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Monday
25 February 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

HER MAJESTY'S GOVERNMENT

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Minister without Portfolio—The Rt. Hon. Brandon Lewis, MP

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Parliamentary Secretary to the Treasury and Chief Whip—The Rt. Hon. Julian Smith, MP

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Minister for Energy and Clean Growth—The Rt. Hon. Claire Perry, MP

Minister for Immigration—The Rt. Hon. Caroline Nokes, MP

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Chris Skidmore, MP (Minister for Universities, Science, Research and Innovation) §

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§ Members of the Government listed under more than one department

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THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-SEVENTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE THIRTEENTH DAY OF JUNE IN THE
SIXTY-SIXTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCXCVI**

FOURTEENTH VOLUME OF SESSION 2017-19

House of Lords

Monday 25 February 2019

2.30 pm

Prayers—read by the Lord Bishop of Oxford.

Retirement of a Member: Baroness Oppenheim-Barnes
Announcement

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from today, of my former colleague in government the noble Baroness, Lady Oppenheim-Barnes, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Baroness for her much-valued service to this House.

China: Freedom of Religion and Belief
Question

2.37 pm

Asked by ***Lord Suri***

To ask Her Majesty's Government what discussions they have had with the government of China, and with the governments of other countries, about protecting the right to freedom of religion and belief of Uighur Muslims and other persecuted religious groups.

Baroness Goldie (Con): My Lords, we are concerned about restrictions on freedom of religion or belief across China, and particularly about the deteriorating situation for minority groups in Xinjiang. During 2018, the UK raised human rights bilaterally with China on a number of occasions, including by the Prime Minister and the Foreign Secretary. The United Kingdom also highlighted our concerns publicly at the United Nations Human Rights Council and continues to liaise closely with a wide range of international partners.

Lord Suri (Con): I thank my noble friend the Minister for her response. She will be aware that many human rights activists and organisations claim that China is organ harvesting religious prisoners of conscience. These people often highlight the fact that the average time to get a kidney transplant in the UK or the US is two to three years, whereas in China it is a few weeks. Has my noble friend asked either the World Health Organization or the Chinese Government how they can explain this remarkable difference? If not, will she do so and report the answer back to this House?

Baroness Goldie: I thank my noble friend for raising a very emotive issue. We keep the issue under review and welcome any and all new evidence. At the moment, our analysis remains that the evidence available is not sufficiently strong to substantiate claims that state-sanctioned, systematic organ harvesting is happening in China. My noble friend referred to the World Health Organization. It collates global data on organ donations and works with China. Its view is that China is implementing an ethical voluntary organ transplant system, in accordance with international standards, although it does have concerns about overall transparency.

Lord Collins of Highbury (Lab): My Lords, this subject was recently discussed in this Chamber, particularly the so-called education camps in the province which was mentioned. Can the Minister tell the House whether we have made the strongest possible representations to the Chinese Government to allow, at the very minimum,

[Lord Collins of Highbury]
UN access to these camps, so that we can properly establish what they are there for and how they are being used?

Baroness Goldie: I can reassure the noble Lord that the United Kingdom Government have spared no opportunity to express concerns, ask questions and seek clarification on what is actually happening in the camps. The noble Lord will be aware that China held a press conference in Xinjiang on Friday where it accounted for and gave its explanation for what the camps exist to do, why they are there and who is in them. The United Kingdom remains very concerned and, along with global partners, has been regularly bringing this matter to China's attention at every possible opportunity.

Lord Dholakia (LD): My Lords, these camps are an area of serious concern. We always hear that the Minister and the Foreign Office make representations to the Chinese Government. However, we have never heard from the Minister precisely what is the response of the Chinese Government and whether independent oversight of these camps would result in a better way of knowing exactly what is happening to the thousands of Muslims who are in them.

Baroness Goldie: As the noble Lord will be aware, the United Kingdom takes seriously the issue of freedom of religion or belief and has taken a keen interest in activity in Xinjiang. As I said to both my noble friend Lord Suri and the noble Lord, Lord Collins, the United Kingdom Government, at various levels and through diplomatic channels, constantly raise concerns and seek answers to questions.

Lord Tugendhat (Con): My Lords, can my noble friend tell me to what extent these representations are made also on behalf of some of the Muslim powers, such as Pakistan and Saudi Arabia? Would she agree that, while it is highly desirable that the United Kingdom should make representations of this sort, if they are done in support of representations by Muslim countries, they are likely to have more effect on the Chinese?

Baroness Goldie: My noble friend raises an important point. He asks a specific question on which I do not have specific information, but perhaps I can undertake to inquire, and if I elicit information, to write to him.

Lord Alton of Liverpool (CB): My Lords, may I take the noble Baroness back to the question asked by her noble friend Lord Suri, specifically about unwanted DNA tests on some of the 1 million people estimated to be in these re-education camps, where Uighurs have been forced to go? Has the noble Baroness seen the evidence collected by David Kilgour, a former Canadian Minister, who says that he has seen more than 10,000 more organ transplants in China than the official figure indicates? Will she undertake, in the light of what she said about the role of the World Health Organization, to bring that evidence to its attention to see whether the practices that are currently being used in China are ethical?

Baroness Goldie: I thank the noble Lord. I am not aware of the report to which he refers, and I shall be interested in looking further at it.

Lord West of Spithead (Lab): My Lords, the noble Baroness will be aware that part of the Chinese one belt, one road initiative was to open up connectivity in central Asia. Cannot our Government point out to the Chinese that, if they are trying to open up central Asia, make it more open and utilise it better, their behaviour, which is totally appalling, is the wrong thing to do to allow that to happen?

Baroness Goldie: It was interesting that China felt it appropriate to hold its three-hour briefing on Friday. I can only surmise that China felt it important to explain to the broader international community what was happening. China is an important global presence and it wants to be a respected global power, but fundamental to seeking that respect is the tangible and visible implementation and observation of human rights, and respect for them.

Baroness Hussein-Ece (LD): My Lords, the noble Lord on the Benches opposite asked which Muslim countries had called for the closing of these camps. Turkey called for these camps to be closed down on 10 February, when the Turkish President said that it shamed humanity that these camps existed. Do the British Government agree?

Baroness Goldie: The British Government have made clear to China our profound concern about these camps. We have sought detailed information, so far as we are able to get it, and have expressed profound concern about China's response to what it claims is an attempt to deal with security and terrorism issues. We have pointed out to the Chinese authorities that all evidence suggests that they are taking disproportionate, indiscriminate measures in response which risk being counter-productive in the longer term.

Business Rate Appeals

Question

2.45 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government what plans they have to carry out a review of the "check, challenge, appeal" system for business rate appeals.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, as set out in the 2017 response to the consultation on "check, challenge, appeal", the Government intend to carry out a review of the effectiveness of the new system in 2019. We expect that this review will draw upon the Valuation Office Agency-led evaluation of the delivery of the new system, which is due to begin later this year.

Lord Naseby (Con): Is my noble friend aware that this review is not before time, in that well over 10,000 appeals are bogged down in the agency at the moment? The challenge element does not work because the portal crashes; the check element does not work because it cannot be edited or amended. Against that background, is it not extraordinary that the agency allows all the retailers I am talking about, let alone other businesses, to incur huge costs in professional advice and have their cash flows adversely affected? Rather than having it at the end of 2019, I urge my noble friend to start the review on 1 March 2019.

Lord Bourne of Aberystwyth: My Lords, I thank my noble friend very much indeed; I know he has done much work on this area. The new system was set up in the spring of 2017 and we were always clear that there would be a review this year. Of the backlog, 100,000 were cleared last year and, as of September 2018—the latest date for which we have figures since the new system came in—there have been 50,000 checks and 6,500 challenges. However, I agree that there are challenges to address. My honourable friend the Minister in the other place meets regularly with Melissa Tatton, the chief executive, to discuss them.

Lord Kennedy of Southwark (Lab Co-op): My Lords, it is good that the noble Lord agreed that there are challenges to meet. The situation described by the noble Lord, Lord Naseby, is, frankly, appalling. Is there nothing that the Government can do in the meantime, or will we have to wait for this review to take place?

Lord Bourne of Aberystwyth: My Lords, as I indicated, we are having that review, as we committed to do, and we have regular meetings with the VOA, which operates independently of government, to discuss the many concerns that do exist. However, I think most fair-minded people would say that the system has improved. As I said, we have regular meetings to address those concerns and we will reflect on them when we conduct the review.

Baroness Burt of Solihull (LD): My Lords, when George Osborne delayed the business rate revaluation, he paved the way for major disruption when businesses had to adjust to seven years of relative price changes in 2017. Does the Minister agree that a simple way forward would be to tax businesses based on land values rather than property values? That way, there would be 60% fewer plots to assess and land values would be more predictable, allowing the VOA to make more regular revaluations.

Lord Bourne of Aberystwyth: My Lords, we are having more regular revaluations but I say to the noble Baroness—this is on a slightly different point from the question—that history is littered with examples of ill-thought-through property taxes and we must be very careful about going there. We need to take time on this.

Lord Watts (Lab): My Lords, when any Government have a problem, they normally set up a review body with no set time for when it will give its findings. Can the Minister give a set date for this review so that we are not asking regularly for the latest position on it?

Lord Bourne of Aberystwyth: My Lords, I anticipate that questions will arise regularly, as they rightly should. We have always been clear that the review will happen in 2019, and I have reiterated that today. There is no doubt on the position: we want to let the new system operate fairly. As I said, it only started in the spring of 2017, it is making progress and we are having regular meetings to update. I think that is a fair position.

The Earl of Lytton (CB): My Lords, while drawing the House's attention to my professional interest in business rates matters, I put it to the Minister that the Government's response indicated a review by, not during, 2019. Problems with "check, challenge, appeal" have been ongoing since the beta test stage two years ago and, despite the intervention of HMRC's digital team in the summer of 2017, far too many glitches, impediments, shortcomings and so on persist. Given the continuing criticism of CCA's functionality, will the Minister undertake as part of any review to have the system independently audited and the findings published?

Lord Bourne of Aberystwyth: My Lords, I pay tribute to the noble Earl, who has been very active in this area. Two hours ago, he sent me a list of issues he is concerned about, which I will ensure that officials address. In the process of reading it, I noted his acknowledgement that the system has improved. More work needs to be done, as I said, but we hold regular meetings to review progress and speak to chief executives and officials to ensure that it continues.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, could this be one of the few messes not caused by Brexit?

Lord Bourne of Aberystwyth: My Lords, no Question is complete without a contribution from the noble Lord. This is one of the many areas where we are making good progress—as we are on Brexit too.

Baroness Maddock (LD): My Lords, the Minister dismissed the idea of land value taxation. Is he aware that it operates in many countries entirely successfully, so it is not something that does not work?

Lord Bourne of Aberystwyth: My Lords, I did not dismiss it; I just added a note of caution, saying that we should not rush into these things. From memory, I think that was the position of the Liberal Democrats in the coalition years. These things have to be thought through.

Yemen

Question

2.51 pm

Asked by ***Baroness Anelay of St Johns***

To ask Her Majesty's Government what assessment they have made of progress to resolve the political and humanitarian crisis in Yemen.

Baroness Goldie (Con): My Lords, the only solution to the humanitarian crisis in Yemen is through a political settlement. The situation remains deeply concerning, with 80% of people needing humanitarian assistance. The Foreign Secretary co-hosted the Yemen ministerial quad on 13 February in Warsaw and discussed measures to resolve the political and humanitarian situation. Quad members reaffirmed their support for the UN-led peace process and implementation of the Stockholm agreements.

Baroness Anelay of St Johns (Con): I thank my noble friend the Minister, but the United Nations says that $4.2 billion is needed to give aid to 19 million people in Yemen. When the Minister, my right honourable friend Alistair Burt, was in Saudi Arabia last week, what assurances did he get that the Saudis would make a considerable contribution to the pledging conference taking place tomorrow in Geneva and ensure that they and their allies, the Hadis, stop killing civilians?

Baroness Goldie: My noble friend raises a very important point. As she said, the upcoming pledging conference that starts tomorrow is a very important occasion. It is important that all donors provide significant funding for the UN's 2019 humanitarian response plan. The 2019 appeal will be the largest in the world. The Prime Minister's announcement yesterday set a fine example: the UK has announced new aid worth £200 million. That money will feed millions of people, provide water and sanitation to those most in need, and bring the total amount committed by the UK since the start of the four-year conflict to £770 million. Going back to my noble friend's Question, I hope that others are watching, taking note and preparing to copy us.

Baroness Northover (LD): My Lords, the Government say that their sale of arms to Saudi Arabia falls narrowly on the right side of international humanitarian law, but the International Relations Select Committee judges that such sales are narrowly on the wrong side. Did the Foreign Secretary—the same Foreign Secretary to whom the Minister just referred—write to the German Government, as *Der Spiegel* reports, urging them to lift their ban? Is this what the noble Baroness, Lady Fairhead, meant last week when she said that the Government were taking this matter extremely seriously?

Baroness Goldie: The position of the United Kingdom Government in relation to exports of arms to Saudi Arabia is clear and well stated. I take this opportunity to thank the International Relations Committee of this House for a very thorough report. The report did make an observation about exports of arms to Saudi Arabia. I was interested in what the report said because it acknowledged very honestly that "fine judgements" had to be made. It also concluded, very honestly, that, "conclusive evidence is not yet available".

I cannot speak for the German Government but I can say on behalf of the United Kingdom Government that we take our export responsibilities very seriously and we operate one of the most robust export control regimes in the world.

Lord Hannay of Chiswick (CB): My Lords, does the Minister recognise that this is now the second time that a Minister has replied to a Question on Yemen since your Lordships' International Relations Committee produced its report on this with a number of recommendations, and that not a single one of those recommendations has been addressed in those two replies? Can that silence now be brought to an end? Just to help the Minister, two of the questions that she could address at the Dispatch Box now are: first, that the British Government should consider appointing a special representative to strengthen the UN's hand in the peace settlement; and, secondly, that if any party, particularly Saudi Arabia or the Emirates, were to take action that went against international humanitarian law or to block medicine or food supplies, arms contracts would be suspended.

Baroness Goldie: First, in relation to the report to which the noble Lord referred, the Government will consider and respond to it. The report is of a fairly recent vintage and I do not think that it would be reasonable to expect the Government to respond fully in the relatively short period of time which has elapsed. On his specific question about an envoy, which was one of the recommendations made in the report, I observe that in the past fortnight the Prime Minister and the Foreign Secretary have personally pushed the international community to put its full weight behind the UN-led peace process and to do more to address the terrible humanitarian crisis. What the Prime Minister announced yesterday is very much an example of Britain putting its money where its mouth is.

Lord Judd (Lab): My Lords, the Question refers to the political solution, which obviously must be in the best interests of the people of Yemen. Does she agree that the problem here is that any part we want to play in bringing about a legal solution is being severely undermined because our credibility is totally in question as the result of our obstinate continuation, for the time being at least, of arms exports to Saudi Arabia? Do the Government take a minimalist or a proactive approach to the European code of conduct on arms sales? Has the time not come to have a policy in Britain that we says we promote arms sales only where they are conducted with our close allies or where we are certain that we can make a specific contribution to establishing peace and stability across the world?

Baroness Goldie: Successive Governments have had to contend with the challenges of a regime and an arms treaty which govern the sale and export of arms by this country to other states. It is a regime which this Government take extremely seriously. Each licence application is rigorously assessed against the consolidated EU and national arms export licensing criteria which require the Government to think hard about end use and the capability that the exports will provide. The Government will not grant a licence if to do so would be inconsistent with these criteria.

Lord Roberts of Llandudno (LD): My Lords, is it the case that we have exported nearly £2 billion-worth of armaments to Saudi Arabia over the past six or seven years? Is that really justified? Is it not hypocrisy

on our part to sell armaments that bomb, destroy and maim while at the same time handing out some aid? Is it not time that the Government got their morals right?

Baroness Goldie: The whole issue of arms exports is a delicate one—an honestly conceded dilemma by the committee of this House, which referred to "fine judgements". Those are what successive Governments have had to make. The committee also said that,

"conclusive evidence is not yet available".

I merely point out to the House that a framework exists, the Government rigorously and robustly test exports against that framework, and, if they felt they could not satisfy the criteria by which they are bound, they would not export arms.

Mental Health: Eating Disorders

Question

3 pm

Asked by ***Baroness Parminter***

To ask Her Majesty's Government what steps they are taking to ensure that those suffering from an eating disorder are able to access treatment and support.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, eating disorders are life-threatening conditions, and it is the priority of this Government to ensure that everyone with an eating disorder can access quick, specialist help when necessary. For children and young people we have waiting time standards to improve access to eating disorder services, and it is encouraging to see a reduction in waiting times compared with last year. Findings from a national review are being reviewed to inform future improvements to adult eating disorder services.

Baroness Parminter (LD): I thank the Minister for that reply. Hospital admissions have more than doubled in the last six years, while out-patient services for adults are underresourced and unable to support people to be treated in the community. What do the Government intend to do to improve adult eating disorder services to treat, as the Minister rightly calls them, these life-threatening, severe mental illnesses?

Baroness Blackwood of North Oxford: First, at the beginning of Eating Disorders Awareness Week, I pay tribute to mental health professionals, charities, researchers and campaigners who have done so much to raise awareness, fight stigma and help the Government and the NHS improve mental health services over recent years. The noble Baroness is absolutely right that, while we have made a lot of progress with children's eating disorder services, we must not forget adult services. That is why the *NHS Long Term Plan* has committed to test four-week waiting times for adults and older adult community mental health teams. We have not exactly pinned down what the scope of these pilots will be, but we expect that areas in receipt of new funding will be those that will expand those services.

Baroness Finlay of Llandaff (CB): My Lords, given the high mortality and morbidity in both adult males and adult females—particularly university students who may be postgraduate students and who, at the time of presenting, may not have significantly changed their body mass index but whose risk of dying actually goes up enormously if they are not referred at that point—will the Government undertake to request that contracts from NHS England to services no longer require body mass index as a referral criteria? I declare my interest as chair of governors at Cardiff Metropolitan University.

Baroness Blackwood of North Oxford: The noble Baroness is exactly right. NICE clinical guidance is clear that people should not be rejected for treatment solely on the grounds of their weight or body mass index. This is an issue that Hope Virgo in particular has campaigned on very effectively to improve awareness of treatment of eating disorders. She has discussed her campaign with NHS England and the department, and I am pleased to confirm that my ministerial colleague Jackie Doyle-Price will meet with her in the coming weeks to see what more can be done.

Baroness Chisholm of Owlpen (Con): My Lords, I ask my noble friend the Minister to remember young boys and men when thinking about future policies and treatment. They are often forgotten, and I think we are seeing quite a rise in men and boys with this problem.

Baroness Blackwood of North Oxford: I thank my noble friend for that question and in particular for raising the issue of stigma. We have put £150 million and extended over 70 services into the community specifically so that services can be more accessible to young girls and boys and so that people can feel free to come forward and seek help where they need it.

Baroness Thornton (Lab): It is to be welcomed that the proportion of children with an eating disorder starting urgent treatment within a week or so remains quite high in London, but it is much higher than the rest of the country, according to the data analysed by the Royal College of Psychiatrists. What will the Government do to address what looks like a postcode lottery if your child needs support and help with an eating disorder and you happen to be in Bradford?

Baroness Blackwood of North Oxford: I am grateful to the noble Baroness, Lady Thornton, for raising the issue of ensuring that we improve services across the country and do not have a postcode lottery. Since July, NHS England has opened up 126 beds for children and young people in areas of the greatest geographical challenge to ensure that we can address exactly that problem.

Baroness Bull (CB): My Lords—

Lord McColl of Dulwich (Con): My Lords—

Baroness Bull: I thank the noble Lord for giving way. While access to treatment is vital, I hope the Minister will agree that it is equally important to address modifiable risk factors for eating disorders. There is good evidence that weight-related bullying, teasing and criticism increase the risk of eating disorders, and young people studying physical subjects such as dance or sport are particularly vulnerable to inappropriate comments from teachers and coaches. The Minister will be aware that size is not a protected characteristic under the Equality Act 2010. Given this, can she confirm that guidance is available to support teachers who are dealing with young people in using language that avoids triggering long-term issues around eating and body image?

Baroness Blackwood of North Oxford: The noble Baroness is absolutely right. It is very important we send the right messages to young people at exactly the right time. That is why we are implementing the children and young people's Green Paper on the basis that early intervention and prevention are the priority in mental health. In December 2018, we announced 25 trailblazer sites that will provide school and college-based services to help children and young people with mild to moderate mental health issues, staffed by a new workforce. Twelve of these trailblazer areas will pilot a new waiting time standard for children and young people's mental health services. This is to address exactly the issue that the noble Baroness raised.

Lord McColl of Dulwich: My Lords, does the Minister agree that, when we talk about eating disorders, the most serious eating disorder by far is the obesity epidemic, which is now impinging on the Armed Forces? Ejector seats in fighter planes are having to be modified because of obesity, and no doubt the noble Lord, Lord West, will be interested, because we may have to enlarge the escape hatches of submarines.

Baroness Blackwood of North Oxford: I thank my noble friend for that question. I do not feel able to comment on ejector seats or submarine hatches—I may have to look to the noble Lord, Lord West, for advice on that matter—but I believe that obesity is a serious issue, and that is exactly why we introduced the children's obesity plan.

Baroness Walmsley (LD): My Lords, in some areas, referrals for treatment are at a later stage of the illness than otherwise because some CCGs have increased the threshold for criteria to be satisfied before a referral can be made. This will result in increased cost and, very often, decreased effectiveness. Have the Government done any assessment of this situation and the impact it could have on patients?

Baroness Blackwood of North Oxford: The noble Baroness raises an important point which follows on from the point raised by the noble Baroness, Lady Finlay. NICE guidance is clear: people should not be rejected for treatment solely on the grounds of weight or body mass index. The issue of threshold is similar and will be looked into by my honourable friend Jackie Doyle-Price. We will be taking this on as a very serious matter indeed.

Draft Registration of Overseas Entities Bill Committee

Membership Motion

3.07 pm

Moved by ***The Senior Deputy Speaker***

That the Commons message of 20 February be considered and that a Committee of six Lords be appointed to join with the Committee appointed by the Commons to consider and report on the draft Registration of Overseas Entities Bill presented to both Houses on 23 July 2018 (Cm 9635) and that the Committee should report on the draft Bill by 10 May 2019;

That, as proposed by the Committee of Selection, the following members be appointed to the Committee:

Barker, B. Faulkner of Worcester, L. Faulks, L. Garnier, L. Haworth, L. St John of Bletso, L.;

That the Committee have power to agree with the Committee appointed by the Commons in the appointment of a Chairman;

That the Committee have power to send for persons, papers and records;

That the Committee have power to appoint specialist advisers;

That the Committee have leave to report from time to time;

That the Committee have power to adjourn from place to place within the United Kingdom;

That the reports of the Committee from time to time shall be printed, regardless of any adjournment of the House;

That the evidence taken by the Committee shall, if the Committee so wishes, be published; and

That the quorum of the Committee shall be two.

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I want to ask the Senior Deputy Speaker a couple of questions, of which I have not given him any notice whatever—for which I apologise, but I have only just realised that this was on the Order Paper today.

The first question is this. Was this matter consider by the Liaison Committee, of which I am a member? I should know if it was, and I cannot remember it being considered by that committee. I understood that the setting up of all committees and Joint Committees of this House came through the Liaison Committee. It would be useful to know that.

The second question is rather more important. The Motion states that,

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

This is the second year of a Parliament which was extended to two years in order to consider Brexit and its implications. By 10 May, we will have been sitting for two years, and there is no sign or intimation of the Prorogation of Parliament and a date for the next Queen's Speech. No Motion has been tabled to extend Parliament for another year—which would be unprecedented. I tabled a question about prorogation, which the Leader of the House was unable to answer, last week. I do not blame her—it is beyond her control—but it would be helpful to know.

This Parliament is getting into a mess because of Brexit. We do not know what is happening—we do not even know whether there will be a vote in the other place this week that is meaningful, deliberative and decisive—and this could go on and on. To ask this committee to report by 10 May 2019 begs the question as to whether Parliament will be prorogued, how long this Parliament will last and how long this Brexit debacle will continue. I do not blame the Senior Deputy Speaker for any of the trouble—absolutely not—but, sadly, he is the poor man who has got to answer this. If he cannot answer it I will find another opportunity to raise it.

Lord Trefgarne (Con): I want to raise a small technical point. I do not oppose this Motion but I notice that a quorum for this committee is only two. Is it considered that just two noble Lords, or one noble Lord and one honourable or right honourable Member of another place, is sufficient for the committee to function?

The Senior Deputy Speaker (Lord McFall of Alcluith) (Non-Afl): I am mightily relieved by the comment of the noble Lord, Lord Foulkes, that it is not my responsibility.

On the first question, yes, the Liaison Committee wrote to us and it was approved. On the noble Lord's second question—he is taking me out of my comfort zone on this issue—the May date is the reporting date and if the committee has not finished its business by then, it can be reappointed and go into the next Session.

On the point made by the noble Lord, Lord Trefgarne, the quorum of sub-committees of the European Committee is two. Other Joint Committees, such as the Joint Committee on Human Rights and the Joint Committee on Statutory Instruments, also have a quorum of two from each House. The quorum of a recent pre-legislative scrutiny committee of the Joint Committee on the Draft Health Service Safety Investigations Bill was also two from each House. Therefore, it is consistent.

Motion agreed.

Civil Procedure (Amendment) (EU Exit) Rules 2019

Motion to Approve

3.12 pm

Moved by ***Baroness Goldie***

That the Rules laid before the House on 31 January be approved.

Baroness Goldie (Con): My Lords, I beg to move the two Motions standing in my name on the Order Paper.

Lord Foulkes of Cumnock (Lab Co-op): Object.

Baroness Goldie: It may assist the noble Lord if I explain that I am not taking the two instruments together. I am going to speak to them together but they will be moved separately.

Lord Adonis (Lab): They should be debated separately; not only moved separately.

Baroness Goldie: Then let us start the debate.

My Lords, the Sanctions and Anti-Money Laundering Act 2018 passed through this House last year. For noble Lords not familiar with this legislation, the sanctions Act provides the legislative framework for the UK to continue to meet its international obligations, to implement UK autonomous sanctions and to update our anti-money laundering framework—although the latter is not part of our discussion today—after we leave the EU.

Before I explain the nature of these instruments, I would like to provide some background and to share the context of our approach to sanctions. The UK has strong expertise in this area and, following our departure from the EU, we want to continue working together with international partners to ensure we can develop and implement effective sanctions in the future. As an EU member state we currently implement more than 30 sanctions regimes, designating around 2,000 individuals and entities. These include country-specific sanctions regimes, as well as regimes targeting Daesh, al-Qaeda and other terrorist groups. Noble Lords will be aware that the Prime Minister has committed that the UK will look to carry over EU sanctions into UK law after the UK's departure from the EU. Applying pressure through sanctions, together with international partners, is one means of enabling us to deliver our foreign policy objectives.

3.15 pm

One important feature of the sanctions Act that noble Lords discussed in detail during its passage through this House is the right provided to designated persons to challenge their designation. Chapter 2 of the Act provides a route for the designated person to request that the Minister carry out an administrative review of their designation. The sanctions review procedure regulations came into force on 7 January and set out the process to be applied in relation to such reviews. A review can be requested for various reasons, including where a designated person believes that the reasons for their designation are incorrect or that particular information associated with the designation is not correct. If, following the review, the Minister's decision is to uphold the designation, the designated person has the right under Section 38 of the Act to apply to the High Court in England and Wales and Northern Ireland or to the Court of Session in Scotland for the decision made against them to be set aside.

The two statutory instruments before us today set out the process applicable in relation to such court challenges, and are a technical step in the establishment of the new autonomous UK sanctions regime. They make technical amendments to the Civil Procedure

[Baroness Goldie]
Rules in England and Wales and the Rules of the Court of Judicature in Northern Ireland. They do not make any new substantive provisions. The instruments provide the procedure that will apply when challenges to sanctions decisions are brought before the courts of England and Wales, and Northern Ireland, under the sanctions Act. These instruments will allow the Government to apply to the courts to use the closed material procedure where appropriate in relation to such challenges. This will enable the Government to defend legal challenges against sanctions decisions which are underpinned by sensitive information. I should make it clear to noble Lords that the UK will use public unclassified material wherever possible when maintaining and pursuing sanctions listings. In a minority of cases, classified material may be necessary to support or sustain certain listings. These rules of court thus provide for closed sessions for those exceptional circumstances where the Government have used classified information to support a listing which is then challenged in court.

As I said earlier, the mechanism for considering such information is an extension of the existing tried and tested procedure, which allows full consideration of the facts and protects the rights of entities. Under Section 40 of the sanctions Act, we will apply Sections 66 to 68 of the Counter-Terrorism Act 2008 to any such challenges against sanctions decisions made under the sanctions Act. Rules of court already made under the Courter-Terrorism Act 2008 and amended in a similar way to these instruments by the Terrorist Asset-Freezing etc. Act 2010 allow the Treasury to ask for closed material procedures to apply to proceedings involving challenges to financial restriction orders made under that Act.

The instruments we are considering make technical amendments to Part 79 of the Civil Procedure Rules 1998 and to Order 116B of the Rules of the Court of Judicature (Northern Ireland) 1980 to extend existing procedures to challenges against decisions made under the sanctions Act. They state that challenges against sanctions decisions under the sanctions Act should be treated in the same way as challenges against financial restrictions decisions made under the Counter-Terrorism Act 2008.

I should emphasise that failure to have these instruments in place by the day we leave the EU would represent a significant risk. It would mean that there would be no closed material procedure set out for court reviews against designation decisions under the sanctions Act, including the availability of the closed material procedure. The Government would not be able to defend legal challenges to sanctions where sensitive information underpins a sanctions designation. This could result in the designation being revoked. Obviously revoking designations could have a significant impact on the delivery of key foreign policy objectives, reduce our ability to co-ordinate sanctions actions with close allies and potentially allow individuals involved in dangerous activities to travel to or invest in the UK.

Before making the rules of court, the Lord Chancellor consulted the Lord Chief Justice of England and Wales and the Lord Chief Justice of Northern Ireland in January 2019, and they raised no concerns. I welcome this opportunity to discuss the statutory instruments and to answer questions from noble Lords. I beg to move.

Lord Foulkes of Cumnock: My Lords, I hesitated to rise because I was sure that a number of other people would raise issues. A number of distinguished lawyers, people who understand the constitution better than I do and people who understand, even more than I do, the implications of what we are doing are present. We are dealing with something of monumental importance. Those of us who are astonished at the way that the Prime Minister is acting at the moment—as though she were a dictator in a banana republic—are amazed at the way that some Members of Parliament of both Houses seem to be sitting back and letting it happen.

The implications are astonishing. We have already looked at them in relation to visas. We are now told that if we come out of the European Union at the end of March we will have to have visas, and it will cost €60 to go to countries which we can now go to freely and as many times as we like. We will have lorry parks all over Kent because of the arrangements for customs clearance. There are questions over medicines and food supplies, which people are really worried about. The president of the CBI is warning us on behalf of all industries of the Armageddon that we face. On aviation, we have already discussed how we are still concerned that flights might not be guaranteed to all destinations after the end of March.

We now come to a life or death matter which is of great importance to everyone. We are talking about sanctions against Daesh or ISIS, action against Russian oligarchs and dealing with terrorists. These are major issues. All it needs is for some mistakes to creep into the statutory instrument that we are considering for something dreadful to happen and for us to fail to be able to deal with terrorists in the future or impose sanctions when we wish to. There are likely to be unintended consequences if we get this wrong.

Normally, if we were starting from scratch, we would go through primary legislation line by line. The noble and learned Lord, Lord Mackay, with his huge knowledge, would alert us to some of the imperfections contained in it and my good friend, the noble and learned Lord, Lord Hope—again, from his great experience—would point out some of the difficulties. We would go through it line by line and be able to consider and vote on amendments. However, because this is being dealt with through a statutory instrument it is, again, a take-it-or-leave-it situation.

It is absolutely unacceptable for a Parliament to be treated in this way. I find it astonishing that people whom I know to be manifestly concerned are willing to sit quietly and let this get through. This is not acting as a Parliament and scrutinising something in the way that we should; it is a meek acceptance of something being pushed through, having been started to patch up differences in the Conservative Party for party-political reasons by David Cameron, who has now fled the scene. He is no longer with us or taking any responsibility for the mess that he has got us into. Other people spread lies during the leave campaign about what was to happen and some of them, for a while, took the Queen's shilling, but they are no longer with us or

taking responsibility for what is happening. It is outrageous that this is being undertaken. I hope that at some point before the end of March, more and more people will get up and call the situation unacceptable, which it is. If we allow all these statutory instruments to go through again and again—day after day, without question or challenge—then we are not fulfilling our function as a legislative Chamber of the Houses of Parliament of the United Kingdom, and we should be ashamed.

Baroness McIntosh of Pickering (Con): I am not outraged. I welcome the statutory instrument. I have merely a factual question to put to the Minister. Paragraph 3.4 on page 1 of the Explanatory Memorandum says:

> "In the view of the Department, for the purposes of Standing Order … the subject matter of this entire instrument would be within the devolved legislative competence of the Scottish Parliament if equivalent provision in relation to Scotland were included in the Act of the Scottish Parliament".

My understanding is that the current legislation is governed by the regulations adopted in Scotland in 2017. Can the Minister tell us how the department in question reached that conclusion, and what discussions were had with the relevant department and with the Scottish Parliament itself before bringing forward the statutory instrument today?

Lord Thomas of Gresford (LD): My Lords, closed material procedures were introduced by the Labour Government around 2008—or possibly before then—when they were subject to considerable controversy and discussion. They were introduced for a number of named, specialist tribunals in the context of terrorism; the applicability of closed material procedures in cases that involved the safety of the public were obviously a matter of balance as to where public interest lay.

Since then, these procedures have crept in scope—the noble and learned Lord, Lord Hope, used that expression in one of the cases that have been decided in relation to them. There was great controversy as to whether a court of appeal should hold proceedings with closed material procedures in place. The Supreme Court has now come round to them but was very reluctant to do so. The creep of the scope has now extended to the challenges to sanctions decisions. As the Explanatory Memorandum makes clear, this will be the first instance of the use of the powers in Sections 66 to 68 of the Counter-Terrorism Act 2008 in the context of sanctions.

It is unfortunate that a Minister who is challenged on a decision that he has made with material in front of him, can go to the court and say, "We must have in place these closed material procedures so that the person who is challenging my decision never sees the full basis upon which that decision was made". A special advocate is then brought in to represent his interests—but I think it is regarded by all as a very unsatisfactory way of doing justice and carrying out the duties of the court.

Lord Adonis: I am grateful to the noble Lord for giving way. Can he explain to the House how this is a change? I thought the whole purpose of this regulation was that nothing would change, but he is telling us that this will be the first introduction of closed material procedures in respect of sanctions proceedings. Can he explain to the House how that can be? It sounds like a significant change—not "no change".

Lord Thomas of Gresford: The reason these regulations have come forward is the passing of the Sanctions and Anti-Money Laundering Act 2018, which was the very first piece of Brexit legislation to be brought before Parliament. Section 40 gives the Minister the right to make rules of court in order to carry out the procedures set out in that section, which are based upon the Counter-Terrorism Act. So it is a change of rules that these regulations are dealing with. The actual discussion about whether they should apply to sanctions was appropriate when the Bill was going through this House last year.

3.30 pm

Lord Adonis: Did the House agree that the closed material procedures could be used in these cases?

Lord Thomas of Gresford: The House agreed at that point. All I am doing is moaning slightly about the further extension of the procedures. There is nothing that I can do about that because they already passed into law in the 2018 Bill last year. I sat in on some of the proceedings but did not actually take part, although I know that others who are present did so. As I say, I am kicking against the further extension of these closed material procedures in the field of sanctions.

I have a second point, which is perhaps a bit more specific. Part 3 of this SI is extremely confusing. I do not understand why the statutory instrument should not simply have replaced Part 79 instead of making minor alterations to 20 of the 29 paragraphs. I would be glad to know why that has happened, why it was not replaced with a new Part 79 and whether this is the proposed procedure for future regulations brought forward to deal with Brexit legislation.

Baroness Northover (LD): My Lords, I want to add to what my noble friend Lord Thomas of Gresford has said and to comment on what the noble Lord, Lord Adonis, said. The noble Lord may remember that that first piece of Brexit legislation was very controversial and full of extra powers given to Ministers, and the noble and learned Lord, Lord Judge, who is in his place, was an extraordinary help to the House in highlighting those. On Report and thereafter, the focus was on several of the most egregious uses of those powers, but they were littered throughout the Bill. The noble Lord, Lord Adonis, is right to highlight this as one of the changes.

Lord Hope of Craighead (CB): My Lords, I would like to follow the observations of the noble Lord, Lord Thomas, mainly because I have been involved in one or two cases in the Supreme Court where this type of procedure has been used. It causes real problems for appellate judges because one of the features of the closed procedure is that you cannot give reasons for your decision that can be made public so you are

[Lord Hope of Craighead]
taking a decision in private, the reasons for which are kept private as well. That is the situation that we are faced with.

With regard to the content of this measure, however, I cannot see it as extending the procedure any further than it exists at present. In response to the noble Lord, Lord Foulkes, I did not get up earlier because I could not see anything to comment on in the substance of the instrument. I cannot speak for other noble and learned Lords but I think there is some virtue in remaining silent if you have nothing to say.

Lord Adonis: My Lords, I have never suffered from that difficulty. What the noble and learned Lord has said is very reassuring. It seems to a non-lawyer reading the Explanatory Memorandum as if the issues at stake are significant, not minor. From what he is saying, I think it is fair to say that while no one doubts the significance of closed-material procedures, let alone the sanctions regimes to which they apply, this does not involve any changes. Some of my good friends on the Lib Dem Benches are very wary of closed material procedures, as am I. Indeed, I find the noble and learned Lord's brief description of them—judgments in which no reasons are given in public at all—to be a matter of extreme concern, and they should take place only in the most extreme circumstances. I am amazed that the noble and learned Lord, Lord Judge, allowed measures like that to pass the House at all, given his views on the growing extent of executive powers.

However, on the basis that there is in fact no actual change in powers that have already been granted by Parliament, clearly we would be doing the right thing just to allow this order to go through.

Lord Collins of Highbury (Lab): My Lords, I will speak very briefly. Of course, we had extensive debates when the first Brexit Bill on sanctions went through and we have certainly spent a lot of time trying to restrict executive powers. However, one thing that was absolutely clear when we took that Bill through was that we needed sanctions regimes. We needed them to ensure that our progressive foreign policy—under whichever Government—could be maintained. Therefore, the Opposition supported the Bill and it is now an Act. I certainly cannot see any reason to not support the straightforward extension in this SI.

I have a couple of questions. One is on consultation; I expected my noble friend Lord Adonis to mention that it seemed rather limited. Is that the norm in these circumstances? Could it have gone a bit further? Also, on the timing, why has it taken so long to bring this rather simple SI forward? Should it not have come forward earlier, bearing in mind that it is linked to other SIs?

Baroness Goldie: My Lords, I am very grateful to those who have contributed. Let me address the important questions raised. The noble Lord, Lord Foulkes, raised a wide range of issues. His pertinent question was "Where are the lawyers?"; he asked why they were not standing up. The noble and learned Lord, Lord Hope, answered that question neatly, to use a judicial phrase, by stating that he had nothing to say. That is perhaps characteristic of him sometimes—although fortunately, for the benefit of this House, not always. I think it is a very helpful commentary on what are technically fairly mechanical provisions, if I might describe them as such.

On the important point about scrutiny, I say to the noble Lord, Lord Foulkes, that these instruments are made under an Act of primary legislation—Section 40 of the Sanctions and Anti-Money Laundering Act 2018—which this House went through line by line. The details of these SIs raised no new issues. The noble Lord, Lord Thomas of Gresford, had a similar concern about that.

My noble friend Lady McIntosh of Pickering raised the question of Scotland and Section 38 of the sanctions Act, which makes provisions to the effect that these rules of court need be made by Westminster in relation only to England, Wales and Northern Ireland. Scotland is to make its own rules, as per the primary legislation. As she will be aware, rules of court in Scotland are different and it is entirely appropriate that the devolved Parliament is placed in charge of these matters.

The noble Lord, Lord Thomas of Gresford, also raised what he described as the creep of closed material procedures. I understand his concern, but let me try to allay it. The Government believe that these procedures are right for cases which involve national security material. Previously, these cases were unable to proceed, which meant that questions posed by claimants remained unanswered. That seems unsatisfactory. The defendant—the Government—could not fully present their case, which is also unsatisfactory. In that event, designations might have had to be revoked. The purpose of the sanctions Act, augmented by these regulations, is to ensure that the hiatus, or dilemma, for both Government and applicants is resolved.

The noble Lord, Lord Thomas of Gresford, also raised an interesting question about the drafting format, asking why we were amending Part 79 rather than creating a new one. Amending the existing rules of court was felt to be the most appropriate and proportionate way to draft these instruments, because it ensures that the effect of closed material proceedings is unchanged in the context of sanctions decisions; in other words, there is a consistency about the provisions.

The noble Lord, Lord Collins, asked about delay. As he is aware, a very considerable volume of statutory instruments has been reaching the other place and this House. I acknowledge that a large body of work has had to be resolved and processed by this House. That has gone through the committee and sifting procedures. I accept that this instrument has been fairly late coming to this House but I hope that your Lordships accept, given the very technical nature of these provisions, which do not create any new policy matters, that it has been addressed adequately by the Government and that your Lordships have been given the opportunity to scrutinise them.

Lord Foulkes of Cumnock: I find the noble Baroness's reply very reassuring. I am most grateful to her.

Baroness Goldie: I never cease to be amazed and surprised by the noble Lord, Lord Foulkes. I never quite know what will be aimed at me from that section of the Benches opposite, but I am very grateful to him for his observation.

I thank noble Lords for their helpful contributions. As I outlined in my opening speech, these instruments are crucial for setting out appropriate procedure for court reviews against sanctions decisions made under the sanctions Act.

Motion agreed.

Rules of the Court of Judicature (Northern Ireland) (Amendment) (EU Exit) 2019

Motion to Approve

3.41 pm

Moved by ***Baroness Goldie***

That the Rules laid before the House on 31 January be approved.

Lord Adonis (Lab): My Lords, the question that presents itself on this instrument to those of us who again are not expert in the field is whether there is any Northern Ireland dimension to it, particularly in respect of terrorist or paramilitary financing, or is this purely to do with international sanctions regimes and the application of their rules after EU exit? The very fact that Northern Ireland appeared in the title of this instrument led some of us to be concerned as to whether there were wider implications.

Baroness Goldie (Con): My understanding is that it ultimately depends on whether we have a deal or no deal. If we have a deal, the UK Government and the EU will be pledged to protect the Northern Ireland border, respect the Belfast agreement and do everything possible to ensure that the harmony and peace that these communities have known will continue. That is certainly what we all want. In the event of no deal, the Prime Minister has pledged that there would be urgent discussions with the Republic of Ireland and the EU on how best to ensure that the environment in which the two communities of Northern Ireland and the Republic have existed would, in every way possible, as far as we can manage, be allowed to continue.

Again my understanding is that, if we leave the EU with a deal, the desire would be to continue the sanctions regime with which we are familiar. Northern Ireland is a part of the United Kingdom. Therefore, under the agreement—if it is agreed—and the ultimate political declaration there would be a desire to continue a uniform sanctions arrangement, albeit that we would be a free-standing state in international law, as would the EU.

If I have failed to answer the noble Lord adequately, I will write to him with further details, but my understanding is that this SI should not in any way affect the current arrangements, which we hope will continue.

Motion agreed.

Money Market Funds (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.43 pm

Tabled by ***Lord Bates***

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

Relevant document: 15th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Lord Young of Cookham (Con): My Lords, I will speak on behalf of my noble friend. The Treasury has been undertaking a programme of legislation to ensure that, if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime for financial services in the UK. The Treasury is laying SIs under the EU withdrawal Act to deliver this, and a number of debates on these SIs have already been undertaken here and in another place.

This SI is part of this programme, and has been debated and approved by the other place. The SI will fix deficiencies in UK law on regulations for money market funds to ensure that they continue to operate effectively post exit. The approach taken in this legislation aligns with that of other SIs laid under the EU withdrawal Act, providing continuity by maintaining existing legislation at the point of exit, but amending where necessary to ensure that it works effectively in a no-deal context.

The European regulation on money market funds relates to their establishment, management and marketing. These funds invest in highly liquid instruments—such as Treasury bonds—and provide a short-term, stable cash management function to charities, local government, businesses and other financial institutions. They are predominately used by investors as an alternative to bank deposits. The regulations were introduced as part of the response to the 2008 global financial crash, to preserve the integrity and stability of the EU market, and to ensure that money market funds are a resilient financial instrument. This is achieved by having further rules on prudential requirements, governance and transparency for operators of money market funds.

Money market funds are structured as either an Undertaking for Collective Investment in Transferable Securities or alternative investment funds. Consequently, they are required to comply with regulations that apply to UCITS or alternative investment funds. The regimes for UCITS and AIF managers have been separately amended to reflect the UK leaving the EU by the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 and Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019, which were made on Wednesday 20 February.

First, this draft instrument removes references to the European Union which are no longer appropriate, and to EU legislation which will not form part of retained EU law. These references will be replaced, to refer to the UK and to relevant domestic and retained EU legislation. Secondly, in line with the general approach taken in other instruments, this SI will transfer functions

[Lord Young of Cookham]
within the remit of EU authorities to UK institutions. All functions exercised by the European Commission will be transferred to the Treasury. These relate to creating rules on standards for money market funds, such as their liquidity and quantification of credit risk.

All functions exercised by the European Securities and Markets Authority will be transferred to the FCA. The FCA will become responsible for technical standards on how funds should stress test their funds, and for two operational powers to establish a register and reporting templates for money market funds. The FCA, as the UK's regulator for investment funds and the current national competent authority for money market funds, has extensive experience in the asset management sector and is therefore the most appropriate domestic institution to take on these functions from ESMA.

As previously stated, money market funds must be structured and regulated as UCITS or AIFs. This instrument makes provision to ensure that EU money market funds are able to use the temporary marketing permissions regime, which lasts for three years, as legislated for in the regulations for collective investment schemes and alternative investment fund managers. Following an assessment by the FCA and submitting a Written Ministerial Statement to both Houses, the Treasury will be able to extend this by a maximum of 12 months at a time. The temporary marketing permissions regime will allow for EEA money market funds which are currently marketed into the UK, and any subsequent money market fund structured as a UCITS sub-fund, to be able to continue to market into the UK as an MMF for up to three years after exit day.

This instrument amends the scope of the regulation to apply to the UK only, with the effect of only allowing the marketing of UK-authorised MMFs, or MMFs managed by UK fund managers. However, additional amendments maintain the eligibility for EEA MMFs with temporary permissions to continue to market in the UK at the end of the temporary marketing permissions regime period, if they gain the required permissions to market as a third-country fund under existing UK domestic frameworks.

Money market funds structured as UCITS will be required to gain authorisation under Section 272 of the FSMA, while for those structured as AIFs, their managers will need to notify under the national private placement regime.

The UK currently has a very small domestic market of money market funds, so these provisions address the cliff-edge risks that could arise as a consequence of defaulting to a UK-only market. This will ensure that UK investors can continue to access their investments and to have a choice of money market funds to use for cash management.

The Treasury has worked closely with the FCA in drafting this instrument. It has also engaged the financial services industry. This has included engagement with the Institutional Money Market Funds Association, which is the main industry body for money market funds. The House should be aware of remarks by its secretary-general, Jane Lowe, who stated:

"We believe the current draft SIs deal adequately with current EU legislation and consider that the dialogue between HM Treasury and industry was helpful to identify and iron out issues that arose".

On 21 November, the Treasury published the instrument in draft along with an explanatory policy note to maximise transparency to Parliament and industry.

To summarise, the Government believe that this SI is needed both to ensure that the regulatory regime for money market funds and their operators works effectively, if the UK leaves the EU without a deal or an implementation period, and to ensure continuity for the UK investors they serve. I hope that noble Lords will join me in supporting this instrument. I beg to move.

Lord Sharkey (LD): My Lords, I was grateful for the clarity of the Explanatory Memorandum and the impact assessment for this SI. I understand that the changes are necessary for the proper continuation in business of UK MMFs in a no-deal scenario. I also understand the importance of the temporary marketing permissions regime in allowing continued UK access for existing EEA MMFs, and I note the £250 billion of UK investment in these funds.

I also note that, as set out in paragraph 157 of the consolidated impact assessment,

"this SI transfers the European Commission powers to make delegated acts and implementing acts to HM Treasury, as a power to make regulations".

This refers, I think, to Regulation 18 of the SI, which states:

"Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument … Such regulations may … (a) contain incidental, supplemental, consequential and transitional provision; and (b) make different provision for different purposes".

It also states that such regulations will all follow the negative procedure. I was not sure of the purpose of the phrase,

"make different provision for different purposes",

or to what extent it extends the Treasury's latitude in drawing up these SIs. I would be grateful if the Minister could explain why this additional power is necessary and whether its scope is as unlimited as it might seem at first sight. I would also be grateful if the Minister could explain the use of the negative procedure for the SIs generated by the power. Is there not a case for using the affirmative procedure to allow Parliament more rigorous scrutiny in this obviously critical area of our financial services industry?

Baroness Kramer (LD): My Lords, like my colleagues on these Benches, I support this statutory instrument. It is necessary: to put it in technical terms, British investors in money market funds would be in a right pickle if we did not pass it, because, as the Minister has said, the domestic market is tiny.

However, I want to raise an issue which is repeated in many of the other statutory instruments before us. Paragraph 2.8 of the Explanatory Memorandum states:

"When the UK is no longer a member of the EU single market for financial services, it would not be appropriate for UK authorities to be obliged to share information or cooperate with the EU on a unilateral basis, with no guarantee of reciprocity".

I understand the emotional tag behind all this, but there is a wise old saying which goes: "An eye for an

eye and we all go blind". The 2008 financial crash and many of the other problems that we have had have come through fragmentation of regulation and the lack of information transfer between regulators in different locations and countries. I really do not understand why we are not seeking to do everything in our power to make sure that information flows continue. A money market fund that is being regulated by the FCA under the new statute following any kind of no deal might well be in the same family as other such funds being marketed in the EU 27. Therefore, something that flags up an issue or concern with one may well reflect through to the other, because it could be core to the administration and deep within the overarching family. Will the Minister explain the consequences of putting up any kind of barrier to existing information transfer and what risks we might be taking on? I am exceedingly concerned about fragmentation.

Lord Adonis (Lab): The noble Baroness had made an important point. We surely have an interest in giving unilateral assurances on transfer of information, because we have such a big interest in the health of our own financial services industry. Anything which ensures that dodgy practice is exposed and information exchanged in respect of it is in our interests, even if—by a complete failure of our negotiating capacity, which unfortunately the Government are guilty of the whole time at the moment—we do not get any reciprocal rights in respect of these transfers of information. The noble Baroness's question is very well made.

I have a question about the impact assessment. On page 17, it says that the familiarisation costs in respect of this instrument are estimated at £340 per firm and that the total cost is £7,200. Do I deduce from that that only 21 firms are affected, or is there an error and it should really read £7.2 million or something? That seems to be a point of some importance.

Lord Tunnicliffe (Lab): My Lords, I feel the need, once again, to express my repeated objection to being here. We are here to discuss no-deal statutory instruments: I believe the Government are being irresponsible in not ruling out a no-deal outcome. A no-deal outcome would be serious in every area of life, particularly in its economic impact and in its security impact. I also believe that it is possible that we may fall into a no-deal scenario by what could be described as "by accident". Accordingly, I will continue with my duty of scrutinising the SIs. The problem with this is that, when you come in on a Monday morning and people ask if you enjoyed the weather yesterday, you have to say: "What weather?" There was no weather for me; I was busy studying these five SIs. What made that even more irritating is that I failed to find any serious problems with them.

I have to admire the noble Lord, Lord Sharkey, for delving into the instruments themselves. I always find that pretty close to impossible, because of their habit of amending previous SIs that amend previous SIs that amend previous Acts. I will listen to the Minister's answer with interest. I also join the noble Baroness, Lady Kramer, in her concern at the tone of the Explanatory Memorandum on the matter of information. I know that the Minister will say that it is just turning it from an obligation to an option. I am sure that is what the words say, but I hope that if we get into the extraordinarily unfortunate situation of leaving with no deal, the appropriate regulatory authorities in the United Kingdom go out of their way to co-operate with regulators in the European Union. These SIs—this one and quite a number of the others—touch on the core issues which caused the 2008-09 crisis, and overall the SIs we are looking at are sensible in making these markets safer.

4 pm

Having said all that, I noticed the standard format: references are changed appropriately; scope is changed appropriately; functions are allocated appropriately; and then there is the old favourite of a temporary marketing permissions regime of three years and as many 12 months as the Treasury feels it needs. However, when you have read all the way through these things, the fundamental issue is that the provisions are asymmetric; they do nothing to allow UK firms to trade in the EU, which will be one of the many economically negative things that are coming out of this exercise.

Lord Young of Cookham: I am grateful to all noble Lords who have taken part in this short debate and hope that there is no substantive objection to the powers which are proposed in this statutory instrument. I will try to deal with the questions that were raised by noble Lords.

The noble Lord, Lord Sharkey, asked why there is an additional power to make regulations. The power to make delegated regulations simply transfers to the Treasury the power in the EU regulation, which lies with the Commission, to make technical standards such as specifying credit quality assessment criteria. As these are basically technical standards, we believe that the negative procedure is appropriate. I may stand to be corrected, but I do not think that any of the committees that scrutinise legislation in this House have suggested otherwise.

Both the noble Baroness, Lady Kramer, and the noble Lord, Lord Adonis, raised the question of removing the legal obligation to share information. I understand the concern, but I want to reassure both of them that this will not preclude UK supervisors from sharing information with EU authorities where necessary. I take the point that it is important that there is a good cross-flow of information between the UK and regulators in the EU, and there is already a good domestic framework for co-operation on information sharing with countries outside. We already have that, and the legislation allows for that. If you look at the Financial Services and Markets Act 2000 and the associate secondary legislation, all the necessary powers already exist for co-operation and information sharing with countries outside the UK, which will of course include the EU when we leave.

The noble Lord, Lord Adonis, asked about the impact assessment. The costs include a one-off cost for firms examining and understanding the instrument, estimated at £7,200, which will be shared between the 21 funds regulated under the MMFR in the UK.

[Lord Young of Cookham]

Finally, the noble Lord, Lord Tunnicliffe, raised the point about reciprocity—I am sorry that he has had another bad day getting on top of these SIs. Of course, we cannot legislate here to make EU countries reciprocate what we are doing to them, but a series of bilateral discussions is under way to ensure that, in the unlikely event of no deal, essential relationships are preserved. I hope that I have answered all the issues raised by noble Lords.

Lord Sharkey: Before the Minister sits down, I may have expressed myself badly when talking about the negative instruments. The instrument we are discussing gives the Treasury the power subsequently to make other statutory instruments—that is partly what it does—and my question was about why all those subsequent negative instruments should come under the negative procedure. The Minister responded by talking about the sifting committees, but those committees will not get sight of those because of course they do not yet exist, and when they do, the sifting committees almost certainly will not. So that does not quite address the question I was hoping to put.

I was also not entirely certain about the answer to the point about making,

"different provision for different purposes".

I am not quite sure I understood exactly what scope that gave the Treasury in drawing up a statutory instrument. However, if the Minister chooses to write to explain, I would be grateful.

Lord Young of Cookham: The Minister might indeed prefer to write. I think that it simply transfers existing powers which rest with the Commission to the Treasury, without changing the fundamentals.

On the sifting committee, I think that I am right in saying that wherever the sifting committee has recommended that statutory instruments under the EU withdrawal Act should be affirmative rather negative, the Government have agreed. I hope that that provides some reassurance to the noble Lord.

Motion agreed.

Uncertificated Securities (Amendment and EU Exit) Regulations 2019

Motion to Approve

4.05 pm

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

That the draft Regulations laid before the House on 17 January be approved.

Lord Young of Cookham (Con): On behalf of my noble friend Lord Bates, I beg to move the regulations. As the instrument is grouped with the draft Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019, also laid before the House on 17 January, I shall speak also to that.

The Uncertificated Securities (Amendment and EU Exit) Regulations 2019 amend UK law as necessary in order to ensure that the directly applicable EU central securities depositories regulation, or CSDR, operates effectively in the UK. The instrument uses the powers in Section 2(2) of the European Communities Act 1972 to do this. Both instruments also use the powers in Section 8 of the European Union (Withdrawal) Act 2018 to prepare for a scenario in which the UK leaves the EU without a deal or an implementation period. The approach being taken in this legislation aligns with that of previous SIs that we have just debated.

First, I will cover the uncertificated securities regulations SI, which amends the uncertificated securities regulations 2001—or the USRs. This instrument concerns the electronic registering and transfer of securities such as bonds or shares, specifically on computer-based systems. Certain requirements within the USRs are also subject to the CSDR, which creates a common authorisation, supervision and regulatory framework for central securities depositories, or CSDs, across the EU. This SI makes the necessary changes to UK legislation to ensure that the EU regime operates effectively in the UK. In addition, the instrument contains provisions that address deficiencies in UK law and retained EU law that arise due to the UK's withdrawal from the European Union.

The changes made to implement the CSDR will come into effect on the day after the instrument has been made in Parliament in any scenario. However, the changes made under the EU withdrawal Act to fix deficiencies in the legislation arising as a result of the UK's withdrawal from the EU will come into effect on exit day only in the event that the UK leaves without a deal or an implementation period.

First, the SI makes amendments to ensure that the USRs align with both the EU regulation and the UK implementing legislation concerning the CSDR. This includes authorisation and recognition of CSDs and Article 49 of the CSDR. Article 49 of the CSDR allows issuers the right to issue securities into a CSD in any EU member state. Accordingly, amendments have been made to ensure that no provisions in the USR are incompatible with this right. By removing the duplication between CSDR and USR requirements for operators of relevant systems, the instrument provides clarity to the industry in this area. Further, USR operators can now gain operator status by virtue of gaining recognised CSD, EEA, CSD, or third-country CSD status for CSDR and FSMA purposes, not via the USR recognition regime, which is revoked by this SI.

Secondly, the SI provides transitional provisions to ensure that operators of systems approved as operators under the USR can continue to operate under the amended version of the USR, pending their authorisation or recognition as a CSD under the CSDR regime. The USR SI also inserts a provision into the CSDR 2014 regulations which grants the Bank of England the power to charge fees to third-country CSDs. This is considered necessary in relation to its new role in recognising third-country CSDs following exit day under the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018, which were agreed in this place.

Finally, the SI amends Article 15 of the short-selling regulation to change its current scope from the EU to the UK. This change is to ensure legal certainty about the scope of this provision in the regulation after exit day.

The investment exchanges, clearing houses and central securities depositories instrument addresses legal deficiencies in parts of the domestic legislation that outlines certain regulatory requirements for recognised investment exchanges—RIEs—EEA market operators, central counterparties, or CCPs, and CSDs operating in the UK. RIEs include firms such as the London Stock Exchange and the London Metal Exchange; EEA market operators include firms such as Deutsche Börse and Euronext Paris, which also provide services in the UK; CCPs include firms such as LCH, LME Clear and ICE Clear Europe; and the UK CSD is Euroclear UK & Ireland. These entities form the backbone of UK markets, facilitating the trading, clearing and settlement of financial instruments. Amendments introduced through this instrument are generally technical in nature and are not intended to make policy changes, other than where appropriate to reflect the UK's new position outside the EU and to ensure a smooth transition to this situation.

I will now outline briefly the key amendments that this instrument makes to the Financial Services and Markets Act 2000, or FSMA. First, in a no-deal scenario the UK would be a third country outside the EU financial services framework and therefore outside the current passporting system, meaning any references to EEA passport rights would become deficient at the point of exit. The instrument therefore removes the FSMA provisions relating to the exercise of EEA passporting rights by EEA market operators into the UK and the provisions that allow recognised investment exchanges to make passporting arrangements into EEA states. This would mean that any EEA market operators currently operating in the UK via a passport would no longer be able to do so from exit day, just as UK recognised investment exchanges would no longer be able to passport into other EEA states.

Instead, EEA market operators who currently make use of passport rights can, if they wish, make use of the existing third-country regimes for investment exchanges that are provided for in UK law to carry on their activities in the UK. For instance, they can apply to the Financial Conduct Authority to become a recognised overseas investment exchange. The FCA published information outlining how firms should go about doing this on its website on 14 September 2018.

Secondly, the SI removes obligations relating to information sharing and co-operation with EU authorities, again to reflect the UK's position outside the EU in a no-deal scenario. The Government took the same approach in a number of other financial services SIs previously approved by Parliament. As stated with those SIs, and as I said a few moments ago, this change does not preclude UK authorities co-operating with their EU counterparts in future through existing third-country frameworks, as they currently do with non-EEA regulators.

Specifically, the instrument removes the obligation on the FCA to inform the European Securities and Markets Authority—ESMA—and the competent authorities of EEA member states when it suspends or removes a financial instrument from trading on a venue that falls under its jurisdiction. However, the FCA will still be required to make such decisions public. In addition, the FCA will no longer be obliged to require venues under its jurisdiction to suspend or remove a financial instrument from trading if the FCA becomes aware that the same instrument has been suspended or removed from trading in an EEA member state.

Thirdly, a provision in FSMA that currently applies to the Prudential Regulation Authority is being extended to the Bank of England. The relevant provision places a duty on the Bank to take such steps as it feels are appropriate to co-operate with other persons, whether in the UK or elsewhere, with similar regulatory or financial stability functions. This provision is being extended to the Bank of England to ensure that co-operation can continue in relation to the new functions it is taking on as part of this legislation.

4.15 pm

Fourthly, as a consequence of the UK exiting the EU, ESMA will no longer carry out functions determining whether third-country CCPs and CSDs can provide services in the UK post exit. These responsibilities are being transferred to the Bank of England through other SIs that have previously been debated in this place. To ensure that the Bank of England can carry out these new functions effectively, this instrument contains appropriate consequential amendments to reflect this in domestic law.

As the definition of "third country CSD" will change to refer to any CSD located outside the UK rather than any CSD located outside the EEA, this instrument deletes redundant references to the term "EEA CSD". This instrument also provides the Bank of England with the appropriate supervisory powers over third-country CSDs, such as giving the power to require information from, and to inspect any UK branch of, a third-country CSD.

Finally, this instrument also makes a number of amendments and consequential amendments to other legislation, principally the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001. The amendments make various necessary changes to these instruments, such as amending definitions to ensure consistency with definitions used in other EU exit SIs, including the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 and the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018, all of which have previously been debated in this place.

The Treasury has been working closely with the FCA, the Bank of England and industry in respect of these instruments to maximise transparency. The investment exchanges, clearing houses and central securities depositories instrument was first published, with accompanying explanatory notes, for sifting on 30 November last year. Following a recommendation by the European Statutory Instruments Committee, it

[Lord Young of Cookham]
was then relaid under the affirmative procedure on 17 January. The Treasury has previously consulted extensively with both of the regulators and industry while drafting the uncertificated securities regulations. The current form of the uncertificated securities regulations instrument was published with accompanying explanatory notes on 17 January this year. Provisions relating to the consultation are dealt with in parts 1 to 4 of the instrument. Part 5 deals with EU exit contingency planning. Regulators and industry bodies have welcomed and have generally been supportive of the SIs.

In summary, the Government believe that the proposed legislation is necessary to ensure the smooth functioning of financial markets in the UK if the UK leaves the EU without a deal or an implementation period. In the case of the USR SI, relevant parts are needed in any scenario to ensure the effective functioning of the CSDR. I hope that noble Lords will join me in supporting these regulations, and I beg to move.

Lord Sharkey (LD): My Lords, I accept that the two regulations in this group are closely linked and I have only one question and one comment. The question relates to the waivers that the Treasury may issue under the terms of the investment exchanges, CCPs and CSDs SI. Paragraph 117 of the impact assessment to this SI explains that, if the Treasury makes an equivalence decision on a third country jurisdiction and the Bank has recognised a third country CSD, this will mean that the third country CSD will be subject to Part 18 of FSMA. As the Minister has said, this will give the Bank the power to make rules requiring information about events specified in those rules and to require the third country CSD to give written notice to a regulator of a change to its own rules or guidance.

The Bank could also require a third-country CSD to give reports on the CSD services it provides in the UK and related statistical information. As the Minister said, the Bank may also inspect any branch of a third country CSD in the UK. There is also the rather threatening addition, "enforceable by injunction". All of this seems eminently sensible. However, the impact assessment includes a provision which qualifies the use of these powers. It means that, for instance,

"the Bank may waive the above rules in respect of a third country CSD where it is satisfied that compliance with those rules would be unduly burdensome and the waiver would not result in undue risk".

I take it that this waiver power is intended primarily to help the continued co-operation of CSDs within the EEA. My question is whether, if the Bank does make such waivers, they be will in the public domain and whether the Bank will explain the reasons for supposing the rules to be unduly burdensome and for supposing that exercising the waiver will not result in undue risk—whatever "undue" may mean in this context.

My comment has to do with paragraph 10 of the EM to this instrument. The paragraph explains in some detail, and with the appropriate references, the outcome of the consultation on the implementation of the CSDR. This was extremely helpful, and it illustrates a key difference between consultation and engagement. Noble Lords will know that many of the Brexit SIs laid by the Treasury have not been consulted on. The Explanatory Memorandums say when this is the case, and frequently follow this by noting that there has instead been extensive engagement with stakeholders. But in no case that I can recall have the EMs given any detail about the questions that arose in these engagements, the no doubt various views expressed by stakeholders or any modifications that may have been made to the draft as a result of these engagements. By contrast, as the current EM demonstrates, consultation gives a clearer, well-defined, comprehensive outcome and even demonstrates how government thinking has been changed. In this case, the three respondents were obviously very persuasive.

Engagement with no detail is a very unsatisfactory substitute for consultation. I realise that it is now too late to conduct consultations on the no-deal Brexit SIs that are before us and on those that will come before us. I think that we have only one more Treasury SI to consider—or at least very few. I ask the Government in general to be much more informative about engagement. I ask them to consider providing in the Explanatory Memorandums at least a list of stakeholders engaged with and a summary of what issues were raised by the Government and the stakeholders, what opinions were expressed and what changes were made as a result of these engagements.

Baroness Bowles of Berkhamsted (LD): My Lords, I declare my interest, as in the register, as a director of London Stock Exchange plc. I am glad that we are debating these two instruments together, because they seem to go together and to form a continuum. Indeed, in some ways it is rather strange. The first says that it would not be appropriate to give the Bank of England powers pre Brexit, but then in the second the powers are being given to the Bank of England. That arises largely because the uncertified securities regulations are largely about transposing EU legislation under the European Communities Act.

I too was interested in the consultation done in 2015 and noted that there seemed to be variably one, two or three comments on various sections. That certainly determined me to step up my rate of response to consultations. The report says that changes have been made, but it leaves you having to compare the before and after. All that was getting a bit too much on a sunny Sunday, as the noble Lord, Lord Tunnicliffe, said. What struck me particularly was the explanation on page 6 of the Explanatory Memorandum to the uncertified securities regulations, which said that,

"the Treasury is taking a proportionate approach to implementing Article 49(1)".

Given that they are regulations, and you cannot change what is in the regulation done by the EU, I am curious as to what this more proportionate approach entails. Does it imply that the first draft had been gold-plated in some way? What was in and has been taken out? I did not find a great deal of guidance in the documents.

My next comment is a very general one. In both of these statutory instruments, and in particular in the second one dealing with exchanges and so forth, there is a large number of changes to the Financial Services and Markets Act. As we have discussed at some length before, that is not up to date on legislation.gov.uk—

although, of course, it does give you a list of the things you might want to go and explore, to see if you can work out what an up-to-date version might be, or you may be thrust into the hands of one of the commercial organisations that will do that for you. However, by the time we have ploughed through all 60 statutory instruments that we are told we have to deal with, and then whatever other number we may get regarding corrections and re-workings—some of which are coming along now—FSMA will be even more incomprehensible on the legislation website, and so too will be any sensible comparison of how EU legislation has been retained with regard to the EU originals.

That might be relevant. If we are ever trying to argue for equivalence, the first thing we will be asked to do is to show it. Page 3 of the Explanatory Memorandum for the investment exchanges SI names six other SIs involved in the onshoring of the Securities Financing Transactions Regulation—so one regulation goes to seven SIs, each of which further redistributes powers and requirements over a range of other instruments. As I have said, we are also getting into second-order corrections and additions, with further SIs winging their way through the system.

It is not my idea of a lawful democracy for laws to be so obscure and inaccessible. It is actually quite a mockery to make a fuss about the accessibility and clarity of wording in individual documents while it remains impossible to find out their cumulative effect. I have long been shocked at this unwholesome situation, but Brexit is making it far worse. What is the Treasury going to do about it? Clearly, check tables have to be used in the Treasury. I am coming to the view that we are reaching a stage at which Parliament should refuse to amend law that is not available in an up-to-date format. At the very least, could the Treasury share the various schedules that point out what has been put where, so that those of us who are expected to scrutinise this do not have to spend an awful lot of time getting frustrated as we try to work out the true current state of the law? If we cannot do it, and we are responsible for it, how is the ordinary citizen supposed to know what is the law, when ignorance is no defence?

Baroness Kramer (LD): My Lords, I concur with all the comments made by my colleagues on these Benches. I want to raise again the issue that I picked up in relation to the earlier statutory instrument: namely, the responsibility or duty to exchange information between the UK regulators and the EU regulators. As far as I am concerned, this gets even worse in these two statutory instruments. I will not comment much on the first statutory instrument because, to me, it is a combination of in-flight and onshoring, and I can see why it is essential. Obviously, I am also not going to object to the second statutory instrument.

However, I want to draw the House's attention to the significance of regulating CCPs. Following the crash of 2008, the G20—quite appropriately, most of us think—realised that to underpin financial stability in the future it would be necessary to require that derivatives be cleared through central counterparties rather than just exchanged between institutions, because in the financial crash it was impossible to work out who owed money to whom, and that caused much of the system to freeze up and undermined liquidity. But everyone has also recognised that, by running all derivative contracts through a limited number of central counterparties, we are cumulating risk in one location. A mistake by a CCP in understanding a risk, in requiring margins and in recognising the creditworthiness of various players has potentially huge consequences because so much is now gathered in the one location—it has become absolutely critical.

4.30 pm

Here again we see this fragmentation of regulation and oversight, which troubles me. The Explanatory Memorandum at paragraph 2.20, the one on which I focused most, contains the same language. It says that, when the UK leaves the EU, information sharing and co-operation obligations in respect of EU authorities will be removed, and goes on to state:

"To make sure the Bank of England has the necessary provisions in FSMA to meet its obligations"—

that is, to co-operate on a discretionary basis—

"this instrument introduces a new provision in the form of a general duty, but not any specific obligation. on the Bank of England to cooperate with other persons (whether in the UK or elsewhere) who have functions similar to those of the PRA or those relevant to financial stability"

If this House had its way—and, I hope, the Government—we could put a gun to the head of the Bank of England and the PRA and tell them they must co-operate and must exchange information.

I should explain that CCPs—LCH in London is the premier CCP globally—are nearly always commonly owned. The members—the owners, if you like—of CCPs are the major oil companies and various big banking institutions because those are the players which both need and underpin these central counterparties. If one CCP has a problem, they all have a problem, and we end up with a crisis that is not limited to one geography but becomes a global problem.

It is crucial that we do not revert to the pre-2008 attitude of "It is not my immediate problem so I am not going to look at it", where systemic risk was completely ignored by all regulators, including the UK regulators. If systemic risk matters, then systemic regulation, co-operation and monitoring matter. Reducing this from an obligation to a general duty with no specific element in it is a retrograde step.

I want to raise this issue with the Minister because if you talk to any regulator and ask where the next financial crash will occur, they will all tell you in a whisper, "Well, it could be in one of the CCPs".

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for introducing these two SIs. I particularly thank the noble Baronesses, Lady Bowles and Lady Kramer, for their contributions. They were off the point but, nevertheless, they hit an important issue. Legislation, particularly financial services regulation, is impossible to understand because of its constant revision and the failure to have a process for regular consolidation. There are two problems: the sheer understanding of it and, because of its complexity, one cannot see whether there are interrelationships between the various activities that are being regulated, such that you end up with a systemic catastrophe.

[Lord Tunnicliffe]

Before the financial crisis many people—I assume genuinely—believed from the way in which the markets were structured that they were robust. In practice, they turned out to be far from robust. I particularly note the concern of the noble Baroness, Lady Kramer, about CCPs—we debated them several months ago, which probably means about a year ago—and, once again, although they seem to be institutions to reduce risk, there is a worrying possibility that they may concentrate risk.

Turning to the statutory instruments, the first seems to tidy up regulations to be compatible with the introduction of the CSDR and the subsuming of the uncertificated securities regulations role. It does that in the same way as most of these SIs by a series of regulations which touch on referencing, transfer, transition and information. I have two small points on these regulations. I have to concede that I rarely get beyond the Explanatory Memorandum but I study that with some care. On Page 4, paragraph 7.4 has unnumbered bullet points; the fourth states:

"Creating transitional provisions, to ensure that operators of systems that were approved as operators under the USR prior to 30 March 2017 can continue to operate under the current version of the USR, pending their authorisation as a CSD under the CSDR regime".

Why was 30 March 2017 chosen? Most of these transitional things are on exit day and I can see no logic in 30 March. How long does this transitional waiver last before they must receive authorisation as a CSD under the CSDR regime?

At the bottom of the page is the eighth unnumbered bullet point. I think the Minister touched on this point. In the middle it says:

"This is necessary in connection with the Bank of England's role after exit under the SCDR regime, which will including recognising and supervising CSDs in third countries".

I have some difficulty grasping what,

"recognising and supervising CSDs in third countries",

means. Does this mean that this law is extraterritorial? I am not sure I have got the word right, but I am sure the Minister has a sense of what I am concerned about. Or does it simply relate to their rules in so far as how they operate in this country?

The second statutory instrument seems to be picking up the usual format of references, transfers, information and so on. I was looking for transition. Most of these SIs provide for passive transition—that is people, institutions and entities doing certain things after exit day carry on for a period to allow them to register and adjust—but, unusually, this one does not. As the noble Lord pointed out, to operate in the UK one has to become a recognised overseas investment exchange. The FCA document on that published on 14 September and updated on 30 January 2019 states:

"The Treasury is not planning to put in place a temporary recognition procedure for EEA market operators in the event the UK leaves the EU without a deal and without entering an implementation period".

Why did the Treasury exceptionally make that decision with this SI? Clearly it is important. Later under "How to make an application" the document states: "Market operators should contact"—then there is an email address,

"as soon as possible to make us aware of their plans in relation to any arrangements they intend to maintain in the UK".

There is a sense that the FCA is worried about whether it has enough time to sort these things out.

Lord Young of Cookham: I am grateful to all noble Lords who have taken part in this debate and, again, I notice that there is no fundamental objection to the purpose of the two SIs. I shall try to deal with the issues that were raised.

On equivalence, the noble Lord, Lord Sharkey, asked about the Bank of England's powers to recognise CSDs from overseas countries and, particularly, whether the waivers were intended primarily for EEA CSDs. These waiver provisions are in fact an existing feature of the FSMA, so they are not introduced primarily to assist the EEA CSDs, although of course they will welcome having them at their disposal. The waivers are subject to statutory conditions and are published. I hope that that answers the noble Lord's point.

The noble Lord also raised a very good point about the distinction between engagement and consultation, expressing the hope that the results of engagement might be made public in the same way that the results of consultation are. As he recognised, we are reaching the end of the road on Treasury SIs, but it is a valid point that we could take on board if in future we decided not to go down the statutory consultation road but instead to go down the engagement road. It would be useful to bear in mind that we could do a little more to explain in what respect the engagement resulted in changes to the draft SI.

The noble Lord also asked whether we could clarify the nature of the consultation on the USRs. In December 2015, the Treasury published the consultation on implementing the EU CSDR. It closed in 2016 and it was then decided to implement it in stages: first, the Central Securities Depositories Regulations 2014; and, secondly, the Central Securities Depositories Regulations 2017. This is the third SI. We engaged with industry by sharing a draft of it on 24 October 2018 and we published a draft on 17 January this year.

The noble Baroness, Lady Kramer, raised a valid point about information sharing. Simply removing the legal obligation to share information does not necessarily mean that there will be any change in the quantity or quality of information that is subsequently shared. It would not be appropriate for the FCA to be obliged to follow the existing information-sharing arrangements with the EU authorities where there is no guarantee of reciprocity, or to be obliged to match suspensions—another feature that I mentioned. However, it will be able to co-operate with relevant EU authorities on a discretionary basis to share information, as it currently does with non-EEA countries. Therefore, the FCA will still be required to publish decisions—for example, when it suspends or removes a financial instrument from trading at a venue that falls under its jurisdiction—in a manner that it considers appropriate, and that information will then be available to the ESMA.

The noble Baroness also asked about requirements for the Bank of England to co-operate with other authorities when it does not have to do so now. The Bank of England will have a general duty, rather than

a specific obligation, to co-operate with other authorities. That is introduced so that the Bank of England is subject to a duty under the FSMA to co-operate with other bodies that undertake similar functions in connection with the Bank's functions.

The noble Baroness, Lady Bowles, asked whether the USR drafting had changed and whether the first draft was gold-plated. The Treasury has sought to take a proportionate approach to ensuring that issuers can exercise their rights under Article 49 of the CSDR. It was considered appropriate, first, to remove any provisions that were subject to both the USR and the CSDR, and, secondly, to remove those provisions in the USR that were incompatible with the Article 49 right. The current version is less extensive than the one published in 2015, while achieving those aims.

The noble Baroness, Lady Bowles, also asked about the accessibility of FSMA amendments. I know that this is a subject that she has raised before. If one looks at Schedule 5 to the EU withdrawal Act, it sets out that the Queen's printer—as part of the National Archives—must make arrangements for the publication of "relevant instruments", including regulations, decisions and tertiary legislation. These instruments will form the retained EU law from exit day and the National Archives is working to ensure that they are visible and accessible to ensure legal certainty and clarity post exit.

All pieces of EU legislation, as well as treaties, international agreements and case law, are currently being archived and will be made available to the public at the appropriate time. The noble Baroness may remember that on 19 April last year, during the passage of the EUWA, my noble friend Lady Goldie wrote to her setting out more detail about how the public would be able to access this EU law and the features that would be in place to ensure legal certainty and clarity post exit; a copy was deposited in the Libraries.

The noble Lord, Lord Tunnicliffe, asked about CSDs. I think it means CSDs from, rather than in, third countries, but I will write to him to confirm that. He asked also why there is no transitional passporting regime—such as the TPR that we have introduced in other parts of the post-Brexit scenario—for EEA market operators. The reason there is no temporary recognition for EEA market operators is that we have an already long-established and well-understood domestic regime for overseas exchanges. EEA market operators which currently make use of passport rights may wish to apply under this regime to become a recognised overseas investment exchange—ROIE. The FCA published a direction on 14 September clarifying how an EEA market operator can make an application to become an ROIE.

The noble Lord also asked about supervising third-country CSDs. Recognition is the process by which the Bank of England allows third-country CSDs to offer CSD services to the UK; supervising third-country CSDs refers to the Bank of England's ongoing regulatory supervision to make sure the CSD continues to comply with its obligations.

The noble Baroness, Lady Kramer, raised a point about CCPs—an important point, which she has raised in earlier discussions. She is worried about the stability of CCPs and their possible vulnerability to total collapse. She will know that the current structure was put in place post the 2008 crash precisely to protect against the scenario that she outlined. CCPs are financial market infrastructures that take on counterparty credit risk between parties to a transaction. They do this by sitting between trades, as a seller to every buyer and a buyer to every seller. If the noble Baroness agrees, perhaps I could write to her in slightly more detail, setting out why we feel that the present position is robust and why we believe that the scenario she referred to may be unlikely to come about.

Finally, the noble Lord, Lord Tunnicliffe, asked about the transition provision for operators in uncertificated securities. Part of the SI is backward-looking to what has already happened and part is forward-looking. The 2017 reference is to operators approved under the USR 2001 prior to 30 March 2015, which will benefit from a transitional provision under this SI. These operators will retain such approval until they become recognised as a CSD for CSDR and FSMA purposes. I apologise for the acronyms; perhaps I could write to the noble Lord, Lord Tunnicliffe, explaining all this without using them.

Lord Tunnicliffe: That would be good. Perhaps the Minister could copy the letter to everybody who has taken part in the debate.

Lord Young of Cookham: Yes, I generously accept the suggestion made by the noble Lord, and I beg to move.

Motion agreed.

Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019

Motion to Approve

4.49 pm

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

That the draft Regulations laid before the House on 17 January be approved.

Motion agreed.

Employment and Support Allowance Payments

Statement

4.49 pm

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, with the leave of the House, I shall repeat as a Statement an Answer given to an Urgent Question in another place by my honourable friend the Minister for Disabled People, Health and Work. The Statement is as follows:

[Baroness Buscombe]

"The Department for Work and Pensions is correcting some past underpayments of ESA that arose while reassessing incapacity benefit claims. We realise how important it is to get this matter fixed—clearly, the mistakes should not have happened—and we know it is vital that it is sorted as quickly as possible.

Since I last updated the House in October 2018, we have made significant progress. We are on track to complete work on the majority of the original 320,000 cases by the end of April this year. By 11 February we had started 310,000 people on the reassessment journey and paid arrears of over £328 million to 58,000 people, which is significant progress. The department has also increased the number of staff working on putting these cases right, from around 400 to approximately 1,200, which will enable us to continue to complete this important activity at pace.

Following the announcement in July last year to pay cases back to the point of conversion, I confirmed in October 2018 that that will require us to review an additional 250,000 cases, with activity due to begin shortly, and we aim to complete phase 2 by the end of this year. The department also published an ad hoc statistical publication last Thursday on GOV.UK setting out further detail on the progress that it has made on processing the cases, including an updated estimate on forecast expenditure and the number of people affected. The department now estimates that around 600,000 cases require review and that by the end of the exercise around 210,000 arrears payments will have been made. The increase, compared with the previous estimate of 180,000, is based on additional assumptions and samples, and very careful checking.

Alongside the Written Statement that was published last Thursday, I also published an updated version of the frequently asked questions, which has been deposited in the House Library".

4.52 pm

Baroness Sherlock (Lab): My Lords, I thank the Minister for repeating that Answer. When, as part of their reforms, the Government moved people across from incapacity benefit to contributory-based ESA, they failed to consider whether or not those people might have been entitled to an income-related ESA, which would have brought with it a potential entitlement to enhanced or severe disability premiums or to housing benefit, council tax benefit and passported benefits. As the Minister has explained, the number of people estimated to have missed out has now gone up from the original 70,000 to 210,000, with a potential bill of £920 million. It took the DWP six years to even begin to sort this out. Even by recent DWP standards, I think we could reasonably say that this is a right mess.

I have two questions for the Minister. First, the department estimates that around 20,000 people have or will have died before payments reach them, so what steps is it taking to identify the families of people in those circumstances? Secondly, the Treasury guidance is very clear that in cases of maladministration or service failure it should seek to,

"restore the wronged party to the position that they would be in had things been done correctly".

When the Minister spoke in October, I asked her about what was happening to people who had missed out on passported benefits. She said the department was in discussion with other departments about that. Could she please update the House and assure us that no one will miss out or fail to be compensated because they should have got housing benefit, council tax benefit, free prescriptions or free eye tests?

Baroness Buscombe: First, my Lords, I repeat that these errors should never have happened, and the department is working extremely hard to make sure that the wrongs that have been done are put right at pace. I want to make it clear that we did not do nothing, as it were, for six years; we started work on this back in 2013. We are working hard with increased support to make sure that we get this right but we want to do it with care. It is very unfortunate that an estimated 20,000 people have deceased since this work began but we are working extremely hard to identify the families.

On passported benefits, I am able to say to the noble Baroness that we are engaging with a number of authorities that are responsible for passported benefits to raise awareness of the ESA underpayment exercise and the potential issues arising from it. This will enable departments across government to understand the impacts on the passported benefits they administer. However, the department does not hold information on what people may or may not have claimed.

Baroness Thomas of Winchester (LD): My Lords, from the Lib Dem Benches, I thank the Minister for making this important Statement. The issue of passported benefits is extremely important. I wonder how the department has learned from this mistake so that it does not slip up on migrating claimants from ESA to universal credit. Will she use the upcoming managed migration pilot to consider alternatives to the hard stop, so that vulnerable claimants do not have their benefits cut off if they do not make a universal credit application on time?

Baroness Buscombe: My Lords, let me make it very clear that those with complex needs will not suffer from a hard stop during the managed migration process. As I have said to your Lordships in previous debates, we are working hard to ensure that we work with stakeholders to pilot the whole scheme of managed migration. On the noble Baroness's very good question about lessons learned, the key point is that through these errors in migrating people from incapacity benefit to ESA, we have learned that the big mistake made was that we did not make contact with individual claimants. We thought it was great to have an automatic transfer, but the issue was that we did not have all the right, real-time, up-to-date information on claimants. Therefore, some of those who were eligible did not receive these payments.

Lord McKenzie of Luton (Lab): My Lords, the Minister explained that the number of staff included in this exercise has increased from 400 to 1,200. Can she tell us from where those staff have been deployed and what training they have had?

Baroness Buscombe: Again, that is a good question. As the noble Lord will recognise, we have increased the number of people working on this quite considerably. We are increasing our resources from 400 to 1,200 fully employed people to manage all demands. We have taken a considerable number of staff from those who were focused solely on new ESA claimants. Of course, we are not taking new ESA claimants now because they are going straight on to universal credit, so we have a number of considerably well-trained staff. We are also increasing our training across the piece to make sure that people are fully aware of the support and the exercise required. I am pleased to say that I learned from meetings with officials only last week that we are on taking more and more highly skilled individuals, who want to work with us on this exercise and on universal credit.

Lord Bassam of Brighton (Lab): My Lords, ESA enables passporting to other benefits. What compensation will the department give to those families that lost out from the passporting arrangements? Perhaps I missed something in what the Minister said earlier, but my other question is: what will happen to the payments that would have been due to people who have now deceased? Will their families benefit from these payments by way of compensation?

Baroness Buscombe: On the first question, the reality is that we are reviewing all cases potentially affected and paying any arrears of past payments that are due. Our focus is on paying arrears to claimants in line with the primary legislation. With regards to those who have already, sadly, deceased, we are making sure that the money that would have been paid to those individuals will be paid to the families.

Securitisation (Amendment) (EU Exit) Regulations 2019

Motion to Approve

4.59 pm

Tabled by ***Lord Bates***

That the draft Regulations laid before the House on 23 January be approved.

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Lord Young of Cookham (Con): My Lords, on behalf of my noble friend Lord Bates, I beg to move that the House approves the Securitisation (Amendment) (EU Exit) Regulations 2019. As this instrument is grouped, I will also speak to the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019.

As with the instrument debated earlier, these SIs are part of the programme of legislation under the European Union (Withdrawal) Act that aims to ensure that, if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime for financial services in the UK. These SIs will fix deficiencies in EU law on securitisation and securities financing transactions to ensure that they can continue to operate effectively after the UK leaves the EU.

The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 concern securities financing transactions, or SFTs. Broadly speaking, SFTs are transactions where securities such as equities are used to borrow cash or vice versa. A common type of SFT is a repo, or repurchase transaction, in which one party sells an asset to another at one price and commits to repurchase the asset from the other party at a different price on a later date. SFTs were not regulated before 2015 and there were major concerns around their effects on the economy, especially given the experience during the financial crisis where repurchase transactions were associated with increases in leverage, while exacerbating boom and bust cycles in the economy. After the Financial Stability Board identified significant risks associated with these instruments, the EU securities financing transactions regulation introduced a framework under which details of SFTs must be reported to trade repositories. Trade repositories are effectively databases for reporting transactions. Under the regulation, this information must then be disclosed to investors and national regulators are required to act where they identify risky practices by firms.

The Securitisation (Amendment) (EU Exit) Regulations 2019 concern securitisation: the practice of pooling financial assets such as loans into financial instruments called securities, which can then be sold to investors. Securitisation allows banks to transfer some of the risk associated with the assets they hold to investors. This frees up regulatory capital to facilitate further lending. Securitisations can themselves be used to finance business activities and reduce the concentration of financial stability risks. To respond to concerns around the opaqueness and complexity of securitisation programmes, the EU adopted the securitisation regulation, which is based on international standards agreed by the Basel Committee on Banking Supervision. The EU securitisation regulation simplifies and consolidates a patchwork of earlier rules, and introduces the concept of a securitisation that is "simple, transparent and standardised", also referred to as an STS securitisation, whose use is to be incentivised.

Both regulations are therefore crucial to protecting financial stability while ensuring that the benefits of these instruments to firms and the wider economy remain available. They will be transferred to the UK statute book by operation of the EU withdrawal Act on exit day, but in a no-deal scenario the UK would be outside the EEA and outside the EU's legal, supervisory and financial regulatory framework, so this legislation would no longer be operative. These SIs make the necessary amendments to ensure that the provisions continue to work properly in a no-deal scenario.

The transparency of securities financing transactions and of reuse regulations amend, first, the treatment of EEA branches of financial services firms in the UK so that after the UK leaves the EU, EEA branches operating in the UK must report their transactions to a UK trade repository. This means that EEA branches will be treated in the same way as other third-country

[Lord Young of Cookham]
branches operating in the UK, which is consistent with the approach adopted under other financial services SIs laid under the EU withdrawal Act.

Secondly, this SI amends the list of entities that will have access to data on securities financing transactions reported to UK trade repositories. EU bodies are removed, making the list UK-specific, to reflect the UK's status as a third country outside the EU in a no-deal scenario. This does not, however, preclude UK entities from co-operating with EU entities in future.

Finally, this SI transfers the European Securities and Markets Authority's responsibilities relating to the requirements for the registration of trade repositories to the FCA, and amends these rules so they continue to work in a domestic context. This is appropriate given the FCA's current role in supervising and regulating securities financing transactions.

It is worth mentioning that one of the main provisions of the securities financing transactions regulation cannot be domesticated at this stage, due to limitations in the powers under the European Union (Withdrawal) Act. This provision is the requirement on firms to report details of SFTs to trade repositories. Depending on the type of institution concerned, this requirement does not apply until 12 to 21 months after the publication of relevant regulatory technical standards by the EU. However, these have not yet been published and the requirement could therefore not be included in this SI, as it is not, in the wording of that Act,

"operative immediately before exit day".

The Government have introduced separate legislation, in the form of the Financial Services (Implementation of Legislation) Bill, to enable us to make sure that this requirement applies in a domestic context in due course.

Turning to the draft Securitisation (Amendment) (EU Exit) Regulations 2019, this SI amends, first, the geographical scope of the EU regulation under which, currently, all parties involved in an STS transaction must be located in the EU. The SI amends this to allow UK counterparties to continue to participate in cross-border STS securitisations where some of the parties are located in third countries, expanding the current scope. This approach is appropriate because most securitisations are structured across borders, and it ensures that third countries are treated equally in the event of a no-deal scenario. For the UK securitisation markets to have maximum depth and liquidity while being subject to the same strict requirements introduced by the regulation, it was important not to constrain the UK market by requiring all parties to be located in the UK. None the less, this SI requires at least one of the parties to a securitisation to be located in the UK. The overall effect of this change in scope is to support liquidity in domestic securitisation markets, while ensuring that UK supervisors retain effective oversight of the securitisation as a whole.

Secondly, this SI introduces a transitional regime for the recognition of EU STS securitisations in the UK during a two-year period after the UK leaves the EU. This ensures that UK investors can continue to participate in the EU market for STS securitisations for that limited period. Any STS recognised by the EU during this two-year period will continue to be recognised in the UK until its maturity. This ensures that UK firms will continue to have access to a major market for STS securitisations.

The draft SI also clarifies the definition of "sponsor" in the securitisation regulation to ensure that where a sponsor wishes to delegate day-to-day portfolio management to a third party, that third party can be located anywhere in the world—not just in the EU. The regulation currently limits the location of the delegated firm to the EU. The EU Commission has acknowledged that this is an unintended consequence and is currently seeking to resolve the issue itself.

Finally, this SI transfers several functions currently carried out by the European supervisory authorities to the Financial Conduct Authority and the Prudential Regulation Authority. Most importantly, the SI transfers responsibilities relating to the authorisation and supervision of trade repositories and the publication of STS notifications to the Financial Conduct Authority. This is appropriate given the FCA's considerable experience in supervising securitisations. The Treasury has been working closely with the Prudential Regulation Authority and the Financial Conduct Authority in drafting these instruments. It has also engaged the financial services industry on these SIs, and will continue to do so going forward. On 19 December the Treasury published both instruments in draft, along with explanatory policy notes to maximise transparency to Parliament and industry; prior to publication, it also shared drafts with industry for technical analysis. The Treasury has incorporated this feedback into the final draft of the SIs.

In summary, the Government believe that the proposed legislation is necessary to ensure that the UK has workable regimes regulating securitisations and securities financing transactions, and that the legislation will continue to function appropriately if the UK leaves the EU without a deal or an implementation period. I hope that noble Lords will join me in supporting the regulations. I beg to move.

Lord Sharkey (LD): My Lords, I have only one brief question, which is to do with the transparency SI. I accept that we should approve both the SIs before us, but I regret that there has been no consultation on either instrument. As I remarked earlier, the engagement noted in both EMs is not a satisfactory substitute. However, I was happy to hear the Minister's response to my suggestion of a more informative account of engagement becoming part of future EMs.

Reading the EM and the impact assessment for the transparency SI highlights one issue: the usual question of reciprocity. The EM for the transparency SI makes it clear that the Treasury can decide which third-country entities can access data on SFTs held in UK trade repositories. I assume that this provision means that all EEA entities currently with access will be allowed continued access. But what about the other way round? As things stand, if we crash out of the EU with no deal, will the UK still have access to data held in the three EEA trade repositories? If not, would it have significant implications for our financial services industry? Have the Government made any estimate of what the

consequences of non-reciprocity might be? What assurance have the Government had from the EU, if any, that the UK would be allowed continued access after 29 March?

Lord Deben (Con): My Lords, in the absence of the noble Earl, Lord Kinnoull, I want to declare my interest as chairman of PIMFA, the organisation representing wealth managers and independent financial advisers, and to say to my noble friend that these are two very important SIs which we have to have—there is no doubt about that. This is a branch of our financial industry which was not, as my noble friend said, properly cared for. It did not have the transparency which it needed and it now does. Very sensibly, that was done over the whole European Union, because that is the area over which much of this—not all of it—is served.

It is crucial that we get reciprocity; it would be a serious blow to the industry if we did not. My noble friend reminded us with such elegance that this measure is here only should we crash out of the European Union. Every day, we recognise what a nonsense that would be and how unaware of the facts those who seem to want it really are, but we should not miss the opportunity of reminding the House of this fact.

My noble friend mentioned that all these powers will go largely to the Financial Conduct Authority but that some will go to the Prudential Regulation Authority. Yet again, we have a series of jobs being given to people without any price on them. I am sure that my noble friend will say what he has said on other occasions, which is that the authorities concerned are perfectly aware that they are able to cover this within their current budgets. I am beginning to wonder whether their budgets are not too generous, because they appear to be able to cover so many things without any extra costs. I merely say to my noble friend that it is becoming difficult for the House to recognise how this can be. If those authorities manage to get by for a relatively short period, I have no doubt that they will then ask the industry to pay the cost thereafter.

Again, it is perfectly reasonable to say that the industry is paying the cost towards the European Union at the moment and it will be in much the same place if we bring this to a British system. I have two things to say about that. First, I would rather like to know what that place is, because we do not seem to be told. Secondly, the industry is not in the same place. At present, it is paying towards a system which gives it access to the whole of the European Union. We are now suggesting that it should pay for one which will only give it access to itself. It would have been valuable to see what the difference in cost was there.

5.15 pm

Nobody sensible would want to stop these two SIs; they are crucially important for the future of the financial services industry were we to be stupid enough to leave the European Union without a deal. It is stupid to leave anyway, but to leave without a deal is manifestly ridiculous. However, in its job of proper concern for the detail of an SI, this House ought to say, yet again: can we please have some costs? Can we please have some idea about what they are going to be? Can we please not say, all the time, that we can trust these regulators when they say they have enough elbow room in their current budgets? Frankly, that makes me begin to wonder whether those budgets are overgenerous.

Baroness Bowles of Berkhamsted (LD): My Lords, I declare my interests, as set out in the register, as a director of London Stock Exchange plc and of Prime Collateralised Securities (PCS) Europe ASBL, which is the Belgian not-for-profit parent company of third-party verification entities. I have no comments on the usual way in which the onshoring has been done, switching to the regulators being UK rather than EU ones, or the way in which infrastructure is dealt with in that.

However, one thing on securitisation caught my eye. Sometimes what is not there, or has been crossed out, is more interesting than what remains. I noted that there was some removal of draft regulatory standard criteria in Article 6.7(a) and (b) of the EU regulation, covering,

"the modalities for retaining risk … including the fulfilment through a synthetic or contingent form of retention",

and measurement of the level of risk retention. I can fully understand why it might not be desired to go into those, or have them dangling as an invitation for people to lobby. It may make no difference, because those were just examples; they could perhaps be brought in again. However, I was curious about why they had been specifically deleted, or has something else which I have missed taken care of it?

Article 45, regarding a feasibility report on a simple, transparent and standard synthetic securitisation and the subsequent action relating to it, is also omitted. I can see that, in the case of Article 45, the report date—2 July 2019—is close, but I would have thought that there were ways other than deletion to retain the policy that one investigates synthetic securitisation. The deletion of synthetic criteria from both the list and the article makes me question whether a policy decision has already been taken not to have synthetics within STS at all in the UK in future. I can understand that some might wish that to be the case, but this instrument is not the place to make such a policy decision. Is there some other explanation? I see no reason why the criteria for binding technical standards, in Article 6.7(a) and (b), should be removed nor why we could not have some kind of report, even at a later date.

Baroness Kramer (LD): My Lords, I will focus briefly on the second of the two statutory instruments. I need help from the Minister, because I am struggling to understand the consequences of this, and I am looking specifically at STS recognition. The Minister will understand that achieving classification as an STS is advantageous because it is very likely to lead to preferential capital treatment. That is very important to banking institutions, which obviously want to keep their capital requirements as low as possible. At the moment, to qualify for STS classification, all the parties to an STS securitisation have to be located within the EU. If I understand the change that flows from this statutory instrument, if we were to leave without a deal, the regime we would move into says that in the UK an STS can be recognised provided that

[Baroness Kramer]
just one of the relevant players is located in the EU—most likely the sponsor. I raise this issue because it sounds as though securitisations in the EU and in all third countries now become available for classification as an STS.

I raise that concern because we are all very aware that the United States has gone back to its old tricks in mortgage lending, and asset-backed paper, backed by US mortgages, is once more beginning to raise some fairly significant issues of concern. We have been protected from that to some degree by the STS regime, which requires that all relevant players are within the EU. If I understand this correctly, that protection is now removed, and since third countries can now get STS classification and therefore preferential capital treatment, we increase the risk or the attraction quite possibly—or rather, quite likely—to UK institutions to once again start playing in that environment of US mortgage-backed securities, where we already know there is incipient trouble; I hope it is genuinely incipient, but some people are using much stronger language than that. I would therefore like the Minister to explain that.

The other issue on which I had a question was under exposures to national promotional banks. At the moment, national promotional banks located in the EU, again, are eligible to be provided with preferential treatment. It would therefore encourage a financial institution to invest in those national promotional institutions because if it lends to them, it faces a lower capital requirement. What is the situation that will fall out of the picture, according to the Explanatory Memorandum? It seems to be KfW, which is the German state-owned development bank. A UK investor who is lending money to KfW would no longer get that preference as it calculated its required capital ratios.

To me, this is the equivalent of "have gun, shoot foot". KfW is a major player in funding small businesses in the UK. It has sat alongside the European Investment Fund and the European Investment Bank in putting significant blocs of long-term patient capital into large-scale infrastructure in the UK. I know that we have the British Investment Bank, but it is minuscule compared to the EIB, the EIF and KfW, and nothing I have heard from government suggests a scale-up to anywhere like the same dimensions. Why, then, would we, in a situation like this, try to discourage KfW from looking at opportunities to put its money into projects in the UK, and especially into that much-needed arena of small business? I find it slightly perverse but that is one of the things that this SI apparently intends to achieve. As I said, I am very fond of the British Investment Bank but, boy, does it have a long way to go before it can possibly replace those other institutions. Surely we should be encouraging KFW—we cannot do anything about the EIF or the EIB because of European rules—to keep it as a player.

Lord Tunnicliffe (Lab): My Lords, I studied these two SIs with great care and could not object to their general direction. I even managed to think of three penetrating questions, which the Minister unfortunately answered in his opening statement, so I shall not repeat them. I thank the noble Lords, Lord Sharkey and Lord Deben, for their contribution. The noble Lord, Lord Deben, was concerned about the FCA costs. To some extent, that does not worry me nearly as much is whether there are competent resources. I worry whether there are enough people who want to work in a regulatory atmosphere who have enough competence to take this mess called falling out of the EU, fit it all altogether and discharge all their responsibilities. I can only just bring myself to ask this as a question, because I know that the Minister has a standard answer.

Building on the comments made earlier, the facts of life are that this is a dreadful deal. There is nothing wrong with the instrument, but if you are going to get into a dreadful situation, there are dreadful consequences. Although the Minister may say, as I am sure he will, that the issue of reciprocity is not nearly as bad as we all make out because the other side will want to do reciprocal deals, my experience of negotiation is that it is not that straightforward. They hold the cards, and if reciprocal agreements are made, good, but I fear that they will be somewhat one-sided.

Lord Young of Cookham: I am grateful to all noble Lords who have taken part in this debate and I shall try to deal with the issues that have been raised. A common theme is the issue of reciprocity, first raised by the noble Lord, Lord Sharkey, and touched on by the noble Lord, Lord Tunnicliffe, and my noble friend Lord Deben. As a matter of EU law, it is for the EU to decide who gets access to data held in the EU and we cannot in the SIs tell the EU what to do. However, we hope that it will take steps to protect financial stability—the consequences would be serious if it did not—and the Government are working to avoid a no-deal exit.

In the meantime, we are taking steps to minimise the disruption for the UK, and there have been some helpful indications on the issue of reciprocity. We welcome the announcements that the EU and some individual member states have made to date, which indicate that they would take steps to mitigate some of the risks. The Commission has taken a positive step in legislating to give the UK temporary equivalence for CCPs in a no-deal scenario, and the ESMA announced last week that all three UK CCPs will be recognised, mitigating a key no-deal risk to stability. Certain other member states, such as Germany and Sweden, have also announced various contingency measures. We stand ready to intensify our engagement, engage in bilateral discussion wherever possible and co-operate with EU institutions on preparedness for all scenarios, because it is in our mutual interest to lessen the risk of disruption to households and businesses in both the UK and the EU.

My noble friend Lord Deben asked a question which I think he has asked before about the resources of the FCA. Each time a Minister has said that these are very small incremental obligations, he has asked: what happens if you add them all up? It is a good question. Under the EU securitisation regulation which has applied from January this year, the PRA and the FCA already carry out most of the functions conferred on them by this SI. The main responsibilities transferring to the FCA relate to the authorisation and supervision

of a small number of trade repositories and the publication of STS notifications on its website. We do not honestly think that this will create a significant burden for the FCA, which has specialist expertise in place and has made extensive preparations, including training supervisors, in anticipation of the implementation of the EU securitisation regulation and the onshoring of its requirements.

5.30 pm

I am confident that the regulators are sufficiently resourced to carry out their responsibilities under the SI diligently and effectively, as they have told us. They are making adequate preparations at the FCA and are effectively resourced ahead of March 2019. A significant proportion of the FCA's business plan's resources are focused on our forthcoming exit. Since 2015, it has increased its staff numbers in response to increases in the scope of regulatory activity, including EU withdrawal. This spring, the FCA will publish its 2019-20 plan setting out its planned work for the coming year. As I have already told my noble friend, the chief executive, Andrew Bailey, has said that he expects to hold FCA fees steady for a year or two, assuming that there is an implementation period; if not, it can increase its fees should it need to increase its income in the event of no deal.

The noble Baroness, Lady Kramer, asked why we were changing the geographical scope of STS securitisations and whether we recognise EU STS securitisations without domestic oversight. One option would have been to insist that all three parties must be located in the UK. That would have placed enormous restrictions on the UK market, which we do not want. For the regime to succeed, the domestic markets for STS securitisations needs an opportunity to grow. Restricting the regime to domestic parties, as I said, would constrain and limit the UK market. Our approach in this instrument enhances liquidity while retaining appropriate supervisory oversight. I imagine that the criteria for what scores as an STS would remain the same. This supports choice for issuers and investors.

However, to ensure that we balance the need for business certainty and market liquidity against the regulatory challenges associated with EU STS recognition, we have time-limited our solution to EU STS securitisations. Regarding the rest of the world, no other country currently has implemented a domestic STS regime, so this SI does not open the UK up to risky practices in jurisdictions with weaker standards. It allows cross-border securitisation of parties in the UK to benefit from the stricter standards in the regulation.

On national promotional banks, I take the point made by the noble Baroness, Lady Kramer. Under the EU securitisation regulation, exposures to national promotional banks are exempt from the requirements; that has all sorts of advantages, as the noble Baroness mentioned. In a no-deal scenario, the UK would fall outside the scope of this exemption in the EU, and domestic institutions, such as the British Business Bank, would not be able to benefit from the EU's exemptions. This SI therefore removes the exemption for EU national promotional banks, ensuring that under the domestic regime, only UK national promotional banks can benefit from the exemption. That is in line with our general policy of treating the EU as a third country in a no-deal, no-implementation period scenario. We have raised this point with industry. My understanding is that it is not likely to create significant difficulties for UK firms and, in any event, the FCA and the PRA will be able to rely on their transitional powers to mitigate any cliff-edge impacts.

The noble Baroness, Lady Bowles, asked about the removal of the draft regulations and mentioned two particular articles. The SI implementing the securitisation regulations makes changes to ensure that the legislation operates in a domestic context after exit. The changes in Articles 6(7)(a) and (b) do not remove UK regulators' ability to supervise synthetic securitisations. They will continue to have that power. The changes to the references to technical standards reflect the cross-cutting approach taken in other financial services legislation. As per my answer to the noble Baroness, Lady Kramer, we did not want to give preference to EU banks over and above any other promotional bank.

I hope that I have answered noble Lords' questions. If not, I undertake to write to them.

Baroness Bowles of Berkhamsted: The bits taken out of Articles 6(7)(a) and (b) related to topics on which the regulator—that will now be the UK—is to make binding technical standards. However, they were deleted so the regulator will not now make them. References to "synthetic" have also been removed. Does this mean that this has already been discounted? I would appreciate it if the Minister could clarify that point in his written responses.

Lord Young of Cookham: The noble Baroness will know that under the withdrawal Act, we cannot make substantive policy changes using instruments such as this one, so whatever has happened should not be a major policy change. However, I generously accept her offer to write to her with a more detailed explanation of the changes she mentioned.

Motion agreed.

Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.35 pm

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

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

Motion agreed.

Aviation Security (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

5.36 pm

Moved by ***Baroness Sugg***

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

Relevant document: 16th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

[Baroness Sugg]

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the draft regulations will be made under the powers contained in the European Union (Withdrawal) Act 2018 and will be needed if the UK leaves the European Union without a deal. The instrument amends EU Regulation 300/2008 and its subsidiary legislation, which sets out the EU rules on aviation security standards that apply to airports, air carriers and entities with access to secure areas at airports. It governs matters such as the screening of passengers and cargo, access control and the vetting of staff.

The draft instrument corrects seven EU instruments which provide the framework for the security of passengers and cargo travelling by air. It also makes some minor changes to the Aviation Security Act 1982. Regulation 300/2008 establishes the framework for the aviation security framework regime in the European Union and sets out the common basic standards. It covers everything from passenger and cargo screening to staff recruitment and training and technical equipment specifications.

The draft instrument makes changes to the scope of the retained regulation to reflect that the UK will no longer be part of the EU after exit day. The retained regulation will apply to all flights departing from an airport in the UK. It will also retain provisions regarding inbound cargo, which I will come to later. The amendments limit its scope to the United Kingdom and remove provisions that will no longer apply to the United Kingdom. The amendments also replace legislative powers exercisable by the Commission or member states with regulation-making powers exercisable by the Secretary of State. In essence, the security screening requirements for all direct passenger flights to and from the UK will remain as they are today.

Regulation 272/2009 supplements the common basic standards by including additional provisions on aspects such as the methods of passenger and baggage screening permitted. It also sets the criteria for recognising the equivalence of security standards of third, non-EU countries when considering exemptions from these screening procedures for passengers transferring at EU airports. The supplementary requirements relating to aspects such as the types of permissible screening method remain unchanged. References to Commission legislative procedures are replaced by reference to domestic legislative procedures, at the same time maintaining equivalent levels of scrutiny.

The provisions relating to the criteria for EU recognition of the equivalence of third-country security measures with EU aviation security standards are deleted. This is because the concept of "equivalence" with the baseline standards in the retained EU regulations does not make sense in a UK-only context where we apply additional measures over and above that baseline. In the future, the UK will retain the ability to make determinations in relation to One Stop Security through Secretary of State direction-making powers under the Aviation Security Act. This power would be exercised on the basis of an assessment of equivalence with the totality of UK aviation security standards.

The third EU regulation covered by this instrument is Regulation 1254/2009, which sets out the conditions under which alternative security standards to the common basic standards may be applied. It covers, for example, non-commercial flights, where the full passenger screening requirements may not be necessary. It allows that for such flights, the common basic standards contained in the main framework regulation may not be appropriate and alternative security measures may be more appropriate. Specifically, such flights might involve light aircraft with a maximum take-off weight of less than 15,000 kilograms; law enforcement flights; flights for medical services, emergency or rescue services; or certain private or business aircraft flights. The draft instrument makes no changes to these criteria.

Regulation 2015/1998 implements the common basic standards by prescribing more detailed requirements. This covers matters such as airport security and planning, aircraft search, passenger and baggage screening, cargo and mail security, training and recruitment, security of supplies available in airport shops and on board aircraft, and technical equipment standards. It makes detailed provision for the practical implementation of the measures contained in Regulation 300/2008. All of these aspects are essential to aviation security and this instrument retains the provisions, subject to the necessary amendments to remove specific EU references.

One key area of Regulation 2015/1998 is the EU inbound cargo regime. The EU operates a regime known as ACC3, which stands for "Air Cargo or Mail Carrier operating into the Union from a Third Country Airport". In essence, this is a requirement for air carriers carrying cargo into the EU from a non-EU country to hold security designations. These designations confirm that they are screening cargo to the required standards and that a secure supply chain exists from the origin of the cargo to its point of entry into the EU. Responsibility for administering this system and granting designations is currently shared between member states. If the UK leaves the EU without a deal, it will no longer be part of this system, but it is of course critical that we maintain our inbound cargo security protections. The effect of this draft instrument is to retain the requirement that carriers must hold a security designation in order to fly cargo into the UK from third countries, and to apply this in a UK-only context. The new system of UK-ACC3 designations will be managed by the Civil Aviation Authority and the Department for Transport. In order to ensure a seamless transition on exit day, new UK designations will be issued to all carriers flying into the UK who currently hold EU designations. On expiry, carriers and screening entities will need to apply directly to the UK for new designations in the event of no deal. New designations will be granted using largely the same criteria as the existing system to minimise any additional burden on industry.

Regulation 2019/103 amends Regulation 2015/1998. The amendments that come into force before exit day have already been incorporated into Regulation 2015/1998 and will be retained and amended accordingly. The amendments that come into force after exit day do not form part of retained EU law. The only provision in Regulation 2019/103 that becomes part of retained EU law on exit day deals with the coming into force date of those later amendments. As the provision does not therefore serve any purpose, it is revoked by this draft instrument.

Regulation 72/2010 covers the requirements for Commission inspections of EU airports and national authorities, which will no longer be applicable, so the draft instrument revokes this regulation. The draft instrument also amends the Aviation Security Act 1982 to remove references related to Commission inspections and inspectors.

Finally in this instrument, Decision C (2015) 8005 contains detailed provision relevant to and in parallel to the detailed provision in Regulation 2015/1998. This Commission decision is a restricted confidential instrument which contains sensitive information necessary to require airports to carry out effective security procedures. Because of the security-sensitive nature of the provision it makes, for example, the types and quantities of material used for equipment testing, the decision is circulated only on a "need to know" basis and is not published.

Under the withdrawal Act, EU instruments not published before exit day are not required to be published on exit day and therefore cannot be meaningfully amended by this draft instrument. In order to retain the important aviation security rules contained in the decision, the requirements previously contained in it will instead be imposed by a direction. The direction will be given by the Secretary of State under powers contained in the Aviation Security Act 1982. The direction will form part of the single consolidated direction which sets out our domestic aviation security requirements that apply on top of EU legislation. The direction is regularly updated and a new version, incorporating the content of the decision, will be issued prior to EU exit. The content of the new direction will be disseminated to the same UK entities as those which currently see the EU decision.

The best outcome is for the UK to leave the EU with a deal, and delivering a deal negotiated with the EU remains the Government's top priority. However, as a responsible Government, we must make all reasonable plans to prepare for a no-deal scenario. This draft instrument ensures that in the event of a no-deal exit from the EU, the legislative framework for aviation security will give the aviation industry clarity about the regulatory framework in which it would operate in a no-deal scenario. It will ensure that we can continue to keep passengers and our aviation infrastructure safe and secure. I beg to move.

5.45 pm

Baroness Randerson (LD): My Lords, this SI deals with the legislative framework for aviation security in the UK covering everything from screening passengers to the rules governing access to airports. This is a hugely important field and one where the UK has an extremely good reputation based on rigorous efficiency and the fact that we were one of the first countries to take up the option to introduce more stringent measures on security. Safety at our airports is of course based on the pooling and swapping of key information—a process that has been built into the EU system which this SI dismantles—so I have some questions for the Minister.

On paragraph 6.4, the reassurance here on the use of the affirmative procedure is so gloriously vague that, to be honest, it is meaningless. We might have some affirmative SIs as a result of this, but on the other hand we might have some negative ones. We are given no proper measure of how that decision will be made. I would be grateful if the Minister could give us some information on how that judgment will be made. This is a fundamental area for our country.

Paragraph 6.6 of the Explanatory Memorandum refers to the revoking of Commission decision C(2015) 8005 and then states that the decision is so sensitive that we cannot be allowed to know what is in it. I have to say that this is a first for me. In my experience, I have never known the Government to revoke a secret power. Can the Minister give us some information as to what this might be about, even if she cannot give us the details? Certainly, can she explain why it is impossible to give us that information?

The question of airport inspections is important because we rely on the inspection of airports in other countries in order to ensure that UK flights and UK citizens are safe. We use the information from those inspections to give warnings to UK citizens that they should not fly to certain airports and to discourage airlines from doing so. This system relies on a free flow of information of a very sensitive nature. In future, we will inspect our own airports. That produces two questions in my mind. First of all, how will we make sure we keep in step with the rest of the world on those inspections and the terms on which they take place? Secondly, how will we continue to share information with the remaining 27 EU countries? The sharing of the information is the absolutely crucial thing here.

I move now to the granting of operating licences, which is dealt with in paragraph 7.3(h) of the Explanatory Memorandum. What will be the impact of removing the provision for mutual recognition between member states in the case of the granting of operating licences?

Finally, the EU has a system of mutual recognition of approved air cargo carriers, whereby approval is given following inspection. Once we leave the EU, we will no longer benefit from this system and will have to set up our own system of inspection and designation. To start with, it is explained here, we will recognise all those carriers we currently recognise, but, obviously, things will move on pretty fast. New companies will enter the field, new information might come to light about existing carriers, and so on. We will have to erect a new system that will be expensive to the taxpayer, but also—this is an important point—to the companies seeking approval, because they will have to do it twice over. They will have to seek approval in the EU and in the UK. Once again, I am really concerned that we are isolating ourselves on a security issue. We are voluntarily forfeiting access to information via EU systems. Obviously, on the balance of probabilities, we will be less secure as a result.

Lord Berkeley (Lab): My Lords, this is a very interesting SI, in particular the issue of confidentiality. This has come up again and again in not just the secondary but also the primary legislation. I know for a fact that people in the industries that I am in touch with say, "We have signed non-disclosure agreements, so we can't tell you anything", which is fine because it means they have to do what the Government say; they have

[Lord Berkeley]
no other information and no means of questioning it. More importantly, I need to ask the Minister how long these NDAs are going to go on for. As the noble Baroness said, once you have "security" in there and everything is confidential, getting that removed is almost impossible because there will always be 25 reasons for not doing it. That applies to NDAs and, even more important, to this legislation. We might just as well sit back and say, "Well, you didn't tell us about it. Of course we trust you; you're the best security in the world until something goes wrong". Whether we believe that is a different matter, but there is nothing we can do about it.

My second point concerns Regulation 16, which the noble Baroness mentioned, about removing the power of the Civil Aviation Authority to grant operating licences to UK-registered air carriers. Why can the CAA not continue to do this? After all, it is a UK government body with the expertise—probably unlike the Secretary of State and his Ministers. I would go one step further and say we can still leave the EU and not have any input into the decision-making processes that go on—if that is what is going to happen—but is there any reason why we should not have the back-to-back arrangements with member states on operating licences with the CAA on mutual recognition? What is wrong with that, apart from the fact that Ministers do not want to do it? The Minister shakes her head, but technically it would make life a great deal easier. It seems to me that it should be looked at. I do not think any noble Lords will oppose this SI tonight—it is a bit late now—but this is something we ought to be thinking about and challenging. On many of these SIs coming up, including railway ones next week, the decision has been made but actually has nothing to do with the basic principle of leaving the EU. It is somebody's interpretation of it to suit their own political ends or whatever. It is worth reflecting on that. In the meantime, I look forward to hearing the Minister's response

Lord Rosser (Lab): First of all, I thank the Minister for her explanation of this SI. I struggled to understand it, and I suppose it must be of some comfort to know that at least one Member of your Lordships' House—namely, the Minister—does understand it. Basically, as the Explanatory Memorandum says, EU law,

"sets out the baseline aviation security standards",

applicable in the UK. As I understand it, the purpose of the SI in front of us is to ensure that,

"the legal framework has the same practical effect",

after we have left the European Union. It says:

"Regulation 300/2008 and a number of the related EU instruments are being retained in United Kingdom law by virtue of the Withdrawal Act".

Consequently, the instrument,

"keeps the effect of the regulatory framework the same in practice".

I too have a number of questions, and I have to say they are suspiciously similar to those that the noble Baroness, Lady Randerson, has already asked. I too refer to paragraph 6.4 and raise the same point that the noble Baroness, Lady Randerson, raised. It says:

"In doing so, this instrument makes provision in relation to powers in Regulation 300/2008 (e.g. to amend detailed aviation security requirements) so as to confer these powers on the Secretary of State. In certain cases, the exercise of these powers is subject to the affirmative resolution procedure where it is considered that greater Parliamentary scrutiny is appropriate".

So we are talking about something of some significance: detailed aviation security requirements. Like the noble Baroness, Lady Randerson, I would like to know how the decision will be made as to whether it should be the affirmative resolution procedure or the negative procedure. Perhaps the Minister could give some examples of amendments to detailed aviation security requirements that might be made under the terms of Regulation 300/2008 and that would go through the process and the procedure mentioned in paragraph 6.4, so that we can get some feel for the kinds of matters that we as Parliament might be being asked to agree to or accept.

I too refer to paragraph 6.6, which contains this reference to "Commission Decision C(2015) 8005". I think we get some assistance earlier on in the document in finding out the purpose of this decision. It says in paragraph 2.4 that the contents,

"are not published, by virtue of provision in Article 18 of Regulation 300/2008".

It then states:

"The Decision prescribes detailed requirements which correspond to the detailed requirements set out in Regulation 2015/1998 but which, if published, would compromise the efficacy of the security measures applied at airports (e.g. the detailed specification of screening equipment or the minimum percentage of passengers required to undergo a particular form of screening)".

As has already been said, we are told that the decision will therefore not be published on exit day in accordance with paragraph 1 of Schedule 5 to the withdrawal Act, and for this reason cannot be the subject of provision made under Section 8 of that Act.

6 pm

I was going to ask what would happen then, as Section 8 removes deficiencies in retained EU law and so ensures that legislation is operable in the UK. However, as I understand what the Minister has said, changes—presumably we are talking about amendments to these security arrangements—will be imposed by direction from the Secretary of State. It would be helpful if the Minister could confirm what I think she has already said: that those directions will not be published. The traveling public will not know what they are and, as I think she said, it will be done on what is euphemistically known as a need-to-know basis. If that is the case, how will we know—and how can the Secretary of State be held to account—that appropriate amendments to airport security arrangements have been made? How will we know if he has covered the right issues? How will we know if the changes he has put forward are appropriate? On the face of it, it seems that there is no way in which the Secretary of State can be accountable for what he or she is doing. Perhaps the Minister could comment on whether that is the effect of the arrangements as set out in this SI.

Paragraph 7.2 goes on to talk about the Aviation Security Act and the provision that relates to Commission inspections. It says:

"Normally, two United Kingdom airports a year are subject to such inspections, and the United Kingdom 'Appropriate Authority' (the Secretary of State, assisted by the Civil Aviation Authority) is inspected once every three years. These inspections will not take place after exit day, since the United Kingdom will no longer be part of the EU".

If at the current time the Secretary of State, assisted by the Civil Aviation Authority, is inspected once every three years, who will inspect the Secretary of State and the Civil Aviation Authority in future? As far as I can make out, this document seems remarkably silent on that question. I invite the Minister to fill in what appears to be a gap, or, if it is not a gap, to point out to me where it sets out what the future arrangements will be for inspecting the Secretary of State and the CAA.

Moving on, paragraph 7.3(b) says:

"Regulation 8 amends Article 4 so as to replace legislative powers exercisable by the Commission with regulation making powers exercisable by the Secretary of State in respect of the basic standards of aviation security and to set criteria to permit derogation from these standards and adopt alternative measures".

Am I right in thinking that this is a new power for the Secretary of State to permit derogation from the standards? Do we have any derogations at present? Have we been trying to get any derogations to date but have failed to do so, which presumably we might be able to achieve once the Secretary of State is making the decisions on derogations?

Paragraph 7.3(c) says:

"Regulation 9 amends Article 5 so as to transfer powers to the Secretary of State to determine the responsibility for covering the costs of aviation security functions".

I appreciate that I ought to know the answer to this, but will the Minister explain where these powers are being transferred from—the Commission or somewhere else? What is this power and who has responsibility at present for covering the cost of aviation security functions in the UK, bearing in mind that the Secretary of State will determine that responsibility in future?

I will not repeat the question asked about paragraph 7.3(h), which relates to operating licences. However, I too am extremely interested to know what the answer is.

Paragraph 7.3(i) comments that:

"Regulation 18 amends Article 15 so as to transfer responsibility for airport inspections to the Secretary of State".

I take it this means transferring it from the Commission. Has the Commission ever found fault during any airport inspections so far, or do we have a 100% record in that regard?

Moving on, paragraph 7.8(f), at the bottom of page 7, says:

"Chapter 6 (see regulations 59 to 120)"—

which is an awful lot to have to wade through—

"is amended to introduce the concept of UK-ACC3 to replace the existing EU wide ACC3 scheme".

As I understand it, ACC3 stands for an air cargo carrier from a third country. Over the page, it goes on to say:

"To minimise any disruption or additional burden on industry, on the first day after the United Kingdom leaves the EU UK-ACC3, RA3, or KC3 designations will be issued to all carriers who currently hold an EU ACC3 designation and fly cargo into the United Kingdom, and their supply chains".

Can I take it from that, and if I have understood correctly what this is trying to say, that exactly the same standards will be applied under UK ACC3 as apply at present under EU ACC3?

Paragraph 7.8(i) says that in chapter 11,

"the provision for the mutual recognition"—

an issue we discussed earlier for operation licences—

"between Member States of training competences is omitted".

What is the impact of this and what replaces it? From reading it, I have not been able to make up my own mind as to what exactly the impact will be and whether anything is there to replace it when reference is made to the omission of training competences.

Finally, the Minister will not be in the slightest bit surprised that I am asking this. On the consultation outcome, a number of bodies are referred to. Are the trade unions represented on any of the bodies that were consulted? If not, were the trade unions in the industry consulted at all in the consultation that took place in respect of this SI?

Baroness Sugg: I thank noble Lords for their consideration of these draft regulations. I agree that this is an important SI, dealing with vital security at our airports and in our skies.

The noble Baroness, Lady Randerson, and the noble Lord, Lord Rosser, asked about future regulation-making powers, and I apologise that these were not specified in the EM. Currently, three legal processes are used for agreeing amendments to EU aviation security, and that depends on the level of the regulation. Essentially, we are following what has been done under the previous regulation.

In order to maintain equivalence between existing EU procedure and the proposed UK procedure for making future amendments, the statutory instrument provides the Secretary of State with powers to make amending regulations by affirmative resolution for amendments to provisions currently covered by Regulation 300/2008 and the overarching Regulations 272/2009 and 1254/2009, and by negative resolution for amendments to provisions currently covered by Regulation 2015/1998 and the amendments to that.

Lord Berkeley: Does that mean that the Secretary State intends, through the amendments the noble Baroness has mentioned, that the regulations will stay in line with the European ones as they develop?

Baroness Sugg: I am not able to give the noble Lord that reassurance as we are not sure how EU regulations will develop. However, we are of course committed to maintaining our high security record. As has been mentioned, we already have more stringent measures and that will continue.

On the more stringent measures and the Commission decision, the Aviation Security Act gives the Secretary of State powers to give directions to or serve notices on specified parties—for example, directly to air carriers or airports—for the purpose of discharging his aviation security responsibilities. The single consolidated direction is a compilation of the various directions and, after the UK exits from the EU, the single consolidated direction will continue to refer to the retained EU legislation, supplemented already, as I have said, by the more stringent measures. This is essential to maintaining our existing aviation standards, which will be continually assessed and modified, where necessary, to reflect the current threat picture.

[Baroness Sugg]

The single consolidated direction will also be used to set out the content of the Commission decision, and the content decision will continue not to be published. The information was not published before and will not be published in the future. I understand the noble Lord's concerns about that but, obviously, if more details were out there on the specifics of what was needed for aviation security that would put us at risk—for example, the specifications of screening equipment, the volume of detection, the criteria for the random testing of airport supplies, details of the exact screening requirements such as what percentage of passengers are checked, and the green list for aviation security. There is no change in this.

Lord Rosser: I appreciate that there are security issues involved—I do not pretend otherwise and the Minister may think this unnecessary—but is it still not possible for the Secretary of the State to publish something at least saying what general areas the regulations or amendments he has made cover without being specific about what they said?

Baroness Sugg: That would be a new development. As I say, the SI ensures that we continue what we have done previously. However, I will take back the noble Lord's suggestion to consider whether in the future we could do that.

The noble Lord, Lord Rosser, also asked who will be inspecting the CAA, the Secretary of State and airports after exit day. We will continue to maintain our high standards. We will be part of the ICAO and may have EU inspections for one-stop security purposes. This country has an excellent record of aviation security and will continue to have it after we leave the European Union.

The noble Lord, Lord Rosser, asked about derogation from standards. Some small airports and demarcated areas within airports already have some derogation. That is what we are carrying over. There are no plans to ask for additional derogations.

On civil aviation security equipment manufacturers, the noble Baroness, Lady Randerson, asked about standards. I point to the European Civil Aviation Conference which, despite its name, is a branch of the International Civil Aviation Organisation and is made up of 44 member states. We will continue to play an active role in ECAC after Brexit and that will include contributing to the development of improved standards on security equipment. ECAC also undertakes testing of aviation security equipment to certify that it meets the required standards. We will maintain that relationship. Any international manufacturer producing such equipment can submit it to ECAC for testing and certification and that is the standard we will continue to use. There should not therefore be any other barriers to UK manufacturers supplying EU airports post EU exit.

On ACC3—this is an important part of the SI—I say to the noble Lord, Lord Berkeley, it is not our choice that we will no longer be part of this scheme. It is an impact of leaving the European Union without a deal. The scheme is open only to member states and. if we leave without a deal, we will no longer be a member state. This is not a policy choice that we are taking; it is an effect of us leaving if we leave without a deal. That is why we have had to bring in a new system.

We want to minimise disruption and additional burdens on industry while maintaining our standards. That is why we have the new UK ACC3 designation and that will be issued to all carriers and the supply chains which currently hold the EU designation. We have consulted carefully on this and, prior to leaving, the CAA will formally confirm the new UK ACC3 designations for carriers and that will be reflected in the UK ACC3 database. However, as the noble Baroness pointed out, this is a moving feast. There will be new cargo flights for existing designations and, when they are due for renewal, carriers in that instance will have to apply directly to the UK for the new ACC3 designation. In order to manage the new regime we will need to maintain a record of all granted designations. In a no deal scenario, we will lose access to the EU database that forms the backbone of the EU ACC3, comprising the approved carriers, the entities and the validators. We will need a new system and that is what we have set up. However, we will ensure that that continues to maintain our high security standards and minimises disruption.

In the current system, to which the noble Lord referred, the UK has a responsibility for designating certain destinations to form part of the EU system. That will also be removed and the EU will take on that role.

On compliance and inspection of airports, as I mentioned earlier, the EU has said that it will recognise one-stop security and we expect some EU inspections in the future. However, domestic aviation security compliance is already managed by the CAA and will continue to be so after exit day.

The noble Baroness, Lady Randerson, raised the important issue of costs. As the basic aviation security requirements will not change, any costs to the industry will be minimal. There will be modest administrative costs to air carriers on expiry of their existing designations because of the change in the ACC3 system. We have aimed to minimise additional costs. The evidence required for both systems will remain the same, so carriers should be able to pay for a single independent validation report and submit it to both the UK and EU authorities. There is no direct charge to carriers applying for an EU ACC3 designation and the CAA will not impose a direct charge on that either. I agree with the noble Lord that it would be easier to stay with the same system but, as I say, it is a consequence of leaving with no deal.

On the question of the noble Lord, Lord Rosser, about how the current system on costs works, the current regulations allow member states to decide how to allocate the costs of aviation security, subject to the relevant rules of Community law. That means that member states do it differently. There are some that use central funding for it. In the UK currently we have the user-pays principle: the costs are borne by the airline and the airports and ultimately passed on to the consumer. Industry meets those costs by virtue of

the charging system under Section 11 of the Civil Aviation Act 1982, and that arrangement is expected to continue after we leave.

On the cost to government, another point raised by the noble Baroness, Lady Randerson, the CAA already has the expertise to assess applications for cargo security designations under what it does in the EU system and it is making appropriate contingency preparations to deliver continuity under that scheme. It has incurred a one-off cost in developing the new database to assist in administration. That cost is around £150,000 and will be funded out of the CAA EU exit programme contingency fund provided by the Department for Transport. There may also be a modest increase in CAA resources required to administer the system in the future. We expect that to be around two full-time posts a year.

I hope that I have answered the majority of the questions. If I have missed any I will follow up in writing. As I have said, delivering a negotiated deal remains our top priority. This SI makes it clear what the benefits of delivering a deal will be and what the implementation period will be. However, in the event of no deal, it is essential to ensure that a crucial part of the regulatory framework for civil aviation continues to work effectively after exit day and that passengers continue to benefit from the level of security we see today.

Motion agreed.

Air Traffic Management (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

6.20 pm

Moved by ***Baroness Sugg***

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

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, this draft instrument will be made using powers in the European Union (Withdrawal) Act 2018 and will be needed if the UK leaves the European Union in March without a deal. It amends single European sky legislation, the four basic regulations which provide the framework for EU air traffic management regulation, and the implementing regulations which set out the more detailed requirements.

The implementing regulations cover air traffic management interoperability: the manner in which the UK works with other states to deliver air navigation services; the organisation of airspace; the safety and oversight of air navigation services; new technology and how it is to be used; and a system of performance and economic regulation for air navigation services. The single European sky legislation supports the EU initiative to improve the efficiency of air navigation services while maintaining safety within the European air traffic management system. The delivery of air navigation services is vital to ensure that congested airspace can be used safely and efficiently. The services regulated by the single European sky legislation support air traffic growth by ensuring the safe separation of aircraft. If these services are not provided in an efficient way, it can cause considerable delays, with resultant costs and disruption to airlines and passengers.

This draft instrument will ensure that the effective regulation of air traffic management arrangements in the UK continues in the event of no deal. It addresses areas where retained EU law will no longer function effectively after leaving the EU. It does this by removing governance and oversight roles of EU bodies that cannot be performed by the UK after exit and assigning them instead to the Secretary of State or the Civil Aviation Authority, and by removing regulatory tools where there is already satisfactory UK legislation. Where possible, roles currently undertaken by the European Commission and EU bodies are being transferred to the Secretary of State or the Civil Aviation Authority, but where they relate to pan-European functions, including air navigation services delivered by more than one state, they are being removed.

The instrument includes arrangements to recognise EU-based certifications and authorisations existing immediately before exit day. For example, EU air navigation service providers operating in the UK that have certificates issued prior to exit day will continue to have their certificates recognised by the CAA, which will allow them to continue to provide services in some parts of UK airspace. These certifications and authorisations will be preserved for a maximum two-year period, subject to any earlier expiry or termination, which will provide continuity until another agreement is reached with the EU on these issues.

The single European sky legislation includes a regulatory framework for the development and deployment of new technology and ways of using it: the Single European Sky Air Traffic Management Research programme, or SESAR. In the event of no deal, the UK will not be able to participate in or legislate for SESAR governance arrangements. We are, however, retaining requirements for the deployment of new technology arising from SESAR for the UK's air navigation service provider, NATS, and some UK airports, to ensure that UK arrangements are modernised in line with those of the EU and that interoperability is retained.

The instrument also ensures that the UK can continue to comply with its international obligations, such as those set out under the Chicago convention, which governs international civil aviation. This is done by retaining regulations that currently dictate how we comply with the standards and recommended practices—SARPs—adopted by the International Civil Aviation Organization under that convention.

Again, the best outcome is for the UK to leave with a negotiated deal, and delivering that deal remains the Government's top priority but, as a responsible Government, we must make all reasonable plans to prepare for a no-deal scenario. The instrument maintains the existing regulatory framework and technical requirements for air traffic management to ensure the continued provision of efficient, safe air navigation services and the effective regulation of the UK air

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traffic management system, as well as to maintain interoperability between the UK and the EU after the UK exits the EU. This instrument also ensures that in the event of a no-deal exit from the EU, the UK has effective regulatory arrangements for the UK's air traffic management system and that the aviation industry—in particular, the CAA and NATS—has clarity about the regulatory framework which would be in place in that scenario. I beg to move.

Baroness Randerson (LD): My Lords, no SI better epitomises the efforts of the Government to force us into splendid isolation. Anyone who has studied history at any time will remember that 19th-century concept of British diplomacy—which got us precisely nowhere in the end.

Modern air traffic management is based on a complex network of international treaties, organisations, protocols and rules that has built up over many years in the interests of safety, efficiency and limiting the environmental impact of aviation. I welcome the fact that just for once, under the section in the Explanatory Memorandum on consultation, there is reference to a specific view of stakeholders. It might have been a limited consultation, but we have a report that they want continuity of the regulatory framework—well, of course. Despite this, this SI is full of efforts to shoehorn the necessary changes into the existing approach. However much there are attempts to continue as normal, there will be significant changes.

There are several issues I want to raise. First, paragraph 7.3 of the Explanatory Memorandum states that some powers now held by the EU will come to the Secretary of State and some to the CAA, but air navigation services delivered by more than one state are simply being removed by this SI. Surely this will lead to a dangerous lack of co-ordination. Will the Minister explain what will happen in that yawning gap once the EU powers are removed?

Paragraph 7.9 states:

"The UK will remain a contracting State of Eurocontrol".

Eurocontrol is an intergovernmental organisation regulated by the EU. I realise that membership of this organisation is essential for the interoperability of air navigation systems, but I was quite surprised to see that we are going to remain a member, given that the EU has powers over it. Has the Minister explained this to her colleagues who are in favour of leaving the EU? The compromise appears to be that we will accept the rules of Eurocontrol, but will be unable to participate in its governance. That seems a pretty poor deal, but I appreciate that we have no choice but to remain a member.

I have a question on functional airspace blocks, or FABs. They do not follow state boundaries, and we share an FAB with Ireland. My recollection is that a large proportion of Atlantic air traffic passes through that FAB. After Brexit, we will have no legal basis to participate in the FAB and in future, any involvement —so the Explanatory Memorandum states—will be discretionary. However, there is no word in the EM about what the Government would like to do. Is it their intention to try to remain a member of the joint functional airspace block with Ireland, and will leaving it be something they do only unwillingly, if forced? There is nothing in the Explanatory Memorandum about Ireland if we cease to participate. We are looking here at the splintering of the co-ordination on airspace functioning, and I believe that it would have a very serious impact on Ireland if we ceased to participate.

6.30 pm

I want to ask a question simply for information, on the sharing of civil and military airspace to increase efficiency. Can the Minister explain how it works at the moment? Is it done on an international or a purely national level? I realise that the plan is that in future, the CAA will co-ordinate it on a national level but I am interested in knowing how it operates at the moment.

I turn to the single European sky legislation. Paragraph 7.26 of the Explanatory Memorandum refers to EU funding to facilitate the delivery of certain common projects. Can the Minister explain more to us about the project that is under way at the moment? What is the value of the pilot common project that is referred to? It commenced five years ago and I am led to believe that it might be intended to go on until as late as 2024. Who is involved and what do the Government plan to do in future to advance interoperability? How much money are we talking about as our allocation for this project?

Finally, I emphasise that to my mind there are strong themes common to this and the previous SI. There is a crucial impact on safety. When we co-ordinate with others, we maximise safety. Anything that reduces that co-ordination also reduces our safety, and I regret that this SI has had to be brought today.

Lord Rosser (Lab): Again, I thank the Minister for explaining the purpose of this SI. As before, some of the points that I wanted to raise were touched on by the noble Baroness, Lady Randerson.

The first relates to paragraph 7.3 of the Explanatory Memorandum, to which the noble Baroness referred—particularly the reference to,

"pan-European functions including ANS delivered by more than one State … being removed".

I, too, would like to know the actual impact of that. Does it compromise safety in any way, and what does it mean in practical terms from our point of view as a nation?

Paragraph 7.9 refers to Eurocontrol, which it says is,

"an intergovernmental organisation that provides some ANS for its member States".

It says:

"It is not an EU body but it has been designated as the",

single European sky,

"Network Manager and is regulated by the EU where it provides services to EU Member States. The UK will remain a contracting State of Eurocontrol after it leaves the EU and will still be able to receive its services as a contracting party to the Eurocontrol Convention".

Can the Minister explain the exact impact of that on us, bearing in mind that it is designated as the single European sky network manager and we will no longer

be part of the EU? What does it mean for us as far as regulation is concerned? Presumably it does not leave everything exactly the same as it is now, but at the moment I am struggling to identify precisely what the change might be. Any assistance that the Minister can give on that will be appreciated.

Paragraph 7.12 talks about the network manager role. It says:

"These functions pre-date the EU exercising its competence for ANS and the UK would still be able to access Eurocontrol's wider network management role as a contracting State of the Eurocontrol Convention".

However, it then says:

"This instrument will amend the preserved SES Legislation relating to airspace in an operable form, but the UK will be unable to participate in EU governance arrangements of the SES Network Manager".

What will our Government's arrangements for the network manager be? If Eurocontrol is the SES network manager and that no longer applies to us, am I right in saying that we have to set up some sort of similar arrangement, or have I misunderstood exactly what this means and what its implications are?

As the noble Baroness, Lady Randerson, has already said, paragraph 7.13, which talks about functional airspace blocks, refers to the fact that the UK formed an FAB with the Republic of Ireland in 2009. Paragraph 7.14 then goes on to say:

"The legislation establishing FABs will not be retained in the SES EU Exit Regulations. As a non-Member State after exiting the EU, the UK will have no legal basis to participate in a FAB".

My question is not dissimilar to that posed by the noble Baroness, Lady Randerson. I simply ask: if we are no longer able to participate in an FAB but have one with the Republic of Ireland, what will the impact of this be on 29 March under a no-deal Brexit? What exactly does it mean and what are its implications? Do we have an FAB only with the Republic of Ireland or do we have a number of others and, if so, what is the impact on, or implication for, those further FABs?

The document also refers in paragraph 7.16 to changes being made in the SI,

"so that the Member State functions in the regulation are retained and instead carried out by the CAA who will now oversee the implementation of the regulation"—

that is, these regulations. Bearing in mind that it specifically refers to a change being made in the SI, is this the only such change of significance in it or are there others that perhaps might not have been highlighted in the same way?

Paragraph 7.19, on the subject of ATM safety, refers to the fact that the,

"SES Legislation relating to safety forms our current mechanism … so that legislation will need to be preserved in UK law in an operable form to maintain continuity in safety. In doing this we are giving some oversight functions to the CAA which were previously for EASA".

Am I right in saying that this means an additional interface on safety issues? If I am right, does the Minister agree that that is hardly a desirable development, since the more interfaces you have over safety, presumably potentially—I stress "potentially"—the more difficult safety issues can become? It would be helpful to have the Minister's comments on that issue.

The Minister referred in her introduction to the SESAR programme, which is the single European sky air travel management research programme. Paragraph 7.25 of the Explanatory Memorandum says that,

"the SESAR Joint Undertaking (SJU) was set up under a Council Regulation to manage",

the research and development programme. The paragraph goes on to say:

"As the UK will no longer be able to participate in the SJU after leaving the EU the Council Regulation setting up the SJU will be revoked".

What exactly are the potential consequences of this as far as research and development are concerned? I believe the Minister said that we have played an active role within it. Will we inevitably be able to play only a less active role? From our point of view, is there likely to be less involvement in research and development programmes?

Perhaps the Minister can confirm—I am sure there will be no difficulty, since the Minister in the Commons has already said so—that on SESAR funding, if there is a no-deal exit the Government will underwrite what would have been paid to the UK under the current arrangements, to provide certainty and continuity for those involved. Paragraph 7.26 indicates that the pilot common project will continue, saying that there will be,

"legislation to require UK project participants who have been implementing it since 2014 to complete the delivery of projects which will maintain interoperability with the UK's neighbouring States".

Presumably, the fact that it refers to one project suggests that withdrawing in this way means that there will be other projects with which we will not continue, or will not get involved when they commence. Perhaps the Minister could confirm whether I am right; that hardly seems a desirable situation.

I turn to paragraph 10 on "Consultation outcome" and ask once again: were the trade unions involved in the consultation? References are made to various stakeholders. I do not know whether that includes the trade unions but, again, I would like to know the answer to that question. The noble Baroness, Lady Randerson, mentioned that the consultation paragraph refers to a view among stakeholders supporting,

"continuity in terms of the regulatory framework for ATM after the UK leaves",

the European Union. The paragraph ends:

"The preparation of the instrument also takes account of representations from operational stakeholders on the impacts of the UK leaving the EU or ATM and ANS including from NATS, the UK's en route air traffic services provider".

Can the Minister tell us what those representations were? Were they simply representations in relation to continuity or were other matters taken into account in preparing this instrument? If so, in what way does the instrument reflect those further representations?

Baroness Sugg: I thank noble Lords for their consideration of these draft regulations and turn to some of the questions raised. On participation in the UK-Ireland functional airspace block—the FAB—it is currently the only FAB we are part of but, in the event of no deal, there would be no legal basis for the

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UK to continue to participate in it. Nor could we compel Ireland to be part of it, so we have not been able to retain this part of the single European sky legislation in the SI. There is a possibility that EU states could involve neighbouring third countries in their functional airspace blocks and future UK involvement as a third country would be discretionary.

Co-ordination and co-operation with Ireland will of course continue, as both states are members of the international inter-government organisation Eurocontrol and, indeed, ICAO; both the UK and Ireland are delegated by ICAO to provide air traffic services in parts of the north Atlantic. The noble Baroness is quite right to point out that 80% of traffic entering or leaving the EU from the north Atlantic flies through that airspace, so it is imperative that we work together on this.

6.45 pm

We must make sure that our air traffic management continues to operate with that of the EU. We will keep the legislation under review on an ongoing basis; we do this already and will continue to do so after exit day. This will make sure that we meet our policy objectives, as well as our legal obligations, and that the airspace remains interoperable with our neighbours. The powers transferred could be used, for example, to comply with the international obligations set out by ICAO. ICAO rules govern the global air traffic management network; the noble Baroness, Lady Randerson, is quite right to point out its interconnectivity.

We need to make sure that our own air traffic management arrangements remain interoperable with the rest of Europe; that is why we will continue to align with ICAO's standards and recommended practices and, potentially, some EU regulations. In many cases, it is likely that we will need to continue to follow these rules to ensure that UK airspace functions with that of our neighbours. But that will not necessarily always be the case. As ICAO updates its SARPs, the UK will need to update its own regulations. These will be subject to the UK air traffic management regulations, which are under the negative resolution procedure.

EU funding has been available and, indeed, granted to UK industry for the deployment of SESAR technologies. Those funding arrangements fall under other EU regulations for the single European sky and the UK will not be able to participate in them if we leave the EU without a deal. The funding was made available through the Connecting Europe Facility—CEF—to help industry deploy SESAR technologies. UK stakeholders received over €130 million in grants for work on air traffic management between 2015 and 2016. I am happy to take the opportunity provided by the noble Lord, Lord Rosser, to confirm that the Government have guaranteed to cover any loss of EU funding granted to the UK. That means that any funding that companies were due to receive will be paid to them through the Treasury.

Lord Rosser: What is the figure likely to be that the Government will have to underwrite?

Baroness Sugg: I am afraid that I do not have a specific figure. Future funding is under consideration as part of our wider airspace modernisation project. That will be looked at through the CAA, which has a contingency fund for airspace modernisation costs, including the deployment of new technology.

It is important to reiterate that the safety of airspace will not be jeopardised after we leave the EU. This SI, along with the aviation safety SI which has been laid and will be debated in the coming weeks, will ensure that we have the same high safety standards. Air traffic controllers will continue to be licensed by the CAA and relevant EASA regulations will be saved in national law to ensure that those safety standards remain.

On the pilot common project, UK industry has been involved in the governance to shape the scale and costs of SESAR deployment projects. The future deployment of new technology would need UK legislation under the Civil Aviation Act 1982.

The noble Baroness, Lady Randerson, asked about military and commercial use. The military is excluded from the single European sky legislation. The flexible use of airspace is about using airspace reserved for the military when the military does not need to use it. It is not strictly about regulating the military, as such, but rules will be transferred into UK law through the statutory instrument which will continue to oversee them.

NATS is currently the UK's en route air navigation services provider and will continue in that role; there will be no difference. On the question of what will replace the SESAR programme when the UK leaves the EU, the level of participation in SESAR remains a matter for negotiation. We firmly believe that it is in the best interests of the UK and indeed of the EU to maintain close co-operation, but it is likely that UK industry will no longer be able to receive EU funding for SESAR deployment. As I said, the Government have committed to cover the costs of that.

I hope that I have answered all the questions. If I have missed any, I will follow up in writing. This SI, and others to be debated in the coming weeks, are a key part of ensuring that we have a functioning statute book for aviation should we leave the European Union without a deal. It will make sure that, in the event of no deal, the UK has effective regulatory arrangements for our air traffic management system, and that the aviation industry, the CAA and NATS, have clarity about the regulatory framework.

Lord Whitty (Lab): My Lords, I do not think that the Minister answered my noble friend Lord Rosser's question on this instrument, or the previous one, about consultation with the trade unions. As she is aware, I am the vice-president of BALPA.

Baroness Sugg: My apologies for not answering that question. We meet BALPA regularly to discuss a variety of issues, including Brexit. I cannot recall discussing this specific SI with BALPA but it is incredibly important that, as we develop these SIs, we take into account industry's needs, our regulators' needs and of course trade union needs.

Motion agreed.

Relationships Education, Relationships and Sex Education, and Health Education

Statement

6.50 pm

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, with the leave of the House I will repeat a Statement made in the other place earlier today by my right honourable friend the Secretary of State for Education. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement to update the House on the Government's proposals for the draft regulations and guidance for relationships education, relationships and sex education, and health education, following public consultation. It is 19 years since the sex and relationships guidance was last updated. The world that our children and young people face today is very different; how they build relationships, interact with their peers and manage their own mental and physical well-being has changed significantly. Along with all the positives of modern technology and new media come great risks, as children and young people are exposed to information, content and people that could and do cause harm. There is little distinction for many young people between their online and offline lives. That why I believe that, now more than ever, we need to provide young people with the knowledge they need in every context to lead safe, happy and healthy lives.

During the passage of the Children and Social Work Act 2017, with strong cross-party support, the Government brought about the introduction of compulsory relationships education for all pupils in primary schools and compulsory relationships and sex education for all pupils in secondary schools. In July I announced that in addition to this I would be making health education compulsory for all pupils in state-funded schools. Thanks and appreciation are due in particular to my right honourable friend for Putney for her leadership through these historic steps, my right honourable friend for Basingstoke and many others across the House, including the honourable Member for Rotherham. My sincere thanks also go to all the external groups and bodies that have contributed to this process, to the tens of thousands who contributed in the call for evidence and consultation and, particularly, to our education adviser, Ian Bauckham CBE. Today we have laid the regulations that, following debate, will finalise this process, as well as publishing the accompanying statutory guidance for schools.

It is clear—this was reflected in the consultation responses—that there are understandable and legitimate areas of contention. In reviewing responses and determining the final content of regulations and guidance, we have retained a focus on the core principles for the new subjects that Parliament endorsed through the Children and Social Work Act. Our guiding principles have been that these compulsory subjects should help to keep children safe; help to prepare them for the world in which they are growing up, including its laws that relate to relationships, sex and health; and to help to foster respect for others and for difference. Content must be age-appropriate and developmentally appropriate and taught in a sensitive and inclusive way, respecting the backgrounds and beliefs of pupils.

Parents and carers are of course the prime teachers for children on many of these matters, and schools complement and reinforce this role by building on what pupils learn at home. We have retained the long-standing ability of parents to request that their child be withdrawn from the sex education element of RSE. The school should respect the parents' request to withdraw the child, except in exceptional circumstances, up to and until three terms before the child reaches the age of 16. At that point, if the child wishes to take part in sex education lessons, the head teacher should ensure that they receive it in one of those terms. In response to the consultation, we have further clarified in the guidance how and when a pupil's special educational needs may be taken into consideration, and that head teachers should document their decision-making process on the right to withdraw.

We believe that after reviewing the consultation responses we have struck a balance between prescribing clearly the important core knowledge that all pupils should be taught while allowing flexibility for schools to design a curriculum that is relevant to their pupils. We made a small number of changes that we felt were important and would further strengthen the intent of the guidance. For example, we have made changes to the content on puberty to reflect that menstruation and menstrual well-being should be taught in all primary and secondary schools. Given the lack of distinction that young people see between online and offline contexts, we have expanded teaching about internet safety and harms to include content on the potential risks of excessive screen time and how to be a discerning and discriminating consumer of information and other content online. We have included teaching about rape, female genital mutilation and forced marriage in secondary RSE, and we have amended the content on organ and blood donation to include the science relating to stem-cell donation.

We are committed to ensuring that every school will have the support that it needs to deliver these subjects to a high and consistent quality by September 2020. We will be investing in tools that will improve schools' practice, such as a supplementary guide to support the delivery of the guidance, targeted support on materials, and training. For the financial year about to begin, we have allocated up to £6 million to invest in the development of these tools. We will continue to encourage as many schools as possible to start teaching these subjects from September 2019, partly so that we can learn lessons and share good practice about how these subjects are being taught before the full mandatory rollout.

These new subjects will put in place the building blocks needed for healthy, positive, respectful and safe relationships of all kinds, starting with family and friends and moving out to other kinds of relationships, including those online. Young people will know what makes a good friend, a good colleague and a successful marriage, and what is acceptable and unacceptable behaviour in relationships. They will understand the positive effects that good relationships can have on their mental well-being. Alongside CPR and first aid, there will be now be mandatory teaching on mental health and well-being, as a foundation for our wider transformation programme on support services for children and young people's mental health.

[Lord Agnew of Oulton]

We believe that these proposals are an historic step in education that will help to equip children and young people with the knowledge and support that they need to form healthy relationships, lead healthy lives and be happy and safe in the world today. I commend this Statement to the House".

6.58 pm

Baroness Massey of Darwen (Lab): My Lords, I very much welcome the Statement.

Noble Lords: Order!

Baroness Massey of Darwen: I am so sorry.

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for repeating this important Statement. We welcome the fact that the Government are introducing the provisions of the Children and Social Work Act 2017 on the introduction of compulsory relationships education for all pupils in primary schools, and compulsory relationships and sex education for all pupils in secondary schools. In addition, health education is being made compulsory for all pupils in state-funded schools, which is also something that we regard as a positive move in preparing young people for an increasingly complicated world. I have a number of questions for the Minister and will be perfectly content if he wishes to respond in writing if he feels unable to answer them immediately.

The Secretary of State announced that he is making £6 million available for training and resources to support the new subjects, but that averages out at around £250 per school. What does the Minister expect schools to be able to achieve with such meagre additional resources? Can he further provide an indication as to whether these are indeed additional resources or whether they are recycled from within the DfE budget? How many teachers will be trained in the new subjects, and how many schools does he expect to be teaching them, by the date that he mentioned, September 2020?

I agree with the Secretary of State that these subjects are of vital importance, but I suspect I am not alone in wondering what he expects schools to teach less of in order to make room for these new subjects in the timetable.

I understand the Government's position on the parental opt-out for relationships and sex education, but I have to ask why they would not give a child the right to be included in those lessons at any age instead of selecting what appears to be an arbitrary age at which point the child's voice will be heard. The Statement says that the parental opt-out could be overruled in "exceptional circumstances". Could the Minister give examples of what he believes would amount to such exceptional circumstances?

Noble Lords will have read of the dreadful bullying and mental health problems that affect LGBT people. The fact that these issues are included in the draft guidance could be a milestone in ensuring that these people and others can grow up understanding more and living in a safer environment. We are certainly glad that the draft guidance says that these topics must be fully integrated into the curriculum and not taught separately. Does the Secretary of State believe that there are any circumstances in which a school should be allowed to simply not teach LGBT issues as part of this curriculum? Obviously, it would undermine the whole thrust of the provisions if that were the case.

It can be only to everyone's benefit if we better understand the differing issues that face each of us. I hope these regulations will mean that we can work on a cross-party basis to make that a reality for the next generation.

Lord Addington (LD): My Lords, following on from the questions from the noble Lord, Lord Watson, I would like to say that I agree with virtually every single one of them—indeed, all of them on this occasion. I also congratulate the Government on having done this. Apart from anything else, this is a good thing; there have been very few things from across the House recently which we have been able to say were a good thing, so whatever else, it makes a nice change. Also, it was announced on the radio this morning—I heard it while having my cornflakes—that certain groups were protesting against this activity. Let me congratulate the Government again; if you had not offended somebody when you did this, it would not be worth the paper it is written on.

I have one or two smaller questions, which follow on from those of the noble Lord, Lord Watson. First, on the tools and the £6 million, the noble Lord hit it absolutely squarely; that is a very small figure for the entire education system. How much ongoing training will be given to teachers in delivering this? Will it be worked into initial teacher training or education, whichever one you want to use? How much CPD will be used? This is a new set of skills that has to be worked into lessons. It will not be that easy; there will be mistakes. How will we look at this and review it? I think this is a very valid question. Do not damage a good thing for a ha'p'orth of tar. Make sure you do this correctly.

Also, when going through this process, can we make sure that the entire system comes around and behind it, so that we can deliver this properly? If we push it off into certain departments, or it becomes something which is normally seen in certain lessons, we will always have problems. It would be very helpful, either today or in some later guidance, to have some idea about how the Government will bring the system around this and how they will work this through.

Last, but I hope not least, I have a question about what it says in the Statement about people with special educational needs. What does the Minister mean by this? Of course, this is my own special area. Which groups is he talking about? Is there some style in this? A few people with autism may have some trouble understanding these topics, but only a few. Somebody with dyslexia may well have no problem with this. What do the Government mean by this? If you do not have the answer now, where will it be presented? The phrase about special educational needs takes into account 20% of the school population, so please give some guidance on this.

Lord Agnew of Oulton: My Lords, on the questions from the noble Lord, Lord Watson, I hope I will address most of them here, but I will write on any that I have missed.

On funding, this is a ring-fenced sum of money. It comes out of the DfE budget, but as noble Lords will know, the DfE budget runs to tens of billions of pounds. This sum is allocated for this. I accept that the sum does not sound like a lot per school. One of the reasons why we are keen for schools to start to roll out this training in September of this year, before it becomes compulsory, is to get feedback from them on their experiences and whether they will need additional support.

A lot of resources are already out there, and they are good quality. For example, there is the Sex Education Forum, which, according to its website, which I looked at today, is endorsed by the ASCL, Unison and the NEU. These are all good-quality resources. It will be a matter of schools learning how to access them. If they feel there are gaps, they will feed that back to us and we will respond.

On how many teachers will be trained, we want to see this soft rollout starting in September to get a sense of how profound the additional training needs will be, going beyond what schools are already doing on PSHE, health education and other elements which are already in the curriculum. It will be a matter of seeing how much further they need to go from where they are at the moment, which also ties in with the question about room in the curriculum. There is already space in the curriculum for much of this, and we envisage there being adequate space. I will come on to that again when I answer the questions from the noble Lord, Lord Addington.

On the right to withdraw, this is a very difficult balancing act. The noble Lord, Lord Addington, made the point that we were always going to upset some people on either end of the spectrum. We believe the prevailing thrust of this is that parents should have responsibility for educating their children on these sensitive matters. We brought in the rule about three terms prior to age 16 because that is the legal age of consent for sexual intercourse, so it is important that some training is made available to children before then.

On "exceptional circumstances", I think the term is what it is. It is extremely difficult to predict what these circumstances might be. We will see from our soft rollout starting in September if circumstances arise which are sensitive and need addressing. However, our view is that we want schools to make the judgments based on what is age appropriate and relevant to their own communities. Clearly, a metropolitan school might have a different kind of child who is more advanced in their understanding of the world than a child in a rural area. We have to be flexible on that.

On the issue of LGBT, which the noble Lord, Lord Watson, raised, we are very aware of the concern about bullying. The subjects are designed to educate pupils about healthy relationships. We have been clear that schools have flexibility on how they develop this, but in the *Keeping Children Safe in Education* guidance, for example, which we rolled out last year, we focused very much on bullying between children and situations where people may be of a different sexuality.

Turning to the noble Lord, Lord Addington, I thank him for acknowledging the cross-party support for this. It was heartening to listen to the debate in the other place this afternoon and see the strong cross-party support. I hope I have addressed some of the funding issues in my answer to the noble Lord, Lord Watson. The noble Lord, Lord Addington, raised the point about ongoing focus in this area. I absolutely agree that this is a Department for Education responsibility. A question was raised in the other place about the fact that it has been 19 years since we last did this and it better not be another 19 years before the next review. My right honourable friend the Secretary of State was keen to indicate that this would probably be reviewed every three years, but possibly more often. We absolutely accept that.

On SEND, coming back to my answer to the noble Lord, Lord Watson, about teaching being age appropriate, it also has to be appropriate for the mental development of a child. If a child's special educational needs are particularly severe, schools will need to be more sensitive to the needs of that child, but as the noble Lord, Lord Addington, quite rightly says, with many SEND issues such as dyslexia, it will not really make any difference and the child would be treated in the same way.

7.08 pm

Baroness Massey of Darwen (Lab): I apologise for my earlier interruption. Noble Lords may put it down to keenness, as I am keen on this area of the school curriculum. I very much welcome the fact that this will be a compulsory subject in our schools; it has been a long time coming. The Minister rightly emphasised that teaching on keeping children safe, developing good relationships, self-esteem and sexual education has been recognised in surveys as having an impact on academic performance in schools.

We know that not all children learn about issues such as sex and relationship education and online safety at home. Indeed, many parents say that they are pleased and grateful that their children receive this kind of education from schools and other professionals. I hope the Government will not be swayed by negative impulses from media sensationalism about this, as we have seen already. Such treatment of serious subjects is a disservice to parents and children.

We have talked about funding; I hope that that will be sorted out. I also hope that schools will be encouraged to involve other professionals in delivering this programme, including school nurses, and will work across departments to share expertise and the funding that will be made available.

Lord Agnew of Oulton: I reassure the noble Baroness that we are absolutely firm on steering the middle course that we have tried to achieve over this long period to get to this point. As she will know, the call for evidence generated some 23,000 responses; the response to the consultation generated another 11,000. On top of that, we had two petitions, with 29,000 names in combination. We have tried to steer a way through this and we believe that we have come up with a process that keeps the vast majority of parents happy and

[Lord Agnew of Oulton]
comfortable that we are doing this in the right way, but, as I said to the noble Lord, Lord Addington, we will keep this under review because we are in a fast-changing world, particularly online.

The Lord Bishop of Oxford: My Lords, I thank the Minister for the repetition of the Statement and for the guidelines. The Church of England's chief education officer has in particular welcomed the stronger impetus on teaching faith perspectives relevant to people of all faiths and none, irrespective of the kind of school that they attend, which is key to combating religious prejudice.

I underline the concerns raised by noble Lords about resourcing. The Minister will be even more aware than I am—as Bishop of a diocese where there are some 283 church schools—of the pressure on budgets for head teachers and the stress that creates. I am very encouraged by the Minister's comments that this will continue to be scrutinised.

I particularly welcome the emphasis in the document on mental health and on good education for an online world. Would the Minister like to comment on the interface between these very good guidelines on ensuring good teaching on this in primary and secondary education and the forthcoming online harms White Paper? Clearly, there needs to be dovetailing between good policy on education and good regulation to ensure that the environment in which our children and young people are growing up is adequately regulated and supervised.

Lord Agnew of Oulton: The right reverend Prelate is absolutely correct to mention the whole issue of online safety and the regulation that I hope will curb some of the excesses we have seen over the last 10 years. One of the things we amended in the period between laying the original guidance and the consultation was to put more emphasis on encouraging children to have much more self-discipline and self-restraint in their use of the online world. It is a matter of great concern to me that teenagers are spending four or more hours a day in this medium, which cannot be healthy. All these things will need to be brought together. My friend, Minister Zahawi, recently established an online safety working group, made up of online safety and education experts, to help advise the department on future iterations of *Keeping Children Safe in Education*. Indeed, that could be strengthened to support schools if needed.

Lord Cormack (Con): My Lords, many parents will have strong religious beliefs, be they Christian, Jewish, Muslim or others. Following up on what the right reverend Prelate said, can my noble friend assure me that at all stages the leaders of all the major faiths, both locally and nationally, will be consulted and referred to so that they can have an input? There is a passing reference in the Statement to respecting,

"the backgrounds and beliefs of pupils",

but we need something rather more than that.

Lord Agnew of Oulton: I reassure my noble friend that faith is a protected characteristic and we have been clear that schools have flexibility over how they deliver these subject so that they can develop an approach that meets the needs of their local community and/or religious beliefs. All schools will be required to take into account the age and religious backgrounds of their pupils when teaching these subjects.

Lord Berkeley of Knighton (CB): My Lords, in paragraph 79 of the draft guidance there is a reference to FGM. Recent events have made it very clear that getting prosecutions, however desirable they may be, is extremely difficult. I commend the Government on coming to the conclusion that education in this area is perhaps the most important facet of stopping this revolting and awful practice. Can the Minister confirm that there will be a real emphasis on educating children about FGM and supporting them when they have friends who have experienced it and might be in need of help?

Lord Agnew of Oulton: My Lords, I reassure the noble Lord that FGM is absolutely in the new guidance. It has been added as an extra subject. As my right honourable friend the Secretary of State said in the other place today, this is not just about educating young girls for their own protection but about changing the attitude to this in the long term so that those who go on to become nurses, doctors and health workers will understand the pure evil it represents.

Baroness Barker (LD): My Lords, the Minister referred to good tools and materials such as those made available by the Sex Education Forum, but he will know that there are a lot of tools and materials produced by groups that have a particular perspective that they wish to push that would not comply with the objectives of these regulations. What guidance could he offer to pupils, staff or parents in a school who find themselves forced to use materials that do not fulfil the objectives set out in these regulations?

Lord Agnew of Oulton: I reassure the noble Baroness that we will provide further advice to support schools to improve the practice and training that could be delivered using the latest technology, including opportunities for face-to-face training for teachers. We intend to produce supporting information by September for schools on how to teach all aspects of internet safety, not just those relating to relationships, sex and health, and to help schools deliver this in a co-ordinated and coherent way across the curriculum. They will of course be free to seek advice from the department on whether the various forums that are out there are considered good. I mentioned that forum because I did not get to my notes quickly enough, but there are several others, such as the PSHE Association; the Royal Foundation, set up by the two Dukes, which focuses on mental health; and the Catholic Education Service, which has also created a model curriculum for primary and secondary schools.

Lord Polak (Con): My Lords, I welcome this Statement, but does my noble friend the Minister agree that the press reports over the weekend suggesting that primary schools were teaching LGBT issues from the age of five cannot possibly be true? Can he also confirm that while there is no specific requirement to teach about

LGBT in primary schools, they can cover LGBT content if they consider it age-appropriate to do so? Finally, can he confirm that age-appropriateness is ultimately a matter for the governors of a school?

Lord Agnew of Oulton: To reassure my noble friend, it is not correct that young children aged five or six will be taught about sexual education. We are quite clear that that is not required until a child moves into secondary education. On LGBT, the approach at a young age is more about letting children understand that families come in different shapes and sizes, to remove any sense of bigotry that could develop at an early age through ignorance.

Lord McCrea of Magherafelt and Cookstown (DUP): My Lords, will the Minister confirm that the Government will firmly adhere to the promise made in the Statement, that they have retained the long-standing ability for parents to request that their children be withdrawn from the sex education element of RSE? When it comes to exceptional circumstances, who decides what these are?

Lord Agnew of Oulton: To reiterate, the right to withdraw is in the parent's gift until the three terms before the child is 16. It is extremely difficult to predict what an exceptional circumstance would be, but paragraph 41 shows how clearly it is entrenched in this guidance:

"Parents have the right to request that their child be withdrawn from some or all of sex education delivered as part of statutory RSE. Before granting any such request it would be good practice for the head teacher to discuss the request with the parent and, as appropriate, with the child to ensure that their wishes are understood and to clarify the nature and purpose of the curriculum".

Schools will want to document this process to ensure that a record is kept.

Baroness Watkins of Tavistock (CB): My Lords, I warmly welcome this new legislation, particularly in relation to mental health. However, I am very concerned that independent schools will not have to conform. People who go to independent schools are just as likely to suffer from mental health problems as those in state-funded schools. We should review this situation, because the demands are far more likely to fall on the NHS than on the private sector, if we have a group of people in independent schools who have not had what we are declaring is sound health promotion. I ask the Minister to consider this issue seriously.

Lord Agnew of Oulton: Let me clarify the definition of an independent school: while academies are defined as independent schools, they fall within these regulations, so I can reassure the noble Baroness on that point. We are still in the stages of finalising the independent school guidance, and will address the issues raised.

Lord Haselhurst (Con): My Lords, does my noble friend agree that the continuing advance of social media is presenting severe challenges for parents and teachers alike in knowing how and when it is best to deal with this difficult subject, in what is already a sensitive area? I welcome what the Secretary of State has announced today. It is right not only that it happens now, but that it be renewed on a very regular basis, to keep up with the changes in social media.

Lord Agnew of Oulton: My noble friend is absolutely correct. Internet safety is an integral part of the subject content. The principles of positive relationships apply as much online as they do in other contexts. The distinction between the online world and other aspects of life is less marked for young people. Schools should support their pupils in distinguishing between different types of online content, and making well-founded decisions. As I mentioned earlier, we intend to produce supporting information for schools on how to teach all aspects of internet safety—not just relating to relationships, sex and health, but to help schools deliver in a co-ordinated and coherent way across the curriculum.

Lord Hylton (CB): My Lords, it seems hard to find anything about morality or moral relationships in the Statement. Surely we can all agree that morality demands respect for others as unique persons? We hear a lot about bullying, grooming and seduction online. Will the Government go deeper than that and insist that there must be a solid moral base for education and lessons on all these subjects?

Lord Agnew of Oulton: The Children and Social Work Act provided the Secretary of State with the power to make PSHE, and elements therein, mandatory in schools. This deals with some of the issues that the noble Lord raises. Regarding the latest changes to the guidance, we have included and clarified the values and personal traits that will give pupils the character to persevere, manage adversity and make a positive contribution to society. These items are very much embedded in the spirit of the document.

Lord Morrow (DUP): My Lords, does the Minister accept that there is the potential within his Statement for undermining the authority of parents?

Lord Agnew of Oulton: I have tried to reassure noble Lords that that is not the intention. We always recognise that parents should lead in this part of a child's education, and are not intending to undermine that in any way.

Lord Lexden (Con): Does my noble friend agree that these regulations are essential if teachers are to be able to give children a firm, proper understanding of very sensitive issues that, left untaught, can so easily give rise to vicious bullying of LGBT pupils, and serious sex offences at a young age? As far as independent schools are concerned, to which reference has been made, has my noble friend noted the wide support that they have given to the Government's proposals? This means they are likely to be widely adopted. As one who follows independent schools affairs closely, I have been very struck with the seriousness with which they are treating mental health issues.

Lord Agnew of Oulton: My noble friend raises an important point. These issues are a matter of safeguarding, not only against bullying but in ways such as recognising

[Lord Agnew of Oulton]
unhealthy relationships and symptoms of poor mental health. These subjects are designed to support all children to be healthy, happy, safe and respectful, both in the school environment and the wider world. We are committed to ensuring that schools and teachers are supported and ready to teach these subjects to a high standard. The £6 million we have announced today is an initial amount for the 2019-20 financial year, which will be used to develop the programme of support. I agree with my noble friend that independent schools have been very supportive in this process, and I am confident that they will follow the guidance.

Maritime Transport Access to Trade and Cabotage (Revocation) (EU Exit) Regulations 2019

Motion to Approve

7.27 pm

Moved by ***Baroness Sugg***

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

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

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the draft regulations that we are considering will be made under the European Union (Withdrawal) Act and will be needed in the event of no deal, in which case UK ships will continue to have access to member state ports and the ability to travel between member states. This access is based on OECD common shipping principles.

The regulations we are considering today revoke EU legislation on market access and cabotage that would otherwise be retained in UK law by the EU withdrawal Act. For the most part, this legislation would be redundant. It would have no effect after we leave the EU. For example, Council Regulation 4058/86 is about anti-competitive measures by non-EU countries. It allows member states to ask the European Commission to co-ordinate retaliatory action against such countries. This remedy will not be available to the UK when we are no longer a member state, so it is clearly inappropriate to retain it.

There are some instances where the regulations will revoke legislation that would otherwise retain on the UK statute book statutory rights for EU member states in UK waters that would not necessarily be reciprocated. EU Regulation 3577/92 gives rights to member states to provide maritime cabotage within another member state. Cabotage in this context is the operation of ships between two ports, or trips to and from an offshore site within a single member state. If we do not revoke the regulation, it will be retained by UK law. This would mean that member states would continue to have statutory cabotage rights in UK waters. However, UK vessels would no longer have such rights across EU waters; their rights would be at the discretion of each member state.

The UK has no intention of restricting cabotage by EU vessels in UK waters. By removing the statutory rights provided in the regulation, we are simply putting EU vessels on the same footing as vessels from other countries: that is, they will continue to be able to operate cabotage, but without an express statutory right.

7.30 pm

Noble Lords may be aware that the regulations were originally laid under the negative procedure. I want to address briefly the points made by the Secondary Legislation Scrutiny Committee in recommending that the SI be upgraded. The committee thought that the Explanatory Memorandum should provide more information on the effects of the instruments. Following the committee's review, the department has re-laid the Explanatory Memorandum and responded to its comments. The EM explained that the instrument will not have any practical effect on ship owners.

Most of the legislation being revoked would have no effect. On cabotage between UK ports, vessels would continue to be able to provide the same services as now. The only difference would be the guaranteed statutory rights.

There is no reason to believe that the regulations will have any effect on service provision. As mentioned previously, the UK has no intention of restricting this. We believe that an open approach promotes competition, leading to better and more efficient services. However, the UK does not intend for member state cabotage rights to continue to be expressly guaranteed in UK legislation where others' are not.

The changes in these regulations are appropriate to ensure that the UK statute book on exit day does not contain regulations which are redundant or provide for non-reciprocated rights. I beg to move.

Amendment to the Motion

Tabled 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 public consultation".

Lord Rosser (Lab): The amendment in the name of my noble friend Lord Adonis is not being moved because he is not here. He asked me to say that he unavoidably could not be in the House between 6.30 pm and 8 pm and therefore anticipated that he would not be able to move his amendment, as has proved to be the case.

Baroness Randerson (LD): My Lords, I am grateful to the Minister for her explanation. She referred to the comments made by the Joint Committee on SIs. I agree with its criticism, as there are issues to be addressed in the clarity of the Explanatory Memorandum.

The Government claim that this SI will not have an impact on shipping operators. Nevertheless, whatever reassurances the Minister has sought to give us today, it removes cabotage rights. The Government's defence is that the measure will put EU operators on the same

basis as those from other countries—indeed, the Minister has just repeated that—but we are working to the lowest common denominator in these matters and one can never be sure.

Looking at such SIs always brings up some interesting piece of history. The history point from this one is that we will no longer be a member of the Rhine convention. Our membership of it goes back to the signing of the Treaty of Versailles, and the convention goes back even further, to the Congress of Vienna of 1815—so we are looking at something that we have been a member of for 100 years, while the convention itself is more than 200 years old. The problem we face is that we renounced our membership while we were members of the EU and we are members of it now only through our membership of the EU. It is interesting to think about the purpose of the Rhine convention. As the world's oldest international organisation, the commission's intention was remarkably modern; namely, to increase European prosperity by guaranteeing a high level of security for navigation of the Rhine. I do not think that the Government are suggesting that we rejoin the Rhine convention in our own right. I seek clarity from the Minister that this is the case.

The SI removes those EU regulations designed to prevent unfair practices, either between member states or between a member and a third country, and to enshrine rights to maritime cabotage. In a nutshell, the SI removes the right to cabotage for the remaining EU states which wish to operate in the UK because the Government fear that we will not be given reciprocal rights within the EU 27. At what stage are negotiations with the remaining 27 countries on cabotage? Is it a matter of ongoing consultation, or has it been shelved for the moment?

Once again, consultation has been very limited. My concern is that this SI relates to devolved issues. Do the Welsh and Scottish Governments remain satisfied? I cannot quite understand the amendment referred to in paragraph 6.12 of the Explanatory Memorandum—I am sure that it is my deficiency. I have read it a couple of times and it is not clear to me what amendment is referred to in relation to the Welsh and Scottish Governments.

The Government say that UK ships undertake relatively little cabotage in EU waters. I am happy to accept that, but can the Minister give us some clarity on the value of such cabotage, the volume of it and the percentage of ships undertaking it so that we can get some handle on the level of activity concerned?

The Government seem to have a nonsensical position on this issue. They say that they do not want to restrict cabotage but are acting to delete guaranteed rights. It is another example of an inconsistent approach in these SIs. Some of them simply smooth it over—it will be the same system after a no-deal Brexit as there was before; we are going to tolerate what may be an inconsistency between the attitude of the EU 27 and our approach to transport issues. However, in this SI, because we might not get cabotage rights in Europe, we will take them away from EU countries operating in the UK. The SI takes away basic international maritime rights and it does not set out with any clarity what the Government intend to replace them with.

Lord Rosser: I once again thank the Minister for explaining the purpose and objectives of this SI. As the Explanatory Memorandum points out, it deals with the legislation related to market access and regulation for maritime transport services. The EU law in question dealing with market access is Council Regulation (EEC) 3577/92 and that relating to anti-competitive practices is Council Regulation (EEC) 4058/86.

I have one or two questions arising from the Explanatory Memorandum. I noted with interest the comments made by one of the SLSC sub-committees and by the ESIC. The view of the sub-committee was that the impact of these regulations was not clearly explained in the Explanatory Memorandum. The ESIC suggested that a number of points were being raised that might relate to questions of particular commercial and economic importance that should perhaps be debated.

My first question relates to paragraph 7.4, which refers to two Council regulations which are,

"designed to provide remedies to member States in the event that other countries take anti-competitive measures. When the UK ceases to be a member State, the remedies specified in these Regulations will no longer be available to the UK. The Regulations will, therefore, be redundant. Instead, UK competition law will apply, so far as relevant".

How relevant will our competition law be in a situation of other countries taking anti-competitive measures, and how effective will it be compared with the Council regulations that cover this issue but which are going to become redundant? It would be helpful if the Minister could comment on that point.

The noble Baroness, Lady Randerson, has already referred to cabotage, where we are removing a statutory right in relation to ship owners from other EU countries. At the moment, we do not know what the situation will be for UK ship owners in relation to cabotage within the EU. The noble Baroness has already asked whether this issue is being pursued vigorously or whether it appears to have been put on the back burner. I too await with interest the answer to that point. The Explanatory Memorandum refers to the fact that we do permit ship owners in other countries to have cabotage rights, and that, in reality, we do not intend to take these away. Is the Minister able to say how many EU states are likely to continue to give us the reciprocal rights which we presumably have at present? It may turn out to be all of them bar one or two, which will not give it to us for obvious geographical reasons. It would be helpful if the Minister could say something about what is likely to happen with EU states in relation to UK ship owners on this issue.

Paragraph 7.7 says:

"Council Regulation (EC) 789/2004 on the transfer of cargo and passenger ships between registers within the Community sets out a reciprocal regime to ensure ships may be easily transferred between registers of member States provided they comply with certain safety and environmental standards".

It goes on to say that:

"This regime will not include the UK when it leaves the EU, so the Regulation is revoked".

Bearing in mind the comment, which I referred to earlier, made by one of the sub-committees which looked at this instrument about the impact of these regulations not being clearly explained in the EM, will

[Lord Rosser]
the Minister explain what the impact will be on our shipping industry in relation to the revoking of Council Regulation 789/2004 on the transfer of cargo and passenger ships between registers? Will it have any significant impact at all?

Paragraph 7.8 refers to Council Regulations 3921/91 and 1356/96 on,

"the rules that apply to the provision of inland waterway transport services in and between member States. These rules will not be relevant to the UK when we are no longer a member State".

Once again, what is the impact of this on the UK? It would be helpful if the Minister was able to comment on that point.

7.45 pm

I will ask the inevitable question on the consultation outcome. Going by paragraph 10.1, it does not look as though there was too much consultation, since it says:

"The Department consulted stakeholders informally on EU exit maritime issues including those related to market access".

Were the trade unions representing crew, including officers, involved in this informal consultation? Why was it decided that the consultation should be done informally? Was that a reflection of the Government's view about the lack of importance of this issue, or did they have reason to believe that those they were seeking to consult would not have very much to say on it anyway? Over what period did the informal consultation take place? A more formal consultation is usually over a specific period of time. I am not sure what the reference to informal consultation means in terms of the period of time over which it took place. The paragraph says that the informal consultation,

"confirmed the view that market access generally was not a significant concern for stakeholders because the industry is regulated internationally and it is not generally in states' interests to restrict shipping access to their ports".

I apologise for my ignorance in this regard, but does international regulation provide that cabotage services must be allowed?

Baroness Sugg: I thank noble Lords for their consideration of these regulations. The noble Baroness, Lady Randerson, and the noble Lord, Lord Rosser, both mentioned the SLSC comments. I agree that the Explanatory Memorandum could have been clearer. I thank the SLSC for its work on this, and other SIs. We took its considerations on board and re-laid the Explanatory Memorandum.

The noble Baroness taught me a bit more history on the Rhine regulation than I knew already. The rules for operating on the Rhine are set through the Rhine convention. We are not planning to rejoin as a country; UK companies could still trade on the Rhine but they would need to ensure that they met the conditions in that convention as well as the relevant EU legislation.

We have consulted with the Welsh and Scottish Governments on Council Regulation 3577/92, which is on public service contracts in respect of island cabotage services. Financial assistance is devolved to the Welsh and Scottish Governments, to differing degrees, so they had a potential interest in this, and Ministers in both devolved Governments have given their consent. It is particularly important for Scotland, where they provide key services between the Highlands and Islands. The Scottish Government are satisfied that they will be able to continue procuring island services through the contracts, so they are content with it.

I attempted to set out in my opening speech why we have taken this approach. Leaving the European Union will mean, obviously, that we are no longer a member state and UK ships will lose their automatic right to cabotage. This SI removes the reciprocal statutory right for EU ships to practise cabotage. Instead, EU member states will be treated as all other countries are. We, the UK, operate a liberal cabotage regime for maritime, which we think is the best way to promote better and efficient services and perhaps—going back to what the Rhine convention originally wanted to do—to promote prosperity across Europe. In practice, all countries' ships in the UK are permitted to carry out cabotage, so EU ships will be able to do the same. As I said, we have no intention to restrict cabotage.

Of course, this SI deals only with the UK side of legislation and does not cover EU action, and the way to ensure that UK ships can practise cabotage in the EU is to agree a deal. The future agreement, should we reach a deal, notes that the parties,

"should also make appropriate arrangements on market access for international maritime transport services",

and EU trade deals always include provisions on maritime transport. It is a Commission competence, so we are not able to have bilateral conversations with separate member states, but EU trade deals usually have a separate chapter or part of a services chapter, and we expect that the same would apply in a future UK-EU agreement.

The noble Lord, Lord Rosser, asked about the effect on UK industry—which, as I say, is not part of the SSI, but it is certainly a valid question. Future UK shipping on EU cabotage will depend on a future agreement. If we leave without a deal, the impact on the UK of losing automatic access is estimated to be less than £10 million a year—although that is still £10 million a year—through losing our statutory rights.

The noble Lord asked about the different member states, and he was quite right to point out that it depends on the member state. International law does not require cabotage to be allowed within a state, so that is a matter for negotiation, if member states have not already set out their views. Some EU countries—Belgium, Denmark, Ireland and the Netherlands—do not have cabotage laws, or at least significant cabotage laws, and we would expect activity to continue. However, some EU countries have restrictive cabotage laws: Bulgaria, Croatia, Finland, France, Germany, Greece, Italy, Poland, Portugal, Spain and Sweden. It is worth noting that many of those states already restrict cabotage, despite the EU regulations, so this would not just be a matter of just switching it off—some restrictions are already in place. The EU technical notice on Brexit and maritime transport specifies which countries would allow that, and obviously we meet regularly with ship owners on this. I repeat that we do not want to see the

loss of cabotage rights. It is one of the implications of not being a member state any more, which is another reason why we are working to achieve a deal.

The noble Lord, Lord Rosser, asked about anti-competitive action. We will rely on our own competitive competition legislation; the Competition and Markets Authority will take a greater role in enforcing such legislation, and we will be able to take action on trade remedies, if necessary under WTO rules. However, as I said, the maritime sector is global and liberalised, and that is reflected in the principles of the OECD, which most countries sign up to.

We have rarely seen action taken; on anti-dumping legislation, for example, there has been only one incidence in 1987. The Commission has been more interested in overpricing than underpricing, so it has looked at prohibiting liner conference cartels in the container trade and regulating the alliances which have succeeded them. Generally speaking, therefore, this has not been a significant issue. Of course, if the EU takes action in this case, it will cover European shipping, and if a ship is not going to the EU, it is unlikely to come to the UK. However, as I said, we have our own competition legislation in place.

The noble Lord, Lord Rosser, also asked about the effect of Regulation 789/2004 on the transfer of cargo and passengers. We believe that the application will have no effect; we are aware of no instance where the regulation has been used.

The noble Lord also asked about inland waterways. The UK will continue to have a similarly liberal regime in relation to the limited market for cabotage on inland waterways. For geographical reasons, obviously there is no international trade on inland waterways within Great Britain, and it is extremely limited in scope for Northern Ireland and the Republic. There is also very little interest from UK shipping in EU inland waterways.

No formal consultation was done on this instrument, simply because, for the most part, the regulations revoke redundant legislation and do not make any changes that affect the operation of businesses or impose any additional costs. The department has discussed the instrument with shipping industry representatives through the Chamber of Shipping, especially in relation to the proposals to revoke the cabotage regulation. The industry is concerned to avoid those restrictions, which is what we are doing. I am pleased again to set on the record that the Government have no plans to introduce such restrictions.

Officials have also discussed the regulations with the National Union of Rail, Maritime and Transport Workers, and especially the implications of the revocation of the cabotage regulation on Scottish inland services; we do not believe that that revocation has any consequence for such services. Ministers and officials meet regularly and frequently with many maritime stakeholders: for example, the Secretary of State met the Chamber of Shipping earlier this month to discuss Brexit. The RMT is one of the organisations we have regular engagement with; the Maritime Minister Nusrat Ghani met the RMT at the end of last year and will meet the union again in the next few weeks, and the chief executive of the MCA also met the RMT last week.

Therefore, while this SI does not have a direct effect, because it changes very little, obviously the alternative side of it is the effect it will have on UK shipping, and whether it has cabotage rights within the EU. While that is not related to this SI, of course we are discussing it on a regular basis, which is why we are keen to ensure that we achieve a deal that allows us continued access to cabotage within the EU, in the same way as EU member states will continue to have access to cabotage in the UK, even if not on a statutory rights basis; they will have the same access as all third country shipping companies do, and we have no plans to restrict that further.

I hope that I have managed to address the points raised, but, if not, I will provide answers in writing. The aim of this SI is to ensure that legislation continues to work effectively from day one in the event of no deal, and that redundant, inappropriate or unreciprocated provisions are duly removed.

Motion agreed.

House adjourned at 7.57 pm.