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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Tuesday 5 March 2019

2.30 pm

Prayers—read by the Lord Bishop of Portsmouth.

Death of a Member: Lord Davies of Coity

Announcement

2.37 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Lord, Lord Davies of Coity, on 4 March. On behalf of the House, I extend our sincere condolences to the noble Lord's family and his friends.

Gender Pay Gap

Question

2.37 pm

Asked by ***Baroness Nye***

To ask Her Majesty's Government what steps they are taking to address the gender pay gap.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, it is fantastic that over 10,000 employers reported gender pay gap data last year. With this year's deadline now less than a month away, I look forward to seeing what progress they have made. We know that reporting is just the first step, and that is why we are now working hard with employers to help them understand their gender pay gaps and getting them to put plans in place to tackle them.

Baroness Nye (Lab): I thank the Minister for that Answer, but she will have seen the *Guardian*'s report showing that no sanctions have been taken against companies that have filed wildly inaccurate, bogus reports or even no reports. New research by the Young Women's Trust shows that two-thirds of companies do not have any plans in place to close their gender pay gap. Does she agree that it is time to consider legislation to require employers to develop those positive action programmes? Will she consider making employers include all salary details in job adverts, which would aid transparency and go some way to closing the gap?

Baroness Williams of Trafford: On companies that have perhaps submitted bogus returns—that is, returns that are not credible—I know that the EHRC is working with companies to help them improve their accuracy. They can be obliged to put in place action plans where they have submitted inaccurate data, and this is what we are helping them to do. I have some sympathy with the noble Baroness's point on salary details, because quite often they are completely opaque and might depend on who the employer sees on the day—so I agree with that. On a positive note, we have come an awfully long way. We are the first country in the world to require companies with more than 250 employees to submit gender pay gap data.

Baroness Burt of Solihull (LD): My Lords, the requirement for companies to publish their gender pay gap figures has shone a bright light on a hitherto dark place. In many firms, the situation is getting worse, not better. As the noble Baroness, Lady Nye, says, poor recruitment methods are a big part of the problem, leading to women taking jobs below their abilities and below salary levels that they should command. The recently published Women and Work All-Party Parliamentary Group report, *How to Recruit Women for the 21st Century*, points the way. The Minister has talked about working with employers. Will she take the lead and update the 2011 quick-start guide to positive action in recruitment?

Baroness Williams of Trafford: I take the noble Baroness's final point, and I will have a look at the 2011 report. I must apologise that, as there was a strange noise coming from behind the noble Baroness—it might have been someone's mobile phone—I did not quite hear all of her question. As to the position getting worse not better, the figures on 4 April will be revealing, and the sort of action that we and others will need to take will certainly be guided by those results.

Baroness Bloomfield of Hinton Waldrist (Con): Does my noble friend the Minister agree that plans to require all large companies to publish their parental leave and pay policies will improve transparency and ultimately help with the gender pay balance in the workplace?

Baroness Williams of Trafford: All those initiatives by companies help to shed light on the types of companies that are employing people; their ethical, gender-based policies and parental leave are only a part of that. As to flexible working, the Government are trying to go further in enabling anyone who wants to work flexibly to be able to do so.

Baroness Corston (Lab): My Lords, on 11 February last—less than a month ago—my noble friend Lady Prosser asked whether the Government would consider legislating to require employers to develop positive action plans for measures such as all-women training schemes and quality part-time jobs. The Government Minister replied from the Dispatch Box, in a somewhat non-committal way, that these measures were good practice for companies and that some companies are adopting them. Does the Minister believe that that was an adequate response?

Baroness Williams of Trafford: I hope I am always eloquent—not always, maybe—but legislating for positive action by discriminating against men, if you like, is not what we want to do. Certainly the Government supports equality of opportunity, but we will not legislate for positive action.

Lord Lea of Crondall (Lab): Can the Minister confirm that the great majority of policies such as those on parental leave come from the blessed European Union? They were negotiated by the social partners—which, translated into English, means the trade unions and the employers—at European level because, on that basis, people would not be undercutting each other by doing it on a national basis.

Baroness Williams of Trafford: On the blessed Europe, I have to say to the noble Lord that we are streets ahead of Europe in equalities legislation.

Baroness Gale (Lab): My Lords, the theme for International Women's Day this year is #BalanceforBetter, but so far some companies are not even asked to properly balance their books. As my noble friend Lady Nye said, the *Guardian* reported last week that the companies that filed inaccurate numbers for last year's gender pay gap deadline have not been sanctioned and some incorrect data have not been corrected a year later. What will be done differently this year to ensure that the quality of reporting is an improvement on last year? Does the Minister agree that transparency is welcome but it will be ineffective if there is a failure in making progress?

Baroness Williams of Trafford: I agree with the presumption of the noble Baroness's question. She is absolutely right about better-quality data coming forward: it is what both employers and employees want. I know that the GEO has been running a series of interactive sessions with employers to try to help them develop their action plans. I also know that the Government have provided two further pieces of guidance for employers and employees as they develop action plans to address the gender pay gap.

The Lord Bishop of St Albans: My Lords, this week the Church Investors Group, which has assets of £21 billion, will vote against the chairs of boards of big firms that have poor policies on tax and climate change. From now on, the 67-member group will put pressure on companies that have no women directors. Does the Minister agree with that approach? Does she also agree that it is a welcome step that companies can no longer get away with such dire records of female representation in management positions?

Baroness Williams of Trafford: I certainly agree with the right reverend Prelate. He will recall that we had a real push to increase women's representation on boards under the Davies review. When we started off, that representation was something like 12% and it has now risen to over 30%—I think that that is where we are now, or maybe it is just short of 30%—so we have made huge strides. I do not think that companies any longer want all-male, white boards, because that really does not give the diversity or balance that is representative of society.

NHS: Stroke Care

Question

2.46 pm

Asked by ***Baroness Wheeler***

To ask Her Majesty's Government what steps they are taking to ensure that there are sufficient specialist medicine, nursing, rehabilitation and community staff to achieve the priority ambition for stroke care set out in the *NHS Long Term Plan*, to meet both current and future needs.

Baroness Manzoor (Con): My Lords, the recently published *NHS Long Term Plan* outlined commitments to improve stroke services, including better stroke rehabilitation services and increased access to specialist stroke units. The Secretary of State has commissioned my noble friend Lady Harding, the chair of NHS Improvement, to work with Health Education England to oversee the delivery of a workforce implementation plan. This will include proposals to grow the workforce, consideration of additional staff and of the skills required, and building a supportive leadership culture in the NHS.

Baroness Wheeler (Lab): My Lords, as a carer keen to see improved stroke services, I welcome the recognition in the *NHS Long Term Plan* of stroke as a clinical priority. Excellent stroke care saves lives and needs a range of professionals across the whole stroke care pathway, including GPs, paramedics, nurses, psychologists, physiotherapists, occupational and speech language therapists, and social care workers. Not only are there chronic staff shortages among all those key groups but high turnover is a major challenge, particularly among nursing and care staff. It is small wonder that nearly half of all stroke survivors say that they do not have enough nursing and therapy support in hospitals, and that when they get home they feel abandoned because of a lack of rehabilitation and care that would help them improve or cope with living with stroke disability. Does the Minister agree that the high-intensity care models for rehabilitation for stroke promised in the NHS plan are urgently needed, and what immediate actions will be taken by the Government to ensure that there are enough trained staff and specialist staff to deliver the promises for future care and treatment?

Baroness Manzoor: My Lords, I agree with the noble Baroness, Lady Wheeler, that it is very important that we have the relevant NHS workforce to deliver the care needed in this very important area. Stroke is a devastating disease for patients and their families. The Stroke Association estimates that it costs the NHS around £3 billion per year, with lost productivity, disability and formal care costing the economy an additional £4 billion. To that end, we are putting in place funding of £20.5 billion each year over the next five years, with cardiovascular also being a clinical priority. This will support the national plan for stroke.

Baroness Jolly (LD): My Lords, there is a complete postcode lottery for good stroke care, with inequities in accessing treatments such as thrombolysis and thrombectomy, as well as the subsequent appropriate rehabilitation and care. By when does the Minister expect anyone who has a stroke anywhere in England to receive the same level of treatment as in London or Manchester?

Baroness Manzoor: My Lords, the noble Baroness is absolutely right: there is variation in care. We are working very hard to tackle the variations in the system. Within its financial constraints, the NHS is committed to providing access to stroke care and prevention services and, as the noble Baroness knows, the clinical commissioning groups are responsible for commissioning these services to meet the requirements of their populations. In doing so, CCGs need to ensure that the services they provide are fit for purpose, reflect the needs of the local population, are based on available evidence and take account of national guidelines.

Baroness Chisholm of Owlpen (Con): My Lords, I keep hearing the word "reconfiguration" in connection with stroke services. Could my noble friend explain what this means for stroke services going forward?

Baroness Manzoor: I thank my noble friend for that question. Reconfiguration of stroke services is very important because there is strong evidence that consultant-led specialist treatments in large, centralised hyperacute stroke services, where geographically appropriate, save lives, improve recovery and can reduce the length of hospital stays, while saving money. Three pilots have taken place in London, Manchester and Northumbria. They have seen a 9% reduction in the length of hospital stays in Greater Manchester and a cost saving of £800 per patient in London.

Lord Hunt of Kings Heath (Lab): My Lords, I remind the House of my membership of the GMC. Coming back to the question about hyperacute stroke services, which have been such a huge boost to patient outcomes, the Minister says this is up to CCGs, but all over the country CCGs have been obstructive to this move. They have defended their own district general hospitals, attempting to keep all their stroke services at the expense of the quality and safety of patient care. The Government have to intervene, surely?

Baroness Manzoor: The noble Lord makes a very valid point. As I said, evidence-based medicine is speaking about a hub-and-spoke way forward. There is the national plan. We have set up a primary board that will look at reconfiguration of services and the workforce planning within it. We hope that some of those challenges can be met head on.

Lord Kakkar (CB): My Lords, I declare my interest as chairman of University College London Partners. Is the Minister content that opportunities for rapid adoption of innovation, which could help identify those at greatest risk of stroke as a preventive strategy, and interventions that might improve stroke outcomes, are available across the entire NHS in England?

Baroness Manzoor: One can never be totally confident, but that is certainly the way we are working. As I said, we have set up the national board for stroke services, which will look at different pathways. It will look at assessment for prevention and rehabilitation, so that we can roll these out across the whole of the NHS. That is the plan and the £20.5 billion will unlock some of these services.

Brexit: British Airlines

Question

2.52 pm

Asked by ***Lord Kirkhope of Harrogate***

To ask Her Majesty's Government what assessment they have made of any restrictions that could be placed on British airlines as a result of the European Commission's proposed measures to ensure basic air connectivity between the United Kingdom and the European Union in the event of a no-deal Brexit.

Lord Kirkhope of Harrogate (Con): I beg leave to ask the Question standing in my name on the Order Paper and declare my interest as a pilot.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, last week the European Union provisionally agreed a regulation giving UK airlines the right to fly to the EU. The UK will reciprocate and provide, as a minimum, equivalent rights to airlines from European states. Taken together, these measures will ensure that flights will continue in a no-deal scenario. The department will continue to work with stakeholders across the aviation industry as we approach exit day. Leaving the EU with a deal remains the Government's top priority.

Lord Kirkhope of Harrogate: While I am reassured by my noble friend's reply, I am sure she will understand that there remain a number of anxieties, particularly among those who are planning to travel around Easter and afterwards, and also those in the boardrooms of a number of internationally operating airlines who need some certainty in their planning and structure. Could she make sure that these proposals are well advertised? I am also concerned about the possible effects of a no-deal scenario on non-EU international connectivity. Could she address that as well?

Baroness Sugg: I reassure my noble friend that we are speaking to airlines regularly and keeping them updated on the progress of the regulations. Of course, they are following them in detail. There will be no effect on non-EU international travel; we have 111 bilateral agreements with third countries and those will continue. We are doing what we can to mitigate any disruption that we might foresee. We do not expect there to be much disruption, assuming that the regulations pass as we expect. There may be some issues at EU airports given some changes to passport checks, but we are working very closely with those airports to ensure that we minimise disruption.

Lord Watts (Lab): My Lords, is it not the case that this is only a 12-month deal and it will cover only the routes that currently exist? It means that British airlines will not be able to develop new routes during that period.

Baroness Sugg: There was in the original regulation a proposal for a fixed cap at 2018 levels. I am pleased to say that that is no longer the case, so there is no restriction on growth. The noble Lord is quite right that the regulation is only temporary. Overall, we continue to believe that liberal reciprocal market access is in the best interests of the EU and the UK. Should we leave without a deal, we will move swiftly to propose negotiations on that basis.

Lord Garel-Jones (Con): My Lords, BA, along with Iberia, is part of the International Airlines Group—IAG. The head office of that company is in Madrid. Consequently, whatever restrictions might arise should not apply to British Airways.

Baroness Sugg: IAG has a very complex ownership structure, as do many airlines. This is truly an international industry. Its EU airlines will need to satisfy the EU

requirements, but they have six months to do so. These EU regulations will not have any effect on BA, which is a UK airline with a UK operating licence. It will need to meet our requirements and it does so.

Baroness Randerson (LD): My Lords, the Government have devoted a lot of taxpayers' money to try to avoid major lorry queues around Dover. East Midlands Airport is the aviation equivalent of Dover: it is our major freight airport. The infrastructure around that airport will not be able to cope with long queues in the event of a no-deal Brexit. What assessment have the Government made of the problem in that area? What measures are they planning to put in place to avoid lorry queues and congestion around East Midlands Airport?

Baroness Sugg: The noble Baroness is right to point out the importance of East Midlands Airport for our freight capacity. In the event of no deal, the Government are designing customs arrangements in a way that ensures that goods can continue to flow. As we have made clear, we will not compromise security on the border, but keeping goods flowing is of vital importance. We are working very closely with East Midlands Airport to minimise disruption.

Lord Berkeley (Lab): My Lords, last night in the Statement on Eurotunnel, the noble Earl, Lord Courtown, who is in his place, said that the agreement to pay Eurotunnel £33 million,

"will help to deliver an unhindered supply of vital medicines and medical devices under any Brexit scenario".—[*Official Report*, 4/3/19; col. 503.]

Would it not have been better value for money to send this medicine by air freight, rather than paying Eurotunnel £33 million for nothing?

Baroness Sugg: I was wondering how that would come back to air freight. The noble Lord is right that we are considering air freight as part of our plans to ensure that we have vital medicines. Some medicines with very short half-lives will need to be carried by air freight and the Department of Health is working to ensure that that happens. The decision on the £33 million was made to guarantee that we will be able to carry essential medicines in the event of no deal.

Lord Rotherwick (Con): My Lords, what will be the situation for UK private pilots, of which I am one—

Noble Lords: Oh!

Lord Rotherwick: I am flying here—who hold EASA licences in a no-deal Brexit scenario?

Baroness Sugg: For general aviation pilots, the UK will remain a signatory to the Convention on International Civil Aviation after EU exit. UK-registered aircraft will still be entitled to fly under the rights established by it. EASA licences, which many pilots hold, will continue to be recognised by the CAA.

Lord Bethell (Con): Can the Minister update the House on deals for flights outside the EU? It is very helpful to hear her update on flights to Europe, but I understand that flights to the US and Canada are governed by deals connected with our membership of the EU, so can she update us on any progress on replacing these important agreements?

Baroness Sugg: As I said earlier, we have 111 bilateral air service agreements with third countries in our own right, and these will continue, but my noble friend is quite right: there are 17 third countries which we have an agreement with by virtue of our EU membership. The very able and hard-working air services negotiating team in the Department for Transport are making excellent progress on this. To date we have completed new bilateral agreements with the vast majority of these countries, which represent 98% of all passengers.

Lord Scriven (LD): My Lords, further to my noble friend's question about East Midlands Airport, can the Minister say what is happening regarding the potential clogging up of the M1, which is the only major way into East Midlands Airport? What specific plans are in place to ensure that the M1 does not clog up?

Baroness Sugg: My Lords, we are not expecting the M1 to clog up, but, as I have said, we are working very carefully with East Midlands Airport to ensure the smooth flowing of cargo and that this very important airport continues to function regardless of the outcome of the negotiations.

Brexit: Small Businesses

Question

3 pm

Asked by ***Baroness Burt of Solihull***

To ask Her Majesty's Government what assessment they have made of the preparedness of small business for a no-deal Brexit.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the Government have provided ample communication setting out the steps that businesses need to take to prepare for a no-deal scenario. As we set out in *Implications for Business and Trade of a No Deal Exit on 29 March 2019*, published last week, there is little evidence that businesses are preparing in earnest for a no-deal scenario; evidence indicates that readiness of small and medium-sized enterprises is particularly low.

Baroness Burt of Solihull (LD): My Lords, the Government's own no-deal impact assessment last week revealed the bleak picture that only 17% of small businesses that trade exclusively with the EU had signed up to the necessary identification to continue trade in Europe. Small businesses are far less able to prepare for a no-deal Brexit. They lack the legal and regulatory expertise to do so, and the cash and the space to stockpile. They, and we, are staring disaster in the face. Should we not put a stop to this madness now, halt the Brexit process and give everyone whose livelihoods and futures are at risk a say on the deal?

Lord Henley: My Lords, I remind the noble Baroness that no deal is the legal default position as agreed by both Houses, and that until we agree a deal, that will remain the case. What is important therefore is that another place, or Parliament as a whole, agrees a deal and gets behind the Prime Minister, so that business can have the certainty that is needed.

Baroness Wheatcroft (Con): My Lords, of the licences to which the noble Baroness just referred, only 40,000 of the 240,000 companies that export to the EU have registered for those licences, and the capacity to issue those licences is currently only for 11,000 a day. Therefore, with 29 March getting closer, could the Minister say what precautions are being taken to increase the capacity for issuing these essential licences?

Lord Henley: My Lords, the important thing is that businesses themselves get their act together and apply for the licences. As we made clear in that document last week—and this is why we published it—there is a failing on the part of many small businesses to apply for those licences. I am grateful to my noble friend for highlighting that again. There is capacity to deal with this in the time available, and we hope that small and medium-sized businesses will take note of the advice we have given them.

The Earl of Clancarty (CB): My Lords, is the Minister aware that many British workers who run small businesses in the services sector are already losing contracts with EU companies because of their insistence on British access to the single market, in other words, free movement of people? In these instances, it makes no difference whether it is May's deal or no deal.

Lord Henley: My Lords, I do not accept that. What is important is that we get a deal, and that is what we should all be behind. That is what businesses want and what we should all look for.

Lord McNicol of West Kilbride (Lab): My Lords, we are 584 hours away from Brexit and we are discussing business preparedness, or the lack of it. Labour has repeatedly urged the Government to take no deal off the table, and believes that the threat of no deal is creating unnecessary uncertainty for businesses both large and small. In your Lordships' House, we are dealing daily with SIs that will impact on the services, productivity and finances of SMEs. Would not the Minister's department's time be better spent dealing with some of the more pressing issues for SMEs, such as the scandal of late payments and other day to day issues, rather than working on a no-deal Brexit that nobody wants?

Lord Henley: My Lords, all I can do is to repeat the position we are in at the moment. No deal is the default position. What is important is that we get a deal; that is what my right honourable friend the Prime Minister is seeking to do. If she had support from the party opposite, that would be a great deal of help.

Lord Fox (LD): My Lords, the overwhelming cry coming from businesses large and small is: "Tell us what our trading environment will be in 25 days' time". Does the Minister really think that any of the messages will get through when the credibility of the Government is completely shot if they cannot answer that question?

Lord Henley: My Lords, we have been offering advice to businesses as to what they ought to do. We also made it clear in the document we published last week that we think a lot of businesses have not done what they ought to be doing: making preparations in case there is no deal because, as I made clear, no deal is the default position. What is important is that we get behind the Prime Minister and get a deal.

Lord Tugendhat (Con): My Lords, in the light of what my noble friend said about making ample information available, is he able to cast light on the report in the *Financial Times* that the Department for International Trade is to cease the preparedness meetings that it has been holding with business? It is of course public knowledge that the department is very much behind hand in reaching agreements with our trading partners. If it is now ceasing to provide information, that really seems to be something of a dereliction of duty.

Lord Henley: My Lords, without having seen that report in the *Financial Times*, I cannot comment on it but I can make it clear that my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy is having regular meetings with representatives of all businesses. He will continue to do so to offer as much advice and support as he and the department as a whole can.

Baroness Symons of Vernham Dean (Lab): My Lords, on the question raised by the noble Baroness, Lady Wheatcroft, the Minister assured the House that if all 200,000 small businesses which have not yet registered do so, there is the capacity to deal with that before 29 March. Can he assure the House on the very important point that the noble Baroness raised?

Lord Henley: My Lords, I am satisfied that there is capacity to deal with those businesses which want or need to do so.

House of Lords (Elections and Reform) Bill [HL]

First Reading

3.07 pm

A Bill to make provision to establish elections for Members to the House of Lords; to restrict the number of voting Members in the House of Lords to 292; to exclude all remaining hereditary Peers; and for connected purposes.

The Bill was introduced by Baroness Jones of Moulsecoomb, read a first time and ordered to be printed.

Local Elections (Northern Ireland) (Election Expenses) Order 2019

Motion to Approve

3.08 pm

Moved by ***Lord Duncan of Springbank***

That the draft Order laid before the House on 4 February be approved.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, this statutory instrument will make two minor but positive improvements to the local election rules in relation to the election expenses that can be incurred by a candidate at a local election in Northern Ireland. The provisions will bring the rules for local elections into line with those of other elections in the United Kingdom. I will now explain the details of each of these changes in turn.

The first change will exclude expenses that are reasonably incurred and reasonably attributable to a candidate's disability from their electoral expenses spending limits, mirroring the recent changes made for UK parliamentary and Northern Ireland Assembly elections in the Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019. Currently, disability-related expenses count towards a disabled candidate's spending limit.

The matters excluded from the definition of election expenses are listed in Part 2 of Schedule 3B to the 1962 Act. Article 4 amends Schedule 3B so that any expenditure that is both reasonably incurred and reasonably attributable to the candidate's disability is excluded from the definition of election expenses. This proposal will help to level the playing field between disabled and non-disabled candidates and enhance equality of opportunity for disabled candidates.

Examples of disability-related expenses may include the cost of providing transport support for mobility-impaired candidates, sign language interpretation for hearing-impaired candidates and the transcription of campaign material into Braille for visually impaired candidates. This list is not exclusive. Importantly, I can assure noble Lords that candidates will not be required to disclose any disabilities and there will be no legal obligation for them to report their disability-related expenses.

The second change deals with the personal election expenses of candidates. The aim here is to bring the policy for local elections in Northern Ireland into line with the rest of the United Kingdom. Unlike in other elections in Northern Ireland and Great Britain, the personal election expenses of candidates at local elections are currently included in the limit on the amount of election expenses that they can incur or that can be incurred on their behalf.

Following the restructuring of local government in Northern Ireland in 2014, which reduced the number of councils from 26 to 11, a number of electoral areas are now considerably larger in size. This proposal will remove potential barriers to campaigning for candidates standing in geographically larger electoral areas, as the costs of travel and accommodation will not count towards their spending limit. Although personal expenses will not be included in the limit on election expenses, candidates will still report them to the chief electoral officer as part of their personal expenses in their expenses return.

These provisions bring local elections into line with other elections in Northern Ireland in respect of the personal expenses changes. The chief electoral officer and the Electoral Commission confirm that they fully support the changes within the instrument.

In order that candidates at the forthcoming local elections can benefit from these improvements to the rules, we have chosen to move as quickly as we can to try to achieve this, rather than delay the order until after the local elections. If the order is approved, it will come into force on the day after it is made. The Electoral Commission will publicise the changes to the rules and update its guidance to candidates in advance of the regulatory spending period for the 2 May local elections.

I hope that your Lordships will support this order. I commend it to the House and beg to move.

Baroness Harris of Richmond (LD): My Lords, these Benches welcome the order. We support Articles 2 and 3, which will bring local election rules into line with those for other elections in Northern Ireland, as we heard from the Minister.

We especially welcome and support Article 4, to exempt disability-related expenses from the definition of "election expenses". This is an important move to help to close the gap between disabled and non-disabled candidates. The Liberal Democrats have always championed diversity and we are keen to ensure that those elected at all levels reflect the wider population they represent.

One of our successes in coalition was the introduction of the Access to Elected Office Fund for disabled candidates to help with the extra costs of standing for office. We have been disappointed, therefore, to see the reluctance of the Conservative Government since 2015 to continue funding this.

Overall, the provisions of the order are important in furthering equality and transparency. However, as the Minister will be aware, although progress has been made to secure full transparency of political donations in Northern Ireland, there is still a significant gap. We welcomed the Transparency of Donations and Loans etc. (Northern Ireland Political Parties) Order 2018 when it was brought before Parliament last year, which allowed the Electoral Commission to publish information about loans and donations given to Northern Ireland political parties dating back to July 2017—I remember speaking in that debate—but we were deeply disappointed that the order did not provide for the backdating of information to 2014, as the Northern Ireland (Miscellaneous Provisions) Act 2014 allowed.

At the time the order was made, the Electoral Commission recommended that another order be brought forward to allow for full transparency dating back to January 2014, as the 2014 Act had anticipated. The Electoral Commission is already in possession the relevant data to allow this. Responding to the debate on that order, the Minister, said:

"Right now, we are not ruling out the re-examination of the period that precedes 1 July 2017. Indeed, the draft order will allow consideration of it, once we have had an opportunity both

to bed in the transparency order and to examine the details reflected therein. We will not rule anything in or out on that point ... I recognise that the issue of backdating will remain sensitive. If, on consideration of the data as it is gathered, ascertained and seen, there are deemed to be issues that need to be examined further, the Government will consider them at that point. We are ruling nothing in and nothing out".—[*Official Report*, 27/2/18; cols. 623-625.]

Have the Government had the opportunity to give further consideration to this important matter? If so, what are their conclusions? I end by restating our firm support for the provisions in the order before the House today, and I look forward to the Minister's response.

3.15 pm

Lord Lexden (Con): My Lords, I support the comments made by the noble Baroness from the Liberal Democrat Front Bench on the divulging of information about election expenses. I do so because I recently put down a Written Question to which, I am afraid, my noble friend gave a rather disappointing answer. If further consideration has been given to this important point, I hope that he will now be able to give the House better news.

I will raise one point on the order itself, which I warmly welcome. Paragraph 6.1 of the Explanatory Memorandum informs us that personal expenses have been excluded from the limit on election expenses in the rest of the United Kingdom, under the Representation of the People Act 1983. Why has it taken so long to bring Northern Ireland into line and implement this obviously desirable change there? Was change not considered at any point by the Northern Ireland Assembly while it was sitting?

More generally, since this order relates to local government, is my noble friend able to provide any assessment of the performance of the 11 local councils in Northern Ireland which this year will complete their first five-year term following the reorganisation finally agreed in 2012 after years of discussion and dispute in the Northern Ireland Executive and Assembly, preceded by earlier disagreement going back to 2005? I have commented in the House before on the very restricted powers of local councils in Northern Ireland—the only elected bodies currently meeting. The Assembly acts as the upper tier of local government in Northern Ireland and I wonder, in view of the prolonged suspension, whether there is a case for reviewing the powers of the local councils to see if there are grounds for increasing them.

Baroness O'Neill of Bengarve (CB): Has the Minister reached any conclusions on the topics that have just been raised in the wake of the publication of the excellent report by the Digital, Culture, Media and Sport Committee in the other place? It reveals a good deal about the implications of the previous secrecy of donations to Northern Ireland election expenses.

Lord Cormack (Con): My Lords, obviously I support the order before your Lordships' House. It is two weeks now since my noble friend was at the Dispatch Box hoping to bring before the House quite soon news of progress towards the restoration of devolution in Northern Ireland. He expressed the hope that progress would be made. Every time that we discuss a Northern Ireland issue, it underlines the vital importance of making progress.

It is now well over two years since we had the Northern Ireland Executive and a similar length of time since the Northern Ireland Assembly met. At the risk of appearing like a worn record—I have mentioned this so many times—will my noble friend indicate that, if the Executive cannot be restored in the very near future, the Assembly at least will be summoned and have the opportunity to pass judgment on issues such as this and on more far-reaching matters?

In three weeks' time, we could be facing the most dire constitutional crisis in our post-war history—and some would put it more strongly than that. Fundamental to that crisis is the position of, and the difficulties occasioned by, Northern Ireland. Had Northern Ireland had an Executive, it is conceivable, as has been mentioned before in your Lordships' House, that we would not be in our present predicament.

I make no apology for slightly widening the scope of the debate. My noble friend, whom we all admire for his steadfastness, was at the Dispatch Box a fortnight ago and in all good faith he was hoping to come back to us about now. Can he at least say a word about that?

Lord Kilclooney (CB): During this debate, reference has been made to the 11 super-councils that were created five years ago in Northern Ireland. The idea was that reducing the number of councils from 26 to 11 would reduce costs in local government administration. That may or may not have happened.

The order is welcome, of course, because it provides greater opportunity to those who represent wider, larger rural areas and a greater facility for those who are handicapped. It widens the opportunity for more candidates to stand for local government elections in Northern Ireland, and that is welcome. However, reducing the number of councils from 26 to 11 means that many people no longer know who their local councillors are. For the last few decades, everyone knew who their local councillors were. But the larger the councils become, the smaller the number of councillors in Northern Ireland, and local people no longer know who their councillors are. That is damaging democracy.

Worse still, at their monthly meetings some of these 11 super-councils are no longer discussing in public all the main issues but are making those issues subject to committee meetings at which some of the media are not even invited. There is no real democracy in some of our 11 new super-councils. I am sorry to say that some people will no longer know who their councillors are and will not know what is happening because of the items that are being discussed almost privately. That will result in a lower turnout in the local government elections in May.

Lord Murphy of Torfaen (Lab): My Lords, the noble Baroness, Lady Harris, and others have referred to the transparency of election donations. I hope that the Minister can give an answer—whether he sings it or says it.

One issue before us, in respect of local government in Northern Ireland, is on giving disabled people the opportunity to stand for election to local authorities—

[Lord Murphy of Torfaen]
obviously, these Benches completely support the Government on that. The other issue concerns the exclusion of personal expenses from election expenses. Again, we very much support that. It brings the law into line with that in Great Britain.

The issue, though, begs a wider question—two questions, in fact. The first, regarding local government, concerns the fact, as I mentioned last week in the House, that we are in a strange position in Northern Ireland. Some years ago, Northern Ireland had the most sophisticated democratic system in Europe, as a result of the Good Friday agreement, with the Assembly, the Executive, the north-south bodies and all the other aspects of the agreement. Now, its local government is the least democratically run part of the United Kingdom or, indeed, of the European Union. Here in this Parliament there is no nationalist voice in this House or, of course, in the House of Commons. There is no Assembly and no Executive, so the only democratic institutions in Northern Ireland are the 11 local authorities. They will have elections fairly soon. Those elections, of course, will be keenly fought by all the parties in Northern Ireland, and my guess is that they will not be fought entirely on local issues either; they will be fought possibly on Brexit but certainly on politics of a wider nature in Northern Ireland. So the 11 local authorities, although they do not have the same powers as local authorities in Great Britain, have a hugely important role as a forum for political and democratic discussion in Northern Ireland.

It should not be like that, of course. The point made by the noble Lord, Lord Cormack, and others about the restoration of the institutions of the Good Friday agreement in Northern Ireland is critical, and he is absolutely right to raise it every time Northern Irish business is debated in this Chamber. There will, of course, be an opportunity next week, when legislation comes before us regarding the budget and other issues in Northern Ireland, and I hope that that becomes a debate about where we are in the political situation at this moment. Frankly, it is a disgrace that we are in this position: to go well over two years without any Assembly or Executive in Northern Ireland is totally unacceptable. It is linked heavily with Brexit, and I am sure we will have an opportunity to debate that as soon as we can, but noble Lords ought to understand that at the end of May there are two deadlines: one deadline for Brexit and another for extending the role of the Assembly in order to have further negotiations. On 25 March, that deadline closes. In neither case, it seems to me, is anything happening at the moment.

So today is a mini-debate, perhaps, on this issue and I hope that next week will be a major one, but we welcome the order. It is important, but the fact that it has to be brought in this Parliament rather than in the Assembly in Belfast is a tragedy for us all.

Lord Duncan of Springbank: My Lords, I thank noble Lords very much for their constructive engagement on this issue. I welcome the support from all sides of the House for the changes in the orders we are bringing forward today. I think they will extend opportunity across Northern Ireland and that that will be welcomed by all in Northern Ireland. It will bring Northern Ireland into alignment with the rest of the United Kingdom. As often happens in debates on Northern Ireland, we had a small amount on the issue on the Order Paper and then we segued quite quickly into a broader discussion. If noble Lords will allow me to pick up some of those pieces, I will do so.

The substantive point raised by the noble Baroness, Lady Harris, is an important one. I gave some undertakings the last time I was at this Dispatch Box. I am always loath to hear my words quoted back to me, but she is absolutely correct. I had a note in my briefing that I felt, when I read it, was not adequate in response to her point, so I solicited further information from my assistants in the Box. They are telling me now that the issues we are talking about, these reforms, have not had a chance to go through a complex election. A complex election is coming in May. I give an undertaking that we shall revert to this issue after that point, when I hope we will be in a better position to move this forward. I appreciate that she would like the answer now, but if she will forgive me I will bring this back after that complex election, when I hope we will be in a position to take this matter forward. I appreciate that it is a complex issue—

3.30 pm

Lord Tyler (LD): The Minister was very generous in his contribution on this issue in February of last year, and I endorse what my noble friend has said. But that was 12 months ago, and it is precisely because these elections are important that this issue of transparency remains so clear in our minds as something that needs to be cleared up as soon as possible. Of course we know that the transparency is there for the future, but clearing up what has happened in the past remains a very important political issue for a number of the reasons that have been given. In the context of the constitutional crisis of the next few weeks, to which the noble Lords, Lord Cormack and Lord Murphy, have referred, in which Northern Ireland—where there is such a democratic deficit—is so central, the need for clarity and transparency is all the greater. I understand what the Minister is saying, but coming 12 months after he gave an undertaking that progress would be made on the issue of transparency of election funding, it is, frankly, not good enough to say that we will postpone it a bit longer because there is another election coming up. It is not good enough, and it adds to the feeling that Northern Ireland is being treated in a way which is not in alignment with the rest of the United Kingdom at a time when it is extremely sensitive. The Minister himself says that the purpose of this order is to bring Northern Ireland into alignment with Great Britain. Here is another area where it should have happened long ago.

Lord Duncan of Springbank: I will accept the criticism. I will not try to defend myself on that point either. We should be able to make progress on this matter, and I hope we can do so, but at this moment I cannot give an undertaking that progress will be made in the short term. For that I apologise.

If I may move on to some of the other issues raised in this particular debate, my noble friend Lord Lexden asked why it has taken so long. In actual fact, although we are reforming an Act which dates to the 1980s, the

reform itself was not instituted in the 1980s. We are bringing ourselves into alignment not that long, broadly speaking, after the rest of the United Kingdom, and I hope that we will be able to make that progress today. My noble friend is also correct in looking at how the reorganisation has worked in Northern Ireland. As the noble Lord, Lord Kilclooney, has also pointed out, we do not yet have enough information to be able to assess that accurately and in the detail which we would require, but we will have to do so to make sure there was some value in undertaking the revision and reconstruction of those particular wards.

I note also the points raised by the noble Lord, Lord Kilclooney, on how larger wards by their nature tend to create a greater distance between the individual constituents—if you will—and those who represent them. I was the former MEP for the whole of Scotland. Frankly, I was widely unknown everywhere in Scotland, but none the less I recognise that the shortening of the proximity between those who do the electing and those who do the response is a challenge. It is greater challenge for those with a larger constituency, particularly if that constituency is a rural one where there will, by its nature, be greater challenges. I accept that on the whole.

My noble friend Lord Cormack is right, as the noble Lord, Lord Murphy, has also pointed out, that we should use every opportunity to flag up where we are on the wider question. Two weeks ago, I hoped to be able to report on greater progress from the first meeting of the political parties in Northern Ireland. I was disappointed that I could not do that at the time. My right honourable friend the Secretary of State for Northern Ireland continues to meet them, and we are hopeful that we will be able to bring about the gathering which needs to take place as a precursor toward establishing the Assembly in a meaningful way with an Executive drawn therefrom.

We have not yet made that progress, but in truth we will have an opportunity to look at this in greater detail when the Executive formation extension element moves the deadline of 26 March to five months hence. I will bring back that very point to your Lordships' House for a full debate. We can open that window of a further five months only if we have progress to report. Otherwise noble Lords will legitimately ask us, "What has changed? Why can we move forward at all?". Noble Lords will say that to me, and I hope to bring forward on that occasion far more detail than I will give them today. At that point, I will explore exactly what we have done to try to bring those parties together.

There is no point in pretending that Brexit is not a part of it—I would sound very foolish if I pretended that—but we have to recognise that we are where we are, and it is against that backdrop that we must make progress. We do not get to choose the timing of these issues; we have to work with what we have before us.

I thank the noble Baroness, Lady O'Neill of Bengarve, for raising the important report, which I have read in part. The issue of transparency is absolutely at the heart of Northern Ireland. There needs to be that confidence, which is why the point of the noble Baroness, Lady Harris, needs to be made; we need to have confidence not just in going forward, but also in the past. We need to have that. We need it as quickly as I can bring it back here, and I will bring it back here as quickly as I can.

I am conscious that the noble Lord, Lord Murphy, flagged up an important debate next week on the wider budget, and we will have longer to discuss in some detail the functioning of the Northern Ireland Civil Service and the delivery of services, and each of the challenges which go with it. I know that we will have a thorough discussion on that occasion.

The restoration of the institutions is important. My noble friend Lord Cormack asks, "Why cannot the Assembly meet again? At least get one of the institutions sitting to explore these issues". I will take that away again for further consideration, but I do not believe that it should be ruled out of hand. Every possible avenue needs to be explored at this point.

Lord Cormack: I am exceptionally grateful to my noble friend for what he has just said. Nobody is criticising him personally, but if, in the rather more substantive debate next week, he could report back specifically on that issue, I think we would all be extremely grateful.

Lord Duncan of Springbank: Yes; I will report back at greater length on that very point.

I hope, looking at my notes, that I have covered all the aspects. I thank all noble Lords for their support for the two changes themselves, which I believe will be important when they will be brought in. This will bring about a greater diversity in Northern Ireland; we need as many voices as we can possibly have in Northern Ireland, both at local government elections and beyond, when that moment comes. On that basis, I commend the order to the House.

Motion agreed.

Social Security Benefits Up-rating Order 2019

Motion to Approve

3.36 pm

Moved by ***Baroness Buscombe***

That the draft Order laid before the House on 30 January be approved.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, in my view the provisions in this order are compatible with the European Convention on Human Rights.

The Social Security Benefits Up-rating Order 2019 reflects the Government's continuing commitment to: increase the basic and full rate of the new state pensions by the triple lock; increase the pension credit standard minimum guarantee in line with earnings; and increase carers' benefits and benefits intended to meet additional disability needs in line with prices.

On the basic state pension, the Government's continuing commitment to the triple lock means that, this year, the basic state pension will continue to be uprated by the highest of: earnings, prices, or 2.5%.

[Baroness Buscombe]
The triple lock has been an invaluable tool in combating pensioner poverty. Maintaining it ensures that pensioners receive the financial security and certainty that they deserve.

This year, the increase in average earnings was the highest of the triple lock figures. As a result, the basic state pension will increase by 2.6%, rising from £125.95 to £129.20 a week for a single person. Consequently, from April this year, the basic state pension will be over £1,600 a year higher than in April 2010. We estimate that the basic state pension will be around 18.4% of average earnings—one of its highest levels relative to earnings for over two decades.

Three years ago, the Government introduced the new state pension, which provides a transparent and sustainable foundation for private saving and retirement planning for people reaching state pension age on or after 6 April 2016. We have also committed to triple lock the full rate of the new state pension. Therefore, from April 2019, the full rate of the new state pension will increase from £164.35 to £168.60 a week. This is approximately 24% of average earnings.

On the additional state pension, this year state earnings-related pension schemes and the other state second pensions, as well as protected payments in the new state pension, will rise by 2.4%, in line with prices. In addition, we are continuing to take steps to protect the poorest pensioner households, including through the pension credit standard minimum guarantee—the means-tested threshold below which pensioner income should not fall. This will rise by 2.6%, in line with average earnings. From April 2019, the single person threshold will rise from £164.35 to £167.25 a week—more than £1,800 a year higher than it was in 2010. Pensioner poverty continues to stand at one of the lowest rates since comparable records began. These measures will help us keep it that way.

In the 2018 Autumn Budget Statement, the Chancellor announced additional assistance for those on universal credit. As such, universal credit work allowances will rise by £1,000 once they have been increased by prices. This measure raises the amount someone can earn before their universal credit payment is reduced and directs additional support to some of the most vulnerable, low-paid, working families.

Finally, I turn to disability benefits. The Government continue to make sure that carers and people who face additional costs as a result of their disability will get the additional support they need. So, disability living allowance, attendance allowance, carer's allowance, incapacity benefit and the personal independence payment will all rise by 2.4%, in line with the increase in prices. In addition, the carer and disability-related premia paid with pension credit and working-age benefits, the employment and support allowance support group component and the limited capability for work and work-related activity element of universal credit will also increase by 2.4%. These increases will continue to ensure that our welfare system provides the most support to the people who most need it.

In conclusion, in this order the Government propose to spend an extra £3.7 billion in 2019-20 to increase benefit and pension rates. With this spending, we are maintaining our commitment to protect the country's pensioners through the triple lock and helping the poorest pensioner households who count on pension credit. We are also ensuring that people on universal credit can earn more before their payment is reduced and providing essential support to disabled people and carers. On this basis, I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, last week I received notification from the Pension Service of the increase in my pension from 8 April, under the triple lock. If I were a hard-pressed mother, claiming child benefit and most other working-age benefits, I would not have been so fortunate.

It has become something of a tradition in these uprating debates that some of us focus on the benefits that are not being uprated because of the benefits freeze. I am sure it will come as no surprise to the Minister that I do not plan to break the tradition. It is particularly pertinent this year, given the growing pressure from a number of quarters to end the freeze a year early. I welcome the real increase in the work allowance, after it was defrosted last year. I hope that the Government will start thinking about a second earner work allowance as a targeted way of addressing child poverty and encouraging more women into paid work.

As my noble friend Lady Sherlock spelled out in the earlier tax credit uprating debate, with her customary forensic skill, the freeze has had a much greater impact on working-age benefits than was originally anticipated at the time of the Welfare Reform and Work Act 2016. This is because of higher than expected inflation, due largely to the outcome of the referendum. According to the Resolution Foundation, the overall, cumulative, real cut in benefits will amount to around 6% by this coming benefit year. The total saving to the Treasury is around £4.4 billion. That is £4.4 billion being taken out of the purses and wallets of some of the poorest members of our society.

According to House of Commons Library calculations for Neil Gray MP, the higher than anticipated inflation rate means that around £1.2 billion is being cut this coming year over and above that originally budgeted for. The Joseph Rowntree Foundation has warned that maintaining the freeze for this final year will mean 10.7 million people living in poverty missing out on £220 to help cover the increased cost of living, and as many as 200,000 more being locked into poverty. The scenario will be even worse in the event of a no-deal Brexit.

3.45 pm

The freezes have been identified as a key driver of the increase in poverty projected by independent think tanks such as the Resolution Foundation and the IFS. The foundation's *Living Standards Outlook 2019* projects a shocking increase in child poverty of more than 1 million by 2023-24, with the figure on course to hit a record high of nearly two-fifths of children. The proportion of parents in poverty is also projected to hit a record high of nearly three in 10. While it raises questions about the actual statistics, it stresses that they do not affect the trends identified.

As well as the numbers in poverty, the impact on the depth of poverty should also concern us. The depth of poverty was highlighted in the Social Metrics

Commission report on poverty measurement. Given that many of those affected by the benefits freeze will already be living in poverty, its impact is more likely to show up in poverty depth or gap statistics than in incidence statistics. I raised this issue in a QSD on the commission's report, pointing out that the experience of poverty is very different if you are one of the more than 4 million estimated by the report to be living at 50% or more below the poverty line from that if you are one of the 1.3 million living within 5% below it. My plea that the Government should undertake to publish regular poverty depth statistics received no response from the Minister, so perhaps she could respond today.

The latest ONS statistics indicate that inequality is also starting to rise again as living standards at the bottom are squeezed by social security cuts. Housing charities have warned of the impact on homelessness of the freeze in local housing allowances. Indeed, research by Shelter suggests that by the coming financial year, four-fifths of areas in England will be unaffordable to those receiving LHAs. Even the HCLG Secretary has now acknowledged that there may be a link between the increase in rough sleeping and social security cuts.

As we traditionally use the uprating order debate to highlight the benefits freeze, Ministers traditionally respond to our concerns with a familiar set of arguments. It is disappointing that the Minister in the Commons did not engage with the arguments made across that House yesterday. I hope our Minister will do so. I will not list them all, but we are told, for instance, that the freeze was necessary because social security spending was out of control. Yet the OBR's 2014 *Welfare Trends* report noted:

"The proportion of national income devoted to welfare spending has not shown a significant upward or downward trend over time".

More recently, it estimates that on current trends, spending on the support of children and working-age people would be at its lowest share of GDP since 1990-91. That is not something to be proud of. Relevant to this is a recent addition to the ministerial quiver of arguments that the,

"UK provides more benefits for families than any other advanced nation".

Leaving aside that the statistic includes services as well as benefits, a Question for Written Answer elicited that it relates to 2013—six years ago and before the Government's full onslaught on social security benefits.

Also relevant is the argument that the cuts were necessary to get the public finances into order, but analysis by the LSE's Centre for Analysis of Social Exclusion, cited by my noble friend Lady Sherlock in the tax credits uprating debate, showed that in effect social security cuts have paid for increases in tax allowances. A number of commentators, including the UN special rapporteur on poverty, have pointed out that it was a political choice in last autumn's Budget to prioritise raising tax allowances over ending the benefits freeze, which would, in his words, have helped to "move the needle on poverty".

Ministers are also always keen to point out that the freeze is only part of the picture and that we should also take into account policies such as the increase in tax allowances and the introduction of the national living wage. Fair enough, but raising tax allowances is regressive in its impact, providing no benefit to those whose incomes are too low to pay income tax and of limited benefit to taxpayers in receipt of universal credit. Welcome as improvements in the living wage are, they do not compensate. As the IFS explains,

"only a minority of those who are likely to gain most from the NLW are in the low-income households that stand to lose the most from the benefit reforms since July 2015. In other words, minimum wages are far less tightly targeted on those with low household incomes than are working-age benefits".

When taking account of the whole picture, remember that the current freeze is just one of many cuts euphemistically called reforms, notably the two-child limit, the benefit cap and the cuts in real value that preceded the freeze. According to the House of Commons Library, cited by the Work and Pensions Committee, this coming year affected households will have to live on,

"incomes that are between £888 and £1,845 lower in real terms than if benefits had been consistently uprated",

in line with inflation, since 2010. The cumulative impact assessment of tax and benefit policies since 2010 carried out for the Equality and Human Rights Commission demonstrated their overall regressive impact.

Taking a historical perspective, the Resolution Foundation warns that the real value of the basic level of support for the unemployed this coming financial year will be at its lowest since 1990-91, and its lowest ever relative to average earnings. Compare and contrast that with the figures the Minister gave for pensions. Child benefit—the cornerstone of financial support for children in both working families and families out of work—will be lower than at any point except 1990 since its full introduction 40 years ago. For two-child families, its value has never been lower. Of course, families with three or more children may also be coping with the two-child limit on children's credits.

Over and above the arguments for lifting the freeze early in light of higher than anticipated inflation is the fear of the impact of Brexit on the poorest in our society—raised in this House during the Brexit debates most notably by the most reverend Primate the Archbishop of Canterbury. According to a recent *Times* report, Ministers are looking at how to protect people in poverty from the possible impact on their cost of living of a no-deal Brexit, including through tax and benefits policy. The other week a group of charities headed by the JRF wrote to all MPs urging pre-emptive action to smooth exit from the EU for those who have endured years of benefit cuts and freezes, starting with lifting the freeze now. The *Times* earlier reported that five former Cabinet Ministers, including Iain Duncan Smith, were leading a call among senior Conservatives to end the freeze. Heidi Allen MP, formerly of the Minister's parish, has questioned its morality. Most recently, the Work and Pensions Committee has added its weight in a letter to the Secretary of State. It points out that, even if the freeze were ended now, the Government would still save £2.5 billion from the cumulative impact of the freeze hitherto and argues that they should use some of the current budget surplus to prioritise lifting the

[Baroness Lister of Burtersett]
freeze to protect families facing destitution—yes, it used the term "destitution"—because of the erosion of the support they need.

I know that to do so would require legislation because, against the advice of your Lordships' House—in particular, I think, the noble Lord, Lord Kirkwood, who is not in his place—the Government tied their legislative hands. But I cannot imagine that anyone would object to an emergency two-clause Bill to end the freeze immediately. Indeed, the shadow Work and Pensions Secretary in the Commons yesterday offered to facilitate such a Bill if the Government were to bring it forward. Where there is a will, there is a way. I call on the Government in the Spring Statement to show they have the will and end the freeze, which is causing so much hardship.

Baroness Janke (LD): My Lords, I too thank the Minister for her announcement today. It is always a privilege to follow the noble Baroness, Lady Lister, who knows so much about this subject. I too feel struck by the benefits that are not in this order. I suspect we will all today mention the Joseph Rowntree Foundation, which described this as "the biggest policy driver" of poverty. The Joseph Rowntree Foundation is the organisation that established the concept of the minimum income standard. The statistics for that are breathtaking. The noble Baroness, Lady Lister, has given us important figures and shocking facts but we should look at the minimum income standard.

A single person has to earn £18,400 to reach the minimum income standard. Each parent in a working family must earn £20,000. The minimum wage is too low to reach the minimum income standard. A lone parent with two children, working full-time, had disposable income 4% below the minimum income standard in 2008; today it is 20% below it. The freeze is set to cost working-age families £4.4 billion a year in 2019-20, and the average single parent will be £710 worse off—that is 3% to 7% of their income.

We have talked about removing the freeze a year early and we would support that. As the noble Baroness, Lady Lister, said, where there is a will there is a way. If we removed the freeze for the last year, the result would be to reduce the number of people in poverty by 200,000 in 2020-21; 27.5 million people would gain, at a cost of £1.4 billion to the Treasury; and a proposed cut of £250 to single parents' budgets would be prevented.

In the last Budget, the OBR found £13 billion in extra headroom, £1.3 billion of which went to cut tax for higher earners. Commentators today are saying that they expect the forecast for public finances to improve, so will the Government consider using the £1.4 billion to end the benefits freeze a year early? Can the Minister explain the freezing of bereavement support payments for the coming year, even though the widowed parent allowance it replaces has been raised in line with inflation?

I support and associate myself with the remarks of the noble Baroness, Lady Lister. I hope the Government will listen and look at this issue again. It is getting to alarming proportions and should shock us about the state of our country.

Baroness Sherlock (Lab): My Lords, I thank the Minister for her introduction to this order and both noble Baronesses who have spoken. As we have heard, the purpose of the order is to make changes to the rates of those benefits which have been fortunate enough to escape the Government's freeze, which is causing so much damage, as we have heard from the noble Baronesses. We now have a series of different categories of benefit which get treated in different ways when it comes to uprating time.

We have a category which is going to be uprated by at least the increase in earnings: the state pension because of the triple lock; the standard minimum guarantee of pension credit; and some aspects of widows' and widowers' pensions in industrial death benefit. They all get to go up by 2.6%, which is the increase in earnings.

Then we have a category which will have to be increased by at least the increase in prices. This includes attendance allowance, carer's allowance, DLA, PIP, severe disablement allowance, other aspects of widows' benefits, the additional state pension, graduated retirement benefit and increments to the state pension. They all get to go up by CPI—inflation.

Then there is a category over which the Secretary of State has discretion. She has decided to use that discretion by uprating some benefits by CPI—by inflation—including statutory sick pay, maternity and paternity pay, adoption and parental leave pay, the support group components of ESA, disability and carer premiums, the carer element of universal credit and the limited capability for work and work-related activity element of universal credit. They go up by 2.4%.

Then there are the benefits which are not being uprated at all. These include all the main means-tested working-age benefits, including: the personal allowance elements of income support; jobseeker's allowance; the personal allowances and work-related activity components of ESA and housing benefit; and the standard allowance, limited capacity for work element and the lower disabled child addition of universal credit. Those are the main things on which most of our poorest fellow citizens depend. However, they have been frozen at the 2015-16 cash levels, having previously been increased by only 1%. Now, as we have heard, we have to add to the list bereavement support payment. It will be paid at the same cash rate as it was last year, which means that, like all those benefits, its value is being cut yet again. There is no triple lock for anybody except pensioners.

4 pm

Obviously, I welcome any increase in benefits that are being uprated, and I welcome the increase in the universal credit work allowance, which will go some way towards undoing the very severe damage done by the Government's decision to slash work allowances in both tax credits and universal credit. Many noble Lords may remember that tax credits got a reprieve, thanks to the marvellous campaign led by my late and very much missed friend Lady Hollis, who led this House in asking the Government to think again. However, that cut was still imposed on universal credit and now we are getting some of that money back.

Like my noble friend Lady Lister, I make it a point of principle never to allow these occasions to go by without pointing out the damage that has been done by leaving these benefits out of uprating. However, given the rather marvellous speech that she has just made, and given the fact that I recounted this in some detail in the debate on the uprating of tax credits, noble Lords will be relieved to hear that I will not rehearse those arguments all over again. "Hear, hear!" is a little harsh, I think. In any case, my noble friend Lady Lister literally wrote the book on this subject—*Poverty*, which is the classic work in this area and remains so about 15 years after she wrote the first edition—so I have nothing to add to the rather marvellous analysis that she has given us.

However, I want to ask a couple of questions of the Minister. In doing so, I remind her that the Work and Pensions Select Committee in the other place has just written to the Secretary of State, setting out the damage that has been done by this freeze and urging her to consider ending it a year early. I hope that when I sit down, the Minister will be able to give us some good news which, unaccountably, the Government failed to share in the Commons yesterday.

The damage is really very severe. As both noble Baronesses pointed out, this is the single biggest driver of the damage that has been done in relation to child poverty in our country. When we discussed the uprating of tax credits, I asked the Minister, the noble Lord, Lord Bates, whether he could justify the freeze on tax credits. He said to me in a letter of 21 February:

"Prior to the freeze the tax credits system was too generous".

What is the rationale for the freeze in benefits? Were they too generous as well?

Previous rationales that we have been given, as my noble friend pointed out, have allegedly been about incentivising work, even though they have cut the work allowances that make people better off in work and they also include various in-work benefits. We have been told that it is necessary to cut the deficit, despite the fact that, as the noble Baroness pointed out and as research shows, the coalition Government spent the same amount on tax cuts as they did on cutting benefits, contributing nothing to the reduction of the deficit. If the aim were to incentivise work, why include tax credits for those in work? The same people whose incomes from work are squeezed as wages have lagged behind inflation find that the tax credits that should top up those incomes are cut in value year on year. This has been causing real hardship across the country, as both noble Baronesses have explained, and the Government are now saving a lot more money than they expected to.

I want to ask the Minister some specific questions. First, what assessment have the Government made of the impact of the freeze on benefits on poverty levels? When I asked the noble Lord, Lord Bates, the same question about tax credits, he said in a written reply that the Government routinely publish distributional analyses of their policies at fiscal events. Although interesting, that was not directly relevant, as I had not asked about distributional analysis; in fact, I had asked about the impact assessment on poverty levels. I ask the Minister the same question now. I presume that this analysis will have been done, as I cannot believe that the Government, who I know care about the poorest, would have set about a policy of this magnitude without having considered its impact on poverty levels. Therefore, can she share that with the House?

Secondly, can she tell the House the Government's latest estimate of the savings to the Exchequer of this four-year freeze in benefits over and above the amount originally scored? When I asked the noble Lord, Lord Bates, the equivalent question about tax credits, he wrote in reply that the OBR had scored the original saving from the freeze at Budget 2015 at £4.01 million by 2020-21. I knew that because I had said it in my speech but I wanted to know what the latest assessment was. The IFS is able to assess this, so I cannot believe that the Government are not. As Parliament was induced to vote for this freeze on the grounds that it would save £4 billion, and the expectation now is that it will save at least an extra half a billion, it does not seem unreasonable for the Minister to tell Parliament the latest assessment of the saving, as the money being saved by the Exchequer is of course being taken directly from the pockets of some of the poorest people in our country.

Finally, if the Government are not willing to end the freeze a year early, why not? Why is that not a priority when making decisions about spending? I look forward to the Minister's reply.

Baroness Buscombe: My Lords, I thank all noble Lords who have taken part in this debate. It has certainly focused on things outside the order itself, but I thank noble Lords for appreciating the upratings made in the order. It feels like 10 minutes ago that we were debating this last year, so I was, to some degree, ready for some of the points that would be raised; I expected there to be references to the benefit freeze and various other issues.

I begin by referencing something that my honourable friend, Justin Tomlinson MP, stated last night in a similar debate in another place. He said that we will always share the proceeds of economic growth to target our support for the most vulnerable in our society. That is why we are spending £7 billion more than in 2010 to support those with severe disabilities and mental health issues.

It is true that things have changed. Our approach is, to some degree, different to that of the party opposite when it was in government. We want to incentivise people; we want to look at the root causes of poverty and lift people out of it. We know—we have research that tells us this—that lifting people out of poverty and into work is the best route. Our welfare reforms incentivise moves into work and support working families. What we are providing is different in some ways, but we know this approach is working. The number of people in work is now at a record high. Through our welfare reforms, the Government have introduced 30 hours of free childcare a week for working families in England; cut income tax for 31 million people; and provided the lowest earners with their fastest pay rise in 20 years through the national living wage.

[Baroness Buscombe]

Our reforms have been highly redistributive. The latest analysis shows that, since taking office in 2016, the poorest households have gained the most as a percentage of net income. The annual average income of the poorest fifth of households has risen in real terms by more than £400 since 2010, while incomes of the richest fifth have fallen. Income inequality is lower than it was in 2010. In 2019-20, the 10% of households with the lowest incomes will receive more than four times as much support in public spending as they contribute in tax. We believe it is right that the poorest households should gain the most as a percentage of net income.

The noble Baroness, Lady Lister, referenced several studies showing that the number of children in poverty will increase substantially over the next few years. However, experts such as the IFS, who undertake these forecasts, acknowledge a degree of uncertainty around them. We stay with our firm belief and principle that work offers the best chance for families to get out of poverty.

Since 2010, there are more than 3.4 million more people in work and around 637,000 fewer children living in workless households. Children are about five times more likely to be in poverty if they live in a workless household, compared to a household where all adults work. There are 300,000 fewer children in absolute poverty, both before and after housing costs, compared to 2010, meaning we are currently at a historic low. We know that children in workless families can face real disadvantages to their development and prospects. This is why we will continue with policies that support and encourage employment, reform the welfare system to make work pay—as I always say, to make work transforms lives—and introduce universal credit to strengthen incentives for parents to move into and progress in work.

The rates of children in material deprivation have never been lower. As I said, children in households where no one works are more likely to be in poverty, but we will be investing more than £6 billion a year in childcare by 2020. There are a number of key ways in which we are demonstrating that our approach is different.

Lord McKenzie of Luton (Lab): My Lords, the Minister has touched on the Opposition's policy for work in previous debates. How would she respond to the executive summary of a White Paper produced when we were in government, which states:

"This White Paper sets out a vision and route map for a welfare state where everyone is given the help they need to get back to work, matched by an expectation that they take up that support"—

a concept supported by the noble Lord, Lord Freud? Indeed, he worked on that programme for the DWP.

Baroness Buscombe: My Lords, what the noble Lord just referenced goes to the heart of what we are trying to achieve. The reality is that we are providing support in every which way to help people into work, and to help people through our jobcentres with our work coaches and case managers. The important thing is that the first thing people do when they go into a jobcentre is talk to a work coach who is interested in ensuring that they have the right support, the right benefits and a roof over their head. We signpost them to the right support where that is lacking. From there, we do all we can, working with a bespoke work coach and case managers. It could take months, weeks or days to encourage people to go into work. Of course, as we know, some of these people have never been in work. Indeed, in 2010 a fifth, of all households in the United Kingdom—20%—were entirely workless. We have brought that down to 13.9% of all UK households. That is still an enormous number of households where nobody is actually working. We genuinely believe it is crucial that we change that, and we are changing it.

Lord McKenzie of Luton: Can the Minister tell me what the figure was when the Conservative Government left office previously?

Baroness Buscombe: I am not able to share that figure with the noble Lord, but I believe so strongly that what we are doing in introducing and developing universal credit with bespoke and universal support is a far cry from what previous Conservative Governments prior to 1997 and the party opposite in Government up to 2010 did with legacy benefits, when people had no contact.

Baroness Altmann (Con): I offer my noble friend a little assistance, because the Government should be rightly proud of the enormous strides that have been made in employment for older people. The Government have made specific efforts to ensure more older people are supported back into work. That has not been done by previous Governments.

Baroness Buscombe: I thank my noble friend for that. It is a very important point because, as we know, life expectancy is extending. The reality is that there are so many people out there, particularly women, who have never had the confidence to go back to work after having children. So many of my peer group would love to have had the confidence to go back to work. That is the sort of thing the Government have been doing and are working so hard at. We have all sorts of projects and support systems in place. In fact, two Secretaries of State have announced in the last year different projects to encourage older women particularly. When we say "older", we—

4.15 pm

Baroness Lister of Burtersett: On the point about encouraging women back into work, which I very much agree with, would the Minister be willing to take away my point about work allowance? At present, second earners have little incentive to get back into paid work. She made the point that we need all adults to be in paid work to have the full impact on poverty. I do not expect her to say that the Government are going to do that but perhaps she might consider my point when developing universal credit policy.

Baroness Buscombe: Yes, I noted somewhere in my papers and will say now that of course it is right that we look at every way to incentivise the second earner to go back into the workplace; that is very much our thinking at the moment. We are looking to find different ways to help and incentivise people. We also have to

think about affordability. We touched on that when we debated these uprating measures a year ago; it has to be taken into account as well. The noble Baroness, Lady Janke, talked about how much was spent at the last Budget, but actually quite a large proportion of that—£4.5 billion—went towards the work that we are doing at the Department for Work and Pensions in supporting people, so we have to ensure—

Baroness Sherlock: On the affordability question, will the Minister address the point that I and another noble Lord made: the Government are likely to save half a billion pounds more on this freeze than they did from the 2014-15 Budget, so why could that money not be put to this purpose? While she is at it, her comments about work are very interesting, but if I could bring her back to the order under discussion, if the aim of this freeze is to incentivise work, why are the Government freezing payments made to some of the people on employment and support allowance whom they have deemed not fit to work? Why does the freeze include benefits paid to mothers of very young children, whom the Government do not require to work? Why does it apply to in-work benefits designed to make work pay?

Baroness Buscombe: Because of the issue of affordability, we have to make some difficult choices. I will not pretend that we are not constantly looking at this; indeed, the Secretary of State for Work and Pensions made a speech only today amplifying the fact that we are looking at different ways of supporting people with disabilities. They may not attract a price tag, if I may put it that way, but they are going to help transform the lives particularly of people with severe disabilities, because the reality is that we cannot simply take that difficult leap and say that we are going to lift the benefit freeze. As my noble friend said last night in another place, we have to face the fact that under the previous Labour Government, welfare spending increased by £84 billion—the equivalent of £3,000 additional cost for every working household in this country. We have to strike a fair balance between those who are funding the welfare system and those who are in receipt of it. It is always a difficult balance, but again, I thank noble Lords who are making suggestions and encouraging me to amplify the fact that we have a particular interest in supporting those who may not have been in work for a number of years, or who may never have worked, to have the confidence to do so.

Lord Judd (Lab): My Lords, the Minister is speaking with great passion and conviction about her commitment to get people back into work. Is it not also incumbent on us all, irrespective of party, to keep constantly under review exactly what some of this work amounts to? It is hardly surprising that there are large numbers of families still not in work: the attraction of going into the sort of work available is the attraction of going into hell.

Baroness Buscombe: I am pleased to say that the vast majority of jobs which people are taking are full-time employment but, as I have said before at this Dispatch Box, it is really important that we focus on low pay. We have introduced the living wage, which has made an enormous difference. However, there is an issue not just in the private sector but in the third sector and others, where low wages are paid on the expectation that they will be supplemented by the state. We have to think about how we can tackle that. It is a very tough one. In a sense, I speak now not as a Minister but we have to take it on board. The reality is that until we have more people being paid what one might call properly, so that they do not have to turn to the benefits system, there will be the issue of how we maintain and sustain an affordable welfare system in the years ahead.

The costs are going up. I do not know whether I dare say this without checking my notes but the reality is that in a few short years—here we are, it is by 2022—our expenditure on welfare will rise by a further £28 billion. We are already spending more than £100 billion on benefits for people of working age. That £100,000 million will go up by £28,000 million by 2022.

Baroness Altmann: It is important for the House to recognise that there are a number of people, particularly older workers—yet again, I declare my interest—who want to work part-time and on zero-hours contracts. It is not as simple as it might appear from looking at the bald figures. That is perhaps work that the department might wish to take further but it is an important point.

Baroness Buscombe: Again, I thank my noble friend. It is a very important point. I often come across people who actually want to work on zero-hours contracts. They want to work in a flexible way so that they can work around their childcare arrangements or caring responsibilities. We live in a complex space. This is where I think the universal credit system is so brilliant, although we constantly seek to improve as we develop it. We inject every two weeks, on average, a new piece of software into that system to improve it, on the basis that everybody's situation is different. We therefore have to have a system that can be as flexible as possible in responding to people's way of working and their family arrangements, which are many and varied and can of course change literally overnight. People may then need to turn, maybe overnight, to our support and help.

That is why we are working hard to ensure that we can support the system in a way that provides for those who are in most need. We will not always agree about every benefit in it, but I hope noble Lords will accept that we at the Department for Work and Pensions are doing our best to develop many policies to encourage and empower people to go into the workplace to provide for their children, and therefore to have fuller lives and fulfil every opportunity for their potential.

Baroness Lister of Burtersett: I sense that the Minister is about to sit down—I apologise if she was not—but I made one point on which I asked her to respond. It would be a new policy but would not cost anything, other than the administrative costs of doing it. It would be to routinely publish the poverty depth statistics, which would help to answer for the future the question that my noble friend Lady Sherlock asked, which has

[Baroness Lister of Burtersett]
not been answered. What attempts are the Government making, or have they made, to measure the impact on poverty of this freeze?

Baroness Buscombe: My Lords, the Welfare Reform and Work Act 2016 was supported by a number of impact assessments that considered the whole picture of the Government's welfare reforms. Any estimate of the impact will fluctuate whenever the number of people claiming benefit, or assumptions about the economy, turn out differently from the forecasts at the time. Although CPI for this year is higher than anticipated, at the time of the impact assessment for 2017-18 CPI was lower than expected. Since the impact assessment for the Welfare Reform and Work Act, we have seen employment reach record levels. If people choose to move into work or to increase their hours, they may mitigate or never experience the notional loss. In total, freezing benefits and tax credits overall is expected to result in £3.5 billion of savings in 2019-20, but the 2015 impact assessment shows a saving from the benefit freeze this year of around £1.4 billion.

I reassure the noble Baroness, Lady Sherlock, that I will share with my colleagues the points that have been raised in this debate. We constantly review whether we have the right policies, what we can do to change them and what our constraints are given that we are just one of numerous departments. We account for 25% of the entire government budget. Therefore, it is always a tough challenge for us to influence change. I have huge respect for the previous and current Secretaries of State, who have been able to encourage the Chancellor of the Exchequer to make some changes.

A question was asked about those with a disabled child. All those qualifying for the disabled child addition also qualify for disability living allowance or personal independence payments, which are exempt from the freeze. Another question was asked about the two-child element. We believe that families on benefits should face the same financial choices when deciding to grow their family as those supporting themselves solely through work. A benefits structure adjusting automatically to family size is unsustainable. I think I have answered almost everything—

Baroness Lister of Burtersett: My noble friend asked a rather pertinent question: do the Government think that these benefits are too high?

Baroness Buscombe: My Lords, no; I can answer that very simply. We do not think that the benefits are too high, but we feel strongly that we have to focus them where the need is greatest.

I hope that noble Lords will agree that we have had a full debate, much of which has related to matters other than the uprating itself. The social security uprating order will provide an extra £3.7 billion of support for the most vulnerable in 2019-20. The triple lock on the state pension will provide an extra £3.6 billion for pensioners. The uprating of disability living allowance, personal independence payments and carer's allowance are worth £0.7 billion in 2019-20 alone. The increase in universal credit work allowances by £1,000 will provide 2.4 million working families with an extra £630 a year from April 2019. This Government have a track record of increasing their generosity in welfare spending. Since 2016, they have invested more than £9.5 billion in universal credit. I thank all those who have taken part in this debate. I beg to move.

Motion agreed.

Social Security Coordination (Council Regulation (EEC) No 1408/71 and Council Regulation (EC) No 859/2003) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

4.30 pm

Moved by ***Baroness Buscombe***

That the draft Regulations laid before the House on 30 January be approved.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, I thank all noble Lords who have supported the presentation of these four statutory instruments, and I will also speak to the remaining three.

These regulations were laid before both Houses on 30 January. They enable the Government to address deficiencies in retained EU law caused by the United Kingdom withdrawing from the EU, which would impact the operation of the retained social security co-ordination regulations in a no-deal scenario. The whole system of social security co-ordination across the EU relies on co-operation and reciprocity. The legal framework for this will cease in a no-deal scenario. The UK will have no means of enforcing reciprocal obligations on EU member states and cannot therefore legislate for this when correcting deficiencies in the co-ordination regulations.

These instruments aim to maintain the status quo on a unilateral basis, ensuring that citizens' rights are protected as far as possible in a no-deal scenario in relation to social security. They are intended to ensure a functioning statute book in the event of no deal, by fixing deficiencies in retained EU law, in line with the power provided by Section 8 of the EU withdrawal Act.

The list of specific legislation that these regulations amend is lengthy but can broadly be split into three categories. The first is data and information sharing. The co-ordination regulations require EU member states to exchange information through specific administrative procedures laid down in the regulations. Data shared is used, for example, to establish which member state is responsible for payment of benefits to avoid overlapping benefits being paid in different member states. These instruments will enable us to ask claimants to provide, within reasonable time, the relevant information to determine competence in cases where the relevant member state does not do so when asked. They also include provisions to ensure that the UK can continue to share data with member states when they are applying the co-ordination regulations.

These SIs also remove provisions within the retained co-ordination regulations that will be inoperable if the UK leaves the European Union without a deal. For example, the co-ordination regulations make provision for a number of bodies at EU level to deal with

administrative and technical issues or disputes arising from the application of the social security co-ordination regulations—the administrative commission being the main one. These instruments remove references to these bodies on the basis that they will be inoperable when the UK withdraws from the EU in a no-deal scenario.

Finally, they deal with applicable legislation. The co-ordination regulations state that an individual shall be subject to only one EU member state's legislation at a time. These arrangements rely on co-ordination between member states in order to operate effectively. These instruments amend the co-ordination regulations to maintain the status quo for when UK legislation does, and does not, apply. These regulations are made using powers in the European Union (Withdrawal) Act 2018 to fix legal inoperabilities and other deficiencies that will arise on exit in retained EU law, so that the converted law continues to operate effectively post exit, and to make consequential provision.

The legal powers used are those provided for under the EU withdrawal Act, and the amendments made are completely in line with both the policy and legal intent of that Act. The use of secondary legislation to amend primary legislation—the so-called Henry VIII powers—was debated at length during the passage of the Act.

These statutory instruments are part of a wider legislative package that my department is laying. We have already laid SIs relating to private pensions, the European job mobility portal regime—more commonly known as EURES—and consequential powers. My officials will be happy to provide noble Lords with more information on the department's legislative programme following the debate.

No formal consultation on the regulations has been carried out by the Department for Work and Pensions as the instruments address deficiencies in retained EU law and there is no significant impact as a result. My officials, nevertheless, had informal discussions with the Social Security Advisory Committee on these instruments; these focused on technical issues and policy considerations. Similarly, we expect the regulations to have no impact on business, charities, voluntary bodies or the public sector.

In my view, the provisions in these statutory instruments are compatible with the European Convention on Human Rights. The Minister of State for Employment has also made the same statement.

All noble Lords will know that the EU withdrawal Act is a crucial piece of legislation that will ensure that whatever the outcome of negotiations, we have a functioning statute book on exit day, providing certainty to people and business across the UK. The Act enables this by providing a power for Ministers in the UK Government and devolved Administrations to deal with deficiencies in the law arising as a result of our exit from the EU.

These regulations are an essential part of the legislative programme that my department is laying in preparation for a no-deal scenario. They are needed to correct deficiencies so that the system can function, albeit unilaterally, and to retain the department's ability to make payments to claimants and to determine claims. Not proceeding with this legislation would result in a statute book that does not function correctly and would fail to protect citizens' rights. Passing these SIs will ensure that we are ready for all eventualities.

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for introducing these regulations. As we have heard, they seek to address deficiencies in retained law caused by the UK withdrawing from the EU. They amend the retained EU regulations comprising the co-ordination regulations, which currently co-ordinate social security systems throughout the EU.

Given that the changes these regulations cover potentially create new imposts and a move away from the status quo, it seems to us that there is a case for an impact assessment and some consultation. Change is necessary, as we have heard, because the current system relies on co-operation and reciprocity from other member states and that cannot be guaranteed when we withdraw in all respects. It will not be possible, for example, to impose reciprocal obligations on member states when correcting deficiencies, or say when co-ordinating rules relate to individuals moving to or from the UK. We understand and accept that.

The regulations will amend retained co-ordination regulations covering provisions that will not apply to the UK, confer functions on EU entities that will no longer have functions in relation to the UK, and make provision for reciprocal arrangements between the UK and other European Union member states. According to the Explanatory Memorandum:

"The instruments aim to ensure that citizens' rights are protected as far as possible in a no-deal scenario".

How? It is asserted that this is about maintaining the status quo, but will the Minister say to what extent the instrument varies from the maintenance of the status quo in practice? How does she characterise this?

The legal framework, as we have heard, for co-operation and enforcing reciprocal obligations in a no-deal scenario will cease. The Explanatory Memorandum states that:

"These instruments aim to maintain the status quo on a unilateral basis",

but there will be arrangements which are inoperable. These include the denial of membership of such bodies as the administrative commission, the advisory body and the audit board. Will the Minister say in more detail what the implications of this are? It is noted that the ability to make provisional payments in the event of an unresolved dispute will no longer exist, although it is understood that these are in fact little used.

The approach to amending the co-ordination regulations is to focus on circumstances where the UK legislation does apply. Will the Minister please expand on that assertion? The Explanatory Memorandum identifies that the change,

"may give rise to occasions where an individual becomes subject to the legislation of more than one state at a time",

and possibly to the legislation of two or more states. This is noted as being an unavoidable consequence of a no-deal exit which cannot be managed using powers in the withdrawal Act, but has any assessment been undertaken of the consequences? On what basis does the Minister conclude that the changes,

"do not give rise to any new costs or any financial or economic impact"?

[Lord McKenzie of Luton]

Further, it is understood that fixes for deficiencies relating to healthcare are not provided for in these SIs. How and where are they to be provided for? We know that, by virtue of the EEA agreement and the Swiss free movement of people agreement, the co-ordination regulations also apply in the EEA. Will she outline the full consequences of that for us tonight? I am conscious that there were one or two technical questions there, but this is a technical document and we are entitled to ask them, although I do not believe that we will have undue problems in supporting the regulations.

Baroness Lister of Burtersett (Lab): My Lords, I also thank the Minister for introducing this rather hefty set of statutory instruments and I echo my noble friend Lord McKenzie in citing paragraph 2.6 in the Explanatory Memorandum—which the Minister also cited:

"These instruments aim to ensure that citizens' rights are protected as far as possible in a no-deal scenario".

Phrases such as "as far as possible" rather leap out at us when we are looking at these things. What does it mean exactly? Will the Minister tell us what scenarios are envisaged in which it will not be possible to protect existing citizens' rights?

Noble Lords will be pleased to know that I will be very brief, after my rather lengthy speech earlier, but I am more worried having read the debates in the Public Bill Committee on the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. A number of those giving evidence to the Committee raised serious concerns about Clause 5, which deals with future social security co-ordination and which, in the words of the Delegated Powers and Regulatory Reform Committee is,

"so lacking in any substance whatsoever that it cannot even be described as a skeleton … There is, moreover, no indication at all in the Explanatory Notes or Memorandum that the Government have even begun to devise their policy on the future of social security co-ordination post EU exit".

Will the Minister explain how the regulations and this thinner-than-a-skeleton clause in the Bill relate to each other? Can she give us some assurance that the Government have begun to devise their policy regarding future social security co-ordination post EU exit, and perhaps some inkling of the lines on which they are thinking?

4.45 pm

Baroness Janke (LD): My Lords, I too have some questions. In May 2018, the Commons European Scrutiny Committee raised very strong concerns about providing legally binding arrangements to protect existing rights. We have already heard mention of non-emergency healthcare; these regulations apparently do not provide that. There are also issues about EU-wide dealings or the need for bilateral arrangements with EU and third countries.

The noble Baroness spoke about data and information sharing. Again, this is a vexed area of negotiation. Certain laws govern the ability to share information and, unless we have some form of legally binding agreement, I cannot really see how this can happen, having looked at the evidence of various people who have looked into data sharing with the EU after Brexit.

We are talking about removing inoperable clauses, under the withdrawal Bill, in relation to the administrative commission. We have mention of disputes; who will settle disputes? There will be a need for medical assessments if they are not provided by individual countries.

It is not clear what is meant by "evidence". I know that, in my own city, EU citizens have had a very hard time providing evidence of residence in this country, even though some of them have lived here for 40 years. I would like to know what sort of guidance will be given on the quality of the evidence, and how that will be provided to people.

On disputes and the removal of provisional payments, again it is not clear how and under what authority disputes are to be resolved. What is the final authority? This is left fairly open, and could be open to legal action. How will rulings be managed if we come out without a deal and are not proposing to recognise the European Court of Justice?

I am sure it is important that the Government look ahead to the possibility of no deal, but it seems to me that there are lots of very open areas in these regulations that need to be fleshed out. We are talking about the rights of individuals and how they can manage without benefits—where there are disputes, for example.

I very much echo the calls made by other Members here for an impact assessment. It seems to me that there is a fundamental need, given the potential impact of these systems not working after Brexit day, for an impact assessment to be carried out.

Baroness Sherlock (Lab): My Lords, I thank the Minister for her introduction and all noble Lords for their contributions. I start with an apology, because I will not be brief. I do not often make lengthy speeches in this House, but I have been through these regulations as best as I can—and there are a lot of them—read the Explanatory Memorandum and listened carefully to the Minister's introduction, and all that I have read in the Memorandum and the introduction implies that these are simply technical amendments which will not make much difference or have much impact. I must therefore have misunderstood them, so I apologise because I will ask quite a lot of questions, since I can only conclude that my understanding of their impact is in some way erroneous. I look forward to having that corrected.

First, my understanding is that the current rules about social security co-ordination within the EU are based on four principles: the single state principle, which means that at any point in time I am covered only by the social security system of one country and pay contributions only in one country; equal treatment, which means that if I am in another member state then I am treated by it the same way as one of its nationals; aggregation, by which periods of insurance, employment or residence in another member state count when determining my eligibility for benefits; and exportability, which means I can receive benefits from one member state even when I am living in another one.

If we have a deal, the withdrawal agreement will cover the transition period during which EU social security co-ordination will continue to include the UK

and our citizens, and the political declaration says that the UK and the EU agree to consider future social security co-ordination in the light of future movement of persons. I guess that the presumption, therefore, is that the UK will seek to strike a single deal with the EU rather than bilateral agreements with member states.

However, if there is no deal, there are no provisional transitions, and in the absence of comprehensive alternative arrangements, problems could arise on all those fronts, including whether you can aggregate contributions, export benefits to other member states, the risk of having to pay double national insurance contributions, a lack of clarity about which country is responsible for paying someone's benefits, and no mechanism for resolving disputes.

The scale is significant. The House of Commons Library briefing on the immigration Bill said:

"In 2017-18, UK benefits totalling around £2 billion were exported to around 500,000 claimants living in EEA countries. Over 90% … was on State Pensions, and over 90% of the recipients … were UK or Irish nationals.".

In addition, more than 1 million people will be affected by the aggregation issues, according to evidence given to the Commons committee on the immigration Bill by British in Europe.

My first question for the Minister is this. There were some bilateral agreements between the UK and some EU member states, which predate either their or our entry into the EU. Would any of those still be applicable in a no-deal scenario? Would we seek to update them, would we want to negotiate additional unilateral arrangements with other member states, or is it our intention to seek a whole EU deal in the event of there being no deal?

If we end up with no deal, we could see UK citizens returning to the UK, perhaps in significant numbers, and needing help. DExEU published a policy paper on 6 December called *Citizens' Rights—EU Citizens in the UK and UK Nationals in the EU*, which accepted the importance of returning UK nationals being able quickly to access benefits and housing. Paragraph 24 stated:

"Arrangements will be made to ensure continuity of payments for those who return and are already in receipt of UK state pension or other UK benefits while living in the EU. We are considering how support could be offered to returning UK nationals where new claims are made and will set out further details in due course".

Given that "in due course" is running out, can the Minister tell the House what continuity arrangements have been put in place for those whose benefits are already in payment, and what support will be offered to new claimants?

The European Commission has called on member states to protect citizens by taking account of periods of work or insurance in the UK before Brexit for both EU 27 and UK nationals, by ensuring the aggregation benefits for those who carry on living in the UK, and more crucially, by encouraging member states to carry on exporting pensions to the UK even though it will then be a third country. But we do not know what will happen in practice. The Government's website has a page entitled "UK nationals in the EU: benefits and pensions in a 'no deal' scenario". However, it tells you very little at all, except that if someone is already getting UK benefits for a state pension transferred to another member state, that can carry on being paid there, and that their entitlement to any in-country benefits will depend on what the EU decides. So we are very much in the dark.

As my noble friend Lord McKenzie said, the whole system of social security co-ordination relies on reciprocity, which cannot be assumed in a no-deal world, so we cannot make other states give us information or co-operate, or require them to apply the current rules to us. The Explanatory Memorandum said—and the Minister has said—

"These regulations aim to address deficiencies in retained law caused by the UK withdrawing from the EU and ensure citizens' rights are protected as far as possible in a no deal scenario".

In other words, they are designed to maintain the status quo. I have never liked this language of "deficiencies", because these are not accidental deficiencies but a direct consequence of the Government refusing to rule out no deal. Those deficiencies are a loss of all kinds of rights, acquired in some cases over decades, which people may experience. This is entirely avoidable—it is simply because we could be in a no-deal situation.

These regulations are intended to maintain the status quo, so I want to try to test the veracity of that claim in a no-deal scenario. The current rules allow you to use periods of insurance contributions elsewhere which can be aggregated together. So someone who has worked in other member states can make one application to the relevant agency in the country in which they live. In the UK, this is the International Pension Centre in Newcastle.

The Commons brief on the immigration Bill gives a really good example, if noble Lords will allow me to describe it. Someone called Jo worked in France, after leaving university, before returning to the UK in 2008. He carried on working here, paying UK national insurance contributions until he reached state pension age in November 2018. As things then stood, Jo did not have to make separate claims to get his French and UK pensions. He had to submit a single claim to the international pension authority, and the centre in Newcastle contacted the French pension authorities. They calculated his entitlement to a French pension and put it into payment. The centre also calculated that Jo was entitled to 9/35ths of a full UK state pension because he had paid nine years of contributions here. That was put into payment as well. The only reason he got it was because his period of insurance in France meant that this tipped him over the minimum of 10 years of national insurance contributions that you have to have to get into the British state system in the first place.

My primary question is: do these regulations preserve the right of UK and EU nationals to aggregate periods working in other EU member states when determining entitlement to UK benefits and the state pension? Where is this spelled out? Is it in domestic legislation? Is it remaining unchanged? Does it include EEA states? Where is it laid out unequivocally?

Secondly, the regulations allow the DWP to ask claimants to provide the relevant evidence where the EU member state cannot or will not. The Explanatory Memorandum says, at paragraph 7.2:

[Baroness Sherlock]

"in the event that the information provided by the claimant is insufficient, the UK will no longer be required to fulfil any obligation under the Coordination Regulations".

This sounds quite harsh. What would happen to Jo if he retired after a no-deal Brexit? He would have to do two things. First, he would have to access his French pension. Would this be done through the International Pension Centre, as it is at the moment? Or would he have to apply directly to the French authorities? Crucially, would he definitely be able to have that French pension paid to him in the UK? In other words, would France export the pension, as requested by the Commission? If not, Jo could be in an impossible position. He might need to return to the UK to care for elderly parents, but if he could not get the bulk of his pension here, what would he do? What if some of our citizens found that they had no residence rights anywhere else, so were forced back to the UK and yet could not access the benefits or pensions they needed because they had entitlement in other member states? What would happen to them?

Then Jo would need to access his UK pension. To get that, he would need evidence that he had paid national insurance contributions in France, as he would need a minimum of 10 qualifying years to get into the UK system. This would raise other questions. Would the International Pension Centre in Newcastle contact the French pension authorities to get this evidence for Jo, or would he have to get it himself? Either way, if the French did not oblige, what would Jo have to produce? If he did not have documents that the DWP liked, he would get no pension at all in the UK, even though he was legally entitled to it. Would he have to pay to get documents translated and notarised? How long would this all take?

As the noble Baroness, Lady Janke, said, it is crucial to know what would count as evidence. I could not produce payslips from 20 years ago, and I think a lot of noble Lords could not either. So, if the authorities in another EU state refuse to co-operate, what should people do? They could go back to their employer, but firms go out of business or merge. In most countries, they would not be required to keep records dating back decades. So, would other forms of evidence be accepted—for example, witness statements from co-workers, neighbours or doctors? Has the evidential basis been published? If not, will the Minister guarantee to conduct a consultation on it at once, so that we can see what would happen?

If a UK firm posted a worker abroad, could the firm be compelled to provide the necessary information to the DWP? If Jo were legally entitled to a state pension here, but could not prove it because the French Government would not co-operate, who would decide that he would not get that to which he was entitled? How could he appeal a refusal?

I have a few more short questions. The Commons brief points out that these regulations remove entirely article 4 of EU regulation 883/2004 which contains the equal treatment provisions to which I referred at the outset. The Explanatory Memorandum does not explain why this provision has been removed. Can the Minister tell us why it was? UK nationals working in the EU and EU residents working in the UK could be required to pay national contributions here as well as paying contributions in another EU member state, so a worker posted to Germany by her British company could end up paying double national insurance contributions. Did the Government consider waiving NICs for someone in this country, which would of course replicate the status quo rather more precisely that what seems to be in here? If not, as my noble friend asked, how could they then say that there are no costs attached to these regulations?

The regulations abolish provisional payments while a dispute is being resolved with an EU member state. The memorandum says that these provisions are hardly ever used, but since there will not be any resolution mechanisms in the future and there will not be a common rulebook, it is entirely possible that the situations which might require them to be used could be far more numerous. What assessment was made of the likelihood of disputes arising in no deal which would trigger payments of this sort? While these regulations are operational, if they ever come to be, what is the status of post-Brexit contributions in other EU states? Will UK state pensions be uprated when paid in other EU member states after no deal? Ministers have said that they will be for 2019-20, but what happens after that?

I want to say a brief word on the point raised by my noble friend Lady Lister about the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, which has been debated in another place and which in its territory overlaps very much with this instrument. As we have heard, that Bill contains eye-watering Henry VIII powers that basically would allow Ministers to rewrite the social security co-ordination rules at will. I am not a Brexit specialist, so can the Minister can explain this to me? If there is no deal, does that Bill fall? If it does not, how do the Government intend to honour the commitments spelt out by the Minister herself and spelt out in the memorandum when they have the power to rewrite them entirely? Will they commit to use those Henry VIII powers only to replicate the provisions of these regulations?

Finally, if there is a deal, what is the status of these regulations?

I apologise for asking so many questions, but they are all important for the great many people who could be affected. I gave the Minister notice of my technical questions, albeit only yesterday, but my priority is to get things answered on the record. The date of 29 March is only three weeks away. If the Government allow a no-deal scenario, these problems will become a reality for many UK citizens living in the EU and vice versa. They and I look forward to the Minister's reply.

5 pm

Baroness Buscombe: My Lords, I thank all noble Lords who have taken part in this excellent debate and for the searching questions, if I may say so. I am particularly grateful to the noble Baroness, Lady Sherlock, for giving me early notice of some of the very technical questions. I have to say, I am certainly not an expert in Brexit and I am not quite sure who is. We all hope very much that we will have a deal and we wish it was already in place. Let me do my best to respond to noble Lords' questions.

As regards an impact assessment, I shall be absolutely straight. An impact assessment has not been prepared for these instruments as they make only technical changes to retained EU law and, as such, do not give rise to any new costs or financial or economic impact beyond the status quo. There is no, or no significant, impact on businesses, charities or voluntary bodies as a result of the instruments and there is no, or no significant, impact on the public sector. That said, as I referenced in my opening remarks on the statutory instruments, we take the role of the Social Security Advisory Committee very seriously. In response to the question of the noble Lord, Lord McKenzie, on consultation, the SSAC provides impartial advice on social security and related matters. It scrutinises most of the complex secondary legislation that underpins the social security system. The committee had the opportunity to review these regulations and a meeting was held on 7 March last year for it to share and discuss the initial drafts. The committee was content with the approach being taken.

Noble Lords asked a number of questions about future policy for social security and how these SIs fit with the immigration and social security Bill currently going through Parliament. These statutory instruments provide for a functioning statute book immediately after exit day, and the immigration and social security Bill ensures that there is the legislative framework required to deliver future policy at the appropriate time. Future policy changes will be set out in regulations made under that Bill and will be subject to the affirmative procedure.

The noble Baroness, Lady Janke, and the noble Lord, Lord McKenzie, referred to healthcare entitlement. I assure noble Lords that these statutory instruments do not make changes to healthcare policy. Any such changes will be brought forward by the Department of Health and Social Care via the Healthcare (International Arrangements) Bill and its statutory instruments. The Department of Health and Social Care is bringing forward the healthcare Bill to enable the UK to implement any future relationship with the EU on reciprocal healthcare as necessary and to ensure that the UK is prepared for any outcome if there is a no-deal exit. The healthcare Bill contains a power to amend, repeal or revoke retained EU law, so we do not anticipate the Department of Health and Social Care using this power.

The noble Lord, Lord McKenzie, asked how the regulations vary from the status quo. The amendments retain the status quo for UK obligations to individuals. They include provision to allow information to be provided by the claimant where we now receive it from the member state. The noble Lord, Lord McKenzie, also asked why provisional payments have been removed. The current provisional payment system operates where there is a dispute between member states of the European Union, disputes being an issue raised by all noble Lords. These disputes are resolved following a decision made by a mediation body, the administrative commission of the European Union. In a no-deal scenario, the UK will no longer be a member state or part of this body. That is why this provision has been removed. We will continue to use the same rules as now to determine whether the UK is competent. Any challenges will instead be resolved through domestic routes.

The noble Baroness, Lady Lister, asked about the terminology "as far as possible". Perhaps it is the lawyer in me, but the reality from a legal standpoint is that it is sensible to use the terminology "as far as possible" rather than providing guarantees and raising an expectation, when something could happen where we would then fail to deliver. We are extremely keen to avoid that, particularly on such an important issue as social security. The noble Baroness, Lady Lister, also asked why this legislation only maintains the status quo and whether it is the Government's plan not to change anything relating to social security. This legislation is about maintaining a functioning statute book. Of course, future policy is a matter for negotiations and, as such, cannot be discussed or raised today. I cannot say more than that today, but we are considering future policy with care. The Government are planning an ambitious deal with the EU in many areas, and this legislation is not about future policy but technical amendments to retained EU law.

The Government are confident that a deal will be reached. However, as a responsible Government, we are planning for all eventualities, including a no-deal scenario. Announcements relating to social security will therefore be made when it is appropriate to do so.

The noble Baroness, Lady Lister, also asked about social security co-ordination and how these statutory instruments fit with the immigration Bill. As I have said, this will be set out in regulations under that Bill.

There was a question about the ESIC referring to changes to retained EU regulations ensuring that any bilateral agreements between the UK and an EU country take precedence over the retained regulations and what impact this will have. Changes made through these fixing SIs are intended to deliver a functioning statute book on day one of exit to ensure a smooth and orderly exit. However, the UK will operate these retained regulations on a unilateral basis. As the Government negotiate future agreements with EU countries that provide for reciprocal social security co-ordination or agree to revive an existing reciprocal arrangement, retained EU law that delivers a unilateral system will no longer be appropriate.

Noble Lords may be interested to know that we have 17 reciprocal social security arrangements within the EU—with Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden. We have reciprocal arrangements with two EEA countries, Iceland and Norway, and with Switzerland. However, there are apparently no reciprocal agreements with Bulgaria, the Czech Republic, Estonia, Greece, Hungary, Latvia, Liechtenstein, Lithuania, Poland, Romania and Slovakia.

There was question about people being affected by double contributions. The latest published figures from the EU show that in 2017 around 50,000 UK workers went to work in the EU and around 60,000 EU workers went to work in the UK under the co-ordinated regulations, which work to avoid duplication.

The noble Baroness, Lady Janke, referenced data sharing. We will continue to work closely with the EU 27 so that the first port of call for all contribution queries will be the appropriate administration in a

[Baroness Buscombe]
member state. We would expect the claimant to provide wage slips or proof of contributions made. The Government will provide support to claimants where any additional information is required from them. The instruments include provisions to ensure that the UK can continue to share data with the EU member states when they are applying the co-ordinated regulations.

The noble Baroness, Lady Janke, asked what evidence an individual will have to produce to confirm contributions in the EU. The UK will consider evidence on a case-by-case basis. We would expect the claimant to provide wage slips or proof of contributions made. The Government will provide support to claimants where any additional information is required from them.

The noble Lord, Lord McKenzie, asked about healthcare. As I have said, the Department for Health and Social Care is bringing forward a healthcare Bill.

The noble Baroness, Lady Lister, asked what scenario is envisaged where rights would not be protected. We are not able to protect the rights of citizens to the extent that they are provided by member states. We have sought assurances, and will continue to do so, from member states that they will respect the rights of UK nationals.

The noble Baroness, Lady Sherlock, asked about bilateral agreements. In the event that the UK leaves without a withdrawal agreement, we will keep pre-existing reciprocal agreements with individual member states under review. Whether these come back into force will be subject to discussion and agreement between the UK and the relevant EU member state.

Will returnees have access to benefits? Returning UK nationals have the same rights to access benefits as other UK citizens or UK residents. For some benefits, in addition to meeting the entitlement conditions, certain residence criteria must be satisfied. For income-related means-tested benefits, such as universal credit and pension credit, claimants must be habitually resident in the UK. In general, this means that they will need to show that they have made the UK their home and plan to stay here. Those returning to the UK after a period spent abroad may be considered to be habitually resident on arrival if it can be established that they were previously habitually resident in the UK and are returning to resume their residence.

For some disability and carers' benefits, such as personal independence payment and carer's allowance, claimants must be habitually resident in the UK. They must also have been present in the UK for a specified period before the claim but this requirement may be satisfied if they have links with the UK—for example, if they have worked and paid national insurance contributions in the UK in the past.

The noble Baroness referred to the terminology "deficiencies". The word "deficiencies", from a legal standpoint, contains anything with no practical application to the UK rather than this being a political deficiency on the part of government. I want to make that clear.

I hope noble Lords will bear with me. The noble Baroness asked a number of technical questions, and I will do my best to answer them as efficiently and speedily as possible. First, it is correct that the UK has reciprocal social security agreements with 17 EU member states, as I have already referenced. These arrangements are generally superseded by EU social security regulations in the UK but are still in use by the Crown dependencies, where EU social security regulations do not apply.

5.15 pm

The noble Baroness questioned bilateral arrangements between the UK and some EU states that predate their or our entry into the EU. In the event that the UK leaves without a withdrawal agreement, the UK will keep under review the role of pre-existing reciprocal arrangements with individual member states. Whether these come back into force will be subject to discussion and agreement between the UK and the relevant EU member state. The agreements will not automatically revive on exit. The UK is seeking discussions with member states on reciprocal social security co-ordination arrangements in a no-deal scenario.

An agreement has already been reached with Ireland. The UK Government have announced an agreement on social security with Ireland that guarantees continued access to state pensions and benefits for UK and Irish citizens and their qualifying family members when in the other state. I also say in response to the question from the noble Baroness on citizens' rights that individuals who return to the UK post exit who were in receipt of a UK benefit while they were living in the EU will continue to receive it as long as they continue to meet the relevant entitlement conditions that I have referenced in relation to residency. In that case, returning UK nationals will have the same rights to access benefits as other UK citizens and residents.

The noble Baroness asked about aggregation. The EU withdrawal Act under which these SIs are laid will convert EU social security co-ordination law as it stands at the moment of exit into UK domestic legislation. This includes the rules governing aggregation that are covered in article 6 of Regulation 883/2004. These SIs do not remove these rules. Their purpose is to ensure that the UK statute book continues to work after exit day. However, it has to be said that, without reciprocity, there are limits to what the Government alone can do. We cannot bind other member states to recognise contributions made in the UK. Therefore, obviously, we will continue to pursue this matter with EU member states.

The noble Baroness referred to the case of someone called Joe and asked whether the international centre would apply for his French pension for him, or whether he would have to do it himself in France and whether he will definitely be able to have his pension paid to him in the UK. Under no deal, the International Pension Centre in Newcastle will continue to accept all claims that would be accepted under the current system. We cannot make any guarantees on the rules that would apply in other member states under no deal. However, as I said, we will continue to press on the matter.

Will the International Pension Centre in Newcastle contact the French pension authority to get this evidence for Joe, or will he have to get it himself? We will continue to work closely with the EU 27 so that the first port of call for all contribution queries will be the appropriate administration in a member state. The instruments include provisions to ensure that the UK

can continue to share data with EU member states when they are applying co-ordinated regulations. If this is not possible, the UK Government will assist claimants in providing the appropriate evidence.

If the French do not oblige, what will Joe have to produce? Would payment of his French pension count as evidence? The UK Government will consider evidence on a case-by-case basis, but we would expect the claimant to provide wage slips or proof of contributions made, and we would accept payment of Joe's French pension as sufficient evidence if there was adequate information on what the payment proves about his contributions and residence periods in France. I noted the noble Baroness's question about what happens if one does not have 20 year-old wage slips lying around.

Will claimants have to pay to get documents translated and notarised? The Department for Work and Pensions currently receives documentation from all 27 EU member states and, where necessary, translates these documents. The claimant will not need to pay to translate or notarise documents.

We would expect claimants to provide what they can but the Government will provide support to them where additional information is required. We will keep evidence requirements under review as the documentation that will be provided by EU member states becomes clear. The purpose of these SIs is to ensure that current entitlements continue as best they can in a no-deal scenario. A claimant could appeal refusal of a claim through the usual appeal processes.

I am almost at the end but not quite. The current provisional payment system operates where there is a dispute between member states of the European Union. These disputes are resolved following a decision made by a mediation body of the administrative commission of the European Union. In a no-deal scenario, the UK will no longer be a member state or a part of this body, but we will continue to use the same rules as now to determine whether the UK is competent. Any challenges will be resolved through domestic routes—that is, through UK courts or tribunals.

I was asked whether we will compel UK nationals working in an EU member state to pay national insurance, even if they are also compelled to pay contributions in the state they are working in or even if they are posted workers. These instruments maintain the status quo with respect to paying national insurance in the UK. That means that workers posted to the EU will continue to pay UK national insurance so that they can maintain continuity of access to UK contributory benefits and the state pension. We are urging the EU and all its member states to protect the rights of UK nationals in the EU.

I think I have already dealt with the question of whether these SIs fix deficiencies in terms of the regulations being operational.

It has already been announced that state pensions for pensioners currently living in the EU will be uprated for 2019-20. We wish to continue uprating pensions beyond that point but will take decisions in the light of whether reciprocal arrangements with the EU are in place, as we hope and expect them to be.

With regard to whether UK nationals living in the EU will receive equal treatment with the nationals of the state administering the benefits of those UK nationals, the UK cannot protect the rights of UK nationals in the EU unilaterally, so, again, we are encouraging member states to do so. Clearly, we are not in a position to comment on the domestic law of member states but, in relation to benefits already in payment, member states will be bound by the European Convention on Human Rights, which might provide protection from benefits being removed.

Finally, these regulations have been drafted to apply only in a no-deal scenario to ensure that the UK statute book functions effectively with regard to social security co-ordination. In a deal scenario, we will consider what amendments to the retained social security co-ordination rules are appropriate.

That brings me to the close of this important debate. I thank all noble Lords for their contributions and for the constructive approach they have taken towards today's debate. I hope that I have answered all the questions. The Government are committed to ensuring that the social security system works for everyone post exit day, and these regulations will help to do that by fixing minor and technical changes to existing DWP domestic legislation.

Motion agreed.

Social Security Coordination (Council Regulation (EEC) No 574/72) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.23 pm

Moved by ***Baroness Buscombe***

That the draft Regulations laid before the House on 30 January be approved.

Motion agreed.

Social Security Coordination (Regulation (EC) No 883/2004, EEA Agreement and Swiss Agreement) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.23 pm

Moved by ***Baroness Buscombe***

That the draft Regulations laid before the House on 30 January be approved.

Motion agreed.

Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.24 pm

Moved by ***Baroness Buscombe***

That the draft Regulations laid before the House on 30 January be approved.

Motion agreed.

Stronger Towns Fund

Statement

5.24 pm

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, with the leave of the House, I shall repeat a Statement made in another place by the Secretary of State for Housing, Communities and Local Government. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement on the work the Government are doing to support our towns. Last week, my right honourable friend the Prime Minister informed this House that the Government would launch a new fund to help our towns to grow and prosper. Today, I am delighted to confirm further details of our new stronger towns fund, a £1.6 billion fund in England between now and 2026 to help our towns to grasp the opportunities available to them in the years to come.

The British people, supported by the balanced, long-term approach taken by this Government, have worked hard to rebuild the economy after the debts we inherited in 2010. As a result, we have seen strong and consistent growth, but we want to make sure that the benefits of that growth help to support towns across the country. The country voted for Brexit, with communities expressing their desire to see change in their local areas. That must be a change for the better, with more opportunity and greater control.

It is important to remind all Members that as we move to support our nations and regions to take control of their own economic destiny, we do not start with a blank slate. Since 2010, seven city regions in England have elected metro mayors, with an eighth to follow in May. We created the local growth fund and devolved it to local enterprise partnerships across England to invest in their priorities for growth. We have agreed, jointly with the devolved Governments and their local authorities, city and growth deals, including in Cardiff Capital Region and in Glasgow and the Clyde Valley, with billions of pounds of additional funding.

Our modern industrial strategy sets out a clear plan for the future that puts places at the heart of our ambition to create an economy that works for everyone, but we know there is more to do. That is why we are in negotiations with other parts of the United Kingdom on more deals, including in Belfast and Derry/Londonderry. It is why we are agreeing local industrial strategies with all places in England, to get for the first time a real long-term sense of what their local economies could look like in 30 years' time.

Our new stronger towns fund will build on that approach and extend our principles of devolution further, out to the towns that our success was built on. Through this, we will ensure that we spread opportunity more widely so that every community can benefit from our economic prosperity. It will be used to create new jobs, help to train local people and boost growth, with communities having a say on how the money is spent.

Today, I have published notional allocations of £1 billion of the fund. I have allocated that amount based on need. I have looked at the relative productivity and income and skills levels and targeted more funding to those places with levels that are lower than the average, ensuring that local towns can access the funding needed to support productivity growth. Given that we all know that pockets of deprivation exist even in our most successful local economies, I have made sure that we take into account such very localised economic conditions. We will work with local areas to explore town deals which unlock local potential, investing in places and investing in people.

Today, I can therefore confirm initial allocations of £583 million to towns across the northern powerhouse, £322 million to those in the Midlands engine and £95 million across the south. The remaining £600 million will be invested following a competitive process that I invite all towns to take part in. I will publish a prospectus which will include further details of the process and I am keen to encourage high-quality, ambitious bids.

The message today to all Members who serve our towns is that we want those who know these places best—community leaders, local businessmen and women, civic leaders and others—to begin to think about the investments that could build on their heritage, improve productivity and boost the life chances of all their people and to bring those into a coherent plan that sets out a positive vision that people living there can rally behind and play a role in making happen.

As a Government, we have set out the value of investing in infrastructure, people, business and ideas in our industrial strategy and we want each place to tell us the balance between those priorities for their town. We also want our local institutions to be involved. No one knows towns better than the local councils which serve them, and we want to ensure that local enterprise partnerships and mayoral combined authorities take a leading role. The Business Secretary and I are working with them on the development of local industrial strategies across England. LEPs and mayoral combined authorities should play a guiding role to ensure that the plans of individual towns across a functional economic area are joined up, so that the overall strategy is greater than the sum of its parts. After all, we know that the success of many of our towns is intrinsically linked to the success of those around them.

Today's announcement is also about our commitment to the whole union. The Government will seek to ensure that towns in Wales, Scotland and Northern Ireland can benefit from the stronger towns fund. This will build on the success of our city and growth deal initiatives. Today, we extend our approach to devolution and make a new offer to towns and the millions of hard-working people who live in them to set their own futures.

Finally, I want to impress on the House what the prize at stake is: people coming together, the public and private sectors working with their communities to set out what their towns can be if everyone pulls together and works together, and the steps it will take in the short term to make that vision happen. The stronger towns fund is this Government's offer to help make that become a reality.

My right honourable friend the Member for Harlow is spearheading plans in his constituency, and other towns, such as Blackpool, are bursting with ideas. So

many people who care so much about the towns in which they live are passionate to see that their potential is fulfilled, harnessing the strength of place and identity and unlocking the potential of all parts of our proud United Kingdom. I share that ambition and am intent to see that, as we look to the future, all parts of our country play their part and no one is left behind. This fund is part of helping to achieve that, and I commend this Statement to the House".

5.30 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the Minister for repeating the Statement made yesterday in the other place by his right honourable friend the Member for Old Bexley and Sidcup. This supposed funding boost is extremely disappointing and will do little compared with the billions of pounds that his Government have already cut from local communities. After all the hype, I would have expected more from him and the Government. This will do little to reverse the damage that they have inflicted in each region of England.

The reason why many of our towns are struggling is a near-decade of cuts to local authority funding and to public services by the Minister's Government. The fact is that between 2010 and 2020 councils will have lost 60p in every £1 that the Government provide for services. Can the Minister tell the House why nine of the 10 most deprived councils in England have seen cuts three times the national average? How can that be right?

The Statement says that the Government have taken deprivation into account when considering the allocation of this fund. I am very pleased that they have done that, but I am also conscious that the Minister's right honourable friend in the other place refused to say that deprivation would be taken into account when considering the local government settlement. Can the Minister tell the House why that is the case? It is quite rightly included in this fund but not in the fair funding formula review.

The Minister mentioned Blackpool. Blackpool is one of the most deprived areas in England and has seen a cut in spending power of more than £45 million. That is more than the £40 million a year that the entire north-west of England will get from this fund. Look at the east Midlands, an area I know very well. Over seven years it will get £110 million, which is £15.71 million a year. If the Government allocate that funding evenly per local authority—I know they will not do that, but if they did—it works out at around £393,000 per year per authority.

This funding announcement is a drop in the ocean. We have seen spending cuts of £7.3 billion over the past decade because of nine years of austerity. Even if we are being favourable to the Government and to Ministers, this enticement is £5.7 billion short of the cuts that they have already inflicted.

The funding promised by the Secretary of State over the next seven years does not even get close to matching the amount of funding that regions have received from the European Union over the last seven years from the European Regional Development Fund. This package is £642 million a year short of the money that England would have received.

Also, why is £600 million unallocated? I know the Minister said that there will be some sort of bidding process, but we have had no more clarity about that. How will the money be allocated? He also mentioned other parts of the United Kingdom. Will the money be distributed through Barnett-type formulas? Will there be additional money for the other parts of the United Kingdom? What will the allocations to Scotland, Wales and Northern Ireland be?

This is a most disappointing announcement indeed from the Government, but unfortunately not surprising. We have such serious problems in our towns, seaside resorts, communities and high streets that we need an ambitious programme to deliver their success so that they can thrive, with proper support for jobs, transport, housing and communities. As I said, the Government have failed in this announcement.

Baroness Pinnock (LD): My Lords, I remind Members of my registered interests, in particular that I am a councillor in Kirklees Council in West Yorkshire. I thank the Minister for repeating the Statement, but it raises far more questions than answers, so I will ask those questions in the hope and expectation of finding the answers.

The funding is described as being for towns. Could the Minister define what towns will be eligible? Are cities excluded? For example, my part of the country—West Yorkshire—contains Dewsbury, a town, eligible, and Bradford, a city, not eligible, despite the fact that their deprivation assessments will be very similar?

It seems from the Statement that the funding will be allocated to the local enterprise partnerships and the mayoral combined authorities, yet these are the very institutions that have clearly not used growth deal funding to invest in those towns; otherwise, there would be no need for this additional funding. The city region-centric approach may well be successful in bringing new jobs into cities, but my experience is that these institutions have not succeeded in reviving our towns. Yet these are the self-same institutions that will be the keepers of this small fund. Could the Minister explain the rationale for this approach? Given that the LEPs serve large populations, how can the needs of small towns feature and be understood? Local councils are much better placed to understand their communities and which ones will benefit from the relatively meagre investment, so why the LEPs?

Then there is this total failure of government thinking that devolution equals handing out funding that in some way local people can influence. The Statement refers to the Government being in charge. It says:

"We will work with local areas to explore town deals that unlock local potential".—[*Official Report*, Commons, 4/3/19; col. 714.]

This is no way to engage communities. Will the Minister confirm that plans for investment have to be agreed with the Government? How will residents and councillors of the towns involved be able to determine what funding programme best meets the needs of their town?

The Statement lists the aims of the funding: to create new jobs and training opportunities, and economic development. The list sounds familiar. The Single Regeneration Budget programme 25 years ago had the same aims. However, that had a budget of £5.7 billion over six years—many times larger than what is now on

[Baroness Pinnock]
offer. The criticism of the SRB was that gains made in local economies were not sustainable. Have lessons been learned?

That leads me to the size of the funding pot. To take an area I know, Yorkshire and the Humber is allocated £197 million over seven years—£28 million per year for the whole region. These are some of the towns in the region that I think will meet the criteria loosely set by the Government: Dewsbury, Batley, Huddersfield, Halifax, Rotherham, Doncaster, Castleford, Pontefract, Scarborough, Grimsby, Scunthorpe, Barnsley, Selby, Goole, Bridlington, and no doubt others. They may have around £2 million a year to invest. It will do something, of course, but—to use a catchphrase—not a lot.

In the context of the massive cuts to local government funding, this is a drop in the ocean. My own council has had cuts of £183 million up to 2018, and has to make a further £40 million of cuts in the next two years, despite government claims of funding rises, which ignore rising demands—and of course, these cuts do not include the squeeze on school spending.

Another way to consider the funding is to compare it with the £1 billion granted to Northern Ireland. The exchange rate per DUP MP is £100 million. There are 54 MPs in Yorkshire and the Humber. Their exchange rate is £3.5 million. So this fund is a lollipop, a sweetener, and, as they say in Yorkshire, "summat for nowt". I look forward to the Minister's answers.

Lord Kennedy of Southwark: Before the Minister responds, when I spoke earlier, I should have drawn the House's attention to my registered interest as a vice-president of the Local Government Association.

Lord Bourne of Aberystwyth: I thank the noble Lord, Lord Kennedy, and the noble Baroness, Lady Pinnock, for their contributions from the Front Benches of their respective parties. I will try to cover the points they raised. First, I will try to put into perspective what is regarded as "something for nowt".

Baroness Pinnock: "Summat and nowt".

Lord Bourne of Aberystwyth: "Summat for nowt". It is £1.6 billion. I do not think that is to be sniffed at; I am sure communities up and down the country will not be sniffing at it. Indeed, some of the communities in the south of England which, because of the way the programme is designed, are not getting as much, are very envious of assistance that is going elsewhere. Yes, it could be more—it always could—but £1.6 billion over seven years is not to be sniffed at.

The other important point is that comparisons were made. I understand that when a Statement offers quite a lot, people want to talk about things where the record might not be quite so rosy, and so there was a concentration on talking about local government settlements over the years but no mention that this year there was a real-terms increase in it, which was welcomed by the noble Lord, Lord Porter, the chairman of the Local Government Association. We need to put this into perspective. It is also worth saying that the Labour Party was putting in place cuts to local authorities before the 2010 election, so whichever party—or combination of parties—had formed the Government, there would have been cuts.

Baroness Pinnock: If there has been a rise in core spending power—which is different from core funding—how is it that councils up and down the country have had to continue making cuts?

Lord Bourne of Aberystwyth: The noble Baroness raises a fair point in a sense, but she cannot expect me to give a running commentary on all the local authorities up and down the country. It is established that there is that increase—I accept that over time there have been cuts—but let me proceed, because it is only fair that I try to cover the points raised. It is worth putting into perspective that there are other funds local communities can draw upon; for example, the Coastal Communities Fund and the Future High Streets Fund. It is also worth reiterating that with regard to the billion pounds, the essence of this programme has been finding the communities that have suffered deprivation and have lower incomes. As we all know, they tend to be in the north of England, and to some extent the Midlands, rather than the south. People asked how the £600 million was arrived at. It was because there are poor communities throughout the country—one thinks of Cornwall, which is in the relatively prosperous south-west, but Cornwall itself is not—which will be able to make bids against that fund.

The noble Lord, Lord Kennedy, made a point about losses from the European programme. I stress that this is not part of the UK shared prosperity fund substitute, but is quite independent of that. It is an additional programme. We still need to address the issue of the shared prosperity fund, which we are talking to the devolved Administrations and others about. Questions were raised about the devolved nations—Wales, Scotland and Northern Ireland—which, as noble Lords can imagine, are dear to my heart. The Secretary of State in the other place undertook clearly that he would be coming forward with the proposals in relation to the devolved nations shortly and would keep the House informed; no doubt I will be doing the same here.

The noble Baroness, Lady Pinnock, talked about the size of the funding for Yorkshire and Humberside. As she rightly said, that is £197 million over the length of the programme and will be geared to towns rather than cities. This is the essence of this. We are looking to towns because cities have had their day in the sun, as it were. This is essentially a towns programme, and we will be looking at the proposals from the towns concerned. As mentioned in the Statement, the Secretary of State is going to publish a detailed prospectus about how it will operate and how the process will move forward.

If there are points I have missed, I will ensure that noble Lords have answers, and will undertake to write to them and place a copy in the Library.

5.46 pm

Baroness Quin (Lab): My Lords, the money announced for the north-east of England amounts to £5 per person in the north-east for each of the seven years. Is it not the case that this in no way mitigates the cuts in

local government spending across the region, nor the effects of Brexit, particularly under a disastrous no-deal scenario? Does this £5 per head of population not contrast dramatically with the £245 per head of population in Northern Ireland as a result of the deal concluded between the Government and the DUP?

Lord Bourne of Aberystwyth: I thank the noble Baroness, who will be aware that the north-east actually has the most favourable treatment of all the regions that have had their monies announced—£105 million, £40 per head over the length of the programme—because of deprivation. We have been here before on the point about the agreement with the DUP; obviously, that is quite independent of this and is money that goes to Northern Ireland for programmes rather than to the party, as the noble Baroness will know. We need to nail that; it is not part of this initiative. Northern Ireland will get a sum of money for towns in Northern Ireland, which will be announced by the Secretary of State shortly.

Lord Wigley (PC): My Lords, although the Minister stated that towns in Wales can benefit, will it be the Welsh Government who administer that fund? In the context of the size of any such fund, will he bear in mind that west Wales and the valleys have been benefiting from £375 million per annum from European funds? Can he guarantee that there will be no drop-back from such a level of funding?

Lord Bourne of Aberystwyth: I thank the noble Lord for the question. In relation to the first point, he will have heard me say that my right honourable friend the Secretary of State will be making an announcement about the position for Scotland, Wales and Northern Ireland, and clearly there will be a role for the devolved Administrations. In relation to his specific point about west Wales and the valleys, I represented a large part of that area in the National Assembly and know, as the noble Lord does, the importance of European funding to them, but as I have indicated, this is quite separate from the UK shared prosperity fund, which would encompass the spending that was directed to those areas in relation to that. That discussion is ongoing. I am sure that in due course an announcement will be made.

Baroness Bull (CB): My Lords, we read in the Statement that the Secretary of State has looked at relative productivity, income and skills and ensured that localised economic conditions are taken into account. Given the many and complex factors underlying the issues that these towns face, could the Minister tell us how long this scheme has been in development? Could he confirm which local organisations, charities and expert bodies have been consulted in developing the scheme, and could he confirm that the What Works Centre for Local Economic Growth has also been drawn into the development of the scheme, to ensure that it truly meets the long-term needs of these towns?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Baroness for that intervention. It is important to note first that the Secretary of State has indicated that there will be a prospectus giving details of not just the process for application, which will clearly be important to areas, towns and communities, but the thinking behind it and the way those aspects were considered and weighed. I think she will recognise from the figures that detailed work has been done. I appreciate that there is a breakdown behind those figures, but one can see that rough justice has been done there for the areas. We will look to communities to help develop the programme, and to set out the spending profile and how the fund operates. I am sure that will become clear once we see that prospectus when it is issued.

Lord Teverson (LD): My Lords, as someone from one of Britain's Celtic nations the Minister will probably know that it is St Piran's Day today—the patron saint of Cornwall. Cornwall is the only lesser developed region within England, yet the funding under this scheme seems absolutely minimal. Can the Minister tell me something specific regarding the town of Newport? I should have said Newquay—my apologies to my Welsh colleagues. Newquay Airport is bidding to be a spaceport under the Government's programme for a launch. A consortium has, together with Virgin Orbit, put together £14.7 million but after two years, it is still waiting to hear from the Government about their own funding contribution. This would be a fantastic boost to Cornwall's economy. Can we please have an answer, and a positive one at that?

Lord Bourne of Aberystwyth: My Lords, may I first reciprocate and wish the noble Lord a happy St Piran's Day? I have been speaking today to the deputy leader of Cornwall Council, Julian German; it was not specifically about the Newquay bid and it would not be wise for me to comment in detail on that bid. But it is obviously the sort of thing that could come forward, given the £600 million part of the programme announced by the Secretary of State. It is certainly right to say that there are areas of poverty in Cornwall, although it finds itself in a relatively wealthy region. That is one reason why the funds have been split as they have: to allow the poorer communities in the wealthier areas to have an opportunity to bid. I very much hope that Newquay will be part of that bidding exercise, as it sounds like a good bid.

Lord Haselhurst (Con): My Lords, in view of the rather underwhelming response so far, might it be wise for my noble friend to repeat that this is money going out from the Government to the towns and local communities? The key to its success will be the alacrity with which they formulate their plans and perhaps use that money as a catalyst to get funding from other quarters so that, as suggested by the noble Baroness, Lady Bull, there truly is a lasting effect.

Lord Bourne of Aberystwyth: My Lords, it is certainly new money, as my noble friend rightly says, and it is important to stress that point. It is also important to stress, as he has, that towns and communities should respond. I am sure that they will and that many of them—as we just heard in relation to Newquay, for example—have been developing plans for which they hope to get support. We would certainly not close down the possibility of communities coming forward with help in kind, or help that they have from money that is already there. As I say, the evidence is that communities will be responsive and that this will meet a need out in the communities.

Lord Hylton (CB): My Lords, I notice that this new money is heavily weighted towards the north. Can the Minister give me any hope for my nearest town, which has four names, namely Radstock, Midsomer Norton, Westfield and Paulton? It is a built-up area with perhaps 30,000 people but it has only four parish councils within its unitary authority, Bath and North East Somerset. The area has taken very hard knocks in the last two generations. It has completely lost coal mining; it lost two railways, which are now cycle tracks; and it has lost a swathe of the printing industry. The result is that many people have to commute into either Bristol or Wiltshire. Is this the kind of area which, although it is in the south, has some hope of extra help?

Lord Bourne of Aberystwyth: My Lords, I think I can give the noble Lord some comfort in relation to the community that he talks about—Radstock and so on in Somerset. Like many parts of the country, that community has lost coalfields. First, the south-west will get a £33 million allocation over the length of the programme, so there is that opportunity. But significantly, there is also the £600 million I referred to and it is open to communities throughout England to bid for that. I am sure that well-developed ideas will come forward from the towns and communities he was talking about. They will certainly be eligible within that part of the programme.

Lord Smith of Leigh (Lab): My Lords, I declare my interests as a member and former leader of Wigan Council, and as a vice-president of the LGA. I welcome the Statement, for two reasons. First, it is an admission by the Government that austerity has damaged the north and the Midlands much more than any other part of the country. At least we are hearing that from them and they are going to try to do something about it. Secondly, they are saying that if we are to have an equitable form of funding, deprivation has to be taken into account. We welcome that but cannot understand why it is not done through the new fair funding formula for local authorities, because that new formula will mean the very authorities that the Government are trying to help here will lose about £390 million per year. That loss will hardly be compensated by this additional money. The north-west of England will get £40 million in total and my own authority has lost £160 million since 2010. That is some bribe.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord for that contribution and his at least qualified welcome. I think the honourable Member for Wigan, Lisa Nandy, gave a similar welcome in the other place. It is important to take deprivation into account, as he says. This enables me to pick up a point made by the noble Lord, Lord Kennedy, about the fair funding formula, which I missed when answering his question. First, the clue is in the name: it is a fair funding formula and that is what we propose to do. Secondly, we have been clear that fair funding is essential to the social care elements, for example, of the formula. I am not quite sure where the scare stories come from that fairness will not be part of it and that we will not look at deprivation. In essence, I agree with the noble Lord, Lord Smith: it is important that we move forward and seek to tackle deprivation. That is the aim here and I think it will be exemplified once the detailed prospectus is issued. But as one can see from the rough-hewn figures we already have, it permeates them with the concentration in the parts of the country where there are more deprived communities.

Lord Pickles (Con): My Lords, this is not the only money available to local government and to communities. Given that cities have generated quite a bit of economic growth through economic partnerships, surely it is not unnatural that there should be extra money for those towns, which might be on the periphery of cities, to make a difference. It does not seem to me to be "Summat for nowt" but something very welcome indeed. As the late President Reagan said, with a billion here and a billion there, you are soon talking about serious money.

Lord Bourne of Aberystwyth: I am grateful to my noble friend for reminding us of the importance of recognising that a significant amount of public money is coming forward here. One thinks of looking gift horses in the mouth. I am sure communities up and down the country will be keen to take advantage of the money available. It is also true to say that there are many other programmes. I have mentioned some; the mayoral combined authorities are obviously getting funding. I take this opportunity to recommend that Sheffield gets its act together as well, to help it ensure that it gets a share of the action as a mayoral combined authority. There is also the Coastal Communities Fund and the Future High Streets Fund, and so on.

Lord Shipley (LD): My Lords, my noble friend Lady Pinnock asked the Minister about defining the word "town", which I do not quite think he did. However, it is an important question. It may be defined in the prospectus but if the prospectus is not consulted upon beforehand, that needs to be clear. Is the Minister in a position to define a town and whether there is a minimum population threshold? Is it simply anywhere that is not a city or a village? In which case, if a city is a cathedral city outside a combined authority—I am thinking of cities such as Carlisle, Gloucester and Hereford—can it bid into a fund which is for towns when they themselves are cathedral cities?

Will the Minister confirm that towns inside city regions with metro mayors and the resources of combined authorities' additional funding can nevertheless be part of the scheme? Or will those areas—I am thinking in particular of the county of Northumberland—find their funding cut because the combined authority has been receiving more money?

Lord Bourne of Aberystwyth: My Lords, I find that last question much easier than the others. Certainly, towns such as Berwick—one that is having elections this year would be eligible—although they are in a metro area.

On the definition of a town and whether it is anywhere that is not a city or a village, I know from visiting the cathedrals of England that not all of them are in cities, which adds to the complexity. Chelmsford

is now a city, but it was not until recently; Southwell is certainly not a city, and so on. I do not think that it is as simple as the noble Lord put it in his question. I do not want to give a definition. Within mayoral combined authority areas, towns which are visibly towns and not cities will certainly be eligible.

Lord Beecham (Lab): My Lords, I refer to my interests as a councillor in Newcastle and vice-president of the Local Government Association. The north-east will receive this wonderful benison of £15 million a year for seven years across the region. It is still a trifling sum given the scale of the problems that the region faces. What role, if any, will county councils have in the process? I understand that the Minister is saying that they will not get no money, but they will surely have a role in promoting any improvements, particularly on the economic side, of the constituent district councils in those areas. What will that role be in practice? How will the Government evaluate the proposals being made? How long will the process take? Can the Minister give any assurance that the north-east in particular will benefit from significant improvements to its infrastructure, which is desperately in need of improvement? How much would he expect such a modest sum to afford when the county council in Durham has a deficit of £245 million a year?

Lord Bourne of Aberystwyth: My Lords, the noble Lord, Lord Beecham, rightly said that the region will receive £15 million a year for the seven years, or £105 million over the length of programme. For reasons that we know, it is an area that is due to benefit more than any other.

The noble Lord asked about the role of the county council in developing proposals. It will certainly be central, as will all councils. We want civic engagement, although, as he said, county councils will not necessarily be in the dominant position; however, they will certainly be there.

How proposals are evaluated will be outlined in the prospectus. I do not want to get ahead of myself by saying that money will go on infrastructure rather than on other projects, but certainly infrastructure will be eligible. We hope that the spending will be transformative, so infrastructure is important. I do not think that we can expect to sort out the bids yet. We do not know the quality of the bids; we do not know the process of the bids. These things are yet to happen.

Baroness Byford (Con): My Lords, I welcome the Statement. Although other noble Lords have pooh-poohed it, which is regrettable, this is new money coming in to help local authorities around the country.

I have two questions for my noble friend. I understand that £600 million will be invested following a competitive process later this year, but my question relates to the £322 million allocated earlier to the Midlands engine. How will that be organised and who will approve it? My question merely follows on from the previous one about the involvement of county councils. The Statement gave no indication as to how bids will be made and how they might be successful. I realise that the £600 million will come later, but there is nothing at this stage on the earlier bit.

Lord Bourne of Aberystwyth: My Lords, I thank my noble friend for once again emphasising that this is new, additional money. Perhaps I might again correct a feeling that this is something to do with the shared prosperity fund—that was certainly the feeling in the other place. It is quite separate from that; this is new money.

My noble friend referenced the £600 million, which will apply across the whole country, including London, which receives no money from the first allocation of £1 billion—London would be eligible within the £600 million. She referred to the £322 million for the Midlands engine, comprising £110 million for the east Midlands and £212 million for the West Midlands. As I indicated, there will be civic engagement and leading parts for mayoral combined authorities, where appropriate, and the LEPs in looking at this. It will be covered in the detailed prospectus which will follow shortly and be issued by the Secretary of State.

Lord Scriven (LD): My Lords, I draw the House's attention to my interests as declared in the register, particularly as a member of Sheffield City Council. The Conference for Peripheral Maritime Regions in its report of January 2019 showed that through the European Regional Development Fund and Social Fund more than £11 billion would have come in from European funding between 2021 and 2027. This is a tenth of that £11 billion. Where will the other 90% come from so that no region or no country is left behind?

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord and, knowing his role in Sheffield, thank him for his support in encouraging Sheffield to get on with its deal, which is important. I come back to the fundamental point that this is not related to substituting European money; it is something that over generations and successive Governments has needed to be done to assist areas of deprivation. It is not about substituting the shared prosperity fund or European funding—that is quite separate. I note what the noble Lord says, but this is additional government funding.

Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

Motion to Approve

6.08 pm

Moved by ***Lord Bates***

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)

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, this statutory instrument will fix deficiencies in the Financial Services and Markets Act 2000 and subordinate legislation made under FiSMA, which is an important part of the UK's regulatory framework for financial services. This instrument has already been debated and approved by the House of Commons.

[LORD BATES]

A key function of this legislation is to define the regulatory perimeter which sets out the activities and financial institutions that are in scope of UK financial services regulation. In a no-deal scenario, the UK would be outside the EU's supervisory and regulatory framework, resulting in deficiencies in the existing legislation. Specifically, many provisions in this legislation set out the scope of regulated activities based on firms being authorised and operating across the single market, or by referring to definitions in EU law, which will no longer be workable after exit. In particular, the UK is currently part of the EEA's financial services passporting arrangements, which allow EEA firms to freely provide products and services throughout the EEA. Once outside the EU, the UK will no longer be part of these arrangements.

As your Lordships will be aware, the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, which Parliament has approved, begin the process of removing legislative provisions which facilitate passporting in the UK, as well as providing for a temporary permissions regime allowing EEA firms to continue their activities for a limited period after exit day, giving them time to become UK-authorised. Although the statutory instrument being debated today does not alter the underlying policy of the UK's legislative framework for financial services, many of the proposed changes in this SI are necessary to complete the task of removing passporting-related provisions, and to define the UK's regulatory perimeter as a regime operating outside the EU.

Many of the definitions for regulated activities in FiSMA, and in the 2001 regulated activities order made under it, include the EEA in their scope and rely on definitions in EU law to operate. To reflect the UK's new position outside the EU, the SI will amend the territorial scope of these definitions where needed so that they only apply to the UK after exit. Some of the changes proposed in this SI are also needed so that UK regulators can continue to carry out their existing statutory functions. As mentioned already, this SI will complete the process of removing passporting-related provisions. This will mean that some firms and fund managers will face new requirements as a result of these necessary changes. The SI therefore creates some transitional arrangements to mitigate disruption to those EEA firms and their consumers. For example, some of the transitional provisions relate to certain financial instruments, financial documents, or contracts which have been issued or entered into pre-exit, ensuring that they continue to operate effectively after exit for an appropriate period.

I will use the rest of my opening remarks to focus on the temporary transitional power in Part 7 of this SI—a very significant part of the no-deal preparations—to which some of your Lordships are paying particularly close attention. This power is a significant delegation of responsibility to the UK regulators so it is quite right that noble Lords have been scrutinising this power in detail. The Economic Secretary and I are very grateful for the constructive meeting which we had with the noble Lords, Lord Tunnicliffe and Lord Sharkey, and the noble Baroness, Lady Kramer, last week to discuss the temporary transitional power. My opening speech will be longer than normal as a result of that meeting, at which they invited me to put on record some remarks to make the nature of those transitional arrangements clear.

Despite the specific transitional arrangements which we are putting in place through a number of SIs, firms will still be faced with a large volume of regulatory changes to which they will need to adapt in a no-deal scenario. This could cause significant disruption to the financial services sector, and consumers, immediately after exit. To prepare for this scenario, this SI creates a temporary transitional power, which allows the UK regulators to defer or modify changed requirements for firms. While I acknowledge that this is a broad power to delegate to UK regulators, in a no-deal scenario the regulators will need flexibility to ensure that firms can reach compliance with onshoring regulatory changes in an orderly way and to respond to unforeseen pressures on firms. Given their supervisory responsibility for firms, the regulators, using their supervisory judgement, are best placed to decide how to phase in onshoring regulatory changes.

This is not intended to be a crisis intervention power to deal with failing firms or financial instability. UK regulators already have a comprehensive range of crisis intervention tools available. Rather, the power is intended to give the regulators flexibility to smooth the regulatory adaptation challenge for firms, to prevent instability and disruption from arising in the first place. While the power is broad in terms of the regulatory requirements it can apply to, the purpose for which it can be used is very specific. It can be used only to prevent or mitigate disruption that may reasonably be expected to arise for firms as a result of legislative changes made under the EU withdrawal Act. Also, the regulators can use the power only to delay or modify financial services requirements which they are responsible for supervising. Onshoring changes on accounting standards, for instance, are not the responsibility of financial services regulators and would be out of scope of this power.

Given that firms have been preparing on the basis that there will be a withdrawal agreement, this temporary power is designed to replace the adjustment time that firms would have if the implementation period in the proposed withdrawal agreement were ratified. For this reason, the temporary transitional power is available for two years from exit day. The power, and any directions made under it, would therefore automatically expire at the end of this two-year period, after which firms would have to comply with all new requirements set by Parliament in legislation. If, for any reason, the Treasury subsequently took the view that more time was needed for firms to adapt, we would need to return to Parliament with new legislation. This SI does not provide for any extension of the transitional power.

6.15 pm

By exercising this temporary power, regulators will not be able to alter the end-state regime that has been approved by Parliament. I also make it clear that this is strictly a no-deal power. Therefore, if the withdrawal agreement is ratified, as we all hope, this transitional power will be immediately withdrawn and the delegation of power to the regulators will be revoked. When

preparing to exercise the power, the SI obliges the regulators to consult each other and the Treasury before making directions under the power. For transparency, the regulators must generally publish any directions made under the power, explain their rationale for using the power, and state that they are acting in accordance with their existing statutory objectives as set by Parliament.

The SI also obliges the regulators to provide an annual report to Parliament every 12 months explaining how they have exercised the power. In response to a request from your Lordships, specifically the noble Lords, Lord Tunnicliffe and Lord Sharkey, and the noble Baroness, Lady Kramer, the regulators would be happy to provide Parliament with six-monthly updates on how the power is being used. Although it is highly unlikely, in the event that a regulator makes a direction under the power which is not published because it relates to commercially or market-sensitive information, the regulator and the Treasury will find appropriate ways to keep Parliament informed.

The regulators have been consulting with industry on how they intend to use the temporary transitional power in a no-deal scenario. On 28 February, the Financial Conduct Authority and the Bank of England published statements on their proposed use of the power following this consultation, stating that they intend to use the power broadly, delaying most changed requirements for firms for 15 months from exit day. The regulators will keep this approach under review and will be prepared to use the transitional power further, within the two-year period permitted, should circumstances require it.

An example of the proposed use of the power relates to changed requirements on the treatment of EU 27 exposures. Under changes that will be introduced by the capital requirements and Solvency II EU exit SIs, which have already been debated and approved by Parliament, including this House, firms will have to treat EU assets as third-country exposures from exit day. In some instances, this will mean that firms will need to hold more capital for these exposures than they do now. Implementing these changes for exit day would be costly and time-consuming for firms. Therefore, the regulators have proposed to allow firms more time to adapt to this change by deferring this requirement using the temporary transitional power.

A further example is the use of credit ratings for regulatory purposes. After exit, UK-supervised firms wishing to rely on credit ratings must have those ratings issued or endorsed by a UK-registered rating agency. Under the transitional power, firms will be able to continue using EEA-issued or endorsed ratings for a year after exit, giving those firms time to make alternative arrangements.

The changed application of group supervision requirements is also an example of the transitional power being used to give firms time to adapt. Once the UK is outside the EU's joint supervisory framework, some EEA groups with business in the UK will be subject to additional supervision from the PRA. For 15 months from exit, those groups can continue to comply with their current group supervision arrangements, and move to new group supervision requirements in an orderly way.

The Economic Secretary to the Treasury has committed to keeping Parliament informed of any directions that the regulators make under this power, ensuring that directions will be brought to the attention of the Treasury Select Committee and opposition parties, as well as laying all directions in the Libraries of both Houses. He wants to ensure that the power is used as transparently as possible and will be happy to meet Members from both Houses at any point to discuss its use.

The Government are particularly grateful to members of the Treasury Select Committee who took the time to scrutinise the temporary transitional power in a recent hearing on 29 January. I am pleased to say that the committee acknowledged the need for a temporary power, with the chairman concluding that,

"although this is unprecedented, these powers are needed in order to make sure our financial services sector works, whatever might happen".

The Financial Policy Committee, the body tasked by Parliament with safeguarding the UK's financial stability, has said that this SI is one of 16 under the EU withdrawal Act that the committee has identified as being,

"particularly important to mitigate risks of disruption to users of financial services",

if the UK leaves the EU without a deal.

The Treasury has been working very closely with the regulators in drafting this SI. It has also engaged with industry through the cross-sectoral working group, including representatives of the financial services sector. The group is chaired by TheCityUK and has representation from a number of trade associations and law firms. Industry has expressed support for the provisions in the SI and welcomed the proposed transitional arrangements as "prudent and pragmatic".

Before concluding, I draw the attention of the House to a minor error which has been discovered in the Explanatory Memorandum. Unfortunately, mistakes do happen from time to time, and I would like to ensure that an explanation of the error is put on the record. This SI removes the exemption from the requirement for a financial prospectus to be approved by the FCA if it has been approved in another EEA state. This amendment is correctly explained in paragraph 2.55 of the Explanatory Memorandum but the paragraph also says that the SI makes transitional provision for prospectuses approved by an EEA regulator before exit day. While there will be such a transitional provision, it is made not in this SI but in the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019, which were debated in this House on 19 February and in the other place on 18 February. I apologise for this mistake but I hope that the House will agree that it is a minor error which does not alter the substance of the explanation provided in the Explanatory Memorandum. The Economic Secretary will be relaying the Explanatory Memorandum to ensure that this mistake is corrected.

In summary, the Government believe that the proposed legislation is necessary to ensure that there is a functioning legislative framework for financial services regulation in the UK after exit. I hope that noble Lords will join me in supporting these regulations.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend on moving this statutory instrument, which I welcome. I have a few questions about it.

What has changed since this instrument was considered in the House of Commons is that the Government have published *Implications for Business and Trade of a No Deal Exit on 29 March 2019*. Paragraphs 41 and 42 flag up a particular case study and the implications for financial services. I shall not rehearse all the arguments, but it concludes that, in,

"the absence of action by EU authorities to mitigate risks in some areas of financial services, there could be some disruption in a no deal scenario".

When this instrument was considered in Committee in the other place, a number of issues were raised, and I hope that more details may be put to the House this evening.

Page 21 of the impact assessment very helpfully sets out that the importance of the financial services sector to the UK is approximately £4.5 trillion, and it itemises various aspects of how that is broken down:

"Approximately £4.5tn … is currently invested in the UK's capital markets (both primary and secondary) through pensions funds, insurance policies and individual private savings".

That is a not inconsiderable sum; it brings many jobs, primarily to London, but also to other financial centres such as Leeds and Edinburgh.

A number of comments were made about the size of the statutory instrument considered in Grand Committee yesterday, where all the regulations were lumped together. The Government cannot win, because putting them all together leads to criticism. However, there has been justified criticism about this mix-and-match, rather piecemeal approach. My noble friend referred to a number of regulations that have already been considered and have a crossover effect on this statutory instrument and others that will follow. If it is confusing for your Lordships' House, imagine how much more confusing it is for those who have to abide by this rather scatter-gun approach.

The specific questions I would like to put to my noble friend relate to costings. There is a rather interesting table—Table 3 in the impact assessment—which may be in language that I do not understand. It gives a "Summary of anticipated costs by SI" but it is blank; it just has crosses against it. I am not very good with figures, but "X" is not a figure. This was raised by my right honourable friend Nicky Morgan, who chairs the Treasury Select Committee which has spent an inordinate amount of time, quite rightly, scrutinising this in the other place. If your Lordships' House does not have those figures, how on earth are firms operating in financial services expected to know?

I understand that a figure of £1,900 has been given as a costing for each firm, but I do not know whether that is purely for familiarisation or if it also goes to the cost of complying with the regulation for business. Should we simply multiply that figure by the number of companies operating in the sector? It would be very helpful to understand exactly what the costs will be.

My second question is on the SI's regulatory reach, particularly the rather formidable array of regulatory authorities that companies will come under, quite rightly, for continuity purposes. That includes the Prudential Regulation Authority, the Financial Conduct Authority, the Bank of England, as my noble friend mentioned, and the Treasury. I have a concern about the duration of the powers. My noble friend very kindly explained that, in one scenario, it will be two years from exit day in the event of no deal. I hope that this statutory instrument and the others we will consider will not be needed, because I fervently hope that we will have a deal and an orderly exit. In other circumstances, the deadline is 12 months, and I am mindful of the fact that my noble friend referred to the loss of passporting rights. We cannot imagine what the cost of that loss will be until we have left the European Union; it took us years to establish passporting rights, and now we are giving them back. I understand that there is a temporary arrangement giving London-based clearing houses licences to carry on doing business with EU-based customers, but that is only valid for 12 months. Already we have identified two different dates with which all the firms operating in the City will have to comply.

My last question relates to the concern that has been expressed by the City of London about the ongoing lack of clarity, shall I say, regarding contract continuity, cross-border data references and uncleared derivatives. It may well be that my noble friend does not have the answer this evening—it may not form part of this statutory instrument covering all the regulations before us this evening in this one instrument—but it is causing concern in the City of London, and I would be very grateful if he could assuage those fears.

6.30 pm

Baroness Kramer (LD): My Lords, I begin with a thank you. My noble friend Lord Sharkey and I—I know that the noble Lord, Lord Tunnicliffe, will speak for himself, as he always does so well—very much appreciated the opportunity to meet the Minister, the Economic Secretary and key staff to talk in detail about this statutory instrument. I completely concur with the comments of the Treasury Select Committee that these are sweeping powers which, under normal circumstances, I do not think anybody, in any part of this House, would dream of granting to a regulator. However, under the circumstances we would face in a no-deal scenario, it seems vital that the regulator has the ability to mitigate a crisis cliff edge for key parts of the financial services industry.

I note that in the guidance published by the Bank of England and the FCA last Friday, they will be attempting to limit the transitional period, as the Minister said, to 15 months, so that firms will manage within that 15-month period to go from where we are now, essentially—let us call it scenario A—to life outside the EU in a no-deal scenario, which we will call scenario B. It would give them some 15 months, typically, but with the capacity to extend that to two years if necessary. Also, the Bank of England has made exceptions for the bail-in rules, the stay in resolution rules and the FSCS rules, all of which relate closely to financial stability. We appreciate that it would be very hard to provide any transitional time for those rules and their consequences, but does the Minister have any comment to make around the significance of deciding on those three exemptions? Can he confirm that, if we were to have no deal and find ourselves in

that reality and the regulators decided that the situation was better managed by finding some flexibility around these three rules, the regulator has given away the capacity to do so? Or does it retain an opportunity to change its mind and provide some mechanism for adjustment? One would hope that that was not necessary. Across the credit rating agency assessments, we will get only a 12-month extension, though I think all of us recognise that that is probably not problematic for any of the players.

In our discussion, as the Minister indicated, we asked for more frequent reporting than just 12 months from now. It seemed a bit like closing the stable door after the horse has bolted to wait for that period. We very much appreciate that the Treasury and the regulators have agreed that they can update us every six months: that is exceedingly helpful. We also appreciate the description that the Minister gave when he had to make a correction, which we perfectly accept is a very minor correction. The noble Baroness, Lady McIntosh, picked up the fact that the complexity here is extraordinary. It is very hard to predict, very hard to track and very hard to play through the scenarios and understand exactly how each needs to be handled, certainly in advance. So I think we might find ourselves trying to take advantage of the offer from the regulators of specific discussions if a particular issue arises. I am grateful again that the Minister has had a conversation with the regulators that led them to say that that will be open to us: it is exceedingly welcome.

This underscores the point of the noble Baroness, Lady McIntosh, about the extent to which, given all this complexity, there might be some way to provide some mapping of exactly what is happening where—what is moving and what is changing. That is a big ask at the moment, I understand, but if there could be some thought around that, it would be very useful, not just to this House and the other place but to the industry, which I am sure must be struggling with all this, although it very much appreciates the detailed engagement it has had with the Treasury, with Ministers and with the regulators. If we move to a practice of mapping under such circumstances, that might be a healthier environment to get to. It was one of our asks of the Minister that he felt he could not commit to at this point.

Our second ask was for some specific examples. My noble friend Lord Sharkey is unable to be here. He was particularly concerned to work through some specific examples in his head, so he may come back to ask for something more detailed. I particularly appreciated that the Minister gave an example of an issue that, as he knows, has exercised me: how do we manage the fact that our major financial institutions have significant exposure to EU and EEA assets and will incur higher capital ratios because they will no longer have preferred status if we leave on a no-deal basis? I was very glad that he gave us that particular example.

We very much hope that we do not have to use this, and it would be exceedingly helpful to know that we are not going to have no deal, because despite all the preparation that I understand is being done with real concentration and thought, it does not deal with the fact that there is going to be an almighty problem. I can see firms—all of them, though they are competitors—in different stages, different states with different micro-problems, all of which regulators are trying to manage so that there is no knock-on effect on financial stability or to the economy. It is going to be an extraordinarily difficult situation to manage, and anything we can do to make sure it does not happen will be extremely useful. If I can encourage anyone in this House to take no deal off the table, let me use this opportunity to do so.

Lord Tunnicliffe (Lab): My Lords, I feel the need to start with my standard speech about how much I object to being here processing statutory instruments for a no-deal situation. I entirely agree with the noble Baroness, Lady Kramer, in her dislike of such a situation and the chaos that will prevail. Having said that, I am forced to say nice things about the Government and, indeed, about the Lib Dem Front Bench in this whole affair. The Treasury SIs we have passed so far have, to a large extent, despite some of the speeches, been fairly non-controversial. What I have been looking for all the way through are attempts by the Treasury or the Government to smuggle through policy changes, which they promised not to do in the original legislation, and I must say that, broadly speaking, I think the Treasury has not sought to smuggle through any of significance. However, the result of that is that our debates have been rather dry.

This SI was quite shocking on initial reading. Part 7 has such sweeping powers, with no formal parliamentary involvement, that I thought—and we spoke to our colleagues on the Liberal Democrat Front Bench about this—that we really had to take it very seriously. I once again repeat my thanks to the Liberal Democrats for coming along on this and to the Government for the positive way in which they have reacted. For the record, I will briefly run over our concerns and note that they have been largely covered in the speech made by the Minister. We were first concerned about the limitations in the power in Part 7; there is a time limit of two years, and it is important to emphasise that that limitation is not just for making directions—rather, directions must cease within two years of exit day. That is fairly clear from reading the document.

It is more difficult to grasp the scope. One of the useful things we discussed at our meeting with John Glen, the Economic Secretary to the Treasury, was scope. Scope is difficult to get into words, and we thank the Minister for the detailed examples in his speech, which will, we hope, be useful for practitioners in understanding it. In particular, we had some concerns over whether it might be used in crisis circumstances, and received a very strong assurance that separate legislation would be used in such circumstances.

I come finally to the lack of any parliamentary involvement in the process. This was clearly also the concern of the Treasury Select Committee; being a big, powerful committee, using its own mechanisms, it can rapidly draw Ministers to account. It did that with the Economic Secretary to the Treasury, and got assurances from him, as I understand it, that whenever the power was used to create a direction it would be advised. Clearly, it was then able to summon a Minister to hold the Government to account on its use. We did

[Lord Tunnicliffe]
not have such a parallel situation, so we asked, and then got this assurance in the speech, that whenever such a notification went to the Treasury Select Committee, a copy would come to representatives on both our Front Bench and the Liberal Democrats'. The second part of that, in a sense, was an assurance that we would get access. I do not mean to suggest the Minister is not an important person, but at the end of the day his interest is in DfID. He simply speaks for the Treasury here. It was good that the Economic Secretary to the Treasury said that he would make himself available to answer any of our questions about how the power had been used. That was very reassuring.

Embedded deep in the SI and the Explanatory Memorandum is the fact that certain directions may have to be secret. We were concerned that when any organisation has the option of making something secret it tends to do so. We would like to know when and for what reasons that is used. That was also acknowledged in the speech. Clearly this has to be post facto—obviously it has to be when it is no longer embarrassing—but it is important that the use of this power is fully understood.

Lastly, we felt that 12-monthly reports on a power that was going to last for only two years would be insufficient. Assuming it is for the previous 12 months, the report takes a couple of months to write and so on, and then you are half way through the second year. The acceptance of six-monthly reports is extremely welcome. I repeat my thanks to the Government for co-operating in the way they did; it has allowed us to create a mechanism for an involvement of this House in the use of this power and, with those conditions attached, we accept the logic that says it is necessary.

6.45 pm

Lord Bates: I thank my noble friend Lady McIntosh, the noble Baroness, Lady Kramer, and the noble Lord, Lord Tunnicliffe, for their contributions and engagement through this whole process. I am particularly grateful to my noble friend Lady McIntosh for participating in the debate and for opening it up with some perspectives on this. She said it was unclear what the post-exit requirements for derivatives were. We have made several onshoring SIs relevant to trading and issuing of derivatives already. I think we are currently up to SI number 40. Within that batch of 40, there were some specifically on that. I will certainly write to my noble friend to explain exactly how this regime will operate post exit.

She also asked about the direction of the transitional power. The power is available to regulators for two years from exit. It is then for the regulators to propose appropriate delay or phasing in of requirements within the two-year period. She also asked about the impact assessment—I applaud her for her scrutiny in getting to that level of detail in the specific tables. Let me populate some of the information from them. As outlined in the impact assessment, while the overall familiarisation costs were estimated at £110 million, the cost per firm was estimated at £1,900. The number of firms affected was based on the fact that FiSMA applies to all firms regulated by the PRA and FCA, which amounts to approximately 58,000 firms. It is also estimated that there will be an additional 1,200 firms entering into the temporary permissions regime, which then brings the total to 59,200. While FiSMA applies to all firms regulated by the PRA and FCA, many of the effects of this SI result from the loss of passporting rights at exit. I note that the remarks she made were drawn from considerable experience of how hard-fought those rights were. Of course, that is a consequence of decisions taken ultimately by the British people. This means that changes made by the SI will, in terms of the number of firms affected, predominantly affect those 1,200 firms entering the temporary permissions regime.

Moving to the remarks made by the noble Baroness, Lady Kramer, I again thank her for her input on this. She asked whether we could map all the onshoring changes. She made that request at the meeting with the Economic Secretary to the Treasury. Although we recognised that there were some challenges in doing just that, we felt that it was a very reasonable request when we met last week. I can confirm that we are working on this and will be in touch, I hope with a positive mapping exercise to share with her.

Baroness Kramer: I thank the Minister; that is good and welcome news.

Lord Bates: I am very happy to do that. I should also say that all these changes are being made because of the quite brilliant Economic Secretary to the Treasury, John Glen. He is an outstanding Economic Secretary, and takes his duties very seriously. As a more senior person, I find it encouraging to see young Ministers who are so diligent in the way they engage with Parliament and the department. He is an example to others in how he does it. The noble Lord, Lord Tunnicliffe, found a polite way of saying that he found it refreshing to be talking to the butcher, not the block. I absolutely get the point, and he could not be engaging with a better metaphorical butcher in this regard.

The noble Baroness, Lady Kramer, asked me to comment on the significance of the Bank of England exemptions regarding the FSCS rules. The regulators have judged that bringing in these requirements immediately is important for the financial stability. The Treasury was consulted and agrees with this. We do not anticipate that this will change.

On the point made by the noble Lord, Lord Tunnicliffe, on the use of unpublished directions, on which again, we had a substantial and useful discussion, it should be stressed that the Treasury and the regulators would want to avoid unpublished directions as the power is to be used broadly across a large range of firms. Unpublished directions would not be effective—as I read that out I thought that the noble Lord was ahead of us in that he was not asking for the unpublished directions but was rather seeking an engagement on matters after the fact. I certainly know that the Economic Secretary is taking that seriously.

I thank noble Lords again for their engagement on this, particularly my noble friend Lady McIntosh. I also thank the Opposition and Lib Dem Benches for the constructive way in which they have engaged with the Government on this, as a result producing a better outcome for regulation.

Motion agreed.

Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

6.51 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 22 January be approved.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, as this instrument is grouped, I will speak also to the draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019. As with the previous instruments we have just debated, these SIs are part of the same legislative programme under the EU (Withdrawal) Act that aims to ensure that, if the UK were to leave the EU with neither a deal nor an implementation period, there would continue to be a functioning legislative and regulatory regime for financial services in the UK.

Gibraltar holds a special place within the British family, not only because of our shared history, which stretches back over 300 years, but also because of the priorities and values we share today. The UK Government are committed to maintaining our close relationship, and this will remain unchanged following the UK and Gibraltar's parallel withdrawal from the EU. In March 2018, at the joint ministerial council with the government of Gibraltar, the UK Government guaranteed that Gibraltar financial services firms' access to UK markets will continue as it currently is until 2020, in any scenario. These instruments deliver on the commitment made at that council.

In a no-deal scenario, both the UK and Gibraltar would be outside the EEA and outside the EU's legal, supervisory and financial regulatory framework. Since the current market access arrangements between UK and Gibraltar are, in part, underpinned by the EU framework, without these SIs the UK-Gibraltar framework would also be disrupted. These SIs update existing UK legislation and make amendments to other EU exit legislation to make special provision for Gibraltar and to ensure that UK legislation relating to Gibraltar works properly in a no-deal scenario.

The first SI, the draft Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019, deals primarily with the Financial Services and Markets Act 2000 (Gibraltar) Order 2001, known as the Gibraltar order. This legislation, along with Section 409 of FiSMA, modifies EU passporting rights to allow market access for authorised financial services firms between the UK and Gibraltar. This applies to a range of authorised firms and, importantly for Gibraltar, includes those in the insurance industry. As a result, since this domestic legislation is derived from EU law, in a no-deal scenario, passporting arrangements between the UK and Gibraltar will become deficient.

The draft regulations amend domestic legislation, including the Gibraltar order and Section 409 of FiSMA, to retain the existing passporting framework between the UK and Gibraltar after we leave the EU until at least 2020, in line with the Government's previous commitment. These provisions are therefore sunsetted and will cease to have effect on 31 December 2020. Currently, EEA firms passporting into Gibraltar can also onward passport into the UK, and vice versa. Consistent with the general removal of EEA passporting provisions in the event of leaving without a deal, the SI also removes provisions enabling this level of access. This will have no impact on UK or Gibraltarian firms.

At the joint ministerial council in March 2018 that I mentioned earlier, the UK Government announced that they will work closely with the Government of Gibraltar to design a long-term permanent framework for market access beyond 2020. This will similarly be based on shared high standards of regulation, enforcement, and regulatory co-operation. While the duration of market access in the SI is contingent on the introduction of a replacement framework, the UK Government are committed to preventing a potential cliff edge in Gibraltar-based firms' access in 2020 and to providing clarity to Gibraltar's market. Accordingly, the SI includes a power to extend existing market access arrangements by one year at a time from the end of 2020. This will be supported by a ministerial Statement on progress towards the replacement framework between the UK Government and the Government of Gibraltar.

The second SI, the draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019, relates to other, non-passporting arrangements between the UK and Gibraltar in financial services that support market access arrangements. Various references across legislation in retained EU and UK law treat Gibraltar as if it were an EEA state in relation to such arrangements. For instance, Gibraltar, like other EEA states, has home state responsibility in the event of a Gibraltar-based firm becoming insolvent in the UK. Gibraltar-based firms are also included within existing treatments for policyholder and deposit protections, as well as in the EU payments regime for euro transactions.

Following the UK's withdrawal from the EU, the arrangements between UK and EEA states will change to reflect the new relationship, but we need to ensure that existing arrangements with Gibraltar are not affected by this but maintained.

Lord Beith (LD): With regard to these regulations and the previous ones, as they are quite complicated and relates to the transitional period, if there is one, can the Minister clarify what would happen to these two SIs if there were an agreement under the rapid withdrawal Bill that would have to be passed if there is an agreement? Would these SIs remain as they are now, if carried tonight, or would they have to be wholly or partially suspended?

Lord Bates: As regards the other SIs we have been dealing with, we have been saying that in the event of no deal, there would not be an implementation period. If there were a deal—we all hope there will be—there would be an implementation period, and at the end of that period, potentially some of the SIs could come into effect if they were still relevant. However, the point I was making was on the specific commitment that the Government have given to Gibraltar to work up a special arrangement which we hope will be in place before that period, and if it is not in place before that period, there would be the potential to extend

[Lord Bates]
these provisions for one year at a time. That is where we are at the moment. Perhaps I will say some more about that, if it would be helpful to the noble Lord, in winding up in response to the debate.

Specifically, these provisions ensure that UK-based firms, Gibraltar-based firms, Gibraltar trading venues and provisions related to arrangements between the UK and Gibraltarian regulators continue to be treated in UK law as they were before exit day. These broad savings provisions also allow the rights or obligations that are dependent on the function of an EU body to instead be performed by the appropriate UK regulator or the Treasury.

7 pm

Finally, the legislation makes minor amendments to the PRA's existing powers of intervention over Gibraltarian insurers operating in the UK. This will allow the PRA, where necessary and appropriate, to address risks of disruption that could threaten the financial stability of the UK. No changes are being made to the FCA's powers in relation to Gibraltar-based firms.

The Treasury has been engaging closely with the Government of Gibraltar on the legislation and they support the approach taken in these SIs. It has also been engaged with the Prudential Regulation Authority and the Financial Conduct Authority in the drafting of the SIs and shared with the financial services industry drafts of the SIs ahead of their publication. On 19 December 2018, the Treasury published the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations in draft form. On 7 February, the Treasury also published the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations in draft form, with an updated explanatory policy note on the two Gibraltar SIs. The Government of Gibraltar are also undertaking their own contingency preparations for Gibraltar's withdrawal from the EU in order to ensure that UK firms currently operating in Gibraltar retain their market access in the event of leaving without a deal and to maintain the current regulatory arrangements.

Before concluding, I draw the House's attention to an error which has been discovered in the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019. Unfortunately, mistakes happen from time to time and, where they are found, it is important that an explanation is put on the record. Shortly after the SI was laid, a small typographical error was discovered in the regulation at 10(3) which inserts a new regulation 4C into the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019. Paragraph (2)(a) of this new regulation refers to the,

"UK law which implemented or the Solvency 2 directive",

whereas, of course, it should read the "UK law which implemented the Solvency 2 directive". This typographical error will be corrected before the SI is made.

In summary, the Government believe that the proposed legislation is necessary to ensure that Gibraltar-based financial services firms can continue to passport into UK markets after exit, as they do now. It would ensure that existing regulatory treatments in relation to Gibraltar continue to function effectively after exit day, if the UK leaves the EU without a deal or an implementation period. I hope noble Lords will join me in supporting the regulations. I beg to move.

Baroness Kramer (LD): My Lords, I will be exceedingly brief because, again, this falls into the category of necessary changes to regulation in order to keep a reasonable consistency in the relationship between the Gibraltarian and UK financial markets. I accept that but I have to say: poor Gibraltar.

There is a three-way relationship between Britain, Gibraltar and Spain. A recent tax treaty between the UK and Spain requires Gibraltarians sourcing their business primarily in Spain to pay Spanish taxes. I suspect that some in Gibraltar are slightly stunned by it but realise they have to accept it. The complexity of the relationship outside the EU is far from being resolved.

As the noble Baroness, Lady McIntosh of Pickering, said earlier, unfortunately impact statements only test the actual cost of a particular regulation and then compare it with what would happen if there was no regulation. They never compare the cost between implementing no deal and remaining in the EU. This is where the big number lies, not only for the UK, but very much for Gibraltar. So it is crucial to do anything we can at this point to try to minimise the impact. This regulation is a small part of it. I cannot see how the whole Brexit strategy—deal or no deal—can ever benefit Gibraltar or give it a future which is anything like as prosperous as the one it had in a remain context.

Lord Deben (Con): My Lords, I want to ask a question which follows on from the intervention of the noble Lord, Lord Beith. First, I am still a little at a loss as to how these years work, compared with other SIs. I do not quite understand what would happen if we had a deal and a transitional period. The noble Lord raised something which needs to be explained.

Secondly, I agree with the noble Baroness, Lady Kramer, that it would be wrong to allow these two SIs to pass without reminding the House of the serious effects of Brexit on this particular connection of the United Kingdom. The more we talk about these and the more you unwind it, the more it becomes quite clear how ridiculous the whole process is. I know it is not suitable for my noble friend to comment on this, but I wish only that our Benches were filled with those who think that Brexit is good idea so that they could listen to the realities of what happens if you leave the European Union—let alone without a deal. As usual, none of them is present to listen to the serious effects of Brexit. It is rather like trying to talk about climate change. You never have the climate change deniers present to see what the science is actually about. The House might like to note the non-existence of those who think that Brexit is just a matter of getting there and doing it at once. The people who stand outside with little notices about the WTO clearly have never worked out what becoming dependent on WTO rules means.

Thirdly, of course we have to pass these two SIs. Without them, were we to leave the European Union without a deal, things would be even worse than they need be, but we must not do it thinking that this is

going to make things easier. Gibraltar is a sharp instance of the damage that could be done. Will my noble friend explain a little more about the discussions that have been held with the Gibraltar Government and particularly his reference to the Gibraltar Government making their own arrangements should there be Brexit without a deal? What are these arrangements and how do they interrelate with this SI? I do not think that many Members of this House have detailed knowledge of the kinds of things which Gibraltar would have to do were we—and they—to leave the European Union without a deal. It would be helpful to the House if my noble friend would delineate what exactly it is that they have to do and what their powers and responsibilities are in parallel with the two SIs with which we are concerned this evening.

Lord Tunnicliffe (Lab): My Lords, we have no objection to these two SIs, but I have two or three brief questions. The position is summed up in the Explanatory Memorandum to the first set of regulations, paragraph 7.21 of which surprised me. It states:

"The UK government will work closely with the government of Gibraltar to design a long-term permanent framework".

My impression until I got to that sentence was that the provisions here would change the situation into a stable framework. I would be grateful if the Minister could give us a feel for the extent of difference between the UK system and the system in Gibraltar that means that this bespoke framework is needed, and particularly what will happen if it is not agreed by the end of 2020.

The Minister can respond in writing to my second comment if he would like to do so. I refer to the first bullet point in paragraph 7.15 on the second set of regulations. This is really a cry of anguish because one has slogged through so many of these SIs and has to read every one, and then one reads this final sentence:

"This framework will not apply to the automatic recognition procedure of resolution actions between the UK and Gibraltar".

I do not have the faintest idea of what that means and not the faintest idea of how to find out what it means. I ask the Minister as a matter of sheer curiosity what it means, and I will accept a letter.

Lord Bates: I thank all those who have participated in the debate. Let me try to put a little more flesh on the bones of this process for the noble Lord, Lord Beith, and my noble friend Lord Deben. In the event of no deal we will be left without the necessary legislative framework because the European Communities Act will have been revoked and therefore the body of law will not apply in the UK. We need to make sure that we onshore the current law so that we get a measure of continuity. If that applies to the UK, of course it also applies to Gibraltar. The Gibraltar Parliament has therefore also had to pass its own version of the EU withdrawal Act and is having to go through the process of the onshoring regime, which is what we are doing here. We are in a sense being treated as two sovereign entities.

Let me put a little more structure on to my initial answer to the noble Lord, Lord Beith. As set out in the White Paper on the EU withdrawal agreement Bill, the Bill will amend the European Union (Withdrawal) Act 2018 so that the conversion of EU law into retained EU law will take place at the end of the implementation period instead of on exit day. While the UK remains subject to EU law and before the conversion of EU law into UK retained EU law, there is no requirement for most instruments relating to our exit from the EU to be in force. The intention is therefore that the EU withdrawal agreement Bill will contain provision to delay all relevant SIs that enter into force on exit day until the end of the implementation period. The Bill will also ensure that Ministers can revoke or amend SIs as appropriate so that they effectively deal with any deficiencies arising from the end of the implementation period.

Lord Beith: My Lords, that is helpful and it is in the language that we have heard used for other statutory instruments. What it does not tell us is whether these two instruments are among those which can be wholly dispensed with or set aside during the transition period, or whether they will be partly in force even if there is a deal.

Lord Bates: To give the level of clarity that the noble Lord seeks, I may have to write to him on that point and copy the letter to others. As I stated earlier, that is our intention. I was at the Joint Ministerial Council as the representative of DfID on that body when those discussions took place. The agreement was that we would have a bespoke piece of legislation dealing with respective access to financial services firms from Gibraltar to the UK market in place by then. That is why the provision was introduced. It says that in the event of it not being in place, there will be the potential to extend the period. However, I will put that in writing.

My noble friend Lord Deben asked how the Government of Gibraltar are preparing for the deal. They passed their own EU withdrawal Act in January 2019 and they are preparing to pass their own programme of EU exit SIs through Parliament to ensure that UK firms currently operating in Gibraltar will retain their market access. The Government will adopt a similar approach to their own EU exit SIs to ensure that Gibraltar has a functioning regulatory framework in a no-deal scenario with mirroring rights and obligations.

7.15 pm

Lord Deben: How can we make sure that the measures we take here in this House and in the other place and the measures taken in Gibraltar are in fact congruent? That is really quite important. Who is responsible for that connection so that we make sure that no part of it falls out of line? As my noble friend has said, mistakes do happen. Perhaps I could be told exactly how this is done.

Lord Bates: This happens predominantly through the Treasury. It is engaging with the Government of Gibraltar and of course with the Executive there to ensure that the process goes through. It is run through the Treasury at present, but obviously in careful consultation with the relevant regulators in both entities.

My noble friend asked whether we had consulted Gibraltar on the SIs, which is in part relevant to the previous point. Throughout the EU exit process the UK Government have been committed to engaging with the Government of Gibraltar. On the ministerial

[Lord Bates]
level that engagement has been largely structured through the Joint Ministerial Council on Gibraltar-EU negotiations. On contingency preparations, the Government of Gibraltar have indeed received both SIs very positively. There have been discussions at both the ministerial and the official level on the onshoring approach taken in the two SIs.

Lord Deben: I have one final point. What would happen if the Gibraltarians did not like what we are doing? Is it really that we are deciding it, they are doing it, and that is it? Alternatively, could they say, "Frankly, we would like it done in a different way"? I think it is quite important to know what the relationship with Gibraltar actually is.

Lord Bates: It is a very close relationship. How would Gibraltar react to the deliberations in this House? I hope that it would respect them as being the work of Parliament. However, we also realise the crucial importance of financial services to both entities and therefore we want to ensure that Gibraltarian firms can continue to access UK financial services and that UK firms—

Lord Deben: I am so sorry, but I should have declared my interest as the chairman of PIMFA.

Lord Bates: I thank my noble friend. Similarly, we want to ensure that UK financial services have access to the Gibraltar market as well.

The noble Baroness, Lady Kramer, commented on the recently signed tax treaty. The UK, Spain and Gibraltar have concluded a treaty to improve tax co-operation between them and secure the protection of their financial interests. The treaty provides rules for resolving tax residency conflicts and administrative co-operation. The UK signed the agreement as the state responsible for Gibraltar's international relations. Whereas this means that the UK will ratify it in due course, the Government of Gibraltar will take forward all domestic legislation required for it to have effect in Gibraltar.

On the follow-up question the noble Lord, Lord Tunnicliffe, asked, on the status of the SIs in the event of a deal, I say that the two SIs will not be needed during an implementation period. He also asked about automatic recognition of resolution actions. The framework referred to relates to the jurisdiction controls in relation to winding-up proceedings. This will not apply to the recognition of the actions taken to resolve a failing bank without winding it up. No firms will qualify for automatic recognition. I hope that is clearer.

The noble Lord, Lord Tunnicliffe, also asked why we needed the long-term replacement framework. I think we dealt with that. Will the replacement framework be ready for 2020 and what will happen if it is not? Again, I think I dealt with that. The Treasury is working with the UK regulators and the Government of Gibraltar to design a replacement framework for 2020. Its implementation will depend on progress between both Governments on this framework. Crucially, we do not want to create a cliff edge in Gibraltar's access to the UK in 2020. The Treasury has therefore included a temporary extension framework in the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019. This will extend market access through a new negative SI by one year at a time from the end of 2020.

The noble Lord, Lord Deben, asked what would happen if the Gibraltarians did not like what we are doing. Gibraltar is content with our onshoring approach to the two SIs. To ensure a mirrored and functioning financial services regime, Gibraltar is onshoring its own financial services legislation in the event of no deal.

With those explanations, I again thank noble Lords who have taken part in this and beg to move these two SIs.

Motion agreed.

Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019

Motion to Approve

7.22 pm

Moved by ***Lord Bates***

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

Relevant documents: 17th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Motion agreed.

Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019

Motion to Approve

7.22 pm

Moved by ***Lord Bates***

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

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, as this instrument is grouped, I will also speak to the draft Mortgage Credit (Amendment) (EU Exit) Regulations 2019 and the draft Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019.

The three SIs are part of the same legislative programme under the EU withdrawal Act to ensure a functioning legislative and regulatory financial services regime in a no-deal scenario. These instruments fix deficiencies in UK law relating to the regulation of distance marketing of consumer financial services and the regulation of consumer buy-to-let mortgages. The final instrument ensures that recently adopted binding technical standards continue to operate effectively and that the markets in financial instruments SI effectively addresses deficiencies in retained EU law if the UK were to leave the EU without a deal or implementation period.

I turn to the substance of the first SI, the Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019. This will fix

deficiencies in UK law related to the distance marketing of consumer financial services. The UK distance marketing regulations derive from the EU's distance marketing directive. This requires firms to provide information to consumers prior to the conclusion of a financial services contract at a distance, sets out consumers' rights of cancellation and provides that consumers who receive unsolicited distance financial services are not subject to any obligation, including to provide payment. The DMD operates on a country-of-origin basis. At present, EEA financial services firms undertaking distance marketing to UK consumers from an establishment in an EEA state are not subject to the UK's distance marketing regime, on the basis that they are subject to regulation in their home state. Consequently, the distance marketing regulations, as well as relevant FCA rules on distance marketing, currently apply only to firms undertaking activity from a UK establishment. Firms undertaking unregulated activity from an establishment in the UK are subject to the distance marketing regulations, while firms undertaking regulated activity are subject to equivalent FCA rules. However, some distance marketing regulations apply to all activity, whether regulated or unregulated.

In a no-deal scenario, the UK would be outside the single market and the EU's legal, supervisory and financial regulatory framework. Retained EU and domestic law relating to the regulation of distance marketing of financial services therefore needs to be amended to ensure it continues to operate effectively. This ensures that consumers continue to receive the information they need to make decisions about the financial services products they may seek out.

Broadly, this instrument will maintain the current distance marketing rules set out in the distance marketing directive, but address deficiencies stemming from exit. The draft regulations remove EU references that will no longer have any legal effect following our leaving the EU. More substantively, this SI will expand the current scope, where necessary, of some of the distance marketing regulations. To remedy any potential loss of consumer protection when the UK leaves the EU, the onshored distance marketing regulations will cover certain EEA firms that will operate in the UK post exit under one of the temporary permissions regimes previously debated by this House. The FCA will amend its rules where appropriate to ensure complete coverage of distance marketing requirements to EEA firms operating in the UK post exit. On 12 December 2018, the Treasury published the instrument in draft, along with an explanatory policy note to maximise transparency to Parliament and the industry.

I turn now to the Mortgage Credit (Amendment) (EU Exit) Regulations 2019. These concern the regulation of consumer buy-to-let mortgages. Many noble Lords will be familiar with the Mortgage Credit Directive Order 2015, which implemented the mortgage credit directive 2014 in the UK. The order established a national framework regulating consumer buy-to-let mortgage contracts. A consumer buy-to-let mortgage is a loan that can be offered to a borrower letting out their home not for the purpose of business or as an investment. Here, the borrower can be thought of as an accidental landlord. In a no-deal scenario, the UK would be outside the EEA and the EU's legal, supervisory and financial regulatory framework. The Mortgage Credit Directive Order therefore needs to be updated to ensure the provisions work in a no-deal scenario.

The SI makes three main changes to the regulatory regime for consumer buy-to-let mortgages. First, the responsibility to update the remarks and assumptions that accompany the calculation for the annual percentage rate of charge, the APRC, is transferred from the EU Commission to the Treasury. The APRC is a standardised calculation of cost of credit that provides the borrower with the total cost of mortgage credit over its full term. It is necessary to confer this power on the Treasury to ensure the APRC remains accurate post exit.

Secondly, the SI amends the territorial scope regulated by the current consumer buy-to-let lending so that in future it applies only to lending related to property in the UK and not in the EEA. This will apply to a very small number of loans and will not affect consumer buy-to-let lending relating to land in the EEA that was entered into before exit day, which will continue to be covered by FCA regulation.

Thirdly, the SI amends the rules for consumer buy-to-let foreign currency mortgages. A foreign currency mortgage is a loan denominated in a different currency from that of the borrower's income or assets.

This SI provides lenders which lend to UK borrowers with a consumer buy-to-let foreign currency mortgage with the option to meet the requirement to protect borrowers from exchange rate risk by allowing borrowers to convert their loan into pounds sterling. Currently, the 2015 order prescribes that where a lender protects a borrower from exchange rate risk by allowing borrowers to convert the loan into a different currency, that currency must be the currency of the EEA state where the borrower is resident, or the currency in which the borrower holds their main income or assets. Once the UK leaves the EU, pounds sterling will no longer be an EEA currency, and so this provision has been made to ensure that a UK borrower with this type of loan can continue to convert their loan into pounds sterling. On 22 November 2018, the Treasury published the instrument in draft, along with an explanatory policy note to maximise transparency to Parliament and to the industry.

7.30 pm

Turning to the final statutory instrument in this group, the draft Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 include two components. The main component follows on from the Financial Regulators' Powers (Technical Standards) (EU Exit) Regulations 2018, debated and made in October 2018, which transferred responsibility for fixing deficiencies in the level 2 binding technical standards—BTS—to the UK financial services regulators. This instrument transfers responsibility for new binding technical standards that have been adopted by the European Commission since the previous SI was laid to ensure that these can also be fixed ahead of exit day. The second, smaller, component of this SI makes minor amendments to the Market in Financial Instruments (Amendment) (EU Exit) Regulations 2018, which were debated and made in December 2018, to ensure that the regulations operate as intended post exit.

[Lord Bates]

A significant volume of the financial services legislation being brought on to the UK statute book by the European Union (Withdrawal) Act consists of EU level 2 binding technical standards, which run to between 7,000 to 8,000 pages. Binding technical standards do not take policy decisions but set out the requirements that firms need to meet to implement policy set in out in higher EU legislation. The European supervisory authorities are currently responsible for developing and drafting binding technical standards, which are then adopted by the European Commission.

The financial regulators' powers SI debated last October delegates the European Union (Withdrawal) Act power to fix deficiencies to the UK financial services regulators, so that they can ensure that onshore technical standards operate effectively from exit day. The SI sets out the procedure and requirements that the regulators must follow for amending future technical standards. The SI listed all EU binding technical standards that were in force at the point that the SI was laid. However, since the 2018 regulations were made, further binding technical standards have been adopted by the Commission. The European Union (Withdrawal) Act will bring these new binding technical standards into UK law at exit day. Responsibility for fixing any deficiencies in these new binding technical standards needs to be transferred to the UK regulators.

This SI therefore adds new binding technical standards to the schedule of the financial regulators' powers SI, bringing them into scope of those regulations. It adds binding technical standards relating to the benchmarks regulation, the European long-term investment funds regulation, the market abuse regulation, the bank recovery and resolution directive and the capital requirements regulation. In addition, this SI makes minor amendments to the markets in financial instruments SI. I hope that that is clear.

This SI replaces an erroneous reference in a provision relating to the carrying out of controlled functions under the Financial Services and Markets Act 2000; corrects a typographical error and certain cross-references; and removes a provision which relates to the "host Member State". These corrections do not change the policy intent or effect of these regulations. While all legislation laid under the European Union (Withdrawal) Act has gone through the normal rigorous procedures, these minor drafting issues were picked up during further checks after the legislation was laid. This SI therefore ensures that the markets in financial instruments SI will function as intended in a no-deal scenario.

The Treasury worked very closely with the regulators in drafting these three instruments, and has also engaged extensively with the financial services industry and will continue to do so. The regulators will also be undertaking public consultation on the deficiency fixes they propose to make to the technical standards covered by this SI.

In summary, the Government believe that the proposed legislation is necessary to ensure that regulation of consumer buy-to-let mortgages and distance marketing of consumer financial services continues to function appropriately if the UK leaves the EU without a deal or an implementation period; that recently adopted binding technical standards continue to operate effectively; and that the markets in financial instruments SI effectively addresses the deficiencies in the retained EU law if the UK were to leave the EU without a deal or an implementation period. I hope noble Lords will join me in welcoming these regulations. I beg to move.

Baroness Kramer (LD): My Lords, I shall be exceedingly brief. That the third of these SIs is basically to correct deficiencies in earlier SIs underscores how complex all this is. Obviously we have no objection to correcting errors in earlier SIs. Again, I do not have objections to the first two SIs, on distance marketing—which sounds like cold calling—and buy-to-let credit. My head was spinning when trying to read them but they seem to be logical under the circumstances. But is there something that is not there or that I have misunderstood? In both circumstances, many British people and continental Europeans live their economic lives beyond country borders. They have done so particularly in the context of the EU because we have been part of a single market and a European family.

Many people who think of themselves as not financially sophisticated have economic activities which go beyond the boundaries of the EU; for example, they might have a property in Spain that they let, investments in different countries, or pensions arising from periods of work. There are all kinds of complexities. Do I understand from reading these SIs that the problem that is not resolved is what happens if there is a dispute or an insolvency? Is it that the legal mechanisms that would have been in place with full membership are no longer available and that these SIs have been unable to on-board any mechanism for dealing with disputes, insolvencies and those kinds of issues? If such were to arise, would the UK resident, for example, with a buy-to-let mortgage for a property somewhere in the 27, have to prosecute their case through that country's national court system, rather than being able to do so as part of the unified ECJ umbrella, and therefore face a series of difficulties which cannot be corrected through SIs?

I say this because we talk constantly of continuity but it seems that there might be partial continuity with discontinuity embedded in it, particularly around the areas of dispute and insolvency. I could be wrong and I stand to be corrected.

Lord Tunnicliffe (Lab): My Lords, we have no objection to any of these SIs. I have read them through as far as I was able, and they seem to be logical.

The distance marketing SI particularly caught my attention, because many citizens are subject to distance marketing that perhaps they do not really want. I note that the Explanatory Memorandum at paragraph 7.30, "Criminal offences", states that various failures to abide by the rules of the regulation we are creating will be a criminal offence and that those guilty of it will be,

"liable, on summary conviction, to a fine not exceeding level 3 on the standard scale".

I have a dilemma because, on the one hand, I am going to say that that does not sound very threatening, especially if you are a large firm—I think this relates to firms as well as to natural persons—and I would

value it if the Minister would write me a letter on that. I also recognise that, if the SI sought to change that, I would argue that it was smuggling through a policy change. I am not suggesting that it should, but can the Minister clarify whether this is genuine consumer protection that firms fear or whether the punishments for offences are too low to be impactful?

Lord Bates: My Lords, having spent the past six months with the noble Lord in Grand Committee and here, I can assure him that the last thing I would ever attempt to do is to try to smuggle through some policy under his astute watch, because I would never succeed—and we would never attempt it, of course.

The noble Baroness, Lady Kramer, made a good point on this. It gives me an opportunity to put some additional remarks on the record—I know she was talking particularly about buy-to-let properties, but the principle will hold. By extending the scope of the distance marketing regulations to EEA firms in a temporary permissions regime, we are ensuring that UK consumers will continue to be protected by appropriate distance marketing regulations. Firms in the temporary permissions regime will be seeking authorisation, and it is therefore in their interests to comply with the UK's marketing regime—that is not the answer. I am sorry about that. I will get an answer for her. I absolutely got what she was asking.

Baroness Kramer: Picking up on the point made by the noble Lord, Lord Tunnicliffe, on direct marketing, illegal cold calling into the UK happens frequently. We know that Nigeria is often the major source of illegal cold calls and illegal contacts through emails and so on. One of the frustrations for UK authorities has always been that they cannot enforce against such illegal calls because they are at a distance and they have no locus. Will an equivalent situation arise after leaving the EU so that, if there are inappropriate or illegal cold calls into the UK from an EU-based entity, there will be no mechanism for enforcement against them? If that is the case, that might be something we need to think about.

Lord Bates: I touched on that in my introductory speech and said how they would be treated. I could do a good follow-up letter on dispute resolution, consumer protection and seeking redress in the context of these SIs, which may have wider applicability. If that is acceptable to the noble Baroness and the noble Lord, I will do that.

Motion agreed.

Mortgage Credit (Amendment) (EU Exit) Regulations 2019

Motion to Approve

7.43 pm

Moved by ***Lord Bates***

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

Motion agreed.

Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019

Motion to Approve

7.44 pm

Moved by ***Lord Bates***

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

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

Motion agreed.

House adjourned at 7.44 pm.