the women affected here is about those who are facing real hardship who did not know about the changes. What progress has there been in supporting, whether in jobcentres or elsewhere, these women who are facing hardship?

Baroness Buscombe: My Lords, anybody facing a particular hardship can seek help from, and will be given support and help by, their local jobcentre. There is no question but that women can always have access, if they require it, at any age, to other state benefits to support them. Indeed, a percentage of the contributions to the national insurance scheme goes towards helping to fund contributory jobseeker's allowance and the NHS; about 20% of receipts are used to fund the NHS. Our national insurance scheme operates on a pay-as-you-go basis: today's contributors pay for today's benefit recipients, including those in receipt of the state pension. It is also important to emphasise that we have communicated over the years with women directly affected by the changes in the 1995 Act. Between April 2000 and the end of January 2019, more than 26 million personalised state pension statements were sent out to women, including to myself and others born in the 1950s.

Yemen: UK Arms Sales to Saudi Arabia

Question

3.31 pm

Asked by ***Lord Tunnicliffe***

To ask Her Majesty's Government, following the publication of the report by the International Relations Committee *Yemen: giving peace a chance* on 16 February, what plans they have to reassess the sale of arms to Saudi Arabia.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, we welcome the House of Lords International Relations Committee's report on Yemen, and thank the committee for engaging on this hugely important issue. The UK is doing all it can to help the parties to find a way to end this devastating conflict, and the Government will respond to the report in due course. With regard to arms export licensing, the Government take their responsibility very seriously, and will not grant a licence if to do so would be inconsistent with the consolidated EU and national arms export licensing criteria. We rigorously assess every application on a case-by-case basis against the consolidated criteria, drawing on all available information. The consolidated criteria set out the policy framework for assessing export licence applications, and they remain as announced to Parliament in a Written Ministerial Statement of 25 March 2014.

Lord Tunnicliffe (Lab): My Lords, the Government say that they are narrowly on the right side of international law in licensing arms sales to Saudi Arabia—but the International Relations Committee, which has just been so praised, says that they are narrowly on the wrong side of international law, as these weapons are: "highly likely to be the cause of significant civilian casualties".

As this appears to be a fine line, what specific evidence would the Government need from the UN, investigators and NGOs to be pushed over the edge and deem those arms sales illegal?

Baroness Fairhead: My Lords, I agree with the noble Lord that this is a very finely balanced decision; there are respectable arguments on both sides. The Government remain confident that we are compliant with our obligations under the Arms Trade Treaty. The key criterion here, of course, is that there has to be a clear risk that the items might be used for serious violations of international humanitarian law in the future. In terms of the sources that we use, in a recent judicial review the court was very clear that there were significant qualitative differences between the risk analysis that the Government could undertake—the information that we got—and the information supplied to NGOs.

Lord Howell of Guildford (Con): My Lords, I am grateful to the noble Lord, Lord Tunnicliffe, for referring to the report of your Lordships' Committee on International Relations, and to my noble friend for her reply, but will she undertake, given that this is probably one of the largest and most horrific humanitarian disasters of recent times and given our involvement because of our export supplies, to use all leverage, including possible suspension of arms export licences, to put pressure on all parties—I emphasise, all parties—to the Stockholm agreement to hold the ceasefire, get the food sitting on the docks of Hodeidah to the starving millions and discourage further outbreaks of violence and bloodshed in this appalling situation, which all of us have a responsibility to do everything we can to halt?

Baroness Fairhead: I thank my noble friend for that question and for chairing the committee. It is, as the Secretary-General of the UN has said, one of the worst humanitarian crises. We keep export licences under close and continual review, and we undertake to continue to do that. In terms of the peace process, we are doing all we can to find an end. Our Foreign Secretary and US Secretary of State Pompeo co-hosted a meeting of the Yemeni quad. Our commitment to a peace process, which is at a critical juncture, is absolute, and we are putting our full weight behind the UN peace process, including additional contributions to support the facility. We have also been active in lobbying the international community on rapid, safe, unhindered humanitarian access to the ports, as my noble friend asks.

Lord Purvis of Tweed (LD): My Lords, I have the pleasure of serving on the committee under the noble Lord, Lord Howell, and I returned from a visit to the wider region yesterday. Since the war began there, the UK has sold £5.5 billion-worth of arms to the coalition, which includes training in targeting and weapons use. I visited Sudan, where there have been an estimated 14,000 militia—including, the UN has verified, nearly 1,000 child soldiers—in the conflict. It is simply not acceptable for the United Kingdom to be satisfied that we are even narrowly on the right side of international humanitarian law. The situation is so severe and the situation is now so tense with the peace process that, for the United Kingdom to give the moral leadership which we currently do by humanitarian assistance and diplomatically, we can no longer effectively turn a blind eye to the need for a pause on arms exports to Saudi Arabia and the Emirates. That will provide the moral leadership so that we can be fully on the right side of international humanitarian law.

Baroness Fairhead: I can assure the House that we are taking this extremely seriously: this is a really significant issue. In terms of the information and assessments we use, we regularly look at various strands and all the analysis to make our judgment. The noble Lord referred to targeting. We are also ensuring that advice is there so that the lessons we have learned from previous conflicts are used and civilians are not targeted. I can assure the House that we will be doing everything we can to continue to support the peace process and the much-needed humanitarian aid. We have already contributed £570 million since 2015. We have just committed to a further three years of almost £100 million to support child malnutrition. We understand the seriousness of this, and we are actively working at all levels.

Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019

Motion to Approve

3.39 pm

Moved by ***Lord Bourne of Aberystwyth***

That the draft Regulations laid before the House on 14 January be approved. *Considered in Grand Committee on 13 February*.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, with the leave of the House, I beg to move the two Motions standing in my name on the Order Paper en bloc.

Lord Liddle: My Lords, perhaps I may make a brief intervention.

The Lord Speaker (Lord Fowler): My Lords, the Minister's Motion to move the Motions en bloc has been objected to.

Lord Liddle: No, I—

The Lord Speaker: You have objected to it, even if you do not know it. The Minister should now move the first Motion on its own.

Lord Bourne of Aberystwyth: My Lords, I beg to move the first Motion standing in my name on the Order Paper.

Lord Liddle: My Lords, it is not my intention to delay the House, and I apologise if that is the case. I realise that we have a heavy day of statutory instruments ahead of us.

I would like to use the opportunity of this order concerning Buckinghamshire to make a parochial plea on behalf of my own native Cumbria, in which I should declare an interest as a county councillor. I am raising the issue on this order because the situation of our county is precisely parallel to the situation in Buckinghamshire. I am rather pleased that, in the case of Buckinghamshire, the Secretary of State has decided in favour of a single unitary authority for the county. In Cumbria, we went through an extensive period of debate with the district councils on the question of local government reorganisation. We tried very hard to establish consensus, but we could not and therefore the county council with the full support of all parties has applied to the Secretary of State, as it is entitled to until the end of March, to make a request for consideration of reorganisation.

I would like an assurance from the Minister. I realise that a lot of effort has gone into this Buckinghamshire case and that the Government will have an awful lot on their plate by the end of March, but for us this is an absolutely vital concern if we are to avoid major cuts in our services and to have an efficient local authority system in Cumbria and one that can deal with the very big challenges that we are facing.

Lord Bourne of Aberystwyth: My Lords, while not strictly on the issue of Buckinghamshire, I think I signed off a letter yesterday to the noble Lord in response to the one that he had written to me on the subject of Cumbria. I am not sure whether he has received it yet—possibly not. The same letter went to my noble friend Lord Cavendish putting forward similar arguments which support the thesis of the noble Lord that there is cross-party support for this. The issue is very much in the in-tray. Suffice it to say that, after the end of March, there is still a facility for local government reorganisation, even if the initiative is not taken before then, although it is on a slightly different basis—it would be an invitation from the Secretary of State. I do not think, from memory of the letter, that we are ruling that out in any way. We would need to consider that.

Motion agreed.

Construction Products (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

3.42 pm

Moved by ***Lord Bourne of Aberystwyth***

That the draft Regulations laid before the House on 18 December 2018 be approved. *Considered in Grand Committee on 13 February*.

Motion agreed.

Public Procurement (Amendment etc.) (EU Exit) Regulations 2019

Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019

Motions to Approve

3.43 pm

Moved by ***Earl Howe***

That the draft Regulations laid before the House on 13 December 2018 be approved. *Considered in Grand Committee on 4 February*.

Motions agreed.

Brexit: Economic Impact

Statement

3.43 pm

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, with the leave of the House, I will repeat the Answer to an Urgent Question given by my right honourable friend the Financial Secretary to the Treasury in another place earlier today.

"Mr Speaker, at the end of November, the Government published our analysis assessing the economic impact of leaving the European Union. It not only included an analysis of the Government's negotiating position as set out in the July 2018 White Paper, but it went further still and considered three other scenarios: a free trade agreement, an EEA-type relationship and a no-deal scenario.

Specifically, the analysis showed that the outcomes for the proposed future UK-EU relationship would deliver significantly higher economic output—about seven percentage points higher—than the no-deal scenario. A no-deal scenario would result in lower economic activity in all sector groups of the economy compared to the White Paper scenario. That is why we should pass this deal: to avoid no deal, and to support jobs and the economy.

In publishing this work, the Government delivered on their commitment to provide an appropriate level of analysis to Parliament. In addition, this House has had plenty of opportunity to debate both the analysis and the deal on the table. As the Prime Minister said, we will bring a revised deal back to the House for a second meaningful vote as soon as we possibly can.

In the meantime, it is right that the Government are afforded the flexibility and space to continue their negotiations. This is because the agreement of the political declaration will be followed by negotiations on the legal text. The UK and the EU recognise that this means that there could be a spectrum of different outcomes. We need to approach these negotiations with as much strength as possible. The focus must now be on the future: planning and prioritising what matters.

Let me remind the House that we will have an implementation period, a new close relationship with the EU and, crucially, the ability to strike trade deals

around the world, bringing back control over our money, borders and laws to mould a prosperous and ambitious new path for our country—on our terms. No matter what approach we take, the UK economy will continue to be strong and grow in the future".

3.45 pm

Lord Davies of Oldham (Lab): My Lords, is it not amazing, with the Government's industrial strategy on the point of collapse and our car industry showing the enormous stresses and strains of the way the Government run the economy and their attempt to secure Brexit on appropriate terms, that Ministers can trot out these ridiculously optimistic propositions on how the economy will fare? Is it not the case that all the Government's proposed options would have a serious, negative effect on the British economy? Has the Chancellor not already accepted that they will amount to a loss in GDP of at least 4%? Worse still, the Bank of England said that no deal would have an even more adverse effect than the financial crisis. The Government contemplate a considerable loss. Is it not totally irresponsible to threaten to act in a way that no proper Government would contemplate, in threatening the possibility of no deal?

Lord Bates: I do not accept that, as the noble Lord would anticipate. There are reasons to be positive about the UK's prospects, particularly if we leave with a deal. The analysis showed the severely negative impact that no deal would have on the UK economy, which is why we want to avoid it at all costs and why a responsible approach from the Opposition, if they care about the economy and jobs, would be to support the deal.

Baroness Kramer (LD): My Lords, the November analysis demonstrated that every scenario would be hugely damaging to the UK economy; it said that no deal would be worse but that the other options were significantly awful. That raises the question of why the Labour Party is not openly opposing Brexit at this point. The deal modelled here, which the Minister presents as though it were the Government's, is in fact the Chequers deal, which had within it "max fac" and therefore assumed absolutely no friction in trade between the UK and the EU. That option is no longer on the table. The backstop was part of the analysis as well. We therefore have never at any point seen numbers that represent the deal currently being negotiated by the Prime Minister. Does the Minister not agree that it is a disgrace that MPs will be asked to vote on that deal without ever having seen the analysis of its impact on our economy in the immediate present, the near future and the long term?

Lord Bates: I do not accept that. We produced that analysis, which ran to some 83 pages. The noble Baroness says that we did not produce analysis. It was the proposal for the backstop in the withdrawal agreement that was rejected very clearly in the other place in the first meaningful vote. In all other aspects of what we seek to achieve, we want to see maximum facilitation and trade. That is what the Prime Minister is working tirelessly to secure with our European partners.

Lord Hannay of Chiswick (CB): My Lords, does the Minister not recognise that it was a little odd to produce three rather theoretical options but not to test them against the present situation? Why did the Government not do that? That would be the normal thing to do. Could it have been that they were frightened to show that all these options were a good deal worse, some of them very much worse?

Lord Bates: In some sense they did that, because the analysis benchmarked against the status quo—our membership of the European Union. It then went through the options and said that, over a 15-year period, if the White Paper model were accepted there would be a 0.6% impact on GDP, 2.1% modelled on White Paper sensitivity, 4.9% on a free trade agreement and 7.7% on no deal.

Lord Bridges of Headley (Con): My Lords, when the Government publish their tariff schedule for what would apply in the event of a no-deal scenario, will they also publish an impact assessment of those tariffs?

Lord Bates: My noble friend puts forward an interesting idea. Of course, the tariff schedule has not been published yet. It will be published shortly, and I am sure the Financial Secretary to the Treasury and others will have heard my noble friend's suggestion.

Lord Davies of Stamford (Lab): My Lords, if the Government seriously wanted a deal, they would be able to conclude one very easily in a matter of days on several bases—for example, on the basis of remaining in the customs union indefinitely. I am quite certain they could get it through the House of Commons as well. If the Government stopped listening slavishly to and taking orders from the ERG, and instead interrogated the national interest, that problem would have gone away years ago.

Lord Bates: The solution the noble Lord proposes would necessitate our signing up to a common external tariff barrier, which would mean we could not negotiate our own trade deals; we would not have control of our borders in terms of free movement; and we would still have our laws dictated by the European Court of Justice. That is what was rejected and what we are trying to negotiate an alternative to.

Lord Bilimoria (CB): My Lords, following the question from the noble Lord, Lord Hannay, the Minister said that under the Prime Minister's deal the economy would be 7% better off than in a no-deal scenario. Does the Minister accept that the Prime Minister's deal would be much worse than remaining in the European Union? The economy would be far better off. Does he admit that? A Norway-plus, least-worst option would also be much better for the economy than the Prime Minister's deal.

Lord Bates: I do not accept that, because the point is that we do not know what that final deal is. There are also significant factors that need to be put in here, such as new trade deals that could be secured with

[LORD BATES]
trading partners. We already had exports at record levels last year. The UK is still regarded—just last month—as the number one location for foreign investment, according to *Forbes*. Just in January, Deloitte said London was the world's best city to invest in. The reality is that this country has a huge amount to offer. Once that energy is released and we get beyond Brexit, I believe we will make those figures look pretty sad and depressed.

Baroness Ludford (LD): My Lords, I follow up the points made by my noble friend Lady Kramer. A statistic in the White Paper on the long-term economic analysis, which assumed much more serious non-tariff barriers than the Chequers White Paper, showed that the hit to GDP would, instead of 0.6%, be over 2%—between three and four times worse. That was reckoned to be the nearest to the actual withdrawal deal—not frictionless trade or all these fabulous unicorn trade deals we were supposed to get, but closer to the reality. I press the Minister again on the need for a real economic analysis of what the Prime Minister is actually negotiating, not a fairy tale.

Lord Bates: I agree with that analysis. That is why I said 0.6% was modelled on the White Paper, but then we introduced a sensitivity analysis which showed that the hit might be 2.1%. That information—which we were told was deficient and incomplete in order to make decisions—is there.

Lord Hamilton of Epsom (Con): My Lords, as there are two parties to this deal—the EU and the United Kingdom—would it not be valuable to carry out an impact assessment of what will happen to the EU under no deal, particularly as it sells one and a half times more to us than we do to it and, in the event of no deal, it would not get £39 billion?

Lord Bates: I was with my noble friend right up until the last element of what he said. He and I have gone over that territory before but, on the first part, no deal is not only not in the UK's interests, it is not in Europe's interests. We want to see Europe prosper because it is a major market for us. The best thing to do is to resolve this difference over the backstop, which is unacceptable in the other place, get behind a deal, and get on with Brexit.

Lord Reid of Cardowan (Lab): My Lords, may I return to the question asked by the noble Lord, Lord Bilimoria, a few minutes ago? The Minister said in a previous reply that the benchmark for measuring the impact assessments was the status quo: our present position as a member of the European Union. He also said that every other option tested was worse than the status quo. Will he therefore admit the logic of his response to the noble Lord, Lord Bilimoria—that remaining in the European Union is better than any other available option, including the Prime Minister's deal?

Lord Bates: I will give broadly the same answer, if the noble Lord will bear with me. What was not given was any potential up side to leaving the European Union, and the ability to have our own trade deals and set our own economic and trade policy. That needs to be factored in, and we remain confident that we have a bright future outside the European Union, as was shown by the record levels of employment we are seeing in this country, and the falls in unemployment announced earlier this week. These are all reasons to be hopeful and optimistic about the future.

Armed Forces Act (Continuation) Order 2019

Motion to Approve

3.56 pm

Moved by ***Earl Howe***

That the draft Order laid before the House on 24 January be approved.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Armed Forces Act (Continuation) Order is a routine item of business. It is a short but vital document to preserve the existence of one of our greatest assets—the Armed Forces. The order also serves to remind us that the existence of the Armed Forces is not just a matter of executive decision but also a matter that requires regular parliamentary consent. We provide that consent through our annual consideration of the legislation governing the Armed Forces: the Armed Forces Act 2006. This reflects the constitutional requirement under the Bill of Rights that a standing army, and, by extension, the Royal Navy and the Royal Air Force, may not be maintained without the consent of Parliament.

It is worthy of note that a change was proposed by the Ministry of Defence in the Armed Forces Bill 2005. That Bill did not make any provision for annual renewal, but this was resisted by the Defence Committee and the Select Committee that considered the 2005 Bill in another place. Both committees favoured retaining the present arrangements. The Ministry of Defence amended that Bill, and the practice of annual renewal continues.

That brings me back to the draft order we are considering this afternoon, which is to continue in force the 2006 Act for a further year, until 11 May 2020. Much of what I am about to say has been said in the past, but it is important to explain, and to place on this year's record, the process for renewal, and to set out the consequences if that does not happen. Every five years, renewal is by Act of Parliament—an Armed Forces Act. The most recent was in 2016, and there must be another by the end of 2021. Between each five-yearly Act, annual renewal is by Order in Council, and the draft order that we are considering today is such an order.

The Armed Forces Act 2016 provided for the continuation in force of the Armed Forces Act 2006 until the end of 11 May 2017, and for further renewal thereafter by Order in Council for up to a year at a

time, but not beyond 2021. If the Armed Forces Act 2006 is not renewed by this Order in Council before the end of 11 May 2019, it will automatically expire. If the 2006 Act expires, the legislation that governs the Armed Forces and the provisions necessary for their maintenance as disciplined bodies would cease to exist.

4 pm

Discipline is essential. It maintains the order necessary for the Armed Forces to accomplish their mission to serve our country, whether at home or abroad. The 2006 Act provides nearly all the provisions for the existence of a system for the Armed Forces of command, discipline and justice. It creates offences and provides for the investigation of alleged offences, the arrest, holding in custody and charging of individuals accused of committing an offence, and for them to be dealt with summarily by their commanding officer or tried in the court martial. Offences under the 2006 Act include any criminal offence under the law of England and Wales, and those which are peculiar to service, such as misconduct towards a superior officer and disobedience to lawful commands. The Act applies to members of the Armed Forces at all times, wherever in the world they are serving.

If the 2006 Act was to expire, the duty of members of the Armed Forces to obey lawful commands, and the powers and procedures under which this duty is enforced, would no longer have effect. Commanding officers and the court martial would have no powers of punishment for failure to obey a lawful command or for other disciplinary or criminal misconduct. Members of the Armed Forces would still owe allegiance to Her Majesty, but Parliament would have removed the power of enforcement. Service personnel do not have contracts of employment and so have no duties as employees. Their obligation is essentially a duty to obey lawful commands.

The 2006 Act also provides for other important matters for the Armed Forces, such as enlistment, pay and the redress of complaints. The continuation of the Armed Forces Act 2006 is essential for the maintenance of discipline. Discipline is fundamental to the existence of our Armed Forces and to their continued success, whether at home supporting emergency services and local communities, and protecting our fishing fleet as well as our shores; playing their part to counter terrorism or to combat people smuggling and drug smuggling; distributing vital humanitarian aid; saving endangered species; or defeating Daesh in Iraq and Syria. The continuation is to ensure a sound legal basis for them to continue to afford us their vital protection. I hope that noble Lords will support the draft order and I beg to move.

Lord Morris of Aberavon (Lab): My Lords, I do not know how often we debate the consequences of the Bill of Rights 1688, but, as the noble Earl said, this is one of them. The Bill prohibited a standing army without the consent of Parliament—a reaction, I suspect, to Cromwell's stewardship.

When I was a young MP, we had an annual Army Act, which provided an opportunity to raise any issue concerning the Armed Forces. It was a day out for old warriors, from Colonel Wigg up or down, as the case was, to bait Jack Profumo, Christopher Soames and other War Office Ministers. I joined in, despite my limited experience as a Welch Fusilier subaltern, whose occasional job was to be in charge of 10 men, fully armed, taking the night train from Hanover to Berlin, with the blinds down, in order to assert our right to go from the British zone to the Berlin sector. Fortunately, World War III did not break out. Now, instead, we debate annually a statutory instrument, as the Minister said, with the same opportunity to raise any issue concerning the Armed Forces.

The 2006 Act is subject to a quinquennial review, and the next Bill will be in 2020. Knowing this, and following the case of Sergeant Blackman, I took the opportunity to alert the Ministry of Defence to my concern with some aspects of the court-martial system. I did this through Questions in September and October 2017, and a short debate in November 2017. I thought that my dual experience as both a Defence Minister and Attorney-General might be useful.

I was fortunate in my timing with the reply from the Minister, the noble Baroness, Lady Goldie, who said that,

"the Government have decided that the time is now right for an independent and more in-depth look at the service justice system so that we can be assured that it is as effective as it can be for the 21st century".—[*Official Report*, 23/10/17; col. 766.]

I was not alone in criticising some aspects of the court-martial system. Indeed, the Judge Advocate-General, Judge Blackett, did exactly that, and I pray in aid his comments.

The MoD moved with unparalleled speed after I raised the issues in the House—I suspect that the noble Earl, Lord Howe, was behind this—by appointing a retired circuit judge, the former Chief Naval Judge Advocate, His Honour Judge Shaun Lyons, to conduct the review. I was fortunate, through the good offices of the noble and learned Lord, Lord Thomas of Cwmgiedd —the former Lord Chief Justice, as we all know—and the noble Lord, Lord Thomas of Gresford, to meet Mr Lyons and to raise with him some of the issues. The noble Baroness, Lady Goldie, said in the November 2017 debate that,

"we look forward to the report of his review in around a year's time".—[*Official Report*, 23/11/17; col. 390.]

Specifically I ask, now that we are in February 2019—15 months on—and because there has been no public consultation, could noble Lords see the report if it is ready now, before any more work is done on the next Bill?

As the Attorney-General, I initiated and signed a protocol deciding, in those cases where civilians are involved, the most appropriate judicial machinery. I trust that the protocol is working well. Given the reduction in the size of the Armed Forces, despite the fact that various courts have held military courts to be human rights-compliant, there is a case for bringing military courts more into line with civil courts, particularly for the most serious cases, which are my concern. Experienced military prosecutors will ensure that the services' general discipline needs will be protected. I emphasise that it is the most serious cases, such as murder and rape, which should be tried by a jury, with

[Lord Morris of Aberavon]
a judge appointed by the President of the Queen's Bench Division, who allocates members of the High Court Bench for the more serious cases in our courts, where he or she sees the need. This should be a routine matter as opposed to an occasional departure. The very fact of the rarity of murder and rape cases reinforces my view that an unfair burden is imposed on the judge advocate when such cases are the day-to-day business of High Court judges, who deal with these matters, and licensed senior circuit judges.

The membership of the court martial is hierarchical, and I am told that the most junior member is asked to express his conclusions first. This is not an easy task for a junior member of the court martial, who might be sitting for the first time. Secondly, court-martial verdicts are decided by a majority. You can be convicted of murder or other serious offences by a three to two verdict. This is hardly 21st-century stuff. Thirdly, the voting is secret. In New Zealand in recent years, using the UK system as a model, they have decided that convictions must be unanimous. In our civil courts, there are strict procedural rules for juries to endeavour, first of all, to reach a unanimous verdict and, if they fail to do so, to reach a verdict by a majority of 10 to two where there is a jury of 12. Lastly on that point, the voting figures are made known to the public, to the court and particularly to the accused.

I trust the review will address the problems which I raised in some detail in 2017, and be bold despite the findings in the past on human rights compliance with the existing procedures; and also fulfil the Government's aim, as the noble Baroness said in November 2017, of a court-martial system that is effective and also fair, in my words, for the 21st century.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I thank the Minister for his exceptionally helpful introduction to this important issue. As he said, this is a vital matter, which we review through an Act every five years and a renewal every year. It illustrates the fact that this is a parliamentary democracy in the United Kingdom. Sometimes, some people, particularly down the other end, forget that this is a parliamentary democracy; Parliament's role needs to be emphasised, as it is in this continuation order. It is much better than a presidential system, where the president is the commander-in-chief and has more extensive—almost unlimited—powers than the head of Government in the United Kingdom, in a parliamentary democracy. I welcome that.

I want to take the opportunity to raise a related matter. I thank the Minister for his recent excellent written replies regarding an accident that took place in Scotland on 1 September 1994. Someone who saw his replies remarked, "These are exceptional". Normally, written replies from Ministers, particularly in the House of Lords, are scanty, whereas these were full and helpful.

The incident took place on 1 September 1994 when RAF Tornado ZG708 crashed on a low-flying exercise. Flight Lieutenant Peter Mosley, the pilot, and Flight Lieutenant Patrick Harrison, the navigator, were both killed instantly. The nephew of one of the flight lieutenants, Jimmy Jones, has written to me again. I raised this issue in the other place in 1994 when I was a Member of Parliament and I have raised it on a number of other occasions, because the board of inquiry into the accident was completely inadequate and the relatives received no explanation of why their loved ones were killed and no indication of the cause of the accident.

In Scotland, as the noble and learned Lord, Lord Keen of Elie, will know, the fatal accident inquiry procedure does not commence automatically in relation to such incidents, and there was no such inquiry. This is an astonishing situation. I do not know if the noble and learned Lord, Lord Hope, recalls the situation but he will certainly know the general legal framework in Scotland, where we do not have automatic FAIs into these military accidents. It seems a strange anomaly.

In thanking the Minister for the written replies, I ask him now, in the light of the plea I am making, to pursue this matter further with the Scottish Government and the Law Officers in Scotland to see whether something can be done, even at this late stage, to satisfy the relatives' concerns. It is important that we are seen to be fair to these two men, who were prepared to fight, and ultimately to give their lives, on behalf of the United Kingdom. We should give some explanation to their relatives.

I would like to return to some of the provisions of the order. It says:

> "The territorial extent of this instrument is the United Kingdom, the Isle of Man and the British Overseas Territories except Gibraltar".

Why is Gibraltar excluded? Our soldiers, sailors and airmen presumably serve there. They may be covered by some Gibraltar legislation, but it is important to know why Gibraltar is excluded from the order. I think that is my only question.

4.15 pm

Also, Article 10(1) says that:

> "There has been no formal consultation on this instrument".

Given the concern expressed about other orders, why has this not happened?

Finally, the best sentence—or part of a sentence—in this order is in Article 8(1):

> "This instrument does not relate to withdrawal from the European Union".

To that I say, "Hallelujah!" Today, almost everything we are doing here and in Grand Committee relates to the proposed withdrawal from the European Union. It is a great relief that, squeezed in among all those other EU exit statutory instruments, we are at last doing something that is relevant to us in the United Kingdom irrespective of whether we are in or out of the European Union.

Lord Craig of Radley (CB): My Lords, I support this legislation. Other noble Lords and I have pressed on a number of occasions for new arrangements to deal with the difficulties that Armed Forces involved in conflict experience with human rights legislation. Such difficulties are well known to this House. What steps are Her Majesty's Government taking to address them, hopefully with a view to introducing such a measure when the Act is renewed in 2020?

Lord Judd (Lab): My Lords, the Minister is always extremely clear on these matters; the whole House appreciates that. I declare an ancient interest, in that I was once a service Minister. This is an opportunity for all of us in the House to put on the record again our admiration for and gratitude to the men and women of the armed services for all they do on our behalf, in some exacting and difficult circumstances.

I would like to raise just one point with the Minister. I am one of those who believes that the highest standards of commitment to human rights and the international conventions are essential to effective defence. If we stand for better things, we must demonstrate all the time that we are behaving in accordance with that conviction.

Sometimes, the circumstances are extremely testing and provocative, but in my view that is exactly when this kind of commitment becomes more important, not less. I would be very grateful for the Minister's assurance that, in our approach to the Armed Forces, we do not slip into the habit of saying, "These are here. We have a commitment to them and we therefore behave accordingly because it is required of us". Particularly in the context of ill-informed media comment and so on, when training and preparing our servicemen and women, do we take seriously our responsibility to explain why these commitments are important and how central they are to our credibility and effectiveness? It is not just a matter of obeying orders, but of people understanding why what is required of them is so essential.

I think the Minister will agree that this is particularly important with younger members of the armed services, towards whom we have an obvious duty of care. Any convincing assurances that he can give would be immensely helpful.

Lord Thomas of Gresford (LD): My Lords, I declare an interest as chair of the Association of Military Court Advocates, having been involved in a number of courts martial over a considerable period. Things have changed very much for the better since the 1950s and 1960s. At the first court martial I went to, the officers on the panel marched in and put their swords on the table, sheathed, until the verdict. The sword was then moved and you understood the way the verdict had gone from the direction in which it pointed. That practice was abolished. I also claim some credit for raising in this House the practice of the Navy to march the defendant in at the point of a cutlass. I tabled a Question asking why this procedure still went on; it was abolished in the weeks that followed, before the Minister rose to give an Answer. That is my one tiny claim to military justice.

I have spoken on each of the Armed Forces Bills since that of 2000-01; over the years, we have moved to a much better system, very much influenced by the European Court of Human Rights and its decisions, which pointed out deficiencies in the practice and procedure of courts martial. These decisions were led by Judge Advocate General Blackett—to whom the noble and learned Lord, Lord Morris of Aberavon, referred—who has been influential in many ways.

It was as a result of long-term advocacy for reform that eventually the inquiry to which the noble and learned Lord, Lord Morris, referred was instituted by the Ministry of Defence. I had the pleasure of meeting the retired judge who was in charge of that inquiry. I would like to know from the Minister when his report will be available and, in particular, whether it will be available with plenty of time for full consultation throughout the profession, and among other professionals, before we come to deal with the Bill in a year or two's time. It is very important that we should have the opportunity to consider and, perhaps, contribute to the Bill that will subsequently come before this House.

There has been much progress under all Governments; I hope that progress will be maintained.

Baroness Smith of Newnham (LD): My Lords, unlike my noble friend Lord Thomas of Gresford, I have not been involved in any of the Armed Forces Bills going back to 2006 or before, nor indeed to the equivalent statutory instrument last year. However, last year the equivalent debate was in Grand Committee in the Moses Room, where I listened to my noble friend Lord Campbell speaking on behalf of the Liberal Democrats.

When I went yesterday to get the draft statutory instrument, the Printed Paper Office was a little overtasked. In the end, I was given six copies of a draft that said "2018". I thought that did not seem quite right, but I read the draft. I went in this morning to see whether that was really what I was meant to be reading, and got the draft defence statutory instrument for 2019. The phrasing of the two statutory instruments is almost equivalent, but two paragraphs have been added to the Explanatory Memorandum. There is paragraph 8, to which the noble Lord, Foulkes, has already referred, and paragraph 9, which says, under the heading "Consolidation":

> "This instrument does not amend any other legislation so no consolidation is needed".

However, paragraph 8 on the EU, headed "(Withdrawal) Act/Withdrawal of the United Kingdom from the European Union", says that it does not relate to this—and the noble Lord, Lord Foulkes, said "Hallelujah". If one looks very closely at the Explanatory Memorandum, the footer indicates that it is from DExEU. I assume that this is simply because the Civil Service is so overwhelmed by statutory instruments at the moment that the assumption is that nothing can come as a statutory instrument that does not relate to Brexit. It says "DExEU/EM/8-2018.2". I assume that DExEU is not really involved with this statutory instrument, and that it is the normal MoD statutory instrument and Explanatory Memorandum.

We have already heard that whether the Armed Forces, starting with the Army, can go forward requires the consent of Parliament. This year, of all years, it is essential that Parliament gives its consent to ensuring that the Armed Forces can move forward. If we are to believe some of the preparations for Brexit and a no-deal Brexit, we are led to understand that Her Majesty's Armed Forces might be brought into some sort of action to ensure stability, not just of the realm externally, but within the United Kingdom.

[Baroness Smith of Newnham]

Since this order appears to be being used a bit like a Christmas tree Bill, to enable noble Lords to talk about various defence issues, clearly it is important to stress, alongside the noble Lord, Lord Judd, our support for and gratitude to the Armed Forces for everything they do in the service of our country. On this occasion, however, I should also like to ask the Minister whether the Armed Forces are being prepared for action in the event of a no-deal Brexit, and what work Her Majesty's Government are doing to ensure that the Armed Forces have the resources that they require.

The Minister has told us that the statutory instrument and these rules allow for command, disciple and justice, all of which are important, but it is also important to think about the well-being of our Armed Forces, and ensure that they are able to do their job as effectively and efficiently as possible. If we are thinking ahead to the need in due course for another Armed Forces Bill in 2021, what work is the MoD doing to think about the future, and is there some way in which your Lordships' House can assist the Minister and the MoD to ensure that the Armed Forces have all the resources they require?

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for introducing this instrument. The Labour Party supports Her Majesty's Armed Forces, and I am sure that support goes across the whole House. My boss in the other place, Nia Griffith, used this order to comprehensively review the present position of the Armed Forces. I will restrict myself to quoting two paragraphs of her speech, the first on,

"forces numbers and the alarming downward trend across each of the services. When Labour left office in 2010, we had an Army of 102,000 … an RAF of 40,000 and a Royal Navy of 35,000. Now they are all substantially smaller. The Army and RAF have been cut by 25% each and the Navy is down by nearly 20%".

The second paragraph states:

"The steady decline in service morale is a significant worry. The proportion of Army personnel reporting high morale in 2010 was 58% for both officers and … other ranks, but that fell to 46% for officers and … 36% for other ranks in 2018".—[*Official Report*, Commons, 18/2/19; cols. 1229-30.]

I have never had the privilege to serve full-time in Her Majesty's Armed Forces, but I have been involved with them over the years. I was taught that effective armed forces come from good equipment, good training and good morale, and the drop in morale since 2010 is sapping away the capability of our Armed Forces. I hope the Minister will agree and give some indication of how this will be addressed in the future.

I have just two specific questions about the law.

4.30 pm

Lord Stoddart of Swindon (Ind Lab): My Lords, the figures that the noble Lord gave on the reduction in our Armed Forces are very worrying. I find it strange that under those circumstances the Secretary of State for Defence is recommending that our Armed Forces throughout the world should be increased. There seems to be some difference between his ambitions and what the Government are prepared to provide.

Lord Tunnicliffe: My Lords, that is not a question for me but for the Minister. What it brings out, given some of the contradictory statements by Her Majesty's Government, is the need for a proper Armed Forces debate in the not too distant future—I think that is the view across the House.

I move on to my narrower questions. First, what happens if we do not pass this instrument? The Minister has anticipated that question substantially in his opening speech, but the one area he did not cover is what would happen to military personnel if it is not approved. What happens on simple issues such as whether they are paid and whether their accommodation is still available? The information he gave us earlier was all about the maintenance of discipline, which we can all understand. But we also have to recognise that we may be unabling the continued proper employment of personnel by passing this order.

The order and the Act that we are keeping alive are about the law. The one area that I have never really managed to understand is this: by what authority does a member of the Armed Forces use lethal force? To put it more directly, when that person kills someone, why is that not murder? Is the explanation different when war has been or has not been declared? In particular, what is the legal position if they kill someone supporting the civil authority in the United Kingdom?

Earl Howe: My Lords, I am very grateful to all noble Lords who have contributed to this debate. I will of course do my best to answer all the questions that have been raised. I start with the noble and learned Lord, Lord Morris of Aberavon, who gave us a most interesting exposition of his long experience, not only in relation to the Armed Forces but also as a law officer. Not unnaturally he homed in on the service justice review, which is being undertaken by His Honour Shaun Lyons, who, I am sure noble Lords will agree, has an excellent knowledge of criminal law and procedures, as well as having served in the Royal Navy as Chief Naval Judge Advocate. The review is covering all aspects of the service justice system, including court martial and the types of cases that it deals with, the summary hearing process, the service police and the Service Prosecuting Authority.

The policing aspects of the review are being led by Sir Jon Murphy, a former chief constable of Merseyside Police. The noble and learned Lord asked whether it was possible to see the conclusions of the report. The answer is, "Not yet". The review is due to report in the spring. That will give us time to consider it and, if necessary, make plans for any legislative changes before the next Armed Forces Bill in 2020. As for consultation, there is no public consultation on the process, but Judge Lyons is consulting a wide range of stakeholders with an interest in the service justice system. Of course, he can be contacted by interested parties through the head of the review secretariat.

The noble and learned Lord asked in particular about the ability of the service justice system to deal with serious offences. As he will be aware, the service justice system is capable of dealing with the most serious offences, and has done so over the course of history. It has been held to be compliant with the

European Convention on Human Rights, both for investigations and prosecutions within the UK and abroad, where the civilian police do not have jurisdiction. We are, however, keen for the review to take a strategic look at all key aspects of the service justice system, and this is one of the issues being explored.

The noble and learned Lord referred to the use of majority verdicts under the current system. The Government, as he will be aware, have been successful in establishing, both in the European Court of Human Rights and in the civilian courts, that the court martial system is in principle safe, independent and impartial. The current system has been considered twice by the Court Martial Appeal Court in the last five years and was on both occasions held to be fair and safe. Noble Lords, and noble and learned Lords, will know that the Court Martial Appeal Court is made up of the same judges as sit in the civilian Court of Appeal. That Appeal Court has held that there is no ground for deciding that a verdict by simple majority is inherently unfair or unsafe. I am advised by my noble and learned friend Lord Keen that in Scotland a majority verdict of eight to seven in a murder case, for example, would be sufficient to convict an accused person. However, the Government recognise that there are differing views about the system of majority verdicts, and this is another issue that will be covered by the review.

I thank the noble Lord, Lord Foulkes, for the compliments he paid me over the recent Written Answers that I was able to give him. I am glad that he found them helpful. He referred to the dreadful accident that I am sure we all remember involving the deaths of two RAF pilots in Scotland. I will take away the suggestion he made about the possibility of encouraging the process to move forward in Scotland. I would not wish to give a firm undertaking to that effect, because I do not want to do anything improper as regards undue influence on the Scottish Executive, but I undertake to take the point away.

The noble Lord asked me about Gibraltar and the jurisdiction over Gibraltar in relation to this order. The Armed Forces (Gibraltar) Act was passed by the Gibraltar Parliament on 8 November 2018—very recently. It came into law on 10 December 2018. The Act gives effect in Gibraltar law to certain provisions of the Armed Forces Act 2006, and Gibraltar wishes to make its own provisions in relation to that Act. Of course, we continue to work with Her Majesty's Government of Gibraltar on the inclusion of the Royal Gibraltar Regiment within the Armed Forces Act 2006 service discipline regime to ensure that a discipline system is put in place that meets the needs of the regiment. The noble Lord also asked whether there had been any consultation on the order. There has been no public consultation but, as a matter of routine, the Armed Forces are consulted in relation to legislation that affects the service.

The noble and gallant Lord, Lord Craig, asked what point we had reached in relation to an issue that he has very effectively championed in this House on more than one occasion: the vexed issue of the challenge in recent years to the principle of combat immunity. This has created considerable legal uncertainty about liability in combat situations and the risk that we may be moving towards the judicialisation of war, if I can put it that way. We want to introduce better combat compensation for those injured in combat operations and for the families of those killed. The public consultation closed on 23 February 2017. Therefore, we have consulted and are still carefully considering the views expressed during the consultation and will be publishing a response.

The proposal that we are advancing is that compensation would be paid at the same level as court damages, which can often be substantially greater than awards under the Armed Forces compensation scheme. Our aim is to ensure that those who have risked their lives in the most challenging of circumstances should be put in the best possible financial position quickly. That last word is one of the operative words, because some of these cases have a tendency to drag on and it is immensely upsetting to the individual or their family—and many times to both. The vast majority of compensation paid in these circumstances currently is not as a result of MoD negligence. These proposals are aimed at providing combat compensation to those who have suffered in the most extreme circumstances. We will announce further proposals in due course and I hope to have further news before too long on that front for the noble and gallant Lord.

The noble Baroness, Lady Smith, asked what arrangements involving the Armed Forces are being considered for the case of a no-deal Brexit. She will remember, I am sure, that on 18 December last year my right honourable friend the Secretary of State for Defence announced that approximately 3,500 service personnel would be held on standby to ensure that defence resources were available to support the wider Government to implement their no-deal Brexit contingency plans, if required. In headline terms, the prudent standby package will comprise approximately 3,500 personnel at varying levels of readiness, including niche capabilities such as military working dogs. No defence estate is ring-fenced at this time as it is anticipated that there will be spare capacity available during spring 2019 to provide a warehousing/storage function, if that is required. Similarly, it is judged that in extremis a request for defence strategic transport capability could be accommodated by existing capacity.

In addition to the prudent standby package, defence has also been making available military planning expertise to support other departments with their Brexit contingency plans. To date, we have provided 28 military planners to a number of departments across Whitehall. I hope that that outline is helpful to the noble Baroness.

Lord Thomas of Gresford: Will the Minister bear in mind, before deploying military forces to deal with possible civil unrest arising from Brexit, that the deployment by Winston Churchill as Home Secretary of troops to Tonypandy, who never got involved in that strike, is so built into people's memories that it was resurrected only a week ago?

4.45 pm

Earl Howe: I assure the noble Lord that we are only too aware of the point he has raised. I think there is common to us all an antipathy to seeing large numbers

[Earl Howe]
of Armed Forces personnel on our streets, so to the extent that that can be avoided, it will be. However, it is prudent nevertheless to have the kinds of contingency plans that I have outlined.

The noble Lord, Lord Judd, asked me, very properly, about the training that Armed Forces personnel receive before they are deployed to a combat zone. I can tell him that such training as he asked me about does take place; that is, training in international law, international humanitarian law and the law of armed combat, which of course governs all that we do, and indeed those key provisions of the European Convention on Human Rights. We are as mindful as he would wish us to be of the need to maintain the kinds of standards that set an example to other nations in how our Armed Forces personnel should behave in such circumstances.

The noble Lord, Lord Tunnicliffe, referred to the fall in Armed Forces morale, as evidenced in recent surveys. It will not surprise him to hear that we take this extremely seriously. There is no single reason for that fall in morale, but we are aware that a number of factors play into it. That is why the chief of defence personnel is leading an important work strand in the Ministry of Defence known as the people programme, which involves looking at the terms and conditions of service—that is, pay and pensions—and accommodation arrangements for personnel; flexible service is another strand. A proposal is also being explored to use the early departure payment resource more effectively and efficiently, which, it is hoped, will address part of the issue we face over the retention of trained people. Therefore, we are not sitting back and doing nothing. However, it is true to say that at a time when the Army in particular is not deployed on an overseas operation in large numbers—although we are overseas in modest numbers—morale tends to suffer. Young men like an exciting challenge, and if they are sitting in barracks and simply training, there is a tendency for morale to dip. That is not to sound complacent, but I am advised that we have seen that in the past.

The noble Lord, Lord Tunnicliffe, asked me by virtue of what law a soldier or serviceperson is empowered to kill. Of course, UK military personnel are always subject to UK law, even on overseas deployments, under the Armed Forces Act. As such, they have the right to use force in self-defence in accordance with UK domestic law. In the context of overseas armed conflicts, personnel may also use offensive force in accordance with their rules of engagement, which reflect the position under both domestic and international law, including the law of armed conflict. I hope that those answers will have been helpful to noble Lords. To the extent that I have not covered everything, I will of course write.

Lord Tunnicliffe: I wonder whether the noble Earl could be a bit more specific in the answer to the last question—not now, obviously, but I really would value a letter, because this is a key question. As we know, when it goes wrong, the alternative is that the person involved is indicted on a murder charge. When we give people the responsibility to use lethal force, it would not be unreasonable for them to know that there is a very solid background for them to do as they are ordered.

Earl Howe: I entirely understand the noble Lord's point, and I shall, of course, be happy to write with any further information on the legal basis that he seeks.

Lord Stoddart of Swindon: Could the noble Earl answer a question that the noble Lord, Lord Tunnicliffe, quite properly, was unable to answer, or did not want to answer? Why have we cut our Armed Forces to such a degree at the same time as the Defence Secretary wishes to expand our operations abroad?

Earl Howe: My Lords, the Armed Forces are fulfilling all the tasks assigned to them, and it is right that we have an Army, a Navy and an Air Force no bigger and no smaller than we need. The noble Lord, Lord Stoddart, is referring to the expansion of the activities of the Armed Forces rather than the size of the Armed Forces. The areas of operation must now take account of world events and changes in the geopolitical situation. That is why my right honourable friend has been talking about the discussions we are having in government to extend our naval presence across the world, and possibly even to look at further bases across the world. But we have no plans to expand the numbers in the Army beyond the target we have set ourselves—which is, broadly speaking, the numbers that we currently have. There is a problem with recruitment to the forces, which is perhaps a subject for a separate debate, but I do not foresee any large-scale expansion in numbers.

Motion agreed.

Judicial Pensions and Fee-Paid Judges' Pension Schemes (Amendment) Regulations 2019

Motion to Approve

4.53 pm

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

That the draft Regulations laid before the House on 7 January be approved.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the draft regulations before us today were laid on 7 January under the affirmative resolution procedure and relate to the contribution rates for members of two judicial pension schemes. The purpose of these draft regulations is to make provision to extend the current member contribution rates and earning thresholds in two different pension schemes until the next financial year. The two schemes are: the judicial pension scheme 2015, which was established by the Judicial Pensions Regulations 2015 following wider public service pension reforms; and the fee-paid judicial pension scheme 2017, which was established by the Judicial Pensions (Fee-Paid Judges) Regulations 2017, following the Supreme Court decision in 2013 in the case of O'Brien, and related court decisions.

The reason for extending the existing rates is that the current provision for member contribution rates will expire on 31 March 2019. Therefore, the draft regulations are needed to make an amendment to specify the member contribution rates which will apply for the next year: for the period from 1 April 2019 to 31 March 2020. The regulations will enable us to ensure the continuing operation of the schemes by deducting the appropriate member contributions for that year. Given that we propose to continue the same rates under the regulations, this amendment simply maintains the existing provision for a further year. This interim measure is required pending the completion of a broader process, which relates to the valuation of the judicial pension schemes. This process has been ongoing for a period of time, and the outcome of the valuation is yet to be determined.

Having referred to a link between the regulations and the broader valuations process, I should like to provide some brief background with regard to that matter. Following the reform of public service pension schemes in 2015, and as reflected in the current legislative framework, government departments are required to undertake valuations of their respective public service pension schemes every four years. This includes the Ministry of Justice in respect of the judicial pension schemes. The valuations of public service pension schemes do two things. One is to measure the cost of providing pension benefits to members of the schemes; and the second is to inform the future contribution rates paid into the schemes, by both the employer and members of the scheme.

Work has been under way on the first such valuations of public service pension schemes, and part of the initial stage is to analyse the provisional results produced for each respective scheme—which, as I mentioned, includes the judicial pension schemes. However, the current position is that the Government have recently announced a decision to pause part of the valuations of public service pension schemes. This is because the Government are seeking permission to appeal the Court of Appeal decision in the case of McCloud. Therefore, pausing the valuations is considered a prudent approach at this stage.

I now seek to explain the relevance of the Court of Appeal matter in McCloud. In December 2018, the Court of Appeal ruled that transitional protection offered to some individuals as part of the 2015 public service pension reforms amounted to unlawful discrimination—including the transitional protections in the judicial pension schemes. The issue relating to this transitional protection is that, as part of the 2015 reforms, most public servants and judges moved to a new career-average pension scheme. However, members within 10 years of their normal retirement age were protected and remained in the existing final salary schemes, together with members between 10 years and 13 years 6 months from their normal retirement age, who were given what was termed tapered protection, which is to remain in the existing scheme for a period of time before moving to the new scheme introduced by the reforms.

The Ministry of Justice has applied to the Supreme Court for permission to appeal the Court of Appeal's ruling, and a decision on that application for permission is awaited. I understand that it is anticipated that it will be available in about July. As the legal process is ongoing and there is some uncertainty about the impact of the court ruling on wider pension reforms, it was considered prudent to pause that element of the valuation, which has the potential to affect member benefits and/or contribution rates in future. That element is referred to as the "cost control mechanism", and is referred to in the Written Ministerial Statement issued by the Chief Secretary to the Treasury on 30 January this year.

I return to the draft regulations, which are the subject of this debate. There is a specific requirement to consult those affected by the draft regulations, as this proposal entails making a change to member contribution rates which are classed under the governing legislation as a protected element. Therefore, in accordance with the relevant requirements, we carried out a four-week consultation from 24 October to 21 November 2018. We consulted representative judicial organisations with a view to reaching agreement on the proposal. We received 23 responses to the consultation, of which the majority of respondents agreed with the proposal but two respondents did not. The two respondents who did not agree with the proposal also raised some points relating to wider pensions issues which were outside the scope of the consultation relating to the proposal for extending the current rates as an interim measure for a year. For example, they disagreed with the stepped approach for contribution rates and expressed preference for a flat rate to apply and for having a non-contributory scheme. We engaged further with the aim of reaching agreement, but unfortunately we were unable to secure the agreement of these two respondents.

In accordance with additional procedural requirements, we have also laid a report before Parliament setting out the rationale for this amendment. Furthermore, as the judicial pension schemes to which these regulations relate are UK wide, we have engaged with the devolved Administrations and kept them informed of progress. We will also continue to engage closely with them on further developments.

I conclude by reinforcing the point that the existing arrangements for member contribution rates will expire on 31 March 2019, in relation to the 2015 and 2017 judicial pension schemes. These draft regulations are therefore a necessary interim measure to continue the effective operation of these pension schemes, until a longer-term solution is put in place. Under this interim measure, the cost of accruing pension scheme benefits will remain the same for members of both schemes for the scheme year April 2019 to March 2020. If it is agreed that changes to member contribution rates—or other changes—are required in future, as a result of the valuation outcome, any changes that are agreed will be backdated until 1 April 2019, where it is appropriate to so do.

I hope noble Lords will agree that these regulations are an important and necessary interim measure to continue the arrangements for member contribution rates and for the effective operation of the judicial pension scheme. I beg to move.

5 pm

Lord Beith (LD): My Lords, I am grateful to the Minister for his careful exposition of the scheme and for the quotations from the report, which the Lord Chancellor made to Parliament, detailing the consultation. We cannot consider this interim proposal—this carry-over proposal—without reflecting that it is part of a complex situation with judicial pensions which causes a great deal of anxiety. Whenever you inquire of those involved in carrying out recruitment to the judiciary or of those who are applying, a number of issues are mentioned, such as the state of the court estate, but pensions come up every time, because of the bizarre and convoluted nature of the system which has resulted from the changes that have been described. The changes produce really bizarre situations where relatively junior members of the Bench find themselves with greater entitlements than those who have served for a number of years. One of the results of this is a deterrence to recruitment. In some cases, there is an incentive for retirement because some are better off retiring than remaining in the scheme.

In extending the present contribution rate for the next year, a number of things have to happen, including litigation. One can only express the hope that pensions cease to be a disincentive to recruitment, because the recruitment problems of the judiciary affect the ability of citizens of this country to obtain timely justice—quality is maintained, but timeliness can become a problem. They also affect the substantial export earnings of our courts and of the legal services which surround them. They are therefore pretty important. As I said, you cannot get into any discussion about judicial recruitment without the pensions issue arising. It would be good if the Government could sort that out.

Lord Adonis (Lab): My Lords, is it correct, from my scanning of the web as to what the dispute before the Court of Appeal, to which the noble and learned Lord referred, is about, that the taxpayer could potentially face a bill of upwards of £750 million if this case is lost? It seems to me to be an extremely high figure. I assume it is a calculation to do with the massive additions to pensions that would be required if all judges got the transitional relief which, at the moment, is only going to be afforded to a small proportion.

My second question makes an obvious point for somebody who is not a lawyer or a judge. Am I right in assuming that the judges who will sit on this case are adjudicating on their own pensions? In no other walk of life would that be considered a satisfactory arrangement. Will the noble and learned Lord tell us whether that is the case? If it is the case, what is the protection against judges simply, to be blunt, ruling in their own self-interest?

Lord Faulks (Con): My Lords, before my noble and learned friend answers that difficult question, I wonder whether he can help the House on a general question about judicial pensions and eligibility. Judges must now retire at the age of 70; there is strong feeling abroad that this often wastes judicial talent. In other fields, people often peak at 70 so a retirement age of 75 may be far more suitable, given that the same retirement age applies to magistrates, jurors and other people given the task of determining matters of justice.

Baroness Chakrabarti (Lab): My Lords, in a crowded and noisy political landscape, it is easy to overlook the importance of protecting our judiciary and making adequate pensions provisions for our people. Forgive me for suggesting this, but this House is perhaps uniquely qualified to value the importance of both.

I begin by politely disagreeing with the concerns expressed by my noble friend Lord Adonis a moment ago. I have no concerns about the Supreme Court's ability to deal with any disputes relating to judicial pensions. Of course, the Opposition do not seek to divide the House on the interim provision set out by the Minister but I want to take this opportunity to urge him not to kick the can down the road into next year and beyond. It is concerning that the Government have recently had a number of disputes of this kind with judges, including the defeat referred to earlier. I agree with a number of the points made by the noble Lord, Lord Beith, about the importance of a confident and, frankly, happy judiciary to which we can adequately recruit to protect our reputation as a rule-of-law nation, whether we are inside or outside the EU. We need to boost our judiciary's morale now and for some years to come.

I agree with the one-year extension of this scheme but concerns over judicial pensions need to be considered in the broader context of the austerity measures that hit the Ministry of Justice particularly hard, including budget cuts of a third since 2010. Savings made in the revised pensions schemes are just one area where spending has been seriously squeezed. Devastating reductions to the court estate, further proposals for the relocation of case management functions, listings and scheduling, new off-site service centres and service centres supervised by authorised staff, not judges, are some of the issues we discussed last year in the context of the then courts and tribunals Bill.

We on these Benches are concerned about the judgment to which the Minister referred. A finding against the Government relating to unlawful age discrimination is very concerning. Going forward, I urge the Government, in as friendly a manner as possible, to consider the acute shortage of High Court judges. As I imagine many people in the Chamber will be aware, senior lawyers and practitioners are not putting themselves forward for High Court appointment—including some highly qualified people who would be keen to complete their prestigious careers in what is a vital public service in this country. Too many positions have been left vacant for years with the very slight prospect of them being filled in the next few years. Time and again one hears that this recruitment crisis is in no small way affected by the change in judicial pensions.

We must ensure confidence in our legal system, perhaps more than ever in the times we are all attempting to navigate now. We need our judicial Benches—the entire judiciary, whether tribunal panel members, chairs, district judges, county court judges or circuit judges—to be made up of exceptional individuals. Those stressful and expert roles need to be properly remunerated for

that to continue. I urge the Minister and the rest of the Government to sit down promptly with judges and have a serious discussion about how to fund that vital part of our constitution going forward, and how to boost morale and recruitment to our judiciary. With that plea to the Government, there will be no objection from these Benches to this interim measure.

Lord Judge (CB): My Lords, I had not intended to speak but perhaps I should. I declare an interest as having been Lord Chief Justice when the shocking new arrangements for the judicial pension were imposed on the judiciary unilaterally by the Government. There was consultation—of the kind that enables the Government to do exactly what they like—but it was imposed on the judiciary. There was a unilateral change to the pension arrangements under which a significant proportion of the judiciary were working if they were below a certain age and had not given so many years' service. The basis on which they joined the judiciary, which was clearly understood, was changed. That represented a betrayal. It greatly damaged confidence in the whole idea of a successful practitioner—a barrister or solicitor—seeking judicial appointment. If the Government could unilaterally change the arrangements, there was no point. We still suffer the consequences of that. There is nothing wrong with the present measure we are considering, but the consequences of what happened between 2010 and 2014 are with us still.

If I may answer the point made by the noble Lord, Lord Adonis, about the arrangements that are currently before and have been before the courts, the judges trying those cases are not those who will have been affected by these dramatic changes. The various matters raised by the noble Lord, Lord Beith, and the noble Baroness, Lady Chakrabarti, are well known. There is no point using this opportunity to stand on a hobby-horse to repeat them, but they do not go away. That is an issue the ministry has to grapple with as soon as practicable.

Lord Keen of Elie: My Lords, I am obliged for the contributions that have been made. I note the points made by the noble Lord, Lord Beith, and the noble and learned Lord, Lord Judge, and I acknowledge that pension issues have created very real issues about recruitment, particularly to the High Court Bench. That is something of which we are conscious and have in mind and under consideration going forward. The whole question of the terms and conditions on which we seek to appoint the judiciary is critical, and I acknowledge the need to ensure that we maintain a judiciary whose expertise and integrity are regarded as pre-eminent. The noble Lord, Lord Beith, touched on the value—if you can put it that way—of legal services in an export sense. It is estimated to be in the region of £4.5 billion, so it is a significant matter in that context alone; but of course, it has a much wider resonance and importance than that.

As the noble and learned Lord, Lord Judge, observed, those hearing this matter in the Supreme Court are not impacted by the transitional provisions we are concerned with in the McCloud case and the related Miller case, which is still to be heard. In any event, I remind the noble Lord, Lord Adonis, of the judicial oath and the confidence maintained in the integrity of our judiciary, which is entirely justified.

Regarding the potential cost of the McCloud decision, it is a matter of speculation. It does not refer just to judicial pensions; it is also relevant to firefighters.

Lord Adonis: My Lords, I am an avid reader of the *Law Society Gazette*, which says that £750 million has been provided for in the department's own accounts as an insurance against the loss of this case. Is that correct?

Lord Keen of Elie: I am not in a position to comment on that figure, but if the noble Lord is concerned about it, I will write to him after seeing what the position is in the accounts, as I do not have them to hand.

The issue of the age of retirement has been debated, and we are conscious of it. Many noble and learned Lords who find themselves retired from the Bench are able to make a convincing contribution to the affairs of this House for many years after their retirement, and it seems in one sense unfortunate that we cannot harness that expertise on the Bench as well as off it.

This is a purely interim measure, pending the final valuation which will follow the decision in McCloud, and we will therefore be taking forward the question of contributions as soon as that valuation process is completed. There is a wider interest—expressed, for example by the noble Lord, Lord Beith—in the whole question of these pension reforms, and it is underlined by the points made by the noble and learned Lord, Lord Judge. We have a scheme, we are implementing it and taking it forward, but this is an interim measure to maintain contributions, not to increase them.

Motion agreed.

Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019

Motion to Approve

5.16 pm

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

That the draft Regulations laid before the House on 21 January be approved.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, this draft instrument forms part of the ongoing work to ensure that, if the UK leaves the EU without a deal, our legal system will continue to work effectively for our citizens. It is solely related to no-deal preparations. If Parliament approved the withdrawal agreement, which includes an implementation period, and passes the necessary legislation to implement that agreement, the Government would defer the coming into force of this instrument until the end of that implementation period. Once a deal on our future relationship with the EU had been reached, we would then review whether this instrument needed to be amended or revoked.

Lord Beith (LD): Is it the Government's policy, if they are negotiating in a transition period because they have got an agreement, to seek to continue the kind of provisions that are in these regulations when we come to the end of the transition period?

Lord Keen of Elie: The Government—in the event that we have a withdrawal agreement—will enter into negotiations on our future relationship with the EU, and that will include a desire to ensure that we have addressed the full panoply of judicial co-operation issues that exist at the present time. We cannot say unilaterally that we will secure all of those, but clearly we have an interest in carrying on that negotiation. That is why, at the end of any implementation period, it may be that we can simply revoke these instruments without them ever having to be applied.

The instrument relates to mediation, which is, as noble Lords will be aware, a structured process whereby the parties to a dispute attempt on a voluntary basis to reach an agreement to settle their dispute with the assistance of a mediator, but without a court needing to rule on the dispute. In the civil and commercial fields, such a dispute covers a wide range of contractual and other issues, but also touches on family issues such as access to children.

In 2008, the European Council agreed what it termed a "cross-border mediation directive" which sought to harmonise certain aspects of mediation in relation to EU member states' cross-border disputes. I should note that the directive does not apply to Denmark, so when I refer to "member states" in this context, I am not including Denmark, which has an opt-out under Protocol 22 of the Lisbon treaty. The aim of the mediation directive is to promote the use of mediation in such cross-border disputes. An EU cross-border dispute can be one between parties who are domiciled, or habitually resident, in two or more different member states, or it can be a dispute where judicial or arbitration proceedings are started in a member state other than the one where the parties are living or domiciled.

The United Kingdom then enacted domestic legislation which gave effect to certain aspects of the mediation directive. I say "certain aspects" because, in many areas—such as ensuring the quality of mediation, and information about mediation for the public—our existing arrangements already met the requirements or standards set out in the 2008 directive. However, in order to implement the directive, the UK had to introduce some new rules for EU cross-border mediations involving UK parties. These new rules first specified that if a time limit, or limitation period, in domestic law during which a claim could be brought in a court or tribunal expires during the mediation process, the parties can still seek a remedy through the courts or tribunals should the mediation not be successful. Secondly, the new rules defined the rights of a mediator, or someone involved in the administration of mediation, to resist giving evidence in civil or judicial proceedings arising from information disclosed during mediation. Various changes were also made to court rules to supplement these changes and to implement the requirements of the mediation directive relating to the enforceability of agreements resulting from mediation.

Under the European Union (Withdrawal) Act 2018, the legislation implementing the mediation directive is retained EU law upon the United Kingdom's exit from the EU. However, should the UK leave the EU without an agreement on civil judicial co-operation, the reciprocity on which the directive relies would be lost. So, even if we were to continue to apply the enhanced EU rules to EU cross-border disputes, we would be unable to ensure that the remaining EU member states applied the rules of the directive to cross-border disputes involving parties based in the United Kingdom, or to judicial proceedings or arbitration taking place in the United Kingdom.

Accordingly, and in line with the Government's general approach to civil judicial co-operation in the event of no deal, this instrument will repeal, subject to transitional provisions, the legislation that gives effect to the mediation directive's rules on confidentiality and extension of limitation periods. It amends the relevant retained EU law in England and Wales and Northern Ireland, and in Scotland in so far as it relates to reserved matters. Separate instruments will amend the related court rules in England and Wales and Northern Ireland. Other legislation implementing the directive is within the legislative competence of the Scottish Government, and I understand that they have decided to bring forward their own legislation in this area.

This instrument is necessary to fix the statute book in the event of a no-deal exit. We have assessed its impact and have published an impact assessment. By repealing the domestic legislation which gave effect to the mediation directive, we will ensure clarity in the law applying to mediations between UK parties and parties domiciled or habitually resident in EU member states. We will also avoid a situation where mediations of an EU cross-border dispute conducted in the UK are subject to different—and arguably more favourable—rules on confidentiality or limitation than other UK mediations.

As I indicated earlier, the instrument will change the rules applying only to what are currently EU cross-border mediations, and then only in two respects: time limits and confidentiality. On time limits, claimants involved in such mediations who no longer have the benefit of an extended limitation period would, if they wanted more time to allow for mediation to take place, have to make an application to the court to stay proceedings and would have to pay a fee. We are unable to assess how many cases this would affect. Limitation periods can extend from three years, to six years, to 10 years in some instances, and can either bar a case from being brought or extinguish the claim in its entirety. They are extensive periods in any event, but they may be impacted by these changes

Overall, the instrument will ensure that, post exit, UK-EU mediations are treated consistently under the law with mediations between UK domiciled or habitually resident parties, or UK parties and parties domiciled or habitually resident in non-EU third countries.

I have set out to deal with the issue of EU cross-border mediations because, without a deal in place on 29 March 2019, such mediations involving UK-domiciled parties would no longer be subject to the mediation directive

rules in EU member states. The regulations now moved will fix deficiencies and ensure that both the courts and UK citizens have clear and effective rules to follow in such circumstances.

Lord Adonis (Lab): One of the most difficult issues that we grappled with during the passage of the European Union (Withdrawal) Bill was child abductions and disputes about child custody. I assume that this affects that issue; can the Minister tell us how? The single most disturbing aspect that came out of that is that it might be harder to deal with cross-border issues of child abduction after Brexit. I am keen to understand whether this maintains the status quo as far as possible. Does this mean that effective remedies will be available to the court to deal rapidly with issues of child abduction?

Lord Keen of Elie: First, this instrument is not concerned with the role of the court: it is concerned with the role of mediation outside the court. Secondly, it is not usual to discover mediation as a form of resolving a child abduction case. The very nature of an abduction is such that the parties are not amenable to agreeing a voluntary mediation to resolve the matter. We have already made provision for civil orders in relation to child abduction.

With regard to criminal orders, it is impossible to replicate the existing provisions of EU law because, under the relevant provisions of EU law, an EU court would not recognise an order from a UK court in any event, and therefore it would give false hope to a party to grant them an order that was not enforceable. Overall, therefore, my answer to the noble Lord is that mediation does not impact directly on the sort of issue that has been raised. We recognise the importance of trying to ensure, as far as possible, that there are means of enforcing child abduction orders. The only qualification if we leave without a deal is that there would be no right of the originating court to make an order that trumps the order of the court in the country to which the child has been abducted. That is simply because in the absence of reciprocity, it is not possible to make such an order enforceable. Otherwise, my understanding is that we will be able to proceed.

Lord Hope of Craighead (CB): I think I am right in saying that we are party to a treaty about child abduction that extends well beyond the EU. I have had experience of a case involving abduction where one of the parties was resident in Australia and the other one in Norway, which, of course, are outside the EU network. We have rules about the speed at which cases can be dealt with, but the basic treaty arrangements are unaffected.

Lord Keen of Elie: The noble and learned Lord is quite right. The Brussels convention on these matters reflects the terms of the Hague convention to a large extent. The one qualification is the element to which I referred about the trumping order, which is not available under the Hague convention. However, it works very effectively in respect of non-EU states and there is no reason it should not continue to operate. I believe that a week or so ago, I addressed these matters in this House when moving other regulations relating to exit, so I hope I have not contradicted myself since then.

Finally, although the confidentiality provisions in the EU directive will no longer be law in the context of mediation in England and Wales, it is usual for parties, when agreeing to mediation, to have an agreement on confidentiality as well. Indeed, even in the absence of such agreement, there is a provision from the High Court in the case Farm Assist Ltd in 2009, which says that such a confidentiality obligation would be implied in any event. It would, of course, be subject to the interests of justice, but we are not going to lose entirely the benefit of the confidentiality provisions if we leave without a deal. In these circumstances, therefore, I beg to move.

5.30 pm

Lord Beith: My Lords, this is another example of something we are losing, although in this instance the amount is relatively small. As the Minister has explained, this concerns mainly time and the confidentiality element as it is currently provided, and there are some alternatives to that.

It is extraordinary in that it repeals provisions that would be continued under the withdrawal Act—which we have already passed—in numerous other statutes, including the Equalities Act 2010, so we are bound to look at it suspiciously for that reason. The Government's argument against continuing these provisions without guaranteed reciprocity—I accept that the Government cannot guarantee reciprocity—is that applying them unilaterally would result in preferential treatment for parties involved in EU cross-border mediations that they believe would no longer be justified when the UK ceases to be an EU member state.

If, however, the provisions can be used to assist in a mediation and the other EU state involved is willing to observe a reciprocal arrangement, why should we deny that benefit? What is the unfairness of that? There are many instances in which we have better arrangements with some states than with others in judicial matters, and in the case of our European neighbours it would be surprising if we could not have more arrangements facilitated than apply in other cases. We do not say that person X is being treated unfairly because their attempt to resolve a matter by mediation relates to a state that is not helpful, whereas person B is in a mediation involving a state with which we are able to make some reciprocal arrangement.

The Government have taken the view with most—although not all—of these statutory instruments that where we cannot have reciprocity we cannot have anything. That is not necessarily the case. The Minister kindly answered the question I asked him earlier in a way that seemed to imply that the Government, if there is an agreement during the transition period, would seek to negotiate back into existence something along these lines. Of course, during the transition period the provisions would continue to operate.

What if there is a no-deal Brexit, which looks increasingly likely? There is no reason why the Government should not seek to facilitate mediation with our former fellow EU states as a matter of policy. Clearly I am arguing that they should have a policy of negotiating during the transition for such arrangements—or

[LORD BEITH]
even if there is no deal. The atmosphere might be less conducive but at some stage why should we not try to resurrect provisions of this kind?

Although, as I have said, the impact of removing these provisions is relatively small, it is another example of an area in which we ought to try to continue arrangements that are beneficial to people who have real problems to solve. Where possible, we should do so by direct agreement with the EU and, if not, by agreement with individual states.

Baroness Chakrabarti (Lab): My Lords, as we have heard, this instrument sits against a backdrop of completely inadequate planning for justice co-operation after Brexit. The danger is that that inadequate planning could put vulnerable people in our society at risk. Across Parliament, including from the Justice Select Committee, there has been concern that the Ministry of Justice has failed to provide sufficient detail or certainty about how co-operation on justice will be managed after we exit the European Union.

As we all know, we currently benefit from well-established, frequently updated and comprehensive reciprocal justice arrangements within the EU. Without an agreement with our European partners on what the future of those reciprocal arrangements looks like, people forced to go to court or mediation to protect their rights can face extremely damaging consequences.

We on this side of the House have consistently said that Brexit must not be used to lower standards or reduce rights. There is a fear of that. I know that the noble Lord, Lord Beith, is a little sanguine about how significant that is in this instrument, but I am a bit less so. It nevertheless breaches that principle about a reduction in standards and rights.

Noble Lords will recall that the instrument was laid for sifting by the Secondary Legislation Scrutiny Committee on 16 November last year. The European Statutory Instruments Committee recommended that it be upgraded to the affirmative procedure because of its large volume of amendments to primary and secondary legislation, but also because it could diminish rights by disengaging from European Union obligations.

I may have misheard the Minister. He referred to an impact assessment. I do not know whether that included a consultation or whether he is instead relying on the Government's general civil judicial co-operation framework. If it is the latter, the European Union Sub-Committee on Justice found that the framework contained little detail on how the Government's aims for co-operation would be achieved.

This statutory instrument will repeal legislation enshrining the mediation directive. The directive extends time limits for bringing some civil claims—including child maintenance claims and employment tribunals—to enable mediation. I am sure we all agree that this is a very good thing. The directive is one of many examples whereby we have raised legal standards and protections across Europe through co-operation with our European partners.

The European Statutory Instruments Committee considered whether this instrument could diminish rights and found that it repeals legislation that extends the time limit for bringing certain claims in civil courts and employment tribunals to enable mediation. Shortening time limits in that regard can have significant consequences, prohibiting parties from reaching mediated solutions in child contact cases, for example. This statutory instrument clearly breaches the principle that standards should not be lowered; it lowers the standards for enabling cross-border mediation from the higher EU standard to a lower international one.

The Government accept that the UK could unilaterally continue to apply the mediation directive post exit but have decided not to do so. The noble and learned Lord will correct me, but my understanding of the Government's position is that, if someone wants to stop a time limit running in mediation, they should issue proceedings before a court and apply to stay or stop those proceedings. That is unfair and unrealistic for so many people in their current financial circumstances, let alone in the context of the obliteration of civil legal aid, which we have discussed in your Lordships' House so many times.

Put simply, this statutory instrument does what Ministers promised—in this House and elsewhere—would not happen: it breaches the principle of not reducing standards in people's access to justice. That is very disappointing.

Lord Keen of Elie: On that last issue, I am somewhat puzzled by the points that the noble Baroness, Lady Chakrabarti, is endeavouring to make in this context. The time limits we are talking about are measured in years—three, four, six or 10 years. If a party is intent on mediation before they raise proceedings, it is unlikely that they will be so disinclined or uninterested in the issue that they will wait years before even attempting to go forward with mediation. Let us be realistic and practical. However, where they have already commenced proceedings, they may then be directed by their lawyers or others to consider mediation as an alternative means of resolving the dispute. In those circumstances, they have already dealt with the time limit by raising the legal proceedings. Pending mediation, all they need to do, if necessary, is stay those proceedings—or sist them, in Scottish terms—putting them on hold while the mediation process is carried on. I do not see that this is a diminution of rights at all.

I come to the points raised by the noble Lord, Lord Beith. On the question of no deal, I understand his point entirely. If no deal occurs—which nobody wants—it will not be a case of switching off the lights and leaving the building. Clearly, we will want to continue discussing with our immediate European neighbours how we can best resolve any differences between us on judicial co-operation. One would hope that that would happen in any event, but I note the noble Lord's point and cannot disagree. It might be more difficult in a no-deal scenario than during an implementation period, when we are negotiating a future agreement between ourselves and the EU 27.

On another point, it is not an issue only of preferential treatment—that is, the idea that parties from the EU would somehow have preference over those in the UK. There is a danger that we might mislead people if we

do not deal with the directive provisions in this way. People may continue to believe that they are protected from having to raise proceedings beyond a limitation period because of the EU directive. We will have to make it clear to people that this will not be the case.

There is not the same issue with regard to confidentiality. The absolute confidentiality imposed by the directive is not immediately replicated in the law of England and Wales, but there is the usual provision for contractual agreement of confidentiality of the mediation process. In any event, as I sought to indicate, there is at least one High Court decision from 2009 that says that, even in the absence of an express contractual term, the court would readily imply an issue of confidence with regard to mediation.

In a way, then, the impact will be minimal, but I do not dismiss it out of hand. We are conscious that we are moving away from an EU-wide provision on mediation and we have to accommodate that at present. Our hope is that we will move into an implementation period when we continue to enjoy this reciprocity. We hope that, in due course and in the course of such an implementation period, we will agree future judicial co-operation, but that will require reciprocity. In these circumstances, I beg to move.

Motion agreed.

Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.42 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 21 January be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, if it is convenient, in moving this Motion I shall speak also to the draft Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019. These draft regulations will be made, for the most part, under the powers conferred by the European Union (Withdrawal) Act 2018, and—in the case of the type-approval SI to align the definitions of type-approval certification used in Northern Ireland with the rest of the UK—under the powers conferred by the European Communities Act. These regulations will be required if the UK leaves the European Union without a deal.

I shall speak first to the type-approval regulations. Currently, motor vehicles can be registered and placed on the UK market only if they have a valid EU type approval. The legislation governing this is a mix of domestic and directly applicable EU regulations. Of the two SIs, the draft type-approval regulations were put forward originally as a negative SI and considered by the sifting committees of both Houses. Both committees recommended that they be upgraded to affirmative, given the potential impact on manufacturers. I thank the committees for their considerations of this and other statutory instruments.

The draft type-approval regulations under consideration ensure that we will continue to have control over the registration of vehicles in the UK while also ensuring that we minimise the burden on manufacturers. The SI achieves this by amending the Road Traffic Act 1988 in GB and the Road Traffic Order 1981 in Northern Ireland to create a UK approval scheme, enabling the Vehicle Certification Agency, the VCA, to issue provisional UK approvals to manufacturers holding a valid EU type approval, without requiring additional, costly retesting.

In addition, the SI amends the Vehicle Excise and Registration Act 1994 to provide that vehicles entering the UK after exit day can be registered only if they have a UK approval. Maintaining control over registration ensures that in the event of another VW emissions scandal, we would be able to prevent those vehicles from being put on the road. Minor amendments are proposed to the Road Vehicles (Approval) Regulations 2009, and to the three retained frameworks for motorcycles, agricultural vehicles and engines for non-road mobile machinery, to ensure that this retained EU legislation will remain operable after we leave the EU.

I assure noble Lords that we have consulted widely since last autumn on our proposals. This has been primarily with the major trade associations, such as the Society of Motor Manufacturers and Traders, as well as smaller, more specialised trade associations, such as the Wheelchair Accessible Vehicle Convertors Association.

5.45 pm

I turn to the Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019. This instrument ensures that inoperabilities within the existing EU regulations will be corrected and there will continue to be a functioning legislative and regulatory regime for CO_2 emissions from new cars and light commercial vehicles. These requirements have been a key contributor to the reduction of CO_2 emissions since their introduction in 2009.

Currently, the European Commission sets a fleet average target to be met by all manufacturers registering new cars and vans in the EU. For cars, this target is 130 grams of CO_2 per kilometre, which will reduce to 95 grams in 2020. For vans, the target is 175 grams of CO_2 per kilometre, falling to 147 grams in 2020. Based on these headline targets, manufacturers then receive individual targets according to the average weight of their fleet. As a result, manufacturers can make vehicles with emissions above the EU target, provided they are balanced by vehicles below it. Fines can be levied if a manufacturer fails to meet its target.

The EU regulation contains a number of related provisions which provide manufacturers with flexibilities in meeting their target. These include derogations based on the number of vehicles manufactured, to ease requirements on those producing fewer vehicles; pooling, where manufacturers in a single group, such as the VW group, may pool their registrations and receive one target using the average weight of all their applicable vehicles; eco-innovations, where manufacturers can receive credits for technologies that reduce CO_2,

[Baroness Sugg]
such as LED lighting; and super-credits, where manufacturers receive credits for registering ultra-low-emission vehicles.

These regulations would amend the EU regulations covering car and van CO_2 emissions, to ensure that they continue to function correctly after exit day. This is essential to ensure that the regulatory regime in place after EU exit continues to align our national policy as closely as possible with existing EU regulations, to provide certainty to industry; to ensure that the UK regime is at least as ambitious as the regulations established in the EU; and to enable the UK Government to assume the obligations and functions exercised by the European Commission.

The SI maintains the current target-setting approach in a UK context, and ensures that all the related provisions that I have outlined will continue to apply in the UK after exit day. The instrument also ensures that minor deficiencies are corrected. For example, all the functions currently performed by the European Commission will transfer to the Secretary of State, and fines will be levied in pounds rather than euros.

While we want a deal that recognises the equivalence of UK and EU type-approval schemes, the changes made in both the type-approval SI and the car and van CO_2 emissions standards SI will ensure that we retain control of the registration of vehicles, maintain continuity of vehicle approvals and emissions, minimise costs to industry and ensure that the legal framework continues to work after the UK's withdrawal from the European Union in the event of no deal. This will enable the UK to ensure that only compliant vehicles are registered in the UK and that requirements on their environmental performance are applied. I beg to move.

Baroness Randerson (LD): My Lords, this SI relates to the type approval process and involves harmonised standards on safety and environmental protection, which are regularly updated. I understand and appreciate that action is needed to maintain standards in future, but I have concerns. Unlike other SIs, in respect of which it is agreed that we will continue as a nation to accept EU standards, in this case the UK will no longer accept EU approvals when vehicles are registered.

The SI establishes a UK system of approvals. There is an interim arrangement for a maximum of two years, after which there will be a comprehensive review and reworking of UK type-approval arrangements. The legislation is planned for the middle of this year. This came as a bit of a surprise when I read this because I was not aware that the Government were thinking of a whole new system. What do the Government have in mind? Clearly, ideas are pretty well developed, otherwise the Government would not be talking of bringing in legislation a few months.

There is the issue of uncertainty for manufacturers. There will be additional costs when working to two different standards. Surely, at the current moment of maximum uncertainty, it is not a good idea to add to that uncertainty. Changing the system undermines the assurance given to manufacturers of a smooth transition on standards. Even more surprising, the Government proposed originally that this SI should be dealt with through the negative procedure; it is here only because the Joint Committee on Statutory Instruments recommended that the affirmative procedure be used.

The EU type-approval frameworks affect passenger and goods vehicles, motorbikes, agricultural and forestry vehicles, and engines for non-road mobile machinery. That is a pretty comprehensive range of products. Paragraph 7.2 of the Explanatory Memorandum specifies that EU approvals will not be accepted in the UK without scrutiny and can be rejected. Perhaps the Minister can explain why we are not prepared to accept EU standards. EU standards on these issues are generally agreed to be the highest in the world and are being adopted by, for example, the Chinese as the exemplar of best practice. Why do we think there might be a problem with these standards?

The SI will give the VCA the power to act on evidence of compliance problems. Is the VCA not able to act in the current situation if it thinks there are compliance issues? Manufacturers that already have EU approval will be able to apply for provisional UK approval. While this will avoid double testing, it does not avoid double bureaucracy. The Minister may well say that all of this is to ensure higher standards. However, in paragraph 7.8 of the Explanatory Memorandum, reference is made to the National Small Series Type Approval, operated by the VCA, which allows the relaxation of standards for UK companies converting or building low numbers of vehicles. Paragraph 7.8 states that the scheme would be of limited use to manufacturers after Brexit because of limits on production. I cannot quite understand that. I read it several times but I could not understand why it would be unfair after Brexit but has been acceptable up to now. How has this situation changed? I was even more surprised by the Government's response, which was to arbitrarily double the limits on production for this group of vehicles until the end of the year. Why? Why is it reasonable to double the number of vehicles this year but not next year? I cannot get any sense of the reasoning behind this. Although this is a small number of vehicles, they are being given an exemption from environmental limits, and there will therefore be an impact on emissions as a result.

Paragraph 7.10 of the Explanatory Memorandum makes the point that this SI will allow,

"new, full type approvals to continue to be issued",

for motorbikes, agricultural vehicles and engines for machinery. We now have a difference in policy. In fact, we have three different policy approaches in this one SI. We have non-acceptance of EU approvals, so you have to get UK approval. Then, another section accepts EU approval, although it admits that it could be misleading in the short term. There is also a specific change of policy regarding manufacturers and operators that deal with small numbers of vehicles.

Even worse than having three different policies in one SI is the lack of formal consultation. The section dealing with impact says that more staff will have to be recruited to the VCA. How many and at what cost? It also says:

"Provisional UK type approval is being offered free of charge".

I accept that that is very good for manufacturers, but can the Minister explain how much of a subsidy that will require from the Government?

Lord Adonis (Lab): I am very grateful to the noble Baroness for giving way. She cited the fact that there would be no formal consultation on this SI, as indeed on any other SI that has come before the House. Did she note that paragraph 10.1 also said that,

"the intention is to ensure that, as far as possible, the status quo is maintained"?

The noble Baroness has done a very good job in the last 10 minutes of explaining why the status quo is not being maintained in key respects. There is a contradiction in paragraph 10.1 regarding the justification the Government have given for not consulting. According to that justification, they should have made no changes at all but continued with the existing type-approval regime. Given that the Government have made those changes, and given the statement that they themselves made in paragraph 10.1, there should surely have been consultation.

Baroness Randerson: I agree with the noble Lord that there should be consultation, because the Government themselves have admitted that there are aspects that could be misleading. That is what they say in the EM.

It is my understanding that gaining EU type approval is pretty expensive. It would be useful to know at least approximately how much it costs, so we can get some view of what the Government will have to undertake in future.

I turn now to the SI on emissions. These EU regulations establish mandatory fleet average CO_2 emissions targets for all cars and vans in the EU, plus Iceland, Liechtenstein and Norway. They establish targets by which manufacturers must abide, based on a formula, and levy fines for non-compliance. EU states record and report new EU vehicle registrations to the EEA, which leads to the publication of emissions performance for individual manufacturers. Are we going to carry on with this system on a UK basis? Powers are being moved to the Secretary of State, but will the system of publication of performance continue? It is really important for public confidence. Small manufacturers can apply for derogations. In the SI, small manufacturers are defined as producing 300,000 cars and 22,000 vans. Are the Government going to divide that by 28 or something, to redefine a small manufacturer, or will the definition of a small manufacturer across the whole of the EU apply within the UK, in which context it will hardly be small?

6 pm

There are clearly major issues of approach here, because manufacturing of cars and other vehicles across the EU is a very uneven process. Some countries do not have an automobile industry; others have one that is concentrated upon a particular type of product. The very sad news this week about Honda, and the previous news about Nissan, shows how the closure of one plant, or the change of plans for investment of one plant, can alter the balance of what is produced in one country. The Government have tried to shoehorn the cross-EU approach to environmental limits and so on into a UK perspective and a UK-only set of statistics. An EU-wide view, which would be pretty comprehensive and would deal with very large numbers of manufactured vehicles, is then applied to the UK. This is a very important environmental issue. The advantage of having an EU-wide approach has been that we have been aiming to be better—to be among the best in the EU. Once you only have a UK approach, you are stuck on the platform you are currently on, simply aiming to be perhaps a bit better next year than you were this: you do not have incentives to improve.

Once again, the Government do not think that there will be a significant impact on business—although on this occasion there does at least appear to have been some sort of consultation. It is a very complex SI, involving a large number of regulations and so on, and my concern is that the Secretary of State has to have an incentive to publish figures, to improve and to encourage manufacturers to improve.

Lord Adonis: My Lords, the House is indebted to the noble Baroness, Lady Randerson, for doing an excellent, forensic job of exposing the issues in this statutory instrument. These entirely substantiate her point about the failure to consult, given the potentially far-reaching nature of the changes. Her last, broader point about the impact of Brexit on the motor industry is, of course, extremely well made.

If we were not in the midst of a very deep Brexit crisis, Parliament and the Government would be overwhelmed at the moment by the controversy and issues raised by the closure of the Swindon plant by Honda. This, together with Nissan's decision to massively scale back production in Sunderland, amounts to a wholesale disinvestment by Japanese companies now taking place in this country. Indeed, one can join up the dots with Hitachi, a company I know well because I played a big part in persuading it to come here and start manufacturing trains 10 years ago. It has now pulled out of nuclear reactor manufacture at the plant in north Wales because of uncertainty in the decision-making process directly related to Brexit. It is deeply unhappy about what might happen in the European rail market at the moment. I am not absolutely sure that it will be staying in the UK for the long term either. We might be on the verge of seeing the reversal of 30 years of industrial policy in this country, all caused by Brexit, and this unravelling could have a lot further to go if the Brexit process proceeds.

The broader context of Brexit is dire for the motor industry, but the point narrowly focused on these regulations, made by the noble Baroness, Lady Randerson, is that we should not be doing anything with the regulatory framework that discourages the import and export of cars. I should have thought that the Minister, for whom I have a high regard, would accept that as a starting principle. I know that she, like me, is unhappy about the whole Brexit process and I am not expecting her to justify it in her reply to this debate: I suspect we would be in a large measure of agreement. If she accepts the starting point that there should be no change to the regulatory environment—certainly none imposed by the United Kingdom, because that would be an act of self-mutilation—can she explain more fully the two paragraphs that the noble Baroness, Lady Randerson, highlighted? These also struck me as I read them; they are paragraph 7.8 and paragraph 2.4.

[Lord Adonis]

I have nothing to add to the noble Baroness's remarks about paragraph 7.8. Like her, I simply do not understand it. If the doubling of the production limits referred to is necessary to ensure the continuation of trading conditions until the end of 2019, why is it not necessary beyond the end of 2019? That seems a straightforward question.

The point about paragraph 2.4 is that I simply do not understand the policy, because it is a policy change. I shall read the paragraph, because there are so many great minds in the House that they might be able to help the House before the noble Baroness replies. It concerns type approvals, a critical issue for the registration of cars, and it reads as follows:

> "The UK will no longer accept EU-27 approvals when motor vehicles are registered, other than for motor vehicles that are in the UK prior to Exit day. A process will be established to issue UK approvals for holders of EU-27 approvals. Existing EU approvals issued by the UK's VCA will remain valid. All of this is an interim arrangement valid for a maximum of two years, pending a comprehensive review and re-working of the UK's type approval arrangements (with legislation planned for mid-2019)".

As I read that, the implications seemed profound and I have some questions about it. If the aim is to have continuity, the obvious question is: why make any change at all? A golden rule in my experience of government, though it is being repudiated by the present Government all the time, is, "Where it is not necessary to change, it is necessary not to change". Indeed, I always thought that was a cardinal Tory rule—it is Edmund Burke. So if the aim is to maintain the status quo, which is surely in the interest of the United Kingdom because we have such a large car manufacturing hub, why make any changes at all? Why not simply say that the United Kingdom will accept EU 27 type approvals hereafter?

Secondly, unless I have misunderstood it, paragraph 2.4 seems to envisage a kind of zombie land for vehicles. It says that the UK will no longer accept EU 27 type approvals for vehicles that are in the UK, registered after exit day—that is my understanding—and a process will be established to decide what the regime will be after two years, which stands to reason because it would take two years to decide what that process is. Therefore, it is my understanding that that could lead to retrospective action because there will still be vehicles coming into the UK with those type approvals in that two-year period. However, it says that the UK will no longer accept those approvals, other than for motor vehicles that are in the UK prior to exit. If the United Kingdom chooses to change the rules, it might create a category of vehicles that have perfectly legally received type approval after exit day but which the Government retrospectively decide no longer meet the approvals. On my reading of paragraph 2.4, that must be a possibility. If that is not the case, why does it not say that the UK will accept EU 27 approvals until the new regime comes into force, which will be after the comprehensive review? Is the Minister following my point? I do not understand what looks to be a zombie period between the completion of the review and exit day.

Thirdly, why is the planned legislation necessary unless the United Kingdom is planning to set up a wholly new and separate type-approval regime? Surely, the only reason for setting up such a regime is that we envisage that our type-approval regime and standards might be different—potentially radically different—from those on the continent.

This leads to my fourth question, which is the big industrial policy question underlying all this: if we diverge from the EU 27 type-approval regime, as appears to be envisaged by paragraph 2.4, will that not, in itself, create a significant impediment to trade? Is that not profoundly against the interests of the United Kingdom, given that we are a massive exporter of cars to the European Union? It may be that all this is redundant because the devastation that Brexit causes to our car industry—just to extrapolate from the events of the last month—is so great that we no longer export large numbers of cars to the EU. It may be that by destroying this great industry we do not have the problem of continuing to mimic EU 27 type approvals.

However, many of us in the House hope that we will continue to have a car manufacturing base in this country after Brexit. Surely, it is in our interests that we do not erect new barriers to trade in cars and that we maintain the status quo as far as possible. In which case, paragraph 2.4 appears to act contrary to that policy, unless the noble Baroness can reassure me in her reply that my concerns are entirely misconceived.

Lord Dykes (CB): My Lords, I, too, appreciate the explanations given by the noble Baroness, Lady Randerson, about her anxiety about a number of key features of this statutory instrument. I am commenting on the second of the two documents rather than the first one, although the first has a number of significant question marks. I thank the noble Baroness for her thoughts on those matters. As the noble Lord, Lord Adonis, said in agreeing with the noble Baroness, a number of questions need to be answered comprehensively today by the Minister.

However, it is not just that but, once again, the anxiety we all feel about the huge accumulation of SIs going through inadequately, badly considered, all in a rush, in not enough time to be considered properly. It comes back to the much more fundamental issue that one always needs to remember in this whole business, of the flaws in the original referendum and the failure to prepare properly immediately after the result for all the things that are now flowing through in the last minute—literally the last few weeks—in the painful process of the disintegration of this country's membership of the EU. This is now causing more anxiety and concern among many members of the public as they wake up to these realities, not having been given any guidance by the Government immediately after the result. It is not a matter of disrespecting the result of that vote. We know that it was flawed for various reasons. The construction of the referendum was wrong. British citizens who had lived in other European countries for more than 15 years were excluded automatically, so were the youngest voters, who should be entitled to be on the register for future occasions. There were many other mistakes as well. It was really the fault of the Government immediately afterwards—

Viscount Eccles (Con): With the greatest respect to the noble Lord, this does not seem to be much to do with this statutory instrument.

Lord Dykes: It is indeed because I am coming on to that in a second, but I am just giving noble Lords the background to this. It needs to be repeated again and again. It is quite legitimate for me to say these things and I will come to the points there. I have already iterated strongly that I agree with the noble Baroness, Lady Randerson, and the noble Lord, Lord Adonis.

6.15 pm

Viscount Eccles: Does the noble Lord not think it is slightly insulting to assume that we do not know the background?

Lord Dykes: That is the reality that is now hitting members of public—and not just the press in article after article, comment after comment—as people interviewed say that they were not given sufficient warning.

On the detailed policies, this might seem to be a minor matter, and in one way it is, but it is of great importance to the environment and to the health of the motor vehicle industry in this country, which faces such a gloomy prospect now in view of the most recent developments. The point I was making, which I think is entirely valid, is that after the referendum result, and at least before the 8 June 2017 election when the Prime Minister completely lost the mandate to continue "Brexit means Brexit"—which needs to be remembered as well, but she carried on regardless—the Government should have started going through all the legislative responsibilities they needed to enact. This would have reassured the public that if there was continuity of any kind in policy formation, if we thought that the EU policy system, of which we were devoted members for 45 years, was sufficient, it would be protected.

I come now to the quick points I want to make to cement my agreement with what the noble Lord, Lord Adonis, was saying as well. I, too, cannot understand why there is no proper explanation of paragraph 2.4 of the Explanatory Memorandum. Further, paragraph 2.5 says:

"The proposed changes are designed to ensure that the CO_2 emissions of new cars and vans registered in the UK after the UK's withdrawal from the European Union continue to be regulated in a manner that is at least as ambitious as current arrangements. If these changes are not made, then the retained EU legislation would have no legal impact on newly registered cars and vans in the UK".

That, too, would cause a certain amount of alarm unless it was properly explained by the Government. I also agree with the question marks raised about paragraph 7.

Consultation was conducted on the second document, at least. According to the Explanatory Memorandum:

"There were seven responses to the consultation all of which were broadly supportive of the proposals".

However, no detail is given, unless one gets the full government documentation. It sounds very strange that there were only seven responses to the major matter of the future of the motor vehicle industry. Once again, it probably indicates inadequate time for people to be able to consider these things.

Finally, paragraph 11.1 says:

"Detailed guidance on how the regulations will function and how the various flexibility mechanisms should be applied for will be provided to manufacturers, and made available on line, as soon as it practicable to do so".

Is this future legislation or just extensions of regulations? When is it going to be? We urgently need guidance now from the Government on all these matters.

Lord Rosser (Lab): My Lords, I will be briefer than I had intended, mainly because most of the points I wanted to raise have already been made. I am afraid there will inevitably be some degree of repetition.

As the Explanatory Memorandum says in relation to the first SI:

"EU law requires manufacturers of road vehicles and engines for non-road mobile machinery to be type approved before production can begin".

It goes on to say:

"The proposed changes are designed to ensure that the type approval regime is effective after EU withdrawal".

We then come on—and the noble Baroness, Lady Randerson, already referred to this—to the reason for the proposed changes. It says:

"If these changes are not made the legislation will not be operable after EU withdrawal because the UK would be required to continue to accept motor vehicles entering the UK market which have a type approval granted by one of the EU 27 approval authorities, and would have no formal way to challenge the validity of the approval".

I think the question has already been asked but I will ask it again: how many challenges have there been so far under the existing arrangements if this is now being put forward, as it almost seems to be the sole major reason for making the changes we are now discussing?

I had also intended to read out paragraph 2.4, but I will not as my noble friend Lord Adonis has already done so. It makes reference to the interim arrangement that will be introduced, which is valid,

"for a maximum of two years, pending a comprehensive review and re-working of the UK's type approval arrangements (with legislation planned for mid-2019)".

I put it to the Minister that if we are talking about introducing an interim arrangement for a maximum of two years, with uncertainty as to what will happen after two years, does that not create quite a lot of uncertainty for the motor industry going forward? This SI may or may not clear up uncertainty for a short period of time, but it certainly does not do so over a much longer period of time. Perhaps the Minister could comment on that.

As I say, the Explanatory Memorandum makes reference to the interim arrangement, under which there will be a need for,

"manufacturers holding an EU approval from an EU-27 approval authority … and producing motor vehicles on or after Exit day … to apply for a Provisional UK type approval from the VCA in order to be able to register their motor vehicles in Great Britain or Northern Ireland".

How quick is this process for applying for a provisional UK type approval? After all, we are getting pretty close to 29 March, so how many of these motor vehicle manufacturers have already applied for one; how many applications are we expecting; is there loads of paperwork to fill in; is it a formality; and on what

[Lord Rosser]
basis would an application be accepted or rejected? Presumably, that in itself might create a further degree of uncertainty for the motor industry in this country.

My noble friend Lord Adonis has already raised the issue of consultation and read out the bit from paragraph 10.1 that says:

"No formal consultation has been undertaken, as the intention is to ensure that, as far as possible, the status quo is maintained".

I share his view that that is not a very good reason for not holding a consultation. Surely the consultation, or at least one key part of it, would be on whether what is in front of us achieves the objective of maintaining the status quo, since maybe some of the manufacturers or others involved in the industry might think that it does not. But since no formal consultation has taken place, presumably they were not invited on a formal basis to offer their views on that particular, rather key issue.

Lord Adonis: Is there not a more fundamental point, which is that the regulation emphatically does not maintain the status quo? On the contrary, it envisages a completely new type-approval regime being set up. How can the Government say that they are not consulting because that maintains the status quo when the regulation itself emphatically does not maintain the status quo?

Lord Rosser: That is the point I was trying to make—that in fact, if the Government had held a consultation, they might have had people coming back and saying that it was not maintaining the status quo, but the Government did not give them a chance to say that because they did not hold the consultation in the first place. Paragraph 10.2 seeks to get round that by referring to the fact that there were,

"a series of focused meetings"—

I do not think anyone would expect a series of unfocused meetings to take place—

"with stakeholders such as the Society of Motor Manufacturers and Traders … the Motor Cycle Industry Association … the Agricultural Engineers Association … and the European Engine Manufacturers Association … Numerous smaller trade associations have also been provided with information, and a number of manufacturers have been contacted directly".

Were they contacted directly on whether what is in front of us in fact maintains the status quo? That is what the Government are saying their objective is, so did they speak to manufacturers about whether they thought this maintains the status quo? As we have already heard in some detail, quite a case can be made for saying that this certainly does not maintain the status quo, which is what Government have said is their objective.

In addition, bearing in mind that the Explanatory Memorandum talks about focused meetings, I know that the Secretary of State is not exactly a fan of trade unions, but I notice that when the Explanatory Memorandum refers to who the focused meetings have been held with, it does not seem to include the trade unions involved in the motor industry. Is this simply a reflection of the Secretary of State's view that the people who work in the industry, as opposed to the people who own and manage the industry, have nothing whatever to contribute as far as the future is concerned? It would be helpful if we could have a reply on that. I am sure that the Minister will not be surprised that, bearing in mind the content of some of the other SIs that we will go on to deal with, there seems to be a similar silence there on whether those who work in the industry and the organisations that represent them have been consulted.

I will not go through the issue that has been raised with regard to paragraph 7.8 and mention that all again, because clearly the Minister will reply to that. I just want to check that what we have in front of us will meet, at least for a period of time, one of the issues that has been drawn to my attention. A motor manufacturer in this country says that it has a long run-in time of some months for production of the particular vehicle it makes. If it does not have type approval, it cannot complete the car—the type approval for the vehicle concerned, which is manufactured in this country, is done from its headquarters in another European country. It indicates that that could potentially lead to hundreds of almost-finished models of that car being stuck in the plant in this country. I am told that the company is creating extra parking spaces near the plant—which is certainly a waste of money but perhaps quite sensible for this reason we are talking about today, as well as because of potential customs delays, which one might argue is a separate issue. Can the Minister at least say that, provided that the manufacturer can get one of these provisional licences or approvals, what we have here would meet that potential difficulty for a major manufacturer in this country that needs a long run-in time for production of the particular vehicle it produces, and can she confirm that its headquarters where the type approval is done, which are in another European country, would not be in any difficulties as a result of anything in this statutory instrument? If in the short term that would not be the case, because the manufacturer will have no difficulty in getting the provisional certificate or arrangement, what will happen to it in two years' time, bearing in mind that the Government are not able to tell us what the situation will be then, and does this SI not mean uncertainty for it, at least after two years, if not earlier?

I will ask one or two questions on the other SI, on vehicle emissions, to check what some of the wording means. I am looking at the Explanatory Memorandum, and I am sure the Minister will know why I am referring to it—basically, I cannot make head nor tail of what the statutory instrument itself says. There is a reference in paragraph 2.7 to a summary of the changes being made to the current legislation, and then it sets them out. It says:

"Minor amendments to restate retained EU legislation in a clearer and more accessible way, such as omitting time-limited obligations"—

which one might think was not quite the same as expressing something in a clearer and more accessible way. Could the Minister outline the time-limited obligations that are being omitted? What is the significance of their omission?

6.30 pm

Paragraph 2.8 of the Explanatory Memorandum—again, I simply want to check what the wording means, because it could be an almighty get-out to allow changes—says:

"The eight (EC) Regulations and twenty-five Implementing Decisions mentioned in paragraph 6.5 will all become retained EU law on exit day, and will all be retained and amended in order to ensure that all of the obligations and commitments listed within continue to apply in a sensible and effective manner after the UK's withdrawal from the EU".

Why was it necessary to add,

"in a sensible and effective manner",

rather than just saying that the obligations and commitments listed would,

"continue to apply after the UK's withdrawal from the EU"?

Which bits will not apply in future because they are not deemed sensible or effective? It would be helpful to have some clarity on that, because it may mean nothing at all, or it may mean that someone could try to drive a coach and horses through the existing arrangements.

There is another place where we have to ask: does it mean nothing at all or does it mean a great deal? Paragraph 3.1 says:

"Additionally, there are a number of sub-delegated clauses within the Regulations that allow for updates to the legislation to be made, such as updating the formula that sets manufacturers' targets to reflect changes to the weight of the relevant vehicle fleet".

I would be grateful for an explanation of exactly what that means. What will updating that formula mean? How will the Government define what is an update and what is a straight change in the present arrangements? Clearly, the word "update" could be interpreted in a very loose way, and used to justify almost anything the Government sought to do.

Paragraph 7.4 says:

"Currently, manufacturer targets are established by formulae which compare the mass of all newly registered cars and/or vans in a manufacturer's fleet against the average mass of all such vehicles in the European Union … At the point of exit, the average mass figure that all other vehicles are compared against will be retained in order to ensure continuity for vehicle manufacturers. At the first such update to the average vehicle mass after the UK's withdrawal, the mass will be amended to reflect the average mass of all relevant vehicles registered within the United Kingdom only".

Mercifully, I do not have to try to explain what that means, but I would be grateful if the Minister could. What I am really getting at is this: if the formula is to be changed in some way at that first update—there is a reference to an amendment—will it make the CO_2 emissions targets weaker or tougher? That is the key issue that arises from the wording. What is the significance of that wording?

Finally, I come to consultation, which is covered by paragraph 10. Again, I ask whether the trade unions in the industry were consulted. They may have a view on emissions targets, and they may have some helpful information. They are involved in constructing and building the vehicles, so they may have some ideas about what is going on at the moment that have not come to light, as we found out with VW, in another country, that things were not going precisely as they should be.

Were environmental organisations consulted? I think that the noble Lord, Lord Dykes, raised that issue, and there have not been many responses. How many organisations were invited to comment directly? Were environmental organisations invited to do so? The Explanatory Memorandum says that key issues were raised about whether UK CO_2 targets would be weakened. I know that the Government will want to say that that is not the case; no doubt the Minister will wish to confirm that.

Will the possibility of simplifying the arrangements for approving eco-innovations, which is also referred to in the document, lead to a weakening of the present arrangements in that regard? As I understand it, although I do not think this could be described as a derogation, if someone wants to be dealt with under that heading because they are introducing new technology and so ought not to be assessed in the same way as everybody else, at present the European Commission has to approve that. In future, presumably, that will be done on a UK basis. If I am correct—I may well not be—and that power of approval will be transferred from Europe to this country, who will exercise it here?

Baroness Sugg: My Lords, I thank noble Lords for their consideration of the draft regulations. The regulations will ensure that we can continue to control the registration of vehicles in the UK and also to combat climate change in the transport sector after we leave the European Union. I shall now respond to some of the points raised.

The issue of type approval and the standards that apply was raised by many noble Lords. Future changes to the standards that apply to vehicles approved and registered in the UK will be laid before Parliament for approval in the form of statutory instruments. At the point when we leave the EU, all existing standards, including those for safety and environmental performance, will continue to be applied to new vehicles registered in the UK. There will not be a drop in standards or a resultant effect on road safety or environmental performance when we leave the EU.

As for future decisions on remaining aligned with EU standards, it will be for the Government to propose legislation for Parliament's consideration, and the process by which the legislation will be considered will be an SI, subject to the affirmative procedure, establishing a new full UK approval scheme. As discussed, that will be laid later this year. I reassure noble Lords that, as has been highlighted, the SI will create an interim arrangement, which will be valid for a maximum of two years. The department is undertaking a comprehensive review and reworking the UK's type-approval arrangements in the case of a no-deal outcome, in order to ensure continuity for manufacturers. This absolutely is about maintaining the status quo. That is why we are having the interim measure for two years.

The review is not intended to make policy changes. We would remain aligned with existing standards, but we would amend the retained EU legislation on type approval, which runs to 3,700 pages, to eliminate

[Baroness Sugg]
remaining deficiencies and, if possible, to streamline the legislation to make it more accessible. There will, of course, be a formal consultation on that process, to ensure that we get it right. This is an interim measure for two years, maintaining the status quo pending a large piece of work with a formal consultation to ensure that, should we leave with no deal, we would have the best possible functioning type-approval system.

Lord Adonis: But what is the point? Why not simply continue to maintain EU 27 approvals? If we do not intend to diverge, what is the point of this big piece of work?

Baroness Sugg: By leaving the European Union through the European Union (Withdrawal) Act, we will take EU legislation on to our statute book. So we are carefully looking at that legislation to make sure that it functions in the best way for us. As I said, this is not intended to make policy changes and is intended to remain aligned with existing standards. But there are more than 3,700 pages of type approvals, and we want to make sure that they function correctly on our statute book. That is a significant piece of work, which we will be doing alongside a formal consultation to make sure that this continues to function.

The consultation on type approval was conducted by discussions and working groups, largely through the main UK trade bodies covering the various categories of vehicle that require type approval. We have had a range of meetings that included members of the SMMT, the Motorcycle Industry Association and the Agricultural Engineers Association. Through these meetings, we refined our proposals and addressed sector-specific issues as well as informing people what is expected in a no-deal scenario. Obviously, we have also spoken to the European trade associations.

Lord Rosser: I ask this in a genuine spirit: I hope that the Minister will accept that. If there were meetings and discussions with the bodies that she just mentioned, which are referred to in the EM, did they agree that what is in front of us today maintains the status quo—because they would have been told that that was the objective? Can I just check, because the Minister did not mention it, that the trade unions were not consulted?

Baroness Sugg: I am afraid that I do not have an answer on trade unions; I shall have to get back to the noble Lord on that.

The organisations we consulted do not wish for no deal—I should be very clear on that—but we are attempting a pragmatic approach to make sure that we continue trade with the EU should we have a no-deal exit. They are supportive of the proposals. The SMMT told the Lords Select Committee on the EU Internal Market that the department had put in place a system of temporary type approval, initially, which is probably as sensible as we can have during the interim period. The Motorcycle Industry Association confirmed that it had no immediate concern with the proposed text, which it expects to alleviate some of the short-term pressures on manufacturers and importers arising from the UK leaving the European Union without a deal. So I think that it is fair to say that industry does not want no deal but, in the event of no deal, it accepts that this interim measure is the right way forward. We published our technical notice of the changes to type approval last September.

On the question of the cost of type approval asked by the noble Baroness, Lady Randerson, the total cost to manufacturers of provisional approval is estimated to be around £800,000. That includes their internal administration costs and familiarisation costs. Normally, to obtain type approval for a single model costs at least £250,000, including the hire of test facilities, internal costs and fees to the VCA. It takes the VCA a couple of hours to prepare a UK approval following an application. As noble Lords would expect, the VCA has engaged extensively with industry and is well placed to issue provisional UK approvals. It has recruited additional temporary staff to manage the additional workload. So far, it has taken on 23 additional staff and is on target to have 40 in place by mid-March. The assessment found an estimated annual cost of the VCA of £800,000 per year, which would be recovered from manufacturers—so, combined with the administrative costs of using the scheme, the estimated total cost to business is £1.6 million per year.

Baroness Randerson: I thank the noble Baroness for those details, but I am still not clear about why the Government are suddenly so suspicious of EU type approvals. What grounds do they have to need to do this all over again rather than simply accepting, certainly for the first two years, that vehicles can come in with EU type approval, which we have trusted in the past and could trust for the next couple of years?

Baroness Sugg: Under no deal, EU-based manufacturers will also need to obtain UK approval from the VCA. That will be granted on the basis of a valid EU approval. The VCA retains the right to retest in the unlikely event that there are doubts about the authenticity of the EU approval. There are certainly no grounds for suspicion on that, but, if we leave the EU, it is only right that we have our own approval. We will no longer be a member of the EU, so we will no longer recognise its type approval.

On the VCA's progress, as I said, engagement is continuing. It is actively working with customers and manufacturers on approvals from EU countries selling into the UK to ensure that they can deal with this. The VCA has already obtained approval data from manufacturers. Used cars and vans make up 99% of new registrations, and that engagement continues, so it is well placed.

The noble Baroness, Lady Randerson, also asked about the powers. The VCA currently has powers but, in the event of a no-deal exit, it will lose its powers as we will no longer be an EU member. That is what the SI brings in.

Several noble Lords asked about the national small series type-approval limits. They are being doubled for this year, and only for this year, because by next year we will have this new statutory instrument in place which will have our new type-approval process.

Baroness Randerson: Can the Minister explain why they are being doubled? On what grounds is their historic level now inappropriate?

Baroness Sugg: Before, it was for the whole of the EU. Now it will be for the UK only, so this is a temporary measure until the new type-approval statutory instrument comes in.

Lord Adonis: The Minister referred to a statutory instrument, but the regulation refers to legislation. What is the relationship between the legislation, which is scheduled for mid-2019, so will be introduced very shortly, and the statutory instrument to which she referred?

6.45 pm

Baroness Sugg: The new type-approval regime will be a piece of legislation through a statutory instrument, which will be affirmative and will follow full consultation before it is published. A statutory instrument is the methodology by which it will come in.

I turn to emissions, on which, happily, we did consult. They were the subject of public consultation in November last year, and the Government's response was published on 18 December. In parallel to that, we offered meetings with any stakeholders who wanted to discuss the proposals further. Again, I shall have to get back to the noble Lord on the specific point about trade unions. In addition to that formal consultation, DfT officials have been in regular contact with stakeholders for many months to help develop proposals to make sure that we have consistency with the existing EU regime. In the government response to comments from stakeholders, we provided clarification on the pooling and eco-innovation arrangements and set out a worked example of how a vehicle manufacturer's target under the proposed UK regime might be established.

Through the statutory instruments, there are no specific impacts on UK manufacturers. If we were to leave the EU without a deal, the new UK regime would continue to operate as the EU regulation does for any vehicle manufacturer that registers new cars or vans in the UK. Manufacturers' CO_2 emission reduction targets would be calculated in the same manner, and they would still be expected to meet the existing headline reduction targets and report new registrations, as they do now. UK manufacturers' vehicles registered in the EU would count towards the EU's regime, as they do now.

Lord Dykes: I am very grateful to the Minister for giving way, and I apologise for interrupting at this stage. Would she forgive me if I again raise the point that has just made by the Opposition Front-Bench spokesman about trade unions being included in the consultations? I note that she has now said twice that she does not know the answer to that, but I should have thought that her team would have provided her with a list of people who were consulted, so she could refer to it. Is it not a matter of alarm if the trade unions were not included, bearing in mind that in the high-technology motor industry, it is well known, as we see from the tragedy of the Honda closure in Swindon, that car workers are not just workers in a general sense: they are highly skilled operatives and proud of their long years of training. Therefore, they often know more than those owning or running the company and managing them about the intricacies of motor vehicle production and manufacture. The trade unions therefore really need to be consulted.

Baroness Sugg: I take the noble Lord's point and of course agree that the staff who work in the manufacture of vehicles play a really important role, and we should ensure that their views are taken on board.

We expect the cost of moving to a UK regime for CO_2 emission reduction standards to be minimal. The registration of vehicles and the collection of required data is already handled by the DVLA on behalf of the DfT, and that will not change after EU exit.

With regard to emissions standards, the Government remain committed to our international and national environmental obligations. When we leave the EU, we will maintain them. If there is no deal, the SI we are considering will ensure that existing CO_2 emission reduction standards are maintained. The formula to set those CO_2 reduction targets and the headline targets themselves will be retained by the statutory instrument.

The noble Lord, Lord Rosser, asked about vehicle mass changes. As the UK average vehicle mass is above the EU average—we make heavier vehicles than the EU, on average—one consequence of adopting the current regime is that the sum of individual manufacturing targets in the UK will be slightly higher than the sum of targets in the EU. That might appear to be a slight loosening of standards, but that impression is incorrect. The goal that manufacturers must achieve remains the same. The SI specifically retains the headline targets that manufacturers must achieve by 2020. It maintains the level of effort that manufacturers must make under the current regime and ensures that regulations are as ambitious as under the existing arrangements.

On improving CO_2 standards, as per the terms of the withdrawal Act, amending SIs must only correct a deficiency. However, the Government are still committed to ensuring that the standards will be as high as or higher than those required to allow importation into the EU.

I hope that I have addressed the points that were raised in the debate. If I have missed any, I will follow up in writing. Maintaining vehicle approval and emissions standards is vital to the broader government commitments to tackle climate change and improve road safety. These SIs are essential to ensure that we maintain control of vehicles on UK roads and that the system of vehicle type approvals and emissions standards continues to function from day one after exit. I beg to move.

Motion agreed.

Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

6.50 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 18 December 2018 be approved.

Motion agreed.

Citizenship Status

Statement

6.51 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat the response by my right honourable friend the Home Secretary to an Urgent Question in another place. The Statement is as follows:

"Mr Speaker, to keep this country safe we must be prepared to make tough decisions. As I told the House on Monday, there must be consequences for those who back terror. More than 900 people travelled from the UK to engage with the conflict in Syria and Iraq. At least 20% have been killed in the region and around 40% have returned.

They have all been investigated and I can reassure this House that the majority have been assessed to pose no, or a low-security risk. Those who stayed include some of the most dangerous—including many who supported terrorism, not least those who chose to fight, or raise families, in the so-called caliphate. They turned their back on this country to support a group that butchered and beheaded innocent civilians, including British citizens; that tied the arms of homosexuals and threw them off the top of buildings; and that raped countless young girls, boys and women.

I have been resolute that where they pose any threat to this country, I will do everything in my power to prevent their return. This includes stripping dangerous individuals of their British citizenship. This power is used only in extreme circumstances, where conducive to the public good. Since 2010, it has been used around 150 times against people linked to terrorism or serious crimes.

We, of course, follow international law. An individual can be deprived of British citizenship only where it will not leave that individual stateless—where they are a dual national or, in some limited circumstances, have the right to citizenship elsewhere. It would not be right to comment on an individual case. But I can say that each one is carefully considered on its own merit, regardless of gender, age or family status.

Children should not suffer, so if a parent loses their British citizenship it does not affect the rights of their child. Deprivation is a powerful tool that can be used only to keep the most dangerous individuals out of this country. We do not use it lightly. But when someone turns their back on our fundamental values and supports terror, they do not have an automatic right to return to the UK. We must put the safety and security of our country first and I will not hesitate to act to protect it".

6.53 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the Minister for repeating the Answer to the Urgent Question asked in the other place today. I agree that there must be consequences for those who back and commit acts of terrorism. Where individuals are British citizens suspected of committing offences, particularly if they were born in the United Kingdom, it seems to me that we have a responsibility: to question them; to investigate their actions; where the evidential tests are met, to put them on trial; and, where a jury convicts, to punish them in accordance with the law.

I am sure that the Minister will tell me that the actions of the Government to deprive someone of their nationality have been done in a way that does not breach Article 15 of the Universal Declaration of Human Rights. How will this assist in bringing someone who has committed serious crimes to justice?

Baroness Williams of Trafford: I can confirm to the noble Lord that these decisions are compatible. All those deprived of citizenship have been deprived on the basis that such an action was compatible with Articles 2 and 3 of the ECHR. On the point about bringing someone back and bringing them to justice, if someone is in Syria, we do not have consular support there, and one would question how we could do that. There is no infrastructure in place that makes it possible to go into Syria. As my right honourable friend the Home Secretary said, he does not want to put Foreign Office or Home Office officials' lives, or anyone's lives, in danger by asking them to go out to Syria.

Baroness Hamwee (LD): Does the Minister agree that it would be conducive to the public good—the criterion applied here—to bring back someone who could tell the authorities here how she was recruited? We could learn from her. The recently retired Independent Reviewer of Terrorism Legislation today made the point that some people who have come back from terrorist activities have proved the best interlocutors in persuading young people away from radicalisation.

May I ask about the child? The Minister said—as was said on Monday—that an individual case cannot be discussed. However, that seems to be exactly what the Home Secretary has been doing. The Minister also said that the rights of the child will not be affected. What does that mean in practical terms?

Baroness Williams of Trafford: My Lords, on whether it would be conducive to the public good if someone could be brought back and rehabilitated in this country, or could tell the British authorities what was going on and perhaps act as a conduit for good, without talking about a specific case, there are of course examples of people who have come back here and been rehabilitated through Channel programmes. That is absolutely correct.

Turning to the rights of the child, if any child is a British citizen, that child's parents having been deprived of their citizenship does not affect the child's citizenship.

Baroness Berridge (Con): My Lords, I am grateful to the Minister for the clarification of the legal status of any children of those deprived of their British citizenship. Will she clarify what exactly the duties of the Home Secretary are? If he is reviewing information that may be confidential but not classified, which reveals safeguarding issues in relation to the children of people who have been deprived of their citizenship, what are his responsibilities to refer information to other authorities so that the children can be protected in situations where their interests and safety are not the same as those of the parent who is having their

citizenship withdrawn? It is important to know what the processes are for those children and what the safeguarding duty of the Home Secretary is.

Baroness Williams of Trafford: My noble friend asks a very good question. Safeguarding is paramount when considering the rights of a child. It is a very difficult situation if a child is in a country where we do not have any consular access and therefore no means of helping them. Under the UN Convention on the Rights of the Child, we absolutely have a serious obligation—and we take it very seriously. If a child is in a war-torn country, however, those obligations are very difficult to fulfil.

Lord Hylton (CB): My Lords, I detest al-Qaeda, ISIS, al-Nusra and their backers as much as anyone in this Chamber or outside. Nevertheless, we must realise that the deprivation of citizenship is an executive act —a very severe penalty that can be imposed by a Minister without a careful court hearing and judicial decision. The Secretary of State may be tempted to appear tough and uninfluenced by his personal background, but will Her Majesty's Government assure us that, in future, misguided volunteers and spouses will not be stripped of citizenship until they have returned home and received legal advice and representation to allow their case to be argued fully?

Baroness Williams of Trafford: I am afraid I cannot give the noble Lord that assurance; it is difficult to do so if someone insists on remaining in a country where we have no consular access. It is also very difficult to give a general assurance without knowing the details of an individual case. In making these extremely difficult decisions, the Home Secretary takes all the facts into account. I think I read yesterday that he had acted with the most robust legal advice in place.

Viscount Hanworth (Lab): My Lords, it is extraordinary that the Minister refuses to discuss the details of the case in question. In my opinion, the decision of the Home Secretary, Sajid Javid, to deprive Shamima Begum of her British citizenship is profoundly flawed. It is wrong from an ethical perspective, it flouts international law and it is the wrong decision from the point of view of expediency. International law decrees that a country cannot render its citizens stateless. The assertion that it is permissible to strip Miss Begum of her British nationality because she can inherit Bangladeshi nationality from her mother seems risible. What legal advice have the Government received on this issue? On expediency, it has been proposed that Shamima Begum's presence in the UK would pose a danger to other citizens. That seems far-fetched; there are greater hazards in leaving her, and others, in Syrian refugee camps.

Noble Lords: Question!

Viscount Hanworth: I have already posed a question.

Baroness Williams of Trafford: The noble Viscount's assertion is absolutely correct. Under international law, someone cannot be rendered stateless unless they are a dual citizen with citizenship of another country. However, I disagree with his view that the Home Secretary's decision was wrong in all sorts of ways. Clearly, anyone who goes out to Syria and voices their support for ISIS is a danger to the UK if they return home.

Lord Paddick (LD): My Lords, what does the Minister make of the comments of the noble Lord, Lord Anderson of Ipswich, on today's "Today" programme? He said that rather than depriving subjects of their British nationality, we should take responsibility for our citizens; otherwise, other countries will start doing the same to us, depriving British dual nationals of their other citizenship and dumping their problems on us.

Baroness Williams of Trafford: I agree with much of what the former Independent Reviewer of Terrorism Legislation said. However, on taking responsibility for our citizens, if our citizens decide to take responsibility for themselves and go to one of the most dangerous parts of the world and engage with proscribed organisations, that is their decision. Therefore, given that we have no consular access in Syria, it is very difficult in any circumstances for the UK Government to take responsibility for one of our citizens who decides to travel beyond our reach.

Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

7.05 pm

Moved by ***Baroness Sugg***

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

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, these draft regulations will be 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 also make amendments under the European Communities Act 1972. They amend EU Regulation 561/2006, which sets out driving time rules for commercial drivers, and EU Regulation 165/2014, which sets out rules on the use of the tachograph device used for the enforcement of driving time rules.

Drivers' hours rules are central to keeping our roads safe. They set maximum driving times and minimum break and rest times for most commercial drivers of both lorries and coaches. Of course, the consequences of driving any vehicle when fatigued can be catastrophic. These rules are enforced by the Driver and Vehicle Standards Agency and the police at targeted roadside checks, as well as by visiting operators' premises. The principal tool used by enforcement officers is the record generated by the tachograph.

The regulations would make three broad categories of amendments. First, the draft instrument would make the necessary changes so that the EU regulations retained in UK law by the withdrawal Act continue to

[Baroness Sugg]
function correctly after exit day. For example, EU processes, such as the need for the UK to seek authorisation from the European Commission for exemptions, have been removed. Secondly, the regulations would amend domestic legal provisions, also using the powers of the EU withdrawal Act. Under the current EU regulations, member states put in place effective and proportionate enforcement provisions themselves. In Great Britain, this has been done by means of criminal offences set out in primary legislation and a fixed penalty regime in secondary legislation. Particularly important amendments need to be made to these domestic enforcement provisions to make them work in a non-EU context. Thirdly, the regulations would make changes to domestic law under the European Communities Act 1972. These changes are required to update the legal provisions that implement EU law ahead of exit day so that the regime is fully effective and enforceable.

In addition to containing the directly applicable rules I have already mentioned, EU law includes the obligation on member states to apply the wider United Nations AETR agreement on drivers' hours rules. With the UK outside the EU, this wider international agreement will in future cover transport operations between the UK and the EU. The majority of the changes here are to ensure that there are explicit domestic provisions, including offences and penalties, to fully implement the AETR agreement. The AETR driving time and tachograph rules mirror the equivalent EU regulations, so this legal change would not affect the regulatory obligations of the drivers and operators in scope of the rules.

While the need for these amendments is particularly important in the context of EU exit, they are in any event legally required under the UK's current international obligations.

To conclude, the regulations are essential to ensure that the EU regulations on drivers' hours, and the tachographs used to enforce them, continue to work effectively in the UK from exit day in the event of no deal. These rules are at the heart of the road safety regime for commercial vehicles.

Lord Adonis (Lab): The Minister referred to the regime in respect of tachographs. Paragraph 2.7(a) of the Explanatory Memorandum states that,

"this includes amendments to criminal offences in relation to the use of tachographs".

I take "amendments" to mean changes to the existing regime for criminal offences. Can the Minister say what will change, or are the amendments technical with no changes to criminal offences?

Baroness Sugg: The penalties precisely mirror those already in place for the existing equivalent offences. For tachographs, the penalty for breaches of the type-approval rules follows the legislation already in place for the type approval of motor vehicles. The fixed-penalty amounts for infringements of the AETR are the same as for infringements of the equivalent EU rules. I am happy to go through this in detail if the noble Lord would like; I expect he would.

Lord Adonis: So there were no changes in the actual impact of criminal offences on the individual, either in terms of the offences or the penalties?

Baroness Sugg: I will go through it in detail. A number of the provisions and offences in Part VI of the Transport Act are being amended to ensure that the AETR is fully applied in the UK, as I mentioned earlier. The existing measures, which make provision in relation to the EU regulation, are amended so as also to refer to the AETR provision: Section 96, which contains the offences of non-compliance with the EU and AETR drivers' rules; Section 97C, which requires drivers to provide tachograph records to employers; Section 97G, which requires operators to ensure the data is downloaded from tachographs; Section 97H, which requires the production to an officer of downloaded tachograph data; and Section 99ZE, which prohibits the creation of false tachograph records and data. Those are the criminal offences being amended to make sure they are in line with the AETR rules.

Lord Rosser (Lab): This relates to what my noble friend said. I intended to say it when I made my contribution, but perhaps I could just say it now. Paragraph 6.5 of the Explanatory Memorandum says that Part 2,

"creates three new offences and amends two existing offences to ensure that there are adequate enforcement provisions".

I accept that if I had read the document more thoroughly, I might know the answer to this question, but what specifically are the three new offences referred to?

Baroness Sugg: I was just coming on to those new offences. The new criminal offences are all under the Transport Act. The first is the failure to install or use a tachograph in accordance with the AETR requirements for in-scope vehicles. The second, in Section 97ZB, is the supply of tachograph equipment that has not been or is no longer type-approved by the relevant authorities. The final new offence, in Section 97ZC, is the failure by a tachograph manufacturer to inform the Secretary of State of known security vulnerabilities in its product. As I said, in particular the provisions around the AETR agreement will be increasingly important as this international agreement takes the place of the existing EU regulations. In the course of the legal analysis work to prepare this EU exit SI, these were the new criminal offences identified as needed. It is particularly important to make sure that the AETR regulatory regime is fully functioning for exit day.

The necessary legal amendments do not modify the substantive regulatory obligations placed on drivers and operators subject to the rules. In the event of a deal, as set out in the draft political declaration, for road transport the UK and the EU intend to develop market access arrangements underpinned by appropriate common standards, including driving time limits. Obviously, that is where we hope to get to, but in the event of us leaving without a deal these regulations are needed. I beg to move.

Baroness Randerson (LD): My Lords, these are really important regulations. They are vital for road safety and for driver welfare, because over the years

there has been great concern about the way drivers have been expected to live when they are not driving along the motorways.

Up to now, drivers have been bound by the EU drivers' hours regulation and the EU tachograph regulation. In future they will be bound by the AETR, which covers a much wider group of countries. From what the Minister has said, it appears that these two sets of regulations are very similar and essentially the same.

I had intended to ask about the three new offences and amendment of two existing ones, but the noble Lord, Lord Rosser, has already asked about that. It is important to find clarity on this.

The Secretary of State will be responsible in future for the approval of recording equipment. Currently, the Secretary of State is responsible only for checking and inspecting, but in future they will have responsibility for approval of the equipment. That is an important additional responsibility. Can the Minister explain who will have that responsibility in Northern Ireland? I realise that this SI does not apply to Northern Ireland, but clearly tachograph issues are very important in Northern Ireland, because drivers cross the border all the time and cross-border trade is so important. Can the Minister explain how it will work in Northern Ireland? Obviously, drivers from the Republic of Ireland will follow EU rules.

7.15 pm

This is a complex set of amendments, including a wide range of offences for matters such as imposing time schedules that do not observe AETR rules, supplying equipment that is not type approved, failing to install or use equipment, and even failing to inform the Secretary of State if a manufacturer is aware of security vulnerabilities.

Paragraph 6.10 of the EM refers to,

"measures to be taken in … a crisis",

in road haulage. This includes,

"information exchange between Member States".

The reference to such information exchange will be deleted by these regulations. Surely the exchange of information would be absolutely fundamental if you had a crisis in road haulage. For example, if you have a huge pile-up of lorries on the UK side of the channel or a problem with some kind of blockage or strike, it is so important that you share that information with the countries to which those vehicles are destined. Can the Minister explain what the Government intend to do in future? Having obliterated that information sharing, what will they put in its place?

There are measures here to ensure that a lorry with EU-approved equipment will be able to operate in the UK in future. Clearly, that is fundamental. We also appear to have a welcome provision that, if the EU tachograph regulation is modified in future, we will adopt those changes. This is a very different approach to the one taken in the previous SIs we looked at, but it is very welcome because it is simple, straightforward and common sense—I hope the Minister will correct me if I have read this wrongly, but I think I am correct. However, having such a different philosophical policy approach from one SI to another will not make life any easier for people working in the automotive industry, the haulage industry and so on.

Paragraph 7.14 makes reference to certain exemptions, transferring the powers to the Secretary of State and giving the Secretary of State powers over testing tachograph equipment. The Secretary of State will be given regulation-making powers over this. Will this be by negative or affirmative procedure?

Paragraph 7.18 raises a crucial issue on the exchange of information on tachograph cards to prevent drivers making duplicate applications in different countries. Obviously, if they do that, they undermine the whole system. In future, we will not be party to the exchange of information between EU countries, but as I understand it, we will rely on the AETR system. What system is that? How does it work? Is it as comprehensive and robust as the EU system? Can we rely on being able to get information from that system as easily as we currently do? If you cannot do that, then that does affect road safety.

Finally, can I take this opportunity to ask the Minister about progress on negotiations in road haulage? It is not directly part of this SI, but this is about road haulage, and these negotiations are important. The EU has proposed a temporary nine-month extension to allow UK hauliers to carry goods into the EU. The industry is especially concerned about cabotage and cross trade, and 25% of international work undertaken by Northern Ireland hauliers is cabotage. The loss of those rights would have a major impact on them, so any update that the Minister can give us this evening would be very welcome.

Lord Adonis: My Lords, I want to raise the issue of changes to tachograph rules hereafter, which is critical. Could the Minister explain how that regime will work? What is the legal mechanism by which we would continue to mimic the changes to tachograph rules in the EU? Is it the Government's intention that our rules will continue to exactly mirror the rules in the European Union?

Lord Rosser: I will make one or two comments on this SI and ask the Minister to repeat a couple of things she has already said.

The Secondary Legislation Scrutiny Committee referred to the three new offences and the amendment to the two existing offences, saying:

"The House may wish to be aware of the creation of new offences using secondary legislation".

Is the Minister able to give some information—I do not mean an enormous amount—on how frequently DfT uses secondary legislation to create new offences, or to amend existing offences? I am not entirely sure in my own mind the extent to which this is a break from normal practice or simply a continuation of an existing practice which may not be used frequently.

I would be grateful if the Minister could confirm that the effect of this SI is that there will be no changes to the requirements of the drivers' hours and tachograph rules, so that what we are being invited to agree to is actually a continuation of the present arrangements.

[Lord Rosser]

I do not think the Minister will be too surprised if I ask whether there was any consultation with trade unions. Paragraph 10.1 says:

"Department for Transport Ministers and officials have regular engagement with the road transport industry".

It would be of some relief if the Minister was able to say to me that, on this issue, that covered the trade unions as well as the other key players within the industry, because it talks, at paragraph 6.5, about creating,

"the equivalent offence of failing to install and use recording equipment".

Presumably, a driver could be accused of not using the recording equipment, and might, for example, turn it off. To suggest that the drivers of vehicles have no interest at all in what is in this SI is stretching it.

I will leave my comments at that, on the basis that there is no change to the existing arrangements, and that is what this SI is intended to achieve. I would be grateful if the Minister could comment on what is in the Secondary Legislation Scrutiny Committee report about creating new offences using secondary legislation.

Baroness Sugg: I thank noble Lords for their consideration of these draft regulations, and I shall turn to the points raised.

The need for these regulations is incredibly important. On the market access regulations, which the noble Baroness referred to, the international access to the EU for the UK—if there is a no-deal Brexit—would be jeopardised without them. The regulation on the haulage market access currently being discussed envisages the continuation of equivalent rules for drivers' hours and tachographs and includes draft provisions to reduce or terminate market access without those equivalent provisions, so they are important. Even under the limited access provided by ECMT permits, we also need to adhere to the international standards.

On enforcement, parts of the tachograph rules and the current regime of drivers' hours offences in the UK would not continue to be enforceable in respect of much of the commercial road transport in the UK. Some of these breaches of the rules are incredibly serious, including the fraudulent manipulation of tachographs, so the rules are important to public safety.

On new powers, in many cases the reference to the Secretary of State is a technical change, but the Secretary of State will have some regulation-making powers, and they are exercisable by negative procedure to replace the Commission's secondary legislation-making powers. At present, such legislation made by the Commission flows through to the UK automatically as directly applicable EU law. The regulation-making powers are transferred to the Secretary of State in relation to authorising exemptions from driver rules for transport operations carried out in exceptional circumstances, which the noble Baroness referred to. Procedures for field tests of tachograph equipment, setting out standardised reporting forms and specifying the content of the training of control officers, and setting out the technical specifications for tachograph equipment are subject to the negative procedure, due to the nature of the amendments which they would make. They are very specific and technical or apply to exceptional circumstances where we need a swift response. It would only be possible to modify the core regulatory obligations, such as maximum driving times and the requirement to install a tachograph, through primary legislation.

The costs on business will not change as a result of these regulations. The effect of the rules will be the same: behaviours which are legal will continue to be allowed, and behaviours which are illegal will continue to be prohibited. The regulations will enable the enforcement of the rules by the DVSA and the police to continue as at present.

On information exchange, which the noble Baroness, Lady Randerson, raised, the provisions are revoked because they relate to co-operation which, in the event of no deal, we sadly cannot guarantee. We would hope, none the less, to be in a position to continue to co-operate with the EU in relation to this sector. That is not an agreement we have reached yet, and we would not be party, for example, to the European Register of Road Transport Undertakings, which is the data exchange on violators, as we would no longer be a member of the EU, but that information flow is important and we would like to see it even in the event of no deal.

This would not affect the enforcement sanctions available. Regardless of Brexit, we are targeting enforcement resources towards offences such as tachograph manipulation, and enforcement against non-UK established hauliers and drivers, which includes the immobilisation of vehicles and fixed penalty notices, is not affected by the regulation or Brexit. We will continue to participate in Euro Contrôle Route, which is not an EU body and is not restricted to EU countries' enforcement agencies. That organisation is focused on practical law enforcement collaboration and enables the exchanges of good practice.

7.30 pm

The noble Baroness raised the issue of Northern Ireland. Type approval is UK-wide and so the Secretary of State's power applies to Northern Ireland too. We are obviously working closely with the Northern Irish devolved Administration, and they are preparing equivalent amendments to Northern Irish domestic legislation, which will be subject to a separate statutory instrument. We will take that through here in the absence of the Northern Ireland Assembly.

The noble Baroness asked for an update on the EU haulage regulations. She is quite right that, in the event of no deal, it will be incredibly important that there is continued access for UK hauliers to the EU and vice versa. Negotiations on the proposal are being taken forward as a priority and are moving very quickly. On Friday 15 February, there was a COREPER meeting at which the presidency established that there was a qualified majority in support of the current Council text, and negotiations were started on that basis. The next trialogue is on 21 February. Once those discussions are complete, the final legislation will need to be approved by the European Parliament in mid-March, and then adopted by the Council of Ministers.

The noble Baroness is quite right to point out the importance of cabotage. Again, that goes both ways, and so we are looking forward to those regulations being agreed.

On consultation, we have met frequently on this with representatives of the trade associations. The drivers' hours and tachograph rules are a core part of the regime. We have had many round tables, and the Road Haulage Association and the Freight Transport Association, which are representative of both hauliers and drivers, are supportive of the regime. We have not met the trade unions on this specific SI, but we think that the trade associations are the best representatives of the sector. However, as I said, there will be no change for drivers who are—

Lord Rosser: Does the Minister think that the RHA and the FTA are the best representatives of drivers, as opposed to the union they are members of?

Baroness Sugg: No, I did not mean to say that. As I said, there will be no change for drivers from these regulations; the rules will stay the same. The EU rules are the same as the AETR rules.

The noble Lord, Lord Adonis, asked questions on divergence. We are not committing to following the EU rules. In the future, the Government will consider on a case-by-case basis how the UK might choose to respond to any changes in EU regulations. These regulations do not oblige the Government to remain aligned to the EU rules, but they do oblige the UK to remain aligned to the AETR rules. We are a contracting party to the AETR, and those wider international rules will underpin all transport operations between the UK and the EU after exit. At present, the AETR is aligned to the EU rules: the rules on driving time, rest time and requirements for the use and installation of tachographs are the same.

Lord Adonis: I had not understood that important distinction. Why, as a matter of policy, are we committing in advance to mimic the AETR rules when we are not committing to mimic any EU rules? Is it an ideological issue about an international body being superior to the European Union, or what?

Baroness Sugg: No, it is not. For many standards, whether it is UNECE standards or the AETR, we are a contracting party. If we leave the European Union without a deal, we will not be a member of the EU and so will not be following its regulations. But we will be following a broader group—those of the AETR.

Lord Adonis: This is important. Does an international treaty requirement or obligation apply to the United Kingdom? If not—to ask the question again—why have the Government decided to follow the AETR rules? If it is a discretionary matter, why are they not going to follow changes to EU rules, given that most of our lorry traffic is to the continent of Europe—in other words, to the European Union? It does not make obvious sense.

Baroness Sugg: All EU countries are party to the AETR and practically all international road freight beginning or ending in the UK begins or ends in an AETR country. As I said, if we leave the European Union without a deal, we will no longer be a member and so it would not be appropriate to follow the EU regulations. We have chosen instead to follow the same regulations under the international AETR body, which is a UN body.

Lord Adonis: I am sorry to interrupt again, but this is a point that will be picked up outside. Are the AETR rules and the EU rules the same?

Baroness Sugg: As I said, they are currently aligned. Rules on driving time, rest time and requirements for the use and installation of tachographs are the same in the AETR and the EU rules. Obviously, I cannot predict what might happen in the future, but we are a contracting party to the AETR, and those wider international rules will underpin transport operations between the UK and the EU after exit.

I think I have answered all the questions. As I have said previously and will no doubt say again, the Government are working to agree a deal with the European Union. But while we do that, and until we have final agreement, it is important that we prepare for the possibility that we will leave with no deal. These regulations are essential to ensure that the drivers' hours rules will continue to underpin our road safety regime for commercial vehicles. I commend the regulations to the House.

Motion agreed.

Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

7.36 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 24 January be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, these draft regulations will be made under the powers in the European Union (Withdrawal) Act 2018, and will be needed if the UK leaves the European Union in March without a deal. The Government are seeking reciprocal arrangements on motor insurance following our exit from the EU, but in the event of no deal, without that agreement we must ensure we have a functioning statute book.

These regulations amend various domestic legislation to correct deficiencies in the legal framework for compulsory motor insurance which arise as a result of the UK leaving the EU without a deal. The draft instrument seeks to maintain the status quo with regards to compulsory motor insurance, making technical changes to ensure insurance requirements for vehicles

[Baroness Sugg]
in the UK are preserved, as well as amending redundant references to the UK being a member state. They also remove specific obligations on the UK's Motor Insurers' Bureau—the MIB—under the Protection of Visitors scheme, commonly referred to as the "visiting victims" scheme. If these changes are not made, the obligations would remain unilaterally upon the MIB in the event of no deal. These changes come into effect on exit day.

This SI was initially laid as a proposed negative instrument, but we have happily accepted the committee's recommendations to re-lay it using the affirmative procedure instead, acknowledging its concerns about the impact of these changes on UK citizens.

It may be helpful to give noble Lords some background to the legislation being changed. In 1930, the UK Government introduced a law that required every person who used a vehicle to have at least third-party insurance. Today, compulsory motor insurance requirements are governed at EU level by the consolidated motor insurance directive, which is implemented in the UK through the Road Traffic Act 1988 and subordinate legislation. The amendments in this SI are necessary to uphold motor insurance requirements as they currently stand in the UK, if we leave the EU without a deal.

The instrument also deals with requirements under the codified EU motor insurance directive for member states to make arrangements to allow victims injured in a road accident in an EEA country, other than in their home state, to claim compensation when they return home. This is facilitated through insurance undertakings, with member states appointing in all other member states a claims representative to handle and settle claims by victims injured in accidents abroad.

Each member state must also appoint a compensation body which is responsible for providing compensation in certain circumstances where insurance undertakings, through the claims representative, fail to do so. These circumstances include, for example, where there is no claims representative or where the claims representative fails to provide a reasoned response to a claim within three months. In the UK, the Motor Insurers' Bureau currently fulfils the compensation body role, and is reimbursed by its foreign counterparts under the motor insurance directive.

The amendments made by this SI are twofold. First, it makes amendments to reflect that, once the UK is no longer a member state, the motor insurance directive will no longer apply in respect of the UK. If we did not make these changes, which relieve the MIB of obligations under the visiting victims' scheme, the Motor Insurers' Bureau would be required to continue to reimburse its foreign counterparts in respect of EU 27 visitors injured in the UK. It would also have cost exposure for claims continuing to be made by UK residents injured in the EU, but without being able to seek reimbursement from its foreign counterparts. There will no longer be an obligation under the Motor Insurance Directive on insurance companies based in the EEA to appoint a claims representative in the UK, as is currently required. The Motor Insurers' Bureau could therefore face the additional cost of handling claims that would previously have been dealt with by claims representatives from EEA countries. The additional cost burden would most likely be passed on to the bureau's members through their membership levy; in turn, they could be expected to pass it on to UK motorists through higher insurance premiums.

The proposed change under this statutory instrument therefore relieves the Motor Insurers' Bureau of obligations under the visiting victims' scheme and removes the potential cost burden that would fall on the Motor Insurers' Bureau if the legislation remained as it was. In future, without the visiting victims' provisions, UK residents injured in a road traffic accident in the EEA will still be able to make a claim, but may need to do so outside of the UK.

The rest of the amendments make technical changes to domestic legislation that are limited to what is needed for the legislation to continue to function effectively once the UK has left the EU. They maintain the status quo in respect of compulsory motor insurance requirements. They also ensure that it remains the case that no insurance checks are carried out for vehicles entering the UK from the EU, and travelling between Great Britain and Northern Ireland.

On Northern Ireland more specifically, the UK Government remain committed to restoring devolution in Northern Ireland, but in the continued absence of a Northern Ireland Executive and in the interest of legal certainty, the Government will take through the necessary secondary legislation at Westminster for Northern Ireland. This SI therefore amends the Northern Irish legislation, which makes provision for Northern Ireland equivalent to the legislation for Great Britain. This has been done in close consultation with the Northern Ireland Civil Service.

In summary, while we are aiming for a comprehensive agreement on motor insurance following the UK's exit from the EU—we very much hope to get that—these regulations are essential for ensuring that in the event of no deal, the UK's legal framework for motor insurance is clear and fully enforceable. The rules on compulsory motor insurance are at the heart of the road safety regime and we must avoid any disruption to their proper functioning. I beg to move.

Amendment to the Motion

Moved by ***Baroness Randerson***

At the end insert "but this House regrets that residents of the United Kingdom could be denied access to justice when injured abroad as they will have to make claims for compensation in the country in which the injury occurred rather than being able to appoint a claims representative in the United Kingdom".

Baroness Randerson (LD): My Lords, I have tabled this amendment because this SI does not simply cross out the term "EU" and replace it with "UK"; it does not preserve the status quo; and it does not recreate the advantages and systems that drivers and passengers can rely on at the moment when things go wrong when they are travelling abroad. I want to thank the Association of Personal Injury Lawyers, which helped to explain how the system works.

Every year, more than 2.6 million UK vehicles make the trip to the EU, whether for business or pleasure. Given the scale of that annual migration, it will come as no surprise that a significant number of them have accidents. Around 5,000 people a year make claims under a very useful EU scheme which provides that if a UK resident is injured in a road traffic accident in the EU and the injury was caused by the negligence of another person, the injured person can claim compensation in the UK. This has obvious benefits, because victims can do this in their own language, using their local solicitor. They do not have to travel anywhere to do this. The claim is made against a UK-based claims representative appointed by the foreign insurer. Occasionally, this excellent system does not work as it should, in which case the injured person has a backstop—if I can use that phrase—and can claim through the Motor Insurers' Bureau. The MIB then takes responsibility for recouping costs from its counterpart agency in the country where the accident occurred.

7.45 pm

Every year, some 4,300 claims are made against insurers and 700 by the MIB. The numbers, therefore, are large: this is an important and well-used scheme. After Brexit, insurance companies in EU states will no longer be obliged to appoint claims representatives in the UK, and this SI removes the ability of UK residents injured in traffic accidents in the EEA to make a claim through the MIB. Instead, a UK resident will have to make a claim in the country where they were injured. Noble Lords can imagine that claiming compensation in a foreign country is a daunting prospect. It will involve travelling there—probably several times—and using a foreign language that they probably do not speak all that well, if at all; and it will involve using a different legal system with which they are not familiar. In most EU states, they will have to pay up front for their own legal advice and representation, which might not be recoverable, even if they win the case. If a person has been badly injured in a traffic accident, they might find it impossible to contemplate all this, and it can take years for a legal claim to be heard. If a victim's injuries are serious, they will need money as soon as possible to replace lost earnings, adapt their house and that kind of thing.

The Government justify this change by saying that if we maintain the visiting victims scheme and the MIB compensation system, we will end up paying out money to EU victims visiting the UK without any reciprocity. That is a very good reason for taking no deal off the table and continuing the current system. Many years ago, the cumbersome system that the Government now envisage was the norm, but more than 2.5 million of us drive abroad each year. That is equivalent to the whole population of Northern Ireland—men, women and children—getting up and taking their cars off on holiday at the same moment.

Lord Adonis (Lab): The noble Baroness is making a very powerful point in respect of compensation for accidents, but there is also a massive bureaucratic issue in respect of insurance here. It is understated in the Explanatory Memorandum. Paragraph 3.7 says:

"If there is no deal with the EU, UK motorists will also be required to carry a 'Green Card' which guarantees third-party insurance provision when driving in the EU. This may result in increased bureaucracy and costs for those drivers".

That must be the understatement of the year: how can that not result in a massive increase in bureaucracy and inconvenience to drivers? Should the Government not be telling all the motorists proposing to leave the country in five weeks' time that they are going to be required to have this green-card, third-party insurance provision which they do not have at the moment, and how they can secure it? I am a former Secretary of State for Transport, but I myself do not know what it is, so the population of Northern Ireland which, as the noble Baroness says, will be decamping over the next 12 months to the European Union, is going to have to be well informed about the green-card insurance system, about which it knows absolutely nothing at the moment.

Baroness Randerson: The noble Lord makes a powerful point and I will come on to the green card later. It did strike me, as I read the Explanatory Memorandum, that it was a masterpiece of understatement. It said some fairly amazing things without the slightest hint of a raised eyebrow.

The point I am making is that the Government's proposal is totally inappropriate to modern life. The Joint Committee on Statutory Instruments points out that paragraph 3.6 of the Explanatory Memorandum says that the method of claiming will vary from country to country and that victims might have to pursue an uninsured person directly.

It also points out that no deal will lead to the issuing of green cards again. I am sure that noble Lords will remember green cards—but not with affection. The DfT has acknowledged that this will also apply to travel between Northern Ireland and the Republic of Ireland. Although it says that the SI has nothing to do with green cards, perhaps the Minister can update us on the situation with green cards, because the British Insurance Brokers' Association is alerting us now to the urgency for a decision, because physical green cards will have to be produced in their millions in the next few weeks.

I sometimes think that Brexit is a giant conspiracy against the great British tradition of a holiday in the sun.

Lord Adonis: I did not pick up on this in my reading of the statutory instrument. Did I hear the noble Baroness correctly: that you will require a green card to cross the Irish border? Is that the point she was making? Is that not a breach of the Good Friday agreement?

Baroness Randerson: I am quoting the Joint Committee on Statutory Instruments. The noble Lord makes an interesting point. It quite possibly would be but I am not sufficiently expert on the Good Friday agreement to be definitive on that.

There is a conspiracy against our summer holidays. We will now be going off with an international driving permit, sometimes two, and a green card to wait in the queue at the Channel Tunnel or the port—unless we

[Baroness Randerson]
choose to go by air, with all the doubts about whether or not the plane will fly. It will cost more because of the changes in the exchange rate in the past two and a half years; the ATOL system will not have the guarantees that it once had; and now we hear that if you have an accident you will be left to fight for compensation on your own. What will we get in return? A shiny blue passport. The problem is that this takes us back to a cumbersome, bureaucratic system that goes back decades and does not fit the modern way of travel.

On the consultation outcome, paragraph 10.1 of the Explanatory Memorandum states:

"Given the EU Exit negotiation sensitivity of changes to the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003, formal public consultation was not considered appropriate".

I have read that several times. Are the Government really saying that because this will upset motorists they are not going to tell them about it or consult them? That is how I read that sentence. If that is not accurate, will the Minister explain exactly what the Government were trying to say?

The paragraph goes on, almost incredibly, to say that the Motor Insurers' Bureau, the insurance trade associations and the motoring trade associations have been consulted and are satisfied. Are they seriously satisfied with this? They cannot possibly be satisfied and I would like to know what they really think. They might take the opportunity after they have read *Hansard* to tell us. It cannot be possible in an industry as diverse as this that all those organisations are happy with these seriously problematic regulations.

Paragraph 12 refers to the impact. Astonishingly, it deals with the impact on the courts of an expected spike in the number of cases being pursued prior to Brexit to take advantage of the current system. It totally ignores the impact on private individuals who are victims and find that they have to go to another country to pursue their case. Justice is a right, not a privilege, and these regulations cut at the basis of that right. UK citizens injured abroad may effectively lose the right to compensation as a result of this. Indeed, it is likely that compensation will be available only to privileged, wealthy people who can afford expensive legal representation.

Lord Adonis: My Lords, it is important that the House does not lose its capacity to be shocked by the scale of the dislocation that may be imposed by the Government on the country in one month's time if no deal Brexit proceeds.

In a succession of speeches, the noble Baroness, Lady Randerson, has laid out the impact of no deal on motor industry regulation and she did a good job of weaving together the changes in relation to insurance, accidents and international driving licences. The extraordinary thing about it is that, because we are going back to pre-1973 law, not only are many bureaucratic requirements being imposed but they are being imposed in a way that is entirely pre-digital.

Noble Lords will recall the green card but I am still of an age where I do not recall it—I do not think the Minister recalls the green card—which is a telling remark. You have to be—how can I put this delicately?—of a certain age to remember the green card. I certainly do not remember the international driving licence. However, as we go into this Alice in Wonderland world of disaster that the Government propose to inflict on the country, we now know that not only will you require an international driving licence and a green card but you will have to have them as physical constructs because the regulations under which they are imposed go back to the pre-digital era. You will have to get a physical international driver's licence or licences—the Minister can intervene on me at any stage if she wishes—and a physical green card. Is that correct?

Lord Hope of Craighead (CB): I am old enough to remember the green card, which you had to produce when crossing a border. When you went through what were independent countries, at each border you had to produce a green card, which was a document in your hand. Has the noble Lord any solution to the problem of what we must do if we are to satisfy the authorities abroad that we are covered by third-party insurance? That is what the green card is all about. It is a document to show that you have third-party insurance. It should go on your policy anyway. It is a document that shows that what is in your policy is transferrable and understood by the countries you want to visit.

Lord Adonis: My Lords, my submission is that we should not be engaging in a no-deal Brexit in the first place.

Let us be clear about the obligations that the Government are now imposing on the country: it is entirely within the Government's power to rescind the notice under Article 50 so that we do not crash out in four weeks' time. If the Government cannot persuade Parliament to agree to arrangements in the Prime Minister's withdrawal agreement that do not involve the country descending into Dante's circles of hell in four weeks' time by leaving with no deal, the Government's duty would be to ensure that we do not leave with no deal. There are two ways of doing this: they could rescind the notice under Article 50 or they could have agreed at any point in the last six months to apply for an extension to the Article 50 negotiating period, which Parliament may impose on them next week.

8 pm

Lord Grade of Yarmouth (Con): I am grateful to the noble Lord for giving way. We have all sat here very patiently. In the politest way that I can say it, the noble Lord is testing the House's good will if he is not testing the *Companion* itself. I read pages 50, 51 and 52 before I came into the Chamber, anticipating this kind of filibustering. It is counterproductive to alienate the mood of the House in such a way. Straying from the *Companion* to the extent that the noble Lord has is testing the House's good will. Will the noble Lord reconsider?

Lord Adonis: I completely refute the noble Lord's remarks. My remarks have been relevant to the statutory instruments before the House. I have said nothing that

is not. That was clearly a pre-prepared set of remarks that the noble Lord was intent on making. I think this is well below the standard that one would expect of a Member of this House in addressing another. If the noble Lord wishes to defend the Government's policy, he should make a speech doing so, rather than attacking those who are doing their duty in this House by scrutinising it.

The noble Baroness set out the concerns about green cards and has done previously about international driving licences. Her point revealed that separate international licences are required for different countries in the EU because of the different rules. Regarding the green cards, my noble friend Lord Rosser has pointed out to me paragraph 3.10 of the Explanatory Memorandum, which says that the DfT estimates that,

"between two to four million individuals may need a Green Card".

In response to the noble Lord who intervened, we have a duty to speak up for those 2 to 4 million people who will be put through a big, new bureaucratic process as a result of this one statutory instrument. It goes on to say:

"Green Cards are obtained free of charge from insurance providers; however, the DfT has explained that 'insurance providers can decide to reflect production and handling costs in a small increase to their administration fees'".

This is another point that the noble Baroness, Lady Randerson, made about the impact assessment: the Government say in paragraph 3.10 that they expect that insurance providers may pass costs associated with the requirement to hold these green cards on to motorists. This surely justifies an impact assessment to judge what those costs will be. The Government also ought to set out what they think is an acceptable level of costs.

I know exactly what will happen and the House can immediately envisage the circumstances. Those costs will pass through and may be quite substantial in many cases, because the insurance providers will claim that there has been a sudden change that they cannot quantify and they want to make proper provision for it. As always in these cases, there will then be a significant public controversy. When that happens, questions will be asked in this House and in the House of Commons about the acceptable level of costs that can be passed through. What does the Minister think would be an acceptable level of administration fees for insurance providers to pass on to motorists if they require green cards?

The point about Northern Ireland is not small but substantial. I see a noble Lord from Northern Ireland in the Chamber. If all motorists in the Republic of Ireland and Northern Ireland who cross the border will be expected to carry a green card, because all those drivers will frequently cross borders, unlike drivers in Great Britain, this cost and requirement will effectively be imposed on a very substantial proportion of citizens and on all citizens in the border areas.

That is a straight cost that will be imposed on them and a big bureaucratic burden. Do the Government not think that, if they are imposing a cost that is pretty much a badge of citizenship on individuals—

Lord Hope of Craighead: I am sorry to intervene again on the noble Lord's interesting speech. That cost is not the product of this instrument at all but of travelling into a country with which we no longer have the relationship that we have at the moment. Their laws will impose on us the requirement to carry the green card and prove that we have the necessary insurance if we enter their territory. I do not think it follows from the instrument. I may be wrong, but I would be interested if the noble Lord could point me to a paragraph in the instrument itself, rather than the memorandum, which has that effect. I would be very surprised if it did.

Lord Adonis: My Lords, I am guided by the Explanatory Memorandum, which has highlighted this as an impact of these new arrangements.

Lord Hope of Craighead: The noble Lord is obviously pointing out for our information that this is the effect of the problem we are facing, which I think he is suggesting we ought to know about. My point is that it is not the effect of the instrument. If he is asking for a statement on the effect of the instrument in the documents that follow, that is not the right question to ask.

Lord Adonis: I now understand the noble and learned Lord's point, which is to distinguish between the precise provisions of the instrument and the regime that will apply around the matters covered by the instrument when we leave the EU without a deal. That distinction will not pass muster with the 2 to 4 million citizens a year who will be required to have green cards, or with pretty much the entire population of the border territories of Northern Ireland and the Republic of Ireland, who will have these obligations imposed.

My final question for the Minister is a serious one. If there is a requirement to have a green card, and therefore new insurance documentation, for all citizens in Ireland's border territory, what legal advice does she have on how that can be reconciled with the Good Friday agreement to have no further border controls or impediments between the Republic of Ireland and Northern Ireland?

The issues raised by the statutory instrument are profound and need to be properly debated in this House. I for one do not intend to be silenced by Conservative Peers who would much rather these issues were swept under the carpet.

Lord Rosser (Lab): My Lords, I would like to raise one or two questions. I will try to direct my questions to what is in the statutory instrument—although I share the view of my noble friend Lord Adonis that, if the Explanatory Memorandum to this statutory instrument makes a reference to something, it is perfectly appropriate to discuss it in this debate.

My first question to the Minister concerns something that is mentioned in the report of the Secondary Legislation Scrutiny Committee, which ends by saying that the committee recommended that this instrument be upgraded to the affirmative resolution procedure when it was previously presented as a proposed negative. Bearing in mind the fairly dramatic impact that this

[Lord Rosser]
instrument will have, why did the Department for Transport think that the instrument was appropriate for a negative resolution procedure rather than an affirmative one?

I will try to make fairly specific questions and points. The first relates to the paragraph on consultation outcome that has already been mentioned. I will pursue a little bit further the point made by the noble Baroness, Lady Randerson, about this extraordinary statement. I will repeat it:

"Given the EU Exit negotiation sensitivity of changes to the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003, formal public consultation was not considered appropriate".

Can we have a proper explanation of why, and sensitivity to whom? What about the changes is so sensitive that the decision was made not to hold a formal public consultation? It goes on to say:

"Nevertheless, informal engagement has taken place with the MIB, the Financial Conduct Authority, insurance trade associations and motoring trade associations to inform our drafting and ensure key stakeholders are aware and satisfied with the changes being proposed".

Does the reference to motoring trade associations cover, for example, the RAC and the AA? If it does, then clearly I know where I stand on that. If it does not, were the RAC and the AA consulted? Bearing in mind the impact on insurance, was the Consumers' Association consulted? It might have had a view on the impact of this statutory instrument on the consumers of insurance policies, which will be fairly dramatic. It would be helpful if the Minister, on behalf of the Government, were able to give a response.

I want to follow up another point, already raised by the noble Baroness, Lady Randerson, about the cost of having to pursue claims in EU countries, which is another fairly dramatic change associated with this instrument. What is the Government's estimate of the cost for individuals of having to do this? The instrument remains pretty silent on what that impact will be. Indeed, as has already been said, the instrument is very much geared towards the impact on the insurance industry and the MIB, and the potential costs involved; it says precious little about the impact on affected motorists. Surely the Government would want to protect the interests of the motorists and not leave them in a worse situation, if at all possible. If the Government felt this was not possible, they might at least produce a document setting out fairly what the additional costs are likely to be for motorists in having to pursue claims in EU countries, as opposed to the current procedures.

Paragraph 12.2 of the Explanatory Memorandum also makes a reference which, presumably, reflects when the statutory instrument was first drafted. It says:

"We should anticipate more UK residents issuing legal proceedings from November 2018 to exit day in order to ensure their claim can continue to be made in the UK".

Bearing in mind that we are now more than half way through February 2019, is the Minister able to update us on whether more UK residents have issued legal proceedings since November 2018, as was anticipated at the time that this instrument was first drafted?

Later in the text, paragraph 14.1 says:

"The approach to monitoring of this legislation is that a Post-Implementation Review is not required".

In view of everything that has already been said this evening about the impact on individual motorists vis-à-vis their insurance, it would seem that if one piece of legislation required a post-implementation review after going through, it is this one. There is no real information in the Government's document about what they think the impact will be on individual motorists; there is speculation, but not much solid information, so surely this ought to be subject to post-implementation review. Once again, I would be grateful if the Minister could give a response on behalf of the Government.

As others have said, considerable surprise will be expressed about what this particular impact of a no-deal Brexit could mean. My final comment is that at some stage, presumably, the Government will want to advise people of the impact that a no-deal Brexit would have on motor insurance. Perhaps they intend to do it by putting an advert on the side of a bus and running it around the country to tell people about some of the downsides of Brexit.

8.15 pm

Baroness Sugg: I thank noble Lords for their consideration of these draft regulations. I start by saying that this is not a situation the Government want to be in. We do not want no deal; we are working very hard to achieve a deal. We do not want to be in a situation where visiting victims provisions are no longer available to UK residents injured in the EEA. That is why we are trying to achieve a deal with the European Union, which is something that I hope will happen very soon. The removal of the visiting victims obligation in respect of the Motor Insurers' Bureau would be a sensible approach in the event of no deal. It will ensure that the insurance industry and, ultimately, people who pay for insurance documents are not hit with an extra cost—the burden would ultimately fall upon UK motorists.

In response to the specific questions raised, as I acknowledged in my opening speech, this SI was upgraded from negative to affirmative. It did not contain provisions falling within paragraph 1(2) of Schedule 7 to the withdrawal Act, requiring it to be made under the affirmative procedure, but we understand why the committee was concerned and we are happy to relay it in the affirmative procedure.

On consultation, I can confirm that, yes, we speak to the RAC, the AA, personal injury lawyers, the insurance industry, the Motor Insurers' Bureau, the Financial Conduct Authority and consumer organisations. It may be helpful to reiterate that, in the event of no deal, the motor insurance directive, which facilitates the visiting victims scheme, will no longer apply. A decision therefore had to be made because that would mean that the MIB would continue to compensate UK residents injured in the EEA without the ability to claim reimbursement from its foreign counterparts.

Also, the MIB would have to pay for claims made by EU 27 visitors injured in the UK, without UK visitors to the EU benefiting from those same benefits. Ultimately, this could mean that UK motorists in

insurance schemes are paying, without any reciprocity, for EU 27 visitors injured in the UK. As I said, we would like to continue being part of the reciprocal scheme but, by leaving the EU, we will no longer be part of the motor insurance directive and will not be able to do so. I reiterate that this does not mean that UK residents will not receive compensation. They will still be entitled to compensation, although, as the noble Baroness pointed out, this will have to be claimed in the country where the accident happened, which will lead to additional complexities and costs.

Baroness Randerson: Could the Minister please take on board the need for people to know about this? I hope that she will come to the issues of why there was no consultation and the sensitivity of consultation. In view of the fact that there has not been consultation, I note that I have not seen any media coverage at all of this issue. There will be people going on their holidays—over Easter, for example—blissfully unaware of the potential impact of these changes if there is no deal. The Government need to take responsibility for advertising this situation—putting something on the government website would be useful because insurance companies, when granting insurance, could give people a pointer to information on the government website.

Baroness Sugg: I agree with the noble Baroness that the Government have a responsibility to ensure that people are aware of this. A communications campaign was launched in February, which has notified citizens about how the changes to claims can be pursued. It advises that in the event of a no-deal exit, UK residents involved in a road accident while abroad would need to bring their claim in the country concerned. That campaign is live, with radio, digital and social media. The noble Lord, Lord Adonis, heard an advert on Spotify, as he mentioned in a previous debate. We are also directing stakeholders to an external site where they can download and share information with their clients; we will continue to do that.

This is an area where we continue to pursue agreements with other EU countries: we are pursuing bilateral agreements and the MIB is having those conversations with its EU equivalents. The nature of the conversations is sensitive, involving the reciprocal payments of insurance claims; that is why the specific detail has not been published. As I say, we acknowledge that this is not an ideal outcome for citizens. It is a sensible alternative, after weighing up the options, but achieving a deal remains our greatest priority.

The impact assessment lays out the five options that we considered, including a "do nothing" policy, but in each there would be a direct cost to victims of traffic accidents. People are still able to make claims, but they will have to do that in another country. I am not able to give a specific cost. The noble Baroness is correct to point out that this equates to 5,000 motorists a year. The additional costs incurred by a victim would depend on a number of factors and the complexity of the case.

On green cards, the noble Lord, Lord Adonis, quite rightly quoted the comments from the SLSC report, which were put in the new Explanatory Memorandum. The noble and learned Lord, Lord Hope, was quite right to point out that this SI does not equate to green cards, but I am happy to address it briefly. The Government want to remain part of the green card free-circulation area. We meet all the requirements needed to remain part of it when we leave the EU. That has not yet been agreed by the Commission; we very much hope that it agrees that soon. They can be obtained from insurers, free of charge. The noble Lord is quite right to point out that that could mean 2 million to 4 million green cards. We are working very closely with insurance companies to ensure that people are informed of this. My noble friend Lady Barran, our new Whip, received such a contact from the insurance industry very recently. However, this is something that we want to avoid and that is why we are very hopeful that the Commission will agree that the UK can remain part of the green card free-circulation area. Again, as the noble and learned Lord, Lord Hope, pointed out, this is not in our gift. We match the requirements that are needed, but need the EU to recognise that.

I think I have answered all the questions raised.

Lord Adonis: Northern Ireland.

Baroness Sugg: On Northern Ireland and specifically the Good Friday agreement, which I think the noble Lord pointed to, the Commission and the UK have said that they will respect the Good Friday agreement, and currently—the noble Lord is right to point out—there would be a requirement to carry a green card. However, the implementing decision from the Commission to recognise the UK as part of a green card circulation area would remove the need for that green card. As I said previously, we meet all the requirements of that, and are working with the Commission to make that agreement.

I think I have answered all the questions; if I have not I will follow up in writing. I will end as I started: I recognise that this is not an ideal situation; it is not one that we want to be in. We think this is the right decision, given the implications of leaving the motor insurance directive—something that will happen if we leave the European Union without a deal—and that is why the Government are working to ensure that we achieve a deal with the European Union. I beg to move.

Baroness Randerson: In light of the Minister's response, I am not minded to take this to a vote this evening. However, I do not want that to diminish the fact that this is a very regrettable direction in which the Government appear to be set. The only slight chink of light that I see is that the Minister tells us that the Government are engaged in bilateral discussions. That is what has persuaded me not to push this to a vote on this occasion.

Amendment to the Motion withdrawn.

Motion agreed.

Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

8.24 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 16 January be approved.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, these regulations will be made under powers in the European Union (Withdrawal) Act, and are needed if we leave the EU without a deal. Marine equipment, as we are discussing today, is the collective term used to describe a ship's safety and pollution prevention equipment. Examples include lifejackets, fire extinguishers and navigation lights.

Marine equipment is regulated globally by the International Maritime Organization, the IMO, under three international conventions: the International Convention for the Safety of Life at Sea, the International Convention for the Prevention of Pollution from Ships and the International Regulations for Preventing Collisions at Sea. Collectively, these international conventions require flag state administrations, such as the UK, to ensure that marine equipment complies with certain safety requirements regarding design, construction and performance standards; and to issue the relevant certification before equipment is installed on board a ship flying its flag. The flag state in the UK for these purposes is the Maritime and Coastguard Agency, the MCA.

Historically, each EU maritime administration had its own systems and requirements for the approval or conformity assessment of marine equipment. To help the free movement of goods, the EU adopted legislation to harmonise the way in which EU member states implement the IMO conventions. This legislation allows member states to designate conformity assessment bodies on behalf of the EU to issue an EU-wide approval for marine equipment.

Marine equipment approved in accordance with the EU legislation may be installed on any EU-registered ship, and the international obligation of each EU member can be discharged accordingly. The MCA, on behalf of the Secretary of State, has designated 10 conformity bodies for the EU which approve marine equipment in the UK. In the event of no deal, the MCA intends to convert these 10 bodies from EU-notified bodies to UK-approved bodies, to allow for continuity in the method of approval for marine equipment in the UK, and to ensure that the UK continues to meet its international obligation.

The MCA regularly meets with these 10 bodies and has kept them informed of the proposals. The 10 bodies have been supportive to ensure that the UK continues to have a functioning statute book. Similarly, the MCA regularly meets with manufacturers of marine equipment, and has received only positive feedback on the proposed instrument.

The EU directive 2014/90, known as the marine equipment directive, and related legislation established the harmonised EU system, criteria for designating conformity assessment bodies, mechanisms for ensuring the compliance of equipment, and remedial measures for removing risks to the safety of life. The regulations in this case, which this SI is changing, includes the Merchant Shipping (Marine Equipment) Regulations 2016, which implement the 2014 marine equipment directive in UK law. The Act also makes provision in Section 8 for regulations to correct deficiencies in retained EU law arising from the UK's withdrawal from the EU.

These regulations make the changes needed to the marine equipment regulatory framework to adapt the EU approval system to one that can function effectively as a UK approval system, if we leave without a deal. The regulations retain the status quo as far as possible to avoid market confusion and allow continuity of operations for manufacturers. Specifically, the regulations do not change the design, construction and performance standards applicable to marine equipment; the methods for conformity assessment of marine equipment; the requirements to become a designated conformity assessment body; and the mechanisms for protecting the UK market against fraudulent or unsafe equipment. The regulations will allow UK ships to continue to use marine equipment that has been approved under the EU system. However, the regulations also establish a new approval system. The regulations make changes needed to ensure the UK approval system works, for example by changing references to "member state" and "the Commission" to "the United Kingdom" and "Secretary of State".

Noble Lords may be aware that, once again, the SLSC recommended that these regulations be upgraded to the affirmative procedure. Again, I am grateful to the committee for its careful consideration of the regulations. The committee noted that in a no-deal situation it is the Government's long-term aim that UK ships will use the UK approval system only. The committee was concerned about the additional costs for manufacturers that might need to seek an EU approval as well as a UK approval. As we set out in the new Explanatory Memorandum, the regulations before the committee do not place any limit on how long the UK ships can use EU-approved equipment. Therefore, there will be no additional costs for manufacturers as a result of this SI. If anything were to change in the future, the Government would introduce regulations to remove the time limit only after widespread consultation and careful consideration of the costs and benefits.

Lord Adonis (Lab): The Minister said that there would be no additional costs to manufacturers. But will there be additional costs to ship owners—that is, to the consumers?

8.30 pm

Baroness Sugg: No. There is no time limit in these regulations on how long UK ships can use EU-approved equipment. The regulations allow UK ships to use EU-approved equipment or UK-approved equipment,

but there is no time limit on that, so there should be no additional costs. There will be small familiarisation costs, but no significant costs.

The regulations also establish a UK conformity mark for the new UK system. UK ships will carry equipment that bears either the EU wheelmark or the new UK mark. The only significant difference between the UK and EU approval systems is that the EU system requires a manufacturer outside the EU to appoint an authorised representative in the EU; the UK system does not require this. We decided to make this authorised representative requirement voluntary to avoid creating a barrier to the new UK system.

The regulations include transitional provisions to smooth the transition from the EU to the UK approval systems. First, UK conformity assessment bodies that, immediately before exit day, are designated EU-notified bodies will automatically be converted to UK-approved bodies, which will be authorised to carry out conformity assessment activities for the UK. That gives certainty to the 10 UK-based conformity assessment bodies of their status after exit day.

Secondly, any application for conformity assessment lodged with a UK body before exit day for EU approval will be treated as an application for UK approval after exit day. In that way, a manufacturer will not need to make another application for conformity approval if it has not been determined.

Finally, the regulations will revoke Commission Implementing Regulation (EU) 2018/733 because these implementing regulations communicate the IMO technical standards applicable to marine equipment, which are updated annually. The MCA currently replicates these in Merchant Shipping Notice 1874 and will continue to communicate the standards in this way. Accordingly, the implementing regulations will become outdated in a year.

Merchant Shipping Notice 1874, Amendment 3, also provides information pertaining to the UK bodies that carry out conformity assessment activities on the UK's behalf, and information on the UK's market surveillance procedures and other technical information that bears no substantive changes. In addition to the merchant shipping notice, the regulations are supported by two marine guidance notes, which replace MGNs 554 and 557; one is addressed to applicant conformity assessment bodies and the other relates to the UK's approach to market surveillance. The marine guidance notes do not change the substance of the notes that they replace.

Finally, the MCA will be publishing a plain English marine information note, which I am sure will be very welcome. It will explain the UK system for marine equipment approvals and substantive changes from the EU system and it will address each major stakeholder—namely, UK ships, UK conformity assessment bodies and manufacturers.

The changes made in these regulations are needed in the event of no deal. They will ensure that the law on conformity assessment of marine equipment continues to function effectively after the UK's withdrawal from the European Union in the event of no deal. They will enable the UK to continue to comply with its international obligations to ensure that equipment installed on board its ships is approved to the relevant, applicable international standards. I beg to move.

Amendment to the Motion

Moved by ***Lord Adonis***

Leave out from "that" to the end and insert "this House declines to approve the draft Regulations because they were not subject to consultation or an impact assessment."

Lord Adonis: My Lords, I am very grateful to the Minister for her rapid-fire introduction. I hope she will not mind me saying that the only thing that she said which I welcome is that there will be a plain English marine information note. She said that this would be for foreign ship owners, but may I suggest that she also circulates it to Members of your Lordships' House, because we might find the plain English version a great deal more comprehensible than these regulations.

No one can doubt the importance of the issues that we are talking about, even at this late hour—although the noble Lord, Lord Grade, may think it superfluous for us to pay any attention to them at all because it is keeping him from his dinner. We are talking about life-saving appliances, firefighting equipment, navigation equipment, pollution prevention and reduction equipment and so on—literally life and death equipment in respect of ships and the operation of a safe marine industry. So it is important that we get this right, and the noble Baroness and her department are doing their level best to do so.

I have a question and a comment. The noble Baroness may have answered the question, but I need to be clear that I fully understand it so that people reading the account of our debate fully understand it. The big question is what is meant by "choice" in paragraph 7.2 of the Explanatory Memorandum, which says:

> "Under these Regulations, UK ships will have the choice of two types of approved marine equipment: (i) equipment which has EU approval … or (ii) equipment which has been approved under the UK system which these Regulations establish".

When I read that, it worried me, because the choice might mean that you have a confused situation where operators could potentially opt for the less demanding standards in respect of this equipment, as our standards diverge over time. That is not a situation, I think, that the House would welcome—let alone our EU partners, who might then raise some serious questions about trade between our countries.

I need to explain what I think is the situation for the Minister to tell me whether I am correct. There is not in fact a choice. The actual situation is that ship owners that are operating on exit day and that have EU equipment can simply continue operating with EU equipment without any end date. But what is the situation for new ships—or is it new equipment on ships? I am already reaching an issue that it is important to clarify. Is it new equipment that can meet UK standards rather than EU standards, or is it just new ships? I would welcome a clarification of what the actual regime is. If I have got it correct, the issue is not that they have a choice but that equipment and/or

[Lord Adonis]
ships procured after exit day can observe new UK standards, insofar as they diverge from EU standards—one would hope that they do not diverge, or we could get a gaming situation in respect of different standards.

Simply in seeking to explain this to the House, I have already noticed one issue: namely, can ships that are in operation on exit day which have existing EU-approved equipment replace that equipment to the previous EU standard, or will they be required to have equipment of the new UK standard? Or does the new UK standard requirement apply only to completely new ships? I am not a shipping industry expert, but I imagine that a lot of this safety equipment goes together and that mixing and matching to different standards would not be a good thing. I would be grateful if the noble Baroness would confirm that the actual situation is that there is not actually a choice but that it is a question of dates.

I shall make a point that I make all the time—it does not become a less significant point just because this is about the 100th time I have made it—that, given the issues at stake here, there should clearly have been consultation with the industry. There has not been consultation, but we get a new formulation for the lack of consultation in each of the regulations. Sometimes it is "focused stakeholder engagement" and sometimes it is "trusted stakeholders". In the Explanatory Memorandum of this one we are simply told, at paragraph 10.1:

"The marine equipment industry has been informed of the Department's intention".

That is all it says, and then it says that thereafter there has been "informal engagement". There is not even a pretence of consultation in this regulation. The industry has simply been informed.

As for safety standards, of course it is the job of the Government and Parliament to set those safety standards. My concern is that they will not be in any way diminished and that there is nothing in these regulations—and in particular the prospect of UK regulations diverging from existing EU regulations—that could lead anyone to expect that they will be diminished over time.

Lord Mackay of Clashfern (Con): My Lords, this amendment is dependent on the requirement of consultation and a document setting out the effect of the regulations. As far as I know, there is no requirement for either of these in any of the empowering statutory provisions. Therefore, this is by no means a basis for the amendment that the noble Lord, Lord Adonis, has signified. As I understand it, what is happening is that the regulations, which previously were all European regulations, will continue to apply in the same form, but with the expression of these regulations in the UK area of shipping.

Perhaps I should mention that I am an Elder Brother of Trinity House: what effect that has on this, I am not sure, but I will mention it just to be certain. I am certainly concerned with the safety of shipping and I believe that the instrument is, too, in that it preserves the existing standard of safety, both in Europe and when it passes from Europe to us here. It is the same standard and I cannot for the life of me see any reasonable basis on which this regulation could be set aside. It would be a drastic thing to set it aside and I ask the same question that I asked the last time I spoke on something like this: has the noble Lord, Lord Adonis, asked anybody who is affected by this whether they would like this regulation to be set aside?

Baroness Randerson (LD): My Lords, it has already been said that this was originally listed for the negative procedure and has been upgraded to the affirmative procedure on the recommendation of the Joint Committee. I express my surprise that the Government thought it was appropriate for the negative procedure.

I understand the concept of continuity that is a thread within this SI. The regulations require marine equipment to be approved by a UK-approved body and will allow equipment approved by the EU-notified body to be accepted. There are currently 10 EU-notified bodies that assess and approve marine equipment. These 10 EU-notified bodies are going to become UK-approved bodies. What is the situation in relation to those bodies now? As I understand it, some of the larger bodies, at least, are preparing to move to the EU because, if they do not, they will not be able to provide EU assessments. That is clearly the bigger picture: they want work on the larger number of 27 countries, rather than concentrating only in the UK. It seems to me that if bodies move from the UK in order to retain their EU status, there will be job losses and jobs moving abroad, and as a result there will be fewer bodies to provide the approvals for the maritime sector that we are talking about. Can the Minister give us some more information on that? How many bodies are thinking of moving? How many are in the process of moving? How many jobs are involved? We can see then how many will be left.

At first, the UK will continue to accept EU-approved products but, as I read it in the Explanatory Memorandum, it is government policy to time limit this, although the Minister seemed not to say that in her introductory comments. I would be keen to have some confirmation as to whether it is government policy. Manufacturers have expressed concern that they may have to get two different conformity assessments in future and that will be twice the effort and twice the cost. I realise that the Department for Transport disputes this. Perhaps the Minister can make a definite statement on it to reassure the House.

Manufacturers will, of course, produce goods to a UK standard if they are based in the UK, but many of the ships in UK waters are EU ships and, presumably, they need replacement parts from time to time and that is a valuable market for UK manufacturers. Will UK manufacturers in future have to produce to two different sets of standards to fulfil orders for repairs to EU ships? EU ships will require EU standards, and UK ships will require UK ones.

8.45 pm

Finally, I want to mention briefly once again the issue of the impact assessment. Paragraph 12 of the Explanatory Memorandum claims that there is no significant impact on business so there has been no impact assessment, but paragraph 10 gives some

detail on the "Consultation outcome", including that manufacturers were concerned about having to pay for things twice. Can the Minister clarify whether there was a proper consultation process? Patently, there is an impact on business—on manufacturers, on the people who own and run the ships and on the notified bodies which may be going to move abroad. It is important that the Government accept that the policy of simply stating that there is "no impact" without any evidence because they have not done any consultation is not good enough in the case of these SIs.

Lord Rosser (Lab): The Explanatory Notes say that:

"The purpose of these Regulations is to ensure that the UK can continue to comply with its international obligations by applying international standards to marine equipment placed on UK ships and enforce those standards".

As I understand it—and as has already been said—the kind of marine equipment covered includes life-saving appliances, crew accommodation, navigation, fire protection and maritime pollution prevention. Despite that, the Explanatory Memorandum states in paragraph 7.9 that:

"These Regulations are unlikely to draw attention from the general public but will be of interest to UK manufacturers, UK conformity assessment bodies for marine equipment and UK ship operators".

Apart from the general public, who appear to have been excluded, another rather important group does not appear to have been consulted if the wording of the Explanatory Memorandum is to be taken at face value: those who work on ships—the officers, crew and their representative organisations. I say do not appear to have been consulted or involved because paragraph 10.1 of the Explanatory Memorandum states that,

"informal engagement has included regular meetings at long established forums with key industry stakeholders".

What were the dates of these regular meetings and were the trade unions there as "key industry stakeholders"?

The Secondary Legislation Scrutiny Committee—as has already been said—recommended that this instrument should be subject to the affirmative resolution procedure because of the impact it may have on industry. At present, organisations known as EU-notified bodies assess and approve the conformity of marine equipment, with 10 such bodies based in the UK. These UK-based bodies will become UK-approved bodies on exit day and if any wish to retain their notified-body status in the EU they will need to seek notification from an EU member state. According to the Government, to do this they will need to relocate to the EU. Apparently, the Government are aware that some of the larger notified bodies have started this process already where they are relocating to one of their EU-based offices. What will be the difference between a UK-approved body based in the UK and a notified body based in the UK which has relocated to one of its EU-based offices as regards its powers, role and regulation, and what will be the difference between the two as far as the industry, including seafarers, is concerned?

Paragraph 7.2 of the EM states:

"Under these Regulations, UK ships will have the choice of two types of approved marine equipment: (i) equipment which has EU approval … or (ii) equipment which has been approved under the UK system which these Regulations establish".

What do the Government believe are the advantages and disadvantages of the two types of approval from the point of view of ship owners and the seafarers who crew the ships? That is not clear from the Explanatory Memorandum.

The Government's position is that, while on exit day the UK will facilitate continued acceptance of EU-approved products, this provision will at some stage be time-limited. What considerations will the Government take into account in determining when to time-limit this provision, and what will be the impact on the industry? Marine manufacturers have expressed concerns that they will have to pay twice for conformity assessment in the future when this happens. What is the Government's response to that?

On the point about paying twice, the Government say in the Explanatory Memorandum that this instrument,

"will not require manufacturers … to pay twice",

and that this would or could apply only following further secondary legislation,

"should the Government decide to time limit the continued acceptance of EU approved marine equipment".

That is in paragraph 3.4 of the EM, but in paragraph 3.3 it says that it is government policy,

"eventually to time limit this provision",

of continued acceptance of EU-approved marine equipment. Which is correct: paragraph 3.3, which states that the Government have already made a policy decision to time-limit this provision, or paragraph 3.4, which says "should the Government decide" to time-limit this provision—that is, that no such policy decision has been made?

Paragraph 6.2 of the Explanatory Memorandum refers to the current Merchant Shipping Notice being,

"updated to reflect the changes necessary as a consequence of the UK leaving the EU",

and says that a draft of this revised Merchant Shipping Notice accompanies the Explanatory Memorandum. Can the Minister confirm that the MSN amendment 3 attached to my copy of the Explanatory Memorandum is the draft revised MSN referred to in paragraph 6.2? If it is, could she spell out the nature of the revisions that are being made to the current MSN by this draft revised MSN now in front of us?

Paragraph 7.3 of the EM states:

"The design and performance standards to which the approved prototype(s) was constructed form the 'benchmark' against which all subsequent production of the equipment is measured".

Who will carry out that measurement after we leave the EU? Will they have to be bodies based in the UK or could they also be bodies that have been designated as an EU-notified body?

Paragraph 12.3 of the EM refers to the impact on businesses and the public sector being limited to "minor familiarisation costs". What exactly are those costs, and where and how will they be incurred?

Lastly, can the Government explain the impact of this SI on new IMO regulations covering marine equipment, which are to be introduced after this SI comes into effect and before any future trade deals between the UK and the EU are agreed and implemented?

[Lord Rosser]

Since this—I hope—will be the last occasion this evening on which I will speak—

Noble Lords: Hear, hear!

Lord Rosser: I knew I would get approval for at least something I said. I take this opportunity, after a fairly long evening, to express my thanks to the Minister for dealing with these SIs in her usual good-natured and patient manner.

Baroness Sugg: I thank noble Lords for their consideration of the final regulations of this evening. International conventions require each flag state administration to approve marine equipment, and once we have left the EU it would not be appropriate for the UK to fulfil its international obligations through an EU system that we can no longer influence. That is why we are setting up the UK system. It will allow the 10 UK-based conformity assessment bodies to continue offering services to the UK market. If we allowed only EU-approved equipment, those bodies would be in the strange position of having to relocate to the EU to provide to the UK market.

We understand that we need to ensure that the UK bodies can continue to offer EU-approved equipment. The new regulations apply both to existing ships and new ships, which will all be able to use either EU-approved equipment or UK-approved equipment. That does not have a time limit currently. The Government will consider whether we should move towards the UK system, but that would be done only after very careful consideration and consultation with the industry.

There will be no reduction in standards under the regulations. As I said in my opening statement, they retain the existing international standards set at IMO level, and that is what we will stick to. They apply the same familiar process and procedures to marine equipment approvals, to minimise disruption to industry. As the noble Baroness, Lady Randerson, noted, some of the 10 UK-based EU-notified bodies have a global client base—and long may that continue. They are global operations and have offices internationally. We anticipate that some of the UK-based notified bodies with offices in the EU will make contingency plans to enable them to maintain their EU-notified body status, but we have no information about any of the UK-based notified bodies moving there. These are global companies that provide to a global market, and we expect them to be able to continue to do so.

Both the EU system and the new UK system are established on IMO standards, so manufacturers do not need to produce to two standards. A UK manufacturer may maintain its existing EU approval and keep EU market access, while also maintaining UK market access.

No formal consultation has been done on this instrument, but the MCA and the department regularly meet the assessment bodies and the manufacturers. Both groups recognise that the regulations are needed to maintain the status quo, and I am pleased to be able to say to the noble Lord, Lord Rosser, on our final SI this evening, that both the UK Chamber of Shipping and Nautilus, the seafarers union, are participants in the MCA industry committees, and have been consulted. These meetings occur very frequently, every three to six months.

This statutory instrument is necessary: if the House does not approve it, there will be no legal basis for UK notified bodies to continue operating in the country. The companies and those who work for them would therefore face uncertainty. If this SI were not approved, we would not be able to accept equipment from the EU or investigate non-compliance. So it is essential. We have not carried out a full impact assessment of the regulations because their purpose, intent and real-world effect is to do everything possible to minimise cost and disruption. Noble Lords should be aware that the impacts and costs to business of not making these regulations would be significantly higher—as I said, it would lead to uncertainty.

I hope that I have managed to address the points that have been raised. I thank all noble Lords who contributed to the transport SI debates. I am genuinely grateful for their scrutiny; these are important pieces of secondary legislation, and the House is certainly doing its job in scrutinising them. Marine equipment approvals are, of course, vital to ensuring the safety of those on board ships and the protection of the marine environment. I hope that noble Lords will agree that this SI is essential to ensure that the legislation on marine equipment approvals will continue to work effectively in the UK in the event of no deal.

Lord Adonis: My Lords, I join in the appreciation of the Minister for the meticulous way in which she has handled our debates this evening. However, I want to clarify one point: that when the Explanatory Memorandum uses the word "choice", it means that there will indeed be a choice on an ongoing basis, and that ships and their owners will be able to choose whether they have EU-approved and certified or UK-certified equipment—they will not have to shift from one to the other by virtue of the fact that they are purchasing the equipment after exit day.

Baroness Sugg: That is indeed the case. They have a choice: UK or EU. That is for new and existing ships and there is no time limit on that choice through the regulations.

Lord Adonis: My Lords, I thank the Minister for clarifying that point. My one final remark is that a felicitous moment in the debate was the revelation that the noble and learned Lord, Lord Mackay, is an Elder Brother of Trinity House. He shares that great distinction with Sir Winston Churchill, who used to appear frequently in the uniform of an Elder Brother of Trinity House. I hope that the noble and learned Lord might do so in future in the House, so that his great and esteemed rank is fully on display. On that note, I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Draft Registration of Overseas Entities Bill

Message from the Commons

A message was brought from the Commons that they concur with the resolution of this House of 23 October 2018 relating to a Joint Committee to consider and report on the draft Registration of Overseas Entities Bill presented to both Houses on 23 July 2018 (Cm 9635) and that they have ordered:

That a Select Committee of six Members be appointed to join with a Committee appointed by the Lords for this purpose.

That the Committee should report on the draft Bill by Friday 10 May 2019.

That the Committee shall have power:

(i) to send for persons, papers and records;

(ii) to sit notwithstanding any adjournment of the House;

(iii) to report from time to time;

(iv) to appoint specialist advisers; and

(v) to adjourn from place to place within the United Kingdom.

That the quorum of the Committee shall be two.

House adjourned at 9 pm.

Grand Committee

Wednesday 20 February 2019

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): Good afternoon, my Lords. If there is a Division in the Chamber, the Committee will adjourn for 10 minutes.

Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Considered in Grand Committee

3.45 pm

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

That the Grand Committee do consider the Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, as indicated, this instrument extends to Northern Ireland only. I am most grateful to officials from the Department of Agriculture, Environment and Rural Affairs who are here today to assist with advice and support.

The island of Ireland has only 10 native species of fish, which is 40 fewer than in Great Britain and 80 fewer than continental Europe. With fewer species, in turn, it has fewer aquatic pests and diseases and consequently has a higher aquatic health status. We must ensure that this situation is maintained. We also acknowledge the vulnerability of the Northern Ireland aquatic environment and therefore the aquaculture industry to the introduction of diseases and alien species.

In Northern Ireland, aquaculture is a small but very valuable market. In 2017, Northern Ireland aquaculture production accounted for 1,248 tonnes of fin-fish at a value of £6.8 million on 36 active licensed sites, and 5,831 tonnes of shellfish at a value of £9.07 million on 43 active aquaculture sites. The sector employs 93 full-time and 33 part-time staff. Freedom from disease underpins international regulations on the trade in live animals and their products. Northern Ireland enjoys a higher health status than the rest of the UK, as I said, as many of the most serious aquatic animal diseases do not currently exist there. The maintenance and protection of Northern Ireland's aquatic health status safeguards the interest of the aquaculture sector, as well as the public, who derive health and well-being benefits from angling and other recreational activities.

This instrument will provide the necessary technical corrections to the Aquatic Animal Health Regulations (Northern Ireland) 2009—the principal regulations—and the Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012 to enable operability when the UK leaves the EU. These regulations do not introduce any policy changes.

The UK Government remain committed to restoring devolution in Northern Ireland. However, in the absence of a Northern Ireland Executive, UK Ministers have decided that in the interest of legal certainty in Northern Ireland the Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the relevant Northern Ireland department.

The proposed amendments fall into three main categories. First, cross-references to EU instruments are amended so that they are operable. These amendments modify cross-references to the 2006 directive contained in the principal regulations, and are essential to ensure the operability of those regulations. These are common amendments which appear throughout EU exit statutory instruments for Northern Ireland, England and Wales and Scotland. The amendments include: the substitution of references to "Member State" or "Member States" with references to "Northern Ireland", "the Department of Agriculture, Environment and Rural Affairs", "Competent Authority", or "UK or a constituent UK territory"; the substitution of references to "EU" with references to "UK"; and the substitution of references to articles in the directive with references to provisions in the domestic Northern Ireland regulations that transposed the directive—for example,

"as if … the reference to Article 4 of Directive 2006/88 were to regulation 7".

Some of those cross-references themselves contain further cross-references to the directive. In those cases, the cross-references have been followed through to modify all necessary provisions.

The second category is provisions which will be redundant or inoperable in Northern Ireland law after EU exit. This instrument makes an amendment to the Alien and Locally Absent Species in Aquaculture Regulations (Northern Ireland) 2012. The amendment removes the reference to a representative of the European Commission being able to accompany an inspector from the Department of Agriculture, Environment and Rural Affairs.

The last category is cross-references to directly applicable EU instruments to reflect technical amendments made to such instruments by other UK-wide SIs. Part II of annexe IV of directive 2006/88 contains a disease schedule which could have been modified only by the EU. It is to be replaced with a new annexe 1A inserted into Regulation 1251/2008 by the UK-wide Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019. That will enable the UK to amend the list in retained EU law following exit. The amendments are made to replace references to annexe IV of the directive with references to annexe 1A to the regulation, which will ensure correct references to retained EU law in domestic Northern Ireland regulations.

Given the unique biodiversity of the island of Ireland, DAERA officials work closely with their southern counterparts on a wide range of fish health issues, especially contingency planning, trade matters, disease and biosecurity. Co-operation on those matters was in place long before both countries joined the EU and will

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continue when the UK leaves it. There is a very close working relationship across the island of Ireland on fish health and aquaculture. For example, the all-island Bottom Grown Mussel Consultative Forum facilitates the management of the seed mussel fishery on an all-island basis. It consists of officials from government departments, scientists, enforcers, the Irish fisheries board and the aquaculture industry. The group has been instrumental in securing Marine Stewardship Council certification for Irish bottom-grown mussels. That prestigious status ensures premium market access for Ireland's top-quality mussels, demonstrating that the sector is vigilant in disease prevention and control, maintains high biosecurity standards and is environmentally aware. MSC certification underpins industry and consumer confidence and is a lucrative marketing tool.

The intention of the instrument is to maintain the status quo and keep the aquatic animal health and alien species in aquaculture regimes functioning as now. It does not create new policy or change existing policy. As a result, there are not expected to be any significant impacts arising from it. In bringing forward this legislation, a workable legal framework underpinning business as usual will be preserved after exit for aquatic animal health and alien and locally absent species in aquaculture. As I said, the instrument will assist Northern Ireland with its very high aquatic health status, which it shares with the other part of the island of Ireland. I beg to move.

Lord Adonis (Lab): My Lords, we are expected to consider these statutory instruments in Grand Committee this afternoon about no deal, but imminently the Chamber will consider another string of statutory instruments regarding no deal at the same time. Incapable as I am of being in two places at once, I want to put on record that I think that situation is totally unacceptable. The more important business is of course in the Chamber, because it can actually approve the regulations rather than simply debating them. I think this is now the fourth time that this has happened. Last time, I made representations to the Government Chief Whip and the Opposition Chief Whip, but clearly those representations have not been effective—otherwise we would not be in this situation again today.

I do not intend to take any further part in the Grand Committee this afternoon, because I need to be in the Chamber, but I intend to speak on these regulations when they come to the Chamber, not least because there is very sparse attendance in the Grand Committee this afternoon, and I think other noble Lords would have wished to be here if they did not have to attend to their duties in the Chamber. I regard this debate as essentially unreasonable, in that it has been scheduled alongside the debates taking place in the Chamber. I do not think they will be able to substitute for the debate in the Chamber because they are happening at the same time.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for bringing this statutory instrument forward. He will be pleased to know that I do not oppose it; I just have a couple of questions. I remind the Committee that I chaired the Environment, Food and Rural Affairs Select Committee next door for one term of five years.

My noble friend set out very clearly the importance of aquatic health to the whole of the island of Ireland. My question goes to the heart of this. I presume this is a no-deal statutory instrument; is that correct, or is it something that will continue in the event of a deal? I read with great interest of the trade deal that has been made with the Faroe Islands. I have visited those islands. I am very proud of my Danish heritage and that the Faroe Islands used to be a part of Denmark. I was intrigued to see that the United Kingdom is selling £6 million-worth of goods to the Faroe Islands, but importing £200 million of goods from them, most of which is fish, particularly shellfish. I understand that a lot of this is crabs. Will this pose a problem for Northern Ireland? Specifically, is the MSC the body that will continue to check all imports from what will effectively be third countries, including other European Union countries—the remaining 27 members of the European Union—at the point of entry? I should know the answer to this, but making the analogy with the Food Standards Agency in England, I want to ask what the relevant body will be and whether my noble friend shares my concern about ensuring that we maintain the excellent aquatic health that Northern Ireland currently has.

In paragraph 7.5 on page 5 of the Explanatory Memorandum—I think this is repeated in the next statutory instrument as well—I was delighted to see that the Government have very wisely chosen to maintain the equivalent or higher standards set by the World Organisation for Animal Health; I will not say it in French, even though I am quite proud of my French accent. I hope that is something that the Government intend to do going forward; I am sure we will discuss this. I am sure my noble friend agrees that it is absolutely vital that we maintain regulations regarding aquatic health in the EU. This is relevant because these will be third-country imports from the date of our leaving, if we leave with no deal.

Lord Teverson (LD): My Lords, it is always with some sadness that we deal with a Northern Ireland issue, a part of this country that voted remain quite decisively yet is completely unrepresented in the other place. In fact, it is represented by a very extreme party of Brexit. However, we are where we are.

I say to the noble Baroness, Lady McIntosh, that in my Select Committee this morning we looked at the Faroe Isles FTA and have brought it to the special attention of the House. It would be quite useful to debate it on the Floor of the House, even though it is only our 144th trading partner worldwide.

4 pm

I thank the Minister for his excellent exposition of the SI. My first question is whether the island of Ireland will remain the single epidemiological—I always have difficulty in pronouncing that but I am sure *Hansard* will get it right—unit that it is at the moment, particularly given that the excellent state of disease over there, which the Minister stressed, is much better

in many ways than it is in the United Kingdom and the rest of Europe. It is very important—clearly organisms do not understand land borders—that that unit remains the same whatever the circumstances of Brexit or otherwise.

Some of these aquaculture plants are owned by foreign investors, some in France, and I will be interested to hear from the Minister what phytosanitary controls he expects the EU, France or wherever products are exported to will start on day one of Brexit, particularly if there is a no-deal Brexit, which is really what these SIs are about. It is particularly important that the systems are in place. I know we have discussed this before, but where are we on the UK replacement for TRACES and its interaction with EU systems? It will have a major effect on friction in trade and on exports of these products from the Province.

One of the reasons that there has been Norwegian investment in salmon farms in the UK is to avoid the EU external tariff on a number of aquaculture products. I will be interested to understand whether the Government have made any calculation of the tariffs that will be applied to these markets post Brexit, if we leave on so-called WTO terms, and the effect that will have on this industry.

Lastly, I was interested to see that the Secretary of State gave an effective undertaking at the NFU conference in Birmingham that tariffs will not be completely removed for the agricultural industry. Will aquaculture be included in that pledge?

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his clear introduction and for the courtesy of meeting us beforehand. I also thank all noble Lords who have contributed to this debate. I remind the Minister and other noble Lords who have been with us on the journey of these SIs that we remain concerned about the whole process for dealing with them. My noble friend Lord Adonis raised one of the issues, but there are a number of other process issues. I do not intend to repeat them today, but the Minister will be well aware of our concerns. For example, we do not have the aquatic animal health and alien species in aquaculture regulations here today, although the Explanatory Memorandum says they should be linked to this SI. That is just one of the issues about the rather haphazard way in which these SIs are being tabled for consideration.

However, we are broadly in agreement with these regulations. They seem to do their best to maintain the status quo in aquaculture in Northern Ireland. It is clearly important to have a strong biosecurity framework which protects animal health and gives maximum protection from imported and exported disease, so it is important that these regulations are in place from day one.

I reiterate that it is a great regret to us that we do not have a functioning Northern Ireland Executive, so that we have to make decisions in their absence. Perhaps if we were not taking up all government time on the distraction of Brexit the Government would have more time to resolve the huge political challenges that face the UK, but perhaps that is an issue for another day.

On the specifics of this SI, the Minister referred to the close co-operation of Northern Ireland and the Republic of Ireland, and the noble Lord, Lord Teverson, referred to their shared interests, which are inevitable because they share inland waterways and a coastal aquaculture. Obviously there is a particular danger of cross-contamination within those waterways. But have the Government of the Republic of Ireland been consulted on the content of this SI, and have they registered that they are content with our proposals, given that they have such a lot in common with us?

Also, can the Minister explain in more detail how the buffer zones are intended to work? When I read the SI and the Explanatory Memorandum, I was unclear whether this was a new legislative function, and whether this is imposed around each separate aquatic business or on a larger geographical basis. Does this help protect the waterways between Northern Ireland and the Republic?

Finally, I pick up the point raised by the noble Baroness, Lady Macintosh. The Explanatory Memorandum explains in paragraph 7.5 that EU aquatic animal health standards, as we have them at the moment, are higher than international standards, and that if we do not adhere to EU standards in the future, that could result in the UK being unable to trade products with the EU and third countries. It goes on to say that the Government have, therefore,

"decided to maintain regulations regarding aquatic animal health at or above EU standards".

We very much welcome this approach. It is an approach that we believe should be applied more widely across other food and animal trade issues which will be dealt with in other SIs scheduled for consideration. It could have been applied in our debate last week on pesticides, for example, but the Government took a different approach on that issue and set up a separate UK regulatory regime, which was not linked to the existing EU one.

Can the Minister clarify the actual clause in the SI that gives effect to this policy? Can he also explain the circumstances in which the principle of applying standards at least as good as those of the EU will apply in future SIs, as we all have an interest in this being rolled out more widely? I look forward to his response.

Lord Gardiner of Kimble: My Lords, I am most grateful for a very thought-provoking debate on these matters. I emphasise that the amendments in this instrument are purely about technical changes to ensure that all the arrangements that are being brought over into our statute book are operable and so forth. A number of points were made; if I could run through them and then, if there are any others, I might receive some assistance.

Both my noble friend Lady McIntosh and the noble Baroness, Lady Jones of Whitchurch, referred to equivalent or higher standards. The Explanatory Memorandum states that:

"EU law regarding aquatic animal health set standards equivalent or higher than the international standards set by the … OIE".

We want to ensure that we are able to trade with our European partners and others post Brexit. Therefore it is vital that our aquatic animal health status is at

[Lord Gardiner of Kimble]
least of equivalent or a higher standard, to ensure that there are no barriers from a disease perspective. As I have explained, particularly in Northern Ireland, the health status is very high, and there are far fewer aquatic diseases in the island of Ireland. The UK, and Northern Ireland in particular, might want to diverge precisely to set higher standards. We will be able to do so, so that we remain focused on biosecurity and proactive in preventing disease. As I said in my opening remarks, with the far fewer fish diseases that there are on the island of Ireland, that is an absolute imperative.

The noble Lord, Lord Teverson, mentioned the single epidemiological unit. It will of course remain. It actually does not relate to Europe; this is an arrangement agreed by the Irish Government and the Northern Ireland Assembly. As I hope I have outlined, it is absolutely essential if the two Administrations are to deal effectively with ensuring that there is a healthy status.

As I said, there is excellent co-operation and collaboration between DAERA and the Department of Agriculture, Food and the Marine in aquatic animal health and aquaculture. That collaboration is regular and extensive. Both departments work closely with research institutes, such as the Marine Institute in Galway and the Agri-Food and Biosciences Institute in Belfast on a range of fish health issues. Also, the north/south fisheries liaison group involves co-operation on operational issues relating to inland fisheries management. It was established by Inland Fisheries Ireland and its parent department, the Department of Communications, Climate Action and Environment in the Republic of Ireland, DAERA in Northern Ireland and the Loughs Agency. That is important because, if I remember rightly, the five sea loughs are cross-border. The Loughs Agency is a cross-border implementation body, established under the Belfast Good Friday agreement. In addition, there is a north/south standing scientific committee for inland fisheries. I have many other examples of the intrinsic way both parts of the island of Ireland work on these matters.

The noble Baroness, Lady Jones of Whitchurch, asked specifically what consultation there had been with the Irish Government. Of course, as a matter of courtesy, DAERA will inform them of these technical changes at the next bilateral, but there was no formal discussion because, with the continuum of all the fora I have described, this is how it will be operable in Northern Ireland. As a matter of courtesy, DAERA of course has extensive and regular dialogue.

The noble Baroness, Lady Jones of Whitchurch, asked about buffer zones. The wording on buffer zones in this instrument is consistent across England, Wales and Scotland. There is no conferral of a legislative power. DAERA is not transposing article 49(2) of the 2006 directive, but merely ensuring that references to it in the principal regulations, or to provisions that cross-refer to it, operate properly by referring to "the competent authority" rather than "the member state". The power for DAERA, as the competent authority, to establish buffer zones is precisely to prevent or to limit the spread of disease. The key point is that that is already conferred by Regulation 27 of the Aquatic Animal Health Regulations (Northern Ireland) 2009, which transposes article 49 of Directive 2006/88/EC. I am sorry for what seems rather a considerable number of words, but they are to show that it is within DAERA as the competent authority to establish those buffer zones.

To my noble friend Lady McIntosh I say that, yes, this is a matter for a no-deal scenario but, whether the United Kingdom leaves with no deal or not—obviously, the Government are working extremely hard with others to secure a deal—clearly some of these technical operability points would have to be attended to at some point. I do not believe that a lot of our work would have to be attended to to get it into the prism of being UK or Northern Ireland-compliant. As the competent authority, DAERA will also continue to inspect all live fish imports. The FSA in Northern Ireland has a role in relation to products going for human consumption. The MSC is a certification body only—it does not have enforcement powers in Northern Ireland.

My noble friend Lady McIntosh also raised the question of crabs. Northern Ireland is a strong exporter of crabs landed in the Province, and they are largely sold to the EU, but this should not affect any crabs exported from the Faroe Islands. I was interested in the point raised by the noble Lord, Lord Teverson, about the Faroe Islands, which, no doubt, will be a matter for further consideration and discussion.

The issue of tariffs is still under consideration by the Government, and the Secretary of State said yesterday at the NFU conference that it is matter on which there is considerable focus.

On the question of the export health certificates, the UK remains committed to not imposing a hard border between Northern Ireland and the Republic under any circumstances. In a no-deal scenario, it is assumed that the EU will require an export health certificate for all exports of products of animal origin, which includes all fishery and aquaculture products. For live exports of aquatic animals, fish health certification will be required to meet EU standards—I conjecture that that would apply to Northern Ireland produce, for the reasons I have described. Consignments approved for export will have to be inspected by an official inspector before departure; that will be an increased imposition on current trading arrangements and will ultimately fall to DAERA resources.

I wonder whether there are any other points that I need to answer; if there are any, I will look again at *Hansard*. I say to the noble Baroness, Lady Jones of Whitchurch, that with Defra business I will use every endeavour to inform all interested noble Lords. Those who contacted the official on the telephone number found in the back of the Explanatory Memorandum—including, I think, the noble Baronesses, Lady Jones of Whitchurch and Lady Parminter—have said to me, "This is wonderful because it so rarely happens". That is purpose of Defra being a helping hand and not a heavy one, so I encourage that. I informed a number of Northern Ireland Peers that the debate was happening, to say what it was about. They obviously thought the discussions were technical and on operability, but I am very keen that there is this dialogue in the Moses Room. A lot of detailed discussions can take place in the Moses Room. I am mindful of what the noble Lord, Lord Adonis, said about further discussions,

but the truth is that all the noble Lords I would expect to see on an issue such as this, where there is a specialism and an interest, are here.

I will look at *Hansard* to see which areas I might not have precisely covered, but on the basis that I think I have covered as many as I can at the moment, I commend the regulations.

Motion agreed.

Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

4.19 pm

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

That the Grand Committee do consider the Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, it is probably appropriate that I declare an interest as a member of the British Horse Society, although, sadly, at the moment I do not own any horses.

The purpose of this statutory instrument is to ensure that EU law regarding equine identification, which will be retained following withdrawal, has the necessary technical amendments made to it so that equine legislation remains operable. This will ensure that the human food chain can continue to be protected and that equines can continue to be traded and moved into and through the EU, while maintaining robust standards of equine health. The current system of equine identification is set out in EU legislation, primarily by Commission Implementing Regulation (EU) 2015/262 —the equine passport regulation.

The regulations before us do not make any changes to current policy or enforcement already in force, but I would like to set out the principal changes that they make. Part 2 sets out the technical amendments to the text of the retained EU equine passport regulation to ensure continued operability. Part 3 makes similar technical amendments to certain directly retained Commission decisions relating to equines—namely, on the collection of data for competitions, the recognition of stud books and the co-ordination of information exchange between those stud books. Part 4 makes amendments to the EEA agreement, as retained in UK law under the EU withdrawal Act.

These necessary technical amendments to ensure operability involve changing references to the Union in the current EU regulation to refer, instead, to the UK or, where the admission of equines with appropriate ID documents from the EU is concerned, to equines from both the EU and the UK. References to authorities in member states are amended to refer to the appropriate authorities in the UK, which in relation to England will be the Secretary of State, in relation to Scotland will be Scottish Ministers, in relation to Wales will be Welsh Ministers, and in relation to Northern Ireland will be the Department of Agriculture, Environment and Rural Affairs.

In Parts 2 and 3 of the regulations, certain articles of the Commission regulation and Commission decisions are omitted by this legislation. For clarification, this is because they contain provisions that will no longer have relevance once Section 2(2) of the European Communities Act is repealed. The omitted articles will therefore become redundant. For example, a requirement to provide for enforcement, or an ability to derogate from the legislation, can no longer be given effect because there will be no legislative power to do so once Section 2(2) is repealed. However, where relevant, necessary provisions have already been given effect by domestic legislation and they will be preserved and continue to have effect by virtue of the EU withdrawal Act.

I draw your Lordships' attention to one addition that the regulations make, which is the insertion of a new article 15A. This is because, in the event of a no-deal exit, it will be necessary to have the facility to generate a supplementary travel document to accompany some equine movements. Such a document is a standard requirement for certain types of movement originating from a third country. Equine IDs issued by passport-issuing organisations in the UK will not be sufficient for this purpose because the ID must be issued by the competent authority.

This travel document will be necessary only for unregistered equines. These are equines that are not registered on an EU approved stud book or by an international organisation that manages the competition or racing of horses, including ponies. The Animal and Plant Health Agency has drawn up a simple single-page document which will satisfy the requirements of the legislation. It can be printed off and signed by the vet at the same time as other travel documentation is issued. The Animal and Plant Health Agency has taken on additional staff and undertaken training to ensure day-one readiness. In Northern Ireland, the role will be performed by the Department of Agriculture, Environment and Rural Affairs, which has similarly indicated appropriate readiness.

The House of Lords sifting committee raised the cost of blood tests for equines moving into or through the European Union. To be clear, European rules require that third countries must be assigned a disease risk status. There are seven possible categories which are based on the geographic region of the third country and the level of associated equine health risk. Blood testing is a mandatory requirement for all equines from third countries. The number of tests required reflects the disease risk category assigned to the third country. Given the UK's high health status and high welfare standards, of which we should be rightly proud, we would expect to be assessed as low risk and therefore subject to the minimum of such tests, which should limit the cost implications on the sector.

The UK has already submitted an application to the EU for the third-country listing of equines as a contingency, as part of a wider application covering other live animals and animal products. The Commission has since indicated its desire to list the UK "swiftly", if necessary. I should stress that these testing requirements,

[Lord Gardiner of Kimble]
as with the need for a supplementary travel document, are not in any way due to this legislation. Both requirements are a consequence of the UK becoming a third country; thus we would be subject to existing laws set down for third countries. The equine sector is very familiar with blood tests and it is already the industry norm for current UK to third-country movements.

For the avoidance of doubt, while all equines will require blood tests prior to movement, the supplementary travel document will be necessary, as I have said, only with respect to the movement of "unregistered" equines into the EU. My department has been working closely with key members of the equine industry to ensure that the new processes are as simple as possible. We are communicating the detail of the necessary changes to equine owners and all involved in horse movement. The extent of these regulations is the UK. All the devolved Administrations have been consulted and involved in the preparation of this legislation; indeed, they have consented to it coming into force. I beg to move.

Baroness Byford (Con): My Lords, I thank my noble friend for introducing this statutory instrument. I have one or two observations, but I am grateful to him for explaining why the Lords sifting committee has recommended that it should be an affirmative instrument. Clearly, the blood testing will be new for some people who are going to be exporting. I am also glad that the single lifetime document will continue as it is.

I want to ask my noble friend about an aspect that has always worried me and continues to do so: the export of ponies or horses, which on the whole are supposed to be going for riding or other purposes but often go into the human health chain. I am glad that the SI refers to this because it clearly mentions the potential harmful substances which could be in those animals when they are exported. Can he tell me a little more about the Government's thinking on that aspect rather than the stud, breeding and horseracing side that we automatically think about? However, I think that hundreds of animals are still being shipped abroad for whatever purpose—in the end, we are not quite sure about that.

I turn to the Explanatory Memorandum. Paragraph 13.2 on page 4 refers to "retrospective microchipping" for older horses,

"which will apply from 1 October 2020".

What will happen between now and then or is something already in place that I have missed? That is quite likely because these statutory instruments are complex.

As far as I am concerned, I welcome the instrument. It is really a matter of transferring EU laws to make it possible for us to continue in the same way. However, we must bear in mind that becoming a third country brings with it additional requirements for those involved in the sector. However, I am much more at ease with those that are registered than perhaps I am with the unregistered. I am not sure how this statutory instrument deals with that aspect of animal welfare and, in fact, in the end of human health welfare too.

4.30 pm

Lord Trees (CB): My Lords, I am grateful to the Minister for his clear exposition. Notwithstanding his assurances, I would like to seek further assurance on two points. First, will this instrument adequately maintain the biosecurity of the UK horse population, particularly regarding African horse sickness and the movement of horses into the UK? My second point was touched on by the noble Baroness, Lady Byford. In view of the fact that the welfare of horses in the UK might be hindered by the difficulty and costs of enabling humane slaughter of unwanted horses, can the Minister assure us that this SI places no additional impediment on the humane slaughter of horses in approved equine abattoirs, which in some cases might be abroad?

Baroness McIntosh of Pickering (Con): My Lords, I welcome the statutory instrument's purpose and I thank my noble friend for introducing it. We should not take equine health for granted, given the latest incident of equine flu and the devastating effect it could have on the racing community. I should declare that I am a member of the APPG on racing, and I live on what was a stud farm in North Yorkshire.

What is the relationship between the statutory instrument and the tripartite agreement? When the tripartite agreement was created it was outwith the European Union. It obviously continues to function extremely well and it is slightly confusing that it should have been brought in the EU's remit when it refers only to horses travelling between the UK, Ireland and France. I know there is great concern that this agreement should continue. I hope the statutory instrument will allow that—it could be one of its benefits—but given that we now have almost less than a month to go, what will the status of the tripartite agreement be and what is the specific relationship between the statutory instrument and that agreement?

Most of the reasons why horses and ponies travel are for racing, breeding and the purposes of riding but, as my noble friend Lady Byford pointed out, there is quite a thriving trade on the continent for edible horsemeat. I confess that I did so once as a student in Denmark, when a trick was played on me and I did not quite realise what I was eating. Having grown up with a little pony, I was absolutely devastated afterwards. There was a sinister development in, I think, 2012 with the horsegate scandal. It showed that there is the potential for, or has been, an animal health issue almost every 10 years: we had BSE in the early 1990s, foot and mouth in the early 2000s, and then what was thankfully only a passing off, not a human or animal health food scandal. But it was totally unacceptable that we never really got to the bottom of the chain. The Select Committee that I chaired tried to invite witnesses who could have proved beyond doubt that there were Irish connections involved, which we were unable to do because we could not subpoena witnesses from outside the United Kingdom.

This is an extremely important instrument for biosecurity, animal health and potentially passing off. I hope my noble friend will put my mind at rest that that is its basis. I have a Question coming up next month, so I will have the opportunity to pursue that further.

My noble friend Lady Byford mentioned the Explanatory Memorandum, in which paragraph 3.2 on page 2 refers to the Lords sifting committee recommendation that

this instrument should use the affirmative procedure. It also mentions the "potential costs". In the disclaimer—for want of a better word—at the end, it is recorded as saying that,

"the total cost … falls below the £5 million",

but the committee must have been concerned. Will the Minister repeat the actual cost for the benefit of the Committee this afternoon? It is obviously below £5 million, but I will be interested to know what the actual cost will be. I welcome that the department, through this instrument, will continue to allow free movement with a minimum of disruption. That begs the question of potential checks in the event of no deal at ports of entry to the continent. I hope that can be resolved by carrying over the tripartite agreement. If it was initially outwith the European Union, I see no reason why we cannot reach an agreement between the UK, Ireland and France that it should continue.

Baroness Parminter (LD): My Lords, I too thank the Minister and his officials for the helpful way in which they have outlined the impact of this statutory instrument and answered questions from those of us who brought them to their attention. I am particularly glad that we can reassure the general public. I feel that very few of them will read the statutory instrument, but it makes it clear that the status quo will be maintained with regard to equine passports. We do not want horse owners thinking that there will be changes in when they need to get their horses identified or in the status for selling feral ponies because although the SI removes those requirements, they are found elsewhere in domestic legislation. If you read the SI, you would not know that, but it was very reassuring to hear from the Minister that the status quo is maintained with regard to equine passports.

I add my voice to the voices of those who raised the issue of horsemeat entering the food chain. I understand from officials that the regulations with regard to the waiting time before that meat can enter the food chain are carried over in their entirety. Going on from what the noble Baroness, Lady Byford, said, it is not just horses going abroad. Horses are slaughtered in the UK. We have four registered slaughterhouses in the UK. I was amazed to find out that 2,800 animals a year are slaughtered in the UK for the food chain.

I do not oppose this statutory instrument but it highlights a number of concerns about what will happen to the trade in and moving of horses if there is no deal. As the noble Baroness, Lady McIntosh, said, this mainly concerns racing, competition and breeding, but individual horse owners take their horses to the continent, including younger people who might go to train to be great jockeys in the future, which would be fantastic. It is estimated that 42,000 such journeys are made every year, so if there is no deal, the impact will be great.

I have one question for the Minister. As the noble Baroness, Lady McIntosh, has noted, the Government's technical note makes clear that the UK will need to be listed as a third country by 29 March. If we are not listed, we cannot move horses to Europe. Can the Minister confirm whether I am correct that if we are not listed by the EU as a third-party country, no horses will be able to move? That would have an incredibly big impact. The noble Baroness, Lady McIntosh, said that the impact assessment, such as it is, refers only to the impact of this tiny SI, which is less than £5 million, but if there is no deal and horses cannot move, that will have a massive impact on the industry and on individual horse owners. Have the Government made any estimation of the cost of that devastating outcome?

The second area I want to touch on is that if there is no deal but we are listed, there will be a need for the new ID document, as the Minister rightly identified. As he said, this should be for non-industry equines only. However, having listened to the debate in the Commons, it seems that there is the possibility that the Commission may not recognise our stud books; that is my understanding of the Commons debate. I would be interested to know whether there is a possibility of the Commission not recognising our stud books. In that case, all equines, including industry equines, would be required to have ID documentation. I know that the Minister has made it clear that the documentation, both the export certificate and the ID documentation, would be available at a minimal cost, but they will require extra blood tests which cost hundreds of pounds. As the noble Lord, Lord Trees, mentioned in the debate on an earlier SI, this will require vets. However, if we do not get a deal, we will not have the 50% of our vets who come from other parts of Europe. We could be under real pressure in terms of the number of vets we have. Again, that would put an extra burden on horse owners and it is possible that the industry might have to wait longer to enable the veterinary profession to undertake these extra requirements. All of that comes on top of the extra border inspections which may be required at ports. I believe that most horse owners are very caring and considerate; they do not want to see their horses stuck at borders, which would be the result of no deal.

This SI points to the fact that, at the very minimum, there will be extra costs, extra administrative requirements and undoubtedly extra time for horse owners if we have no deal. If we have no deal and we do not get listed as a third party, there will be no movement at all, which will have a massive impact. This is another statutory instrument which demonstrates the huge loss that this country will bear if we leave the European Union on 29 March.

Lord Grantchester (Lab): I add my name to other noble Lords who have spoken today and thank the Minister for his explanation of the regulations. I declare my interests as set out in the register, but hasten to add that I have no connections with anything to do with horses. The Minister is correct to make clear that these regulations are being made in the event of a no deal outcome to the UK leaving the EU and it would be redundant should the UK leave with a deal. I thank the Minister once again for facilitating discussions earlier in the week on the SI.

While EU law is supported by UK domestic enforcement legislation after exit day with a deal, as EU legislation will then be retained under the withdrawal Act, the UK must still have an effective, operable statute book should the UK leave the EU without an

[Lord Grantchester]
agreement, as the Minister has explained. Labour recognises that the regulations largely make no changes to the current policy or enforcement, although there are one or two points I shall come to, and therefore does not oppose them. That is not to say that there are no significant concerns about the considerable impact that a no deal outcome will have on the equine industry as well as nearly every other industry. For this reason, the sifting committee of your Lordships' House has recommended that the regulations be made under the affirmative procedure.

EU law requires equines to be identified by way of a passport. In most cases, equines born after 2009 must also be uniquely identifiable with a microchip. It is recognised and emphasised that this passport will contain important identity information and pertinent details of veterinary medicines administered to the animal and will define the animal's current food chain status eligibility. The identification regulations have also been recently updated. The UK's database was launched on 8 March 2018 and contains data about virtually every equine in the UK except those registered and listed as belonging to semi-wild and wild populations. It is to these populations that my attention has been drawn by World Horse Welfare and I thank that organisation for raising these issues. In his opening remarks, the Minister explained that the technicalities under the legislation withdrawing the UK from the EU might explain some of the anomalies the charity has raised. I thank him for that and I also thank the noble Baroness, Lady Parminter, who underlined this point. Some of the points that I am about to raise might be redundant, although, as World Horse Welfare has specifically asked these questions and I have given the Minister notice of them, perhaps I may outline them so that he can deal with them appropriately.

4.45 pm

The first concerns the amendment to article 12. Regulation 15(c) on page 5 omits paragraph 2. World Horse Welfare does not agree that that paragraph should be omitted. According to the organisation's understanding, to do so would be to make a change to current practice in an already complex system where member states may decide to limit the maximum permitted period for identifying the animal to six months or to the calendar year of birth. England and the devolved Administrations are already using slightly different language in their implementing regulations and it is unclear whether they are using this derogation. Am I correct that removal of this derogation, if not covered under domestic legislation, would add to the confusion regarding the relevant deadline to get an ID document for a horse and cause further confusion for the 70-odd passport issuing organisations across the UK—already a confusing enough situation? Does the Minister agree that the industry might be encouraged to undertake a rationalisation of the number of passport issuing organisations, especially if that were to result in cost savings?

World Horse Welfare also raises a concern about the omission of article 13 in Regulation 16 on page 6 regarding wild and semi-wild horses. In England there are horses living under wild or semi-wild conditions; namely, on Dartmoor, Exmoor, Wicken Fen and the New Forest, and on some commons in Wales. It is impractical and indeed a risk to their welfare to require them to be passported unless being moved, sold or brought into domestic use. Once again, I would be grateful if the Minister could clarify the situation regarding this article, as it has been used to great effect for many years.

Returning to more general matters regarding the no deal scenario and how its worst features can be mitigated, what discussions have the Government had with the EU and the European Commission about allowing the UK to become a listed third country on the day the UK leaves the EU? Once again, I thank the noble Baroness, Lady Parminter, who raised this issue.

As with other farm animals, these passports are mostly necessary in relation to non-pedigree, unregistered equines. Have the Government undertaken any discussions within the EU to recognise UK stud books and pedigree records? The Minister made reference to stud books in his opening remarks. Will it be possible to assimilate all farm animals under a scheme drawn up by the APHA with a simple, single-page document that will meet the requirements of the legislation and which can be downloaded and signed off by the relevant vet at the same time as other travel documents and health certificates?

Although the Explanatory Memorandum makes it clear that additional costs will not result from the regulations, the Minister will be aware that your Lordships' sifting committee specifically raised the cost of blood tests for equines moving into or through the EU following UK withdrawal and recommended that the regulations be upgraded in this respect. I understand that the number of tests and procedures varies depending on the risk-assessed disease risk category assigned to the third country. What discussions have the UK Government had with the EU regarding the UK's disease risk status as a listed third party? How many tests would this involve and what would be the likely additional costs for those moving horses from this country to the rest of the EU, given that blood testing is a mandatory requirement for all equines from third countries?

Lastly—or nearly lastly—there also remain concerns about the welfare implications of long queues at the borders, should they happen in the event of no deal. Clearly, hours spent in a queuing lorry in high temperatures pose significant welfare problems for live animals. Can the Minister outline whether any contingency planning has been undertaken regarding live animals, including equines, in the event of a backlog of lorries at the border? Would it be possible for priority to be given to live animals in any queue? EU veterinarians have to sign off on various responsibilities during movement, which means that some of the checks will occur outside the UK. After Brexit, most of these responsibilities will fall to UK vets, which may increase the work required and the associated costs, assuming movements continue to occur at the current rate. I am grateful to the Minister for his follow-up letter regarding the recognition of standards in veterinary surgeons following the SI that we discussed last week.

Finally, I understand that the recent Equine Identification (England) Regulations 2018 will become subject to review by no later than October 2023.

This is some considerable time ahead, and no doubt is the normal due process procedure in normal times. Would the Minister consider whether this process should be reviewed and reconsidered, given the various regimes, should no deal indeed turn out to be what happens?

Lord Gardiner of Kimble: My Lords, I am most grateful again for this very constructive debate. Some of the issues have gone beyond the instrument itself, but I am delighted to answer as many of them as I can. If there are points of detail to follow up, I will ensure that we do so.

In reply to the noble Baroness, Lady Parminter, and the noble Lord, Lord Trees—in fact all of your Lordships, because this is something that we all care desperately about—this SI absolutely is about the continuation of the existing high standards of biosecurity and equine health. There is no change to anything at all in these technical and operability amendments. I say again to my noble friend Lady Byford and the noble Baroness, Lady Parminter, that there are absolutely no changes in the standards required for horses entering the food chain. Articles 34 and 37 of EU regulation 15/262 cover the action that must be taken when an equine dies or is slaughtered to ensure that the animal's ID and medication record reflect any medical products administered to the animal and its status regarding the food chain.

In reply to the noble Lord, Lord Trees, and the noble Baroness, Lady Parminter, the Food Standards Agency enforces checks carried out at slaughterhouses and will take appropriate enforcement should that be required. The combination of the legislation, passports, microchips, the UK's central equine database and checks by the FSA help to ensure that, with that architecture, the safety of the human food chain is secure.

To confirm, because it is terribly important, particularly to my noble friend Lady Byford, these regulations will not affect government policy on the slaughter of equines for food. The existing equine identification rules do not prevent the slaughter of an equine for human consumption, provided the equine is properly identified in accordance with the legislation and has not been signed out of the food chain.

On the issue of passports, which the noble Baroness, Lady Parminter, and the noble Lord, Lord Grantchester, referred to in one sense, the current rules around applications for and the issuing of an equine passport are set out in our domestic regulations—for example, at Regulation 6 of the Equine Identification (England) Regulations 2018. For article 12, referred to by the noble Lord, Lord Grantchester, concerning a derogation allowing for a shortening of the deadline for issuing a passport, domestic secondary legislation already sets out the appropriate and necessary deadlines. Therefore, the article is omitted from the retained primary because it is covered in domestic law. The relevant provision in England can be found in Regulation 6 of the Equine Identification (England) Regulations.

On the point raised by the noble Lord, Lord Grantchester, semi-wild ponies are in so many ways an iconic and cultural part of many of our wonderful landscapes. Article 13, which was omitted from the retained legislation, contains the derogation available on semi-wild ponies. The domestic regulations, which came into force for England on 1 October 2018 and in Wales on 12 February 2019, make use of the derogation for semi-wild ponies. Therefore, the allowance rules pertaining to semi-wild ponies are not changing. For example, this is a provision in Regulations 17 to 23 in Part 3 of the Equine Identification (England) Regulations. An equivalent provision is made in the Welsh regulations.

I am well aware of the long-standing nature of the tripartite agreement, which was raised by my noble friend Lady McIntosh. The Government recognise the importance of the tripartite agreement and we have published the implications of a no-deal Brexit on equine movement in the technical notice *Taking Horses Abroad if there's No Brexit Deal*. This made clear that we would no longer have access to the tripartite agreement if the UK leaves without an agreement. Of course, we are seeking and want a deal, and I am well aware of all the equine interests. There has been a very strong working relationship with the equine sector for a long period of time. We fully realise that we want to ensure the free movement of equines as part of the tripartite agreement. If we did not have that access all EU member states would be subject to the same rules on equine movements—we are planning for this scenario, although we do not want these circumstances to arise. I think everyone in the equine world—many in Ireland, although not so many in France—is working as hard as they can to get these matters resolved.

My noble friend Lady Byford mentioned retrospective chipping. This is in our domestic regulations. The 2020 deadline for microchipping is to give time to owners of horses that were not previously required to be microchipped to adjust to the new requirement, but these microchipping requirements are so important for identification if horses are stolen or get loose, or if there are strays. There are all sorts of reasons why it was absolutely right that we extended microchipping to all horses and to give that ability for older horses that were not part of the original regime. I suggest that anyone who has not had their horse microchipped and, inevitably, has a routine visit from the vet, gets it done at the same time.

A number of other points were made. As I said in my opening remarks—the noble Lord, Lord Grantchester, referred to it—we have been in close communication with the Commission about a listing, not only on this matter but more widely. Clearly, the stud book issue is alongside that. Although obviously I cannot guarantee it, we are very positive about the response and understanding in the reference to "swiftly" because member states are of course keen to continue with the movement of equines, particularly between the Republic of Ireland and the UK, where there is a strong equine connection, and indeed between the UK and France. It is absolutely understood that it will be of mutual benefit to get those listings.

5 pm

Noble Lords have talked about the costs of the blood tests. They are not directly related to this instrument but blood tests are likely to be required to obtain an export health certificate, which owners will have to pay for. Additional costs related to the need for blood tests

[Lord Gardiner of Kimble]
are estimated to be between £200 and £500 depending on the third country category placed on the UK. As I have explained, we are expecting, if this were to come about, that we would be placed in a low-risk category and therefore we are not expecting the higher figure. That is not a consequence of the regulation but a result of having to comply with existing third country rules. As I have said, our export of equines to other third countries is already subject to blood testing requirements and, as I know directly, the equine sector is familiar with the process. Indeed, it is the norm for third country movements. But, again, we are looking for a deal. I emphasise that we need and want a deal.

The noble Baroness, Lady Parminter, asked what would happen if the UK does not get a third country listing. Racehorses registered with a national or international organisation or association will still be able to move; it will be other horses that will not. I would also say that we have a lot of communication with the equine sector, not only with the British Horseracing Authority and the racing authorities but more broadly as well. The sector is apprised of the new requirements and it is vital that a clear component of that is that we continue with clear communications. That is why I have looked at many of the technical notices on this matter so that, as a horse enthusiast, I can check how they might be received because they have been written in language that I would understand.

The noble Baroness also raised a point about capacity. The APHA has now planned for this and there is adequate capacity, while DAERA has already indicated that it is ready and able to issue the notices in Northern Ireland. The Government do not plan to charge for ID documents.

The noble Lord, Lord Grantchester, asked about the rationalisation of passport-issuing organisations. The point was eloquently made but it is not a component of this instrument. However, the noble Lord has raised an issue that could clearly be a matter for review. Of course, all passport-issuing organisations must comply with the law.

We have been working with the equine industry on the issue of border delays. In the event of no deal we need to ensure that this is factored in. The key point of any factoring in is that animal welfare must not be compromised. We are working closely with the equine sector because we must not put our animals in any jeopardy.

The noble Lord, Lord Grantchester, also said that the review would take too long. The first report must be published by 1 October 2023. It is a deadline and we will look at it; indeed, we will review earlier if there is a clear case to do so. That is very important.

Since the noble Lord, Lord Trees, is here and since two members of my family are in the veterinary profession, as I have disclosed before, I should say that I am very conscious of the vet as a key component in equine life. It is also important that I therefore assure the Committee that Defra provided evidence to the Migration Advisory Committee, strongly supporting the return of veterinary surgeons to the shortage occupation list. A report on that is due this spring. However, we are working with the official veterinarians and other support officers to ensure all that we need to have in place is there in readiness.

Although this slightly goes off the subject of this instrument, I am also very conscious that my noble friend Lady McIntosh mentioned equine flu, while the noble Lord, Lord Trees, mentioned African horse sickness. We absolutely must maintain our biosecurity standards and, wherever possible, enhance them. One key area in the work of the Animal Health Trust, the universities and the APHA—all the organisations that we have in the public, private and charitable sectors—is the health status of UK horses, which is hugely important. That is part of our reputation and when we see cases of animals not being cared for, we are all angry and expect matters to be undertaken. I notice that my noble friend Lord De Mauley is here; important work was also done on the legislation to ensure the welfare of horses that were being dumped on other people's land.

Parliament, and all of us, have been working extremely hard beyond this instrument, but I will look at *Hansard* because there may be some elements, or twists and turns in some questions that I have not fully covered. In the meantime, this technical operability instrument is important and we have it ready.

Motion agreed.

Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019

Considered in Grand Committee

5.08 pm

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

That the Grand Committee do consider the Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I shall speak also to the instrument grouped with these regulations, as they are so interconnected. I should make it clear, first, that neither instrument makes any change to policy. These instruments are technical in nature and are to ensure a smooth transfer of powers from the EU to the UK. Secondly, I make it completely clear that these instruments in no way diminish our controls in the important subject areas covered. There is no proposal to alter or reduce our biosecurity controls for animals or plants, our animal welfare standards or our capacity to protect public health. Thirdly, Ministers will be able to make negative resolution statutory instruments only on specific procedural or technical matters that are laid down in the various legislative functions currently exercisable by the European Commission. The new enabling powers will therefore be confined to those matters that the

European Parliament and Council have delegated to the European Commission to implement by way of tertiary legislation with input from relevant experts.

Legislative functions are currently conferred on the Commission by EU legislation. They enable the Commission to set out the technical details of the regimes in what is known as tertiary legislation. The two instruments take those powers currently held by the Commission and transfer them to the appropriate Ministers in the UK. These instruments are therefore correcting measures enabled by the European Union (Withdrawal) Act 2018. As I have said, the crucial point is that they do not introduce new policy. They preserve the current animal, fish and plant health regimes and simply ensure that we continue to operate effectively.

The Animals (Legislative Functions) (EU Exit) Regulations 2019 cover the area of animal health and welfare. They provide for legislative functions to be exercisable by UK authorities. The exercise of those functions will principally be by way of domestic secondary legislation by the appropriate authorities, made under the negative resolution procedure as they will involve minor technical amendments to the EU retained law. This instrument transfers existing functions currently conferred on the Commission in the areas of: animal transport—Regulations 2 and 6; livestock identification—Regulations 3 and 5; transmissible spongiform encephalopathies or TSEs—Regulation 4; seal products—Regulation 7; animal slaughter—Regulation 9; animal by-products or ABPs—Regulation 8 and 10; and zootechnical conditions—Regulation 11.

These functions include matters such as: amending implementation rules and procedures when amending detailed rules of sampling and laboratory methods; approval of new scientific disease-related tests; revisions to disease monitoring and surveillance; setting down rules for breeding programmes to recognise disease resistance in livestock; determining feed safety practices; amendment of training and educational programmes; and the uniform application of disease contingency plans. They also include the power to amend the welfare requirements for transporting live animals and methods of animal slaughter to take account of scientific and technical progress.

Regulation 12, "Saving and transitional provision" is a cross-cutting regulation applying across this instrument. It contains transitional and saving provisions relating to standard form documents. For example, although new forms will be introduced for the UK, under these regulations, it will also be permissible to use the current EU forms for several months after exit day.

Turning to the Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019, there is one matter which I wish to draw to your Lordships' attention. This relates to the Explanatory Memorandum, which has been amended. The amended version, which was published on Monday, merely deletes incorrect references to powers not included in the SI, and therefore does not affect the content of the SI. The first was about editing the criteria for listing diseases. This was not included in the SI as the focus of this instrument is to ensure day-one readiness. The power to amend the criteria is not required to be transferred as the current criteria are well-established and effective. The second change involved the power to set out detailed rules for the introduction into the EU of aquaculture animals and related products from third countries. This was moved from this instrument to the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019, which contain a number of similar amendments. The detailed rules on imports into the EU are currently set out by the Commission in model health certificates, and the proposed amendments remove these model health certificates from retained EU law and allow the Secretary of State and the devolved Administrations to publish new health certificates for imports into the UK. I hope your Lordships will accept my apologies for any inconvenience or confusion. None of this affects this SI, but I wanted to be straightforward and open about the changes.

This instrument also provides for a series of legislative functions currently conferred by European Union legislation upon the European Commission to be exercisable instead by Governments in the United Kingdom. The difference is that this instrument relates to EU directives while the previous instrument covers EU regulations. Directives are transposed into domestic law by regulations or, in some cases, primary legislation, when they come forward, so they are already on the statute book. However, the functions conferred on the Commission in those directives were not transposed as it would not have been appropriate to do so, but they are now being brought in by these regulations to the appropriate Ministers in the UK.

5.15 pm

I reiterate my earlier point: Ministers will be able to make negative resolution statutory instruments only in specific procedural or technical matters that are laid down in the various legislative functions currently exercisable by the EU Commission. The new enabling powers will therefore be confined to only those matters that the European Parliament and European Council have delegated to the EU Commission to implement by way of tertiary legislation with input from relevant experts. As with the previous instrument, there is no change in policy.

This instrument relates to aquatic and animal health in Part 2, and plant health in part 3. The regulations relating to plant health do not extend to Scotland, as plant health is devolved and the Scottish Ministers have chosen to bring forward their own legislation to deal with deficiencies in their plant health legislation in Scotland.

In Part 2, which covers transferring functions relating to aquatic animal health, this instrument transfers existing European Commission legislative functions to appropriate UK Ministers. It will enable them to amend the list of diseases for disease control purposes, and to draw up and update lists of third countries, or parts of third countries, from which aquaculture animals and related products can be introduced into the UK, post exit.

In Part 3, which covers transferring functions relating to plant health, this instrument transfers the legislative functions to appropriate Ministers in England, Wales and Northern Ireland to make amendments keeping pace

[Lord Gardiner of Kimble]
with developments in scientific knowledge or changes in risks to plant health. The appropriate Ministers will also be able to specify import conditions that apply to plants and plant products originating in a third country. This is important in enabling international trade based on assessment of risk. It also enables appropriate Ministers to put in place temporary emergency measures to prevent the introduction or spread of a plant pest.

As I have said, there is no lessening of our biosecurity controls. These measures will enable us to respond to emerging threats. These instruments are to ensure an operable legal framework is in place for exit day and make no policy changes. I beg to move.

Lord Trees (CB): My Lords, again I thank the Minister for his very clear and extensive exposition. I have one or two queries regarding the animals legislative functions regulations, particularly concerning regulation EC 999/2001, which concerns the prevention, control and eradication of transmissible spongiform encephalopathies—TSEs. Certain substitutions have been made under article 4—"Safeguard Measures"—on which I seek the Minister's assurance. Specifically, in article 6, the appropriate authority is given any power to disapply the requirement for the annual monitoring programme under certain circumstances—a monitoring programme is required under current EU regulations—and in article 7, the appropriate authority can prescribe tolerated levels of "insignificant" amounts of animal protein in feeding stuffs.

Without seeing the original material, these sound a little concerning. Can the Minister assure us that they do not represent departures from the original legislation and would not leave us unaligned with current EU 27 regulations? That might create a prejudice against our livestock exports.

Baroness McIntosh of Pickering (Con): My Lords, these regulations are very technical and I congratulate my noble friend on moving them. I have a question that relates solely to the Animals (Legislative Functions) (EU Exit) Regulations 2019, in particular to paragraph 7.9 on page 4 of the Explanatory Memorandum covering Regulation 9. This is the animal slaughter regulation which will transfer, as my noble friend has explained, the legislative functions from regulation EC 1007/2009. I notice that we are transferring the power specifically and allowing Defra, presumably, to,

"define the maximum numbers of poultry, hares and rabbits to be processed by low throughput slaughterhouses; and publish guidance".

What is the average throughput of these animals at the moment? Is my noble friend minded to specify other categories as well?

Perhaps the Committee will permit me to make a general comment. I was in the European Parliament as a directly elected Member when we passed the original abattoir directive, as I think it was known. I argue that it was not the fault of MEPs that we applied that very restrictively in the UK. That led to a number of slaughterhouses closing. A point of principle has been established—I am sure my noble friend is wedded to it, as am I—that animals for human consumption should be slaughtered as close to the point of production as possible, yet we now find ourselves in a situation where we have a greatly reduced number of slaughterhouses. I had the privilege of representing two different areas, but for 18 years I represented next door to the joint largest livestock production area in the north of England. I believe that animals being transported further, because of the reduced number of slaughterhouses, was a factor in the foot and mouth disease epidemic. I hope that my noble friend will take this opportunity to say that we will draw the line and that we have no intention of reducing the number of slaughterhouses through this or any other regulation.

The Duke of Montrose (Con): My Lords, I thank the Minister for his detailed exposition of the extent of this legislation. It sounds as though the existing regime will transfer without too much of a hiccup in order to enforce the regulations. However, in declaring my interest as a livestock rearer and a farmer, I cannot resist pointing out that the existing system is not totally foolproof. This is really for another day, but we need to realise that certain diseases seem to slip in not just by midges being blown across from Europe. Two that affect sheep in particular which have come in are maedi visna and ovine pulmonary adenocarcinoma—OPA. These diseases are now hidden in our own flocks and are very difficult to determine.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for his very helpful introduction, and for his time and that of his officials in producing the very helpful briefings we received prior to debating these statutory instruments. But yet again no impact assessment has been produced for them, as the Government believe there is no significant impact. This is not acceptable, since insufficient time is being allocated to allow proper scrutiny of the raft of Defra SIs in particular that are required to be passed before 29 March. Had the Government started this process earlier there would have been sufficient time for such impact assessments to have taken place, and for the public and politicians to be suitably reassured that no harm would occur. However, I do not agree with the noble Lord, Lord Adonis, that all our consideration of SIs should take place on the Floor of the House. That would be a very poor use of parliamentary time.

Although the first SI on aquatic animal health and plant health does not make changes to substantive policy content, there is always a risk of new disease and pest risks. The SI gives the Secretary of State powers to manage and prevent diseases and pests in aquatic plants and animals. It also allows the Secretary of State to amend lists of possible diseases and pests on the basis of evidence and bring about restrictions to stop imports if they are believed to be infected with these diseases and pests. However, there is little to say what the evidence base will be for amending lists of diseases and pests, or how this will impact on businesses and the voluntary sector. What type of evidence will be required and where that will come from?

As we are becoming somewhat used to, there are a whole host of delegated powers in this SI that allow the Secretary of State to amend lists of diseases as well

as other things listed in Regulation 7 in Part 2. These powers are currently exercised by the Commission as delegated powers. However, the Government do not appear to be drawing back powers that should be held by Parliament. If the Government essentially intend to mirror the EU's list of diseases and pests, could the Minister say what the point is in claiming back these functions? Surely this is the point of pooled sovereignty.

The list of diseases is transferred, with appropriate modifications, to the Secretary of State, Welsh Ministers, Scottish Ministers and Defra in the case of Northern Ireland to exercise in their respective areas. Could the Minister say what these appropriate modifications will be? The Secretary of State may also exercise the functions on behalf of a devolved Administration with their consent. There are several other powers under this directive that are not transferred via this instrument as they are not thought to be critical for day-one readiness and may be transferred in due course. Again, could the Minister say what these functions are and when they might be transferred?

The animals legislative functions SI covers the provision of a lot of animal regulation currently managed by the Commission to be given, again, to the Secretary of State, who may make amendments with the permission of the "appropriate Minister". New article 2a as inserted by the SI gives a definition of the appropriate Minister, which includes the Welsh Ministers, the Scottish Ministers and Defra for Northern Ireland, as I said. However, the appropriate Minister has to give consent to the Secretary of State before changes can be made. Could the Minister say what contingencies are in place should such consent not be forthcoming from the Welsh and Scottish devolved Administrations? I presume is it expected that Defra, on behalf of Northern Ireland, will automatically give consent.

I am concerned that the transfer of these powers to the Secretary of State on animal welfare could lead to a watering down of our animal welfare regulations, which are currently some of the best in the world. They include the transportation requirements of animals, the level of checks carried out on livestock, limiting the amount of seal hunt products arriving on the market, and the maximum number of poultry, hares and rabbits to be processed by low-throughput slaughterhouses. As the noble Lord, Lord Trees, has said, it is extremely important to maintain the strictest regulations for TSE.

As the noble Baroness, Lady McIntosh, flagged up, could the Minister say just how many hares and rabbits—particularly hares—are slaughtered through slaughterhouses? I am by no means an expert, but I have never heard of hares or rabbits being killed by slaughterhouses in this country. Our hare population, although recovering in some areas, is seriously under threat. The thought that these wild creatures will somehow be subject to a slaughterhouse production line is extremely concerning.

The Government continue to make encouraging noises about their commitment to animal welfare, but appear not to ensure that our current standards are enshrined in our law; they are subject to alteration by the Secretary of State. While the current incumbent is committed to animal welfare, we all know that Secretaries of State can come and go. It is a dangerous policy to allow these commitments to be the subject of individual personnel, as opposed to committed to law.

5.30 pm

Finally, Regulation 13 allows for standard form documents, currently set out in retained EU legislation, to be used after exit day in the form they took before exit, if the appropriate authority or Minister determines that necessary. Can the Minister give an example of when it might not be necessary for this to happen?

Like many of my colleagues, I remain very concerned at the number of powers passed to the Secretary of State, which will not receive scrutiny in your Lordships' House. I am aware that the deadline is coming towards us at the speed of a runaway train, but more thought to this process, far earlier, could have avoided this situation.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for his introduction today, and his courtesy in providing us with a pre-briefing. I thank all noble Lords who have contributed to this discussion, and I refer to my entry in the register of interests. Like the noble Baroness, Lady Bakewell, we reiterate our concern about the process for dealing with these SIs. Once again, we register our concern about the reliance on powers being granted to the Secretary of State without external scrutiny and challenge.

It seems a bit of an act of desperation to produce these composite SIs, which have completely different subject matters, particularly when there are other SIs in the pipeline covering more specific regulations relating to these individual topics. In retrospect, it will make it very difficult for people to navigate their way through all these different bits of legislation and the different SIs.

I turn to the aquatic animal health and plant health SI. We accept that, for the most part, the substance of this SI is non-contentious, but I have a few questions. First, this instrument transfers a number of technical legislative functions to the Secretary of State, but it also refers to "appropriate authority" and "other responsible authorities", suggesting that these powers may be sub-delegated. If that is the case, to which public bodies do the Government propose to sub-delegate these powers? Assuming that these powers will be sub-delegated, will the public bodies have to report on their use of the powers under the relevant provisions of the European Union (Withdrawal) Act 2018?

The second issue is on plant health. The SI transfers responsibility to the Secretary of State for import restrictions and bans on plants and plant produce, as well as emergency measures for restrictions on imports to prevent plant pests being imported. According to the Explanatory Memorandum, this power is conferred,

"in light of developments in scientific or technical knowledge or technically justified and consistent with the risk to plant health".

So far, so good, but could the Minister clarify how these functions will be carried out by the Secretary of State, which organisations will be authorised to make that scientific or technical assessment, what will the status be of any advice given in these circumstances,

[Baroness Jones of Whitchurch]
and what additional resources will be required to carry out these functions previously carried out by the EU Commission?

Finally, I have a question relating to the controls on disease in aquaculture animals. In Regulation 6, on page 3, reference is made to adding, varying or removing an exotic or non-exotic disease from the proscribed list. Obviously, we want to make sure that diseases harmful to aquatic animals are controlled and are not inadvertently spread from the EU or third countries, but the circumstances in which these controls are put in place in aquaculture seem to concentrate solely on the adverse economic impact and the likely production or export losses. There is no reference to the welfare or suffering of the species involved.

I realise I am treading on a controversial issue here, but should the Secretary of State not have a wider responsibility to ensure good animal husbandry and a disease-free environment for these fish regardless of the economic consequences? I realise that this SI transfers current EU regulations, but is this something that the Minister will aspire to address when the opportunity arises? I hope that when he replies he will take into account the increasing evidence that fish that are farmed in an aquaculture environment that most closely replicates their natural environment are kept disease free and are less stressed, more productive and more robust in the longer term, so there is a longer-term benefit all round.

Turning to the Animals (Legislative Functions) (EU Exit) Regulations, again it would be helpful to know the appropriate authority in these regulations and the extent to which its advice is given independently and made public. I also have a few issues of detail to raise with the Minister. First, like the noble Lord, Lord Trees, I am concerned that the regulations on TSEs seem to water down the requirement in the annual monitoring programme to check animals in remote areas with low animal density. They also allow the overall programme to be revised based on a comprehensive risk analysis. Who will carry out this risk analysis and what organisations will be consulted before any changes are made?

The regulations also allow proteins derived from fish to be added to the feed of young ruminants based on a scientific assessment of their dietary needs. Will the Minister clarify who will be responsible for carrying out the scientific assessment? Does he accept that any relaxation of the current rules relating to TSEs should be made with extreme caution?

I refer the Minister to Regulation 7, which relates to the trade in seal products; I gave him notice of this question. As I read this regulation, it seems to water down our current ban on products derived from seal hunts. For,

"Commission shall adopt implementing acts",

it substitutes,

"the Secretary of State may make regulations".

It goes on:

"The Secretary of State may, by regulations … prohibit the placing on the market of seal products derived from seals killed as a result of a seal hunt conducted primarily for commercial reasons".

What is intended to be achieved by that change and why do the regulations not spell out clearly a continued requirement to ban such products on the basis currently in operation in the EU? I look forward to his response on these issues.

Lord Gardiner of Kimble: My Lords, this has again been a very interesting and helpful debate. I understand that this is a subject that excites public concern and interest. The noble Baroness, Lady Bakewell, was concerned about future Secretaries of State. This instrument is about a very distinct area of operability. Changes of the sort the noble Baroness was envisaging would come through a completely different route. The work we are doing today is very technical and is about issues that the European Parliament and Council have defined as being for the Commission to manage. These instruments are very tightly drawn. Therefore, any changes of the sort that the noble Baroness might be envisaging are not in them because they are not about changing policies in the areas that have come up in these regulations.

I turn to one issue immediately. I can safely say to your Lordships that I am extremely concerned about TSEs and extremely cautious. The noble Lord, Lord Trees, and the noble Baroness, Lady Jones of Whitchurch, raised them. I want to make it absolutely clear that the TSE monitoring programme will not be watered down by the amendments; it will continue unchanged after we leave. Similarly, the Government have no plans to alter feeding stuffs regulations. These regulations exactly reflect the current EU programmes. Our existing monitoring programme for TSEs will remain at the current level, and we have no plans to change it. The Animal and Plant Health Agency is the national reference laboratory for TSEs and has the latest scientific evidence. I say that only to ensure that there is a recognition of the expertise that we have, as the noble Lord, Lord Trees, in particular, will know. Obviously one can never bind anyone else, but this is an area where, given what we have seen in a whole range of areas, we should always be extremely cautious.

As to whether there is any intention of loosening restrictions, the Government do not allow the feeding of fish meal to young ruminants and have no plans to alter that position. Again, any future changes would have to be based on a scientific assessment of the dietary needs of young ruminants and of the control aspects for permitting the young of ruminant species to be fed proteins derived from fish. However, as I said, this Government have no plans to alter the current situation.

I should have declared my farming interests and I apologise to your Lordships for not having done so.

Following the outbreaks of BSE and foot and mouth disease, which resulted from animal by-products entering the animal feed chain, in 2003 the EU implemented legislation to ensure the safe handling and disposal of animal by-products. The Government take very seriously the ever-present risk of the entry and spread of serious livestock disease. We all recall the pain and distress of those outbreaks. I can just remember the 1967 outbreak when I was at school. I was quite young, but I remember it very dramatically. There was also the foot and mouth outbreak in 2001. I want to be absolutely emphatic on this issue. Although

this instrument has nothing to do with these matters in terms of the policy, which is not being changed, we simply must not and will not relax our guard. High standards of biosecurity are essential.

My noble friend Lady McIntosh and the noble Baroness, Lady Bakewell—I was going to say "my noble friend"—asked about rabbits and hares. Rabbit, and possibly hare, form a normal and much greater part of the diet in parts of the EU. There are currently no FSA-approved establishments for the slaughter of farmed rabbits or indeed hares—I have never even heard of hares being farmed. While the UK has a small rabbit farming industry, we are unaware of any commercial farms producing rabbits or hares for meat. Article 11 of directive 1099/2009 provides a derogation that currently allows farms to slaughter up to 10,000 rabbits, hares and poultry per annum outside an FSA-approved establishment, but there are currently no FSA-approved establishments here. This provision was brought back as part of that regime, but I am not sure it has a UK resonance. We have no plans to change any of the arrangements.

5.45 pm

My noble friend Lady McIntosh raised animal slaughter and the closure of slaughterhouses—an issue that I understand well. We are working closely with the FSA and with industry, because we clearly recognise the desirability of two things: of animals always meeting a respectful end, and for them not to have to travel any further than is necessary. But we must also be mindful that in this country we require high standards of hygiene, cleanliness and safety, which we expect across all slaughterhouses. This is all eminently possible with all sizes of slaughterhouses, but again this is an issue which we will return to as a nation in other times.

The noble Baronesses, Lady Bakewell and Lady Jones of Whitchurch, referred to evidence particularly on diseases and pests. Our government agencies and expert committees have recognised expertise in undertaking risk assessments and advising Governments. They have been doing so for many years and will continue to offer this expert advice in collaboration with industry and scientific centres. I am sure the veterinary profession has always been part of this great firmament of experts. The agencies include the APHA—the Animal and Plant Health Agency—which safeguards animal and plant health through research, surveillance and inspection, and CEFAS, the Centre for Environment, Fisheries and Aquaculture Science, which does the same for aquatic animal health.

UK laboratories are recognised as the world leader in 21 areas of animal health science—more than any other EU member state. This recognition is effected by the World Organisation for Animal Health—the OIE—which includes our own APHA and CEFAS. The UK Government have their own officers, such as the government and departmental chief scientific advisers, the Chief Veterinary Officer and the Chief Plant Health Officer. Again, there are opportunities to work with world-class universities and other institutions.

We also have several working groups that provide advice in decision-making processes to all UK Governments—jointly as well as singly—including the national experts group, which, in the event of an outbreak of an exotic disease, provides UK policy teams and the CVOs with specific veterinary, technical and scientific advice and recommendations on the disease, its transmission and options for control. There is also the UK Surveillance Forum, which provides a structure and direction to develop a single view of the UK's animal health status, and evidence to support it. Having worked with a number of these organisations, when I go to Europe there is a recognition of how world-leading we are in some of these areas. Borders and boundaries mean that whatever happens with future arrangements—I hope they are collaborative and strong—this is an area where partnership is clearly essential.

The noble Baroness, Lady Bakewell, took up the matter of the devolved Administrations. We are committed to working closely with devolved Administrations on an approach that works for all of the UK and reflects the interests of all four UK nations. We are working with other Administrations to agree the detail of the process for delivering joint decision-making. Where matters are devolved and an Administration decide they would like to take their own statutory instrument forward I personally think that we should respect the devolved arrangements, provided we keep within the same framework. The essential thing is that the experience of all of this is done in a collaborative spirit of wanting to have a common framework, even if an Administration sometimes want to bring in their own SI.

On standard forms, raised by the noble Baroness, Lady Bakewell, the intention is to allow trade to flow and not to interrupt it with unnecessary bureaucratic insistence on specific forms. There are likely to be perfectly understandable cases when the trader has completed the wrong form—the one that applied before we left—and this might be in cases of goods already in transit. In other words, we want pragmatism and common sense to prevail.

The noble Baroness, Lady Jones of Whitchurch, raised good husbandry. I understand why she did, not only because it applies to any animal but because it is the right thing to do. As the noble Baroness outlined, if you look after your stock, they will have a good reputation and will sell well. I have never understood why anyone would think it a good idea to bring indifferent stock to market, with the reputation that provides.

Going back to fish, some areas are already on our statute book. The Animal Welfare Act 2006 protects fish under control of humans from unnecessary suffering and places a duty on the person responsible for them to ensure that the needs of the fish are met. The Welfare of Animals (Transport) (England) Order 2006 applies specific welfare requirements when fish are being transported for commercial purposes, and EU regulation 1099/2009 on the protection of animals at the time of killing sets obligations to spare fish any avoidable pain, distress or suffering during killing or related operations. This will become retained EU law in our own arrangements. APHA and local authority inspectors have official responsibility for the enforcement of animal welfare legislation on fish farms.

[Lord Gardiner of Kimble]

On the question of which powers in aquatics and plants we have not transferred, no one could want a tidier life on these matters more than me, but there are further powers under the plant health directive and the aquatic animal health directive—for example, the power to amend the criteria for listing diseases. I have no doubt that attention will be paid to those matters. We face the dilemma of wanting to get as many of the things that are ready debated, but I understand that your Lordships are extremely busy and we want to ensure that these instruments are grouped as effectively as we can possibly manage. I know my noble friend Lady Vere and I feel as strongly as your Lordships about that.

On the question from the noble Baroness, Lady Jones of Whitchurch, on seal products, I want to make it very clear that the regulations make operability changes and do not amend current restrictions or exemptions. The ban on importation of seal products into the EU is maintained in the UK. There is currently a derogation that permits the marketing of seal products from the hunts of Inuits and other indigenous communities when they are conducted for and contribute to the subsistence of those communities. This does not extend to those carried out primarily for commercial reasons. Currently, the European Commission has the power to prohibit or limit seal products placed on the market from Inuit hunts when evidence subsequently comes to light that they were actually from a commercial operation. Regulation 7(2)(b) will amend article 3(5) of the retained EU regulation to transfer this power from the European Commission to the Secretary of State. This will enable the Secretary of State to take appropriate action to restrict the marketing of seal products, should evidence come to light that they do not meet the derogation. Again, this is not, in absolutely any way, a diminution; it is to enable the Secretary of State to do what the Commission could have done, if evidence was to emerge.

The noble Baroness, Lady Jones, made a point on aquaculture and risk of disease. Most aquaculture production in the UK takes place in so-called open systems where fresh water is abstracted from rivers directed through aquaculture sites. In the case of marine aquaculture, aquatic animals are placed in rearing units immersed in seawater. Therefore, there is a potential for pathogens to be passed from wild aquatic animals to farmed aquatic animals, and vice versa. The main way to minimise the risk of pathogen spread is to prevent the introductions of the pathogens in the first place. Indeed, the UK applies strict rules to minimise the risk of pathogen introduction via trade in live aquatic animals. For example, aquatic animals imported into the UK for aquaculture purposes can be imported only if they come from areas that are shown to be free from those pathogens that the UK has declared free from.

My noble friend the Duke of Montrose was absolutely right: we are transferring through the withdrawal Act 2018 all the guts of these many regulations, which are the foundation of how we do things with animals, and aquatics and plant health. These two instruments ensure that, where there are distinct issues where the Commission was previously permitted to act, the regulation-making powers are conferred on appropriate authorities—the noble Baroness, Lady Jones of Whitchurch, mentioned this point. For aquatic animal health, these are the Secretary of State in England, Welsh Ministers in Wales, Scottish Ministers in Scotland, and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. In other words, the "appropriate authority" is the appropriate Minister. It may be that, in the varying terms, they are the same thing, but I will look at that.

I will also look into the sheep matters for my noble friend the Duke of Montrose. Although it is somewhat different from these two particular instruments, it is really important that that is reflected. Some of the issues raised may well have gone beyond the precision of these two instruments, but I will look to see whether there are any particular questions or details, either within this instrument or beyond, that I may not have fully attended to. On this occasion, I beg to move.

Motion agreed.

Animals (Legislative Functions) (EU Exit) Regulations 2019

Considered in Grand Committee

5.58 pm

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

That the Grand Committee do consider the Animals (Legislative Functions) (EU Exit) Regulations 2019.

Motion agreed.

Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

6 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2019.

Baroness Vere of Norbiton (Con): My Lords, we have already discussed fish, horses, animals and plants, and now for something completely different—fertilisers and ammonium nitrate.

This instrument changes legislation in two areas. First, it amends domestic legislation that is out of date and, secondly, it addresses failures of retained EU law to operate effectively and other deficiencies arising from the UK's withdrawal from the European Union.

Legislation surrounding fertilisers concerns the manufacturing and marketing of products. It provides for the definition, composition, labelling and packaging requirements for specific categories of fertilisers that are set out in lists. The legislation does not address the application or use of fertilisers and it does not change the definition or compositional requirements of fertilisers.

In 1975 the EU created its first set of legislation relating to fertilisers. The wide disparity in existing fertiliser rules between member states and the bulky nature of these materials restricting cross-border trade meant that it was not suitable to fully harmonise rules on all fertilisers across the EU. Instead, fertiliser rules were partially harmonised to begin removing technical barriers to trade within the EU. This means that the UK has kept its existing domestic framework alongside the EU framework. The EU regulation sets out the requirements for EC fertilisers, previously called EEC fertilisers, that can be freely sold across the EU. Manufacturers can choose which framework to market their products under, and this partial harmonisation is still in place today.

The current domestic framework for any material described as a fertiliser is the Fertilisers Regulations 1991. In the EU, the current framework is EU Regulation (EC) No. 2003/2003, and this applies only to fertilisers labelled "EC fertiliser". It was implemented in UK law by the EC fertilisers regulations 2006. Ammonium nitrate fertilisers are controlled through safety regulations that apply to all ammonium nitrate in Great Britain.

Part 2 of the instrument amends out-of-date references in the domestic legislation—for example, omitting references to EEC fertilisers and EC fertilisers to ensure clarity for users of the legislation. In the case of EU legislation, Part 3 of this instrument amends retained EU law to ensure that it will operate effectively after exit day—for example, references to member states and the Commission are amended to refer instead to UK authorities. A requirement as to the language to be used on labels is also amended. The SI replicates the EU framework in UK law by replacing the "EC fertiliser" label with an equivalent "UK fertiliser" label. The requirements will otherwise remain the same.

Part 4 of the instrument amends domestic legislation as a result of exit. It ensures continuity of supply by recognising EC fertilisers for a two-year transitional period after exit day. This will minimise burdens on businesses and authorities.

The amendments made in this instrument do not change the definition, compositional requirements, labelling or packaging rules of fertilisers, whether marketed under the existing domestic framework or under the EU framework.

Ammonium nitrate fertilisers are additionally covered by domestic safety regulations, as they can be misused as improvised explosives and pose safety risks if mishandled in manufacture, transport or storage. Part 4 of the instrument amends the regulations surrounding ammonium nitrate fertilisers with high nitrogen content in Great Britain in order to treat imports from EU member states in the same way as imports from other third countries, in line with WTO obligations. Northern Ireland has separate restrictions on ammonium nitrate for historical reasons, which this instrument does not amend.

Under the British ammonium nitrate regulations, the rules for imports from the EU are different from those for imports from outside the EU. In light of WTO rules, it would not be possible to retain these differences. Therefore, the instrument amends some aspects of the ammonium nitrate regulations—in particular those relating to detonation resistance tests, or DRTs—to apply the more stringent of the two regimes to all imports, whether from the EU or elsewhere, after the end of the two-year transition period, and to uphold current safety standards.

Currently, the definition of what constitutes a "batch" of ammonium nitrate differs depending on whether the import comes from the EU or elsewhere. The EU definition is based on a production run that lasts no longer than 92 days, whereas the non-EU definition relates to any single imported consignment. Using the non-EU definition in this case would cause increased costs for manufacturers due to additional testing, and provides no additional safety benefits. Therefore the EU definition of "batch" will be applied to all imports from exit day.

Continuity of supply is ensured by a transitional period of two years for imports from the EU, which provides 99% of imported ammonium nitrate to the UK. This allows the continuation of current rules with regards to the time limit for detonation resistance test certificates, and the ability to recognise EU laboratory test certificates. These arrangements give manufacturers time to prepare for compliance with the import rules post exit and, importantly, this reduces any burdens on UK laboratories immediately after exit.

The instrument was presented to the sifting committees on 1 November 2018 as a negative instrument. The House of Lords sifting committee was content with that, but the House of Commons sifting committee did not agree with the Government. It considered that the effect of one regulation was to allow Ministers to charge fees to cover the cost of tests needed for official control measures. In addition, it considered that the instrument conferred powers to legislate. It therefore recommended that the instrument be debated in Parliament. The instrument has been amended since it was presented to the sifting committees to reflect certain recommendations in the report, and the Explanatory Memorandum has been amended.

In general, fertiliser policy, like other agricultural policy, is devolved. The devolved Administrations were closely engaged in developing these regulations, which apply to the same geographical areas as the original legislation that they amend. All the Administrations have agreed to maintain a single common framework for fertilisers labelled as "UK fertilisers", while continuing their own domestic framework. This will make the marketing of fertilisers much clearer for industry, and is a good example of how well the four Administrations work closely together for a common goal.

The instrument relates to the maintenance of existing regulatory standards with no significant impacts, or new or greater administrative or economic burdens on business or other stakeholders. While there was no statutory requirement to consult on this instrument, officials have held discussions with key stakeholders: the fertiliser manufacturers' representative body, the Agricultural Industries Confederation, and the farmers' representative body, the National Farmers' Union. Their main concerns have been addressed by allowing for a transitional period for existing rules and compliance with the amended rules. The changes to the rules on

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ammonium nitrate have also been developed in conjunction with the Health and Safety Executive and the Home Office to ensure that safety and security elements are maintained or improved.

These measures are essential to ensure that the retained EU framework will operate in the UK alongside the existing domestic framework and, importantly, allow the continued trade in high-quality, safe fertilisers. I beg to move.

Baroness Byford (Con): My Lords, I am grateful to my noble friend for introducing this statutory instrument. I shall start where she ended and thank her for the consultation the department has had with the Agricultural Industries Federation and the National Farmers' Union. It is essential that we take advice from or hold consultations with them. In the same way, I should declare our family's farming interests because obviously fertilisers are used on the farm.

I have little to question my noble friend on, but I am grateful that the Government have responded to the Commons sifting committee which referred the question of costs to the department. That has been addressed and the Minister has reminded us that 99% of fertilisers are imported from the EU. It would be logical to accept this statutory instrument and I am grateful for the way in which the labelling requirements have been addressed; in other words, we can still use the EU fertiliser labelling scheme until the UK fertiliser labelling scheme is put into place.

The most important thing that I have picked up from this statutory instrument is the need to ensure that fertilisers are bought, sold, stored and then used on farms safely and securely. It is easy for accidents to happen, and we do not wish to see fertilisers fall into the wrong hands. I welcome these regulations and again I thank my noble friend for introducing them.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for introducing this statutory instrument on which I have just a couple of questions. Obviously farmers and farming are responsible for a great deal of our ammonia emissions. I want to make a general plea. Someone who is going to take over at the helm of Natural England is not known as being perhaps the best friend to farmers. To which body will farmers be able to turn to advise them on fertiliser use? Also, what is the relationship between this instrument and the ammonia and livestock farming regulations, which have either gone through or are to come through at the same time, that set new rules on housing and better feed and further restrictions on the storage and spreading of slurry? This relates to an earlier debate which I know my noble friend listened to.

It would make more sense if we could have an umbrella statutory instrument which covered every single item relating to the use and control of ammonia. I had farming interests. My brother and I shared the freehold of two fields which I have now offloaded on to him. I therefore have no further interests to declare, although I wish him good luck. It would be helpful if there was a single body that farmers could turn to for advice rather than the various bodies that are policing them. I am afraid that this is a constant theme to which I will return when the Agriculture Bill and the environmental protection Bill reach us. I am sure that my noble friend is a reasonable person, so would it not make more sense if we had one regulation coming through covering the whole issue of ammonia emissions? Good luck with that, but I thought I would mention it. Defra is a busy department with about 100 statutory instruments going through, so perhaps my suggestion would help.

In the guidance is a reference to the fact that:

> "The Government will publish a new list of laboratories approved to test to the standards required for the new 'UK fertiliser' label".

It may be that the Government have produced that list and I would be interested to see it as we are now at half past the eleventh hour before leaving. The guidance goes on to say that:

> "Any necessary sampling or analysis must be carried out by a competent laboratory included in the Commission's published list".

I would expect to see that list and would welcome the news that it has been published.

The notice goes on to say, in the third paragraph from the end:

> "The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU Member States".

Do we know whether we are included in those discussions? It would make sense if we were.

With those questions, and depending on the answers—although I do not intend to stand in the way of the statutory instrument—I look forward to my noble friend's reply.

6.15 pm

The Duke of Montrose (Con): My Lords, I again declare an interest as a farmer who has used fertilisers and ammonium nitrate over the years. I am most grateful to my noble friend for laying out the detail of how these regulations came about and the changes that will be required.

I was very interested to hear her say that we will accept the laboratory investigations from Europe, and I wonder whether this is the first sign we have had of how we will deal with imported chemicals. Presumably, those laboratory tests were required in order for products to gain REACH approval in and across Europe. There is a big question over how we will get authority for all chemicals—both those in this country and those imported from Europe—if we cannot use REACH approvals directly. Some will involve the GDPR, and we cannot just accept them immediately because that would infringe the GDPR concerning transfer of knowledge.

Presumably these regulations are largely to do with importing chemicals for use in this country, but there is of course the other big issue about exports. I do not know whether that will have to be dealt with at another point. One thinks of the Republic of Ireland as the sort of area that, presumably, buys a lot of fertiliser from this country. If it is unable to do so that will, first, affect trade and, secondly, affect the Republic quite considerably.

Baroness Parminter (LD): My Lords, I certainly have no intention of opposing this fairly straightforward statutory instrument, particularly since ringing round a couple of the people who were described as the key stakeholders. When I phoned one of them, they sent me a reply and copied it to the department. Clearly there is a healthy, if not cosy, relationship between the industry and the department.

I want to make two points. Paragraph 7.5 of the Explanatory Memorandum talks about what will happen, and has been happening, in terms of a risk assessment for these fertilisers. It refers to certain ways in which a fertiliser can be treated,

"if there are justifiable grounds for believing that it constitutes a risk to safety or health of humans, animals or plants or a risk to the environment".

That is a really important point, given the impact of fertilisers. We accept that they have an important role to play in farming but they are not without their risks. I would like a little more clarity from the Minister about our process for identifying those risks. The memorandum goes on to talk about the changes in the rules being carried out in conjunction with the HSE. Of course—that is perfectly right and proper because the HSE has a remit with regard to human health. However, I would like some reassurance about what the process is at the moment. I am not saying that there are any changes—I am pretty sure there are not—but I would like some clarity. What engagement is there between the HSE and the Environment Agency to ensure that environmental concerns about fertilisers potentially coming into the UK are assessed appropriately, particularly given that, sadly, we import the majority of our fertilisers at the moment?

My second point is merely one of process—a matter that other noble Lords have mentioned. Paragraph 6.3 of the Explanatory Memorandum talks about the need for some changes to be made. They are changes which pertain to this SI but which will be covered in a further SI—the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations, which will come before us at some point in the future. That SI is the third of the triumvirate of pesticides SIs, which we discussed at great length in the Committee last week. A government impact assessment said that both business and the Government would be extensively impacted, and it seems wrong that this third pesticide SI was not discussed at the same point. I accept that there is an argument that it should and will be subject to the negative procedure at some point, but with that to one side, if you have an impact assessment which covers three SIs and says that there are major implications, it would be helpful for the House to discuss them concurrently.

Baroness Young of Old Scone (Lab): My Lords, as I came to the House today, my local farmers were carting megabags of EC fertilisers everywhere I went. I presume they have come to the conclusion that spring is here; it seems that in spring a young farmer's fancy turns not to love but to fertilisers.

I thank the Minister for her clear exposition of the regulations, and for the briefing meeting that she very kindly convened. I am sure everyone will be delighted, at this point in the evening, to hear that this statutory instrument appears comparatively straightforward. We welcome the changes that have been made as a result of the consultation and the sifting exercise, including the introduction of a two-year transition period for the fertilisers part of the regulation.

I would much prefer that the transition period be overtaken by an outbreak of sanity and us remaining in the EU, rendering the provisions unnecessary. However, it would be good to hear from the Minister what the Government anticipate that the longer term will hold. Currently, fertilisers are partially harmonised in that member states are permitted to have a domestic regime in addition to the EU rules. Do the Government anticipate us trying to keep in harmony with EU fertiliser standards and controls in the longer term, and if not, what impact would that have on both imports and exports?

Of more concern, though admittedly affecting only a small number of UK fertiliser manufacturers, is the position of those manufacturers who export to the EU. They may already have to meet individual member state requirements where a member state has a domestic regime. A technical notice has been issued by the Government on where the parachutes are if we crash out on 29 March. Under that, UK manufacturers who wish to continue trading with the EU will have to send samples to EU labs for testing in order to comply with EU regulations. Any necessary sampling or analysis will be carried out by competent laboratories included in the Commission's published list. Manufacturers in the UK will be able to label their products "EC fertilisers" only in accordance with the EU framework, and UK companies will only be able to export EC fertilisers to the EU if they comply with the EU regulations, which include a requirement that I did not quite understand, that,

"the manufacturer is established within the EU".

Therefore, I ask the Minister for clarification on two points. First, in the short term, does the requirement to have the sampling and analysis carried out by an EU lab double up the costs—an EU lab and a UK lab—and is this an additional burden on UK manufacturers? This would be at odds with the Government's statement in the Explanatory Memorandum that there will be no added cost burdens to manufacturers. Secondly, does the requirement that the manufacturer is established within the EU in reality rule out UK manufacturers being able to market their products under the EC label if we crash out of the EU at the end of March?

All this would be unnecessary if we came to the conclusion that leaving the EU is the arrant folly which it is, but I am sure the Minister is not going to give any key assurances on that tonight.

Baroness Vere of Norbiton: I thank all noble Lords who have taken part in what has thankfully been a short debate; I believe that this is a fairly simple piece of secondary legislation which we should be able to dispatch fairly quickly. However, I appreciate the comments made by many noble Lords, and certainly from my noble friend Lady Byford. The consultation period was very important to us, and it was quite interesting that the agreement was that two years was the best time; this is the period that had been used

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previously. For example, when the label had to be changed from "EEC fertiliser" to "EC fertiliser"—they had to knock out an "e"—that took two years, which seemed the appropriate amount of time for the bags to be relabelled and for more to be produced with the new label. The transition period is an important issue for the labelling and I am pleased that it seems all parties are happy with where we have got to.

I turn to the comments made by my noble friend Lady McIntosh. It is always a pleasure to see her in these debates, but I sometimes fear slightly what she may say—I do not want to say that she may go off-piste, when I am sure many of us are supposed to be skiing. She certainly asked me some questions that I cannot hope to answer within the scope of what the Committee is discussing. For example, I am afraid that ammonia emissions go far beyond what I have and can help noble Lords with, but it is important that many bodies already exist which farmers can go and speak to on the use of fertilisers. When we get to consider the Agriculture Bill in your Lordships' House, we will be discussing advice to farmers and their relation to the environmental land management schemes which will be put in place. All those things are very important for how we function in harmony with the countryside, so perhaps my noble friend would hold her horses just a little while longer and we will come back to that.

Baroness McIntosh of Pickering: I am most grateful to my noble friend for answering as she did. This goes to the point that a number of your Lordships made during the debate that other regulations have been coming through. It must be just as irritating to the team at the department to have this piecemeal approach. It would help farmers enormously if we had one approach to a substance such as ammonia.

Baroness Vere of Norbiton: My noble friend is quite right but I see us as doing something specific today, which is to protect our country in the event of a no deal Brexit, which I am sure none of us would want to see. I recognise that we sometimes have to deal with these provisions in a slightly piecemeal fashion but they are designed to be piecemeal—to be nice little nuggets that we can discuss and then hopefully move on, having protected our legislative framework which is clearly so important.

I also put forward a slight word of warning because apart from my Defra job I have another, which is as the Whip for BEIS. I am sure that many of your Lordships will be aware that that department has issued an SI which amounts to 330-odd pages. I see my noble friend Lady McIntosh saying that is not a problem but I am afraid that many people have regarded it as a problem. To a certain extent, bite-size pieces can be better. I see the noble Lord, Lord Grantchester, rubbing his hands in glee and I hope that I will not be the Minister taking it through—I am sure that my noble friend Lord Henley will be better by then and with us.

To go back to the matters in hand today, my noble friend Lady McIntosh also mentioned the list of laboratories. Yes, that will be republished. At the current time, I believe that three laboratories do fertilisers. It will be republished shortly and I will make sure that that is the case.

I turn to the points raised by my noble friend the Duke of Montrose. What we are dealing with today is more about the imports than the exports, as I am sure he will appreciate. It is so important that our farmers have continuity of supply. Obviously, we cannot tell the European Union what to do if we leave with no deal. We will unfortunately be in a situation where there will be no reciprocity. However, it is the case that we import vast quantities of fertilisers, including ammonium nitrate, which is why we are extending a warm hand to those overseas manufacturers and saying: "Look, it's okay. We will continue to recognise your labelling for the next two years to ensure continuity".

With regard to chemicals more broadly and the REACH SI, regulations on which will I know be coming to us soon, that is a far more complicated area and we will have to go into it. It was most important for us to make sure that we have the systems and laboratories in place, and that we accept the results from overseas laboratories for that two-year period.

The question of exports was raised, both by my noble friend and the noble Baroness, Lady Young. Fertiliser manufacturers based in the UK will, of course, be able to sell products into the EU. If we leave with no deal, they will do so as a third country, but they will have to comply with the EU regulation—they already comply with it at the moment, Regulation (EC) No. 2003/2003—and any other relevant legislation.

The noble Baroness raised the point about ensuring establishment—this is a very broad term—within the EU after exit. Sometimes, when exporting to third countries, you have to comply with them as they require. In some cases of larger companies, it would be cost effective to have an office there, but for many it is simply a case of using an import agent in that country. Those requirements would come into being; however, this is for no deal only. If we have an implementation period, none of this will come into play. If we get a free trade agreement thereafter, as we hope, much of this will continue, as we all wish it to, so I am afraid we are dealing solely with a no-deal scenario today.

Baroness Young of Old Scone: Will the Minister confirm that that small number of 20 or 30 manufacturers of fertilisers in this country will have to get lab tests in the UK and the EU—potentially in member states that have a national testing regime—and pay for an agent? That seems like quite a major burden on the poor souls.

Baroness Vere of Norbiton: I cannot really comment on the costs because the testing of fertilisers is not required quite as often as, for example, for other chemicals. I imagine that there will be a small increase in costs for those companies that want to export into the EU, unless of course the EU decides that it wants to mitigate those costs and would like to work with us, either on a bilateral basis or whatever. That is indeed the case: exporters, whether of fertilisers or, quite frankly, of anything else, will find that certain things

will be different for them when they export in future if there is no deal. This is why the noble Baroness and I would like a deal.

Baroness Young of Old Scone: I just do not want us to leave.

Baroness McIntosh of Pickering: On that point, highlighted by the noble Baroness, the technical notice says that Norway, Iceland and Liechtenstein, being party to the European Economic Area, will be covered. Will lab costs have to be applied to export to those areas in the event of no deal as well?

Baroness Vere of Norbiton: We will have to look into that in greater detail. I will write on that. We are possibly slightly off topic, as this is about the cost of exporting, but I will certainly write. I am very happy to do so.

Turning to the pesticides SI, it covers a range of different topics, so it is important that we discuss it today. It updates out-of-date references and provisions in the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 and makes corrections to the EU plant protection product regulatory regime. It is a bit like what my noble friend Lady McIntosh is doing—it covers lots of things, but we are being told that we should not have done that. This instrument was laid on 18 February. We produced an impact assessment, which considered the collective impact of the three statutory instruments, and noble Lords will know that we have already discussed the other two affirmative SIs. This SI was discussed today in relation to the specific provisions about ammonium nitrate.

I believe that I have covered most of the points raised. Like my noble friend Lord Gardiner, I will review *Hansard* with great interest to check that I have covered all the points. Where I have already promised to write, I will certainly do so.

Motion agreed.

Committee adjourned at 6.35 pm.

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