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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

Wednesday 6 March 2019

3 pm

Prayers—read by the Lord Bishop of Portsmouth.

Gender Equality and Rights in the Workplace
Question

3.07 pm

Asked by ***Baroness Crawley***

To ask Her Majesty's Government what steps they are taking to ensure that the United Kingdom maintains gender equality and rights in the workplace in line with other European Union member states.

Baroness Crawley (Lab): My Lords, in begging leave to ask the Question standing in my name on the Order Paper, I refer noble Lords to my pension as a former MEP, which is in the register of interests.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the UK has a proud record of supporting workers' rights and some of the strongest legislation on equalities in the world. We have committed to maintaining these rights but we already go beyond EU requirements in many areas: our ground-breaking gender pay gap reporting regulations and public sector equality duty, to name just two. Our new strategy, to be published later this year, will restate the Government Equalities Office mission on gender and set out the ambitious work taking place across government on this agenda.

Baroness Crawley: I thank the Minister. We can agree that current UK gender equality legislation is indeed in good health, although I am sure she will agree that it is not always complied with. However, does she agree that we are where we are only because the EU has been a backstop—if noble Lords will excuse the expression—against the unilateral lowering of standards by member states? I am aware of the Prime Minister's announcement today but how can we be confident that her Government will protect women and workers' rights when members of her own party have regularly voted against them?

Baroness Williams of Trafford: I am sure that the noble Baroness will agree that the UK has a long-standing tradition of ensuring that our rights and liberties are protected domestically and of fulfilling our international rights and obligations. The decision to leave the EU does not change that.

Baroness Mone (Con): My Lords, what steps, events or campaigns are Her Majesty's Government undertaking to encourage more female entrepreneurs?

Baroness Williams of Trafford: I thank my noble friend as the epitome of a female entrepreneur in this House and commend her on her recent app, Connect 2 Michelle Mone, which provides mentoring to would-be female entrepreneurs. Of the start-up loans that the Government have provided, 39% have gone to women and, through our industrial strategy, we are focusing on barriers to women in business.

Baroness Hussein-Ece (LD): My Lords, the Minister will be aware that the majority of carers in the UK—an estimated 58%—are women, and many struggle to find and hold on to good jobs. A reported 76% felt that they were forced to make changes to their job or quit. A recent survey by the Disability Law Service discovered that, of those carers who have applied for flexible working, a shocking 52% have had their request refused. A simple amendment to the Equality Act 2010 could resolve this by giving carers the same rights to reasonable adjustments as are currently given to disabled people. This would send a powerful message to both carers and the business community that a carer is to be accommodated in a similar way.

Noble Lords: Too long.

Baroness Hussein-Ece: Perhaps I might finish. Will the Government consider this?

Baroness Williams of Trafford: I am sorry, my Lords; the noble Baroness seemed to stop mid-sentence. The first point that she made—on low-skilled, low-paid women—is very important. Those women tend to be stuck in that low-skill/low pay situation both at the beginning of their potential career and at the end. Graphs very clearly show that pattern. We have a ring-fenced returners fund for marginalised women, and we are actively encouraging women and girls to take up STEM subjects so that they can get involved in things such as engineering. In addition, the economic empowerment strategy that I talked about will very much focus on women throughout their career journey and on how to get them out of that low-skill/low-pay rut.

Baroness Boycott (CB): My Lords, compared with our fellow Europeans, the UK lags behind quite a lot in terms of the number of women on boards and in leadership positions. At the moment, only a third of companies place any emphasis on this, but it is clearly crucial to provide good role models for girls coming up through the business community. Last year, research showed that there were more people called David or Steve running FTSE 100 companies than the total number of women and people from ethnic minorities. For the record, there were five minority-ethnic bosses and seven female CEOs, versus nine bosses called David and four called Steve. What are the Government going to do about this?

Baroness Williams of Trafford: David and Steve must be listening. The noble Baroness really pinpoints how far we have to go, but at this point I must also talk about how far we have come. I think that way back

[Baroness Williams of Trafford]
in 2014 12% of board members were women; now, over 30% are women. The noble Baroness talks about women in leadership positions. Of course, leadership is provided by ensuring that women are on boards, but I think that at this point in time there are no male-only boards. That may be a small step but it is a step none the less.

Baroness Lister of Burtersett (Lab): My Lords, the Minister talked about the "proud record" but analysis by leading scholars from Manchester University shows that,

"far from being a pace setter in the area of European gender equality law, the UK has usually sought to stall, dilute or divert legal measures".

Therefore, how can we have confidence that these rights will be real? As a minimum, can the Minister give us an assurance that we will implement the work-life balance directive currently under consideration by the European Union and, in particular, following on from the earlier question, introduce paid leave for carers?

Baroness Williams of Trafford: My Lords, we are sixth out of 28 in the EU's equality index. The noble Baroness is absolutely right to talk about carers—they are the typical low-skilled, low-paid people who often cannot get out of that situation. The noble Baroness talked about another directive—we have implemented all relevant directives into UK law. In many ways, we have gone further with our gender pay gap and public sector equality duty.

Baroness Gale (Lab): My Lords, is the Minister aware that the TUC has said that the current deal does not protect existing rights or guarantee that the UK will not fall behind in future? The TUC described the Prime Minister's promises today as "window dressing". Promises to do the right thing are not enough. What plans do the Government have to give a legal guarantee that there will be no regression on existing rights for women?

Baroness Williams of Trafford: As I explained, we have implemented the transfer of all relevant equalities directives into UK law. I am not concerned about that. We leave the European Union with that intact. However, even if we were not leaving, I am very satisfied that on equalities we punch well above our weight. Far from falling behind the EU, the EU is falling behind us.

Prevent Strategy

Question

3.16 pm

Asked by ***Lord Sheikh***

To ask Her Majesty's Government what plans they have for the review of the Prevent strategy.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as outlined in the Counter-Terrorism and Border Security Act, which received Royal Assent on 12 February, further details of the review of the Prevent strategy will be provided by 12 August.

Lord Sheikh (Con): My Lords, I thank my noble friend the Minister for her reply. I am pleased that Her Majesty's Government have agreed to undertake an independent review of the Prevent strategy; this has been very well received in the Muslim community. Will the review have sufficiently broad terms of reference, including community engagement, public consultation and full government disclosure? To what extent will Her Majesty's Government commit to the recommendations in the review when it is completed?

Baroness Williams of Trafford: I thank my noble friend for his Question. I echo the words of my right honourable friend the Security Minister in the other place, who has agreed to engage across the House on the review and ideas for the terms of reference. As I said, the review will report by August 2020, but arrangements for how it will be carried out will be made by 12 August 2019. We absolutely recognise the importance of hearing community views. Now is the opportunity for any noble Lords or members of the community who are concerned or otherwise to feed into the review, and we will welcome them.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the internet is a hugely powerful tool: it has been a force for good but it has also been used for crime and to draw people into terrorism. Will the Minister ensure proper cross-over of the Prevent review with the Government's White Paper on internet safety?

Baroness Williams of Trafford: The noble Lord is absolutely right: we cannot discuss what is happening in this area without talking about the online sphere. I entirely agree with him that the White Paper on internet harms has to include that important element.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that "prevent" is too weak and negative a word for trying to get different communities to behave responsibly and with respect towards one another? Does she further agree that religious leaders have a particular responsibility to counter bigotry by emphasising that the one God of us all is not interested in our different religious labels but in what we do for one another and wider society?

Baroness Williams of Trafford: The noble Lord is indeed right. Our gods, whoever they are, care about how we treat each other and work together. On the question of whether "prevent" is too weak or has become too divisive, what is often forgotten is that many of the referrals—in fact, almost half now—arise from concerns about the far right. I hope that the noble Lord will feed into the review when it comes.

Lord Paddick (LD): My Lords, what lessons have the Government learned from the numerous attempts to appoint the chair of the Independent Inquiry into Child Sexual Abuse that will help to ensure that the independent inquiry into Prevent has the trust and confidence of the communities most affected?

Baroness Williams of Trafford: My Lords, I do not think the independence of the IICSA chair was ever in doubt. Some of the concerns were around—

A noble Lord: Process.

Baroness Williams of Trafford: Process, absolutely—I thank the noble Lord. Independence was not in doubt, but for the reviewer to have confidence is of the utmost importance.

Lord Pearson of Rannoch (UKIP): My Lords, has there been any increase in the 8.6% of tip-offs about potential terrorists to the Prevent programme and our security services that come from within our close-knit Muslim communities? What plans do the Government have to encourage greater collaboration with our Muslim friends against their radical co-religionists?

Baroness Williams of Trafford: My Lords, given that Prevent is a safeguarding measure for young people—usually—who are vulnerable, "tip-offs" is not necessarily the correct term in this context. If authorities are in any way warned that somebody is vulnerable, they will take action to ensure that that person is protected. We have seen over the last two years that sometimes—in fact, oft-times—Muslim communities have been the biggest victims of terrorism and suffer the worst aftermath of its effects.

Lord Blair of Boughton (CB): My Lords, I declare an interest, having been involved in the original conversations that started the concept of Prevent. Will the Minister make sure that those conducting this review—nothing should get in its way—recognise that, when the British came up with the idea of a system to engage with communities so that they could protect themselves, there was nothing like it in the world? There still is not. Law-enforcement communities across the world regard Prevent as the gold standard for working with communities to protect them against terrorism. I ask the Minister to make sure that that view is represented in the review.

Baroness Williams of Trafford: The noble Lord is absolutely right, and I look forward to hearing his views when the review comes. If we look back at the start of the process—I am talking way back—integration and counterterrorism were sometimes muddled. I think that is what started some of the accusations that came with Prevent, but he is right: we are looked upon across the world as a model for this sort of intervention.

Royal Navy: Type 31e Frigates

Question

3.23 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government when they expect to award the contract to build five Type 31e frigates.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, there has been no change in the Government's plans. It remains our intention to award a single design and build contract for five Type 31e frigates by the end of 2019.

Lord West of Spithead (Lab): My Lords, I thank the noble Earl for his answer. Many of us who are concerned about the number of ships in the Navy have been concerned about this delay in ordering. Only yesterday, the noble Lord, Lord Lee of Trafford, accosted me and asked whether the ships' names committee could call them the "Grayling Class" as there were no ships, which I thought a little unfair. Can the noble Earl reassure the House that the first of these ships will be fully active in the Royal Navy in 2023? If not, as the noble Earl knows, "HMS Argyll" will pay off and the number of frigates that this great maritime nation possesses will have dropped to 12.

Earl Howe: My Lords, we see no reason at all to depart from the timescales that we set ourselves; they remain unchanged. We want the first ship in 2023 and all five by the end of 2028. I say to the noble Lord that we have streamlined the procurement procedure in a way that should be helpful, to enable us to award the contract by the end of this year.

Lord Howell of Guildford (Con): My Lords, my noble friend will be aware that we are both designing and building frigates for other Commonwealth countries, notably Australia and Canada. Will he encourage his friends to consider the proposal that these frigates—I am not sure whether they are Type 26 or Type 31e—shall be crewed and operated jointly by Commonwealth navies?

Earl Howe: My noble friend draws attention to something very encouraging. The UK shipbuilding sector has been able to compete in the world market for very high-end specification frigates—it is the Type 26 frigates which he was referring to. This aids the issue of interoperability between allies, which he also highlighted. We welcome the fact that Australia and Canada have entered the fold of nations which will operate this vessel.

Baroness Smith of Newnham (LD): My Lords, in light of the National Audit Office's November 2018 report, which suggested that the MoD's equipment plan remained unaffordable, falling about £10 billion short over the next 10 years, will the Minister explain to the House what plans the MoD has to ensure that the Type 31e frigates are delivered on time and, crucially, on budget? Are the new procurement arrangements intended to deliver that?

Earl Howe: The noble Baroness is quite right: in April, the forecast cost of the equipment plan exceeded the allocated budget of £7 billion over 10 years, which is the central estimate. Indeed, if we took no action, the plan would not be affordable. However, based on past experience as well as what we are doing, we are confident that we will successfully deliver the plan

[Earl Howe]
within budget, both this year and next year, through effective management, by monitoring and controlling costs as we go, and with the benefit of the additional money secured in the Budget.

Lord Tunnicliffe (Lab): My Lords, on 20 July 2016, the then chief executive of Defence Equipment and Support, said to the Defence Committee that,
"the eight Type 26 frigates are approximately £8 billion-worth of planning going forward".
I interpret that as meaning that a Type 26 frigate will cost £1 billion. The Government have consistently said that the Type 31e frigates will cost a quarter of £1 billion each. Just how incapable will these frigates be, or does the Secretary of State have a magic wand?

Earl Howe: My Lords, the Type 26 is a high-end specification, anti-submarine warfare frigate; not unnaturally, that specification makes it expensive. The Type 31e is an adaptable, general purpose frigate, subject to completely different procurement processes. However, it should not be inferred from that comparison that the Type 31e will be in any sense a low-grade warship. Of its kind, we intend it to be a world-beater, which other Governments will wish to buy.

The Lord Bishop of Portsmouth: My Lords, will the Minister confirm that these frigates will be based in Portsmouth, and when a decision will be announced to this House? As the home of the Royal Navy, Portsmouth is the obvious home for these frigates, not least because the general purpose Type 23 frigates are currently based there. This decision would bring much support and give reassurance to the city, community and the diocese I serve.

Earl Howe: The right reverend Prelate's bid will not be lost on those of my colleagues who are responsible for decisions of this kind. However, I am afraid I can tell him that no decision has been taken as yet.

Lord Houghton of Richmond (CB): My Lords, I declare an interest in defence procurement issues, as reflected in the register. I wholly support the noble Lord's aspiration to increase the size of the surface fleet—it must be expanded. The Minister will, however, recognise that the three principal trade-offs in a great military procurement exercise are performance, cost and time. Cost is fixed. Time is fixed. Performance must be traded down. Does the Minister agree that the best way to trade on performance is in some way to compromise on the exquisite nature of the platform to ensure that the combat and command systems on board are state of the art?

Earl Howe: The noble and gallant Lord speaks with great experience and he is right: we are consciously prescribing an adaptable but general-purpose specification for the Type 31e, as opposed to the more exquisite high-end specification of, for example, the Type 26. That is not to say—as I emphasised before—that the Type 31e will be in any way an inferior warship—quite the contrary, in terms of the capability that we will require of it.

United States: Trade Deal

Question

3.30 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what assessment they have made of the government of the United States' negotiating objectives for a future trade deal with the United Kingdom, published on 28 February.

Baroness Manzoor (Con): My Lords, negotiating an ambitious free trade agreement with the USA that maintains our high standards for business, workers and consumers is a priority. We welcome this demonstration of the commitment by the US to begin negotiations. The UK and US economies are already highly compatible. We welcome the emphasis on state-of-the-art provision in financial services and digital trade, where the UK is recognised as a world leader. We will publish UK objectives for parliamentary consideration ahead of negotiations.

Lord Hunt of Kings Heath (Lab): My Lords, I think that is a generous interpretation of the aims of the United States Government. It is clear that the price of a trade deal with the US, which this Government will be desperate to achieve, will be high. It will certainly include the possibility of the UK having to pay more for US medicines, of our data protection provisions being swept away, and, with US access to our food markets, of lower standards in food safety and animal welfare. That comes with the added bonus of the US ambassador lecturing our farmers on the delights of chlorine-washed chicken and growth hormones in cattle. In their desperation for a deal, are the Government exchanging so-called vassalage to the EU with subjection to the United States Government?

Baroness Manzoor: My Lords, I do not agree with the noble Lord. As with all negotiations, these objectives mark the starting point for the USA and not the end. They are entirely in keeping with the objectives mandated in US legislation for all trade negotiations and are not surprising. In relation to the NHS, the Government have consistently made it clear that they will continue to ensure that rigorous protections for the NHS are included in all trade agreements. Protecting public services, including the NHS, is of the utmost importance, and the Government will continue to ensure that all decisions about public services are made by the UK Government and not by our trade partners.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend join me in ensuring that the US ambassador should be in awe of UK producers and the high standards of animal welfare that they meet? Will she make representations to the US ambassador to tell us what the density of their chicken and beef production is?

Baroness Manzoor: My Lords, I thank my noble friend for that question. The USA is already our largest single-country trading partner. Trade between us is worth more than £180 billion and accounts for one-fifth of UK exports. We have been clear that any future deal with the US must work for UK consumers,

farmers and companies, as well as ensuring food safety, animal welfare standards and environmental protection. As I said, it is too soon to say exactly what will be included in the future UK-US deal, but we are committed to reaching a high-quality, high-standards deal—

Noble Lords: Oh!

Baroness Manzoor: And, if I may for a second, in relation to the—

Lord Purvis of Tweed (LD): My Lords, a month before the US published its trade negotiation objectives for the United Kingdom, it published its *Summary of Specific Negotiating Objectives* for trade with the European Union. The sections on agriculture, for both the European Union and the United Kingdom, are identical—word for word. We have long held that the use of decontaminants on carcasses, as a replacement for good hygiene in farms and slaughterhouses, is not acceptable, and we prohibit it under UK law. We will have a choice: either to align ourselves to the existing European standards, which are the highest, or to adopt the US standards, which the US is asking us to do. Which will we be aligned to: high standards or low standards?

Baroness Manzoor: My Lords, we will always be aligned to high standards.

Noble Lords: Oh!

Baroness Manzoor: Among the other things said by the US ambassador on the "Today" programme this morning, he stated: "I don't think we would want to lower any of these standards but just want to have more trade between the US and the UK". On agricultural scope, we are committed to negotiating a full and comprehensive free trade deal. That means discussing all areas of free trade. As with all negotiations, the US objectives on matters such as agriculture mark the starting point and not the end.

Lord Anderson of Swansea (Lab): My Lords, it was all going to be so easy, according to Mr Fox and his friends, since when an amendment has been moved. Have the Government realised that they are now confronting a nationalist President who wants to do deals and that commerce is largely under the control of the Congress, whose members want to bring home the bacon to their own districts?

Baroness Manzoor: My Lords, once again, I do not agree. An ambitious UK-US free trade agreement will benefit the UK economy, improving access to the whole of the world's largest, most dynamic economy. It will make it even easier for the UK and US to trade with each other and to invest in each other's economies. Surely that is a good thing for our country.

Lord Wallace of Saltaire (LD): My Lords, this is the second Question today where Ministers have promised that leaving the European Union will make no difference to our regulations. The leave campaign promised us before the referendum that part of the whole rationale for leaving the European Union was to change regulations—indeed, to lower their number, get rid of them and have a free market. Are the Government now betraying that leave promise?

Baroness Manzoor: My Lords, we are not betraying any promise. This Question is about negotiations between the US and the UK. We are working closely with our closest allies to get the best deal we can for UK businesses, consumers and others. We should support that aim wholeheartedly.

Lord McNicol of West Kilbride (Lab): Does the Minister accept that, with the primary US negotiating objective being to,

"Secure comprehensive duty-free market access",

for the US, the UK will be forced to concede on standards, eliminate barriers and agree restrictions on who we can trade with? Page 2 of the recently published US-UK negotiating objectives paper lists as an objective:

"Establish a mechanism to remove expeditiously unwarranted barriers that block the export of U.S. food and agricultural products".

I understand the US's aim, but what will the Government do to push back on that?

Baroness Manzoor: My Lords, as I have said, as with all negotiations, those objectives mark the starting point of the US and not the end, so we will continue to discuss these issues very closely. We have already taken concrete steps towards further developing our strong trading relationship with the US. This includes signing early last month a mutual recognition agreement on conformity assessment, which will secure trade in goods worth up to £12.8 billion as we leave the EU.

Northern Ireland Budget (Anticipation and Adjustments) (No. 2) Bill

First Reading

3.39 pm

The Bill was brought from the Commons, endorsed as a money Bill, and read a first time.

Draft Domestic Abuse Bill Committee

Membership Motion

3.40 pm

Moved by ***Lord Taylor of Holbeach***

That this House concurs with the Commons message of 28 February that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on the draft Domestic Abuse Bill presented to both Houses on 21 January (CP 15);

[Baroness Evans of Bowes Park]

That a Committee of six Lords be appointed to join with the Committee appointed by the Commons and that the Committee should report on the draft Bill by 17 May;

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

Armstrong of Hill Top, B. Bertin, B. Blair of Boughton, L. Burt of Solihull, B. Farmer, L. Ponsonby of Shulbrede, L.

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

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

That the Committee have power to appoint specialist advisers;

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

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

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

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

That the quorum of the Committee shall be two.

Motion agreed.

Stalking Protection Bill

Third Reading

3.40 pm

Moved by ***Baroness Bertin***

That the Bill be now read a third time.

Baroness Bertin (Con): My Lords, I pay tribute to the honourable Member for Totnes, Sarah Wollaston, for all her hard work in creating this Bill in the other place and for her determination to get this legislation on the statute book. Furthermore, the Bill would not be in existence without the many brave stalking victims speaking out and the dedication of campaigners such as the Suzy Lamplugh Trust. I sincerely hope that anyone currently suffering from this terrifying crime will take some comfort from today. More help and protection for them is on its way. I thank this House for its cross-party support, the Home Office—particularly Andrew Lewis and his team—the clerks and Ben Burgess in the Whips' Office, who deserves a medal for his patience with me. I have had the privilege of meeting many victims and grieving families, who have somehow found the strength to channel the pain of their trauma into changing the system to prevent others going through the same horror. I dedicate this Bill to them and to the ones they lost.

Bill passed.

Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018

Carriage of Dangerous Goods (Amendment) Regulations 2019

Storage of Carbon Dioxide (Amendment and Power to Modify) (EU Exit) Regulations 2018

Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019

Shipments of Radioactive Substances (EU Exit) Regulations 2019

Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019

Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019

Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019

Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019

Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019

Motions to Approve

3.42 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 27 November, 17, 19, 20 December 2018, 21 and 30 January be approved.

Relevant documents: 10th and 16th Reports from the Secondary Legislation Scrutiny Committee (Sub-Committee A) and the 12th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B). Considered in Grand Committee on 13 and 26 February.

Motions agreed.

Trade Bill

Report (1st Day)

Relevant document: Processes for making free trade agreements after the United Kingdom has left the European Union (CP 63)

3.42 pm

Moved by ***Baroness Fairhead***

That the Report be now received.

The Minister of State, Department for International Trade (Baroness Fairhead) (Con): My Lords, this House has debated many issues during the passage of the Trade Bill, none more important than the scrutiny of future free trade agreements. That was the subject of the Motion tabled by the noble Baroness, Lady Smith, seeking further details of the Government's intentions in this respect. In response, last Thursday we published a Command Paper setting out further proposals for the parliamentary scrutiny of future FTAs. Those proposals drew heavily on the views put forward by Members of this House.

Noble Lords raised questions about Parliament's role in future FTAs, the role of the devolved Administrations and legislatures, and public transparency. We listened, we considered carefully and we have acted. In particular, we hear concerns about transparency and scrutiny of negotiating objectives, transparency over negotiations themselves and the desire for Parliament to be involved at every stage of the negotiations and not just at the ratification stage. As a result, we have brought forward comprehensive proposals on public transparency and the role of Parliament and the devolved Administrations. I will not go into detail on those proposals now, as we will debate them fully during Report, but they give Parliament, and this House in particular, the reassurance that this Government are fully committed to effective parliamentary scrutiny and public transparency.

It is often said that no legislation passes the scrutiny of this House without being improved. From my perspective, this is unquestionably true here. Equally, it should be recognised that this House can and does influence and improve thinking beyond the strict confines of the Bills that pass through it. The Trade Bill focuses on continuity of existing trade agreements, but throughout its passage we have touched on issues of great importance outside of the scope of the legislative provisions before us and, as I said, none is more important than the scrutiny of future FTAs. It is perhaps not often that the Government welcome a Motion tabled by the Opposition on one of their Bills, but in this instance I can say that the Motion tabled by the noble Baroness, Lady Smith, served our common objective of ensuring that the scrutiny arrangements for future FTAs are robust, effective and informed by the passionate and expert Members of your Lordships' House.

This Bill is essential to providing continuity and certainty for UK businesses as we leave the EU. I look forward to making progress on the Bill this afternoon and I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, first, I thank the Minister for her efforts to meet the requirements of the Motion in the name of my noble friend Lady Smith of Basildon, who is unfortunately indisposed at the moment. I know that my noble friend keeps a beady eye on everything that goes on here, so she will have noticed the welcome given to her Motion, even though it was not quite so well received on the Government Benches at the time. Nevertheless, we are where we are and we have made some progress. It cannot have been easy for the Minister or the Government as a whole to get a White Paper prepared and laid in an atmosphere that is probably best not gone into and in the very short time available. It is a major achievement and we appreciate it. It is also clear that the Government's thinking has progressed in recent weeks and we welcome much of the analysis set out in the White Paper.

As we all know, trade negotiations are complex and difficult. They should engage civil society and feed in the views of consumers, trade unions and companies. The negotiations require a proper and effective system, involving this Parliament and the devolved Administrations, in relation to the negotiating mandate, and feedback on the negotiations as they progress and the final agreements. We think that requires underpinning with a statutory framework so, in the absence of any government amendments covering these points on Report, and in view of the assertion in the White Paper that no legislation is needed to deliver the Government's proposals, we have tabled an amendment setting out a possible scheme. It is on that basis that we are happy to agree with the Motion moved by the noble Baroness and proceed to Report.

Lord Purvis of Tweed (LD): My Lords, like the noble Lord, Lord Stevenson, we welcome the Minister's comments from the Dispatch Box. This is an occasion when parliamentary persistence has proved effective. We started this process when the Government had indicated that the Bill would be about only the existing continuity agreements and we made a very strong case, across all parts of the House, that it should also signal a direction of travel which, in many respects, would create precedent. It is on that basis that we on these Benches welcome the Command Paper that the Minister has published and her willingness to engage with and meet opposition parties and Members from across the House.

One reason this has been so important is that it has been a consistent practice of this Government, in relation to continuity trade agreements or starting discussions with countries about future trading relationships, to delude themselves that it will be easy, then deny that there is a problem when it is highlighted that they are difficult. Then they demur when frustrated officials leak information that allows us to glean the reality from the media. Then, unfortunately, on occasions, they deflect the problem, saying that is not their problem or responsibility; it is other countries that are not lifting the burden, or the European Union that is not being forthcoming with its position on a future relationship. We want to be in a position where we can put all that behind us and move on to a platform

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where we have much greater clarity as to what the trading relationships, and the role of Parliament and the devolved Administrations in their oversight and approval, will be. I welcome the Command Paper as the start of that.

To quote the noble Baroness, Lady Manzoor, from Question Time, this can be only the start of the process, and this is the platform on which we will seek to build. This is not the end. In that spirit, I hope the Government will be very favourable to Amendment 12 later today to ensure that that platform can be built on in the most constructive manner. On that basis, I look forward to hearing the Minister's comments.

Lord Hannay of Chiswick (CB): My Lords, as one of those who supported the amendment of the noble Baroness, Lady Smith, I thank the Minister for her efforts in the meantime and for the publication of the Command Paper, which is a useful production and provides greater clarity on the Government's intentions.

I shall make two small points. First, this legislation really matters. It could be—I hope it will not be—that within three weeks we will have left the European Union without a deal, in which case the Bill, by then perhaps an Act, will be the basis for Britain's future independent trade policy. So we need to get it right. On the issue of parliamentary oversight, mandating and scrutiny, the Bill currently before your Lordships' House on Report contains not one word added in that respect to the version we saw in Committee. The problem is the Government's unwillingness to put in the Bill the provisions described in the Command Paper. That is at the heart of the debate we will have on Amendment 12.

Baroness Fairhead: My Lords, with the indulgence of the House I should like to welcome the start of Report. A number of points were made on the preceding Motion, but I believe that they will be picked up in our discussions on further amendments over the course of the day.

I have listened carefully to the thoughtful contributions that this House has made on the Bill so far—not just in our debates, but in meetings I have had with a great number of noble Lords over the past few weeks. I look forward to continuing to benefit from the experience, expertise and knowledge of your Lordships, and the continuation of the constructive dialogue we have had so far.

Lord Kerr of Kinlochard (CB): I would like to ask one question of the Minister. I welcome the White Paper; it is full of commitments to transparency. What will be the tariff regime of the United Kingdom for imports on 30 March if we have left the European Union on 29 March with no deal? We know what the European Union's tariff will be against us—it is the one we are currently applying—and we know that two months ago the European Union sent out instructions to the member states on how to apply the common external tariff against United Kingdom goods in the event of a no-deal Brexit. As far as I know, however, we know nothing apart from rumour about the regime that British importers will pay. Could the Minister enlighten us?

Baroness Fairhead: As the noble Lord will be aware, the Government's aim is to achieve a deal. As this House will also be aware, we seek to achieve some important agreements on or before 12 March. We are therefore not planning for no deal, which is not our preferred option. If and when that occurs, that would be the appropriate time to publish those schedules, but as I have said before on the Floor of this House our objective is to achieve an agreement, at which point we will move into the implementation period.

Lord Kerr of Kinlochard: I understand that that is the Government's aim, but it is also the case that the Government have deliberately kept no deal on the table. British importers, businesses and farmers do not know what no deal means for them. Is that fair?

Baroness Fairhead: I understand the point that the noble Lord is making. As we have always said, we will seek to balance the protection of our consumers and downstream users from the possible price impact of no deal. The tariff regime will be subject to the approval of the House, and secondary legislation to give effect to the tariff will be laid in line with the Taxation (Cross-border Trade) Act 2018. The Government aim to secure a deal, so we hope that that announcement will not be required.

Lord Lansley (Con): Before my noble friend sits down, I draw the attention of the House to Amendment 10, in my name and that of the noble Lord, Lord Stevenson, which relates to tariffs. It permits a debate of the kind that I think the noble Lord, Lord Kerr, was hinting that he wanted. It seems to me that we do not start on 29 March without a schedule. We have notified a schedule to the WTO, and it is in line with the EU's external tariff. On that basis, we should talk about it later rather than now. We know where we start from. The issue is to what extent we might vary—that is, apply a rate of duty lower than the EU's external tariff at some point after 29 March were we to leave without a deal.

Baroness Fairhead: I thank my noble friend for his clarification. That is indeed true but I think he will also accept that, if we were aiming to have a deal, we would not need to publish. If we got to a stage where no deal looked likely, clearly we would have to provide the information that he and the noble Lord, Lord Kerr, mentioned.

Baroness McIntosh of Pickering (Con): My noble friend will be aware that the Secretary of State for Agriculture promised, at the NFU Conference more than two weeks ago, that the tariffs would be published. It would be immensely helpful for the House to have that information before us for the purposes of the Bill today. I wonder if there is a reason why the tariffs have not been published now.

Baroness Fairhead: I hope I have addressed that. Should no deal appear to be what is happening, they will be published. We are focusing very much on achieving a deal, so we do not feel that this is the right time to publish.

I thank all the noble Lords for their additional contributions. I look forward to debating these and other issues as we progress through Report.

Report received.

Clause 1: Implementation of the Agreement on Government Procurement

Amendment 1

Moved by ***Baroness Fairhead***

1: Clause 1, page 2, line 13, after "direct" insert "principal"

Baroness Fairhead: My Lords, as this amendment touches on the GPA, I inform the House that the UK has formally received an invitation to accede to the GPA. This was agreed by the GPA committee at a meeting in Geneva on 27 February, and I am sure that the House welcomes that news.

Government Amendments 1 and 2 have been tabled to clarify that the powers in the Trade Bill may be used to modify retained direct principal European Union legislation. These amendments are very simple in nature. They make it clear that the regulations made under either Clauses 1 or 2 may, like the powers conferred under the European Union (Withdrawal) Act, modify retained direct principal EU legislation. This will allow qualifications to be made which make retained direct principal EU legislation workable in the context of a UK outside the EU.

4 pm

The Constitution Committee recommended in its report of 15 October 2018 that the Bill was clearer in its definition of retained direct EU legislation. I welcome the work that the Constitution Committee has undertaken on the Trade Bill, which shows the very best of the expertise that can be applied in this House. Consequently, and in light of its recommendation, we have brought forward this amendment, which I hope brings greater clarity to the Bill and will be supported by this House.

Baroness McIntosh of Pickering: My Lords, perhaps there is a report from the Constitution Committee that would answer the question I am about to ask, but what is the concept of direct principal European legislation? I do not recall it being referred to—perhaps I should. Is it the main pieces of legislation? Could my noble friend be more specific?

Baroness Fairhead: My Lords, the concept of retained direct principal EU legislation is that of EU legislation that will come into UK law upon leaving the EU. This amendment will make a clarification to ensure that the same wording is used as in the withdrawal Act. Just for further clarification, because I asked it myself, saying "retained direct principal EU legislation" includes minor legislation.

Amendment 1 agreed.

Clause 2: Implementation of international trade agreements

Amendment 2

Moved by ***Baroness Fairhead***

2: Clause 2, page 2, line 41, after "direct" insert "principal"

Amendment 2 agreed.

Amendment 3

Moved by ***Baroness Jones of Moulsecoomb***

3: Clause 2, page 2, line 47, at end insert—

"(5A) Regulations under subsection (1) may not be used to make provision which will have the effect of reducing standards in comparison to those applying immediately before exit day.

(5B) Standards in subsection (5A) include, but are not limited to, those relating to—

(a) marketing of agricultural products,

(b) animal health, hygiene or welfare,

(c) environmental protection,

(d) food safety,

(e) public health,

(f) employment and labour,

(g) human rights."

Baroness Jones of Moulsecoomb (GP): My Lords, I will also speak in support of Amendment 4, which I have put my name to.

I thank the Minister and her civil servants for meeting me to discuss my amendment outside this Chamber. She has been incredibly generous with her time, and I very much appreciate that. It is thanks to the meeting with the Minister and the constructive criticism from noble Lords in Committee that I have tabled this much refined amendment on Report.

The sole purpose of my amendment is to give legislative effect to the Government's own policy, which, as I understand it, is that the Bill will be used only to roll over existing free trade agreements that we enjoy as a member of the EU so that we can continue to enjoy them after we leave. Rolling over means no renegotiation, changes in terms or reduction in standards. My amendment is a way of giving effect to the Government's own policy. I am not looking to cause trouble here, nor to undermine the Government—for a change.

The problem with the Bill as it currently stands is that it does not give effect to this policy. The Clause 2 powers are much broader than they need to be, and would allow for a significant undermining of precious protections for our environment, workers' rights, food safety and a whole host of other provisions. Clause 2(1) allows an appropriate authority to,

"make such provision as the authority considers appropriate for the purpose of implementing an international trade agreement".

Clause 2(2) and (3) restrict the regulation-making power only to implement agreements with signatories which are already signatory to a trade agreement with the EU, but that is the only limit on the power. There is nothing to say that the terms of an agreement have to

[Baroness Jones of Moulsecoomb]
be the same or similar to the existing EU trade agreements. There is no reference to protecting standards and no limit on renegotiation, nor on implementing a totally new trade agreement. There is not even a time limit, or sunset clause, on how long into the future these powers can be used. Hundreds of years from now, a Government could implement a completely new trade agreement on the sole condition that the partner country had a deal with the EU before Brexit. If this sounds ridiculous, it is because it is. Clause 2 grants Ministers an incredibly broad, almost uncurtailed power to enact whatever trade agreements they negotiate.

At Question Time today, chlorinated chicken was mentioned with regard to trading with the USA. A Bryan Smith got in touch with me to say, "As a microbiologist, I can tell you for sure that washing chicken carcasses in bleach does not kill all salmonella. It forces the bacteria to form cysts which can hatch later. It is much harder to detect in this form, so it hides the problem". I used to joke that it was just as well that chickens were chlorinated because at least they were clean. In fact, they do not now use a chlorinated wash; they use other substances—for example, peracetic acid. This is an organic peroxide—a colourless liquid—and it can be highly corrosive. The practice is not dangerous in itself but it might hide poor farming hygiene practices. Other animal welfare issues are very concerning, such as stocking density, sow stalls, animal transport, antibiotic use, veal crates, battery cages, debeaking, tail docking and castration. We could be subjecting our food to these practices and people to whom I talk outside this House are absolutely horrified.

The Minister told the Committee that none of this mattered because the European Union (Withdrawal) Act brought all European standards and rules into UK law. They say that everything is fine; everything is protected. This is completely undermined by Clause 2(5)(a) which allows the Minister, by regulations, to modify,

"retained direct EU legislation or primary legislation that is retained EU law".

So the Government, having incorporated all EU law into the withdrawal Act, would have the unrestricted power to tear it all up in order to implement whatever terms they agreed in these trade deals. The Government's assertion that the withdrawal Act resolves all my concerns could be correct only if Clause 2(5)(a) were removed from the Bill or curtailed by restrictions, such as those in my amendment.

The truth is that we are not protected by retained EU law at all because the Bill allows the Government to scrap it in the interests of trade. The only protection left is the assertion from the Government that they will not use the powers in the Bill to undermine our prevailing standards. This is not good enough. If the Government are not going to use the powers, as they have promised they will not, my amendment will not make the slightest difference. It would cause a problem for Ministers only if they go against their promises and try to undermine prevailing standards when incorporating a trade agreement. We must not allow this to even be an option.

I have tried to draft my amendment in the simplest possible terms. This is for my own reference and not because this House in any way lacks understanding. The amendment uses as reference all the standards which apply immediately before exit day—the existing standards on which current trade deals operate. Some trade deals might have higher standards than others, so my amendment is designed to allow whatever level exists in each specific trade deal to be rolled over. The Government have a problem only if there is any reduction in standards in the rolling-over process. This is a much more restricted approach than I would have liked. Amendment 4 expands on it and could be much more powerful. I have gone to great lengths to develop an approach that can be supported by noble Lords across your Lordships' House, and even be accepted by the Government. Personally, I should like much higher standards, but I am compromising here, which is not easy.

The Bill gives far too much freedom to Ministers to change the law and undermine our precious standards on a whole range of issues. The Government's promises and ambitions will easily give way to the harsh reality of trade negotiations. By that point, it will be too late for Parliament to reject whatever deals are made. Your Lordships' House must put a backstop on the Government's promises, so that these trade deals cannot be renegotiated in a way which would undermine any of our prevailing standards. My amendment will achieve this. I beg to move.

Baroness Henig (Lab): My Lords, I have put my name to Amendments 3 and 4 and speak in support of the noble Baroness, Lady Jones. We had a wide-ranging debate in Committee about standards and Members from across the House argued that we should not allow standards to fall in a whole range of important areas, as outlined in the amendment. The Government's reply was to agree in principle. The Minister said at the time that the Government were committed to high standards and that they were the right policy for the country, but that they should not be written in the Bill. When asked why not, she was unable to give a convincing reply.

It is essential that we take this opportunity to ensure that existing standards in a number of areas cannot be lowered as a result of the Bill and that that is made explicit in the Bill. One reason for that comes down to the issue of trust. In 2017, the Trade Secretary promised that the United Kingdom would not lower the standards. He said:

"We have made very clear we are not going to see reductions in our standards as we move forward, partly because British consumers wouldn't stand for it".

But at the same time, the self-same Trade Secretary has prioritised a trade deal with the United States. It is no secret that the prime aim on the United States' side will be to negotiate lower food standards with the United Kingdom to enable their food products to flood in to the UK. There is no secret that that is their ambition.

Asked about this last weekend, when asked about food standards, the Trade Secretary replied:

"The question is not about safety".

This is a bigger issue than the safety or not of a way of preparing food, which is also subject to rules at the World Trade Organization: it is about the decisions we

make between the EU and United States approach to regulation. It is about the barriers to trade that that may impose, the impact on our producers and, most of all, the level of trust over trade policy.

The absolute worst way to make significant changes would be through the power under the Bill, because that would cause huge resentment and distrust of United Kingdom trade policy, which would damage our long-term prospects of achieving consensus and wide support for trade deals in future. As the noble Baroness, Lady Jones, points out, under the Bill, the Government could make any change they liked to any regulations as long as it was relevant to implementing a trade agreement and that tariff changes are handled by another piece of legislation. Let us take the much cited chlorinated chicken, which she mentioned, beloved of the United States.

Lord Lansley: My Lords, surely the point is that the Bill relates only to agreements in place before exit day. There is no agreement on chlorinated chicken or with the United States, so any such argument is irrelevant to the Bill.

Baroness Henig: The noble Lord is clearly prescient, because I am just about to cover the very point he raises. As I said, let us take the question of chlorinated chicken. There is nothing to stop Ministers making that change in implementing existing trade agreements. For example, perhaps Mexico would want us to declare that we will accept chlorinated chicken in return for continuing our trade agreement. There is nothing to stop a country with which we have an existing agreement asking for that in future as a part of the rollover, which is what I think he was asking about. Slightly more far-fetched, perhaps, there may be a change of Minister. Perhaps the current Secretary of State for Transport takes over at trade and makes the change by mistake. Who knows?

That is why it is so important to agree the amendment. Major changes in standards in all these important areas should not be covered under the Bill: they need to be fully discussed in terms of our future trade relationship with the United States and the EU in the light of the terms under which we depart from the European Union and with the involvement of a wide range of businesses, trade associations, producers, consumers and local communities. The Bill should not allow a departure from standards, and that is why I put my name to the amendments.

Baroness McIntosh of Pickering: I am delighted to follow the noble Baroness, Lady Henig, and thank her, the noble Baroness, Lady Jones of Moulsecoomb, and the noble Baroness, Lady Brown of Cambridge, for their support for the amendment in my name. Since we last met in Committee, there have been two positive developments. One is the fact that the Government have published their report on the implications of no deal for business and trade. The second is the promise to publish the tariffs.

4.15 pm

I shall speak about my Amendment 4, which I thought was superior to Amendment 3, although there is not a great deal in it. I am particularly concerned that, when we look at the rolled-over agreements with some countries, we see that a number of African countries do not necessarily have the same animal health and hygiene standards that we do. This is a matter of concern with continuity agreements as well as with future agreements.

I hope that my noble friend the Minister will agree that any relevant trade agreement that we wish to see as part of the continuity agreements should be consistent with the standards laid down by primary and subordinate legislation, whether those are principal or minor. I hope that her department can help a little more by explaining what "principal legislation" means, because I still do not entirely follow that. I want particularly to look at food safety and animal welfare issues in this regard, and to ensure that any goods imported under a relevant trade agreement have been produced to standards comparable with those already effective in the UK, as per the aspects listed in subsections (1) to (3) of my amendment.

I also insist that both Houses should have,

"approved a motion that the relevant trade agreement does not have the effect of lowering marketing standards for agricultural products below the standards used by the European Union on the day the motion"—

that is, the motion to leave—

"is passed".

The noble Baroness, Lady Henig, made that point eloquently in Committee.

The figures are quite telling. On 2018 figures, trade between the UK and the EU amounts to £286,000 million, accounting for 45.6% of total UK trade. That is overwhelmingly our major market. UK participation in the roughly 40 current trade agreements covering 70 countries—again, on 2018 figures—is infinitely smaller, and accounts for 11% of UK trade. UK trade with the rest of the world currently amounts to about 40% of our trade. UK-US trade is 18% of our trade. There is lots of talk about a future agreement with Japan, as currently we have no agreement with that country, but that would account for only 2.1% of our present trade. With Turkey the figure is 1.9%.

I understand that since Committee stage the Government have issued a Written Ministerial Statement in the other place outlining the implications of the fact that the Turkey agreement and the EU-Japan agreement cannot be rolled over. It is very helpful to have that Statement on the record.

As I said at the opening of Report stage, I regret that the House is not yet in possession of the tariffs. I understand that we have some figures from the Secretary of State for Environment, Food and Rural Affairs, given at the NFU conference last month, and that in the event of no deal we are looking at potential tariffs on imports of 70% on beef and 45% on lamb. It is important to grasp those figures, and what the impact on our home producers will be.

Under a previous Conservative Government—I welcomed this at the time, although it made us very uncompetitive—we had the unilateral sow stall and tether ban, which gave our UK pig producers a seven-year disadvantage. It put prices up because we had to impose the ban seven years in advance of the rest of the EU, and many of our producers went out of

[Baroness McIntosh of Pickering]
business because consumers voted with their feet and bought the cheaper meat produced to lower animal welfare standards. I hope that the Minister will not lose sight of the fact that consumers, the public and farmers welcome these higher standards of animal welfare, and that they will not be sacrificed in this dash for future free trade agreements.

On the continuity agreements—the rolled-over agreements—the most unfavourable one relates to the Faroe Islands. We export £6 million-worth of goods to the Faroes and import £200 million-worth, mostly fish. That will be of concern to the Scottish fisherman, as the fish are mostly salmon, halibut, haddock and many of the other products the Scots seek to sell.

I hope the Government will look favourably on Amendment 4. We recognise all the work that successive Governments of various political persuasions—including both main parties—have pursued in setting a high bar for animal welfare and food safety. In the amendment, I have added animal health and hygiene to any future rolled-over agreements.

Lord Purvis of Tweed: My Lords, we now know for a fact that only a tiny fraction of those rolled-over trade agreements to which we are a party and will have ratified before exit day will be considered continuity agreements. The reality is that within a short period of time—a number of weeks, in fact—we will not be able to rely on the fact that our existing trade agreements will be considered as continuity agreements. The noble Baroness, Lady Henig, is absolutely right that, for the vast majority of the agreements we enter into prior to exit day, there will have to be a degree of certainty as to the underpinning, replicating or agreement of standards after exit day.

In many respects, the only continuity agreements that will exist are those we will have ratified before exit day, which is a tiny fraction of those that exist. Everything else will be, in effect, a trade deal. The concern is that the Government may choose to use the regulatory framework in this Bill rather than the CRaG procedure in making treaties. It is absolutely right that in this Bill we should have a degree of legal underpinning of the standards to which we are now a party and which we wish to see continued after exit day.

In Committee there were a number of amendments from me, my colleagues on these Benches, the noble Lord, Lord Stevenson, the noble Baronesses, Lady Henig and Lady McIntosh, and others. I am happy that this has coalesced around a cross-party amendment and I look forward to the Government's response. On exit, we are looking to baseline the standards that already exist. It is necessary to maintain these standards in any of the agreements now that we are likely to carry forward—which can be permanent. Regulations made under this Bill would last for three years, but could be extended for a further three years and then a further three years. The lifetime of the regulations could become very long indeed.

As much as the Government say there is no difference in them as they are simply continuity and will not include any of the contents, that is merely a statement of policy. As we just heard on tariff policy, we know what schedules have been submitted to Geneva. However, we now know that if there is a likelihood of no deal, potentially there will be a revision to the schedules put forward by the Government. We cannot rely simply on the policy of the Government: we must rely on the legislation being clear.

We already know through the EU Select Committee of this House that there are some differences in the agreements that have already been signed beyond legal terminology. We know that interpretation of text can sometimes be as important as the text itself when it comes to trading relationships. That is why I have lodged Motions to debate each of the three deals that have so far been agreed, so that the Chamber has an opportunity to look at them. The noble Baroness, Lady McIntosh, and others will, I am sure, want to take part in a debate on the Faroe Islands agreement and others. I have had to lodge the Motions to debate those agreements because the Government did not intend to do so. The EU Select Committee report said it was "bizarre" that the Government chose not to bring those agreements at least for consideration in the Chamber. However, they will be debated because I have ensured that. The Minister, who has expressed openness and transparency all along, was seemingly content for there to be no debate on those agreements—the only ones that we are likely to have, with the addition of Switzerland in the next week or so. That is regrettable.

With regard to the amendment, the Minister may say that she has difficulty with the words "reducing", "standards" and, in particular, "animal … welfare". Proposed new paragraphs (a) to (g) are reasonable areas in which we have current regulatory standards as a baseline that we wish to protect. The Government should have no problem in accepting proposed new paragraph (f) on labour rights. The Prime Minister seems to have accepted it as regards guaranteeing employment and labour rights, and I would be surprised—putting it lightly—if, the day after the Government said a "lock" would be put in place to guarantee the future of these standards, they opposed an amendment that secured those standards' continuity.

If the Minister says that she is concerned about the word "reducing", she need not be. We have well-established systems of oversight through the courts to consider whether the current regulatory regime for standards is being upheld. The Government seem content with their approach on migrating such existing laws into domestic law so it should not pose problems for civil society groups or any interested parties to consider whether or not standards are being reduced. In the amendment, we are stating that they should be upheld in the implementation of any new agreements by virtue of the continuity agreements being new treaties. That is reasonable.

The Minister should also be content with the use of the word "standards", as this is commonplace. Indeed, that is clear in, for example, the Air Quality Standards (Amendment) Regulations 2016, which this Government brought forward and Parliament passed. None of those areas should pose them any difficulties.

The Government also seem to have been opaque in recent days about animal health, hygiene and welfare—the point made by the noble Baroness, Lady Henig—and

whether it is necessary to continue these approaches when we engage in trade agreements. In many respects, this is the litmus test for how the Government will approach the discussions. The Secretary of State's rather glib comparison on television at the weekend between the process of surface-washing salads with chlorine prior to packaging and its use as a decontaminant in the United States as a replacement for good hygiene practice at farm level and in slaughterhouses, thereby directly masking poorer hygienic practices, was utterly misleading. He should not have said that. The EU, with full UK support, has made it clear that good hygiene practice is a prerequisite to the application of hazard-based controls, and that these are an essential element in any discussion on market access for such animal products.

Lord Lilley (Con): I am grateful to the noble Lord for pointing out the distinction between whether chlorine washing is bad for our health or masks the different treatment of animals during their lives. Is he saying that chlorine washing is not bad for our health, whether it is used on fruit from the EU or animals from the US? He and others have been using the issue as a scare to make us think that our health would be put at risk by having things rendered salmonella-free by this kind of treatment, whether by the EU or the US.

Lord Purvis of Tweed: It is a shame that processes do not allow interventions on interventions. When have I said that this is a health risk? When has the noble Lord heard me say that? He intervened on me and said "he", as in "me".

Lord Lilley: I apologise and withdraw in that case.

Lord Purvis of Tweed: I am grateful for that. The point I am making is that the EU, with full UK support, has had a consistent position on the use of chlorine on chickens—that it should not be used to mask the lack of hygiene on farms and in slaughterhouses. The separate issue of the effect of its use on public health is, and always has been, a moot point which the European Union has always recognised, and that is why it has consistently commissioned a number of reports. The final conclusion from those reports, which the EU and the UK have relied upon, has come from the World Health Organization, which has said that, as far as the use of chlorine in agriculture is concerned, the current position is the one to be maintained, because the primacy is that the United States, as a policy, uses it to mask poor hygiene practices in farms and slaughterhouses. When it comes to trade and the trading of goods, that is the critical aspect, and that would be reflected in a trade agreement.

4.30 pm

I was disappointed that the noble Baroness, Lady Manzoor, was not careful to say that the United States' negotiating objectives would be only the start, when we have in the past, as a policy, categorically ruled out the importation of chickens that have gone through that process. It is black or white: we either maintain our position or adopt the American position. Neither can be finessed, and the Minister should have been categorical that we will not move from our position on the use of chlorine on chickens. That is why it was very disappointing that the Secretary of State blurred the lines and conflated its use with the process of surface-washing salad.

Some have therefore suggested, as the Secretary of State did, that animal welfare should not have a place in the trade discussions. Some have indicated that that is not permitted under WTO rules. I hope that the Minister will not say that when she responds to this debate, because the UK has a number of trade bans relating to animal protection that have been implemented as part of international obligations or agreements, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora. For example, the UK has had an import ban on products from endangered species, such as tiger skins, ivory and pangolins, dating back to 1975, 1989 and 2016. This has been a consistent approach by the UK. Furthermore, we have a number of trade bans which have been implemented across the EU and have never been challenged or tested, so they can remain in place. They include an import ban on fur produced from cats and dogs, which was implemented due to concerns about the killing methods used. All those indicate that we have a wide set of standards which need to be protected in the existing continuity agreements. However, I repeat that only a tiny fraction of them will have been agreed before exit day and therefore after exit day they might not be considered by the Government to be merely continuity agreements—they would be trade deals. That is why this amendment to correct some of the misleading statements from the Secretary of State needs to be made and why these standards need to be underpinned as we go forward.

Lord Garnier (Con): What else does the noble Lord have in mind in proposed new subsection (5B) when he uses the expression,

"but are not limited to"?

Lord Purvis of Tweed: As the noble Lord will know, we have engaged in a number of legislative standards across all the different aspects of the British economy. If they are not captured in proposed new paragraphs (a) to (g), which we believe to be comprehensive, and if there are some elements of the economy where legislative standards currently exist and we would consider them to be of equal status, there is a requirement for them to be protected. That is why these are baseline standards. If areas are excluded, they will be captured by "not limited to". The list of standards is not necessarily designed to be open-ended; these are meant to be the existing legislative standards that are already on the statute book that we wish not to be impacted by any of the regulations that could be made through this legislation.

Lord Stevenson of Balmacara: My Lords, we have had a very good debate on an important and long-lasting topic which we need to draw to some form of conclusion. We have before us two amendments that cover the ground very admirably, although their approaches are rather different. Indeed, the essence of what we are trying to get at may become a little masked in the

[Lord Stevenson of Balmacara]
timing. That last exchange is a good example of the way in which aspiration, interests and enthusiasm can sometimes lead us to a position where the drafting does not support where we are trying to go to.

We should be clear that there is support around the House for putting into the Bill at an appropriate place a clear and unambiguous statement which reiterates what the Government have said on a number of occasions—and we will probably hear again in a few minutes when the Minister responds—that they are committed to not lowering domestic standards in the EU agreements that are transitioning into bilateral agreements or in any future trade agreements that they wish us to enter into. If we can hold on to that and find the appropriate words rather than the ones before us, which need to be merged if we are to get the best out of this, we might make a way forward. I hope the Minister will give us hope that there will be the opportunity for further meetings and discussions on this issue. It is worth trying to go the extra mile to get us to a point where, by Third Reading, we have an agreed procedure.

The noble Lord, Lord Purvis, was right to try to drill down into some of the points that may need to be bottomed out. I will not repeat where there are difficulties but simply acknowledge that we need to be clear about whose standards we are talking about, where they are to be found in current statute, how they apply to UK interests and how they are limited in what they might say to any future Government about third-party Government arrangements, which are clearly not right.

Another point is to pick up how the WTO and other international agreements and treaties that we make covering the list in subsection (5B)(a) to (g) would fit best in a statutory form. That is the way that we need to go. I therefore hope that all parties will accept that this is not the time to force through either of these amendments but to come forward with an agreed position, if we can, in time for Third Reading.

Baroness Fairhead: My Lords, I appreciate the attention that this House has paid to the vitally important issue of standards at each of the Bill's stages, and for the amendments tabled by the noble Baronesses, Lady Jones of Moulsecoomb, Lady Henig, Lady McIntosh of Pickering, Lady Brown of Cambridge, and by the noble Lords, Lord Stevenson of Balmacara and Lord Purvis of Tweed. I also thank their Lordships for the productive meetings that we have had on the subject.

The Government, like your Lordships, do not want and do not intend the strong environmental protection, food safety, and animal welfare standards that the UK is proud of to be lowered once we leave the EU. As I mentioned in Committee, the Prime Minister and Ministers from across government, including Defra and DIT, have made public commitments to the maintenance of the current protections and offered many assurances that we will not lower these rigorous levels of protection in order to secure trade deals.

Let us not forget that, first and foremost, our policy is one of continuity. We seek to carry over the effect of the existing EU agreements. Our trade continuity programme is rooted in our desire to deliver consistency to businesses and consumers as we leave the EU. This approach has been widely endorsed by partner countries, businesses and Parliament. The International Trade Select Committee report in March 2018, for example, stated:

> "Almost no one who contributed to our inquiry suggested that the Government's policy objective of seeking continuity was the wrong one".

In relation to standards, I can confirm that, under the provisions of the EU withdrawal Act, we will start at a point of maintaining the high standards that we have benefited from as an EU member. This provides us with a strong basis to build on in future. This includes those provisions that the House will be aware of on chlorinated chicken or hormone-treated beef, which will not be able to enter the UK market. The UK has already transposed the relevant EU Council directive into UK law prohibiting the use of artificial growth hormones in both domestic production and imported products. This is now UK law. No products, other than potable water, are approved in the EU to decontaminate poultry carcasses, and this will still be the case in the UK when we leave the EU. EU food safety provisions will come across through the European Union (Withdrawal) Act 2018, where they will be enshrined in UK law.

The noble Baroness, Lady Jones, raised an issue about the unlimited duration of this clause. I would just like to clarify that there is a sunset clause for this power: unless it is extended by both Houses of Parliament, it will expire three years after exit day. That is set out in Clause 2(7).

I turn to the issue of reducing standards in future trade agreements. Our future trade agreements provide us with the greatest opportunities for the UK to develop its global trading position. The demand for UK goods, as I have seen first-hand, is based heavily on our outstanding reputation for quality and the British mark of excellence. The Government have no intention of harming this reputation. Indeed, we intend, as a minimum, to maintain the standards that we currently have, which are set out in our primary and subordinate legislation, and the high standards that we have led on maintaining as a member of the EU. We will continue to retain these as part of the retention of EU legislation, as we exit the EU, through the EU withdrawal Act. The desire to maintain the high levels of standards that we enjoy in the UK is therefore at the heart of the Government of this country and, more than not planning to reduce those standards, we have a strong policy of ensuring that those standards are maintained.

The noble Lord, Lord Purvis, raised a point about the WTO schedules and the fact that we are already suggesting that we might change them. I want to clarify that our WTO schedules will not change. These set out the maximum tariffs that the UK would impose. The UK, like any country, remains free to impose lower tariffs than those set down if it so chooses.

On Amendment 3, I thank the noble Lords for their amendment and for my conversations with them on this important issue. I fully understand the sentiment with which the amendment is laid and have already reiterated in my response the Government's strong commitment to maintaining standards as we leave the EU. However, we feel that the amendment as currently drafted is problematic for a number of reasons.

First, the amendment comes with some uncertainties as to its scope. The term "standards" does not have a single legal definition which can easily be called upon. Any legislative commitment not to lower standards would need to make crystal clear what regulations are in scope. This amendment does not, and instead requires the Government to report against an open-ended list of potentially relevant standards, as my noble and learned friend Lord Garnier highlighted. This would require the establishment of a process to determine what constitutes "standards", not only in each of the listed groups of standards but beyond. Outcomes of this process could then be easily questioned in a court and, until a court ruled on the matter, they would simply be the Government's own assessment rather than legal certainties.

Secondly, on the notion of "reducing" standards, how the Government would prove that they were or were not reducing them would be problematic. This contains a degree of subjectivity, which would create considerable legal uncertainty if it were to be added to the Bill. Again, the term "standards" can mean a voluntary, best-practice way of doing something. Standards are often not set by Governments but developed by consensus among relevant stakeholders. Of course, there are minimum levels of safety, quality and environmental protection—for example, where voluntary approaches are not effective. These rules and regulations are mandatory and enshrined in our laws, which, of course, are subject to parliamentary approval.

We sincerely believe that the best way to influence standards in other countries is to forge strong trading relationships where we can positively influence those countries through the reputation of UK businesses. Through such relationships, we can insist on the proper treatment of workers and their rights, so that UK consumers are assured that the products they buy from reputable UK businesses are from suppliers whose practices those businesses have assured. In order to achieve that, we need to have trade agreements in place.

On human rights, which are referred to in paragraph (g) of the amendment, noble Lords will recall that the Government have already reaffirmed that the UK is a signatory to the ECHR and will continue to uphold human rights in the UK under the Human Rights Act. The Clause 2 power cannot be used to amend the Human Rights Act, and it would be unlawful for any regulation under the Trade Bill to be incompatible with the rights enshrined in the ECHR.

4.45 pm

On Amendment 4, I have listened with interest to the useful debate, and I thank my noble friend Lady McIntosh of Pickering for her well-argued contribution. In relation to this amendment, let me make it clear that, before any regulations are laid under the Clause 2 power for the purpose of implementing a free trade agreement, the Government will lay reports before Parliament which will clearly detail any significant trade-related differences from the EU third-country agreements. This would include significant differences which had an effect on the standards that we or our trading partners were required to meet.

The Government have already laid such reports for the UK's agreements with Chile, the Faroe Islands, the eastern and southern African region, Israel, the Palestinian Authority and Switzerland and Liechtenstein. I am pleased that my noble friend Lady McIntosh of Pickering welcomed the updates that we have made and will continue to make as these progress. I hope that it is clear from these reports that our continuity agreements are compatible with the maintenance of the UK's high standards in the areas of environmental protection, animal welfare and food safety.

The noble Lord, Lord Purvis, has called for debates on the continuity agreements which the Government have already made. His Motions will be dealt with in the usual way and the Government look forward to further discussion on those.

What is more, regulations under the Clause 2 power will be laid before Parliament under the affirmative resolution procedure. As your Lordships know, affirmative secondary legislation is scrutinised and debated before it can be approved by votes in both Houses. This well-established procedure provides ample opportunity for examination of the regulations.

I thank noble Lords for this really constructive discussion and for the comments of those who tabled this amendment, particularly the words of the noble Lord, Lord Stevenson of Balmacara. I believe we are not far apart from each other, particularly in light of the progress we have made to date. Consequently, as throughout this process, I can confirm that I am happy to have further discussions to see if we can reach a mutually acceptable agreement, and we will return to this at Third Reading. On this basis, I beg noble Lords to withdraw the amendment.

Baroness McIntosh of Pickering: I have been looking at the continuity agreement reached with the Faroe Islands. I understand that it could potentially result in an implied annual increase in total duties of up to £11 million. It goes on to say that that is unlikely to be true, but I wonder: will there be scope to discuss these continuity agreements—as the noble Lord, Lord Purvis suggested? Perhaps we could do so in an afternoon session and take them all together. This agreement raises issues which will be of interest to the House.

Baroness Fairhead: My Lords, as I tried to explain, the Motions laid by the noble Lord, Lord Purvis, will be dealt with in the usual way. We look forward to those further discussions taking place.

Lord Purvis of Tweed: I may be able to help the noble Baroness. I am grateful for the response from the Government Whips' Office and its suggestion of tabling time for these to be debated. I will not pre-empt these exciting debates on Faroe Islands fisheries, but they look likely to happen next week.

Baroness Jones of Moulsecoomb: My Lords, I thank the Minister for her response and her promise to bring this back at Third Reading, so I will not go through any of the arguments again. The sunset clause, however, is not secure, simply because Clause 2(5)(b) allows

[Baroness Jones of Moulsecoomb]
Ministers to scrap it by statutory instrument. It is not, therefore, secure, and that is a matter of concern to me.

However, in the interests of even more co-operative working—and I thank the noble Lord, Lord Stevenson, who has worked very hard, along with the Minister—I beg leave to withdraw this amendment, on the assumption that we will return to it at Third Reading.

Amendment 3 withdrawn.

Amendment 3A

Moved by ***Lord Judge***

3A: Clause 2, page 2, line 47, at end insert—

"( ) Regulations under subsection (1) may not create or extend criminal offences, impose fees, amend primary legislation other than retained EU law, or create new public bodies."

Lord Judge: My Lords, this amendment has very little to do with trade as such, but it raises a constitutional issue. If you looked at those supporting me on this amendment, you might even think that this is a bit of a geeky constitutional issue. It is not. All three of us are members of the Constitution Committee. We speak on our own behalf but feel it essential to draw the attention of the House to what we believe to be a total misunderstanding of the purposes of Explanatory Notes.

The misunderstanding arises in this way. Under the Bill, Clause 2(5) provides the regulation-making powers that may—forgive me for underlining this—among other things, "make provision". Then there are paragraphs (a), (b), (c) and (d); paragraph (d) is about the penalties. We also looked at the Explanatory Notes. I wonder how many of your Lordships have recently looked at the front page of Explanatory Notes any Bill. I will read parts of them:

"These Explanatory Notes have been prepared by the Department … in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament".

I do not suppose that a single Member of the House is surprised by that because, constitutionally, it is impeccable. The Explanatory Notes do not form part of whatever legislation may at some future date be enacted by Parliament.

Faced with the wide-ranging regulation-making power, and that assertion in the Explanatory Notes, can we look at the Explanatory Notes themselves? Paragraph 59 —I will not read the first part—in unequivocal terms says that:

"Subsection (5) does not allow for regulations to make or extend criminal offences, charge fees, amend primary legislation other than retained EU law, or create new public bodies".

The Constitution Committee produced a report on this that expressed some concerns. Noble Lords may remember that in the EU withdrawal Act there was an absence of safeguards, but eventually—through the efforts of Members of this House—safeguards were put into it that prevented the use of delegated powers to impose or increase taxation and fees, to create a relevant criminal offence, or to establish a public authority. That was the step. The Constitution Committee then looked at the provision in relation to subsection (5), to which I have referred. The committee noted that the Explanatory Notes contained the assertion that the Government were not interested in the worrying provision for creating criminal offences and the like, but that this was not stated in the Bill. The committee then pointed out what subsection (5) extends to and recommended that the Government introduce an amendment to include in the Bill the restrictions on the use of the Clause 2 powers set out in the Explanatory Notes. That is what this amendment is designed to achieve.

There is something rather strange about this. You win some, you lose some. If you lose, you come to the House to ask the House to look at it. In a sense, that is what I should do. However, a more important issue has arisen in relation to the response of the Minister, who in effect is saying, "Look, there is nothing to worry about—what are you getting so concerned about? Just read the Explanatory Notes. That is all you need". Lest you think that I am exaggerating, let me read the words:

"we believe that the explanatory notes to the Bill, which explain the purpose of the provisions contained in the legislation, is the most suitable document to outline the restrictions to the use of the clause 2 power".

In other words, the issues which were raised as being of concern to the Constitution Committee, and which were referred to in the Explanatory Notes showing that the Government did not wish to have the powers that would have been troublesome, were simply to be found by looking at the Explanatory Notes. That is a troublesome approach to these issues. As I am aware, it is new: "Look at what the regulations do not contain and you'll find that in the Explanatory Notes". It seems a rather strange way of going about legislation.

The letter from the Minister was followed by a reference to an observation by a former Law Lord—who sadly is no longer with us, the highly respected Lord Steyn—based on a decision of the House of Lords called Pepper v Hart in which it is said that he allowed for the possibility of looking at Explanatory Notes in exceptional circumstances. I would argue that that was not as an aid to construction but in effect to say, "If the Executive have said this, you can draw that to our attention while we resolve the issue".

Pepper v Hart is a troublesome case. Perhaps I may summarise what it is meant to mean in the following way—hopelessly inadequately in view of the presence of some noble and learned Lords here. It means that you can look at what has gone on in the House if the legislation itself is unintelligible. Legislation should not be unintelligible; it should be intelligible. At this stage when we are looking at this legislation, if it is not, we should make it so.

On how far Lord Steyn went about allowing for examination of Explanatory Notes, if it offered a diminution of the principle that Explanatory Notes are not, never were meant to and never should be treated as a legislative provision, I say with great respect to Lord Steyn that I think he got it wrong. I do not believe that that was what he was saying, but if he did it is wrong. We surely must not countenance the

arrival of a pernicious new form of legislation, the Explanatory Note. We have enough trouble with guidance. Guidance is a seriously problematic source; it sort of hands over power to the Executive, but at least when we do that we have listened to the debate, have decided that that is the right way to approach the problem and have legislated accordingly. In relation to Explanatory Notes, there has never been a debate; there has never been anything. This comes from the department. The department tells us what the department thinks it wants. It cannot possibly be a guide to what we in this House or in the other place decide that the legislation should be. But we will now look at the department's own Explanatory Notes to decide whether a provision which is an important safeguard against regulations creating criminal offences, imposing fees, amending primary legislation or creating new public bodies should be found. It is a constitutional absurdity. I beg to move.

Lord Garnier: My Lords, if the noble and learned Lord, Lord Judge, thought that his thinking was inadequate compared to that of Lord Steyn, it is the only inadequate thing that he just said. I rise briefly to encourage him in his arguments and to encourage the Government to understand that it is not only on the Cross Benches and on the Liberal Democrat Benches that the concerns that he has expressed can be found.

I want to look at Clause 2 through the lens of Amendment 3A, because it gives both United Kingdom Ministers and devolved Administration Ministers the power to make regulations that make provision among other things to modify primary legislation and impose penalties, as the noble and learned Lord, Lord Judge, pointed out.

5 pm

There is another problem that concerns me, although perhaps I am misreading the legislation. According to Clause 2(5)(b), the regulations are permitted to make provision,

"conferring functions on the Secretary of State or any other person, including conferring a discretion but not including a power to make subordinate legislation".

As I said, I might completely misunderstand the legislation, but it has always struck me that regulations are brought into force through secondary or subordinate legislation, so there seems to be a confusion. It might be a confusion only in my own mind, but I invite the Minister to untangle it or tell me that I have got it wrong.

Returning to the remarks of the noble and learned Lord, I could not agree more with him that it is not appropriate for Ministers to create or extend criminal offences. It might in some circumstances be appropriate for them to regulate in relation to the imposition of fees. I can see that there is an argument for some amendments to primary legislation to be made by regulation: for example, if they simply remove the letters "EU" and replace them with the words "United Kingdom". However, we need to be cautious before permitting a Minister to amend primary legislation without knowing more about what is intended. As regards the creation of new public bodies, again it very much depends on what is implied by that power.

It is often said that repetition never made a good argument better. The noble and learned Lord, Lord Judge, has made a series of very powerful arguments which I hope the Government will have listened to, but I also hope that they will understand that his concerns are not confined only to those who have supported his amendment.

Lord Pannick (CB): My Lords, I have added my name to this amendment because I share the concern expressed by the noble and learned Lord, Lord Judge, that it is simply not appropriate for Explanatory Notes to be used as the means by which overbroad powers enjoyed by the Minister are to be confined. I will add one point, however: the Minister gave an answer to the concern that we are all expressing. The answer was given in a letter on 19 February to the noble Baroness, Lady Taylor of Bolton, the much respected chairman of the Constitution Committee. In her response to the Constitution Committee's report, the Minister suggested that the courts would apply a well- established legal presumption that, if powers were intended to be used for any of the purposes set out in the amendment, there would have to be an express reference to that effect in the legislation. Indeed, the Minister also expressed concern that this amendment, if accepted and written into the Bill, would undermine this legal presumption in relation to other legislation that does not include an express reference to these limitations.

My concern about that argument is that these powers are being conferred in this Bill in a Brexit context. The Minister's letter emphasises that the Government are going to use the Clause 2 powers only to implement obligations and agreements that seek to provide continuity in respect of those already signed by the EU. My concern is that in this specific legislative context it might be said that when a Brexit Bill of this nature does not contain these express limits on the Minister's powers—the limits set out in the amendment—it should be contrasted with Section 8 of the main Brexit Act, the European Union (Withdrawal) Act, which expressly contains restrictions that are similar but not identical to these limitations. It is my concern that such a contrast might be drawn in this context.

The noble and learned Lord, Lord Judge, made the important point that the Pepper v Hart principle is a troublesome one but, if the Government are not going to accept this amendment, at the very least it would be helpful for the Minister to give the House the clearest possible response to it, in the terms set out in her letter—that the Government understand that the powers in Clause 2 do not extend to the sensitive issues—so that her comments could if necessary be relied on in court proceedings under the Pepper v Hart principle.

Lord Hope of Craighead (CB): My Lords, we should be very grateful to the Constitution Committee for drawing our attention to this matter, which might otherwise not have been observed. I shall add just a few short points to those that have been made. The first is to stress the importance of the words in subsection (5), to which the noble and learned Lord, Lord Judge, drew our attention:

"Regulations under subsection (1) may, among other things, make provision—".

[Lord Hope of Craighead]

It is the words "among other things" that cause me concern. They appear in the Healthcare (International Arrangements) Bill as well: they seem to be a feature creeping in to this kind of legislation, which is quite disturbing. If we find that phrase, I suggest that we have to be even more exacting in setting out the qualifications to the power, otherwise the words "among other things" may be used to expand the power in a way that we have not foreseen. It is really very important, as the noble and learned Lord, Lord Judge, pointed out, that we take those words into account in what we make of this amendment.

My second point is to reinforce what the noble Lord, Lord Pannick, said about the comparison between Section 8 of the European Union (Withdrawal) Act 2018 and what we have now, in reply to the point that we do not need to be concerned about that, because express provision would be needed for a regulation that sought, for example, to create a criminal offence. These exceptions, or almost exactly the same ones, are expressly set out in Section 8(7) as,

"regulations … may not … impose or increase taxation or fees … create a relevant criminal offence … establish a public authority".

If it was thought appropriate to put those qualifications in that very important subsection, which does not contain the words "among other things", I should have thought it was all the more important to have them here.

My last point is made with reference to the point made about Lord Steyn's use of Explanatory Notes. I had the privilege of sitting with Lord Steyn for a number of years and of discussing with him how Explanatory Notes might be used. I do not think that at any point in our discussion he suggested to me that Explanatory Notes could be regarded as a form of legislation or its equivalent—certainly not. He was referring to them as a means of understanding ambiguities in legislation; he thought that one could look to the Explanatory Notes to understand the legislation one was seeking to explain. That was his point, and it was made in a number of cases where I agreed with him. It would be a mistake to think that he was embarking on something outside the normal use of Explanatory Notes, which is to explain but not to legislate. For these reasons and the others mentioned, I warmly support the amendment that the noble and learned Lord has brought to our attention.

Lord Beith (LD): My Lords, I do not need to add to the masterful laying out of the reasons for the amendment by the noble and learned Lord, Lord Judge, or to what was said by the two Members who have just spoken—particularly the noble and learned Lord, Lord Hope. But I will refer to the consequence of going about the matter in this way. Lord Steyn's judgment does not place any obligation on the courts to have a habit or practice of referring to Explanatory Notes—it is entirely up to the courts whether they choose to do so—but, if the Government persist in this interpretation, which appeared to us for the first time in a letter from the noble Baroness, it says to parliamentary draftsmen and departments, "Don't worry about ambiguity; there are the Explanatory Notes and we do not have to get those through either House". It is an invitation to careless and sloppy drafting; it is an invitation to leaving open a possibility that the Government may not want to specify at this stage, but might be useful at a later date, when the Explanatory Notes would be relied on for a purpose that I do not think Lord Steyn intended. I was quite shocked to find this interpretation of Pepper v Hart coming into the Government's responses to the Constitution Committee. We need to squash it pretty quickly, before it influences the habits of departments and parliamentary draftsmen any further.

Lord Wilson of Dinton (CB): My Lords, I offer a footnote in support of noble and learned Lords and the points just made. It should be remembered that Explanatory Notes were for many years produced by officials to brief Ministers on what the Bill meant. They were usually classified—because we used to classify things. Occasionally, when Ministers were having real difficulty explaining a clause to either House, in a kind of noble gesture they would hand over their Explanatory Notes as a way of trying to get their opponents on side. That is the history of this. The idea that, with the slow creep of the Executive's power, they are becoming a form of legislation of their own is appalling. I can only support very strongly what has already been said.

Lord Mackay of Clashfern (Con): My Lords, I suppose I ought to take some part in this discussion. I hope to do so briefly, because I was a strong dissenter, on my own, against the decision in Pepper v Hart. I did not believe it was right to allow extraneous matters to be taken into account in construing an Act of Parliament. That Parliament had used the words, and that some Minister had said something in explanation, should not, to my mind, be used to deal with ambiguity. However, I was overruled then, and I am waiting for that judgment to be overruled in due course. Certainly, that judgment does not include statements not made in Parliament by people who are trying to say what they want to happen in the Act of Parliament, and the Explanatory Notes in no sense come within the judgment in Pepper v Hart. I have no doubt at all that the correct way to restrict a power to impose penalties is by putting the restriction into the Bill.

Baroness Fairhead: My Lords, I thank the noble and learned Lord, Lord Judge, and the noble Lords, Lord Pannick and Lord Beith, for tabling this amendment and for highlighting what is clearly an area of genuine concern—not just from them, but from the Constitution Committee.

I start by reassuring the House that the Clause 2 power will be used only to implement non-tariff obligations of our continuity trade agreements. For example, we will have to implement procurement obligations in several of our agreements, including the Chile agreement we signed recently. Without the Clause 2 power, we would not be able fully to implement such obligations under these agreements.

I stand before this House not professing to match in any way the legal brains and experience of noble Lords—and, indeed, noble and learned Lords—but I will give the Government's position. Explanatory Notes are always admissible aids in the construction of an

Act. Exceptional circumstances, as in the Pepper and Hart case, are not required. Indeed, I am asked to refer to the House of Lords case R v Montilla and Others in 2004, in which it was said:

> "It has become common practice for their Lordships to ask to be shown explanatory notes when issues are raised about the meaning of words used in an enactment".

5.15 pm

My noble and learned friend Lord Garnier raised the issue of the delegation of power to make legislation, but Clause 2(5)(b) explains that the power does not include the ability to delegate the power to make legislation. Our approach follows common drafting practice. There is a well-established legal presumption that, if a power is to be used for any of those purposes, a court would expect to see an express or an explicit reference in the legislation creating the power. To state in the Bill what the Clause 2 power cannot be used for would call that presumption into question. It would create ambiguities for the interpretation of powers in other statutes which do not contain such express restrictions, as I wrote in my letter to the Constitution Committee.

The noble Lord, Lord Pannick, and the noble and learned Lord, Lord Hope, asked why the Bill differs from the drafting of the European Union (Withdrawal) Act. It is because the withdrawal Act powers have a different starting point. Section 8(5)(5) of that Act, for example, says that a regulation made under it may do anything that an Act of Parliament may do. Given how much an Act of Parliament can do, it was necessary to explicitly limit that power so that it cannot, for example, be used to impose taxes. The power in Clause 2 is instead built from the ground up, so we do not believe that there is a need to list exhaustively what that power cannot do.

The Government are simply ensuring continuity in trading relationships. It is not an opportunity to change or negotiate the terms of the agreement. This, I hope, is evident in the continuity agreements we have already laid in Parliament, such as those with Chile and Switzerland. I refer noble Lords to the parliamentary reports laid alongside them, which describe any significant difference between these agreements and the original EU third-country agreements. All reports are publicly available on GOV.UK. While it is true that trade agreements are becoming increasingly broad, one must look no further than CETA with Canada, which is known for its breadth and ambition. Even CETA, however, has not required the UK to create or extend criminal offenses, impose fees, amend primary legislation other than retained EU law, or create new bodies.

The noble Lord, Lord Pannick, asked if I would make a statement about our intent. I am happy to say that we have no intention of making changes to the areas of concern to their Lordships as part of our trade agreement implementation under the continuity programme. I have, however, heard the legal weight behind this amendment. I am happy to reflect, and would welcome a meeting with your Lordships, because there are clearly very different points of view here.

Lord Pannick: I am very grateful to the noble Baroness. Under the Pepper v Hart principle, what matters is not the Government's intention but the Government's understanding of the scope of the provision they are putting before the House. I am asking the noble Baroness to say on the record, in *Hansard,* that it is the Government's understanding and intention that the Clause 2 power does not give them a power to create or extend criminal offences, impose fees, amend primary legislation other than retained EU law or create new public bodies. It is not about the intention, but about the Government's understanding of what they are putting before the House.

Baroness Fairhead: I am happy to confirm that that is the case.

Lord Garnier: Can I press my noble friend a little further? Why does she not simply arrange for Amendment 3A to be included in the Bill?

Baroness Fairhead: My Lords, there is a genuine difference of legal opinion here. My proposal is that we reflect on this and have a meeting, if your Lordships are content to do that, because we have to work through this.

Lord Cormack (Con): I apologise for interrupting at this stage, but is my noble friend prepared to say on the record that this matter can be referred to at Third Reading, if necessary?

Baroness Fairhead: I am unable to make that commitment.

Lord Judge: May I respectfully ask what, in that case, would be the purpose of the meeting with the Minister to which she referred?

Baroness Fairhead: My understanding is that we have a clear legal position which is strongly believed, and the meeting would be to see whether we can reach a mutual agreement.

Lord Judge: If we can reach a mutual agreement on it, it is at least possible that the Government may decide to amend their Bill.

Baroness Fairhead: There will be other opportunities; perhaps we could have a meeting before the second day on Report.

Lord Judge: Provided it is understood that the resolution of this issue will abide or at least wait for a meeting between those of us who wish to meet the Minister—I would certainly be one of them—and those whom the Minister wishes to meet, that is fine. But I cannot leave the House in the position that we will now leave this for ever, and if the Minister deigns to do us the kindness of giving us what we want, we will have it. We have to know exactly where the Government stand on this. I know the argument, but where do we stand procedurally in the House?

Baroness Fairhead: I have heard a very well-argued case—the first time I have heard the impact of that case. I can commit to writing a detailed letter on our position, having a meeting and bringing this back on the second day on Report, if that is what this House would prefer to do.

Lord Pannick: I suggest that this matter cannot be brought back on the second day, because this is an amendment to Clause 2, which we will have passed. Given that the noble Baroness, fairly and properly, has accepted that what she has heard today requires further discussion, and that the Government may wish to consider further this matter after they have met with noble and noble and learned Lords who are concerned about this, surely the way to proceed is for the Government to accept that it is appropriate for this matter to be raised again at Third Reading to see whether any progress can be made.

Lord Stevenson of Balmacara: My Lords, we are in a very similar situation to where we were in an earlier debate. Clearly there is an issue which needs to be resolved between the Minister and those who feel strongly about it. She is putting the mover of the amendment in a difficult position, because the only right thing to do at this stage is to test the opinion of the House, and I am sure that that is not where we need to go on this. We need to give the Minister time to reflect on the issues and to be convinced, if she has to be convinced, by further points made, and, if necessary, to come back at Third Reading. That is not an onerous consideration.

Baroness Fairhead: I thank the noble Lord, Lord Stevenson, and I agree with that position.

Lord Judge: My Lords, I am grateful to the noble Lord, Lord Stevenson. I think that calling for a Division at 5.24 pm when we have so many other things to deal with might not have been very popular, although I suspect we would have won. I also thank the noble Lord, Lord Wilson, for enlightening me as to where Explanatory Notes come from.

I thank everybody who has spoken in this debate. I will leave it at this: the Executive accept that these powers should not be given. There should be no difficulty whatever in putting them into legislation, rather than leaving them in an Explanatory Note. Although the noble Lord, Lord Pannick has sought—and graciously been given—an assurance of the Minister's position, I do not think that is enough. For the time being, at any rate, I shall not press this amendment.

Amendment 3A withdrawn.

Amendment 4 not moved.

Clause 3: Report on proposed free trade agreement

Amendment 5

Moved by ***Baroness Henig***

5: Clause 3, page 3, line 43, at end insert—

"(5A) A Minister of the Crown must lay a report before both Houses of Parliament during each session of Parliament reporting on the progress made in all negotiations relating to agreements Her Majesty's Government intends to ratify under this section.

(5B) A report under subsection (5A) must include, at a minimum—

(a) a summary of proposed changes against the existing agreement,

(b) the estimated date for the completion of the negotiations, and

(c) the date when the agreement is expected to be laid before Parliament."

Baroness Henig (Lab): My Lords, I hope that my amendment will prove a little more straightforward than the one we have just debated. When the issue of parliamentary scrutiny of trade agreements covered by this Bill was discussed in Committee, the Minister made much of the issue of speed. Speed, she argued, was of the essence in rolling over these agreements. She said that the Government were opposed to any detailed scrutiny arrangements which might slow the negotiations down and delay conclusion of the deals. Since then, it has become increasingly clear that, whatever the Government's intentions, these deals will not be speedily concluded. Indeed, it could be two or three years before they are all finalised. This being the case, we surely need to put in place some clear scrutiny arrangements. At the very least, these should replicate the information that the EU Commission regularly supplied to us. They should keep parliamentarians and, more importantly, businesses and their customers informed about what is being discussed and the timescales envisaged for the conclusion of deals, so that they can plan effectively for the future.

I am sure I am not alone in having been shocked at the level of secrecy imposed by the Department for International Trade with regard to its progress on trade talks during the last 18 months. In 2017, the Secretary of State for International Trade made his much quoted promise about having up to 40 trade deals,

"ready for one second after midnight",

at the end of March 2019. Businesses would have assumed with some confidence that all was going well and that, in the course of 2018, progress was being made in rolling over the deals. It was only through a leak in the *Financial Times* in January of this year that we learned that, in fact, only a handful of deals was going to be finalised by the end of March. Not surprisingly, this has caused great consternation among business leaders and companies, great and small. Now we learn, through a second leak—again in the *Financial Times*—that the Department for International Trade's consultations with business representatives have been suspended because information was being passed out of the meeting, allegedly in an unauthorised way.

Where is this obsession with secrecy coming from? Is it from the Department for International Trade or from 10 Downing Street? Whatever the source, this cannot be a recipe for successful trade negotiations, either now or in the future. Both Parliament and businesses have a need and a right to know what is being negotiated, what stage discussions have reached, and when they are likely to be concluded. Successful trade negotiations require consensus—from business groups, sectors of industry and wider stakeholders about the interests that are being pursued and the goals that are going to be set. This requires extensive

consultation and collaboration between the Executive, Parliament, businesses and stakeholder groups. The reality is that the secrecy demanded by the Department for International Trade is counterproductive to successful trade negotiations, both in relation to those being rolled over and to future deals.

Lord Davies of Stamford (Lab): I am most grateful to my noble friend for giving way. I know that she is an expert in the subject. Does she agree that when the European Union has been conducting trade negotiations with a view to reaching trade agreements with third parties, it has always set very high standards of consultation and transparency, reporting regularly to the European Parliament as well as consulting business interests that might be at stake, trade associations and other potential stakeholders? Does she further agree that it is a terrible pity that the British Government do not seem to be following that excellent example?

5.30 pm

Baroness Henig: I absolutely agree. That is precisely my concern: that there is an effective scrutiny process in place to replace what we will lose at European level. In later amendments, we shall discuss future arrangements, but my concern is that in the rollover of the existing deals, we have effective scrutiny so that everybody knows where we are in the negotiations.

Parliament and business leaders should not be seen as the enemy from whom important national secrets must be kept, which seems to have been the way things have been going. Our businesses, exporters and trade bodies need to plan. They need to work in tandem with the Government. Of course we accept the need for confidentiality in trade negotiations. We all understand that, but the level of secrecy we have experienced in the past 18 months has been totally counterproductive.

My amendment would put some basic scrutiny arrangements in place to cover the period for which these deals are being rolled over. It enables Parliament, businesses and the wider community to know what stage they have reached and when they may be completed. Reporting once a Session is hardly an onerous requirement on the Executive. After all, our current Session is now nearly two years old. That seems to me a basic requirement for effective parliamentary scrutiny.

I hope that the Minister will tell me that the amendment is unnecessary, as the Government will bring forward something similar at or before Third Reading, but meanwhile I beg to move.

Baroness Fairhead: My Lords, I thank the noble Baroness, Lady Henig, for tabling Amendment 5. It gives the House an opportunity to revisit the issue of how the Government will update Parliament on the status of negotiations on the continuity agreements. We enjoyed a useful discussion on this in Committee.

First, let me reiterate that Parliament plays a crucial role in scrutiny of free trade agreements, and we intend that to continue. It is right that Parliament should expect to be updated by the Government. That is why the Government have already informed Parliament on progress of our continuity agreements through a Written Ministerial Statement. As your Lordships will be aware, they have already gone through a process of scrutiny in becoming free trade agreements with the EU.

We have also laid our first free trade agreements for scrutiny in Parliament ahead of ratification, which we believe is the right level of scrutiny, along with their accompanying parliamentary reports and explanatory memoranda, in which we have committed to giving explicit information about any significant changes, should any occur, making clear where they are, and any economic impact, should there be any.

Unfortunately, we cannot give a running commentary on the progress towards signature of our other continuity agreements. We believe that doing so would create a handling risk with our partner countries. Some partner countries may not wish to share such information, and a commitment to do so might prejudice the prospect of a successful negotiation. We are trying to get the best possible outcome for the UK.

However, let me assure the noble Baroness that, as we are aiming for continuity, we do not expect there to be significant changes. I therefore argue that the detailed reporting required by the amendment would be unsuitable for the continuity programme. For the future free trade agreements programme, the Government have committed to publish updates on the conclusion of each substantive negotiating round and to publish an annual report on all future trade agreement negotiation programmes under way. In this way, we will ensure that Parliament is kept fully updated on progress as we pursue new FTAs with partner countries.

Although I understand the desire to know what progress we are making towards transitioning continuity agreements, I hope that the noble Baroness, Lady Henig, understands the Government's position and therefore request that the amendment be withdrawn.

Lord Berkeley (Lab): Before the Minister finishes, I do not think that she answered my noble friend's question about comparing the Government's policy on non-disclosure agreements and secrecy with what the European Union has done for many years. That applies not just to these trade agreements, but to most discussions with industry and everyone else to do with the whole Brexit process. People seem to be required to sign NDAs before they get any information at all. Is that now the Government's policy—that no trade agreements or anything similar can be achieved unless the industry concerned signs NDAs? That seems a pretty draconian change.

Baroness Fairhead: My Lords, the engagement we have with civic society, businesses and trade unions will be critical as we develop our future trade agreements, and we will continue those discussions. We have already talked about creating a strategic trade advisory group, which will contain members from civic society, trade unions and business organisations. We have also agreed to have expert bodies, so I hope that will reassure the noble Lord that we are intent on continuing very active engagement.

The difference here is that these are continuity agreements that have already been negotiated and scrutinised through a process, and we are aiming for

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continuity here. Therefore, we believe that the appropriate level of scrutiny by Parliament is for the Government to bring forward the reports when they have been signed, alongside a detailed report on the changes, if any, and the economic impact. Of course, ratification will be required, and that will go through scrutiny in the normal way.

There is a very different position on future free trade agreements, on which I wholeheartedly take on board the points made by the noble Lord and the noble Baroness.

Baroness Henig: I have listened carefully to what the Minister said. She talked about a "running commentary", and I do not think that is what my amendment sought. It sought a report once every Session, which, I respectfully suggest, is not quite the same thing. As has been said, these are continuity agreements. What I—and, I am sure, many other Members of this House—seek is continuity: when we are no longer members of the EU, we want the same level of information as we were getting from the EU. We seek a level of information; we do not want a dilution of processes, with more meagre information and more difficulty in finding out what is going on. That is what lies at the heart of this.

I have listened carefully to the Minister, and I do not propose to pursue the matter at this stage—but I am sure that I and many other Members of this House will keep the Government's feet to the fire on the issue of getting hold of information and making sure that everybody, particularly businesses, commercial organisations and people throughout the country, know where we are and what is going on. They should not have to rely on leaks from newspapers for their information. Having got that off my chest, I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6

Moved by ***Baroness Fairhead***

6: After Clause 5, insert the following new Clause—

"Post-ratification report

(1) This section applies where—

(a) the United Kingdom has ratified a free trade agreement, and

(b) the other party (or each other party) and the European Union were signatories to a free trade agreement immediately before exit day.

(2) Before the end of the period of five years beginning with the date of ratification, a Minister of the Crown must publish a report giving the Minister's assessment of the impact of the agreement on trade between the United Kingdom and the other party (or each other party) to the agreement."

Baroness Fairhead: My Lords, this group includes Amendments 6 and 7. With the indulgence of the House, I shall speak now to Amendment 6, and then respond to Amendment 7 when my noble friend Lady Neville-Rolfe, who tabled it, has spoken.

I thank noble Lords for their contributions during the discussion on post-ratification reports during the Committee stage. Once again, the debate demonstrated the value of this House and your Lordships' expertise and knowledge. In the light of that debate, I can confirm that the Government accept that post-ratification reports are important tools for understanding the real effect trade agreements have on the economy. They are useful not only in informing our discussions in joint committees but in refining our strategies for future trade negotiations.

Having had the benefit of this House's wisdom in Committee, the Government have tabled an amendment that would require a Minister of the Crown to publish a report on the impact on trade of each of our continuity free trade agreements. These reports will need to be published within five years of ratification of the agreements. The reports will assess whether trade flows between the UK and the other signatory or signatories have changed since the agreement began to be applied. If there has been a change, the reports will then discuss how much of that change can be attributed to the agreement itself.

Given that these reports will consider impacts across the whole of the UK, this will include an assessment of any impacts on the devolved nations. We will of course share these reports with the devolved Administrations. I hope the House will support the amendment.

Amendment 7 (to Amendment 6)

Moved by ***Baroness Neville-Rolfe***

7: After Clause 5, leave out subsection (1)(b)

Baroness Neville-Rolfe (Con): My Lords, I thank my noble friend the Minister for a useful meeting, and for responding to my amendment in Committee and to the concern that was expressed on all sides about the need to monitor and review trade agreements. I support this proposed new clause. Good government requires objective review in the light of performance and the priorities of the day. Regulations are reviewed every five years in many areas.

I have tabled the amendment to establish two points. First, I wanted my noble friend to explain why she felt we could not include my simple proposal that the Secretary of State should arrange for the report to be laid before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. Can she agree that this will be done? Secondly, the review clause applies only to trade agreements ratified before exit day. I am also interested in having such provisions apply in the case of new agreements made after Brexit. Can the Minister outline her intentions on this point? We are entering a period of profound change, where a habit of looking back critically would be both desirable and helpful. I beg to move.

Lord Purvis of Tweed: My Lords, in Committee there were a number of amendments, including one in my name, which sought to make the case that some of the agreements that we are party to by virtue of our membership of the EU are significant for the economy

as a whole and certain sectors of the economy. Some have a greater impact on some of the nations and regions of the UK and, therefore, to understand the impact of our trading policy it is necessary to have the report. So I welcome the Government's position, as outlined by the Minister.

However, there are a couple of areas where I would wish to press for further information. One area relates to comments I made earlier about the status of the vast majority of the agreements to which we are party and have signed prior to exit day but which we are looking to replicate or agree after exit day. These will not necessarily be considered as continuity agreements—a point made by the noble Baroness, Lady Neville-Rolfe.

The agreement with Japan is a good example. It has been in force since 1 February and, given all the powers under this Bill, is a candidate to be considered as a continuity agreement. The Japanese Government have said that they do not wish it to be a continuity agreement but a new trade agreement. Under the Government's amendment, how would that be reported on? It would not come under its remit. That is one of many examples.

Lord Lansley: I declare an interest as the UK co-chair of the UK-Japan 21st Century Group. My understanding of the Japanese Government's position is that they have made it clear that the procedures that are required by the Japanese Diet for a treaty would make it impossible for them to bring this forward as an agreement between the United Kingdom and Japan in the event of a no-deal exit. They would require it to be considered as a new treaty because we were no longer members of the European Union or covered by the withdrawal agreement. Were we, however, to sign the withdrawal agreement and to have a transition period, the Japanese Government, in their view, could consider it to be a rollover agreement during the transition period.

5.45 pm

Lord Purvis of Tweed: That is helpful. However, my question to the Government remains as to what the status of the Bill would be, under the amendment, with regard to the reporting mechanism. Japan is one example among the vast majority of examples also in this category. A degree of clarification on that would be helpful.

The second issue is: why five years? Under the regulations, the agreements have to be renewed by Parliament after three years. One could therefore have a situation whereby an agreement could be renewed twice, lasting nine years, but with only one report. Would it not be better if the Government brought forward their report prior to the conclusion of the three-year life of the agreements? It would be no more burdensome for there to be a reduction from five years to three, and the report would be one of the key documents that Parliament would use when considering whether or not to renew the regulations after the three years; otherwise, they would be significantly out of kilter and either the report would not be helpful to the extension of the regulations or we would be unable to have a meaningful discussion on their extension in the absence of a report on the impact on Britain of the agreement.

Baroness Fairhead: My Lords, I thank my noble friend Lady Neville-Rolfe for Amendment 7, which brings reporting on future FTAs into scope, and her support for Amendment 6. The engagement I have had with my noble friend, as with others in this House, has been invaluable.

My noble friend asked why we are not agreeing in statute to lay the reports before the devolved Administrations. The UK Government, as a point of constitutional principle, are not responsible for laying documents in the devolved Parliaments. However, I recognise the importance of ensuring that the devolved Administrations are appropriately involved. That is why we are proposing that the Minister will make a commitment in the House that the Government will send the reports to the relevant Ministers in each of the devolved Administrations. We hope that that solution addresses the objective and the constitutional agreement.

Lord Purvis of Tweed: From my experience of the Scottish Parliament, there is nothing to prevent any UK Government submitting to the Library of the Scottish Parliament or Welsh Assembly documents similar to those laid in the Library of this House, so that MSPs and AMs can be informed and do not have to rely on their Governments submitting them.

Baroness Fairhead: That is a helpful interruption, but we would probably like to have a more formal process for handing the reports to Ministers and devolved Administrations.

As my noble friend may be aware, the Government published a Command Paper on 28 February on our processes for making free trade agreements after the UK has left the EU. In that paper, we outline our plans for transparent scrutiny of future FTAs, including publishing a scoping assessment prior to launching negotiations. We will also publish full impact assessments of new FTAs once negotiations are concluded. It is important to note that we have not yet begun negotiations on new FTAs, but the Government would be willing to consider publishing similar reports for future FTAs to those required by the amendment or continuity free trade agreements.

As regards our helpful discussion on the agreement between Prime Ministers Abe and May, the UK undertook to make an enhanced agreement with Japan. My noble friend Lord Lansley was correct in saying that the Japanese Government have agreed that, subject to there being an agreement, the EU-Japan agreement will continue during the implementation period, as with all our other continuity agreements. The Command Paper on scrutiny and transparency sets out our overall approach to scrutiny and consultation in relation to trade agreements. The UK and Japan have agreed to deliver a bilateral trade agreement based on the EU-Japan EPA, enhanced in areas of mutual interest, as I said. In scenarios such as this, the exact approach that we

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take on scrutiny and consultation will obviously depend on the nature and potential impact of the agreement that we seek.

The noble Lord, Lord Purvis of Tweed, asked whether the reporting requirements referred to in the proposed new clause would apply to Japan. The answer is that they would. The reporting requirements apply to all agreements with third countries that sign an FTA with the EU before exit day.

I hope that with that assurance my noble friend Lady Neville-Rolfe will feel able to withdraw her amendment.

Baroness Neville-Rolfe: I thank my noble friend for her very helpful assurances and have pleasure in withdrawing my amendment.

Amendment 7 (to Amendment 6) withdrawn.

Amendment 6 agreed.

Amendment 8

Moved by ***Baroness McIntosh of Pickering***

8: After Clause 5, insert the following new Clause—

"Trade in legal services in the EU

It shall be an objective of the Government to ensure that any future trade agreement between the United Kingdom and the European Union contains reciprocal rights for UK qualified lawyers to practise law in the European Union after exit day."

Baroness McIntosh of Pickering: My Lords, as I mentioned earlier, since Committee the Government have published the very helpful *Implications for Business and Trade of a No Deal Exit on 29 March 2019*. Paragraphs 39 and 40 set out the importance of the services sector, which overall accounts for 80% of the UK's GDP. The last available figures—from 2016—show that the legal services sector generates £31.5 billion in UK revenue. The UK has signed an agreement with Switzerland, and this is an example of a rolled-over agreement that will potentially bring direct benefits to UK lawyers. The Government say at paragraph 40 of their paper that in a no-deal scenario,

"the EU has said that UK nationals would be treated in the same way as third country nationals with regards to recognition of their professional qualifications. This would mean the loss of the automatic right to provide short term 'fly in fly out' services, as the type of work lawyers can do in each individual member state may vary, and the loss of rights of audience in EU courts. UK lawyers and businesses would be responsible for ensuring they can operate in each Member State they want to work in".

I have a couple of questions for the Minister, my noble friend Lord Bates, whom I am delighted to welcome. What provision has been set out in the rolled over agreement with Switzerland, particularly regarding the insurance and banking sectors, for rights of audience, rights to establish and rights to continue to provide legal services in Switzerland for this purpose? I would be very grateful if my noble friend would take the opportunity to update the House on the provision that the Government are making, in a potential no-deal scenario, to ensure continued rights of audience, continued rights to "fly in, fly out" services, continued rights to establish themselves and continued rights to provide services in the interim between no deal and a future deal being signed. When the regulations went through this House, it was pointed out by my noble and learned friend Lord Keen that EU lawyers would have the right to enjoy those privileges in the UK. It would complete the circle if my noble friend could update the House with an assurance that mutual recognition is being sought with other member states and in the agreement signed with Switzerland.

Lord Bilimoria (CB): I emphasise how important this issue is. From my experience, the UK has arguably the finest legal services in the world. As the founding chair of the UK India Business Council, I am aware that foreign lawyers are not allowed to practise in India. That makes it very difficult for our lawyers to provide advice not just to British companies in India but to Indian companies, and that is a huge loss for India and our British legal services. The ability of our lawyers to practise abroad is crucial. The EU is another area where we have taken mutual recognition for granted. All sorts of situations could arise in a no-deal scenario—situations involving not just advice to companies but disputes. What about consumer rights, for example? British consumers will no longer be able to sue in relation to a European product here in the UK. It will have to be done in the country of origin in the EU and, if our lawyers cannot help out, that will be to the detriment of our consumers. Therefore, this is a very important point that cannot be taken for granted and should be included.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I thank my noble friend Lady McIntosh for presenting this amendment and for giving us the opportunity to put on the record further remarks on where we are with regard to legal services. As she reminded us, legal services contribute around £25 billion to the UK economy, with a trade surplus of around £4 billion. They directly employ well over 300,000 people in the UK, two-thirds of whom are outside London. The UK is a world leader in the provision of legal services, as the noble Lord, Lord Bilimoria, also pointed out, and English law has a reputation for excellence across the world. We are determined to continue to build on this success.

We acknowledge that leaving the single market might have implications for market access and that some UK and EU service suppliers will not enjoy the same rights as they do today. That point was made by my noble friend Lady McIntosh when referring to *Implications for Business and Trade of a No Deal Exit on 29 March 2019*, published by the Government on 26 February—specifically paragraph 40, which sets out a case study on legal services. In a sense, that underscores that the Government see this as a key priority in the future economic framework negotiations.

That is why, in the political declaration on the future relationship between the EU and the UK, there will be comprehensive arrangements on the trade in services, covering a wide range of sectors, including legal services. The political declaration includes a

commitment to conclude arrangements for services and investment that go well beyond WTO commitments and build on recent EU free trade agreements, as well as a commitment to make appropriate arrangements for professional qualifications.

The Government want to secure positive outcomes for the professional business services sector, including legal services. However, as my noble friend will be aware, our future trade relationship with the EU is subject to negotiation with the EU. A trade deal must be negotiated before its terms can be set out in law. I am aware that this is perhaps a probing amendment that seeks to get some points on the record, but clearly the Government's view is that what my noble friend proposes is not the correct vehicle.

I am aware that in previous debates on this Bill and on some no-deal secondary legislation my noble friend has raised concerns about the impact of a no-deal outcome for lawyers. We do not want a no-deal scenario but, as a responsible Government, we have to prepare for it.

The no-deal SI relating to the practising rights of European lawyers in England and Wales and Northern Ireland, which this House debated in January, and was made on 13 February, provides transitional arrangements for EU-EFTA lawyers. The purpose of this no-deal SI is to clarify the position of EU qualified lawyers who are practising in England, Wales and Northern Ireland immediately before exit day, so that they can be secure in the knowledge of what their position will be in the event that we exit without a withdrawal agreement.

6 pm

The Scottish Government are also making the necessary preparations for a no-deal outcome and laid a separate but similar SI before the Scottish Parliament on 20 February. However, we cannot address the question of how the EU 27 will treat our lawyers going forward in our domestic legislation. We continue to be in discussion with EU member states on their no-deal arrangements.

The noble Baroness, Lady McIntosh, specifically asked what provision for rights has been set out in Switzerland. Individuals who have transferred into the UK legal profession would retain their rights. The UK-Swiss agreement goes further, providing rights for lawyers within the scope of the agreement to continue to provide services on a permanent basis under home title, while they remain registered with a relevant regulator in their host state. It also provides for continued service provisions under home title for 90 days in any given calendar year.

I hope that those responses offer my noble friend some reassurance and she will withdraw her amendment.

Baroness McIntosh of Pickering: My Lords, I am most grateful to my noble friend for such a comprehensive response. I am sure some in this House will agree that English law has a reputation for excellence, but speaking as a non-practising Scottish advocate, perhaps Scottish law is pre-eminent. I am grateful to my noble friend for updating the House on transitional arrangements for EU-EFTA lawyers and the position in Scotland. I was particularly pleased to hear of the arrangements in the UK-Swiss agreement.

I wish to return to this subject in the next trade Bill on our future relations—I do not know whether we have a date for that. For the moment, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9

Moved by ***Lord Lansley***

9: After Clause 5, insert the following new Clause—

"Preferential trade schemes: parliamentary approval

(1) The Taxation (Cross-border Trade) Act 2018 is amended as follows.

(2) In section 32 (regulations etc)—

(a) after subsection (3)(a) insert—

"(aa) the first regulations under section 10 (preferential rates given unilaterally),",

(b) in subsection (3)(b) omit "that section" and insert "section 8"."

Lord Lansley: I am glad to have the opportunity to speak to Amendment 9 in my name and that of the noble Lord, Lord Stevenson. Amendment 9 follows our constructive discussions in Committee and outside the Chamber with the noble Lord, Lord Bates, and his colleagues on the question of the trade preference scheme, typically referred to as the generalised scheme of preferences in the European Union context.

A generalised scheme of preferences or the trade preference scheme established by this country would be one intended to give unilateral access to our markets for the products of some of the least and less-developed economies, assisting in their economic progress.

In so far as we have been discussing continuity, the intention is for the United Kingdom to maintain some continuity between the European Union preference scheme and a future preference scheme in the United Kingdom. However, I want to talk about where there may be scope for differences. If noble Lords want to look at the measure, it can be found in Schedule 3 to the Taxation (Cross-border Trade) Act 2018. That is why the amendment amends that Act, not to interfere with its revenue-raising functions but in relation to the scrutiny to be applied to regulations to establish a trade preference scheme.

Under that Act, when the Government bring in a trade preference scheme, the first such regulations will be subject to an affirmative procedure. As I understand it, the scheme may be established in line with the existing European Union preference scheme. However, it will be helpful for me to raise a number of issues with the Minister to give him a chance to put the Government's intentions on record—as he helpfully did on the last group—about the character of the regulations and the extent of detail to be provided.

First, when we looked at Schedule 3 to the Taxation (Cross-border Trade) Act, we found it very difficult to relate that directly to what is in the EU's preference scheme. That is mostly because the EU's preference scheme does not include those countries with which it has association agreements that effectively supersede and replace the unilateral preferences. They have entered into bilateral or multilateral arrangements.

[LORD LANSLEY]

Whereas "least-developed countries" corresponds directly and derives from a UN classification, the list of "other eligible developing countries" is referenced to a World Bank classification, "among other things". It is not the same as the classification by the World Bank. In particular, it would be helpful if my noble friend would confirm whether it is the Government's intention to follow the EU practice and to identify in that category a sub-category of "vulnerable developing countries". I think the intention of the unilateral scheme of preferences is to support economic development in circumstances where they are not the poorest countries of the world but none the less have significant issues—often they are structural or governance issues—that require additional preferential support.

Secondly, can access to preferences be suspended or withdrawn, as Section 10 of the Taxation (Cross-border Trade) Act makes clear, in recognition of or in consequence of human rights abuses in those countries or in relation to United Nations sanctions? Will the regulations make that clear?

Thirdly, what is the situation where the availability of this unilateral system of preferences none the less gives rise to dumping? I remember way back in 1981 that I was responsible in the Department of Trade and Industry for the generalised scheme of preferences as it applied to chemical products. The dumping of petrochemicals produced in Middle Eastern countries illustrated this point: the fact that one is a developing country does not necessarily mean that one does not have the ability to have serious competitive issues with producers in this country.

Where preferences might lead to dumping, or to subsidy, or to an increase in imports that could give rise to injury to markets and producers in this country, will the Secretary of State under the regulations be required to ask the Trade Remedies Authority to investigate any such complaint? As is the case elsewhere in the Act, will the Secretary of State be required only to act and to implement remedies in so far as the Trade Remedies Authority itself determines that there is a need to act and in line with its recommended remedy? It is not clear in the 2018 Act that the Trade Remedies Authority is required to be used by the Secretary of State in relation to the preference scheme.

Will the first set of regulations make clear the overall structure of the preferences scheme? Will it also make clear the structure in relation to specific products from developing countries, which are not to have the unilateral nil duty of tariff but are to be treated as graduated products? This sometimes happens for reasons of relative competitiveness or due to the need to protect industries in this country—as might, for example, be the case with textile imports from India or Bangladesh. Will the availability of the preferences for those graduated products be specified in the regulations, so that the two Houses can look in detail at the way in which the preference scheme is to vary in relation to certain sectors and certain countries, which might give rise to differences between the EU scheme and our scheme? Clearly there are graduated products, particularly in the agricultural sphere, where the protection afforded is to southern European producers for certain agricultural products that have no relevance in the United Kingdom. This could be true for industrial products as well.

As was said in the previous group of amendments, that is my list. I hope the regulations will include—but not necessarily be limited to—those details. There may be other issues that noble Lords will want to make sure are set out by the first regulations. It will be helpful for us to have an idea because, depending on circumstances, it may not be long before the shape of the trade preference scheme becomes clear in detail, not just in its overall application, as was set out in the 2018 Act.

Lord Stevenson of Balmacara: I rise briefly to support the amendment in the name of the noble Lord, Lord Lansley, which I have signed up to. The meeting that he referred to was extremely helpful in drawing out some of the confusion that emerged during our first debate in Committee. The issues of how countries get on to the lists, how the lists get managed and shaped, and how the changes might come forward were all explored carefully; we now have a much better understanding. In these lists, there are bound to be curious decisions which do not seem to match up to one's perspectives. I was in Tanzania on holiday recently and it certainly did not come across as one of the least-developed countries, although clearly there are issues around how it will progress and develop its own trading arrangements.

The point behind the amendment is to get on record some further points that have emerged. The noble Lord was kind enough to suggest that we might have further questions, but his all-encompassing knowledge and brilliant, incisive questions are quite enough for me.

Lord Bates: I thank the noble Lords, Lord Lansley and Lord Stevenson, for moving the amendment standing in their names and giving us another opportunity to discuss this important area. We are moving to a stage where we can consider how having an independent trade policy could provide opportunities, particularly to the least developed countries in the world.

I also thank the noble Lords, Lord Lansley and Lord Stevenson, as well as the noble Lord, Lord Fox, and the noble Baroness, Lady Neville-Rolfe, for the debate we had in Committee and for then participating in what I was glad to hear reported as a helpful meeting. I join noble Lords in saying that I found it an incredibly helpful meeting, which improved my own understanding not only of the barriers and hurdles but of the opportunities that are there.

I should perhaps deal directly with my noble friend Lord Lansley's questions, rather than outlining issues that have been previously discussed in Committee and on which the House is already aware of our position. The noble Lord asked whether it is the Government's intention to identify a sub-category of vulnerable countries. The answer is yes: we will be replicating the GSP+ tier of economically vulnerable countries.

The noble Lord asked whether these trade preferences would undermine human and labour rights. The UK has a longstanding commitment to universal human

rights, and this will be reflected in our trade preferences schemes. As part of transitioning the EU preferences scheme, we will be maintaining a similar approach to human rights commitments.

On the question of who will investigate accusations of subsidies, dumping, surges of imports et cetera, the Trade Remedies Authority will be able to investigate cases against any country, including preference-receiving countries. In doing so, it will consider allegations of dumping, subsidies and unforeseen surges in imports which cause injury to UK industry. Where the TRA determines that a trade remedy measure should be applied, it can make a recommendation to the Secretary of State, who can accept or reject that recommendation. Such measures usually take the form of an additional amount of import duty above the most favoured nation rate.

6.15 pm

On whether the SI will set out rules on graduated products, the regulations will set out detailed tariff lines, indicating which products will receive reduced tariffs or have tariffs removed altogether. It will also set out the rules for graduated products that are internationally competitive.

The UK currently trades extensively with developing countries under the EU's GSP, which reduces tariffs on imports. Imports of goods from unilateral preferences accounted for 4% of all imports into the UK in 2017. Our first priority for the UK's trade with developing countries is to deliver continuity in our trading relationships. In fact, the Government's intention is to replicate all the EU's tiers of preferences. This includes the Everything But Arms tier, which provides a nil rate of import duty on everything but arms and ammunition, and the standard GSP tier, which provides tariff reductions of two-thirds on tariff lines for low-income and lower-middle-income countries.

There will be an opportunity to look at how we should respond to and reform the generalised scheme of preferences going forward, but this will be a matter for future negotiations. In the trade White Paper, we invited people to make representations, and a number of representations were received on areas in which the GSP could be improved and these included areas such as rules of origin, which could be considered. As I have said, we believe that there are opportunities to look at ways in which the scheme of preferences could work better for the world's poorest countries going forward, but our first priority is to ensure that the preferences which exist already—helping approximately 70 developing countries to export to the UK—are maintained; that is the objective of this Bill.

Lord Lansley: I am grateful to my noble friend the Minister and indeed to the noble Lord, Lord Stevenson, for their contributions to this short debate, and for the discussions that we had, which were not so short but were extremely helpful in clarifying many of the issues; they have enabled us to be brief today. I am grateful to my noble friend for his responses to my questions, which were very satisfactory.

I have two things to say. First, what he described as the role of the Trade Remedies Authority seems an appropriate one and mirrors what would be the case with other countries who are not part of the GSP scheme. I hope he implied that the Secretary of State would follow the TRA's recommendations on the extent to which the preferential access is suspended or withdrawn; this can lead to a rate of duty that lies between nil and the standard rate—the most favoured nation rate. It is not necessarily in excess of the most favoured nation rate, as my noble friend said, but might fall somewhere between the nil rate and the MFN rate.

On the second point, I completely understand that noble Lords might expect us to start with a preference scheme that mirrors the European Union scheme and then consider the extent to which we can, or need to, change it in order to improve it—to address both the different circumstances of EU industries relative to those of developing countries and some characteristics of the scheme itself. Given that the legislation is structured so that the first regulations get affirmative processes and subsequent regulations do not, I hope that that will not inhibit Ministers from trying to consult proactively, as they have done through the White Paper and otherwise, on how the preference scheme could be improved if and when—there is definitely an "if" as well as a "when"—we come to establish a trade preference scheme that is the UK's own scheme, rather than one which simply reflects the EU scheme. However, on the basis of the very helpful response from my noble friend, I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10

Moved by ***Lord Lansley***

10: After Clause 5, insert the following new Clause—

"The customs tariff: parliamentary approval

(1) The Taxation (Cross-border Trade) Act 2018 is amended as follows.

(2) In section 32(3)(b) (regulations etc)—

(a) leave out "an increase in" and insert "to vary", and

(b) after "section)" insert "from that which is in the United Kingdom's Schedule notified to the WTO"."

Lord Lansley: Amendment 10 stands in my name and that of the noble Lord, Lord Stevenson. In Committee, we did not discuss what tariffs the United Kingdom would apply if we were to leave without a deal with the European Union. Since Committee, although Ministers have not published a proposal—notwithstanding some hints that they would—we are told something about it by virtue of reporting by Sky News. I do not know whether that is true or not; I tend not to rely on media reports for these purposes. As it happens, I tabled Amendment 10 before Sky News started reporting anything of this kind, because it seemed that noble Lords would want to talk about what such a tariff structure might look like.

This amendment relates to the implementation of import duty under Section 8 of the Taxation (Cross-border Trade) Act 2018. There are regulation-making provisions in Clause 32 of that Act, which specify that the first regulations under the Act require an affirmative procedure in this case, and that the affirmative procedure should

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also be used when there is an increase in duty in the standard case. For these purposes, "standard case" means when there is not a preferential rate or a tariff-rate quota, or when something is not subject to trade remedies. In that sense, it is what my noble friend referred to in the last group as an "MFN rate". That is the standard case for these purposes.

The provision currently says it would be an affirmative procedure when there is "an increase in" that duty. The effect of Amendment 10 is to change that, so that it would be an affirmative procedure for any regulation that sought "to vary" the rate from the rate set in the schedule notified to the WTO. One of the points I hope to make is that this enables us to say something about the shape of how we might approach the situation if there is no deal. If we remain in the transition or implementation period, we will clearly abide by the EU external tariff. Depending on the nature of the future relationship with the EU, we may continue to be within a single customs territory and, by implication, within a single EU external tariff. That does not necessarily reflect the Government's point of view, because they appear to want to be able to reduce tariffs below the EU rate, even though we remain in a single customs territory. This is a debatable proposition, which we will perhaps debate later but not on this group.

In this amendment, there is an expectation that, if we leave without a deal, we will start with our schedules to the WTO being those that we have notified—as I said right at the beginning of our proceedings today, in response to the noble Lord, Lord Kerr. They are essentially in line with the EU external tariff. My proposition is that there is no need for this; indeed, there would be significant detriment if we did not maintain those schedules. Under the WTO rules, we should have what is known as a bound rate, which is in line with the EU external tariff. The bound rate is the one that we are, in this sense, bound not to exceed. However, that does not mean that that is the rate that is applied. It is not widespread, but it is entirely normal practice under the WTO rules to have not only free trade agreements of the kind which are contemplated under Article XXIV, which lead to preferential arrangements, or the kind of preference scheme that we were just talking about for the less developed countries, but also to apply a rate of duty that is lower than the rate which one is bound to under the schedules for the WTO.

The proposition I put to your Lordships is that we should be thinking constructively about how to use the flexibility under the WTO rules to vary the applied rate of tariff from the bound rate, if we were in the unhappy circumstances of leaving without a deal. We would leave the bound rate, the WTO schedule and the EU external tariff where they are, in the expectation that, even if we leave without a deal, we may enter into a relationship with the European Union with a customs relationship which might require us not to vary from the EU's external tariff—we would just leave that alone for the time being. In the short term, this would enable us to reduce tariffs on products from around the world which are presently subject to a higher tariff or to tariff-rate quotas. It would enable us to offset what is otherwise a significant risk of overall price increases for UK consumers.

The reasoning of course is that the EU will not change its external tariff. If we leave without a deal, we will be subject to the EU's external tariff. Roughly half of our imports come from the European Union; a significant proportion of those—for example, cars—will have a 10% tariff applied. To turn it the other way round, UK producers would be in the unhappy position of being subject to increased costs when they try to sell. What we do not want to happen is that, simply by virtue of leaving, we impose high tariffs, leading to higher costs for UK consumers.

When people have speculated about what the tariff on a no-deal basis might look like, in some quarters they have tended to say, "We cannot lower our tariffs because the consequence of that is that we will have given something away unilaterally, which would prejudice our ability to enter into bilateral trade deals with other countries". This is not the case. If we proceed by having an applied rate that is lower than the bound rate, first, it will become apparent to us and other countries to what extent liberalised, lower rates of duty stimulate imports from those countries, in some cases in competition with the EU at a level of duty which it has not been able to match in the past. It will begin to tell countries, and us, what the impact of lower rates of duty might be on trade between those countries.

Secondly, those countries would know that, if no bilateral deal was brought to a successful conclusion which then gave a preferential rate of duty to the United Kingdom under a free trade agreement, we could restore our applied rate back to the bound rate. They would then lose the benefit we had given them in the short run. In a nutshell, the short-run benefit of lowering tariffs not only potentially offsets what might otherwise be price increases but enables us to demonstrate to other countries what the benefits of a bilateral deal in the long-run might look like.

My expectation, and the expectation of most developed economies, is that the bound rate and the applied rate will converge in the long run. They are generally the same thing, but we are not required to have them as the same thing. It gives us an opportunity to vary rates and see what the future might look like. In the short run, it also gives us the opportunity to vary the rates of duty from those in the EU tariff to give specific benefits on things such as agricultural products or some industrial products where the protection that is required for European producers does not apply to UK producers. In that way, we can start to benefit from lower rates of duty where the European Union does not currently offer that option to us.

6.30 pm

I am not necessarily looking for the amendment to be adopted by Ministers, but I hope that they will see the benefit—even if they cannot tell us what is planned—of saying that, structurally, we should start with the EU external tariff and the WTO schedules as they are but be prepared, in a no-deal situation, to look at how we can liberalise trade through lower rates of duty across

many products. We could then have specific protections for, for example, farmers and the ceramics industry—those were referred to in our Committee debates—which may require particular protection against non-EU countries that bring in products at a lower rate of duty. On that basis, I beg to move.

Lord Stevenson of Balmacara: I have a private joke with the former Minister, the noble Baroness, Lady Neville-Rolfe, that there is a small and declining number of people in this House with an interest in intellectual property, and that we used to gather to discuss arcane issues using incomprehensible language to our hearts' content. The noble Lord, Lord Clement-Jones, is clearly a member of that group, and there are one or two others. The noble Baroness, Lady McIntosh, who is unfortunately not in her place, has joined the group recently. I say that because the discussion of the WTO tariff rate is coming down to that rather narrow group of people who have a deep knowledge of and fascination for the issues and are interested in exploring them, but are frustrated by the fact that the Taxation (Cross-border Trade) Bill, on which we should have had the chance to discuss the points so ably made by the noble Lord, Lord Lansley, was held back from us by procedural rules and went through without much debate. We are therefore having to invent a way of getting into that discussion.

The noble Lord, Lord Lansley, has done a great service to the House by going through some of the very intricate and complicated issues around setting tariffs and rates and how you play the game against the very complicated rules of the WTO. He does it, however, from a position of knowledge and experience that, I am afraid, will be frustrated again tonight, because there is not the will in the House to go through it in detail. Indeed, I tabled an amendment a week or two ago—when I thought there would be more time to discuss these things—on the prospect of the GSP tariff rates, setting and mechanisms. He is right that there are broader issues around those that we should discuss. However, this is not the time—and we do not have the time—to go into the detail, so I will not press my Amendment 14, which comes later, because the noble Lord, Lord Lansley, has raised the same points in a broader context. I hope that the Minister will respond briefly to the points raised, so that some of the issues that need to be on the record are on the record, but perhaps we should save some of the more detailed issues for another day.

Lord Bates: I thank my noble friend for moving the amendment. The noble Lord is right: my noble friend has raised, effectively, three issues that need to be examined. One is the level of tariffs. In that regard I will probably disappoint my noble friend by referring back to my noble friend Lady Fairhead's response from the Ministers' Bench to the invitation of the noble Lord, Lord Kerr, to set out a timetable for when those tariffs might become known. She made her points and they stand on the record; I probably do not need to repeat them. I also draw to the attention of the House *The Implications for Business and Trade of a No Deal Exit on 29 March 2019*, which was published on 26 February. On this occasion I draw my noble friend Lord Lansley's attention to the section on tariffs, beginning at paragraph 31 and continuing into paragraph 32, which explores some aspects of the setting of tariffs.

Those are two aspects on the level of tariffs, but I now turn to some of the specifics to which my noble friend referred. He asked about the status of the common external tariff applied by the WTO. The noble Lord is correct that we have notified our bound tariff schedule to the WTO. Our bound schedule represents the upper limits of what tariffs the UK could apply on imports. If, for example, our bound schedule says 10% for product X, we could choose to apply 9%. The Government have yet to announce their applied tariffs for a no-deal scenario, but the noble Lord, Lord Lansley, is correct to say that on leaving the EU we will be free to set out tariffs within the parameters of the bound schedule that we lodged last year.

The EU's common external tariff—as referred to by the noble Lord, Lord Lansley—is the EU's version of its applied tariff schedule. These are the tariffs that will apply to UK exports to the EU in a no-deal scenario. My noble friend also referenced the Taxation (Cross-border Trade) Act, which states that the first time a tariff is set, and whenever an import duty rate increases, the made affirmative procedure will apply; otherwise the negative procedure will apply.

These amendments would make the made affirmative procedure apply in different circumstances. In the case of Amendment 10, that would be any time the rate of import duty diverged from the bound commitment made by the UK to the WTO; in the case of Amendment 14 the made affirmative procedure would apply in all circumstances. However, under both amendments it is currently stipulated that the setting of the tariff would remain a matter for the other place. The Act ensures that the scrutiny procedures applied to the exercise of each power are appropriate and proportionate, taking into account the extremely detailed nature of the tariff and the frequency with which it may be changed. The tariff is long and complex; it currently contains 17,000 types of goods and is more than 1,000 pages long. The EU tariff is subject to regular, almost daily, amendment, so the current balance of the chosen procedure reflects that understanding.

Once again, I express the Government's appreciation to my noble friend Lord Lansley for moving this amendment, giving us the opportunity to expand on our positions and put those additional remarks on the record. I hope that is helpful and reassuring to him, and that he feels able to withdraw his amendment at this stage.

Lord Lansley: I am grateful to my noble friend, and to the noble Lord, Lord Stevenson of Balmacara. This debate has been very helpful, and the takeaway from this—one I am grateful to my noble friend for confirming—is that the bound schedule has already been notified to the WTO. People need to be very clear about the fact that if we leave without a deal and the Government come forward and say, "These are the tariffs that we intend to apply", they are not varying the WTO bound rate but saying that, on a most favoured nation basis, they will apply these rates. That provides a basis for negotiations on preferential

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schemes that could emerge over time. I read the document about the implications of no deal for tariffs, and it is correct: the Government must balance the desirability of supporting liberalised trade, with benefits for consumers through price and choice, with protection for producers in this country. That will be a delicate balance to strike. If people are aware that we can behave in this way with an applied rate that varies from the bound rate, it removes the argument that by applying a lower rate in the short run we have prejudiced our ability to conduct trade negotiations with other countries in the future—we have not done that. If we get rid of that argument, it helps to shift the balance in many cases in favour of lower rates in the short run, rather than higher rates. I am most grateful to my noble friend for his response. On that basis, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11

Moved by ***Lord Lea of Crondall***

11: After Clause 5, insert the following new Clause—

"UK membership of the European Free Trade Association and the European Economic Area

It shall be the objective of an appropriate authority to achieve before exit day the implementation of an international agreement to enable the United Kingdom to become a member of the European Free Trade Association and continue as a signatory to the EEA Agreement."

Lord Lea of Crondall (Lab): My Lords, last summer the House supported a proposition along the lines of retaining our membership of the EEA. Given that all other ideas seem to be falling by the wayside one after the other like dominoes, it now has even more steam behind it. I expect this will be demonstrated in the other place quite soon, with the proposition supported by cross-party groups in the Commons and in this House.

Before I come to the main issue, I want to make a point about all the bad news from the car industry, with BMW and Toyota adding to it. This is another demonstration of the need to stay in the customs union, which will be debated later.

We are talking in this Bill against a background of leaving the EU—not about whether it is a good idea, which it certainly is not—and moving from Pillar 1 of the twin-pillar European Economic Area, which is the European Union, to Pillar 2, which is EFTA. Given where we are now, I think that it is the only way we can still be part of a family of agreed rules and justiciable arrangements, with the emphasis shifting on the latter point from the European Court of Justice to the EFTA Court.

I wish to get out of the way a rather unnecessary obstacle. I refer to the publication by this Government on 20 December of the EEA EFTA separation agreement with the UK. Although this is a treaty provision whereby we will leave the EEA on 29 March, will the departure requirement in Article 71 of the draft agreement be automatically frozen in the hypothetical situation of our reaching agreement with the EU to extend the Article 50 period, which is becoming more likely, so that it does not happen on 29 March? If we crash out, would we not have the right to apply to rejoin EFTA? Would not Parliament have the right to vote on such a treaty change if it were no longer logically derivative of the wider constitutional Act? Many lawyers think that there should be such a vote.

Jeremy Corbyn paid tribute in the Commons recently to the cross-party Norway-plus group, echoing its view that we need full access not only to the single market but to a customs union. This policy is supported by the TUC under the distinguished leadership of Frances O'Grady. As I have said previously, I prefer to say "the" customs union, because I am agnostic about whether there is a cigarette paper of difference in this context between the definite and the indefinite article. The EU customs union and the single market between them—they are intertwined—cover a wide range of electronic data, driving licences and product standards, as well as labour standards. Given what has been said in the newspapers today, membership of them would be the only way to guarantee that workers' rights in this country kept pace with further improvements in the EU. As we have seen from today's reports, the Prime Minister restricts her commitment to consultation, which past experience suggests gives a veto to the CBI, even though I suspect that it, like the TUC, will remain part of the employers' negotiating team in Brussels. In other words, it could have its cake and two bites at the cherry, given its reluctance to be part of this arrangement.

6.45 pm

Membership of the customs union and the single market would determine that we had no problem on the Irish border—to which my noble friend will return later—and no problem on Dover-Calais. However, I recognise that the scenario I am spelling out is not problem-free. EFTA has free trade agreements with third countries which are not the same as the EU's; the UK as a member of EFTA and in a customs union with the EU could not join those. Indeed, the UK must fully respect the fact that EFTA states need to protect the integrity of their agreements. But on the basic premise of staying in both the customs union and the single market, this is a policy on which, as I understand it—there have been many quotes saying this much—the leaders of Norway and Iceland have in different ways stated that they would be open to negotiation.

I turn to the principal objection raised by some to the EEA option, which has been rather rhetorically posed in the phrase that we would be a "rule-taker rather than a rule-maker". Membership of the EEA is not unique in being open to that characterisation. Even if the penny has not yet dropped for Mr Boris Johnson and such circles, we cannot leave the EU table and then complain that we do not have a vote there. How is that idea still running? Moreover, as Jacques Delors foresaw in 1990, the EEA has scope for devolution. EFTA with the UK again a member would probably evolve into a more influential and substantial body than is currently the case. There would no doubt be further strengthening of the pre-legislative consultation protocols within the EEA and the EU.

In referring in the second half of his speech on 4 February to,

"control of our borders or our laws",—[*Official Report*, 4/2/19; col. 1368.]

the Minister sounded, perhaps unintentionally, as if he was quoting straight from the Rees-Mogg/Boris Johnson playbook. We could have every expectation that there would then be reciprocal controls over freedom of movement, which would be cutting off our nose to spite our face. It is said that we would be free to act unilaterally, but this does not apply to GATT or lots of everyday things, from railway signalling to air traffic control. If we want to live in splendid isolation, I guess we ought to have our own rules on penalty shoot-outs, having left FIFA, and restrict ourselves to playing against a team from the planet Mars. So I ask the Minister to modify that sort of rhetoric.

My key proposal is to urge discussion among the 27 and the 3+1, which is Switzerland—that means representatives of the whole EEA—to enable a wider group of member states to be involved in finding pragmatic solutions to the single market and the customs union, involving cross-over between the two pillars if we are outside the EU. That is why I am advocating that the EEA Council be in a position to take initiatives to call meetings between the pillars in such circumstances. That prospectively involves the UK's affiliations. I beg to move.

Lord Monks (Lab): My Lords, the House has carried an amendment such as this before and has done so overwhelmingly. It crops up in the context of this Trade Bill and will do so again whatever the Government do. If they achieve their withdrawal agreement, the direction of travel of what happens next will have to take account of the Norway-plus option. If they fall flat on their face next week, we will see that the options which the country needs to consider urgently are likely to include this one.

It is the only option that combines reconciling the referendum result with single market membership and the customs union arrangement as well. I know that time is tight, but I ask the House to keep this option in mind; the fact that it is being treated briefly tonight does not mean that it will not be very important in the future. I hope people will reflect on the points made by my noble friend in moving this amendment.

Lord Bilimoria: My Lords, to follow what the noble Lord, Lord Monks, said, I was one of the noble Lords who led on the amendment—along with the noble Lord, Lord Alli, and others—suggesting that the EEA was the least worst option. That amendment to the withdrawal Bill was passed overwhelmingly. That decision, therefore, has been made by this House; it was overturned by the other place, but it could quite probably—as the noble Lord, Lord Monks, has said—come up again as the least worst option.

Lord Stevenson of Balmacara: My Lords, although the key point was made by the noble Lord, Lord Monks, that this might seem a little out of keeping with the rest of today's discussions, points were made here that will be resonant as we move on with the Bill. I commend them to the House.

Lord Bates: My Lords, I am conscious of the time, but I also want to ensure that noble Lords have an opportunity to reflect on the serious issues raised by the noble Lord, Lord Lea. We may deal with them briefly this evening but we did not deal briefly with them when they came up in Committee. There was quite some debate on them on 4 February, and for those noble Lords who are interested, they can read it in glorious technicolour between columns 1360 and 1370 in the *Official Report* of those proceedings. Perhaps if the noble Lord, Lord Lea, will permit me to summarise what the key arguments were at that point, I will try to answer two of the points that he raised.

EFTA membership would not be acceptable because it would mean accepting the free movement of people between its four existing members. To gain access to the 29 existing free trade agreements negotiated by EFTA, the UK would have to negotiate its way into each and every one of them with the relevant third countries. There is no guarantee that that would be successful: EFTA's trade agreements were not negotiated with the size and type of Britain's economy in mind. Were the UK to join EFTA, it would constitute 71% of the enlarged area.

If we rejoined the European Economic Area to stay in the single market, we would not have control over our borders. It would mean having to accept all four freedoms of the single market, including free movement of people across the 30 EEA states. On laws, it would mean having to implement new EU legislation covering the majority of the sectors of our economy. In contrast, we are making an up-front sovereign choice to commit to ongoing harmonisation with EU rules on goods, covering only those necessary to provide frictionless trade in the context of our agreement.

The noble Lord, Lord Lea, said that if we crash out, we need to keep the right to rejoin EFTA. If we leave the European Union without a deal, we fall out of the EEA and EFTA. We would be able to apply to rejoin, but this is contrary to government policy for the reasons that I have explained. He asked what the impact on the EEA Agreement would be if we extended Article 50. If we were to extend Article 50, the UK would, of course, stay within the EEA under the EU pillar until we left the EU. With regard to citizens' rights agreements made with the EEA and EFTA states, these would enter into force only when we leave the EU or at the end of an implementation period.

I hope that, with that brief summary, the noble Lord—whose contributions I always enjoy and listen to attentively—will not feel that I have not responded to him, but in the context of the wider consideration of this issue in the debate, the Government's position remains as it was in Committee. I therefore ask him to consider withdrawing his amendment at this stage.

Lord Lea of Crondall: My Lords, I thank the Minister for that reply. In fact, he did not answer all the questions on 4 February. I could draw attention to some of them, but I will not. This could have been an opportunity today. Free movement of persons is, of course, an issue of which we have experience within the European Union. We would be cutting off our nose to spite our face on areas of the economy, such as the whole entertainment, theatre and ballet industry,

[Lord Lea of Crondall]
as the noble Baroness, Lady Bull, referred to on one occasion. There are many, many others, so these sweeping statements about control of our borders are really over the top and not a sensible way to address this issue.

I am not going to say more at this stage. Suffice it to say that the initiative is now with the House of Commons. I have some confidence that in the next few days and weeks this will become, as my noble friend Lord Monks said, a strong policy in the Commons. I rest on the fact that it is still the policy of the House of Lords, as has been said by my noble friends. On that basis on this occasion, I will not seek to test the opinion of the House.

Amendment 11 withdrawn.

Amendment 12

Moved by ***Lord Stevenson of Balmacara***

12: After Clause 5, insert the following new Clause—

"Parliamentary approval of trade agreements

(1) Negotiations towards a free trade agreement may not commence until the Secretary of State has laid a draft negotiating mandate before the appropriately constituted Committee and it has been approved by—

(a) resolution of that Committee, and

(b) a resolution of both Houses of Parliament.

(2) Prior to the draft negotiating mandate being laid, the Secretary of State must have consulted with each devolved administration on the content of the draft negotiating mandate.

(3) Prior to considering a resolution approving a mandate relating to the negotiation of a free trade agreement, the Committee must produce a sustainability impact assessment.

(4) Before either House of Parliament may approve by resolution the text of a proposed free trade agreement, the Secretary of State must lay the text of the proposed agreement before the Committee and that text must be approved by a resolution of that Committee.

(5) Prior to the laying of the text of the proposed agreement, the Secretary of State must have consulted with each devolved administration on the text of the proposed agreement.

(6) Prior to considering a resolution approving the text of a free trade agreement under subsection (4), the Committee must produce a report setting out a recommendation in relation to the ratification of the agreement.

(7) The Secretary of State must lay the report produced under subsection (6) before both Houses of Parliament.

(8) Schedule (Committee on Trade Agreements) contains further provision about the reports under subsection (6).

(9) A free trade agreement may not be ratified unless the agreement has been laid before, and approved by an amendable resolution of, both Houses of Parliament.

(10) The Constitutional Reform and Governance Act 2010 is amended as follows.

(11) At the end of section 25(2) insert ", or a treaty containing a free trade agreement as defined in section (Parliamentary approval of trade agreements) of the Trade Act 2019."

(12) In this section, "free trade agreement" refers to any agreement between the United Kingdom and one or more partners that includes components that facilitate the trade of goods, services or intellectual property including but not limited to—

(a) Free Trade Agreements (FTA) as defined by section 8;

(b) Interim Association Agreements, Association Agreements (AA);

(c) Economic Partnership Agreements (EPA);

(d) Interim Partnership Agreements;

(e) Stabilisation and Association Agreements (SAA);

(f) Global Agreements (GA);

(g) Economic Area Agreements (EAA);

(h) Cooperation Agreements (CA);

(i) Comprehensive Economic and Trade Agreements (CETA);

(j) Association Agreements with strong trade component;

(k) Transatlantic Trade and Investment Partnerships (TTIP);

(l) Investment Protection Agreements."

Lord Stevenson of Balmacara: My Lords, after that brief pause for dramatic effect, we move on quickly. We have already begun to discuss this issue because it was the subject of the Motion before the House before we began to consider Report, so I can be relatively brief. I thank the noble Lords, Lord Hannay and Lord Purvis of Tweed, for joining me on Amendment 12. I will speak also to Amendment 35, which would be a new schedule dependent on Amendment 12 and which I consider to be consequential.

The background is the White Paper on future trade deals that was referred to. It is very good to read in that paper that,

"the Government is clear that we must have a transparent and inclusive future trade policy that delivers for all parts of the United Kingdom … that there must be a strong and effective role for Parliament in scrutinising our trade policy and free trade agreements … We recognise that the best free trade agreements will be those that draw on the extensive expertise and experience of both the House of Commons and House of Lords and have its full support".

Unfortunately, those good recommendations in the White Paper do not follow on from the analysis. The problem that we have come across is that the stumbling block seems to be the rather startling assertion:

"The making amending and withdrawing from treaties are functions of the executive which are carried out in exercise of the Royal Prerogative".

I thought that we decided some time ago that the royal prerogative had had its day. It is a bit odd to see it prayed in aid in this case.

Trade negotiations are no longer just a matter of the import and export of physical goods. They are about societal rights, environmental rights, the provision of healthcare, and investment protection. There are trade-offs between services and tariffs, which was exactly the point that we were discussing earlier today. The public are entitled to know what the Government are doing. We in Parliament are duty-bound to have a role in scrutinising what the Government intend to do. Surely our country needs a modern approach to the approval of trade agreements, with proper roles identified for the Executive and for Parliament, which can operate a sensible scheme rooted in reality, not fantasy, and which is appropriate for our representative democratic system.

The Government say that this proposal,

"should draw on the expertise of Parliament … via a close relationship with a specific parliamentary committee in each House".

They suggest that these committees,

"would have the power to produce a detailed report … to assist parliamentarians and the public in understanding the agreement and its potential implications".

Moreover:

"Where the Committee(s) indicated that the agreement should be subject to a debate prior to the commencement of parliamentary scrutiny under CRaG, the Government would consider and seek to meet such requests where those requests are made within a reasonable timeframe and subject to parliamentary timetables".

These are a pale imitation of what we already have in the EU, where the relevant committee follows trade negotiations extremely closely and a plenary vote in the Parliament is required before the conclusion of an agreement.

In our view, the arrangements proposed in the White Paper do not provide a solid role for Parliament that meets the expectations of those who are interested in trade and which is required for modern trade negotiations, particularly during the scoping and negotiating phases; n or do they accord Parliament the role it should have in ratifying the final agreement, with positive votes being required in each House. I hope the Government will engage with us on this issue and I would be very happy to meet them again to explore the way forward. In the interim, I beg to move.

7 pm

Lord Hannay of Chiswick: My Lords, this amendment is in the names of the noble Lords, Lord Stevenson and Lord Purvis, and my own. I do not wish to appear disobliging towards the Command Paper the Government tabled last week and to which the Minister referred this afternoon before we started Report. It contains some useful material but unfortunately it falls short of providing a proper role for Parliament in three important respects, and thus fails to bring this Parliament anywhere close to the degree of mandating, oversight and approval that will prevail in some of the main trade partners with whom we will, in the future, be negotiating if and when we become responsible for a new, independent trade policy—most significantly, of course, the European Union and the United States.

The first defect is the Government's refusal to put any of these provisions that they referred to in the Command Paper into the Bill. The degree of mandating and oversight will remain entirely in the Government's gift on every occasion in which we set out to negotiate a major free trade agreement. Their willingness to give Parliament a say is clearly absent when one considers the consultation the Government have been holding on proposed agreements with the United States, Australia and New Zealand. No doubt having a public consultation, which they are engaged in at the moment, is entirely valuable and appropriate, but there has been no involvement at all by either House of Parliament in that consultation. That, surely, is a sad defect.

A second defect is that there is no provision at all in the Command Paper for mandating ahead of, and oversight during, the negotiations for parliamentary bodies—the word "mandate" never appears at all. The EU will be seeking a mandate from the European Parliament before negotiating with us and the European Parliament will no doubt have oversight throughout the negotiations. In the US, the Administration have just tabled their proposals for an agreement with us and these will undoubtedly be subject to detailed scrutiny and consideration by both Houses of Congress. Why should this Parliament not receive the same provisions and opportunities?

The third defect lies in the process of parliamentary approval for any agreement once the negotiations have been successfully concluded. The CRaG procedure, which is the Government's preference, provides only for a negative procedure, which I suggest is inadequate for the very complex and sensitive issues that free trade agreements now entail. It is a much weaker instrument than the affirmative procedure proposed in this amendment. I hope that the Government will reflect carefully on how to remedy those three major defects. Without such remedies, the Bill clearly falls short of what is required in a period when trade negotiations have, quite rightly, become the object of careful parliamentary scrutiny and approval all across the world at every stage. Why should this Parliament be left on the sidelines?

Lord Purvis of Tweed: My Lords, I am very grateful to the noble Lords, Lord Hannay and Lord Stevenson, for working collectively to condense a number of amendments in Committee into one composite amendment. It captures the two broad areas that were left outstanding in the Government's Command Paper, the presentation of which I and others welcomed. The first area explores how the Government see the prerogative power of the Executive taken forward in a new, more complex world. The second concerns the devolved Administrations. Both areas are deficient in the Command Paper, as has been said already.

To illustrate the first point, I was born in 1974, when there were four regional trade agreements in the world. In 1992, there were 24 and in 2019 there are 471. That shows the massive growth in breadth and complexity of trade agreements that have been notified with the WTO. Nine been notified to the WTO during the tortuous process of our consideration of this Bill, which shows how trade moves fast but also widely and with growing complexity. Therefore, reverting, in effect, back to a consideration of the prerogative power before our membership of the EU is not really sufficient. It is why the International Chamber of Commerce, in a meeting I chaired, was so disappointed with the British Government seeking,

"to address the issue of 21st-century trade with 19th-century constitutional practices".

This amendment seeks to address this fundamentally.

There is no direct replication of the relationship between the Commission, the Council and the European Parliament. The European Parliament has formally notified and engaged from the start of a trade negotiation 12 times. We are seeking to maintain this as the same form of platform of relationship, and if there is no direct read-across from what we have at the moment we will seek to use that as an opportunity to enhance the role of Parliament, rather than enhance the role of the Executive. That is why the first element seeks a role for Parliament in supporting the mandate or the negotiating objectives. The Government may say they have an issue with the word "mandate": we are just taking the word of the Prime Minister when she sought and secured, "the mandate I need" when it

[Lord Purvis of Tweed]
came to negotiations with the European Union recently. When that passed the House of Commons she said she was,

"armed with a fresh mandate".

This is the Prime Minister's language and if the Government are opposed to it, they need to explain why the Prime Minister's language is wrong.

On the second area, we have changed the use of the prerogative power over recent years. Canada still deploys troops without parliamentary approval—we do not. We have moved to fixed-term Parliaments. We have changed, adopted and modernised the prerogative power and that is why it is appropriate that Parliament has a role in setting the negotiating objectives and mandate and also has a vote on the final ratification.

My final point concerns consultation with the devolved Administrations. This formal statutory underpinning of consultation was sorely lacking in the Command Paper. It is welcome that there will be a process through the concordat, that there will be a forum and that there will be ongoing discussions with Ministers, but just to give the current example of the Faroe Islands trade agreement, the draft text was not shared and the level of consultation with devolved Ministers was not appropriate. We seek to address those two areas in this amendment, with consultation with the devolved Administrations, an updating and a more appropriate role for Parliament. I hope that the Government will see this in the spirit in which it was tabled—that we wish to build on the Command Paper and improve it—and that they will accept it.

Viscount Hailsham (Con): My Lords, I rise briefly simply to explain why I do not feel I can support the proposed new clause, although generally speaking I agree with the views that have been expressed in its support. I shall indicate what I could support with some changes to the new clause. I shall deal first with proposed new subsection (9), which makes the ratification of the agreement subject to approval by resolution of both Houses. This provision, in fact, goes much further, as the noble Lord will appreciate, than the procedure set out in the 2010 Act with regard to the approval of treaties, but I welcome the principle and I have no difficulty with it. However, I have a question which I hope the sponsors of the proposed new clause will address. I may have overlooked the answer—it may be staring me plain in the face. What happens if the Lords decline approval but the Commons approve the trade agreement?

There is no provision in the Bill to deal with that situation, and it would be profoundly unattractive if the House of Commons were to approve the trade agreement and the House of Lords were to refuse it, the result being that the trade agreement could not pass. This is actually dealt with specifically by Sections 20(7) and 20(8) of the CRaG Act of 2010, but there is no similar provision in the new clause. Because the procedures between the new clause and CRaG are fundamentally different, I do not think you could simply import the procedures in CRaG to the new clause. Perhaps I might seek guidance from the mover of the amendment on how to resolve a difference of opinion between the two Houses.

To move very quickly to proposed new subsections and (1) and (4), so far as the former is concerned it is very good idea that the negotiating mandate should be placed before an appropriate committee and discussed in both Houses of Parliament. It is a splendid idea, and I also agree with the supporting procedure set out in the proposed new clause. The one thing I do not agree with is that the negotiating mandate should be made subject to approval of the committee or the House. That is an undue restriction on the ability of the Executive to negotiate. I would say yes to consideration and discussion, but no to express approval.

The same point relates to proposed new subsection (4). I see no reason why the agreement of the appropriate committee should be obtained before the matter is put to a vote under subsection (9), because that subsection is already a parliamentary lock on the agreement. Why, therefore, should there be a pre-agreement by the appropriate committee before it goes to both Houses of Parliament? It seems to me that that restricts the ability of Parliament to do that which it thinks is right, and it is unnecessary because the parliamentary lock already exists.

To summarise, I cannot agree with this new clause, but I could agree with it if the principle of consideration and discussion were substituted for that of express approval in subsections (1) and (4).

Lord Lansley: I thoroughly agree with my noble friend Lord Hailsham in his argument. I will add one thing. The Commonwealth Parliamentary Association just a few weeks ago brought together people from across the Commonwealth to discuss a number of issues. The meeting I attended was a discussion on the ratification of treaties. It was clear that Australia and New Zealand—which of course have a long continuing history of negotiating their own trade agreements—still use the prerogative power as the basis on which the Executive enter into a trade agreement, but they do it in the context of continuing scrutiny, oversight and an approval process following implementation of legislation.

What I read in the White Paper last week went a long way towards replicating that in a very satisfactory way—that is, we would do those things in a similar way to Australia and New Zealand such as the outline approach being presented, reports on rounds and negotiations being reported back to Parliament and of course an approval process. It is perfectly reasonable to wait on the two Houses of Parliament to tell the Government what they think should be the committee processes by which these are considered. Australia, for example, has a joint standing committee on treaties, which looks at the way treaties are ratified. I do not think it is the case that mandates are being taken all over the world; some of the countries that have the greatest constitutional consistency with us do not have a mandate. The noble Lord, Lord Hannay, was right about scrutiny and oversight, but he elided them with the necessity for Parliament to issue a mandate. Under our constitutional processes we should not be issuing a mandate, and the proposed new clause falls on that count.

Lord Bilimoria: My Lords, at the heart of this is Parliament taking control. What has been a problem for the past two and two-third years is that the Executive

have continually tried to bypass and bully Parliament, whether with Article 50 or the statutory instruments that are going through now. This is really frightening. I am sorry to say to the noble Lords, Lord Lansley and Lord Hannay, and the noble Viscount, Lord Hailsham, but there is a big difference between Australia and New Zealand, and, for example, the United States of America. Not only does that country undertake a meaningful public consultation before negotiating, but it releases all the negotiating text to a large representative panel and subjects the deals to an affirmative vote by Congress, which is also entitled to amend deals unless it waives its right. That is Parliament having a say. That is transparency. The European Union, with its mostly mixed agreements, needs ratification by member states. It is crucial that we accept these amendments, to make sure, in the words of the Brexiteers, that we take back control.

7.15 pm

Lord Kerr of Kinlochard: My Lords, my perspective is that of a former negotiator. I do not think that a serious parliamentary procedure of the kind set out in the amendment for the approval of a mandate and the approval of the outcome of a negotiation damages one's negotiating stance or limits one's flexibility. I do not believe that at all. Having negotiated against Americans, I know that it greatly strengthens their hand to be able to say, "Here is the proof that I cannot give you what you want, because Congress would turn it down". At the end of the day, when Congress turns one down—and it does—that is a very serious and effective deterrent to those disagreeing with the Americans in a negotiation. Speaking against unilateral disarmament in 1957, Aneurin Bevan talked of the dangers of sending the Foreign Secretary naked into the conference room. If we do not accept the amendment in the name of the noble Lord, Lord Stevenson of Balmacara, we will weaken the hand of British negotiators in the future.

Lord Tugendhat (Con): My Lords, I will intervene very briefly. The proposers of this amendment put forward their arguments so admirably that there is little more to say, particularly the noble Lord, Lord Hannay, who compared the role envisaged for this Parliament with the roles of other parliaments. As we all know, one of the key arguments in the referendum campaign was about taking back control. Here is an absolute instance of where Parliament ought to take on greater powers if it is to take back control over an important area of British policy. The other thing is that a great deal has been made by the Government, the Secretary of State for International Trade and the Prime Minister about the centrality of being able to do trade deals. The argument is put forward that one of the great reasons for being outside the EU is that it gives us the ability to do trade deals. They are going to be a central part of government activity once we have left the European Union. For those two reasons, it seems to me that the Minister will have to put forward some very strong arguments indeed if she is to convince me and perhaps some others that it is right for the Government to ignore the principle inherent in this amendment.

Baroness Fairhead: My Lords, I thank the noble Lords, Lord Stevenson of Balmacara, Lord Purvis of Tweed and Lord Hannay of Chiswick, for tabling Amendments 12 and 35. They seek to ensure that Parliament has a significant role in free trade agreements and impose obligations on the Government and a scrutiny committee in relation to mandate-setting, transparency and approval of free trade agreements.

I fully understand the desire of noble Lords right across the House to ensure that there is strong and effective scrutiny of future trade agreements. It is an objective that the Government share. We have listened carefully to the views put forward in both Houses on this topic and last week published comprehensive proposals for enhanced scrutiny of future trade agreements in a Command Paper. This included confirmation that we would publish our outline approach to negotiations, including our objectives, accompanied by detailed economic analysis.

We further committed to publishing progress reports after each negotiating round and an annual trade report across all live negotiations. This draws on best practice internationally and will ensure a high degree of public transparency around our negotiations. In terms of Parliament's role, we committed that we would work closely with a committee, or one in each House, to ensure that it could effectively scrutinise negotiations from start to finish, as well as setting out opportunities for scrutiny of FTAs throughout negotiations.

It is to this role that Amendments 12 and 35 apply. I will address these amendments and our proposal in this area in more detail. Amendment 12 would disapply CRaG to trade agreements and instead require that the agreement secured the approval of both Houses prior to being ratified, as well as requiring the approval of both Houses for negotiating mandates. Without wishing to revisit ground that was covered during Committee, it is worth reiterating that such a proposal goes to fundamental constitutional principles that underline the negotiation of international treaties. The negotiation and making of treaties, including international trade agreements, is a function of the Executive. This rule is not only the result of centuries of constitutional practice but also serves an important function. It enables the UK to speak clearly, with a single voice, as a unitary actor under international law. It ensures that partners know our views and are able to have faith that our position, as presented formally in negotiations, is the position of the United Kingdom.

Regarding the setting of mandates, we have considered international practice, and it is telling that there was none among those we considered in which the legislature had this role. That includes the EU, Canada, Australia and New Zealand. The noble Lord, Lord Bilimoria, referred to the United States. It is true that the United States legislature is different from ours. Congress does not vote on a mandate for each agreement but delegates authority for brokering trade agreements through a trade promotion authority. This includes setting out overall objectives for trade negotiations and legislation but not specifically for individual deals. The trade promotion authority then enables an expedited process for the consideration of trade deals whereby Congress has 30 days to consider the mandate for an individual country negotiation and can call hearings on them

[Baroness Fairhead]
with the United States representative. They are therefore consulted in relation to the specific mandate for each country and during negotiations, as we plan to consult Parliament.

The noble Lord, Lord Hannay, said that there had been no consultation with Parliament, but there was a debate on 21 February to consult the Commons on four new free trade agreements we are considering. As he will understand, we are unable to negotiate right now while we are members of the EU. We will ensure that Parliament has the opportunity to scrutinise the outline approach to negotiations, and those would usually go to general debate in each House.

Lord Hannay of Chiswick: I am most grateful to the Minister for that clarification. I think I heard her say that there will now be an opportunity to consider the objectives the Government are pursuing in their negotiations—when they are able to conduct them—with Australia, New Zealand and the United States. That is very helpful, but she seems to be making rather heavy weather about the word "mandate". She gave us a very lengthy exposition of the royal prerogative, which is something that is behind us but is now exercised, of course, by the Government. Could she not possibly think a little more carefully about ways in which this objective could be achieved? She has said already, I think, that the Government intend to set out their objectives in the negotiation. Why can they not say that they would seek the view of both Houses of Parliament on their objectives, which would be a mandate for the negotiations? That is all that is being suggested.

Baroness Fairhead: My Lords, the chosen words of the Government are "outline approach". On the noble Lord's point, the ability to have objectives in that outline approach and the ability for both Houses to debate and scrutinise those objectives is the key part of what we are discussing here. I agree with my noble friends Lord Hailsham and Lord Lansley, who talked about the critical issue here, which is consideration and discussion. That is absolutely what this Command Paper proposes—in the initial stage of the outline approach, to particularly scrutinise those objectives.

Lord Bilimoria: The noble Lord, Lord Kerr, said very clearly that the power of having Parliament behind the Government enhances our negotiating position with the mandate that that gives. The exact example is: why have we been outgunned by the EU in the negotiations over the past two and two-thirds years? It is because it has had a clear mandate from 27 countries, whereas we have a divided country and a divided Parliament. That does not give a clear mandate whatsoever, which is all the more reason we need the amendment.

Baroness Fairhead: My Lords, I do not want to go into the world of semantics, but the preferred term is "outline approach". The objectives will be the objectives set, which will be scrutinised in the way in which we are proposing in both Houses. I agree totally with the noble Lord, Lord Kerr, that you want the ability to go back and say, "I do not think that will get through my executive board" or whoever because we want a clear set of objectives. This is what we intend to have, and an ability to say, "I do not think that will rub". I also note that the International Trade Committee in the other place did not call for the power to approve the mandate.

We recognise the legitimate desire of this House to ensure that Parliament is able to shape our approach to negotiations. That is why we are committed to publishing the approach to negotiations. It will include those objectives. We will ensure that Parliament can scrutinise these. My noble friend Lord Tugendhat asked whether it is sufficient. We are trying to ensure enhanced scrutiny, so that is exactly what the Command Paper proposes. As I said, we expect that this would usually be through a general debate in each House.

Lord Warner (CB): Does the Minister not accept that a Command Paper does not give the assurance to Parliament that provision in legislation does?

Baroness Fairhead: My Lords, I will come to that point later, which relates to the question that the noble Lord, Lord Hannay of Chiswick, raised on whether these matters should be on the face of the Bill.

The essential point is this: this is the first time in 40 years that we have been negotiating a free trade agreement. We are keen to make sure that we do not lock ourselves into a process by having detailed elements on the face of the Bill which would then be difficult to change. What we want to do is to ensure that, through this Command Paper, the process of an enhanced scrutiny is clear, that there is an ability for Parliament to scrutinise at every stage and, furthermore, that there is a committee which will meet in confidence, which I think was something that was raised in this House as critically important. The noble Lord, Lord Hannay of Chiswick, raised this with reference to the ISC, pointing to the fact that sometimes confidential discussions need to be held in a room with a committee of experts. That is what we are proposing. We would also expect these outline approaches and objectives to be the subject of close dialogue with the relevant committee.

7.30 pm

Once an agreement had been negotiated, the amendment would seek to disapply CRaG to FTAs, replacing it with approval by an amendable resolution of each House. The Government continue to believe that CRaG is the right process for Parliament to scrutinise FTAs. It provides Parliament with the opportunity to consider a treaty in detail and, where it has concerns, delay ratification and require the Government to put forward further arguments as to why the agreement should be ratified.

Alongside the CRAG process, we have said that we will ensure there was sufficient time for the committee to produce a detailed report—with input from experts, as appropriate—prior to beginning ratification procedures under CRaG. This would ensure that Parliament would have detailed independent information, in the form of that report, to inform and support that process. We have said that, if the committee felt that the agreement should be debated prior to ratification procedures commencing, the Government would seek to meet such requests subject to the constraints of parliamentary time.

I remind the House that we have also committed to giving regular updates to the committee, including ensuring, as I stated, that it has access to sensitive information that was not suitable for wider publication and that it can receive private briefings from negotiating teams. This would not only ensure the committee was well prepared to produce a detailed report on the agreement but would also give it the opportunity to provide feedback to the negotiating teams throughout negotiations.

Taking these measures as a whole, we have sought to maintain the balance between the Government's role in negotiating FTAs and the important principle that Parliament should have the opportunity to scrutinise, in an enhanced way, those treaties effectively. In 2010, CRaG confirmed these respective roles after a process of consultation. I do not believe that it would be appropriate for this House to seek to undo these long-held constitutional principles, nor to remove the flexibility of either House to undertake scrutiny in the way it best sees fit.

These amendments would also impose a number of further requirements on both the Government and the scrutiny committee. They would require the Government to consult the devolved Administrations on the negotiating mandate and the final agreement. There is no question that the devolved Administrations must have a real and meaningful role in the development of our trade policy, and that is why, after discussions with the devolved Administrations, we will be putting in place a new ministerial forum for international trade. This will ensure that there is meaningful engagement with the devolved Administrations at all stages of a negotiation, including prior to developing the mandate and finalising the agreement.

We are also currently in discussions with the devolved Administrations on their role in future agreements, with a view to agreeing a new concordat on international trade. This would complement the existing memorandum of understanding on devolution that was agreed by the UK Government and the devolved Governments in 2012. The MoU, with its associated concordats, is the established and respected means of setting out the underlying principles that govern relations between the UK Government and the devolved Administrations. It is entirely appropriate that we use this mechanism to ensure there is strong and ongoing engagement with the devolved Governments.

The noble Lord, Lord Purvis, raised criticism of the level of involvement of the devolved Administrations, specifically regarding the Faroe Islands. I would like to give the noble Lord two assurances on this point. First, we acknowledge that we did not get this entirely right. We have reflected on the process for agreeing continuity agreements, and I can now confirm that it is our intention to share treaty texts with the DAs prior to their being signed. Secondly, our approach to the technical rollover of continuity agreements does not set a precedent for future trade agreements. These are fundamentally different things, and it is our clear intention to ensure that the DAs are engaged throughout the process of negotiations and are able to provide input at all stages, including prior to an agreement being signed.

The amendments would also require the committee to produce a sustainability impact assessment during the mandate-setting stage and a report on the final agreement, and to set the terms of the committee's report and analysis in some detail. We agree that Parliament should have detailed analysis available to it when considering our negotiating objectives and the final agreement. That is why last week we published further details on the economic analysis that we will produce to accompany our outline approach and objectives. This analysis will cover many of the areas that this House has sought assurances on: for example, the impact on the environment, on individuals with protected characteristics and on countries not party to the agreement, including developing countries. That analysis will be subject to parliamentary scrutiny, usually in the form of a debate in both Houses.

That does not preclude a committee from undertaking its own impact assessments, but it would not be appropriate to dictate how that committee should undertake its work. Nor would it be appropriate to dictate how and when the committee should report on a proposed trade agreement, or what that report should contain. In bringing forward our proposals last week, we were clear that Parliament itself must shape the final scrutiny arrangements, including which committee or committees would be most appropriate to take on this scrutiny role. Once that committee is in place, it must have the flexibility and freedom to undertake its important scrutiny work in the way it sees fit, and to shape the processes by which Parliament plays a role in FTAs, including being able to respond to its experiences of scrutinising the first FTAs the UK will pursue after Brexit.

It would be highly unusual for a committee's obligations to be set out in statute in the way this amendment would bring about. The Intelligence and Security Committee is a statutory committee but is unique by virtue of the material it handles. It would not be appropriate or, we feel, respectful of parliamentarians' immense expertise and experience in the field of scrutiny to dictate the terms by which a committee will conduct its scrutiny.

I therefore hope the noble Lord will see that, although we share much common ground here, we cannot support these amendments. The proposals we brought forward last week strike the right balance between ensuring a strong and effective scrutiny role for Parliament and respecting our existing constitutional framework with regards to the making of international treaties. They set out clear commitments on the part of the Government to ensure effective scrutiny, while leaving sufficient flexibility for Parliament itself to shape the final arrangements. I hope that, in light of this, the noble Lord will feel able to withdraw his amendment.

Lord Stevenson of Balmacara: I will keep the Minister in suspense about what I am going to do, but not for long. I am grateful to all noble Lords who have contributed to this debate, which has been high level, and interesting in that some of the issues which perhaps have been a bit confused have been allowed to emerge in it.

I make it absolutely clear at the start that I do not believe that the amendment in my name and those of the other noble Lords who have joined me is a perfect

[Lord Stevenson of Balmacara]
solution to the problem we are facing. The noble Viscount, Lord Hailsham, is quite right to pick up a number of inconsistencies in that—noble Lords do not have to laugh that loud. But in my mitigation, may I say that it is not the job of the Opposition to draft for the Government the sort of detailed legislative framework which is being talked about here? This needs a lot of time, effort and attention which we are not able to bring to it.

Viscount Hailsham: Does the noble Lord then accept that it is necessary to have some provision to deal with the situation that would arise under proposed new subsections (1) and (4), where the two Houses disagree?

Lord Stevenson of Balmacara: Yes—but I do not have it. I challenge the Minister: if she is asserting that we are as close as she says we are, would she agree to have further discussions and bring forward an amendment we could both support at Third Reading? I will give her time to seek inspiration. I am not confident that it will come in any palatable form but I make this offer genuinely. It is so important and the principles so germane to what we are doing that we should try to go the extra mile if we can.

Having said that, I think the Government are hiding behind a completely fantasised world in which everything is rolled back, as someone said, to the 19th century with the royal prerogative secure in its place. Somehow, Parliament would be consulted; it would be able to scrutinise and look at the outline approach. The clue is in the language: why outline an approach except to mandate? Why scrutinise, when what we are talking about is post hoc discussion in Committee, reports that will gather dust in libraries but not have any effect, and no chance to influence at a parliamentary level what is being decided.

There are issues of principle at stake—about who has the right to make the decisions that will literally affect the people of this country in a very material way. This is because of the way in which trade has moved away from being simply about goods. It now involves services and a whole range of socioeconomic issues that need to be addressed in the round, at the highest level, by those elected by the people they serve. We have a role, though not as an elected House. I say to the noble Viscount, Lord Hailsham, that, in any discussion about priority, of course it has to be the Commons that takes the final decision.

These proposals need to be worked through properly. I will pause for a second to allow the Minister to respond on whether she is prepared to take this up at Third Reading. I will talk until I have to sit down, but I will give way to her if she wishes to make a comment.

Lord Mackay of Clashfern: While my noble friend is proposing to make a comment, it is highly important that the question of whether something should be discussed at Third Reading is a matter for this House. We have become rather accustomed to attempts on the part of Ministers to decline the opportunity of a Third Reading, but it is for this House to decide. I have no doubt that this particular, very important problem, which involves a delicate balance between the Executive on the one hand and Parliament's two Houses on the other, should be handled with the utmost care. As the noble Lord, Lord Stevenson of Balmacara, noted, this is an issue about which there is already a bit of difficulty with the detail. We must try to get this right. I have no doubt that, if it is agreed at this stage, the House will allow it to be raised at Third Reading.

Baroness Fairhead: My Lords, we have had very fruitful discussions and come quite a long way on this point. All I can say is that I would be happy to discuss it further but I cannot guarantee to come back at Third Reading with any changes. On that basis, the noble Lord will have to decide how he chooses to treat his amendment.

Lord Stevenson of Balmacara: The Minister is certainly very brave to take on a former Lord Chancellor in his pomp. I agree with the noble and learned Lord. The House has a very strong view about this and would like to see it back, but I am stuck with the procedural arrangements, as far as I understand them. I cannot amend the amendment before the House at the moment. I assume that the only way to do this would be to vote it through—if the House will agree to its view being tested—and hope that we can bring it back either through ping-pong or in some other way. I give way to the noble and learned Lord to see if he has inspiration of his own.

Lord Mackay of Clashfern: Inspiration is not my line but there is no doubt at all that it is for the House to decide. The mere fact that the Minister has not been able to agree that the matter should come back does not seem to be a bar to the House deciding whether or not it is right. If the noble Lord tables a new amendment for Third Reading, the clerks will have a view but, ultimately, whether it should be considered is a decision for the House.

Lord Stevenson of Balmacara: I am grateful to the noble and learned Lord. I am getting inspiration in the form of a book from my noble friend.

Lord Grantchester (Lab): My noble friend could retable the amendment. He should, really.

Lord Stevenson of Balmacara: In short, the advice is confused, but I am going to think about it.

The noble Lord, Lord Tugendhat, set a very high test for the response today. He wanted a detailed response that would assure him that the Government had in mind significant changes that would meet some of the questions raised. I think the view of the House is that the response was not up to that level; therefore, I wish to test the opinion of the House.

7.44 pm

Division on Amendment 12

Contents 215; Not-Contents 168.

Amendment 12 agreed.

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7.58 pm

Amendment 13

Moved by ***Lord Stevenson of Balmacara***

13: After Clause 5, insert the following new Clause—

"Customs union

It shall be the objective of Her Majesty's Government to take all necessary steps to implement an international trade agreement which enables the United Kingdom to participate after exit day in a customs union with the European Union."

Lord Stevenson of Balmacara: My Lords, the purpose of the amendment is to give the other place a chance to consider whether the UK should seek to remain in a customs union with the EU. It is an option that we know is realistic and negotiable, as signalled by senior EU figures over recent weeks and months. It has demonstrable support among communities throughout the United Kingdom, this House and the Commons, as well as business and trade unions, and would go a very long way to providing a permanent solution for Northern Ireland.

A customs union with the EU would guarantee continued UK access to existing EU trade agreements without having to roll over after 29 March, although that does not seem to be going terribly well. It would enable the UK to have a say on the direction of future European trade negotiations, allowing us to push forward our principles of development and strong standards, and our values in tackling issues such as climate change. It would offer certainty and stability to British industry, thereby protecting jobs and allowing businesses to secure new trading opportunities. When coupled with a close single market relationship, it would create the conditions for our vital services economy—80% of our GDP—to flourish and grow. The other place narrowly rejected a customs union when it considered the Bill, in part because the Prime Minister promised to replicate the benefits in her deal. However, they are for negotiation and certainly not yet agreed.

If this House supports the amendment, we are doing our duty in allowing the Commons to think again about a really important issue. I beg to move.

Lord Purvis of Tweed: My Lords, there is no doubt that we on these Benches support the free economic movement of goods and people, which benefits all parts of the British economy and of our United Kingdom. The news today from the motor manufacturing industry is no surprise to those who have been following the assets leaving the United Kingdom and seen the people leaving the United Kingdom. There is a growing and depressing trend of businesses making a choice to move away, or at least to move some elements away, from the United Kingdom.

One of the principal reasons for that is the uncertainty about our trading relationship with our biggest market. The amendment, to which I have put my name, is better than the Government's current position, or any position they are likely to take. That is why I support it. It is becoming a cliché that business needs certainty, but for many businesses it is now too late. The least this House can do, through the Bill, is to offer a higher level of certainty to businesses that there is some support for the UK remaining a member of a customs union.

I shall give one small example, of the many that could be offered, of why it is important to avoid the kind of disruption that leaving a customs union would bring about. This was highlighted in the Government's recently published paper, *Implications for Business and Trade of a No Deal Exit on 29 March 2019*, and it illustrates what leaving a customs union would mean. There is a requirement for all businesses trading with the European Union to have an economic operator registration and identification number, in order to,

"complete the necessary customs documentation for goods they are importing".

It is not simply desirable; it is necessary. As the Government themselves say,

"an EORI number registration is one of the most basic and straightforward parts of the process most businesses would need to undertake to prepare for no deal".

Businesses will need that number on exit day. The government document goes on:

"As of February 2019 there had only been around 40,000 registrations for an EORI number, against an estimate of around 240,000 EU-only trading businesses".

So we are one-sixth ready to leave.

The document highlights the fact that on an issue for which government communications have been strong, and the information to businesses about the fact that they needed to prepare has been clear, they have not done so—for a number of reasons. This illustrates the complexities required of the business community if we are outside a customs arrangement that would amount to a union. That is one reason, among many others, why we support the amendment.

We on these Benches reserve our right to campaign strongly for the UK to retain membership of the single market, as well as the customs union, of the European Union, and to say that if there is to be a withdrawal agreement it should be ratified by the people in a referendum. I hope that those on the Labour Benches are also moving faster in that direction. That debate is for another time. The debate on the movement of people is for the next day on Report, but for the moment we can give a signal to businesses across the country that the House of Lords, at least, is focused on providing a degree of certainty, even if the Government are not.

Lord Kerr of Kinlochard: My Lords, for this House it is déjà vu all over again. We voted for a customs union in the withdrawal Bill on 18 April, by an enormous majority of 223. The amendment then was in my name, and I made a speech of coruscating brilliance taking up several columns of *Hansard*, advancing five very strong arguments for the customs union. I refer the House to my speech on that occasion.

Lord Wigley (PC): My Lords, I shall try to be as brief as the noble Lord, Lord Kerr. I too tabled an amendment early in the Committee stage—the predecessor to the amendment that he so ably moved at that time. My feeling is that we have lost an opportunity to find a satisfactory compromise in the negotiations. The red lines laid down by the Prime Minister have stopped the possibility of getting a deal, including a customs union and possibly a single market—that would have avoided the difficulties with Northern Ireland and safeguarded the position of Gibraltar. More than anything, it would have looked after the manufacturing industries for which we in Wales worked so hard, with different parties in government, to secure over the past 30 years. I think that it was 52 Japanese companies that came to Wales, to sell to the European Union: they came for that reason. We now see the danger of Japanese companies and others being lost. Let us also look at the situation of the agricultural industry, and the need to ensure that we have that export market. For all those reasons, I hope that the amendment will be carried—by the same majority as last time.

Viscount Trenchard (Con): My Lords, I know I am in a small minority in your Lordships' House on this one, but I would like briefly to put the other argument. According to the trade data published by the ONS in September 2018 the customs union, of which noble Lords would like us to remain a member, has not actually achieved any benefits for the UK during the 20 years for which we have been a member. The UK's slowest-growing export trade since 1998 was goods exports to the EU.

Lord Hannay of Chiswick: I just want to correct the noble Viscount. We have been a member of the customs union with the European Community since 1972—rather more than 20 years.

Viscount Trenchard: I do not disagree with the noble Lord—but the point I was making is that in the period since 1998 goods exports to the EU have grown by only 0.2% per year, or 3.7% over those 20 years, reaching £164 billion in 2017. However, the UK's goods exports to countries outside the EU customs union have grown in the same period by 3.3% a year—over 60% in total—to £175 billion. So the customs union has not been quite as marvellous for this country as noble Lords opposite suggest. I very much hope that the Government will stick to their policy of leaving on a basis whereby we will have our own independent trade policy, which will enable us to do more trade and enter into trade agreements with the economically faster-growing parts of the world.

Baroness Altmann (Con): My Lords, I support the amendment. I hope we will send back a clear message to the other place that it needs to reconsider the importance of having a customs union—for our integrated supply chains, for the success of our manufacturing industry and, indeed, for peace in Northern Ireland and security on the Northern Ireland border. I am afraid that a number of colleagues in the other place do not seem to understand how international trade deals work. The idea that we would have rolled over all 40 trade deals that we had through the EU by now has been shown to be fanciful. I do not believe that it is safe, in the 21st century, to assume that operating as a medium-sized country outside a customs union will deliver us more and better trade than remaining within it.

Baroness Falkner of Margravine (LD): My Lords, I would like clarification from those who tabled this amendment: they refer to "a" customs union but other speakers have used the expression "the" customs union, as the noble Baroness, Lady Altmann, has. For the purposes of what I am going to say. I will assume that they mean remaining in the EU's customs union and common commercial policy.

If that is the case, I understand the motivation for seeking a halfway house between leaving and remaining, which is what this implies. However, being in a customs union and being entirely subject to the EU's common commercial policy, which is the overarching umbrella under which the customs union sits, is the worst of all options. That is why Switzerland and Norway—two countries with different arrangements in the EU—have chosen not to be part of the customs union. So while the idea may be attractive to protect trade in goods—and I admit that is important—given that we have an economy where trade in goods is a relatively small part of our exports, the sting of the common commercial policy, although it is encroaching into services, is primarily about trade in goods, not trade in services.

Being under the umbrella of the CCP without membership of the EU will mean that we will not be present in the European Council, which has the ultimate say over trade deals; we will not be present in the

[Baroness Falkner of Margravine]
European Parliament or in regional parliaments. Noble Lords may remember the Canada-CETA story and the Parliament of Wallonia. We would not even have the status of the Parliament of Wallonia in future trade deals were we stay in the customs union. We would be a rule taker without a seat at any table. It would also render the previous amendment, which the House overwhelmingly passed, entirely redundant.

Turkey feels so disadvantaged by its current arrangement in the customs union—which, incidentally, was only agreed as a stepping stone towards full membership—that it is seeking to change those terms. However, I suspect that by now it is not seeking to change the terms because it accepts that it is not going into membership of the European Union.

The CCP is designed to serve the interests of member states—and so it should—but it is not designed to serve the interests of the fifth biggest economy in the world. Even those who feel that the United Kingdom will be much diminished if it leaves the EU must surely recognise that we are a more significant economic power than Turkey. So when the EU rightly seeks to advance its own interests, who will speak for UK interests? When the EU moves to use trade remedy laws—we have had a great deal of discussion during the passage of this Bill about trade remedies—to protect its own industries, and when that does not cohere with the United Kingdom's interests, while we remain a member we can say something about it; we can indicate our preferences. If we are out of the EU but within the customs union, we would have no say over our interests being disadvantaged in the interests of any of the 27 member states which would be at the table.

Lord Kerr of Kinlochard: The situation the noble Baroness is describing will obtain if the Prime Minister's deal goes through and we go into an interim transition period. It is certainly the situation that would obtain if we go into the backstop. We would be a rule taker. We would have no say in the making of the tariffs but we would have to apply them. We would not be consulted; we would be notified.

The amendment refers to "a" customs union. We have never attempted to work out what kind of customs union the EU would be prepared to agree with us. We have never done that because the Prime Minister's rash red line ruled it out. We are now going into the worst possible case, if the deal goes through, of being absolutely a rule taker and absolutely not in the European Council, as correctly described by the noble Baroness. However, that is not what the amendment is asking for. It is asking for the negotiation of a real customs union between the United Kingdom and the European Union.

Baroness Falkner of Margravine: The noble Lord has expressed sentiments that I have heard many times over the past three years from Mr Corbyn. In our various EU Select Committee meetings with the EU's chief negotiator Mr Barnier, some of us raised the issue of whether there would be a possibility of negotiating a different sui generis, unique, bespoke customs union. We have been told in terms that that is not possible. I fear that concealing one's intentions behind "a" customs union in the hope that if all else fails the EU will come around to providing us with a customs union presents the EU with a situation where it would have to consider how it could give each country it does any negotiation with in the future a bespoke customs union.

Anyone who knows anything about EU law—I accept that the noble Lord does, but I do too—will tell you that it will not uniformly make such an enormous exception in a law that has been there from the 1950s to accommodate the United Kingdom, particularly not at this late stage.

8.15 pm

Baroness Altmann: I think what the noble Baroness is doing for the House is eruditely explaining the trade-offs that the country is facing as a result of the decision that was taken and the red lines that were imposed. What this House is talking about—and what the amendment seeks to achieve—is to protect the manufacturing success, jobs and the integrated supply chains that we have built up in this country on which so many people's livelihoods depend, as well as protecting the border in Northern Ireland. That is entirely accepted. Indeed the House has already passed the amendment which would also require us to have some kind of regulatory alignment in order to better achieve the aims we are trying to set out. However, that does not mean that we should not have and do not need a customs union.

Baroness Falkner of Margravine: The noble Baroness has just told your Lordships that the House was trying to protect manufacturing through being in "the" customs union. So we have on one side "the" customs union, which is the EU customs union, and on the other side we have a bespoke customs union. That in itself illustrates the problem with those who want to reverse where we are today.

I urge the House to look at the common commercial policy carefully, not only in the light of Articles 206 and 207 of the TFU, and to look at the jurisprudence. The jurisprudence on the part of the CJEU expounds the EU's common commercial policy into foreign direct investment rules way beyond common commercial policy and into the EU's external action policy. Some of us may have no problem with that, but the jurisprudence will continue while we are outside the room and not at the table. The jurisprudence will reflect the EU's priorities, not ours. It would leave us in a vulnerable position going forward whether we were in "a" customs union or the bespoke customs union, which would potentially give us bargaining rights and some say in jurisprudence. Certainly that customs union would give us no rights at all.

I am not used to evoking Mr Blair in support of any cause—I suppose it will have the same impact here as it does elsewhere in the country—but even he has gone public to say that the worst of all worlds would be for us to stay in the customs union. If noble Lords want to support trade in goods they need to move either towards the withdrawal agreement and the FTA that is likely to come with it, or to move to simply remain in the EU. This amendment is an ambush to try to achieve that latter aim. I am pro that latter aim—I am pro remaining in the EU—but I can see, with 20-something days to go, that either we have to

agree with the withdrawal agreement, as I voted the last time, or we have to go the other way, as I said in my previous speech, and ask the Prime Minister reconsider our position. A customs union is not going to do that and, on that basis, I will be voting with the Government.

Lord Bates: My Lords, at this hour, and given the debate, there will probably not be many Members of your Lordships' House who are carefully weighing the arguments on either side, wanting to know what the Minister is going to say from the Dispatch Box that could just persuade them another way. We have been around this course many times and the arguments have not changed. The House knows the Government's position on this: they have set it out many times. The people of the United Kingdom voted to leave the European Union and to take back control of their laws, borders and money, and have an independent trade policy. If we had a customs union, we would not get that. That is the central point against the amendment. On the other hand, we have a withdrawal agreement that allows us to have many of the benefits of our membership of the European Union without being members of it, and honours the referendum result.

I shall come to two points. The noble Lord, Lord Stevenson, when moving the amendment—which is worthy of further examination as to what it is seeking the Government to do—said that he wanted to give the other House an opportunity to think again on this issue. The noble Lord, Lord Kerr, in a brilliant, brief contribution—perhaps because we had heard his eloquence on this point in Committee—reminded the House that it voted in favour of his amendment. What they did not mention was that when it went to the other House, giving it an opportunity to think again, it rejected not only your Lordships' amendment but the concept of a customs union put forward by Stephen Hammond when the Bill was at this stage in the other place. If the purpose is to give that House another opportunity to think again, perhaps it could shout down the Corridor, "We have already said it; did you not hear us the first time?"

Some noble Lords have pointed out that the uncertainty is damaging for business. I accept that. Uncertainty is always damaging for business. What business needs is certainty. However, right at the 11th hour, when we are within sight of and have an agreement, with an exit day that meets the criteria, the amendment proposes to require Her Majesty's Government to reopen the whole negotiation process that has taken place over the past two years. Somehow that is supposed to help business. Not many businesses would sign up to that level of reopening negotiations and uncertainty. The presentation of the amendment presupposes that the outcome and benefits of a customs union are known. No—they would have to be negotiated. That would be the case unless, as the noble Baroness, Lady Falkner, rightly said, it actually related not to "a" but "the" customs union. In that case, the noble Lords' option would be there immediately. That is the position of those who want to stay in the European Union, and we understand it.

The amendment therefore plunges us further back into uncertainty and more years of negotiation. The House has already given its view, not once but twice, on this issue. The other place does not need the chance to think again and I therefore urge noble Lords to vote against the amendment if it is pushed to a Division. Most importantly, I urge all Members in the other place not to listen to the amendment but to look at the withdrawal agreement before them next week and make sure that they vote for it, so that we leave the European Union on 29 March, as the British people wanted, but with a deal.

Lord Stevenson of Balmacara: Follow that wonderful peroration! The Minister has been practising, I am sure. I congratulate him on his brilliance in getting out of the Tugendhat trap. He obviously thought that he would be judged on whether he met the very high standards required of an answer in this place before going down to an ignominious defeat—as I hope will be the case. He did it by setting his own bar and then deciding whether he had passed it by inventing, as often happens in these debates, the things that I did not say and then arguing against them effectively. He ended up by appealing to the green Benches down the Corridor, where I think he will probably find a slightly better response than he will get today.

I am sorry that the Minister has to defend the indefensible. As he said, all the arguments have been exhausted. In response to two of the charges, yes, the other place has considered this matter before, but somebody once said, "When the facts change, I change my opinion. What do you do, sir?" On the question of uncertainty, surely it is better to have a certain target, even if it takes time, than the continuing uncertainty of whether there will be a target, and that is what this amendment tries to do.

Customs unions are not very widely found in the world. They are a very special thing, particularly when they involve equality of partners trading with each other. The majority of customs unions in the world involve single dominant economies forcing terms on others. This customs union is a particularly good example of the way in which mature democracies coming together can create good for all and we should be very chary of moving out of it.

The Minister challenged the wording of the amendment but it is incredibly inclusive and was drafted to make sure that it stood the test of time. It simply states:

> "It shall be the objective of Her Majesty's Government to take all necessary steps to implement an international trade agreement which enables the United Kingdom to participate after exit day in a customs union".

It does not imply staying in the EU. I think that we have had the debate. I wish to test the opinion of the House.

8.27 pm

Division on Amendment 13

Contents 207; Not-Contents 141.

Amendment 13 agreed.

Division No. 2

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8.40 pm

Amendment 14 not moved.

Amendment 15

Moved by ***Lord Stevenson of Balmacara***

15: After Clause 5, insert the following new Clause—

"Involvement of judicial systems in trade disputes

(1) A trade agreement is not eligible for signature or ratification by the United Kingdom unless the agreement includes the provision in subsection (2).

(2) Subject to section (3), legal proceedings brought against the United Kingdom under investment protection provisions included in a trade agreement will be heard by the courts and tribunals system of the United Kingdom.

(3) If in the view of the Secretary of State there is a substantive case for including an investor state dispute settlement chapter in a future free trade agreement, regulations to that effect must be laid before both Houses of Parliament in advance of the approval of the mandate for that free trade agreement; and such regulations must be approved by a resolution of each House of Parliament before the mandate may be approved."

Lord Stevenson of Balmacara: My Lords, Amendment 15 deals with whether future trade agreements should have a chapter or separate part relating to investor-state dispute settlement systems. These complicated issues have a long history and have been a feature of trade agreements for many years. I think the UK has some 90 in place. As a country, we have not found much difficulty with them. Their main purpose was to ensure that in the case of arrangements for financing and operating the agreements set up under various free trade agreements and similar arrangements, those who put money at risk had a secure route to ensure that when issues outside their control or the control of one of the partners concerned caused difficulties, there was a chance to recoup the monies involved.

In that sense, these ISDS chapters and separate agreements have a place, but they have some downsides, which have not yet had as much discussion as they should have had. The arrangements have been used in the past to prevent social change in countries which have been subject to a free trade agreement where investors have thought that their investment was at risk. They have sued in courts which have been set up specifically for the purpose and which are not transparent or available for wider scrutiny, in order to recoup the investment involved or to change the policies that have been brought about.

For example, in a recent case in a western European country, an investor sued a town authority which had introduced a national minimum wage on the basis that the deal under which they had been brought in to support the scheme did not make provision for additional wages to be paid out and, as a result, the company was losing funds. That case was not a question of cash transfer, it was the cancellation of a policy, which I think many people would find a rather strange outcome.

These schemes have been the subject of recent debate and discussion, particularly around TTIP, but in particular about the fact that they were included in the agreement with Canada signed by the EU only a few years ago and now in the process of being ratified. However, it is being ratified at the expense of the ISDS chapter. In order to ameliorate that in some ways, the EU has set up a special judicial system under which these schemes can be considered. It may be that the future of ISDS measures, if they are included in schemes, lies in that sort of approach. As will be argued, I am sure, that is a very intensive system in terms of salaries, structures and procedures and it may not be worth the candle.

This is a probing amendment to get a better understanding of where the Government stand on these issues. In moving the amendment today, we are also reaching out to the Government to suggest that it is time we got more organised. It seems strange that, at quite a high level, a mature democracy such as the UK, with tried and trusted judicial systems, has to go to the trouble of setting up a parallel system to deal with this class of activity. Surely our existing legal systems should be capable of drawing these in and working with them. Even it were necessary to set up a separate arrangement, does it need to be a permanent system or could there be an alternative route? If the Government were interested in further discussion on that, we would make an offer to see if we could find an amendment that would work. I beg to move.

8.45 pm

Baroness Fairhead: I thank the noble Lord, Lord Stevenson of Balmacara, for tabling this amendment. I will make some statements about why we are much more supportive of ISDSs and these dispute resolutions. I draw noble Lords' attention to the fact that, as this House is aware, the Trade Bill is not intended to cover future free trade agreements or the investment policies associated with them. As a result, Clause 2 allows the Government to change domestic law where necessary to ensure that these continuity agreements can operate in a UK context. To be clear, no powers in the Trade Bill will be used to implement investment protection provisions, because such provisions in trade agreements do not require legislation.

I want to comment about investment protection provisions more generally because I believe they have a place. According to UNCTAD, foreign direct investment

[Baroness Fairhead]
in 2017 was around $30.8 trillion. There are around 3,000 international investment agreements, most of which include these sorts of provisions. They have been going for over 40 years and, to date, only 855 claims have ever been completed. This means that, for the vast majority of investment agreements, no claims have been made. Furthermore, states have won more claims than investors—37% to 28%—with the rest either settled or discontinued. This does not suggest a bias in favour of investors and, I hope, offers a bit of comfort.

I understand the concerns that have been raised in the past, but our assertion is that many have been overstated. Often, ISDS mechanisms are attacked because they seem able to force a Government to regulate in a particular way in the public interest. However, they do not infringe on that right to regulate. The right of Governments to regulate is protected in international law. I reassure the noble Lord that the threat of potential claims has never affected the UK Government's legislative programmes. We have more than 90 agreements with these clauses, as the noble Lord said. We have never had a successful claim made against us.

The amendment would require investment disputes to be heard by UK courts or tribunals in all instances, which has the potential to undermine what we think has been quite an effective process—an internationally accepted framework which has successfully supported our investors worldwide. The noble Lord, Lord Stevenson, mentioned new concepts, including the multilateral trading court. I agree with him that that is just one of a number of concepts. Work is at an early stage internationally. Future negotiations should take place in a forum where states will be fully involved to ensure that the system delivers. I fully agree with the noble Lord on that. We support the objectives of ensuring fair outcomes of claims, high ethical standards for arbitrators and increased transparency, which is another of the points that have been held against the previous systems. We have pushed hard for greater transparency.

As the noble Lord is aware, we in the UK expect other countries to treat our businesses operating abroad as we treat their investors in the UK. Our concern is that if the amendment were passed, it would be likely that any future partners would also insist on reciprocal provisions. That would mean that any disputes brought by UK investors against a host state would be required to be heard in its national court. This has the potential to be to the disadvantage of our investors.

The amendment could also create a precedent by encouraging some existing bilateral investment treaty partners to seek amendments with the UK to ensure consistency. UK investors—I am sure we all agree—can make incredible contributions to the countries in which they invest, including in hospitals, schools and other infrastructure. Potentially, this amendment could lead to decisions by UK investors to not invest. These countries would therefore not benefit; indeed, our assertion is that countries could be damaged in investment terms. I also ask noble Lords to note that, while international arbitration has been a valuable tool for our investors—who, in some cases, have been subject to egregious treatment by local Governments—we have never been successfully sued.

Most of our future negotiating partners who favour the inclusion of investment protection and ISDS would expect this to include some form of dispute resolution through a means that the international community is trying to work out. Securing agreement on an alternative domestic process could lead to the UK having to accept an unwelcome trade-off.

Additionally, as I highlighted at the start of my comments, the Trade Bill is not intended to deal with future free trade agreements. Therefore, we do not propose coming back with any changes on this at Third Reading. I am very happy to have discussions with the noble Lord outside the Chamber, but in respect of the true aims of this Bill and the systems already in place to resolve those disputes, I ask him to withdraw the amendment.

Lord Stevenson of Balmacara: I am very grateful to the Minister for her full response. I look forward to reading it in *Hansard*. I will take her up on her offer of further discussions, but at this stage, I think the best thing is to withdraw the amendment.

Amendment 15 withdrawn.

Amendments 16 and 17 not moved.

Amendment 18

Moved by ***Lord Tyler***

18: After Clause 5, insert the following new Clause—

"Geographical Indications

It shall be an objective of an appropriate authority to take all necessary steps to implement an international trade agreement which ensures mutual recognition of Geographical Indications in the United Kingdom and the European Union."

Lord Tyler (LD): My Lords, I am a co-signatory to this amendment. I will be exceedingly brief because of the late hour, and also because I am extremely optimistic about the response I will get from the Minister. On 23 January, the Committee heard an extremely helpful response from her and since then she and I have exchanged correspondence, which has underlined the commitment of the Government to try to support the objectives that we were seeking on that occasion, and which are included in the proposed new clause here. It is purely declaratory; it strengthens rather than undermines the Bill, so I hope I can expect a very positive response.

Much as I am tempted, even at this late hour, to wax eloquent on the merits of Cornish clotted cream, pasties and sparkling wine—particularly as, this week, the people of Cornwall celebrate their great patron saint, St Piran—it is more appropriate that we move smartly on and get a very enthusiastic response from the Minister. I am sure that the Government will recognise that what we have sought to do here is to give form to the precise reassurances that she gave in Committee, and which she has subsequently repeated in her correspondence. I beg to move.

Lord Deben (Con): My Lords, I wish to make a confession: when I was a Minister responsible for this area, I disobeyed the Government's policy. Then, it

was that we should be opposed to all these appellations and very determined in insisting that they were a restraint on trade and a disgrace. I thought that was nonsense. We have done great damage to our food industry by not defending so many of the things we have. Cheddar cheese, for example, can be manufactured almost anywhere in the world, but it is a Great British invention. The noble Lord, Lord Tyler, referred to what Cornwall has produced; in Suffolk, we now have a kind of local food industry which is really important. The fact that the food is made locally matters hugely, even if it is sold a long distance away.

This is much closer to what people want; it is much closer to what food ought to be like. It is much further from the kind of industrialised agriculture and food industry which, we must understand, is the "museum"—if I may use the expression of the ambassador from the United States. It is a museum of the kind of food we have produced, which has not had this very important distinction. Part of that distinction is the geographical identification. I know that my noble friend will be hugely supportive of this, but I thought I ought not to leave the opportunity to admit my past transgressions.

Baroness Fairhead: My Lords, I thank the noble Lord, Lord Tyler, for tabling this amendment. I fear, however, that I may not be able to give it the wholehearted support that he wants, because it seeks to bind the UK into a negotiating position of agreeing reciprocal protection of all EU and UK geographical indications—GIs—as part of the future economic partnership agreement. I can, however, reassure this House, the noble Lord, Lord Tyler, and my confessional noble friend Lord Deben, that the Government fully recognise the importance of continuity in the protection of UK GIs. We have heard, loud and clear from all parts of the UK, the concerns of our producers. It remains a priority for us to secure this protection; we agree that it is very important to maintain it.

While we share the objective of continuing the protection of UK GIs, we do not support the amendment because its effect would be to restrict our negotiating position on the detail of the future agreement. It is important for the Government to retain options that give us the flexibility to conclude negotiations successfully, with both the EU and potential future partners, in line with UK interests. These negotiations will be to the great benefit of UK industry, not least the UK's superb food and drink industry, by opening markets to our products.

As I hope I explained in the House on the last occasion, the protection of UK GIs in the EU has been confirmed as continuing in both negotiated-deal and no-deal scenarios. This has been confirmed by the European Commission and is consistent with our understanding. These GIs should continue to have the same level of protection.

For the future protection in the UK of both UK and other countries' GIs through the withdrawal Act, we have agreed to establish our own GI scheme, which will be very similar to the EU scheme—a good scheme, to echo the point of my noble friend Lord Deben. This was confirmed in the White Paper. The scheme will provide a simple set of rules giving all 87 of our GIs continued protection in the UK when we leave the EU. The independent scheme will be established in both a no-deal and a negotiated-deal scenario. It will be open to new applications from both UK and non-UK applicants from day one, and it will fulfil our obligations under the WTO agreement on trade-related aspects of intellectual property.

In the rest of the world—again, as I confirmed last time—we are working with our global trading partners to transition the EU trade agreements, including ongoing obligations towards, and recognition of, our GIs.

While existing UK GIs will automatically remain protected whether we reach an agreement or not, existing EU GIs in the UK do not automatically benefit. As the House is aware, the withdrawal agreement with the EU means that all existing EU GIs will get the same level of protection as now until a future economic partnership agreement between the UK and the EU comes into force. The potential long-term protection of existing EU GIs would, therefore, not be determined then but as a result of the future economic partnership. This amendment, which proposes a reciprocal agreement, would, therefore, prejudice the negotiation. Furthermore, by requiring a reciprocal system of mutual recognition, it would tie the UK into accepting EU GIs created in the future. That would mean that the UK would be forced to protect successful EU GI applications without the ability to assess them ourselves.

As I emphasised earlier, not agreeing to a reciprocal arrangement would have no consequences for the protection in the EU of existing UK GIs, which should enjoy continued protection after exit regardless. In summary, therefore, we believe fundamentally in the importance of GIs, particularly for the agricultural community, but if this amendment passes it will remove the flexibility necessary for the UK to successfully negotiate new trade relationships outside the EU.

Additionally, I have assured noble Lords that the desire of UK GI producers for continuity of recognition and protection is fully acknowledged and is a key priority for us. In that context, the comments of the European Union grant us additional assurance that they will continue to be protected. On that basis and in the light of the negotiation of the future economic partnership, but with the absolute conviction that we are committed to UK GIs, I ask the noble Lord to withdraw this amendment.

Lord Tyler: My Lords, I have listened with great interest to what the Minister has said. There is a simple trade-off here. She said that if we were to pursue the declaratory proposed new clause, it would reduce flexibility. The more flexibility there is in a case such as this, the less one can be sure and confident that the situation is going to continue to protect in the way that my noble friend Lord Stevenson—I think that I can call him that on this occasion—and I would like. Various producers in the UK want that continuity as a certain guarantee for the future. However, we will read with care in the *Official Report* what the Minister has said and see whether further action may be needed. In the meantime, I beg leave to withdraw the amendment.

Amendment 18 withdrawn.

Amendments 19 to 21 not moved.

Consideration on Report adjourned.

Northern Ireland (Regional Rates and Energy) (No. 2) Bill

First Reading

9.01 pm

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

Schools: Swimming and Life-saving Skills

Question for Short Debate

9.02 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government what plans they have to improve the swimming and life-saving skills of children provided through schools.

Lord Storey (LD): My Lords, I declare my interest as a patron of the Royal Life Saving Society. I thank those organisations which have sent briefings, particularly the Royal Life Saving Society, the MCA, the RNLI, the Local Government Association and our own Library, all of which have been very helpful. I thank, too, those few Members who are here; I am sorry that the debate is happening so late.

Swimming is a bit like riding a bike. Once you learn to do it, you never forget it. The best time to learn to swim is when you are very young, although taking 30 infants to the swimming pool once a week was a nightmare in terms of getting them dressed and undressed.

I was asked last October to go to Worcester Cathedral, where the Royal Life Saving Society has its annual awards for volunteers. Before that event, a family went into one of the private chapels and lit a candle, because their son had tragically died in a drowning accident. I can think of nothing worse than receiving the telephone call, the knock on the door or the visit from the police or emergency services to say that family or friends have died in such tragic circumstances, yet, every year, on average 600 people lose their lives through drowning.

Quite rightly, we are at the moment concerned about knife crime and asking, "What can we do to prevent knife crime?" That is a tragic occurrence and lives are needlessly lost. Equally, through drowning, lives are needlessly lost, but there are things that we can do about it. One is to ensure that children and young people can swim. It must be concerning that only somewhere in the order of just over 50% of children leave primary school being able to swim. That really is quite a worrying figure.

I want to praise the Government first of all. The decision to introduce CPR and first aid as part of health education is a very good move forward. I congratulate them on that and thank them. They should at the same time realise that, just as we will be teaching children first aid, we should also be teaching them water safety. Children and young people need to know that if they see someone in difficulties, they should not automatically jump into the sea or the lake or the river or the canal to help them because they might put their own life in danger. There are simple things they can do: they need to know the colour of the various flags being flown at the seaside and a whole host of other things about water safety. It seems to me to be a really good fit to learn CPR, life-saving skills, first aid and water safety. I put down a Written Question about this a few weeks ago, and the Minister gave a very detailed reply. I hope that in his response, he might add to that.

Swimming is, of course, one of the best defences against drowning and we must ensure that we teach children to swim. I am sure that in his reply, the Minister will tell us that swimming and water safety are taught in primary schools and are a compulsory element in the PE curriculum. However, I question that because they do not have to be taught in all schools: they do not have to be taught in free schools or academies, and he will know that more than 1,000 schools do not teach them at all. Perhaps it is no wonder that just over 50% of children are leaving school unable to swim. We should ensure that every school has the facilities. If there are no swimming pools—if they are in a rural area, for example—there are ways around that. For example, there are mobile pools that can be inflated—children can get into them and learn basic swimming strokes.

We should be bold enough to say, "We want to ensure that nearly every child who leaves primary school can swim. In every school, every city, every village, every town and every county, every child should learn to swim". Perhaps we should suggest targets: we are good at setting targets on the number of apprentices we are going to have. Why not set a first target that over the next period—say over the next three years—we want 60% or 70% of children, when they leave their primary school, to be able to swim? Just think of the lives that we would save.

Of course, it is not just the people who drown whom we are discussing. It is also the non-fatal drowning cases, sometimes referred to as near-drowning. For every person who loses their life through drowning, there are six hospital admissions through near-drowning. This is, again, unacceptable. If we were to sort out the issue, it would also relieve pressure on our hospitals.

I know that the Government are anxious about this. They set up the Swim Group to submit an independent report with recommendations for curriculum swimming; its final report was submitted to the Government in the spring of 2017. It focused on six key areas and made 16 really good practical recommendations for improving curriculum swimming in primary schools. New guidance on the PE and sport premium has been released to help schools understand how they can use this funding to support swimming and water safety sessions. There is also a requirement to show the percentage of pupils in year 6 who meet the minimum national curriculum standards.

I have a question for the Minister. I think I gave him notice and if I did not, perhaps he could tell me in writing. One of the issues about the whole question of drowning is that it is left to the voluntary organisations—which do fantastic work and, in common parlance, I give a big shout-out to them and all their volunteers—to do the recording of drowning incidents. It would make their job significantly less difficult if the statutory

bodies were required to contribute to the database, either directly or through one of these voluntary bodies. Will the Government make the reporting of drowning to the National Water Safety Forum mandatory for the NHS, coroners, the fire and rescue service and the police service, so that we can know, quickly and accurately, the number of people who have drowned and the lessons we can learn? I am happy for the Minister to write to me about that.

I want to raise one other issue. There has been, over the last few years, an increasing number of students at our universities losing their lives through drowning, often, or in most cases, alcohol related. There was the recent tragedy of a student at, I think, Reading University, who died in the lake on the campus. We ought to be writing to student unions at universities, copying in vice-chancellors, suggesting that they should make their students aware of the issue and give them some simple and non-patronising advice about how they should conduct themselves, because the trend is an alarming one and we must do something about it.

Finally, I quote Steve Parry, who, noble Lords will remember, was an Olympic swimming medallist:

"Water safety is the only part of the national curriculum that will save children's lives, it can't be treated as an optional extra".

9.12 pm

Lord Dunlop (Con): My Lords, first, I congratulate the noble Lord, Lord Storey, on securing this short debate and on the thoughtful way in which he introduced it. I declare my interest as a board member of Scottish Swimming. The benefits of sport to physical and mental well-being are well documented and beyond dispute. This is particularly true of swimming, which is one of those sports that can be enjoyed at all ages and by people of all abilities throughout life. It is no surprise, therefore, that swimming remains one of the most popular mass-participation sports in the country, with 2.5 million people swimming at least once a week. The ability to swim is also essential for at least 20 other water-based sports, such as canoeing, rowing or sailing, but what sets swimming apart from other sports is that it is a key life and life-saving skill, which every child has a right, and should have the opportunity, to acquire.

The noble Lord, Lord Storey, mentioned drowning and it is a sad fact that accidental drowning is the third-highest cause of death in children. Talking from my own Scottish experience, in Scotland the total of accidental drownings is 50 per year. That is 50 too many and almost double the rate of drowning in the UK as a whole. Perhaps this is explained by Scotland's extensive and varied coastline.

As the noble Lord, Lord Storey, mentioned, in England the importance of swimming has been recognised by virtue of the fact that it is a compulsory part of the national curriculum, and has been since 1994. I will again draw a contrast with Scotland, where education is devolved to the Scottish Government—happily, the Minister therefore does not have responsibility for it. There the system is different. Swimming is neither mandatory nor part of the curriculum, although I hope this is something the Scottish Government will now look at.

However, one of the features of devolution is the scope to adopt different approaches in different parts of the country and then to share experiences across the UK of what does and does not work. In that spirit, perhaps the Minister, when he winds up, could say what, if any, discussions there have been between his department and the Scottish Government to share best practice. There is certainly very close co-operation and a shared vision among the swimming governing bodies in England, Scotland and Wales. We all want to ensure that every child has the opportunity to learn to swim at primary school and that no child leaves school unable to swim with confidence.

I too congratulate the Government on the action they have taken. Swim England has acknowledged the Government's consistent support for school swimming. I welcome the fact that, as the noble Lord, Lord Storey, said, the Government, established in 2016 a working group to consider the challenges of delivering curriculum swimming and water safety lessons and have since acted on its recommendations. In particular, primary schools are now able to use the extra funding from the PE and sport premium to top up swimming lessons and to provide extra teacher training. This action is certainly timely, because there is still a mountain to climb—or perhaps more appropriately when talking about swimming, a gulf to cross—to arrive where we need to be.

Some of the working group's 2017 findings on primary school delivery of swimming at key stages 1 and 2 are troubling: 26% of primaries are either not currently providing swimming lessons or not recording any attainment levels; 27% are providing lessons but not getting the results on any of the three national curriculum outcomes; and 11% are providing lessons but getting results on only one of the outcomes—swimming 25 metres unaided. That leaves 36% of primary schools providing lessons with all children reaching the national curriculum standards.

As part of the package of changes introduced by the Government last year, my understanding is that primary schools are now required to publish their swimming and water safety attainment levels as a condition for receiving funding under the PE and sport premium. If this is so, it is clearly welcome and will improve levels of accountability. Can the Minister confirm that this is indeed the case, and can he provide any recent data, two years on, to show whether the picture is improving?

The challenges in Scotland are similar. Over 30% of children in Scotland leave primary school unable to swim. For those from the most deprived backgrounds, school swimming is likely to be their only opportunity to learn to swim. In Scotland, 25% of children aged between five and 12 take part in community Learn to Swim programmes. The majority of these children are from the 20% least deprived areas of Scotland. Only 10% of those taking part come from the most deprived parts of Scotland, so school swimming has a vital role to play. However, a quarter of Scotland's local authorities —8 out of 32—do not offer a primary school swimming programme, and those that do vary between schools opting in and comprehensive programmes. The picture is very varied.

[Lord Dunlop]

The relevance of the Scottish experience for England is that, for five years, until it was ended in 2015, the Scottish Government supported school swimming through investment in a national top-up swimming programme. Most of the funding was used to improve the quality of the school swimming programmes by reducing child-to-teacher ratios, which in many cases were as high as 25:1. This funding was starting to make a difference, with some areas reporting a 5% to 10% increase in the number of children achieving the Scottish triple swimming standard and increasing the number of children in the most deprived areas learning to swim.

The lesson from the Scottish experience is that relatively modest levels of investment, effectively targeted, can have a disproportionately beneficial impact. Although funding was not extended beyond 2015, it is encouraging that there appears to be a renewed willingness on the part of the Scottish Government to explore what practical steps are needed to ensure that every child in Scotland can swim.

In conclusion, whether north or south of the border, the aspirations and the challenges are similar. If our children are to acquire this lifelong skill, it is important that their initial experience of swimming needs to be fun and positive. That is why school swimming programmes should not be about simply the numbers game, about how many children we can get through the programme. Quality is critical, and quality means: first, sufficient and consistent availability of properly trained swimming teachers, with the time to get to know the kids and sufficient pool time in modern facilities to make a difference; secondly, effective communication between pool operators or swim schools and primary schools so that one hand knows what the other is doing, and attainment is accurately recorded and passed on; thirdly, overcoming transport issues and getting easily from school to pool without taking too much time out of the weekly timetable; and fourthly, the ability to cater for diverse and special needs.

All this will help to secure better buy-in from both primary teachers and parents and to enhance prospects of success. The Government's aspirations are rightly ambitious. Of course, there are considerable challenges to overcome but, overall, things appear to be moving in the right direction, but we need to move further and faster.

9.22 pm

Lord Addington (LD): My Lords, this is one of those debates in which you find yourself rapidly agreeing with everybody in front of you. The basic tenet of it—that swimming is a skill that will save your life and is best learned early—will have nobody disagreeing. The fact that it is a social skill that allows you to do other things is pretty obvious as well. I asked the Minister if he had a list of all those sports you cannot do. The noble Lord, Lord Dunlop, said there were 20. I did not get that far. I just knew that there was a big list of activities which are not available to you if you cannot swim.

There is a little bit of social isolation in there as well, and it is something that is dangerous. It is something which we are supposed to be doing. The noble Lord read out a list of figures I had seen as well. More than a quarter of schools are not doing anything. The Government set targets. How are we not actually implementing this? If we have got ourselves into a mess where a few people are saying, "We can't get there, we can't afford the bus fare to get to a pool because the local authority has shut it down because it didn't have enough budget", this may go beyond the Minister's area of control, but this is a factor that plays into it. There is no way that you can ignore the capacity in local government with this figure because most schools, particularly junior schools, do not have their own pool.

We can also say, "What about independent schools? How are we accessing them? How are they helping?", but ultimately it is still the transport to them. There is a big interaction here going on from the various bits of government and the approaches to it. The prioritisation of this is very important as well. Is this regarded as something that you will have to do, or something that you will fit in round the edges?

When most of these situations come up—usually less life-threatening ones—it is the same thing that is happening in education in other areas, such as the arts, sport, et cetera. An interaction here is of course more direct—"Here is your core, and here are the things we would like you to do". Learning to swim cuts across this. It becomes a real priority, so the figure of 26% of primary schools is utterly unacceptable. It would be nice to hear from the Minister exactly what we are doing to address that.

I return to the idea of sports, and the idea the noble Lord, Lord Dunlop, mentioned, that swimming is one of those activities that are easier to do in later life. If you are in water that carries your weight, you are less likely to damage yourself in various ways. That applies if you are taking exercise, and it is useful for rehabilitation from sports injuries—even for horses—and it is a good way of taking gentle exercise. It is also an essential part of making sure that there is social interaction in many mainstream sports that are readily available; canoeing is one example. How can you get in there and become a part of it? We often talk about mental health problems, and once you are part of that sport, company, activity and focus help. If you take that away, you are cutting off whole bits of activity.

The anecdotage of the Bishops' Bar comes out. Somebody said to me, "I knew somebody who was a good sportsman and went to live in Australia. He discovered that he couldn't swim, so he spent large parts of his life watching the rest of his family on the beach as he hid from the sun under towels". Possibly that is a more jokey part of it, but it is still something that says, "You can't do it".

How are we doing on water safety? The fact of the matter is that if you fall into certain types of water, it does not matter how good you are at swimming—you are in real trouble. Deep, cold and fast-running water are things we do not like being in. If you hit cold water, you go into a sort of system shock, where you try to take a breath, and if you are underwater, you are probably not getting out. So training about what to avoid and what not to go near is another important part of this.

How do we train people to make sure that you do not go in there—you do not swim in that small river with a current of, say, a couple of knots, because most people cannot swim against that, and they cannot do it for any length of time? That sort of education is also a key part of what is going on, making sure that you stay safe. It is also a good thing if you are taking it as a social activity, because you will know the limitations of your capacity as a swimmer. This is the sort of information that we need, and we need it early.

We live predominantly in cities, and virtually all of them have rivers running through them; that is probably why they were built there in the first place. We have access to open, cold, running water all the time. Mix that with alcohol—we have a habit of building bars beside these nice bits of water—and we end up with situations where people go in. Something else that comes in here is whether people know—it may cut through the fog of the cheap cocktail—that you should not go for a little paddle in there now, and whether your friends, who are hopefully not quite as far gone, know what to do to get you out and call for help. There is no downside to making sure that we get better figures for making sure that people can swim, and early on. I hope that when the Minister gives his answer, he will be able to do that.

I have one last specific question, which I sent through to the Minister's office. There seems to be a suggestion in the briefing provided by the Library that those with special educational needs in schools are not getting access to this. Anybody who has suffered me in a series of debates on this subject will know that that is one of my key areas. However, I do not think that we are talking about dyslexics en masse but about specific groups. Are we, for instance, talking about groups of people who are autistic, because they are difficult and people do not want them in that situation, or are other groups included in that because it is not considered that they would benefit? Many people with quite alarming physical disabilities can swim—they can action in water. It might even be easier for them. What are we doing to make sure that they get access as well? It may be of even greater benefit to them than it is for people in the mainstream, because it may be an area of exercise that they can take safely once they have had that initial training. I hope the Minister will have an answer on that. If not, I hope he will write to me, because we should look at it.

I look forward to the Minister's reply because this is something we should all be working together to achieve. I can see no party-political advantage in not achieving it.

9.30 pm

Lord Watson of Invergowrie (Lab): My Lords, we are indebted to the noble Lord, Lord Storey, for initiating this debate on the very important—though often underreported—subjects of swimming and life-saving skills. All primary-aged children should learn to swim. It is a basic life skill and a life-saving skill, whether it involves developing the ability to save themselves—and possibly others as well—in difficult circumstances, or learning particular life-saving skills, such as CPR and how to get help in a medical emergency.

The Government seem to be clear on the additional action required to achieve this, as evidenced by the announcement in October 2018 that primary schools were to receive extra support and improved guidance to help make sure that all children can swim confidently and know how to stay safe in and around water. It is to involve the provision of more swimming lessons, extra teaching and improved guidance, supported by the PE and sport premium. All this is to be welcomed.

What was not spelled out was how much of the PE and sport premium would be dedicated to this extra support for swimming and life-saving skills. The premium has around £300 million available to it, so can the Minister say whether the swimming initiative is to be taken from that, or have new resources been allocated to fund the enhanced activity?

Presumably, the intention is to build on the 2017 *Review of Curriculum Swimming and Water Safety*, published by the National Water Safety Forum—an association of bodies with a range of interests and responsibilities. As the noble Lord, Lord Storey, said, their review contained 16 recommendations to the Government. Almost two years later, how many of those recommendations have been met or are in the process of being met?

The Local Government Association has called on the Government to do more to raise awareness of water safety issues. It stressed that there needs to be greater emphasis in the school curriculum on water safety, drowning prevention and messages around cold water shock and what that can do to those who unexpectedly find themselves in water. The statistics that most resonated with me in the LGA briefing were that more people in the UK die each year from drowning than from fires at home, and that more people drown while out walking or running than while swimming.

These facts underline the need for young people to be prepared for the dangers that can await them. This is why the initiative announced by the Government in October last year is to be welcomed. It will be delivered in partnership with Swim England, as part of the Government's sport strategy, Sporting Future, committed to ensuring that every child leaves primary school able to swim. This is a very necessary objective.

The measures were announced days after a government-backed review of swimming and water safety in primary schools, entitled *Swim England Parents and Curriculum Swimming Research 2018*, was published. That survey found that swimming standards vary in schools—as noble Lords have mentioned—despite it being compulsory in the national curriculum. Following its recommendations, the Government was said to be,

"working with Swim England to provide extra guidance to help schools deliver safe, fun and effective swimming lessons".

This is necessary because, as the RNLI reported in its excellent briefing for this debate, and has been mentioned already, today around 1,000 schools in England do not teach swimming, even though it is a statutory requirement.

I hope the Minister will confirm that schools failing to meet their legal requirements will quickly and decisively be brought into line. These include academies, which may not have to follow the national curriculum but have a duty to see that their children are properly trained to ensure their safety. Children who attend

[Lord Watson of Invergowrie]
schools that do not provide swimming lessons—and their parents—are being failed. This cannot be allowed to continue.

The problem may be much greater than this. There are around 18,000 primary schools in England. When the Swim England survey asked parents of children in reception, year 3 and year 6 about their child's swimming provision—as the noble Lord, Lord Storey, said—it emerged that a mere 53% of primary school children in England have swimming lessons, just over half. For the figure to be 33% for reception children is perhaps not too much of a surprise, but for year 3 the figure was only 63%, with an even more disappointing 64% receiving lessons in year 6—that is, children aged 10 and 11. To say that there is much room for improvement would be an understatement.

Access to pools may be an issue, although that should not be used as an excuse, because timings can be flexible. The Local Government Association highlighted that 72% of primary schools use publicly owned facilities for their swimming activity, but access can be compromised as a result of issues of cost, availability and transport. Quite a few independent schools with swimming pools work in partnership with state schools to provide access, and I hope that that can be increased.

Swimming comes under physical education, and the narrowing of the curriculum since the introduction of the EBacc has reduced opportunities as a result. Recent research in secondary schools by the Youth Sport Trust found that timetabled PE time is decreasing, and the reduction is greater as students get older. At key stage 4, 58% of schools had reduced timetabled PE in the past five years, and nearly a quarter had done so in the past year. By the time young people are in sixth form, they are doing barely half an hour a week.

The same survey found that nearly 40% of teachers said that their provision had declined because core or EBacc subjects had been given additional time, with students taken out of timetabled PE for extra tuition in those subjects. Those results were cited last week by her Majesty's chief inspector, who said that the result,

"chimes with our own two-year research programme on the curriculum".

PE is likely to be a subject that has been affected by that curriculum narrowing, and it would appear that that is not contested by the DfE, because I found Amanda Spielman's speech on its website. Children learning about water safety cannot be treated as an optional extra and must not be squeezed out of the curriculum.

Life-saving skills are equally important, and we welcome the announcement by the Secretary of State in January that all secondary school-leavers in England are to be taught cardiopulmonary resuscitation and general first aid for common injuries, including defibrillator use, from 2020. The British Heart Foundation described the plans as a decisive moment in attempts to improve on the less-than-10% survival rate for people in the UK with cardiac arrests while not in hospital. It is surely no coincidence that in countries that teach CPR in schools, cardiac arrest survival rates are more than double those in Britain. There are 30,000 out-of-hospital cardiac arrests every year and, each day, people needlessly die because bystanders do not have the confidence or knowledge to perform CPR and defibrillation. It is absolutely appropriate that all schoolchildren should be given the opportunity to learn these skills. Introducing CPR lessons in health education in all state-funded secondary schools is a significant step that could lead only to increased survival odds for countless people.

Of course, schools alone are not the answer. The responsibility for ensuring that children have enough opportunity not just to exercise and live healthier lives but build the skills that may save lives ultimately rests with parents. The combination of parental awareness and good-quality, consistent learning options in school will lead to future generations being better able to keep themselves and others safe.

9.37 pm

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, I am pleased to answer this Question for Short Debate, and thank the noble Lord for raising the important issue of swimming and life-saving skills in schools. Swimming is a vital life-saving skill. This is why pupils are taught to swim and about water safety at primary school. I am delighted to be able to update the House today on the work the Government are doing to improve swimming and water safety skills in schools. Being able to swim and learn about water safety, including the dangers of open water swimming and cold water shock, can prevent accidents and drowning fatalities.

The noble Lord, Lord Addington, asked how many sports are impacted by one's ability to swim. It opens up opportunities to participate in a wide range of water-based activities, such as canoeing, rowing and sailing. I cannot get to the figure of 20 that he mentioned, but he is correct that it impacts on many opportunities, which is why all pupils should have the opportunity to learn to swim.

The Government support the view of the noble Lord, Lord Storey, that no child should leave primary school unable to meet a minimum standard of capability and confidence in swimming. This is reflected in the national curriculum, which includes swimming and water safety as compulsory elements at primary level. It also provides a frame of reference for academies in deciding what to offer as part of the broad and balanced curriculum. We know that too many pupils leave primary school unable to meet those expectations. We are working closely with colleagues in government and the sport and education sectors to raise attainment.

In 2015 the Government asked the Swim Group to submit an independent report setting out recommendations for improving curriculum swimming as part of the *Sporting Future* strategy. The Swim Group includes representatives from across the swimming and education sectors. The report demonstrated the need to do more to support schools in delivering swimming and water safety lessons to all pupils.

The noble Lord, Lord Watson, asked about progress in implementing the recommendations. To date we have implemented four of them. Sport England is also updating its facilities guidance for local authorities. We have increased the flexibility of pupil premium funding, and we are including a communications strategy,

which was recommended, for educational stakeholders. For secondary schools we are also including an updated communications strategy. We took the recommendations very seriously, and we are endeavouring to implement as many as possible.

All primary schools in receipt of PE and sport premium, including academies, have to report on how many of their pupils meet the swimming expectations. We have increased support for schools to use their PE and sport premium to increase training and provide additional top-up swimming lessons. New free guidance is available from the Swim England website, which covers everything schools need to know about how to provide high-quality swimming and water safety lessons to all pupils.

We have worked with the Independent Schools Council to encourage meaningful partnerships between independent schools and their local state primaries. For example, Cheltenham Ladies' College is working with local partners to provide additional swimming lessons to pupils not able to swim after being taught swimming in their core PE lessons.

The noble Lord, Lord Addington, asked about SEND pupils. We agree that it is most important that all pupils have the ability to learn to swim. The Swim Group reported that not all pupils with SEND have access to swimming and water safety lessons in school. More work needs to be done to understand the current provision, and any barriers to inclusive lessons. We have funded a project to help address this issue—the Youth Sport Trust-led Inclusion 2020 project has identified five local areas to form partnerships to improve swimming and water safety: Durham, Dorset, Milton Keynes, Northamptonshire and West Yorkshire. We will review the evaluation of these local innovation partnerships when it is available in 2020.

The noble Lord, Lord Addington also asked about the resources available for swimming generally, and I can reassure him that, again, there is a lot going on. Sport England is working with nearly 100 local authorities that have plans for additional swimming pool provision. Since 2012 it has invested £67 million in 46 local authority facilities to include pools, which results in about £700 million in investment from those authorities.

We will continue to build on this work across government, working with and supporting schools, county sports partnerships, and swimming and water safety bodies and charities. We are working with Swim England to publish online videos that will support teachers in assessing pupils' swimming capabilities. These will be available to all schools this spring. Our swimming and water safety communications activity will focus on supporting a water safety awareness week. This addresses part of the question asked by the noble Lord, Lord Addington, about highlighting the dangers of being around water. The awareness week will include information on that subject, and a new guidance pack for parents on school swimming and water safety will be published on the Swim England website by the end of March, including information on how to be safe in and around water.

The noble Lord, Lord Storey, asked some related questions—and one in particular, about drowning following excessive intake of alcohol. The noble Lord is right to highlight this as an important subject. Issues around alcohol will make up part of the health education taught in schools. Combating alcohol-related drowning is a priority for partners such as the Royal Life Saving Society, with its national campaign, "Don't Drink and Drown". This campaign reaches out to universities and warns drinkers to steer clear of walking by or entering water when under the influence of alcohol.

The noble Lord, Lord Storey, also asked about the collection of data on drowning. The collection of data on water-related incidents is an important part of reducing the number of deaths by drowning. I welcome the collaboration on data collection through the water incident database, but I will raise the issue with the Department for Transport, which has the overall responsibility for water safety.

County sports partnerships review schools' reporting of the use of their PE and sport premium and this year we will be looking at those reports in more detail. We will be launching a school sports action plan in the spring of this year. It will have at its heart how sport can assist in the development of character and well-being in pupils. Swim England is involved in its capacity as a national governing body of sport.

My noble friend Lord Dunlop raised several questions. On the sharing of experiences between English and Scottish schools on swimming, Swim England is working closely with Swim Scotland and other swimming national governing bodies. They are sharing the outcomes of the Swim Group report and the government actions to support these national governing bodies to work with their own Governments.

My noble friend asked about data. The Active Lives Children and Young People Survey will provide annual data on swimming following findings on school swimming and water safety in the December 2018 publication of the survey. These annual findings will give us robust information on the swimming and water safety skills of pupils. We have also changed the reporting for primary schools to ensure that the mandatory requirement to report the use of the premium on their school website includes a requirement to publish information on their pupils' swimming and water safety ability.

Lastly, my noble friend asked whether the picture is changing. Sports England's Active Lives Children and Young People Survey collected data on more than 100,000 pupils and reported its first findings in December last year. Seventy-seven per cent of year 7 pupils reported being able to swim the 25 metre unaided requirement in that survey.

Life-saving teaching in schools also relates to work that the Government are doing in health education. We are making health education compulsory in all state-funded schools in England and voluntary teaching will begin in September of this year. In doing this we have responded to the sustained calls for mandatory first aid in schools so that pupils can have the access they need to knowledge about life-saving and first-aid skills.

The noble Lord, Lord Storey, asked about the teaching of water safety and rightly highlighted the importance of learning about it. Our guidance on

[Lord Agnew of Oulton]
health education encourages schools to look for opportunities to draw links between subjects and integrate teaching where appropriate. There will be an opportunity for schools to bring together what they teach in life-saving with their swimming lessons. The new water safety guidance pack can help them to do that more effectively.

We have proposed in the updated draft statutory guidance that health education will include first-aid and life-saving skills in core content for the first time. This will support whole school approaches to fostering pupil well-being and developing pupils' resilience and ability to self-regulate. We encourage teachers to draw upon high-quality resources in the classroom, including guidance on first aid and emergencies from the British Red Cross, St John Ambulance and the British Heart Foundation.

As such, health education should complement what is already taught and develop pupils' core knowledge and broad understanding to enable them to lead healthy, active lives. It will be up to schools to decide whether and how to build on the core swimming expectations in the context of their wider health education provision.

The debate we have had today has highlighted how important swimming and life-saving skills are.

Lord Watson of Invergowrie: The Minister has answered a considerable number of questions but he has not answered one of mine in relation to the funding that supports the announcement in October last year of additional support for schools. The figure of £300 million in the PE and sport premium was mentioned. My question was whether the activities announced in October 2018 are to be paid for through that—and, if so, how much—or is it to be new resources from the DfE?

Lord Agnew of Oulton: Apologies to the noble Lord; I omitted that in my reply. Extra help for schools was announced on 18 October but there was no new funding specifically for school swimming. However, we have encouraged use of the £320-million PE and sport fund, from which all primary schools receive each year to support school swimming and water safety. This works out on average at about £18,000 per single-form-of-entry primary available for sports activity. More broadly, as part of the 2012 Olympic legacy, we have invested nearly £1 billion in sport in aggregate since then.

This debate has highlighted how important swimming and life-saving skills are, and the role that schools can play in teaching them. I hope that the range of actions I have set out demonstrate just how seriously the Government take the ambition that all pupils ought to leave primary school being able to swim, and that the new health education requirements can help to build on that. I hope all noble Lords will join me in doing all we can to make sure that schools are aware of the support and take advantage of it.

House adjourned at 9.50 pm.

Grand Committee

Wednesday 6 March 2019

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): My Lords, good afternoon. I remind the Committee that, in the event of a Division in the Chamber, the Committee will adjourn for 10 minutes from the sound of the Division Bell.

Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

3.45 pm

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

That the Grand Committee do consider the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

Relevant document: 17th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, given the interconnections of the three instruments, I hope it will be helpful to your Lordships if I speak to all three together. The instruments before your Lordships make technical corrections to maintain the effectiveness and continuity of EU-derived legislation that would otherwise be left partially inoperable on exit.

The conservation of habitats and species regulations extend in part to the UK and to England and Wales only. The Conservation (Natural Habitats etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 relate only to Northern Ireland.

The UK Government remain committed to the restoration of devolved government in Northern Ireland. However, in the absence of a Northern Ireland Executive, UK government Ministers have decided that, in the interest of legal clarity in Northern Ireland, the Government should take through the necessary statutory legislation at Westminster for Northern Ireland, in close consultation with the relevant Northern Ireland department. In pursuing this course, we have worked closely with the Northern Ireland Department of Agriculture, Environment and Rural Affairs—DAERA—and I am most grateful for the support given by DAERA officials.

The technical changes made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 enable the UK to continue to meet its international commitments, such as the Berne and Bonn conventions, and ensure that regulations transposing the EU habitats and wild birds directives are operable. Principally, it makes amendments to three existing instruments that transpose the habitats and wild birds directives so that they are operable: the Conservation of Habitats and Species Regulations 2017, the Conservation of Offshore Marine Habitats and Species Regulations 2017, and the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001. The instrument also amends Section 27 of the Wildlife and Countryside Act 1981 to ensure that existing protections continue.

The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 are the principal pieces of secondary legislation that transpose the terrestrial and offshore marine aspects of the EU habitats directive and certain elements of the EU wild birds directive—commonly referred to as the nature directives—into domestic law. The Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 apply to specific activities only in relation to the directives. The nature directives lay down the rules for the protection and management of habitats, and the protection and exploitation of species. These three regulations fulfil the objectives of the nature directives in the UK's terrestrial areas and inland waters, and its inshore and offshore marine areas, by ensuring that activities are carried out in a manner consistent with the directives.

The territorial extent of this instrument is the United Kingdom, with exceptions. Part 2 extends to England and Wales. Part 3 extends to England and Wales, but also extends in certain circumstances to certain specified reserved matters in Scotland and Northern Ireland. We have worked with the devolved Administrations on this instrument, and where it relates to devolved matters, they have given consent. The Scottish Government are making similar changes by means of their own secondary legislation within their areas of legislative competence.

As part of national operability, this instrument implements a number of changes, one of which is a national site network. Sites designated under the nature directives have contributed to the EU's Natura 2000 network. These sites will now form a national site network and will continue to help fulfil the UK's international biodiversity obligations, for example under the Berne convention, where they will continue to form the UK's contribution to that convention's Emerald network. New Regulations 16A and 18A set out ministerial responsibility to manage, and where necessary adapt, the national site network in co-operation with Ministers in the devolved Administrations. That obligation will be exercised with the support and expertise of the statutory nature conservation bodies. The network's management objectives look to secure compliance with the overarching aims of the habitats and the wild birds directives.

I turn to the issue of reporting. To ensure transparency and accountability, Ministers will produce reports on how the regulations are being implemented within six years from the date of exit and every six years thereafter. The Secretary of State will compile these reports into a combined UK report within two years of that. This is in line with existing reporting requirements, and the reports will be publicly available. The requirement for biennial reporting on exemptions or derogations from the strict protections for habitats and species is maintained.

[Lord Gardiner of Kimble]

Let me turn to the designation of special areas of conservation. Functions currently undertaken by the European Commission in designating any future SACs will be transferred to Ministers. Ministers will assess new SAC proposals acting on specialist advice from the appropriate nature conservation body. In Defra's case that will be Natural England, along with the Joint Nature Conservation Committee, using existing criteria.

I turn now to imperative reasons of overriding public interest. This instrument transfers the role of the European Commission to Ministers in being able to offer an opinion to local decision-makers such as local planning authorities. The opinion concerns whether imperative reasons of overriding public interest may apply in the granting of a planning application for a proposal which may adversely affect priority habitats, but where there is no feasible alternative. In doing so, Ministers will need to take account of the national interest and consult widely, including the Government and the other devolved Administrations, along with the Joint Nature Conservation Committee. It is my understanding that imperative reasons of overriding public interest have never been deployed in relation to priority features with regard to planning proposals anywhere in the UK, in that no file or dossier has been submitted to the European Commission for an opinion.

I will now address the amendments to annexes and schedules. A new instrument-making power allows Ministers to make amendments to the annexes and schedules where this is supported by technical and scientific progress. This brings into a national context provisions which already exist at EU level. The devolved Administrations will have the same powers. Any amendment under this provision which cannot be supported by expert opinion is open to challenge in Parliament or the courts. This instrument will ensure that the strict protections that have been in place for many years for our most vulnerable habitats and species are maintained when we leave the European Union.

On consultation, although there was no statutory requirement to consult publicly on the instruments, officials undertook engagement with key stakeholders. Indeed, following concerns raised by the RSPB, we chose to withdraw and re-lay the SI to provide absolute legal clarity that the management objectives of the new national site network to protect wild bird species and their special protection areas remain equivalent to those in the wild birds directive. The RSPB and Greener UK have welcomed this. It is a very good example of where there has been consideration by people who can look at these things with a fresh eye, and we were absolutely seized of the importance of making it absolutely clear. So I welcome this as an example of where, if one does not get it perfect the first time, let us try again.

I turn to the Conservation (Natural Habitats etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. As I have said, these regulations extend to Northern Ireland only. Importantly, they mirror the five main changes to the regulations I have just set out—in short, replicating for Northern Ireland Parts 1, 2 and 3 of the England and Wales legislation. It was felt that Northern Ireland officials should draft a separate regulation for two reasons. First, nature conservation is a devolved function in Northern Ireland. Secondly, the structures in Northern Ireland are different from those in England and Wales in that DAERA, a government department, undertakes all aspects of nature conservation. Therefore, many of the amending clauses could not simply be replicated for all three countries, and several Northern Ireland amendments would have to sit separately in any encompassing statutory instrument.

As is evident, Northern Ireland is unique within the United Kingdom as it shares a land border with the Republic of Ireland. There are excellent working relationships on nature conservation between officials in Northern Ireland and their counterparts in the Republic. This co-operation occurs within a framework of the North/South Ministerial Council, in which the environment is identified as an area of joint working. For example, the Loughs Agency is a cross-border body set up under the 1998 Good Friday agreement to manage commercial fishery activity in Lough Foyle and Carlingford Lough and to undertake valuable work in the conservation of vulnerable species. Similar arrangements apply on an east/west basis. The British-Irish Council has played a positive role in nature conservation issues, for example the sharing of information and experiences on the many invasive alien species threatening our important habitats. The council has also supported initiatives such as an all-Ireland pollinator strategy, which contains practical actions and information designed to increase the number of pollinators throughout the island of Ireland.

Finally, I turn to the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019. These regulations address failures of retained EU law to operate effectively with regard to six pieces of Northern Ireland primary legislation and two sets of regulations, as set out in the Explanatory Memorandum. The regulations are similar to the amendments made to legislation in England and the UK by the Environment (Amendment etc.) (EU Exit) Regulations 2019, which have already been affirmed in both Houses. We have a separate set of regulations for Northern Ireland, as in the areas covered there is a well-established body of Northern Ireland legislation. Where there are already UK-wide instruments, we have taken forward regulations that include Northern Ireland and other jurisdictions. Taking forward Northern Ireland-only amendments in this case helps preserve the integrity of Northern Ireland's statute book—albeit that the amendments are being made by UK statutory instruments rather than by the normal Northern Ireland statutory rules.

As an example of the amendments made by the instrument, Regulations 15 to 17 make changes to the Producer Responsibility Obligations (Northern Ireland) Order 1998, replacing,

"obligations of the United Kingdom under the Community Treaties",

with, "retained EU obligations". This is an example of where, if we did not make the amendment, the references to the UK's obligations under community treaties would be inoperable as there would be no obligations.

In this instrument there is no policy change and—I must emphasise—no reduction in the environmental standards or obligations to which Northern Ireland is currently subject. I beg to move.

4 pm

Baroness Parminter (LD): My Lords, I thank the Minister for his introduction. This statutory instrument brings over legislation from the nature directives, which have been the bedrock of nature protection in Europe and the UK for many years. We know that species resident on sites protected by the habitats directive are recovering more strongly than species on sites that are not covered by it. The nature directives are the bedrock of protection and are important for species such as the bittern, which has recovered far more strongly by virtue of the habitats directive.

I shall give credit where credit is due. As the Minister rightly said, this statutory instrument was removed and relaid after concerns were raised by the RSPB and other environmental stakeholders. That is a model of how such matters should be treated. I commend the department on that, and I will not be opposing this statutory instrument.

I shall touch on a particular issue the Minister raised. He did not quite address it to my satisfaction, so I shall press him a little further. It is about reporting under these regulations. The Explanatory Memorandum makes it clear that the reporting requirements will be carried across, and I pay tribute to the Secondary Legislation Scrutiny Committee which teased out a bit more from the department on that matter to make sure that there was greater clarity about the format of those reports. The formats for reporting are very clear under the directives, but they are not clear in the statutory instrument or the Explanatory Memorandum. The Secondary Legislation Scrutiny Committee got the department to put on record that the formats for reporting will be agreed with statutory agencies and the devolved Administrations. That is to be welcomed. However, there is no clarity on the provision for reviewing those reports and highlighting any failures for action. The Government say that they will meet their international obligations, which is welcome, but there is no guarantee that that reporting will be timely or at a pace that will allow failures to be rectified speedily. At the moment, the EU has the power to enforce action for failures. Is there any sufficient capacity to enforce, including by fines for breaches of the regulations?

When he sums up, will the Minister say a bit more about how the Government see these vital reporting requirements being reviewed and how we can be sure that transgressions against them are speedily rectified? I am sure the Minister will talk about the office for environmental protection, which we hope will be forthcoming in due course, but it will not be truly independent since the Government will appoint its board and will be responsible for its budget. Discussion so far suggests that there will be insufficient enforcement mechanisms. For example, there is no power to call the Government to hearings or, as a last resort, to levy fines. We do not have the office for environmental protection yet, so what will happen to reporting in the meantime? If the Minister could offer us some reassurances on how reporting will be reviewed and how we will rectify any failures, I would appreciate it.

Lord Krebs (CB): I welcome and appreciate the Minister's introduction. Overall, what he said is reassuring. In addition to the point that has already been made, I want to pick up on scientific input, which was mentioned in the Minister's introduction. Will he clarify in a little more detail the point that changes will be allowed only due to "technical and scientific progress"? The statutory instrument does not specify where the expert input will come from and whether it will involve the statutory nature conservation advisers. Will the Minister elaborate a little on the nature of the scientific input, how it will be taken into account, the degree of transparency in the publication of any scientific advice and how it will work across the four nations of the United Kingdom?

Baroness Young of Old Scone (Lab): My Lords, I thank the Minister for his exposition on these three statutory instruments. I shall start with the first two on the conservation of habitats and species. I have spent almost 30 years of my life campaigning for the nature directives—for their introduction, refinement and implementation, and, on occasion, in their defence. They have been hugely instrumental in protecting internationally important species and habitats, so I say to the Minister: tread gently because you tread on my dreams.

I am delighted that the Government accepted many of the concerns of the NGOs and others, and withdrew and then relaid the first statutory instrument. I commend the excellent work of Greener UK and its constituent NGOs in that respect. The SIs are certainly in better shape now, but there remain a number of points on which I seek ministerial assurance.

We welcome the new provision for statutory guidance to be produced in consultation with the appropriate nature conservation body. This guidance will be required urgently to ensure clarity across all sectors on the meaning of all these changes. I hope the Minister can assure the Committee that consultation on the statutory guidance will begin right away and not take more than a few months to conclude.

We welcome the new regulation introducing management objectives for special protection areas and special areas of conservation, and for their joint network, but I must admit that I am rather perturbed at the wording of the first SAC objective, which talks about achieving,

"a favourable conservation status … (so far as it lies in the United Kingdom's territory, and so far as is proportionate)".

This proportionality is about the management of sites, not their designation, and seems to introduce a new restriction that is not in the habitats directive—which, of course, I read nightly before I go to bed. The Minister kindly organised a briefing session with his civil servants, where it emerged that this was about prioritisation, and we explored on what basis that prioritisation process would take place. Surely if a site has been designated as being of international importance, the objective of achieving favourable conservation status ought to be axiomatic; we do not designate sites in order to watch them get worse. We may have only a small proportion of a particular European habitat and species, but we should still have a responsibility to get it into favourable conservation status. Equally, if we are the principal guardian of a habitat such as blanket bog or a species such as the great crested newt, we have a particular responsibility on behalf of the

[Baroness Young of Old Scone]
European biosphere to do a good job in looking after them. Do the Government think we have too many newts and blanket bog sites? I may be misjudging the Government, and I would be grateful if the Minister could explain what is intended by the concept that management effort should be "proportionate".

I turn to reporting, which has been raised by the noble Baroness, Lady Parminter. We welcome the change to the instrument, which brings in a requirement for reporting on progress, and on exceptions and derogations, but, as the noble Baroness said, the regulations do not make provision for anyone to review these reports or highlight any lack of progress, as is currently undertaken by the European Commission. As it stands, the statutory instrument is a diminution in protection for these vital species, sites and habitats. Although the reports will be forwarded to the Berne convention, the convention has not exactly been alacritous in following up failings and enabling action to be taken.

I ask the Minister to ensure that provisions be made for an independent review to be included, with the stress on the word "independent". This would preferably have been in the legislation but we are now beyond that point, so can the Minister assure the Committee that a suitable independent body such as the OEP will be given this reviewing role? Although the progress in setting up the OEP is slightly glacial, the first report under these provisions is not due for two years, so I hope it would be set up in time to pick up the reviewing function.

The regulations introduce a new power for the relevant authorities to make changes to the birds and habitats directives' annexes and the habitat regulations' schedules, which will include prohibited methods of capturing and killing mammals and fish. Changes would be allowed on the basis only of technical and scientific progress. I echo the point made by the noble Lord, Lord Krebs, that expert input, and a duty to consult relevant statutory nature conservation advisers and take account of their advice, is needed in connection with this change, particularly since the changes would be achieved through negative procedure SIs, with their inflexibility to challenge once laid. It would be useful if the Minister could say whether the guidance that will be issued for this SI will confirm the process by which the Government will seek expert input, including from the statutory advisers, and whether this process will be agreed with the devolved Administrations.

On the amendment to Regulation 36, to move the paragraphs on prohibited means of killing mammals and fish into a schedule that would then be amendable by Ministers, could the Minister confirm, firmly and unequivocally, that these powers will not be used to roll back animal welfare standards? I am not sure the Government understand what a hornets' nest they are inviting in making it easier to challenge what has been quite a difficult process of changing this particular set of provisions about killing.

A highly important issue, which some may see as a bit of a sideshow, is the name of the network of sites designated under the nature directives—currently Natura 2000. I declare an interest, because about 25% of the sites in that network were designated under my chairmanship of English Nature, a piece of work of which I am immensely proud. We are talking about my children and I love them all.

The statutory instrument proposes that this network be called the national site network. This has problems on three counts. The first is practical: sites of special scientific interest are also known as national sites, since they are important for national and not European criteria. Also, planners across the country risk getting mightily confused, as there is already reference to national sites in the National Planning Policy Framework. These are different sites with different criteria.

The second issue is that several of the Natura 2000 sites in Northern Ireland span the border with the south. I have happy memories of driving along the border in the dark during the Troubles, in an RSPB Land Rover, which I hoped was clearly marked, trying to track down the last crekking corncrake in Northern Ireland. If we crash out on 29 March and have a hard border in Northern Ireland, presumably wildlife will have to wait at the border, in common with everyone else, but we certainly should not call these border sites national sites because they are clearly transnational. Also, "national" has a distinctly different meaning in Northern Ireland.

The third and most important reason for not calling the network of sites the national site network is that the one thing that distinguishes the sites designated under the nature directives is that they are not national in importance, but designated for the very reason that they are international in importance. Therefore, could I persuade the Minister to confirm that no matter what this statutory instrument calls the network, the Government will swiftly announce that for the purposes of clarity it will forthwith be known as the international site network? This network would include the Ramsar sites to complete the set, and would be clearly distinguishable from the SSSIs and the marine conservation zones.

On the impact of the statutory instruments on provisions in Northern Ireland, the office for environmental protection will not operate in Northern Ireland. Northern Ireland is also the only country in the UK that does not have an independent nature conservation advisory body, so who will take an independent role in overseeing the implementation of these statutory instruments in Northern Ireland? For example, when I spoke on the need for reports to be reviewed by an independent body or for independent conservation advice to be taken, it was not clear who could take this role in Northern Ireland. We are sweeping away the powers that the European Union had in ensuring protections were enforced, but we are not proposing anything to replace that vital function in Northern Ireland. In the absence of a functioning Northern Ireland Assembly and Executive, what do the Government propose?

I see from the scrutiny of these statutory instruments in the other place that the Minister indicated that DAERA civil servants had asked that the possibility of the OEP covering Northern Ireland should be kept in play until Northern Ireland Ministers returned and could decide. Can the Minister cast more light on this?

I hope he will confirm that these are issues that need to be tackled and tell us what discussions have been held on this with Northern Ireland civil servants. I hope the Minister will also agree that continued environmental co-operation on the island of Ireland will be vital post Brexit, since it is, after all, a single biogeographic unit.

4.15 pm

My last point is on the delightful statement of hope in Regulation 14 of second the Northern Ireland instrument. An amendment to the Waste and Contaminated Land (Northern Ireland) Order 1997 lays out a provision drawn from the aims of the waste framework directive and enshrined in the Northern Ireland waste strategy in the UK waste and resources strategy,

"to enable the United Kingdom as a whole to become self-sufficient in waste disposal as well as in the recovery of mixed municipal waste collected from private households taking into account geographical circumstances or the need for specialised installations for certain types of waste".

We need to reflect that Northern Ireland exports a proportion of its waste and will continue to do so for many years. It has no plant to process refuse-derived fuel, so where is it therefore transported? Under the proximity principle it is to the south, where it generates electricity that is no doubt shared with the north. A hard border in Northern Ireland might result in loads of rotting rubbish festering at the border—another good reason for ceasing this Brexit folly.

Lord Gardiner of Kimble: My Lords, I am most grateful for all of the contributions, and I was struck hearing about bedrocks and bitterns, treading on dreams, and hornets' nests. I found the experience rather more frightening than I had already intended. However, this is an important area and I am most grateful to the noble Baronesses for acknowledging that we did the right thing in withdrawing and re-laying the instrument, because we wanted to make it absolutely clear that our good faith in these matters is strong.

The noble Baronesses, Lady Parminter and Lady Young, both raised the important issue of reporting. As we explained in our written evidence to the Secondary Legislation Scrutiny Committee, the reporting requirements introduced at Regulation 8 of this instrument are intended to ensure that, at a minimum, they reflect those set out in article 17 of the habitats directive and article 12 of the wild birds directive. However, as that regulation makes clear, these requirements are not exclusive since currently within the EU, the Commission determines the full extent and format of the reports, in consultation with experts across member states. Similarly, UK Ministers would expect to determine the format of such reports administratively, in consultation with our statutory advisers and those from the devolved Administrations, ensuring that we meet all our international reporting obligations.

The provisions for a composite report, including an evaluation of progress and contribution of the national site network—about which I will speak in a moment—in our view replicates the current legal requirement on the Commission. Accordingly, on operability, there is no need to provide an additional statutory review provision. This instrument also converts environmental reporting obligations in the directives into a requirement to publish reports in the future. This will ensure transparency and scrutiny of our environmental performance. The UK will continue to report on a similar basis as a contracting party to the Berne convention and will be obliged under resolution 8 of the standing committee on the convention, adopted in 2012, to report on the conservation status of species and habitats every six years, covering the previous six years.

We are also required under article 9 of the Berne convention to submit reports every two years on exceptions that have been permitted, the protection of wild fauna and flora, and an assessment of their impact, in the same way as we do now via the EU. The convention standing committee can review the implementation of the convention through legal and policy reports from independent experts. Indeed, the OEP—more about which in a moment—will be an independent, statutory environmental body and may well be interested in this matter. I say to the noble Baroness, Lady Parminter, that on reporting and timeliness—timeliness is important—six years is the usual period for compiling these reports, which are comprehensive. That is what is in the nature directives.

Perhaps I could spend a little time on proportionality, which was referred to by the noble Baroness, Lady Young. I wish to assure or reassure her—whatever the right word is—that it is not the intention of this provision to reduce in any way existing nature conservation protections. This provision is about not the designation and management of sites, and therefore the permitting of certain activities, but the overall management of the UK network in the context of achieving favourable conservation status for species and habitats across their biogeographical area and within their natural range.

New Regulations 16A and 18A place a wide duty on Ministers, in co-operation with other authorities in the UK, to manage and adapt the network to maintain or, where appropriate, restore at a favourable conservation status threatened and vulnerable habitats and species throughout their natural range. This duty can be exercised only where those natural ranges fall within UK jurisdiction. It is also to be discharged with regard to the importance of the UK globally in the conservation of those species or habitats. We can contribute to achieving a favourable conservation status for vulnerable or threatened species and habitats only in the proportion to which their range falls within UK jurisdiction.

In this respect, the provision reflects the requirement in article 3 of the habitats directive to have, "A coherent … ecological network" to maintain and manage species and habitats,

"at a favourable conservation status",

and therefore for Ministers in future to have regard to what is being done beyond UK borders to contribute most effectively to maintaining and restoring those features at favourable conservation status in their natural range. If I may return to where I began, I place it on record that there is absolutely no intent at all for this provision to reduce in any way existing nature conservation protections.

The noble Baroness, Lady Young, raised the office for environmental protection, the independent statutory environmental body which will hold government and

[Lord Gardiner of Kimble]
public bodies to account on environmental standards, replacing the current oversight of the European Commission. This body will provide independent scrutiny and advice on environmental legislation and the Government's environmental improvement plan, and hold government to account on the implementation of environmental law, including taking legal action where necessary. It will also of course have access to these publicly available reports. I say particularly to the noble Baroness, Lady Parminter, who raised this, that we are finalising interim measures that may be necessary under a no-deal scenario and before the office for environmental protection is established. Again, the Government are doing what they can in Brussels and elsewhere to ensure that we have a deal, but with or without a deal there will be no period of time during which government actions cannot be held to account.

The noble Lord, Lord Krebs, queried—rightly, given his expertise—the availability of technical and scientific expertise. I hope he might agree with my impression, from going around the Council of Ministers and other bodies, that this country has significant expertise in nature conservation, which is recognised at home and at international level. Hundreds of scientists are employed in our statutory nature conservation bodies and the depth and breadth of their experience is hugely regarded. Ministers will continue to benefit from the advice of their statutory nature conservation bodies: in England, this is Natural England while at the UK level, it is the JNCC. Natural England provides statutory advice to public authorities and is responsible for ensuring that the natural environment is protected and improved. It has a responsibility to help people to enjoy, understand and access the natural environment.

The JNCC already has a statutory duty to advise Ministers on developing and implementing policies on nature conservation matters. The JNCC has an independent chair and five independent members, some with scientific experience and some with a legal background. The majority of the joint committee is made up of appointments by the four countries' statutory conservation bodies.

The noble Baroness, Lady Young, raised the question of committing to produce statutory guidance. We plan to issue guidance on the operability changes to the regulations as part of our EU exit arrangements. We are developing a page for GOV.UK to explain the main changes to the regulations and to signpost to existing guidance. Following the UK's exit, our intention is to review and update our own domestic guidance on all aspects of the regime. We plan to consult and involve a range of interested stakeholders to ensure that guidance on wildlife legislation is fit for purpose and can contribute to ensuring that we maintain and enhance existing protections.

The noble Baroness, Lady Young, queried the power of the Secretary of State to amend schedules. This is where she referred to a hornets' nest; I hope that I can reassure her. The prohibited capture and killing methods listed in this schedule are those set out not only in annexe 6 of the habitats directive but in the almost identical appendix 4 of the Berne convention, from where it derives and of which we will remain a contracting party. There has been no reason to amend appendix 4 since 2002. The provisions for amending the annexes and schedules in this instrument, including moving prohibited killing from the body of the regulations to the schedule, simply ensure that we retain the same power of amendment as the Commission has at present to update annexes. This is an updating power to be used only—I emphasise only—for the purpose of adapting these annexes to technical and scientific progress, and therefore a power that can be exercised only where it is supported by expert opinion from the JNCC and Natural England. We will, of course, continue to work closely with devolved Administrations to secure nature conservation outcomes across the UK.

Northern Ireland was also raised by the noble Baroness, Lady Young. It is important—again, I hope I can reassure her—that in the case of Northern Ireland, DAERA has a statutory advisory body known as the Council for Nature Conservation and the Countryside. This body includes academics, land managers and environmental non-government bodies with a wide range of conservation expertise in terrestrial and marine environments. The CNCC is tasked with providing a focused view on DAERA's functions, including relating to nature conservation. There could be a specific role for the CNCC in future reporting mechanisms.

The noble Baroness, Lady Young, also asked about a possible extension of the OEP to Northern Ireland. She is absolutely right that Northern Ireland Civil Service officials have requested that the scope of the office be expanded to include Northern Ireland. The Secretary of State has agreed to this; I hope that is helpful to your Lordships. Discussions are ongoing between officials as to how this might be taken forward. Any decisions by Northern Ireland officials will be taken in light of the requirements of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 and the Northern Ireland Secretary of State's guidance thereunder.

The noble Baroness, Lady Young, also raised the name of the national site network. These sites will continue to be selected under the criteria in annexe 3 of the habitats directive and article 4.1 and 4.2 of the wild birds directive, which—as she will know better than I do—makes them distinct from SSSIs. The National Planning Policy Framework and other policy guidance does not particularly recognise the Natura 2000 network by offering planning protections but is concerned instead with the different types of protected sites, such as special areas of conservation, special protection areas and European sites. This instrument retains those names. I emphasise to the noble Baroness—I have noted her appeal for a different name—that the term "National Site Network" is a legal one for the purposes of these regulations. It will be open to Ministers in the UK to agree a distinct name for the network in a similar way to, for instance, the Emerald network. We do not need a legal power to do that. It might be my duty to play back her commentary on the national site network. I should also say that we intend, nevertheless, to publish guidance explaining the main changes that will arise due to operability.

4.30 pm

I think I have referred to the issue of reports, a point also raised by the noble Baroness, Lady Young. The next six-year report is due in the coming few months and will go to the Commission, therefore it will be six years until the report after that. On the issue of the waste schedule, Regulation 14(a) replaces an existing paragraph in Schedule 3 to the Waste and Contaminated Land (Northern Ireland) Order 1997, so that Northern Ireland is required to establish an integrated and adequate network of installations for dealing with household waste. This is so that the UK as a whole can become self-sufficient in waste disposal and recovery, taking into account geographical circumstances or the need for specialised installations. This paragraph formerly required such a network to be designed so that the EU would become self-sufficient, where practicable. If we did not make the amendment, it would become inoperable. By making the change, we retain the effect of the existing legislation. As I have said, there is no change of policy or substance.

The noble Baroness also raised the issue of cross-border waste between the UK and other EU member states. In 2018, Northern Ireland exported 127,000 tonnes of notified waste and imported 200,000 tonnes. In the same year, Northern Ireland exported 33,000 tonnes of notified waste to the Republic of Ireland. This was largely solid recovered fuel. Also in 2018, Northern Ireland imported 198,000 tonnes of notified waste from the Republic of Ireland, mostly as mixed dry recyclables. What these figures suggest is the clear imperative that I know all noble Lords are aware of: the importance of the open border for the island of Ireland. It is what we all want and this highlights that we all want to see a more circular economy by using less, reusing and recycling. The figures indicate how inextricably linked the two parts of that island are with each other. As I have described in the environmental context, there is the issue about the whole of Ireland working together on many of the environmental dilemmas that perhaps previous generations and our own have presented.

These three instruments need to be passed in order for there to be operability. It is very important that we should continue to safeguard, maintain and enhance our environmental protections in all parts of the kingdom.

Motion agreed.

Conservation (Natural Habitats etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

Considered in Grand Committee

4.33 pm

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

That the Grand Committee do consider the Conservation (Natural Habitats etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

Relevant document: 17th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

Motion agreed.

Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019

Considered in Grand Committee

4.33 pm

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

That the Grand Committee do consider the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019.

Motion agreed.

Animal Welfare (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

4.34 pm

Moved by ***Baroness Vere of Norbiton***

That the Grand Committee do consider the Animal Welfare (Amendment) (EU Exit) Regulations 2019.

Baroness Vere of Norbiton (Con): My Lords, this instrument makes primarily minor operability changes to three pieces of legislation to ensure that retained direct EU legislation protecting the welfare of animals kept at control posts while being transported and at the time of their killing will continue to operate effectively once the UK has left the EU.

The first piece of legislation, EC Regulation 1255/97, relates to control posts. Control posts are approved areas for animals to be unloaded, fed, watered and rested for at least 12 hours or more during long journeys. There are currently 11 control posts designated in the UK. The regulation sets out the health and hygiene requirements for control posts and details how they should be constructed, operated and approved. It makes a number of minor operability changes, including updating references and definitions. The power to designate or suspend control posts will remain devolved to the relevant Ministers in the devolved Administrations, as is currently the case. These regulations will not alter the current requirements or standards for control posts, which will be maintained after exit.

The second piece of legislation relates to the welfare of animals during transport. EC Regulation 1/2005 sets out the standards to be applied when moving live vertebrate animals for commercial purposes as well as the necessary documentation to accompany the journey and the checks to be carried out on consignments leaving or entering the EU. The regulation also sets out the requirements for transporters, drivers and vehicles to be authorised. These regulations will continue to enable authorisations for transporters, drivers and vehicles issued by an EU member state to be recognised within the UK. This approach will help to minimise friction at the border and prevent potential animal welfare issues arising from delays of animals coming from the European Union entering the UK.

Finally, the instrument makes technical changes to EC Regulation 1099/2009 relating to the protection of animals at the time of killing to ensure that it remains

[Baroness Vere of Norbiton]
operable after the UK exits the EU, including transferring obligations on the European Commission to the relevant UK authorities. The regulation requires that animals shall be spared any avoidable pain, distress or suffering during their killing and related operations. It sets out detailed rules for the accepted methods of stunning and killing animals, as well as the layout, construction, equipment, handling and restraining operations at slaughterhouses. This instrument will not alter the current requirements or standards which will be maintained after exit.

However, I want to draw noble Lords' attention to one policy change contained in these regulations. EC Regulation 1099/2009 requires all slaughterers to be trained and competent in the tasks they undertake, with certificates of competence issued by a competent authority. Currently, a certificate of competence issued by any member state must be recognised in the UK. These regulations will end that requirement. Continued recognition of certificates issued in other member states would open up potential enforcement issues. We would be unable to suspend or revoke a certificate issued in another member state if a slaughterer breached the requirements of the retained EU legislation or domestic legislation. The impact on businesses will be minimal. A very limited number of slaughterhouse employees will need to apply for a certificate of competence issued by a competent authority in the UK to be able to continue to work in the UK after exit. Applying will carry a cost of around £225 and we expect that fewer than 200 individuals out of a total population of 6,000 people with this certificate will be affected. This is around 3% of all slaughterers.

While there was no formal duty to consult, we have engaged directly with industry representative bodies on this issue and more widely, and we have not received any expressions of concern. The devolved Administrations have been consulted on this instrument and they are content. The purpose of the instrument is to ensure that the three pieces of EU legislation relating to animal welfare will be fully operable after exit. For the reasons I have set out, I beg to move.

Lord Wigley (PC): My Lords, I declare an interest as I have a link with the British Veterinary Association. I should draw that to the attention of the Committee, although it is not a financial interest. This order provides significant recognition of the variation between the devolved authorities. That is right, and it already exists to a large extent. However, it requires effective co-ordination between the devolved authorities to ensure that where there are matters of common interest, they are brought together. Can the Minister give us some assurance that those mechanisms are in place or, to the extent that they need to be strengthened, they can be put into place in good time?

The second point I want to raise is with regard to the certificate of competence issued to slaughterers by other member states. As things stand, they must be recognised in the UK, but that will end for the reasons the Minister has mentioned. Such certificates of competence are required by slaughterhouses in the EU to show that individuals have been trained to the necessary standard to undertake animal stunning and killing. If these changes occur in the UK and there is a reciprocal change in the EU 27, will that affect the number of competent people who will be available to undertake the work? We are aware of the number of people from European countries who are working in these areas in the UK. If there is a danger of us losing some of the supply of these essential people, what proposals do the Government have to ensure that there is not a lapse in this area that could have an impact on animal welfare?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I thank the Minister for her comprehensive introduction and I thank her and her officials for the briefing we had earlier this week. This is a very important statutory instrument that will move into UK law aspects of EU law pertaining to the welfare of animals while they are being transported, when they are at control posts and at the time of killing in slaughterhouses. Much of the SI refers to the need for those involved at all three stages to have a level of competence which ensures that animals do not suffer unnecessarily. I am sure we all want to ensure that that does not happen.

This SI gives the Government power to set their own standards on live transport and control posts once we leave the EU. The UK Government have always said that they will manage live exports once we leave the EU. The public are extremely interested in the issue of the live export of animals and it frequently comes up as one of the important Brexit matters. Can the Minister say whether the Government are likely to decide soon on this subject and what evidence they will consider when they make this decision?

I have a small number of minor questions to ask. In paragraph 2.4 of the Explanatory Memorandum, reference is made to the protection of animals during transport and related operations within the EU. However, it applies to the transport of animals which does not take place in connection with an economic activity. Would the transportation of racehorses to take part in a race—for instance, le Prix de l'Arc de Triomphe in France—come under the heading of an economic activity or would it would be classed as a sport? This is important as racehorses are a valuable commodity and their safety and well-being are paramount to their owners. I mention, just for interest, that the prize money for winning that race is €2,857,000.

The movement of animals to and from slaughter is a particular issue on the island of Ireland where consignments of animals can move from Ireland across the border to Northern Ireland for slaughter and then back again, and vice versa. This is something that needs to be addressed before Irish farmers find that they can no longer move their livestock.

On assembly centres, paragraph 2.7 of the Explanatory Memorandum refers to animals being grouped together to form consignments. Domestic equidae—that is, donkeys—are specifically mentioned, and I wonder how often and how many donkeys are moved around either in the EU or in the UK.

There is reference in paragraphs 2.17, 2.18 and 12.2 to certificates of competence. After exit day the UK will not recognise certificates issued in the EU, and for its part the EU will not recognise those issued in the UK. As the noble Baroness has said, this is particularly

in relation to the protection of animals at the time of killing. The change will result in a number of slaughterhouse employees who work in this country having to apply and be reassessed for their competency. The estimated cost of this per employee is around £225. We do not know exactly how many employees will be affected but that is not an insignificant sum of money and it could lead to some employees deciding to look for more conducive work. This will have an impact on the running of our slaughterhouses, as the noble Lord, Lord Wigley, has indicated.

As a result of a freedom of information request, we can see that the Government have failed to consider the impact of Brexit on sheep farmers. Sheep farmers are not wealthy people but their farms, especially hill farms, are the backbone of many of our remote rural communities. To run their businesses, farmers need certainty and the ability to plan far ahead, not just to next year but for five and 10 years ahead. They need to know what funding is available, what standards must be met and what tariffs need to be paid. There is a rumour that vast numbers of sheep will have to be slaughtered if they cannot be transported for export. This would have a catastrophic effect on sheep farmers in this country. Can the Minister comment on this issue?

Lastly, I understand that the report by the Farm Animal Welfare Committee, the Government's independent science advisers, is likely to be presented this week. Can the Minister confirm that that is the case? As the Government have said that they would announce what they intend to do in England following that report, can the Minister give an indication of when there will be announcement and what it is likely to contain?

4.45 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for her introduction and for the courtesy of arranging a helpful meeting with officials beforehand. As the noble Baroness, Lady Bakewell, said, the live export of animals is a very sensitive subject about which there is considerable public concern; there have been some shameful public images of animals suffering or dying in transit that have highlighted the fact that in many cases the current rules are simply not being respected in practice. This is why I am pleased that my party is committed to banning most exports of live animals for slaughter or fattening, with exemptions for those crossing the Northern Ireland border.

At the current time, more than 50,000 cattle and some 500,000 sheep are exported live annually for further production or slaughter in other regions of the UK and to EU member states. I echo the concerns of the noble Baroness, Lady Bakewell, about the effect on sheep farmers of not having clarity over these rules at a very early stage. We must ensure that those markets are still open and available for business.

The 2017 Conservative manifesto stated that the UK could take early steps to control the export of live farm animals for slaughter once it left the EU. Since then, Defra has stated that a ban is one of the options being considered, and it launched a consultation in April 2018. Do the Government intend to introduce meat-carcass only export so that animals do not have to endure inhumane conditions to be slaughtered? Can the Minister confirm whether a ban on live animal exports would be compatible with the provisions of the General Agreement on Tariffs and Trade, often referred to as the World Trade Organization rules, which prohibit countries imposing quantitative bans or restrictions on imports or exports?

Livestock legislation has been the same for 12 years now, despite European scientists calling for improvements on conditions and a reduction in journey times. Meanwhile, paragraph 2.14 of the Explanatory Memorandum states:

> "The controls on control posts in the UK will remain identical to those in the EU (at least initially) after EU Exit".

Can the Minister confirm whether, following Brexit, the Government will introduce better animal welfare provision at control posts? Is that what the phrase "at least initially" is meant to capture?

There is also concern about the lengthy delays that are common at the border, and we can all agree that there is a risk that this can only be exacerbated during or post-Brexit. There is also concern that we will not have enough vets to check on animal welfare and approve export licences at the UK border. What steps are the Government taking to reduce delays and cut maximum journey times for live animal exports? What discussions have taken place with veterinary bodies to ensure sufficient staff are in place? Will the Government introduce a "fit for travel" provision to ensure that animals are of an appropriate age, not in certain stages of pregnancy and do not have pre-existing injuries?

According to the Sustainable Food Trust, one in three small abattoirs in the UK has closed in the past decade. There are now just 249 red-meat abattoirs in the UK, down from 320 in 2003. The Association of Independent Meat Suppliers acknowledged that there are now black spots in the country where no abattoir provision exists. Is the Minister concerned about this? What action are the Government taking to reduce abattoir black spots and ensure that slaughter can take place close to areas where cattle, sheep and poultry are raised, and achieve the objective of travelling no longer than eight hours, as recommended by the BVA.

Turning to authorisation documents for the transport of animals, paragraph 2.15 of the EM states:

> "The standard forms that are contained in the legislation will be removed and a power is given to each constituent nation of the UK to make their own versions of the authorisations and documents".

Can the Minister advise whether the forms need to be changed in the event of a deal and/or no deal? If so, is the Minister confident that the required amendments to these forms will have been made in time for day one, if necessary, or can there be a period of grace while the old forms are still used? Will there be accompanying guidance ready in the event of no deal? Why was the EM worded in that way? What changes to the forms were envisaged? Will the detail required on the forms be on a par with the information currently required by the EU? Since it is proposed that the devolved Administrations will be responsible for amendments to those authorisations and documents, what impact will different versions have on businesses which export live animals through ports in England, Wales, Scotland and Northern Ireland and across the borders between the devolved Administrations?

[Baroness Jones of Whitchurch]

Currently, all drivers and attendants must hold certificates of competence evidencing their training in animal welfare during transport. This instrument amends the legislation to allow authorisation and certificates of competence issued by member states to those involved in transport to be recognised in the UK after EU exit. However, paragraph 2.16 of the Explanatory Memorandum advises that enforcement action,

"will not be possible after EU Exit".

As that is now in the public domain, people may begin to realise that there will be no enforcement action. Does the Minister share my concern that without that enforcement mechanism, and with the knowledge that no action is going to be taken, unscrupulous traders may employ drivers and attendants who do not hold that certificate of competence in transporting animals and that that may lead to more breaches of animal welfare and worsening conditions for animals being transported?

What action are the Government taking to improve enforcement? Can the Minister assure the Committee that we have the appropriate resources and staff in place at border control posts to ensure that animal welfare standards are enforced? Can she confirm that the recognition of transporters' certificates of competence is not reciprocal and that certificates issued in the UK will not be recognised by the EU 27 after the UK has left the EU? If that is the case, how many transporters will be affected and what costs will they incur if they are required to appoint a representative and seek authorisation in each EU country through which they will travel?

As the Minister said, the SI also sets out a change in policy on the certification of slaughterhouse staff. It removes the recognition of certificates of competence issued to slaughterers by other member states. Paragraph 2.18 of the EM states:

"Continued recognition of certificates issued in other Member States would open up potential enforcement issues as we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterer breached the requirements of the retained EU legislation or domestic legislation".

As a result, a number of slaughterhouse employees who gained their qualification in an EU member state will need to apply for a certificate of competence in the UK to continue to work in the UK after exit.

As the Minister also said, Defra estimates that applying and being assessed for a certificate of competence in the UK will carry a cost of around £225 and will affect fewer than 200 individuals, which comes to around 3% of slaughterers. The EM suggests that £225 is not a large sum of money, but it could put some people off. Has there been any discussion with the industry about whether it could pay for that extra certification and whether that would be good practice, rather than individual staff members having to pay for it? What other discussions have taken place with the industry to ensure that those affected are aware of and understand the policy change and those new requirements which could come on stream very quickly?

When will affected slaughterers need to apply for a new certificate of competence? Will it be literally from exit day? How long will the process of getting the new certificate take? Will their applications be expedited, given that they hold existing EU qualifications? Given that the EU has already confirmed that it will not recognise UK certificates of competence, do we know how many UK-qualified staff will be affected by that decision if they try to work in the EU? I do not know whether that information is available.

Finally, this SI will permit meat produced in member states, the Channel Islands, the Isle of Man, Liechtenstein, Norway and Switzerland to be accepted in the UK without a third-country health certificate. Can the Minister confirm whether this is the case in both a deal and no-deal situation? Is this a reciprocal arrangement? Do we have the same opportunities to trade with those additional countries that are not member states? I look forward to the Minister's response.

Baroness Vere of Norbiton: I thank all noble Lords for their contributions today. This has been an interesting debate and we have covered all the key elements of what I hope is a fairly simple SI that largely leaves everything exactly as it was. I shall spend a few minutes answering questions raised by noble Lords. There has been a variety of them.

The noble Lord, Lord Wigley, brought up the issue of divergence with the devolved authorities. I reassure him that, as a department, we have been working closely with the devolved authorities on a wide range of areas and on this area in particular. We are working on developing common frameworks. One was agreed in October 2017 with the Scottish and Welsh Governments, and further frameworks were agreed in April 2018 to deepen and broaden the relationship. We are very clear that the Scottish and Welsh Governments are committed to not diverging in ways that would cut across future frameworks where it has been agreed that they are necessary and where discussions continue. We would expect, for example, the forms issue that was raised by the noble Baroness, Lady Jones of Whitchurch, to be one of those issues; it makes no sense whatever to have different forms in different countries.

I turn to the issue of slaughterers. I completely understand that this issue has been highlighted because it is clear that fewer than 200 people will be affected by this issue; we expect it to be about 170. That is the number that we got when we asked the Food Standards Agency, Food Standards Scotland and DAERA to provide the information. The noble Lord was concerned about whether there would be a shortage. I feel that 170 people out of a total of 6,000 definitely do not make for a shortage, but they would be able to get retrained pretty much immediately. That is usually carried out in-house by slaughterhouse operators and there is certification by a private assessor provided by the UKAS-accredited body, which is FDQ.

5 pm

Lord Wigley: I thank the Minister for responding to the points that I raised. Does she appreciate that, although the numbers may be some 200 or fewer, there can be a diversity of intensity of those? In some slaughterhouses, as we know in Wales, there is a quite disproportionate number of European-originated workers, so there could potentially be points of difficulty even though the overall situation is okay.

Baroness Vere of Norbiton: I completely accept the noble Lord's point. He is right, and I did not mean to denigrate their contribution. Certainly we have been in communication with the industry—we communicated in August 2018 and then with other groups more broadly in January 2019—so there has been time to think about this. We believe that, as was raised by the noble Baroness, Lady Jones, a number of people are offering to pay the £225. It is important to understand that these individuals would still be able to work under supervision anyway. If they are within that sort of environment, they would be okay. It seems that the training and accreditation is not measured in years; it is much shorter than that.

I turn to the questions asked by the noble Baroness, Lady Bakewell. The point about the banning of live exports was also raised by the noble Baroness, Lady Jones. I know, having been in your Lordships' House for a little while now, how important this issue is, because it comes up frequently. Our manifesto commitment made it absolutely clear that we would take early steps to control the export of live animals for slaughter once we leave the EU. Last year, as noble Lords will know, we sought evidence on how we could achieve that, including through a possible ban. A number of noble Lords mentioned that we are awaiting advice from the Farm Animal Welfare Committee on this issue, as well as advice on how we can more generally improve welfare for all animals in transport, which I believe will address some of the issues raised by the noble Baroness, Lady Jones.

I cannot confirm that the report will be published this week. I very much hope that it is, but I have a note saying that it will be published by the end of March. I hope that is acceptable to the noble Baroness. We will consider all the options, in line with the commitment that we made in our manifesto, and we will ensure that any measures introduced are consistent with the General Agreement on Tariffs and Trade.

I confess that the issue of economic activity was something that confused me, too, and I am grateful to the noble Baroness for asking her question. I will try to be helpful here, but I am not sure that I will be very helpful. The regulation states:

> "Transport for commercial purposes is not limited to transport where an immediate exchange of money, goods or services takes place. Transport for commercial purposes includes, in particular, transport which directly or indirectly involves or aims at a financial gain".

So I think the €2.5 million-odd at the Arc de Triomphe would fall within that. Indeed, the note says that it includes transporting horses to race abroad.

Noble Lords touched on the issue of the Irish border and movement over it. We have been clear that there will be no physical infrastructure or related checks and controls at the border. It will be a key part of our ongoing relationship with the EU and with our friends and neighbours in the Republic of Ireland. If we leave the EU without a deal, we will be treated as a third country. At this time, there is no reciprocity being offered by the EU, but one might imagine that it might at least be open some conversations if the worst comes to the worst—certainly from my perspective—and we leave with no deal.

The question of donkeys is one that I asked myself. I reassure the noble Baroness that, although we do not have figures for how many exports may involve donkeys, mules or hinnies, no equines were exported for slaughter. That is pretty much all I can do with that one, I am afraid. I think it is a minority sport, so to speak; I do not think that there are donkeys heading anywhere to be killed for meat.

Noble Lords mentioned sheep farming. It is an incredibly important issue. I answered a Question, I think from the noble Lord, Lord Wigley, about sheep farming in Wales. We all feel that this is a very important issue. I think it is something that we will be discussing as the Brexit process happens. I certainly hope that we have a deal. However, if we are in a situation where we leave with no deal, the Government will look to do whatever they can to intervene in the event that there is significant market movement in the price of lamb. We do not consider—as was suggested in the *Sunday Times*, I believe, this weekend—that a mass cull is an option. It is not an option, and we would certainly work very closely with the sheep farming communities on what we can do.

The noble Baroness, Lady Jones of Whitchurch, talked about border delays, and she was right. In planning for leaving the EU, we have three objectives: to maintain the current high levels of UK biosecurity; to maintain the flow of goods at the border; and to minimise the impact on businesses. Animals and animal products originating in the EU will continue to enter the UK without needing to be checked at a UK border inspection post. We will continue to have risk-based border import checks for live animals, germinal products and some animal by-products, as are carried out now. The only additional inspections will apply to live animals, animal products and high-risk food and feed not of animal origin that originate from a third country and have travelled through the EU. We believe that we have the resources in place, and we are confident that there will not be significant delays at the border resulting from any changed arrangements as we leave the EU.

The noble Baroness spotted the "at least initially" in the Explanatory Memorandum. I would like to reassure her—because it does look quite suspicious—that we have no intention of lowering any of our current welfare standards after we leave the EU. In fact, we will look to raise standards substantially over time as new research and evidence emerge. So there may well be divergence in future, but we do not expect it to be to the detriment of the welfare of animals in our country.

Another issue that often arises when we discuss animal welfare is the small abattoirs sector. The Government acknowledge the role that small abattoirs play in local economies and in reducing the distance that animals have to travel for slaughter. The decline in the number of small abattoirs is the result of a combination of different factors, including consolidation in the retail sector and greater efficiency, so much of the slaughter is now taking place in larger, more efficient abattoirs. However, officials from Defra and the FSA are working with the Sustainable Food Trust to understand the issues facing small abattoirs and what scope there may be to reduce regulatory burdens that may not be appropriate in those very small settings. The Government will not reduce animal welfare standards,

[Baroness Vere of Norbiton]
but there may be other things that we can do. We are also aware that the All-Party Parliamentary Group for Animal Welfare has just announced a review of the small abattoir sector and we look forward to seeing that report.

The issue of forms was mentioned by the noble Baroness, Lady Jones of Whitchurch. This is extremely important because the forms contain the information and data that go into ensuring that we are able to meet the regulations, et cetera. That is the issue which underpins all of this. We do not envisage that the type of data in the forms will change in the future. However, if it needs to do so, it will be only in order to meet the regulations. Therefore, it is not the case that you could suddenly knock off half the data, because then you would not have the information to prove that you were complying with the regulations. We do not envisage any significant change and we will continue to use the current EU forms after exit day. Over a period of time it may be that we will introduce our own forms, but there is unlikely to be a significant change and the industry is very used to providing this information.

I turn to the issue of transport enforcement. This is indeed critical, and it is the case that we have had to strike a balance. We will not have the powers to suspend or revoke certificates of competence for individual transporters. However, we will be able to make a formal notification to the issuing member state to address issues of non-compliance, and the local authority will have powers to take action against the EU transporter if it commits an offence in the UK under the Welfare of Animals (Transport) (England) Order 2006 or the Animal Welfare Act 2006. We are clear that this is for an interim period. The purpose here is again about balance. It is to make sure that as little as possible changes, particularly in the very short term. However, over the longer term as the future relationship settles down, particularly in a no-deal situation, we will be looking at the system again to ensure that enforcement is possible. It also could be that a relationship with the EU may develop over time. But we cannot say how it will be affected at this stage, especially on transportation, because the options are so many and varied. Also, there is movement in the area of haulage in general, which I do not think is quite within the scope of this SI.

Almost finally, I turn to consultation, an issue that frequently comes up. I hope that I can reassure noble Lords that we have done our best to provide guidance to all of the affected stakeholders. As I mentioned earlier, we did this in August 2018 and in January 2019.

I shall say a little more about transporter costs and numbers. The cost of acquiring EU 27 authorisation will vary across the different member states. Our understanding is that the direct and administration costs are on average around £300. This could have an impact on around 500 transporters, although some will have the option of using EU-authorised transporters to mitigate some of the impact—as I alluded to earlier.

I believe that I have covered nearly all of the questions put to me by noble Lords, particularly those relating directly to this SI. I beg to move.

Motion agreed.

General Food Law (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

5.14 pm

Moved by ***Baroness Blackwood of North Oxford***

That the Grand Committee do consider the General Food Law (Amendment etc.) (EU Exit) Regulations 2019.

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

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, I thank noble Lords for their consideration of the draft regulations—the General Food Law (Amendment etc.) (EU Exit) Regulations 2019, the General Food Hygiene (Amendment) (EU Exit) Regulations 2019, the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019 and the Contaminants in Food (Amendment) (EU Exit) Regulations 2019.

The Government's priority is to ensure that the high standards of food safety and consumer protection we enjoy in this country are maintained when the UK leaves the European Union. These instruments are crucial to meeting our objective of a functioning statute book on exit. They are made under the powers in the European Union (Withdrawal) Act 2018 to make necessary amendments to the overarching food regulations so that we can continue to protect public health from risks that may arise in connection with the consumption of food. These instruments correct deficiencies in those regulations.

I wish to be clear that no policy changes are made through these instruments, nor is there any intention to make any at present. These instruments propose a transfer of responsibilities to UK entities to support a UK-centric regulatory regime. Responsibilities incumbent on the European Commission are designated to Ministers in England, Wales and Scotland, and to the devolved authority in Northern Ireland.

The European Food Safety Authority, EFSA, is the EU body that provides scientific advice on food safety. These regulations designate EFSA responsibilities to the food safety authority. This will be the Food Standards Agency, the FSA, in England, Wales and Northern Ireland, and Food Standards Scotland, which has a close working relationship with the FSA. The draft instruments being considered today will ensure that the following key EU regulations on food and feed safety and hygiene will function effectively on exit day.

Regulation 178/2002 lays down the fundamental principles that underpin food law and the essential requirements that food and feed businesses must comply with, as well as describing certain functions to be carried out by EU institutions. A key principle set out in the legislation is that food placed on the market must be safe to eat. It also provides for other fundamental safety and hygiene requirements, including rules and expectations on traceability. It establishes a requirement for open and transparent public consultation if food law is revised.

Regulation 852/2004 contains the basic food hygiene requirements for all food businesses. It sets out the general requirements for the hygienic production of foodstuffs through the provision of effective and proportionate controls throughout the food chain to the final consumer.

Regulation 853/2004 relates to the specific hygiene rules for products of animal origin, and Regulation 854/2004 relates to the organisation of official controls for products of animal origin. These specific hygiene rules set out the requirements and specific health standards for establishments on land or at sea for slaughtering, processing, storing or transporting products of animal origin.

The regulations on chemical contaminants protect consumers by ensuring that they are protected from the adverse effects of exposure to contaminants that may be present in food. Chemical contaminants may be present in food from the environment or as a result of growing conditions. The legislation sets out maximum limits for certain contaminants in food and provides a clear legal basis on which enforcement action may be taken, where necessary, to protect consumers by facilitating the removal of unsafe food from the food chain.

These instruments do not introduce any changes in how food businesses are regulated or managed. They do not introduce extra burdens and therefore provide continuity and clarity for businesses and continued protection of consumers' interests. It also means that non-compliances can continue to be addressed in the same way. These will ensure a robust system of controls that will also underpin UK businesses' ability to trade both domestically and internationally.

It is also important to note that the devolved Administrations have provided their consent for these instruments. Furthermore, we have engaged positively with the devolved Administrations throughout the development of these instruments. This ongoing engagement has been warmly welcomed. A full public consultation indicated support for the proposed approach to retained EU law for food and feed safety and hygiene. These instruments therefore constitute a necessary measure to ensure that the important food safety regulations will continue to work effectively after exit day. On that basis, I beg to move.

Baroness Walmsley (LD): My Lords, I thank the Minister for introducing these SIs, which replace references to the EU in regulations with references to the UK, and as such are relatively innocuous. The first question I want to ask was raised in Grand Committee last Wednesday by the noble Lord, Lord Rooker, who is in his place. Is the Minister satisfied that all relevant regulations on these important food safety matters have been copied over into the SIs we are discussing today? The noble Lord found some SIs where some important matters had not been copied over. Perhaps he has spotted something which I have not in these regulations, and we will hear from him in due course.

Secondly, the general food law SI, the general food hygiene SI and the contaminants in food SI allow only one hour for a single officer in a local authority to familiarise himself or herself with the new regulations and disseminate the information to staff and stakeholders. I wonder whether it is a coincidence that they will have to do it on April Fools' Day, the first working day after Brexit. The problem is that cuts to local authority funding have meant that some authorities no longer have any full-time food and feed officers to take charge on this issue, so who is going to do it, and who is going to pay for it? How can they do it in only one hour? Is this not just a covert way of ensuring that an impact assessment does not need to be produced? All those who responded to the consultation claimed that this cannot be done in so short a time and will certainly cost more than the Government estimate, and the Government have not offered to cover these costs. How did the Government reach the conclusion that the implementation time for businesses would be so staggeringly short?

The food hygiene SI allows a 21-month implementation period for food labelling changes from EU to GB or UK, but even here, the industry has concerns that some small businesses may struggle to comply. Other respondents to the consultation raised concerns that a common framework across the whole of the UK has not been properly addressed. The NFU pointed out that some farm holdings cross borders and animal feed moves across the Welsh and Scottish borders frequently. Is the Minister satisfied that devolution issues have been settled to the satisfaction of the Welsh and Scottish Governments?

Thirdly, can the FSA and its Scottish equivalent, the FSS, fulfil their additional responsibilities? Do they have enough staff and resources? Can the Minister respond to these concerns? Other respondents are concerned about how the Government intend to provide a suitable replacement for the risk-management function for food safety currently undertaken by the European Food Safety Authority. Can the Minister say what is being done about this? The whole of the food safety regime is based on risk management, and it is far from clear who will be responsible for this after Brexit and whether they have adequate resources. The National Pig Association is keen to retain a close working relationship with the EFSA to ensure that we in the UK receive food problem alerts in good time to take effective protective action against livestock diseases coming to us from the continent. This will also be a concern for other livestock producers. Can the Minister say what arrangements for this have been put in place?

I hope I will be forgiven for straying slightly beyond these SIs to some relevant matters, and I hope the Minister will find my comments useful for the future. If we are to leave the EU, the Government have always said that there is no danger of reducing our food standards and that, on the contrary, it gives us an opportunity to improve them. That is why I am surprised we have heard nothing yet of the Government's plans to do that. One thing I would have wanted to improve in the common agricultural policy is to link food production and trade policies to the better dietary health of the European population. So here is a challenge for the British Government. They can start with two things, which I put down as markers for the future. First, they should ban the use of nitrites in processed meats, such as bacon and ham, in favour of other processes which have not been designated as

[Baroness Walmsley]
carcinogenic by the World Health Organization, as nitrites have been, but which preserve meat just as well and protect it from botulism just as effectively.

Secondly, they should introduce supply-side regulations to reduce the UK population's intake of free sugars by two-thirds to comply with the Scientific Advisory Committee on Nutrition's recommendations, which make clear that overconsumption of sugar is responsible for the crisis of obesity, diabetes and all their associated preventable diseases, and for tooth decay in children, which is responsible for most of their hospital stays. Agricultural and trade policy are central to the supply of sugar, and amendments could be effective in changing the market for sugar before it even reaches the consumer. Reformulation programmes, sugary drinks tax and nudges towards behaviour change have their place, but we could make a greater and faster change if we addressed the supply side.

Once they have got all the relevant SIs about retained EU law through Parliament, will the Government look at these two opportunities as a matter of urgency? Has the Minister had any discussions or made any representations from her department to the rest of Government about such measures, as we move into the years after Brexit?

Lord Rooker (Lab): My Lords, this is my first opportunity to welcome the Minister and congratulate her on her government appointment. I sincerely wish her well for the future.

As for interests to declare, I recently chaired an egg summit for the largest retailer in the country, which is in the register, and of course at one time, along with the noble Lord, Lord Krebs, who is in his place, I was chair of the Food Standards Agency. Before that, I was one of the last food safety Ministers, so I go back a little bit. This is my guest appearance only, at the personal invitation of my noble friends Lady Jones and Lady Smith; if the party leadership find out about it I will be in real trouble, although I can say that I am speaking for myself today since there is nobody else here from the Labour Party. I serve on Sub-Committee B of the Lords process for Brexit. We deal with all the FSA SIs as they come through. That was agreed simply because the chair is my noble friend Lord Cunningham, who was the Minister at the MAFF when we started work on setting up the FSA. I also sit on the Lords environment sub-committee. This morning we had the pleasure of having the chair of the Food Standards Agency and the Minister's colleague, the Minister for Public Health and Primary Care, with us for an hour to discuss risk assessment and risk management post Brexit.

We are at one with these regulations. I am not going to waste the time of the Minister or of officials with details on the regulations. They provide continuity for people in terms of public health, the legal framework stays the same and there should be no problem with businesses. We were given quite good commitments in public this morning in terms of resources both for the Scottish end and the FSA, dealing with the rest of Great Britain and Northern Ireland, and therefore I do not want to duplicate everything.

There is one area which the Minister and officials might want to take away for the future. There is a lot of concern about local authority performance, and in terms of inspections there is no question about that. Environmental health officers are the unsung heroes of food safety. They do the takeaways and all the bits that people do not normally think about, but that is not politically sexy for councillors, to be honest, and therefore it is one of the first things they will go for chopping. Of course, without them, in terms of managing the situation, the FSA is powerless, because of lack of information.

5.30 pm

I am going to deal with only one issue, which I gave notice of this morning. It is an area that we might have a problem with, although I hope we do not, and I doubt that the Minister will be able to give us satisfaction on this but it will then be on the record when I am looking for the audit trail afterwards. It is RASFF, the Rapid Alert System for Food and Feed in the EU. This came about in 1979 so it was not there when we joined the Common Market, as the EU then was. Its membership is 32 countries—that is, the EU and the EEA. The system is not perfect, as the chair of the FSA mentioned this morning, and no one is saying that it is. However, the fact is that it has kept us safe in terms of food safety and has made a massive contribution in the years that it has operated.

Some 46% of RASFF notifications come from the external borders of the EU—that is, border posts and entry points—relating to food. Some 3,800 alerts are issued each year, which means 10 a day are whizzing around Europe. In 2017—I want to put this bit on the record—the top 10 countries of origin that triggered notifications were: Brazil; Turkey; China; amazingly, Spain; the USA; Italy; Iran and Poland. Actually a couple of those countries were in there twice, but they are basically the top 10 from where products were discovered that needed to have the rapid alert system operated. This is detailed in RASFF's annual report, which is easily available. I do not propose to list all the details but the issues were with poultry meat, fruit and vegetables, and fish. Lots of these incidents related to nut products; there are real issues there sometimes. This is a worldwide issue in the sense of imports to the EU from those countries that are in the top 10.

The top 10 countries in the EU that spot the issues and notify include the Netherlands, Italy, Germany, the UK—the UK is mentioned twice in the top 10 in relation to poultry meat, poultry products, nuts and so on—Spain and Italy. Those are the countries in the EU that issue the alerts. Of the 32 member countries, the UK is the fourth highest for issuing notifications. If one counts follow-up notifications, which are separately listed in the annual report, the UK is the fifth most active member of the alert system. The idea that we are just a minor functionary in this is not on. RASFF's report shows how vital the system is to the UK and the UK's contribution to the rest of Europe in sending these reports around to alert people. The alerts are from border inspection posts. Some are for information only, and of course some relate to fraud.

The fact is that this matter will be pretty fundamental once we are out on 29 March, whether with a deal or not. Even with a deal we will go into a transition period, but we will no longer be a member of the EU. The only countries that can be members of the RASFF system, due to its legal structure, are members of the EU or the European Economic Area, and the UK will not be in either of those.

One question has to be dealt with, although I fully accept that the Minister cannot give us an answer. The sifting committee and the EU sub-committee have repeatedly been told: "We will negotiate", or "We are negotiating so that we can still have access to the system". It is too late to say, "Well, we can use it later". The clue is in the title: "rapid alert". It is an amazing operation which has protected us over the years and one that we will no longer be in. We asked this morning about the state of the negotiations and we keep being told that Defra is negotiating. It was very unfair to ask the chief vet for Defra, who was there, but it would be really useful if we knew that genuine negotiations were going on because this is pretty vital.

If we leave with a deal, we are in the transition period. If we leave without a deal, we are out. Either way, we are out of the EU and out of this system. This is not the only alert system that operates within the European Union. There are others relating to other products, particularly on the animal side, but this is something that is incredibly serious because we import and process a huge amount of food that then gets sent around Europe for more processing. We discovered during the horsemeat situation some years ago the number of times that borders are crossed by products while they are being processed. It is my only concern and one that I think is shared by the European Union sub-committee and the sifting committee. The Minister will be aware that we produced a short note on this. It is the Achilles heel and it really ought to be dealt with before we leave, otherwise we could be high and dry with a lack of information.

My final point is that without information and openness, there are rumours. The whole point about the FSA when it was set up was to rebuild confidence in British food and to be open and transparent. If it is not, it allows rumours to start, with the risk that we will get rumours about alerts we might not be receiving. The media are not stupid; they are looking for headlines all the while. This sort of thing has to be nipped in the bud so that we do not have problems. I do not know what the answer is because once we are out, we are out. We have got something the EU want in terms of information and technology, but being out of the Rapid Alert System for Food and Feed is highly risky. In some ways it is a reason not to leave the EU, but that is for debate on another day. Whatever the Minister is able to say, it needs to be put on the record that this is incredibly serious for food safety, not just for the United Kingdom but for the rest of the EU if we are out of the system.

Lord Krebs (CB): I add my congratulations to the noble Baroness on her appointment as the Minister in the Lords for health and social care. I would like to pick up on a point mentioned by the noble Baroness, Lady Walmsley, and to reiterate the point made by the noble Lord, Lord Rooker. I am also a member of the EU Sub-Committee on Energy and the Environment, chaired by the noble Lord, Lord Teverson. We heard evidence this morning from the Minister for Public Health and Primary Care and from Heather Hancock, the chair of the FSA. The point that I want to pin down here is the one concerning risk management because we have heard contradictory statements over the past six to nine months about who is going to be in charge of risk management after Brexit day. What we learned is that at the moment, the arrangement is that EFSA produces the risk assessment, the risk management decisions are taken by the standing committee, on which the UK is represented by the Food Standards Agency—and on only rare occasions are decisions on risk management escalated to the Council of Ministers.

Heather Hancock has proposed, and indeed has set up an equivalent arrangement for post Brexit, so there will be an equivalent of the standing committee in which the FSA on behalf of England, Wales and Northern Ireland, and Food Standards Scotland will make the risk management decisions. That is her proposal. On the other hand, we have been told on numerous occasions that Ministers intend to take risk management decisions in relation to food safety and standards, which of course would take us right back to the old days before the FSA was set up when Ministers got themselves in a tangle when confronted with having to make difficult decisions about risk management and they sometimes got them wrong. I will not go into detail, but we are all aware of the mistakes that were made in the 1990s. I would like to get confirmation from the Minister of what Steve Brine told us this morning; namely, that it is his intention—I do not believe I am putting words into his mouth—that risk management decisions on most issues will be delegated to the Food Standards Agency. I would like confirmation that that is indeed the Government's position because we have heard contradictory points of view.

That was my main point. My only other point is that I picked up this morning some difficulty over who is in charge in ministerial terms between Defra and the Department of Health and Social Care. I would like confirmation that it is indeed health Ministers who are accountable to Parliament, even if they are not making decisions. The current situation is that the FSA through the standing committee makes the decisions, but health Ministers account for them in Parliament if necessary. They are a kind of conduit from the Food Standards Agency to Parliament. I would like to hear confirmation that that will remain the case after Brexit and that responsibility will not somehow be split between Defra and the Department for Health and Social Care.

Lord Teverson (LD): My Lords, I will make some brief comments. I too welcome the Minister to her position. I also particularly welcome the noble Lord, Lord Rooker, coming back to the Opposition Front Bench. I remember great times when he was a Defra Minister and the work he did when the climate change Bill went through.

I will raise two points that relate in many ways to what has been said by the noble Lord, Lord Krebs. Although these SIs make technical replacements to make sure that the regulations work, which I accept

[Lord Teverson]
and understand, subject to my noble friend Lady Walmsley's question about what has been left out, the whole crux of this comes back to how the structures that enforce and flow from these SIs will work. Is the Minister satisfied that the Food Standards Agency will be sufficiently independent of political influence when it comes to important decisions about consumer safety, food safety and agriculture? At a time of major incidents, decisions taken by Ministers can be very difficult in their effect, in particular on the food processing industry and indeed the agriculture industry.

The other area concerns our meeting with the Minister this morning at the sub-committee. I was very impressed by the chair of the FSA, Heather Hancock, and what she has achieved over time to put all the systems and people in place, but I was not convinced by the liaison between Defra and the Department for health over these negotiations. It seemed that on the question of systems the Minister was not entirely in touch—I do not mean this over-critically—with the negotiations in this area that Defra has undertaken. It is that liaison on which I would like some assurance.

5.45 pm

Baroness Blackwood of North Oxford: I thank all noble Lords for their contribution to this debate on my first SI. I think it is quite unusual for your first SI to involve two former chairs of the independent body that you are in part debating. I shall do my best to tread appropriately carefully.

I shall respond to some of the questions asked by the noble Baroness, Lady Walmsley, about why the instruments deal specifically with these questions and do not think beyond Brexit. I am sure she will know, having experience with previous statutory instruments, that the instruments are responding to the fixing power of the European Union (Withdrawal) Act, which is limited to making appropriate changes to prevent, remedy or mitigate failures of retained EU law to operate effectively, so these instruments aim specifically to ensure that food safety and hygiene legislation functions in a no-deal scenario. I state at the outset that we think it is unlikely that the UK will leave without a deal—indeed, it would be very undesirable—but we must be prepared in all scenarios. I wanted to put on record at the beginning why these SIs were drafted in this specific way, although I know she knows that.

To respond to the noble Baroness's question about whether we are confident that they have all the necessary read-across from EU law into UK law, we have been very careful to review the EU law in FSA policy areas to check that. We believe we have identified all the EU law that needs to have those connections across.

The noble Baroness asked about the consultation, and this was echoed by the noble Lord, Lord Rooker, regarding the responses about the impact on local government. The SIs were very effective, in as much as the FSA did a full public consultation that lasted six weeks. It should be praised for following that route and for engaging with local authorities and industry. It is reasonable to point out that local authorities are under pressure at the moment, but I think the reason why we have come to the view that it will take a relatively brief amount of time to get familiar with the new legislation is that there are no changes to the vast majority of requirements in the read-across. We are therefore confident that the time that has been predicted in the impact statement is sufficient, so we believe that that impact assessment is robust.

In addition, we wanted to discuss the devolved Administrations and consultation there. We are very pleased that Scotland, Wales and Northern Ireland have provided their consent for these instruments. We have worked very closely in developing them. The principles and rules set out in retained legislation in these SIs are intended to ensure that we have the same level of food safety protection throughout the UK, so that we can have a free flow of trade through it to address exactly the concerns that the noble Baroness raised. However, the FSA is not going to leave it there: it will continue that close working relationship with the Administrations of Scotland, Wales and Northern Ireland so we can be confident that in practice it will be possible to make arrangements to operate a framework of food safety regulation across the UK in whatever exit scenario we may face.

I turn to the important series of questions about RASFF risk assessment and management in a potential no-deal scenario, asked by noble Lords with great experience. I know there has already been something of a debate about this in Select Committee with my colleague the Minister, Steve Brine, so I suspect I will repeat some things that he has said—perhaps not so eloquently, but I will do my best.

As the noble Lord, Lord Rooker, rightly said, securing continued access to and participation in the RASFF system after leaving the EU is one of the UK Government's top food safety priorities. We recognise its importance for UK food safety, but we also recognise the important role that the UK has played in establishing that system. We are proud of that, and would like to continue to play a role. We are pressing for full access to that system in our negotiations with the EU, and I am sure that is what my colleague the Minister said earlier. As he would have said, though, the exact arrangements for participation in RASFF are still a matter for the next phase of negotiations. It is therefore hard to provide any further detail on that, as I know noble Lords will recognise. We recognise the importance of it and of a continued strong relationship with the EU.

In communications back to us, the EU has recognised the important role the UK played in the establishment not only of RASFF but of equivalent food standards bodies in the European Commission, so I think the close relationships we have there will bear fruit. They are not just close relationships at a European Commission level but scientific relationships, which tend to weather political storms a little better than political relationships, if I may say so, so I have a sense of optimism about this. We must be clear that negotiators recognise that there is no precedent at this point for third-country membership of RASFF, but we will continue to make the point that we have an unusually strong contribution to make to it and therefore there is value in us engaging with it.

The mutual benefits are an important element of maintaining food safety for both parties, and we think it is important for the EU, as well as for the UK, that this close trading relationship can continue without compromising confidence in food safety. As the noble Lord, Lord Teverson, pointed out, FSA officials have been working closely on this point with Defra officials to ensure that there is a seamless approach to dealing with the challenge of exit, and that contact is maintained at not only a policy and legal level, but, most crucially, an operational level. That will need to continue as we go through this next period.

I now turn to what will happen in the undesired scenario of no deal, where we may well have to cope without access to RASFF, even if it is in the short term. Noble Lords will have heard earlier today from Heather Hancock, the chair of the FSA, on the plans she has put in place to ensure we have robust protections and operational measures in place to ensure that food safety standards are in no way compromised, no matter what the outcome of EU exit may be. In the first instance, we have ensured that the FSA is increasing the level of engagement with the International Network of Food Safety Authorities, INFOSAN—which, noble Lords will know, is managed jointly by the FAO and the WHO—to provide the UK with an extensive reach for communicating food safety issues to INFOSAN. Indeed, we believe that, with our extensive experience, we have done work to improve the effectiveness of that organisation.

We have to bear in mind that we have effectively been managing food risk from imports from and exports to non-EU countries through some of those bilateral and non-EU routes, so we can have confidence in the effectiveness of the FSA as a world-leading regulator—up until this point, in any case. Nevertheless, there has been no complacency in this. The FSA has put in place a number of measures to strengthen the domestic risk assessment and risk management measures. To do this, it has recruited additional staff involved in risk assessment and risk management, implemented an expanded role for the independent scientific advisory committees, which are now being strengthened by recruiting new experts and establishing three new expert groups, and expanded access to scientific experts who can provide scientific advice and other scientific services to inform our work on a contract basis, including by expanding our register of specialists. It has ensured that it will put in place a slightly new system that is based on current practice but includes: a structured separation of risk assessment and risk management; a new executive advisory committee that draws together officials from government; an expanded role for the independent scientific advisory committees, which, as I have said, have been strengthened by recruiting new experts; and a new process for authorising regulated products, such as food and feed additives, enzymes, flavourings, GM food and feed, and other novel foods.

The noble Lord, Lord Krebs, raised an important question about the independence of the FSA and the role of Ministers. It is right to assure him that the response he received from my honourable friend Steve Brine in Select Committee is right. While food safety decisions will be made by Health Ministers, the FSA and FSS will continue to lead and make risk management decisions during food safety incidents, providing risk management advice to the enforcement authorities, which take action. Of course, this independence is set out by statute. No proposal is in place to change that. All food safety and risk management decisions will be proportionate and evidence-based. They will be based on a package of supporting analysis in line with the fine tradition the FSA has of openness and transparency. We can be proud of the FSA's tradition of doing that.

I hope I have answered the questions raised. On that basis, I beg to move.

Motion agreed.

General Food Hygiene (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

5.55 pm

Moved by ***Baroness Blackwood of North Oxford***

That the Grand Committee do consider the General Food Hygiene (Amendment) (EU Exit) Regulations 2019.

Motion agreed.

Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019

Considered in Grand Committee

5.56 pm

Moved by ***Baroness Blackwood of North Oxford***

That the Grand Committee do consider the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019.

Motion agreed.

Contaminants in Food (Amendment) (EU Exit) Regulations 2019

Considered in Grand Committee

5.56 pm

Moved by ***Baroness Blackwood of North Oxford***

That the Grand Committee do consider the Contaminants in Food (Amendment) (EU Exit) Regulations 2019.

Motion agreed.

Committee adjourned at 5.57 pm.