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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

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House of Lords

Monday 18 March 2019

2.30 pm

Prayers—read by the Lord Bishop of Chester.

Children: Covert Human Intelligence Sources

Question

2.36 pm

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

To ask Her Majesty's Government, further to the debate on the regret motion on the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018 on 16 October 2018 (HL Deb, cols 435–50), what assessment they have made of the recruitment, use, deployment, numbers and oversight of children used as spies by the police.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Investigatory Powers Commissioner, Lord Justice Fulford, undertook to report on this issue. He has now written to the chair of the Joint Committee on Human Rights with his findings, and a copy of the letter has been placed on his website.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for that response. Does she agree that the police setting targets for increasing the number of child spies in each region goes beyond what the Minister told us before—that this is a rarity? I have been alerted by a whistleblower that the police are doing exactly this. There is no way I can check, so will the Minister check for us and report back to the House?

Baroness Williams of Trafford: I most certainly will. Obviously, the police are operationally independent of the Home Office, and I do not know why they would be setting targets for this. The noble Baroness referred to the letter of Lord Justice Fulford, which says that 17 juvenile covert human intelligence sources, or CHISs, have been used in the past three years. When she refers to targets, I assume she means targets upwards, but I will certainly look into the matter.

Lord Paddick (LD): My Lords, the UN Convention on the Rights of the Child states that all those under the age of 18 should be treated as children, yet the Government allow the police to recruit 16 and 17 year-olds as informants without an appropriate adult being present. Accepting that it does not have to be a parent or guardian if they are also involved in criminality, can the Minister explain why such children cannot be questioned as a suspect in a criminal investigation without an independent adult being present but they can be recruited as an informant?

Baroness Williams of Trafford: The noble Lord and I have gone over this on a number of occasions; the situation reflects the emergence into adulthood of 16 and 17 year-olds. That said, where anybody undertakes covert human intelligence, there is always an independent assessment of various aspects of their personality, their willingness and their ability to undertake such a difficult task.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I recall from our previous discussion on this issue that the young people involved are likely to be the children of people the authorities are interested in. That puts these children in a very dangerous situation. What measures are in place to ensure that children are protected and do not feel pressurised into undertaking this dangerous activity?

Baroness Williams of Trafford: The noble Lord brings forward an important point: someone recruited as a covert human intelligence source might be the child of someone who is already involved in criminal activity. Anybody under the age of 16 cannot be involved in anything to do with their parents.

Lord Lexden (Con): Who conducts the independent assessment of potential child spies, to which my noble friend referred, and what happens to the results of those assessments?

Baroness Williams of Trafford: The Investigatory Powers Commissioner has oversight of all decisions taken on these children.

Baroness Lister of Burtersett (Lab): My Lords, do the assessments to which the noble Baroness referred include an assessment of the best interests of the child under the UN convention?

Baroness Williams of Trafford: Yes, it does.

Lord Watts (Lab): My Lords, is the increase due to the amount of criminals who are now using young people, especially in the drugs-related elements of crime? What are the Government doing to address that problem?

Baroness Williams of Trafford: My Lords, a number of complex matters are driven by knife crime, by gangs, by county lines and by drugs, and the noble Lord is right to raise the issue. I have gone through the various things we are doing on knife crime—including the Offensive Weapons Bill—and the various aspects of what we are doing to tackle drugs, most notably a public health approach to the issue.

Baroness McIntosh of Hudnall (Lab): My Lords, the noble Baroness referred to children under 16 not being allowed to be involved in intelligence involving their parents. Does that prohibition include other family members—for example, siblings or carers who are not their parents?

Baroness Williams of Trafford: I know the prohibition involves parents. I do not know about siblings—I shall get back to the noble Baroness on that—but any family affiliation would make it difficult to ask them to undertake such a thing.

Lord West of Spithead (Lab): My Lords, does the Minister agree that the Investigatory Powers Act has been the most amazingly successful piece of legislation? It has enabled us, for example, to identify the growth in right-wing extremism, into which the agencies have put a great deal of effort recently. We should be pleased that it went through this House and the other House and is now on the statute book.

Baroness Williams of Trafford: The noble Lord is right, especially given the events of the past few weeks,

Lord Pannick (CB): My Lords, are there guidelines which restrict the use of children in this way to cases where the suspected offences are very grave indeed and where there are no other means available to obtain necessary evidence?

Baroness Williams of Trafford: The noble Lord will appreciate that I cannot talk about operational matters. I hope he will be comforted by the fact that the use of a juvenile as a covert human intelligence source is only in exceptional circumstances.

Lord Haskel (Lab): When we discussed this on previous occasions, the Minister promised us a much higher level of judicial supervision over the process. Is that in place?

Baroness Williams of Trafford: At the time, I said that Lord Justice Fulford, the Investigatory Powers Commissioner, provided the oversight needed. The noble and learned Lord, Lord Judge, had referred to judicial oversight, which I explained would require primary legislation. I said that Lord Justice Fulford provided a sufficient level of oversight and that it was satisfactory at this point.

Festival of Great Britain and Northern Ireland in 2022

Question

2.44 pm

Asked by ***Lord Goddard of Stockport***

To ask Her Majesty's Government what steps they are taking to ensure that the museum sector is able to support the proposed Festival of Great Britain and Northern Ireland in 2022.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the festival of Great Britain and Northern Ireland is an exciting opportunity to celebrate creativity and innovation across the UK in 2022. The festival is still in the early stages of planning. However, we expect our excellent and vibrant museum sector to play an important role.

Lord Goddard of Stockport (LD): The Minister kept his face straight there. I thank him for that Answer, but does he agree that there are many important collections up and down the country owned by local councils, whose funding has been decimated and which are now being forced to make impossible choices, in some cases leading to the disposal of those collections? Hertfordshire is recommending 90% disposal. The collections are based on local towns and cities; they are regional assets and parts of the town and place. We cannot lose them. The mark of a civilised society is how we treat our citizens. We have not been doing that very well for the past four years. Does the Minister agree that we should protect the history and heritage of this country? Once it is gone, we cannot get it back.

Lord Ashton of Hyde: My Lords, I definitely agree with the noble Lord that we should protect the heritage of this country. He also mentioned impossible choices. The Mendoza review showed that the museums and galleries sector is vibrant and that over the past 10 years—the 10 years of the review period—public funding to museums across the country was broadly flat. Some individual local authority museums have particular problems and each case is unique, but Arts Council England is helping them, and by and large most museums are in good shape. Hertfordshire has agreed that any money raised by purchases will be invested in the remaining collection in the first instance, including in the conservation and potential move of the nationally significant sculptures that it possesses. It has fully considered the Museum Association's code of ethics.

Baroness Bull (CB): My Lords, recent history shows that these large-scale national events work best when they are led by visionaries, are connected with communities, are delivered by independent bodies, and—with great respect—politicians stay clear. Let us contrast the Millennium Dome with the astounding success of the London 2012 Festival, Hull City of Culture or the 14-18 NOW commemoration. Who has been appointed to key leadership roles for this festival? What delivery mechanisms will be put in place to balance accountability to the funding body with genuine curatorial freedom?

Lord Ashton of Hyde: I agree with the noble Baroness that it is better if Ministers stay out of it. That is why the intention is to have a commissioning body that is independent of government. It will have £120 million of extra money to spend, but nobody has been appointed to it yet.

Baroness Fookes (Con): My Lords, will my noble friend include the world of horticulture, given our magnificent gardens and parks and the world-class flower shows we have each year?

Lord Ashton of Hyde: My Lords, while I have great sympathy with my noble friend, I have just said that the delivery body will be independent of Ministers. However, I am sure it will take note of what my noble friend said.

Lord Griffiths of Burry Port (Lab): My Lords, I grant that there must be this arm's-length relationship between the organisation of the festival and the Government. However, when the body that oversees the festival is set up, can we find a way of ensuring that it is reminded that this is neither 1851 nor 1951 and that Britain is a much more diverse country now than it was then, so that we can celebrate diversity in the

course of this festival? If we are looking for someone to lead and spearhead those who organise this festival, as the noble Baroness said, may I recommend someone who I know will be free from the summer and who has proven organisational ability and a great inspirational character, namely Mr Warren Gatland?

Lord Ashton of Hyde: This is meant to be a cultural festival—

Noble Lords: Oh!

Lord Ashton of Hyde: It is not a sporting festival. I completely agree with the noble Lord's previous point about diversity. Arts Council England is paying particular attention to that. He will have seen that the annual report mentioned diversity in the arts and culture sector. *Equality, Diversity and the Creative Case* was published in February this year.

Lord Kirkhope of Harrogate (Con): My Lords, why is the title of this proposed festival as it is? In 1951 we had a Festival of Britain. We are now talking about a festival of Great Britain and Northern Ireland. Surely it would be more appropriate to have a festival of the United Kingdom.

Lord Ashton of Hyde: I do not know why that title was selected but it seems to explain exactly what the festival is all about.

Lord McNally (LD): My Lords, is this new festival an opportunity to establish a museum of Brexit, where the record of this Government can be preserved for future generations? Would not the advantage be that there is already a perfect location in the Chamber of Horrors?

Lord Ashton of Hyde: I imagine that the noble Lord wants it to be publicly funded, but I do not think that that is necessarily what the public want.

Lord Cormack (Con): Does my noble friend agree that local authorities that disperse or sell collections, or propose to close galleries, are in fact repudiating the past and those who have been kind enough and benevolent enough to give? Does he agree that it is something that should on all occasions be avoided?

Lord Ashton of Hyde: No, my Lords, I do not agree. Sometimes museums have to do what the Mendoza review suggested—that is, to have a dynamic collections policy, which in some cases means getting rid of some pieces which are in storage and are not being preserved well because they are not in ideal conditions, and using the money raised to preserve the best items in their collection and to buy new items which might interest a younger audience.

Lord Rooker (Lab): Will the festival take place before or after the general election that is due in 2022?

Lord Ashton of Hyde: The plans have not been made but I believe that the festival will take place across the whole year, so it will happen either side of the general election, if it takes place in 2022. Many other interesting events will be taking place, not least Her Majesty's Platinum Jubilee, the 100th anniversary of the BBC and the 75th anniversary of the Edinburgh Festival Fringe.

Cycling: Licences and Insurance

Question

2.52 pm

Asked by ***Lord Winston***

To ask Her Majesty's Government what assessment they have made of the case for requiring adults riding bicycles in city centres to have a licence and third-party insurance.

Baroness Barran (Con): The Government considered this matter as part of the cycling and walking safety review in 2018. They have no plans to require cyclists to have a licence or third-party insurance. The costs and complexity of introducing such a system would significantly outweigh the benefits, particularly the requirement for a licence. However, the Government believe it is wise for all cyclists to take out some form of insurance, and many cyclists do so through their membership of cycling organisations.

Lord Winston (Lab): I thank the noble Baroness for her reply. Of course, most cyclists are conscientious and law-abiding but an increasing number are extremely aggressive and ignore, for example, the fact that some streets are one way, pedestrian crossings and red lights at traffic lights, and from time to time they collide with pedestrians. In view of the fact that the Government obviously wish to encourage cycling—and I agree with that—does the noble Baroness not think that they should consider their obligation to improve public safety and therefore implement these or similar measures?

Baroness Barran: The noble Lord makes a number of very fair points. The Government obviously want to reinforce safety for all road users, particularly those described as vulnerable road users, including pedestrians and cyclists. He will be aware that there was a review of cycling and walking safety, and licensing and insurance were considered as part of that. Over 3 million new cycles are sold each year. Licensing and insurance would require the establishment of a central register, and the Government's view is that this would be very cumbersome and expensive to administer. There is evidence that other countries that have trialled these schemes have then withdrawn them. The Government have committed, through the cycling and walking investment strategy, to a 50-point plan and £2 billion of investment to improve safety for all road users.

Lord Robathan (Con): My Lords, should we not consider whether we wish to encourage cycling for the health benefits that it gives, and indeed its advantages regarding reduced congestion, or whether we wish to deter cyclists—I declare an interest as a former chairman of the All-Party Parliamentary Cycling Group—with unnecessary regulation that would keep the police busy for the next 100 years?

Baroness Barran: I hope I can reassure my noble friend that the Government are definitely seeking to strike a balance, with substantial investment in education for all road users and safe infrastructure. We are also reconsidering some of the offences relating to cycling. However, noble Lords will be aware that trying to retrofit new, safer and more sustainable transport modes to old cities is a challenge.

Lord Rogan (UUP): My Lords, your Lordships and others who cross Millbank to this House, especially between the hours of 5 pm and 6 pm, will know that the number of cyclists who breach the zebra crossing with pedestrians on it is, frankly, an accident waiting to happen. What measures can be taken, without licensing cyclists, to prevent this occurrence happening—by, I should say, a minority of cyclists?

Baroness Barran: My Lords, the Government do not in any way condone unsafe cycling. A number of noble Lords have mentioned to me the risks and perils of crossing Millbank but, as the noble Lord said, it is a tiny percentage of cyclists responsible for this. The Government's view is that in the long term, in terms of pollution and health benefits, it is important to encourage safe cycling, hence the 50-point action plan in the strategy.

Lord Storey (LD): My Lords, I am sure the Minister is aware that pedicabs—rickshaws on bikes—are licensed as hackney cabs in every part of England and Wales except London, where 1,500 pedicabs go unlicensed with no requirement for insurance, no health and safety checks and no fixed fares. When are the Government going to take action on this matter?

Baroness Barran: As the noble Lord will be aware, transport is a matter that is devolved to the mayor, so the Government have no specific plans in this area.

Lord Wills (Lab): My Lords, the Minister will be aware that 20 years ago fixed-penalty notices were introduced precisely to deter irresponsible cyclists from cycling on pavements. She may not be aware that freedom of information requests have shown that in 2017-18, 30 out of 38 police forces issued fewer than five fixed-penalty notices and 12 of them issued no fixed-penalty notices at all. Does the Minister really think that there is so little irresponsible cycling on pavements? If she does not think that, what are the Government going to do to protect disabled people, vulnerable pensioners, mothers with babies in buggies and many others from these hoodlums in lycra?

Baroness Barran: I hear the noble Lord's concerns. I have to say that I did not anticipate the popularity of this topic. The Government take these issues extremely seriously. There are small minorities of motorists, cyclists and, dare I say, what are now known as "smombies"—smartphone zombies, including pedestrians—who cause danger on our roads, but only a tiny percentage of accidents on our roads are caused by cyclists so the Government are seeking a proportionate response that upholds the law but also encourages cycling and walking.

Northern Ireland: Devolved Government

Question

2.59 pm

Asked by ***Lord Dubs***

To ask Her Majesty's Government what progress they have made towards restoring a functioning Executive and Assembly in Northern Ireland.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, what progress has been made? Not enough. The Secretary of State continues to work closely with the main political parties in Northern Ireland to restore devolved government. The Secretary of State met the five main political parties and the Irish Government on 15 February to discuss a further phase of talks to restore devolution, and held further bilateral discussions with the parties on 1 March.

Lord Dubs (Lab): My Lords, will the Minister confirm that it is over two years since there was a functioning Executive and Assembly at Stormont? Since that time, key decisions have been made by civil servants that cannot be challenged—and they are normally on the cautious side, given that they do not have ministerial backing. Is it not time that the Government got a move on? Inertia is no recipe. They are betraying the Good Friday agreement and the people of Northern Ireland. Can we not have something more than talks? For example, can we go back to the original idea of appointing a neutral person to bring the parties together and make some progress? At the moment, nothing is happening.

Lord Duncan of Springbank: I am happy to confirm the first point the noble Lord made; it has been far too long since there was an Executive in Northern Ireland. The noble Lord will be aware that over the past year we have set out guidance that can be issued to civil servants to allow them to act beyond what would traditionally be accepted by the Civil Service. All we are doing just now has a single objective in mind: to restore an Executive. We have not made enough progress, and responsibility rests not just with the Government but with many other parties as well.

Lord Naseby (Con): My Lords, I declare an interest as a former PPS in Northern Ireland for two years. Against that background of experience, is it not clear, as the noble Lord, Lord Dubs, has said, that one way or another we need to find an external catalyst to pull together these difficult, challenging people in Northern Ireland, who have little trust in each other? Does this not suggest that you need the experience of some external party or other?

Lord Duncan of Springbank: My Lords, the Government have not ruled out using an external facilitator. Indeed, they are actively considering that point. However, it is important to stress that circumstances at this moment may also be a factor affecting that role just now.

Baroness Smith of Basildon (Lab): My Lords, while the Prime Minister is repeatedly failing to get her Brexit deal through Parliament, she has shown less determination in trying to secure the return of a functioning Executive and Assembly in Northern Ireland. Today, we are hearing rumours of a last-minute "Stormont lock", and other negotiations, to try to win the backing of the DUP for the Prime Minister's deal. I have two questions. First, if there is a "Stormont lock", given that there is no functioning Executive or Assembly, would it be the DUP or the unelected civil servants making decisions that would affect the whole of the United Kingdom? Secondly, what assurances can the Minister give to convince this House that the Government's approach to Northern Ireland and the UK constitution is being driven by something more encouraging than political expediency and the short-term goals of Mrs May and No. 10?

Lord Duncan of Springbank: I am unaware of any Stormont lock and cannot comment upon that. On the question of where we stand as a country, the constitution must be respected, as must devolution. That is why we have sought to restore devolved government in Northern Ireland by every means possible over the past period. Without it, direct rule from here would be a terrible retrograde step.

Lord Bruce of Bennachie (LD): My Lords, does the Minister not acknowledge that the longer this stalemate goes on, the more polarised politics in Northern Ireland becomes and the more dangerous the situation is? Will he not follow up things he has suggested before, including making the Assembly active while positive measures are taken to restore the Executive, rather than determining to get an Executive before the Assembly comes together, so that politicians at least meet each other?

Lord Duncan of Springbank: The noble Lord is correct: polarisation is a great risk in Northern Ireland. As we have said before, we are making every endeavour to restore the Assembly and are exploring every possible way. On my previous time at the Dispatch Box, I said that I would sit down with noble Lords who have an interest, hopefully to take this matter forward.

Lord Lea of Crondall (Lab): My Lords, is the Minister aware of the statement made by the secretary of the senior Civil Service union that civil servants in Northern Ireland who are now taking decisions are becoming public figures? It is worrying for them that they are exposed to the normal cut and thrust of politics. It is very important to bring about a situation with the political parties in Northern Ireland so that civil servants do not feel vulnerable through having to take high-profile political decisions.

Lord Duncan of Springbank: The role of the Northern Ireland Civil Service is vital to the functioning of the situation in Northern Ireland as we understand it. In reality, civil servants have been placed in an invidious position. Without their work we would be in a much worse position. However, the reality remains that serious political decisions cannot really be taken by the Civil Service. That is why we require a restored Executive now.

Lord Lexden (Con): My noble friend referred to consideration being given to the appointment of an independent chairman and for the calling together of the Assembly. When can we expect some decisions to be taken?

Lord Duncan of Springbank: As soon as we are in a position to make that announcement, we will do so.

Lord Anderson of Swansea (Lab): My Lords, the Minister spoke of the increasing danger of polarisation in Northern Ireland. Does he agree that part of that danger arises from the fact the DUP purports to speak here on behalf of the people of Northern Ireland, but in fact the majority in Northern Ireland were for remaining? Therefore, it clearly does not speak on behalf of the majority in Northern Ireland.

Lord Duncan of Springbank: No single party can claim to speak for any area whatever. There is a diversity of opinion in Northern Ireland and we must respect that diversity in every one of its manifest forms.

Lord Brooke of Alverthorpe (Lab): My Lords, could the noble Lord say a little about the discussions taking place with the DUP at the moment? Frequent meetings are taking place with the Prime Minister. Is this topic on the agenda?

Lord Duncan of Springbank: I am afraid I do not know the answer to that question.

Lord Browne of Ladyton (Lab): My Lords, has the Prime Minister met with the leaders of any other parties in Northern Ireland to discuss Brexit in the same timescale as she has met with the DUP? All important decisions in Northern Ireland according to the Good Friday agreement require cross-community agreement. What efforts are the Government making to get cross-community agreement for the people of Northern Ireland?

Lord Duncan of Springbank: Brexit is Banquo's ghost at every meeting the Secretary of State for Northern Ireland undertakes in Northern Ireland—of that I can be absolutely certain. The important thing is to ensure that all those in those discussions are heard and that their voices are not ignored. We are not yet in a position to bring them together to deliver the Executive that we would wish to see restored.

Local Government (Structural and Boundary Changes) (Supplementary Provision and Miscellaneous Amendments) Order 2019

Motion to Approve

3.07 pm

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

That the draft Order laid before the House on 16 January be approved. *Considered in Grand Committee on 12 March.*

Motion agreed.

Arrangement of Business

Announcement

3.07 pm

Lord Taylor of Holbeach (Con): My Lords, we had an impromptu exchange on Thursday last week after Questions, during which I was asked to return to the House today to set out the Government's position on the business of the House during the next fortnight. Following further constructive discussions in the usual channels, for which I am very grateful as always to the noble Lords, Lord McAvoy and Lord Stoneham, I am delighted to do so.

In the context of Brexit and the imminence of 29 March, I fully understand why noble Lords want to consider our business with greater attention than normal. I have always been willing to speak to noble Lords about the business of the House when invited to do so, and I am here today.

One of the points raised by the noble Lord, Lord Foulkes of Cumnock, was to express concern at the scheduling of the debate on the Spring Statement in Grand Committee this Wednesday, rather than in the Chamber. I am sure that I do not need to tell noble Lords that there are precedents for taking this business on the Floor of the House or in Grand Committee, but I listened to the argument.

The reason for putting the debate in Grand Committee, with the agreement of the usual channels, was to provide some certainty about the slot. At this notice, I am now clear enough about the demands of business this week to move the business from the Chamber to the Grand Committee, and therefore provide time on the Floor of the House on Wednesday for the debate on the Spring Statement. The timings of that Grand Committee and the debate on the Floor of the House should be similar, so I hope that in making this late change I am not risking serious inconvenience to those who have signed up to speak. The noble Lord, Lord Foulkes, presented a reasonable argument, and I am happy to act on it.

The wider point made by the noble Lord, Lord Adonis, and others, was to ask that we cease our debates on the scrutiny of secondary legislation necessary for the UK's exit from the EU, particularly any legislation necessary if the UK leaves the EU without a deal. To be crystal clear, this is not legislation to enable a no-deal exit. The House passed that legislation in the form of the European Union (Notification of Withdrawal) Act 2017 and the withdrawal Act. This is legislation which mitigates the impact of a no-deal exit and is about ensuring that we have a functioning statute book. The majority of the statutory instruments would be needed at the end of any implementation period.

As my noble friend Lord Finkelstein said on Thursday, nobody, whether they want to leave without a deal or not, can be entirely certain that it will not happen. This Government do not want it to happen and the House of Commons does not want it to happen, but perhaps it will be helpful if I explain to the House why, even so, I cannot be complacent about that outcome.

Whatever the Commons decides, the next meeting of the EU Council is on Thursday. It does not meet again before 29 March. Any extension will need to be agreed later this week and would have to have legislated for next week, in the form of a statutory instrument under the withdrawal Act. In the period between now and having secured a satisfactory agreement to an extension and thereafter legislating to change the date of exit day, we have to operate on the basis that it is possible, whether or not anybody wants it, that one of the necessary steps to prevent our leaving the European Union on 29 March has not been taken. Because that is possible, I believe this House has only two possible approaches to scheduling its business. I am being entirely frank when I say this.

One approach is the one that we have been taking and that I want to continue to take. We have brought forward the secondary legislation to a timescale which has meant that the scrutiny committees have been able to consider it properly and that we as a House, whether in this Chamber or in Grand Committee—sometimes both—have had time to debate each instrument with our normal thoroughness and rigour. Government Ministers in this House have, quite rightly, been put through their paces. I can assure the House that all remaining SIs necessary for day one after exit day have been scheduled for debate. I have every confidence that we will be able to debate them in an orderly way, without significant departure from our normal sitting patterns. I think this is the responsible and consistent approach and serves the public interest.

The only alternative approach would be for me to do what the noble Lord, Lord Adonis, asked me to do: to remove all debates on Brexit SIs from the Order Paper in the next fortnight. If anything goes wrong that means that we do not agree an extension with the EU, we would likely have one day—Thursday 28 March—in which I would have to table effectively two weeks' business. The House would then be asked to consider and approve all necessary legislation in that day. I do not regard that as a respectable or sensible thing to ask the House to do. I will not be making that request, and that is why I will not be un-scheduling any of those debates. As I said on Thursday, the House of Commons will continue to consider the same instruments over the next fortnight.

I have taken a little longer at the Dispatch Box than is customary for a Chief Whip, but given the legitimate questions that I was asked on Thursday and their importance, I hope that the House will forgive me for having detained it today. The Spring Statement debate has today been tabled for the Chamber on Wednesday, and the statutory instruments tabled for the Chamber on that day have been moved to the Moses Room. Otherwise, the business will be as advertised in *Forthcoming Business*. In the normal way on Wednesday following our usual channels meeting, we will publish further details for the next week.

3.15 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the Chief Whip for his statement. It is rare that we hear him speak for so long; perhaps we shall hear more from him in due course.

I am grateful for the statement. My noble friend Lord McAvoy and I welcome the rescheduling of the important economic debate for the Chamber rather than the Moses Room, as my noble friend Lord Foulkes

raised last week. However, it is a sign of how this Government's handling of Brexit has dominated the political landscape and crowded out everything else.

I am sure that I am not the only Member of this House who finds it quite incredible that here we are, just eight sitting days from the Government's self-imposed deadline for exit day, and the Prime Minister is still clinging on to her discredited deal as the best the UK can get. She appears determined to batter MPs into submission to agree it. At least the Government are now seeking an extension to Article 50. If the Prime Minister's deal is not agreed by MPs, any extension must be used to produce a different outcome and not just to rehash the same rejected deal.

To return to the point I made a few months ago in Questions, the Prime Minister's latest wheeze is apparently to offer a "Stormont lock", in effect giving her friends in the DUP a veto on UK-wide future regulation if they vote with her on the deal. Yet again, it is a short-term fix with no thought for the wider impact, including the constitutional implications for the other devolved Administrations. We know that there are special circumstances relating to the Irish border, but this seems like political expediency designed to suit the Conservative Party and the DUP, especially given the Government's failure to get the Northern Ireland Executive up and running again.

I asked last week when the Government would give legislative effect to the decision by the House of Commons to reject no deal. The Minister, the noble Lord, Lord Callanan, declined to answer. The problem is that the only reason that we are still dealing with no-deal Sis—there are relatively few left to deal with—is the Government's incompetence. The Prime Minister clings to her belief that to threaten us with a crash-out disaster is an ingenious strategy.

I take the point made by the Chief Whip that he must prepare for all outcomes. Should Mrs May's belligerence mean that we still crash out, these regulations will be needed. It is to the Government's shame that we will not know until Thursday whether there will be an extension to Article 50. Many of us find it ludicrous that, with all that we could be doing, with all the issues that this country needs to address and resolve, Parliament has had to spend time rushing through contingency arrangements when even the impartial Civil Service has been clear with Ministers that 29 March is unachievable. On a point of clarification, I thought that the point made by the noble Lord, Lord Finkelstein, was that he did not trust the Government not to crash out without a deal.

There were questions that were not answered in the Chief Whip's statement. I would be grateful if he could address them, because your Lordships' House has struggled to get an answer to them. First, we have been told that the Government will table all necessary legislation for a no-deal Brexit. What are those Bills and where are they? Can the Chief Whip list them today for the convenience of the House?

Secondly, should an extension to Article 50 be granted, what legislation will be required to give effect to it? My understanding is that there will need to be an SI to change the exit day. Will that be it or is anything else required?

Thirdly, as I asked last week and did not get an answer, when will the Government bring forward legislation, whether by SI or in another form, to give effect to the House of Commons' rejection of no deal as an option?

The Minister will recall that I asked last week whether the Government were considering Saturday sittings. The noble Lord, Lord Callanan, was unable to answer then; can the Chief Whip do so today?

Lord Newby (LD): My Lords, the truth is that the Government Chief Whip has put a brave face on a farce. The position is that the Commons decided last week that it would press for a rejection of no deal and an extension of Article 50. It has been perfectly clear all along that any such reasonable request would be accepted by the European Council at the end of this week, so the only basis on which the Government are pursuing these no-deal SIs is that they simply have no faith in their own ability to enact what the Commons has asked them to do and what the EU has said it is prepared to do.

I want to ask about the disappearing primary legislation relating to Brexit. Even if the Government were to get their deal through, there are a number of pieces of primary legislation that they say will be necessary at the point we leave the EU, particularly the immigration, Agriculture and Fisheries Bills. None yet has a scheduled date for Report in the House of Commons, which I assume means that they cannot come to this House on the planned schedule until after Easter. There will then be about eight weeks until 30 June, which is the point at which the Government say they wish their extension to come to an end and, presumably, leave the EU. May I have an assurance from the noble Lord that these pieces of primary legislation, which are deemed necessary—indeed, essential—by the Government, will be brought to your Lordships' House, if the Government succeed in getting their deal through, in a timely manner, so that we do not have the same kind of farcical rush we have been expected to endure on other matters?

I also want to ask the Minister to deny the rumours that have been swirling around the House in recent days that the Government plan to curtail the Easter Recess and that, just as in February, noble Lords will be expected to be in Parliament, business or not, when they are currently planning to be away. Finally, given all the uncertainty surrounding the Government at the moment, will the Chief Whip give the House an undertaking that, in the light of what happens at the weekend, he will return to the House next Monday and explain what is going on?

Lord Foulkes of Cumnock (Lab Co-op): My Lords, I genuinely thank the Government Chief Whip for listening sympathetically and agreeing to the specific suggestion I made last Thursday. I hope this will create a precedent.

Lord Adonis (Lab): My Lords, I too thank the noble Lord, Lord Taylor, for his very considerate response to our discussion last Thursday and I recommend that, if he were to take further advice on the organisation of business from my noble friend Lord Foulkes when he

[LORD ADONIS]
offers it, the House would be in a good place. However, the contents of the Chief Whip's statement is deeply concerning, because the House of Commons resolved by a decisive majority last week not to proceed with no deal. The Government have effectively said that, in the event of their not being able to reach agreement with the European Council this week, they are still keeping no deal on the table, even though it is open to Her Majesty's Government to take it off the table at any moment by rescinding the notice under Article 50. If the Government were acting in accordance with the will of Parliament, they should, if they cannot reach a deal with the European Council this Thursday and Friday, rescind the notice under Article 50 and not put the country and Parliament through a no-deal Brexit.

The idea that, because we are considering these statutory instruments for 20 or 30 minutes apiece, the nation is somehow better prepared for the horrors of a no-deal Brexit is straightforward Alice in Wonderland. It will be catastrophic for the country if the Government put us through a no-deal Brexit. Parliament has already told the Government, who are supposed to be the Executive and to execute the will of Parliament, that it does not want to see a no-deal Brexit. It is absolutely within the power of Her Majesty's Government to prevent a no-deal Brexit by withdrawing the notice under Article 50 and it is a complete mystery to me why the Government utterly refuse to follow the wishes of Parliament, which have been so emphatically expressed.

Lord Lansley (Con): My Lords, my noble friend the Chief Whip was absolutely right to express a degree of caution over the question of regulations. If the European Council does not agree to an extension, we will leave the European Union on Friday 29 March. We cannot change that other than by revoking Article 50, and the Government have no power to do that—it would have to come before Parliament. To reflect, if my noble friend will forgive me, what the Leader of the Opposition was saying, to amend exit day under Section 20 of the European Union (Withdrawal) Act would require an affirmative procedure. We hope and expect that such a regulation will be made next week, and we will therefore need to debate it. It would be perfectly reasonable now to schedule such a debate for next week so that Members of this House can prepare for it.

Lord Grocott (Lab): My Lords, can the Chief Whip assure us that the suggestion from this House, albeit from only one Member—my noble friend Lord Adonis—that Parliament, which includes this unelected House, should, at the recommendation of an unelected Member of Parliament—my noble friend Lord Adonis—rescind at a stroke a decision that is the consequence of a referendum in which 17.4 million people voted—

Noble Lords: Oh!

Lord Grocott: I hope many people are watching this—I doubt it, but they may well be. They will have just heard a very audible groan at the reference to the 17.4 million electors who cast their votes on the basis of an Act of Parliament that this House supported and whose result the two major parties—we know the rest of the arguments—committed in the general election to respect. The suggestion by my noble friend Lord Adonis that this unelected House should veto all that work and electoral commitment by rescinding Article 50 is something to which this House should give not even a moment's consideration. It should be a subject of shame.

Lord Pannick (CB): My Lords, I respectfully advise the noble Lord, Lord Adonis, that just as an Act of Parliament was required to invoke Article 50, an Act of Parliament would be required to revoke it.

Lord Forsyth of Drumlean (Con): My Lords, could my noble friend the Chief Whip confirm that the Prime Minister has told the House of Commons on no fewer than 108 occasions that we shall be leaving the European Union on 29 March? Yesterday I listened to the Chancellor on "The Andrew Marr Show" telling Andrew Marr that we were not in a position to be able to leave on 29 March. Whom should I believe? If I believe the Chancellor, what on earth have the Government been doing?

Lord Harris of Haringey (Lab): My Lords, I will certainly not engage in the continuing dispute between my noble friends Lord Adonis and Lord Grocott, who seem to have developed an antipathy to each other in recent weeks. I too am grateful to the Chief Whip for making this statement today. What he said has been helpful, but does not go far enough in enabling noble Lords to plan what their commitment will be over the next few weeks.

I assume that somewhere in government is a series of contingency plans. I would be appalled and surprised if the very able people in the Civil Service had not been working through a series of permutations—indeed, I would be very surprised if the clerks to this House and to the other place had not been working through a series of permutations. Something is clearly going on, because one understands from the usual gossip mill, involving the staff who support the Members of this House and the other place, that the first week of the Easter Recess will not be happening and that there may be Saturday sittings. They may be misinformed—I do not know where these ideas come from—but it is incumbent on the Government to give us an indication of those contingency plans for various eventualities.

3.30 pm

We are told by the noble Lord, Lord Pannick, that if the Government wished to revoke Article 50—which I suspect is not on their agenda—it would require an Act of Parliament. Presumably, somebody has done some work on how much time would be taken in this House and the other place to pass that. We know that something will have to be done if the date of withdrawal is changed. Again, what work has been done on how much time will be taken and when that will occur? We know that if the Government's deal goes through, there will be a series of pieces of consequential legislation. What work has been done on when those pieces of legislation will be continued, how many days are required,

and so on? The list goes on. However, there are some simple contingency plans, and it is incumbent on the Government to tell Members of Parliament of both Houses what is likely to be required of them over the next few weeks, given those various eventualities, so that we can plan accordingly.

Lord Naseby (Con): My Lords, I had responsibility for taking the whole Maastricht Act through Parliament, and I know that it was virtually impossible to determine more than 48 hours ahead how long the debate would be on any one of the 542 amendments tabled to it. Not a single person, on any side of the House, forecast that it would take 25 days in Committee, with three all-night sittings. Secondly, some noble Lords will have lived through the period of the Falklands War. Who could have forecast that Parliament would have to assemble at less than 24 hours' notice, on a Saturday morning, to debate the Falklands? My noble friend has a difficulty. He has been generous in what he has offered us this afternoon, and we should trust him. He has said that he is involving noble Lords on the Opposition Benches and that they have responded; I, for one, will trust all three Chief Whips to keep us as informed as they are able.

Lord Taylor of Holbeach: I rise on that good point and I thank my noble friend for his confidence. In fact, I have gone as far as I am able in committing the Government and this House to their work programme for the next fortnight. I can say a certain specific things: we have tabled all the legislation we need to get through for Brexit. We are dealing with the healthcare Bill and the Trade Bill, both of which we should finish this week.

I was asked how Article 50 could be dealt with; it is a simple matter. It would be done through an SI, which cannot be tabled at the moment but only when there is a deferment of the exit date. That will be next week; I imagine that the Prime Minister will make a Statement on Monday, and there will be a debate in this House on the statutory instrument in the course of next week. Noble Lords may soon see a day this week when we publish *Forthcoming Business*.

Noble Lords have asked what would happen if we had to exercise the legislation required for a deal. Nothing more complicated than a single Bill would be needed for that purpose. There is primary legislation still to be considered, which will be important, but there will be an implementation period if we have an agreed solution. That is what we are looking for. I think all parties are looking for an agreement—that is certainly true of the Labour Party, too. We are looking for an agreement on Brexit, and if that is the case, the primary legislation in the House of Commons at the moment will come to us in due course. It is important not to forget that there is an implementation period and, indeed, considerable discussion and negotiation, to take place once the withdrawal agreement has been signed.

I have been asked about Saturdays. I do not think I have ever suggested that Saturday sittings are likely, but they could be. I will tell noble Lords now that it is possible we might have to sit on Saturdays. When I was asked about the Easter Recess, I said, emphasising the usual caveats more than usual, that those were dates that had been published in the House of Commons and which I hoped we would be able to keep to. I do not know. The course of the next fortnight or three weeks is very involved and, until that time comes, I cannot tell noble Lords whether we will have to sacrifice all or part of our Easter Recess. Personally, I hope that we shall have some time away from this place. We might all be better for having a break, if I am honest. But we still have a public duty to perform, and if necessary, we will come back to the House again.

I think I have answered pretty well everything. The Leader of the House will be repeating a prime ministerial Statement next Monday, and I am certainly prepared to come back to the House about business when it is clear in my mind what we will have to do. In the meantime, I have great confidence that my colleagues in the usual channels and the Convener of the Cross-Bench Peers can talk together about these things and ensure that the Whip noble Lords receive at the end of this week will give them a clear indication of what is demanded of them as Members of this House.

Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.37 pm

Moved by ***Baroness Sugg***

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

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

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, if it is convenient, I shall speak also to the Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019.

These are two sets of draft regulations that will be made under powers in the EU (Withdrawal) Act 2018 and will be needed if the UK leaves the European Union without a deal. To ensure that retained legislation remains operable, both of these draft regulations change references to "member states" and "the Commission" to "the Secretary of State" or "the United Kingdom". They will also change definitions and other wording to reflect the UK's position outside the EU.

The Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019 deal with the certificates that seafarers need to hold to demonstrate their competence to perform certain roles on ships. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers sets the standards of competence for seafarers internationally. Through two directives, the EU harmonised the way in which member states implemented the requirements of the STCW Convention.

The EU directives and the EEA agreement require the automatic mutual recognition of seafarer certificates issued by EEA states. They also establish a process for

[Baroness Sugg]
EU-wide recognition of certificates from third countries. EU countries can accept certificates from third countries that have been approved under the relevant EU process. The EU directives and our international obligations are implemented in the UK by the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015; the SI before the House amends these regulations. This instrument was originally laid under the negative procedure. The Secondary Legislation Scrutiny Committee recommended that the regulations be handled under the affirmative procedure; I am grateful to the Committee for its consideration of the regulations and should like to respond briefly to their concerns.

The committee was concerned that, in the event of no deal, the recognition of the certificates of UK seafarers working on EU-flagged ships will be at the discretion of each member state. This instrument cannot, of course, require other countries to take a particular course of action. However, EU employers and trade unions have welcomed the Government's commitment to continue recognising seafarer certificates from EU and EEA countries; these regulations will enable the Secretary of State to deliver this commitment.

The UK will also continue to recognise the certificates from those non-EU/EEA countries that we currently recognise under the STCW convention. These regulations will also enable the Secretary of State to remove recognition from any country if he is satisfied that the country no longer complies with the STCW convention. The regulations will remove the requirement to report to the European Commission on the seafarer certificates and endorsements issued by the UK, and replace it with a requirement to report to the Secretary-General of the International Maritime Organization on such compliance.

The second set of draft regulations—the Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019—deals with passengers' rights and other issues involving the carriage of passengers by sea. Under EU regulation 1177/2010, UK passengers travelling by sea and inland waterway benefit from a comprehensive set of rights and entitlements. The EU regulation puts in place consumer protections which allow, among other things, for redress in respect of delayed and cancelled journeys. It also defines the standards which industry must uphold in respect of disabled passengers.

The IMO's Athens convention requires ship owners to maintain compulsory insurance. This must be sufficient to cover third party claims in respect of the death or personal injury to passengers, and the loss of, or damage to, luggage and vehicles. EU regulation 392/2009 applied the provisions of the Athens convention in EU member states and added some protections above the requirements of the Athens convention. These included a €21,000 advance payout in case of death or serious injuries to passengers and a requirement to replace or repair personal mobility equipment damaged during the course of a journey.

These draft regulations will amend EU regulations 1177/2010 and 392/2009 to ensure that they continue to function correctly as part of UK law if the UK leaves without a deal. The changes we are making will not affect passengers in any way and will ensure that passengers have the same rights and entitlements as today. The regulations will also amend EU-derived domestic legislation which implements EU law in this area. In order for the UK to continue to meet its international obligations under the Athens convention once the UK leaves the EU, these draft regulations will transfer powers from the European Commission to the Secretary of State. These powers will enable the UK to keep up to date with changes to the compulsory insurance requirements and liability limits for ship owners as and when they are adopted by the IMO.

These draft regulations will remove a requirement to accept state certificates of insurance from an EU member state even when that member state has not ratified the Athens convention. This requirement is a legacy from a time when few member states had signed up to the international provisions on state certificates. In 2018, only 21 ships visited the UK which had insurance certificates issued by non-convention EU member states. Once the UK leaves the EU, the UK will accept state certificates only where they have been issued by a state party to the Athens convention. State certificates are easily obtainable from states parties to the convention, including from the Maritime and Coastguard Agency. This proposed change will not therefore have a significant impact on industry and simply ensures that we are complying with our international obligations under the convention without exception.

Finally, the regulations will also revoke three Council decisions. Two of these decisions were related to the accession of member states to the Athens convention. The third decision relates to the accession of member states to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001. Like the Athens convention, the bunkers convention obliges ship owners to maintain compulsory insurance—only in this case to cover third party claims in respect of bunker fuel oil spills. The UK will remain party to both of these conventions but these three Council decisions are addressed to EU member states. They will become redundant once the UK leaves the EU and so they are being revoked for the purpose of legal certainty.

The changes made by these draft regulations will ensure that retained EU law operates correctly so that we have an effective system for ensuring that seafarers working on UK ships are qualified to do so, and that passengers can continue to rely upon the rights and entitlements they are currently entitled to. They also ensure that the UK can continue to meet its international obligations and passenger safety commitments. I beg to move.

3.45 pm

Baroness Randerson (LD): My Lords, I thank the Minister for her explanation.

The first of these two SIs relates to training standards in the industry and is based on EU directives 2008/106/EC and 2012/35/EU. The EU-wide process for the recognition of certificates has been very important—indeed, fundamental—in raising safety levels in an industry where international crews are the norm. In 2016, as the Explanatory Memorandum helpfully tells us, 3,410 UK seafarers had certificates enabling them to work in EU and EEA-registered vessels. The SI adopts the usual procedure, replacing "EU Commission" with "Secretary of State".

It will not surprise the Minister to hear that I am concerned about the reduction once again in transparency in the process because the SI gives the Secretary of State responsibility for the withdrawal of recognition of parties to the STCW convention where standards are not met. What is the procedure by which the Secretary of State will come to that conclusion? Who will advise the Secretary of State? Will there be any right of appeal? We are replacing a well-established, well-understood European process with a process bathed in mystery. Perhaps the Minister could explain whether any further regulations will set out the process and where any advice might be given to the Secretary of State.

The Joint Committee on Statutory Instruments drew this SI to our attention because of its impact on seafarers. The UK will continue to recognise the certificates it currently recognises but there is no guarantee of the EU recognising our certificates in future. The 2005 directive established certificates of competency; each seafarer must have one, and have it endorsed by the flag state of the vessels on which they want to work. These are known as certificates of equivalent competency. Once the European Commission has approved a third country, other member states can, but are not obliged to, accept seafarers from that third country on their ships. That is an unusual discretion. How does it work in practice? How has it worked in practice until now? Is there a record of seafarers from a recognised third country not being accepted on ships from other EU countries? If there are cases where that has happened, which countries have chosen to exercise this power of discretion? Have we always accepted those certificates?

I am sure the Minister can see where I am going with this. My concern is that once we become a third country our seafarers may find themselves excluded by some EU countries, even though the European Commission has agreed to accept our certificates as compliant with STCW.

There is also my usual concern about how we keep up with the flow of information as the EU changes its standards. It is fine to say that we will hitch ourselves to the current standards, but keeping up with the list of countries recognised by the EU might be more complex than it seems. In this SI, the Secretary of State is given the power to add to or subtract from the list of recognised countries, so I ask the same questions again about that power. What will be the system for this? Where will be the transparency? Who will give the Secretary of State advice? I am even more concerned, because as usual there has been no consultation on this, and it involves individual seafarers. Although companies can be expected to keep abreast of all these changes, individuals should not be expected to have to do so.

I turn to the SI on passenger rights. Officials working in the Department for Transport must be losing the will to live during this whole process. As things descend into farce, it is probably difficult to keep abreast of the pace of these things, but I have to say that this is an unusually opaque Explanatory Memorandum. I draw noble Lords' attention to paragraphs 2.8 and 2.9, which introduce us to the bunkers and Athens conventions in terms that suggest we chat about them over our cornflakes, so familiar are they to us all. I really grappled with this one; I raise this because if I have misunderstood it, it is because bits of it are particularly complex.

In practical terms, this SI seeks to continue current arrangements on passenger rights and on insurance. I have a technical question for the Minister. In the EU rules on this, the compensation for when things go wrong is currently dictated in euros. It is converted to sterling at the rate for the year ended 31 December 2017. Why are we using something pretty historical for this? It makes it look rather outdated before we start.

Once again, there has been no consultation on this. I want to make an important point in relation to the comments on small business. One after another of these SIs say that there will be minimal impact and only familiarisation costs to SMEs. I am beginning to be extremely concerned that, within each sphere—here we are on maritime—individual businesses are expected to absorb and to familiarise themselves with a number of SIs, not just one. The pace of change for them is adding up to something substantial, and the Government have not consulted them on it.

I also want to ask my usual question: how will the Government keep up with changes that happen in the EU on this? Passengers' rights are very dear to people's hearts. If there is any shadow of thought that we in this country have inferior rights, passengers would be extremely angry—and rightly so. Therefore, I am keen that we know how the Government intend to keep pace with change. What will be the process by which the Secretary of State makes decisions to change things when necessary? On whose advice would he act?

Lord Tunnicliffe (Lab): My Lords, there is a certain disadvantage in following the noble Baroness, Lady Randerson: she has usually nicked most of my points. I will therefore highlight only a couple.

Paragraph 3.2 of the Explanatory Memorandum states that,

"EU recognition of United Kingdom certificates will be at the discretion of Member States".

Clearly, here we have a non-reciprocal situation, where we are providing rights to the EU and it is not necessarily reciprocating. Will the Minister explain the processes the Department for Transport intends to carry forward? Is there reciprocity, as we desire, or will it have to be done state by state? Can it be done through some comprehensive agreement with the EU? What efforts are being made at the moment to try to get a reciprocal agreement?

I share the concern of the noble Baroness, Lady Randerson, about the Secretary of State. To be even-handed, I should say that that is any Secretary of State—one is tempted to ponder on this one in particular, but I will set that to one side. I could not find it in the Explanatory Memorandum, but I may have overlooked it: what political oversight is there in the exercise of the Secretary of State's powers? If there is none, how can there be transparency in the process? To pick up the noble Baroness's point, how will he be advised?

Turning to the very important issue of passengers' rights, although the Explanatory Memorandum is a document in the public domain, it is not one dear to people's hearts, whereas *Hansard* is. Paragraph 7.1 of the Explanatory Memorandum seems to say that

[Lord Tunnicliffe]
passengers' rights will be identical. Will the Minister tell us in plain language that they will be identical, so that it can be included in the formal record?

On paragraph 7.3, I share the view about opaqueness. It talks first about EU member states that are not state parties to the Athens convention. Elsewhere, one got the impression that all EU member states were parties now to the Athens convention. Of the member states, which are not parties to the convention? It tells us little about how the Athens convention works and gives appropriate support and assurance to passengers. Will the Minister spell out what the convention does for passengers? I know it limits compensation, but how does it ensure that compensation will be paid? I recognise that the answer to that might be rather complex, so I am content for the Minister to write to me on that subject.

4 pm

Baroness Sugg: I thank noble Lords for their consideration of these draft regulations.

The noble Baroness, Lady Randerson, pointed out the high quality of the seafarer qualifications, and we will continue to recognise them in accordance with the international STCW convention, so standards will not slip and will not be affected by our departure from the EU. To work on a UK-registered vessel, EU seafarers will still need to obtain a UK certificate of equivalent competency.

On the position of UK seafarers on EU-flagged ships, it is in the interests of both the UK and the EU to avoid any barriers to UK seafarers continuing to make the important contribution that they already make. If there is no deal, endorsements issued before withdrawal by EU countries to seafarers who hold UK certificates of competency will continue to be valid until they expire. So, if you are a UK-trained seafarer with an endorsement already issued by an EU country, you will be able to continue working on board vessels flying the flag of that country until the endorsement expires.

We are seeking to ensure that UK seafarer certificates continue to be recognised through the well-established EU process for recognising third-country certificates. That will provide continuity for UK seafarers. As I have said, we have committed to recognising EU countries' certificates, and that approach has been welcomed. The Commission issued a technical notice in January 2018 setting out that the UK would be treated as a third country and that member states would need to apply to recognise UK certificates under the relevant provisions in directive 2008/106. It is not possible to apply for this recognition until the UK becomes a third country, and the Commission can take around 18 months to process the application. However, member states can recognise certificates in the meantime, and we are confident that the EU will accept that UK training is of a high quality, will want to recognise us as a third country and that major commercial flags such as Malta and Cyprus will continue to recognise the UK certificate of competence. When we raised the issue with all of those countries, they have been positive.

As to the impact on day one, the vast majority of UK seafarers will already have a current certificate of competency which, as I have said, will be valid for up to five years.

On the powers of the Secretary of State to remove recognition from countries, we will be advised by the MCA. The Secretary of State currently makes decisions based on its advice and so that will not change. The decisions will be based on all the evidence available that that country meets the STCW requests. The normal administrative law provisions apply so that the Secretary of State's decisions can be challenged in court if necessary.

No formal consultation was carried out on the STCW SI, but the department has worked closely with shipping representatives and the trade union Nautilus International. The Government also issued technical notices in September to inform seafarers and companies about the approach. The department has met with the general secretary of Nautilus on several occasions; the MCA has regular contact with it and with the Chamber of Shipping on the whole SI programme. The Shipping Minister recently met with Nautilus and the Chamber of Shipping, which was described as productive by Nautilus. Both organisations support the continued recognition by the UK of certificates issued by EU member states.

On passenger rights, the noble Baroness, Lady Randerson, asked about the conversion rate. This was done using the average exchange rate for the year ending 31 December 2017 and the figures were rounded. Therefore, the €80 and €6 in EU regulation 1177 becomes £70 and £5, and the €21,000 reference in EU regulation 392 becomes £18,500. In each case, those roundings work to the benefit of passengers. The conversion was carried out at the beginning of the drafting process according to cross-government guidance, and at the time 2017 was the last full year available. However, as the noble Baroness said, the exchange rate has fluctuated since but, because of the rounding, the effect on passengers is minimal. Those amounts were fixed and we do not have the power to vary them other than through primary legislation.

Passenger rights and entitlements will be the same as they are today. I hope that is plain English enough for the noble Lord, Lord Tunnicliffe.

No formal consultation was undertaken on the passenger rights SI, but the department consulted a range of stakeholders in 2018 when preparing the post-implementation reviews of the Merchant Shipping (Carriage of Passengers by Sea) Regulations 2012 and the Merchant Shipping (Passengers' Rights) Regulations 2013, which implement the relevant EU law in the UK. In both cases, all stakeholders expressed support for the 2012 and 2013 regulations and a desire to see the current rules retained in their existing form.

On further delegated powers to the Secretary of State, the draft regulations transfer powers which currently enable the Commission to amend certain elements of regulation 392/2009, which applies the Athens convention. The powers transferred to the Secretary of State are limited to amending the liability limits to incorporate changes made by the IMO Athens convention and to other non-essential elements of the regulation. No changes to the EU regulation have been made since it came into force, and it is not expected that we will use this power frequently. We will continue to monitor developments in the implementation of the Athens

convention at international and EU level. Any other changes to that regulation will need to be made through primary legislation.

The noble Lord, Lord Tunnicliffe, asked about the Athens convention. It establishes a regime of liability for damage suffered by passengers on a sea-going vessel. It declares a carrier liable for damage or loss suffered by a passenger if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier. As far as loss or damage to luggage is concerned, the carrier's limit of liability varies depending on whether the loss or damage occurred in respect of cabin luggage, a vehicle or other luggage carried in or on it. The key requirement is that the registered owner of a vessel must maintain compulsory insurance. Passengers travelling on ferries to or from the EU after exit will continue to be protected, as it applies to all passengers regardless of nationality.

Under regulation 1177/2010, passengers have the right to information, refunds and rerouting, in some cases, and compensation in most circumstances in which their journeys are delayed or cancelled. The regulation also grants the right to assistance and travel at no extra cost. I hope that is a sufficient explanation of what the Athens convention does. The EU regulations were harmonised and brought it into UK law. The new regulations we are discussing transfer them.

The noble Lord, Lord Tunnicliffe, also asked which member states have not yet ratified the convention. A number of member states have not ratified the convention, despite it having been in force for almost five years. They are Austria, the Republic of Cyprus, the Czech Republic, Estonia, Germany, Hungary, Italy, Luxembourg and Poland, but only Cyprus, Estonia, Germany, Italy and Poland have maritime ports. Only 21 ships made that journey and it is very easy to get a certificate of competence. We are in contact with those countries which have not ratified the Athens convention.

I hope I have managed to address the points—

Lord Tunnicliffe: I asked whether there is any parliamentary involvement in the Secretary of State exercising his rights under either of these instruments.

Baroness Sugg: On the first instrument and the Secretary of State's right to remove a country from STCW, I do not believe there is any parliamentary involvement. That would be based on the MCA, as previously. On the delegated powers under the passengers' rights obligation, that will depend on which regulation he is using. The powers transferred to the Secretary of State are limited to amending the liability limits to incorporate changes and other non-essential elements of regulation. Any other substantial changes will need to be made through primary legislation, which will be subject to parliamentary scrutiny. There are no further delegated powers through the STCW regulations.

I hope I have managed to address the points that noble Lords have raised during the debate. I will perhaps write to the noble Lord to clarify the last point on parliamentary scrutiny.

This completes the programme of maritime SIs that noble Lords will consider. I thank the policy officials and legal advisers to the DfT—who I hope are not losing the will to live—for their hard work and diligence in both producing the SIs and briefing the Minister on them. The proposed changes made by these draft regulations are appropriate to ensure that retained EU legislation relating to seafarer qualifications and passenger rights work effectively in the UK from day one in the event of a no-deal exit.

Motion agreed.

Merchant Shipping (Passengers' Rights) (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

4.10 pm

Moved by ***Baroness Sugg***

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

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

Motion agreed.

Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

4.10 pm

Moved by ***Baroness Sugg***

That the draft Regulations laid before the House on 6 February be approved.

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

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, these draft regulations will be made under the powers conferred by the European Union (Withdrawal) Act 2018 and will be needed if the UK leaves the EU without a deal. They amend regulation 1071/2009, which sets the requirements and procedures for transport operator licensing, and regulation 1072/2009, which regulates access to the international freight market. This SI makes minimal changes to those regulations and consequential amendments to domestic legislation to ensure that road haulage markets continue to operate effectively.

Regulation 1071/2009 provides a framework for the licensing of transport operators—both haulage and bus and coach operators—in member states of the EU and ensures minimum standards across the EU. Operators are licensed by national authorities. In Great Britain, this is the traffic commissioners; in Northern Ireland, it is the Department for Infrastructure. Operators need to comply with four criteria in order to be considered fit and proper persons to hold an operator's licence. These criteria are: having a stable establishment;

[Baroness Sugg]
being of good repute; having a sufficient level of financial standing; and possessing the required professional competence.

Regulation 1072/2009 sets out the rules and procedures for accessing the international road haulage market. It allows appropriately licensed hauliers from EU member states to operate in other member states and provides for enforcement mechanisms to regulate and control this access.

The withdrawal Act will retain regulations 1071/2009 and 1072/2009 in their entirety on exit day. The draft instrument we are considering makes the changes necessary so that these regulations continue to function correctly, and it is essential to ensure that the regulatory regime in place after exit continues to operate.

The regulations will ensure that the requirements of regulation 1071/2009 continue to be applicable to UK hauliers and public service operators—both those operating in the UK and those operating overseas. They will also ensure the continued operation of regulation 1072/2009, which provides that hauliers from the 27 EU member states will continue to be admitted to the UK provided they have a valid operator's licence, issued by the country in which they are established, showing that they meet the requirements that I outlined earlier.

The regulations require hauliers to hold a UK licence for the Community after their current Community licence expires. This is a new document and will look very similar to the current EU Community licence, which hauliers already hold when operating in the EU. The criteria for this will be the same as for the Community licence.

The European Commission has already published legislation that would govern UK operators' access to the EU for nine months after Brexit. This is based on the principle of reciprocity, and this SI allows us to offer a reciprocal level of access to EU hauliers. The regulations might also help in future negotiations. They demonstrate that the UK is committed to maintaining high standards in the freight industry that meet the EU baseline. They also allow for the UK to adjust levels of market access to EU hauliers in order to reciprocate whatever is agreed in the negotiations.

The access rules in regulation 1072/2009 also include provisions to allow hauliers to practise cabotage—jobs entirely in another member state. Currently, three domestic jobs in a seven-day period are permitted for EU hauliers as part of their return trip once they have completed a job in another member state. Previously the power to suspend cabotage provisions if they disrupted the domestic market was subject to the approval of the European Commission. These regulations transfer this power to the Secretary of State so that we have the ability to suspend cabotage for non-UK hauliers if reciprocal arrangements are not offered to UK hauliers in the EU.

The regulations also modify the Goods Vehicle (Licensing of Operators) Act 1995. Section 2 of the Act makes it an offence for a person to use a goods vehicle except under an operator's licence. However, for very practical reasons, the provision exempts holders of Community licences issued by member states from this requirement. This means that EU hauliers are able to operate in Great Britain without having to apply for an operator's licence. An equivalent provision is made in Northern Ireland legislation. The SI also allows us to exempt operating licences using secondary legislation in future.

The regulations provide for the continuation of the road haulage and passenger transport licensing system. They also allow for EU member state hauliers to continue to operate in the UK, ensuring that supply chains continue to function effectively. I beg to move.

4.15 pm

Baroness Randerson (LD): My Lords, I start with the big question, as I see it: where does this dovetail with ECMT permits? We have already been through those in relation to an SI. They are already established as part of our no-deal preparations, and there has already been feedback on the fact that only 5% of the industry will be covered by them. So is this an either/or, or is it an either/or that kicks in after December this year? Perhaps the Minister could clarify for me exactly where this regulation stands in the whole thing.

In essence, and I say these words carefully, this SI substitutes a community licence applied for in the UK with a UK licence for the community. No wonder the public are beginning to get frustrated with the whole thing. Given that this applies to thousands of hauliers—thousands of small haulage firms, many with one or two vehicles—they could be forgiven for getting confused over this. That innocuous though confusing change of name hides a fundamental potential change in their rights to operate within the EU.

On Northern Ireland, I have very serious concerns about cabotage and cross-trade. Paragraph 6.5 of the Explanatory Memorandum makes several references to future arrangements in Northern Ireland. There is of course a great deal of cross-border haulage between Northern Ireland and the Republic. The situation is very nuanced because goods haulage is very different from passenger transport. What will happen to these arrangements if Northern Ireland is caught in the backstop? Generally these SIs say, "We're sorting Northern Ireland separately", but this one incorporates arrangements for Northern Ireland. That led me to wonder how it will operate if Northern Ireland is caught in the backstop. Am I right to assume that in that situation these arrangements would cease to apply?

Rather obliquely, paragraph 6.6 of the Explanatory Memorandum says that the amendments made by the SI also apply to coach and bus services, but paragraph 7.9 says that there is separate provision for international passenger transport. Could I have an explanation of that?

Importantly, regulation 1071/2009 allows member states some discretion to impose additional requirements of operators, and once again the Secretary of State is to get that power. I repeat my usual questions. What about transparency? On whose advice would the Secretary of State exercise this power? How would it be done? Would there be a role for Parliament? Would there be a negative or an affirmative process? I know I ask this every time, but I assume that the answer is different on each occasion.

Applications for Community licences currently go to the traffic commissioners. Will they maintain that role for UK licences in future? If so, what about resources? I am well aware that the traffic commissioners have a very broad responsibility and their organisations are usually extremely thinly staffed. There is the usual hope that the EU will continue to recognise our rights as usual, but there are EU proposals on this and, as I understand it, they do not give us full cabotage rights. They also extend only to the end of this year.

The Explanatory Memorandum says that it is hoped that this SI will be superseded by full legislation by the end of the year. As time goes on, the end of this year looks remarkably soon for there to be even more legislation on this. To clarify, is this EU offer for nine months after we leave for a rolling nine months following Brexit, which will kick in only when we leave, or has it offered this up to the end of this year and that is it?

Once again, there has been no consultation. That is especially serious in this case, because thousands of hauliers who make their living in international haulage will not be able to rely on a Community licence in future. This is not a minor change; it is fundamental. Again, SMEs are not especially taken into account.

Finally, if you currently have a Community licence, will you have to reapply for it? Suppose you have a Community licence that is valid to this end of this calendar year: are there any events or potential Brexit scenarios, foreseen or unforeseen, that could lead to hauliers having to reapply for their licence within that timeframe? Everyone expects that they will reapply for their licence at the end of the period covered, but is there anything that could happen that would interrupt that licence? Or are hauliers right, and can be confident to assume, that if they have a valid licence until the end of this year, for example, they can carry on working until then? I would be grateful for clarification on that.

Lord Tunnicliffe (Lab): My Lords, I took a slightly more optimistic view of this SI than the noble Baroness, Lady Randerson. However, clarification in plain language will help. Paragraph 2.7 of the Explanatory Memorandum says:

"The UK operator licensing regime will generally remain as at present".

I wonder whether we could have simpler language than that. My understanding, taken with recent agreement in the EU, is that the situation will be fully reciprocal. I will say it again, because it is a question to which I would like a direct answer. The Explanatory Memorandum uses terms such as "provided that", which enthused me to look up the European Commission—I will not do this again. On 19 December 2018, it published a regulation of the European Parliament and of the Council on,

"common rules ensuring basic road freight connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union".

At the end it says that the regulation applies until 31 December 2019, and that it was "done at" Brussels. I do not understand EU law. Is that now a piece of EU law? Does it, together with this SI, mean that in all respects, except the names of these licences, the situation for operators is identical to where we are now, with, of course, the overriding importance that the agreement of the EU is only until the end of the year?

Baroness Sugg: I again thank noble Lords for their consideration of these regulations. The noble Baroness, Lady Randerson, asked about the hot topic of ECMT permits. The European Commission has published the draft regulation on road transport. It was approved by the European Parliament last week. We expect it to be approved by the Council of Ministers this week—tomorrow, in fact. We welcome the substance of these proposals, which will ensure that the majority of UK hauliers can continue carrying goods into the EU for the rest of the year without needing an ECMT permit, providing that we reciprocate and provide equivalent rights to EU hauliers, which we are doing through these regulations.

Lord Tunnicliffe: Am I right in understanding that that also includes the cabotage allowance?

Baroness Sugg: The Commission's proposal includes the right for UK hauliers to complete point-to-point journeys and transit journeys. It also offers limited cabotage and cross-trade journeys. Cross-trade journeys are limited compared to what UK hauliers can do now, which is three movements in seven days. They will still be allowed to do two cross-trade or cabotage operations on every international trip for the first four months of these regulations, then one cross-trade or cabotage operation every trip during the next three months.

Baroness Randerson: Could I point out that this complexity underlines the importance of consultation and, therefore, public awareness? People in the industry could be forgiven for being confused.

Baroness Sugg: I agree with the noble Baroness. The EU has proposed a complex system. It has been clear that it is not replicating current market access provisions, but it is ensuring basic connectivity and phasing out the current system by the end of the year. However, given that UK hauliers are allowed to have these journeys, we do not expect the vast majority of haulage operations to be able to continue. We have ECMT permits to fall back on.

As I said, the measure is based on the UK granting reciprocal access. To protect businesses and minimise disruption, we are currently offering more to EU hauliers than the EU is offering us, so we are mirroring the situation at the moment. We have the power to amend this and mirror the EU's offer. The regulation does not cover transit to third countries, but will cover transit to EEA countries such as Norway, so we will use the ECMT permits to those third countries. It also makes it clear that bilateral agreements with the UK can be negotiated and concluded for periods during which the regulation applies—for example, after December 2019—but should we be in a no-deal scenario and should these regulations come in, we will of course be negotiating at pace to understand our future arrangement.

[Baroness Sugg]

If we leave the EU without a deal, we will not be able to issue Community licences, as we will no longer be a member state. Therefore, we have had to come up with a replacement document: the UK licence for the Community. UK hauliers should continue to carry their current Community licence, which lasts for five years. Only when a Community licence expires will it be replaced by the new UK licence for the Community.

4.30 pm

Article 3 of the new EU regulations allows a UK haulier to conduct international haulage on the terms set out in the regulation. The UK road haulage operator licences are defined in the regulation, and in practice, as any suitable licence issued by the UK for the purpose of international haulage. That licence will be the UK licence for the Community, issued by the traffic commissioner. The noble Baroness, Lady Randerson, is right to say that they have a very broad responsibility. Currently, the DVSA issues Community licences, and will continue to do so for the UK licence for the Community.

The noble Baroness mentioned Northern Ireland, raising the very important aspect of cabotage on the island of Ireland. In any scenario, our objective is that traffic there should be maintained without additional burden for businesses or citizens. In the case of no deal, the EU measures preserve the rights of UK hauliers to access the EU market via point-to-point and transit journeys, as well as enabling cabotage and cross-trade within the limits I spoke about earlier. That approach is in line with the joint report published in December 2017 by the UK and the EU, which made clear our steadfast commitment to upholding the Belfast agreement, specifically preserving in full cross-border co-operation on transport.

The regulation includes the cabotage services in Irish border country until September 2019. Should we leave with no deal, we will of course continue to work with the European Commission and the Republic of Ireland to ensure that any long-term UK-EU transport arrangements take into account the unique road transport demands on the island of Ireland. If we are in a backstop situation, Northern Ireland will continue to follow EU regulations, and continue to have access under them.

The noble Baroness also asked about bus and coach operators. EU regulation 1071/2009 provides a framework for the licensing of transport operators—both haulage and bus and coach operators—in member states. The specific licencing for international passenger journeys will be dealt with in a separate SI which we will debate on Thursday. We are just dealing with the specific provisions for haulage here.

Regarding delegated powers, in many cases the reference to "Secretary of State" is a technical change in places where the EU regulation specifies member state authorities; in the UK, those authorities would currently be the traffic commissioner or the Secretary of State. New powers are being inserted into the retained version of EU regulations 1071/2009 and 1072/2009, to enable Ministers to amend retained legislation through regulations. These changes will be required to ensure consistency and the necessary flexibility.

The noble Baroness is right to say that there are different rules for different parts of the regulation. In regulation 1071/2009 we are inserting two powers permitting future amendments. One, in Article 6, deals with the provisions relating to the good repute of transport managers who work for haulage operators. That will be a negative procedure. We are recognised internationally for our high standards in the freight industry and the affected and targeted enforcement from the DVSA and the traffic commissioners, and there is certainly no intention to water down or reduce those standards.

The second new power under regulation 1071/2009 deals with the requirement of transport managers to hold certificates of professional competence—CPCs. The degree to which we recognise foreign CPCs will affect the wider relationship between the UK and the EU, and for that reason, amendments to the criteria for professional competence will be subject to the affirmative procedure. Again, UK hauliers have a good reputation in the EU, due to the high compliance with the standards, which will be maintained regardless of our future relationship with the EU.

The powers to amend substantively the rights of access to the UK, including changes to cabotage under EU regulation 1072/2009, are provided under an affirmative resolution SI. We are inserting three powers, which permit future amendments dealing with the technical requirements for the UK licence for the Community, the technical requirements for driver attestations and the suspension of cabotage. These will be needed if we reach an agreement with the EU in which we need to do reciprocal action on cabotage. As all those powers affect the way in which access to the UK market operates, with implications for reciprocal access to the EU freight market, these are all considered appropriate for affirmative resolution SIs.

The noble Baroness, Lady Randerson, asked about the impact of any short extension period. If there is a short delay, it would also delay when the EU regulation came into force, but it will end on 31 December 2019. It would mean a slightly less complicated EU regulation, because the final two months of the regulation, where no cabotage or cross-trade would be permitted, would not occur, therefore reducing the pressure on ECMT permits. However, it would of course be in place for a shorter period and mean that we needed to ensure we had in place by then a future agreement on access.

On consultation, the noble Baroness was right to point out how big a part of the market small and medium-sized enterprises are. The regulations ensure continuity after Brexit in the event of no deal. We published back in September technical notices on commercial road haulage in the EU which explained what UK hauliers need to do to operate in the EU. We have close and constructive links to trade associations, including the Freight Transport Association and the Road Haulage Association, as well as a range of industry associations and operators, from major operators through to SMEs. We hold regular ministerial and official-level round tables.

Industry is of course concerned about the changes required as a result of Brexit and the little time that it will have to adapt to them. We have discussed this SI

with the industry. As expected, it is looking for as much continuity as possible. Where changes are required, it seeks clear guidance from the Government on what it needs to do. This SI is based on ensuring that there are no changes in licensing requirements for hauliers and the minimum change possible in documents that hauliers will require when operating internationally.

I think that I have answered the noble Lord's question about the European Parliament approving the regulations. It did so last week and the decision will be finalised at the General Affairs Council tomorrow. The proposal was discussed both in Article 50 formation and in working groups with the UK in the room. I think that it is fair to say that the majority of the text was agreed under Article 50 formation, as this is related to our departure from the EU, when we will be treated as a third country, but we have highlighted UK hauliers' interests at ambassadorial and working-group level. I believe that the regulation did not originally contain any cabotage rights, so we have seen an improvement on that so that UK operators will be able to continue operating cabotage and vice versa.

I hope that I have answered all noble Lords' questions. If I have missed any, I will follow up in writing. These regulations will make the changes necessary to ensure that retained EU legislation setting out UK operator licensing requirements continues to function properly and allows for the regulation of international market access in the event that we leave the European Union without a deal.

Motion agreed.

Holocaust (Return of Cultural Objects) (Amendment) Bill

First Reading

4.38 pm

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

Rivers Authorities and Land Drainage Bill

First Reading

4.38 pm

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

Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

Motion to Approve

4.39 pm

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

That the draft Regulations laid before the House on 15 January be approved.

Relevant documents: 17th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A). Considered in Grand Committee on 12 March.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the instrument that the House is invited to approve today was debated in Grand Committee last Tuesday. The noble Lord, Lord Paddick, was unable to take part, but we had a good and thorough debate, so I shall keep my remarks brief and confine them to the points raised by him in his amendment.

However, it is perhaps worth underlining what we want to achieve in regard to law enforcement and security as we exit the EU. We all want to protect the operational capabilities that help the police, law enforcement and prosecutors do their jobs in protecting the public and bringing criminals to justice. The Government's position remains that the best way to do that is to exit with a deal. However, it is right and necessary that we prepare for all eventualities, including the no-deal scenario that most of us do not want to see. The instrument before the House forms part of the programme of secondary legislation that the Government have been bringing forward to ensure that there is an effectively functioning statute book on exit day. It addresses deficiencies in our domestic statute book that would arise if we leave the EU without a deal, focusing in particular on deficiencies in the area of security, law enforcement, criminal justice and some security-related regulatory systems. It is important to be clear that the regulations play no part in bringing about the UK's withdrawal from the EU. Rather, the purpose of the instrument is to make amendments to the UK's domestic statute book, including retained EU legislation, to reflect that new situation.

Having said a few words about what the instrument does, I should also be clear about what it does not set out to do. For the most part, the instrument is not a vehicle for implementing the Government's policy response to a no-deal exit. Our contingency arrangements for co-operation with EU partners on security, law enforcement and criminal justice involve making more use of Interpol, Council of Europe conventions and bilateral channels. These are existing alternative channels, outside the EU, that are already in use between the UK and many other non-EU countries. Accordingly, they do not require domestic legislation to set up. That is why those contingency arrangements are largely outside the scope of what these regulations set out to do. Even the Council of Europe Convention on Extradition, in respect of which this instrument links into our contingency arrangements, is already in place and in day-to-day use by the UK with non-EU countries. I beg to move.

Amendment to the Motion

Moved by ***Lord Paddick***

At the end insert "but that this House regrets that the draft Regulations cover policy areas that are individually of such significant concern to the House that they should not be considered together, and that Her Majesty's Government have provided insufficient information in relation to the statutory instrument's policy objectives and intended implementation".

Lord Paddick (LD): My Lords, I start by apologising to the House that I was unable to take part in the debate in Grand Committee last week. Sad to say, I

[Lord Paddick]

did stream the proceedings live to my sickbed, so I followed proceedings contemporaneously. The words of my amendment are not my own but those of the Secondary Legislation Scrutiny Committee's Sub-Committee A. I intend, first, to give an example of how important the areas are that are covered by this SI; secondly, to question the reassurances given by the Minister in Grand Committee on the area of extradition; thirdly, to examine the impact of losing access to crucial EU databases on securing our borders and how that jeopardises the Government's immigration strategy post Brexit; and finally, to highlight the muddled thinking of the Government that resulted in their putting too many important legislative changes into one SI.

The regret is about the way the Government are showing contempt for proper scrutiny of this statutory instrument by the House, by accident or design, not about the content of the instrument itself. As the Minister acknowledged in Grand Committee on 12 March at col. GC 195, these regulations which cover some of the most important areas of leaving the EU—law enforcement, security and judicial co-operation—have been "under-debated". Yet despite this, the Government cram every necessary legislative change in these important areas into one statutory instrument. Not only does this make the SI impenetrable to mere mortals, even the Secondary Legislation Scrutiny Committee's Sub-Committee A concluded in its 17th report, published on 20 February, at paragraph 5:

"We were not persuaded that so wide-ranging an instrument, covering policy areas that are individually of significant concern to the House, can be justified. Effective scrutiny is inhibited by the wide range of issues included".

4.45 pm

Just to emphasise the importance of these areas and the lack of information being provided by the Government, I will talk briefly about the European arrest warrant, in which the UK will no longer be able to participate after Brexit. The then Director of Public Prosecutions described the EAW to the House of Lords European Union Select Committee on 2 November 2016 as,

"three times faster and four times less expensive",

than alternative arrangements. It had enabled the extradition of more than 12,000 individuals from the UK to the EU in nine years.

This SI, to quote the Minister again,

"will ensure that the UK has the correct legal underpinning to operate the no-deal contingency arrangement for extradition—the Council of Europe Convention on Extradition 1957—with EU member states".—[*Official Report*, 12/3/19; col. GC 186.]

That contingency arrangement operates through diplomatic channels, so extradition will require political approval in the extraditing country. It does not impose the sort of strict time limits of the European arrest warrant and does not require a country to extradite its own citizens. Indeed, Germany made a change to its constitution to allow the extradition of its own citizens under the European arrest warrant. German criminals at least will know that they can commit crimes in the UK and flee to Germany, safe in the knowledge that they cannot be extradited to the UK after Brexit.

In Grand Committee the Minister was asked by my noble friend Lady Ludford specifically how many EU states need to make legislative changes, as we are doing here, to operate the 1957 convention with the UK. The Minister, perhaps unaware of the DPP's evidence to the House of Lords committee to which I have referred, replied:

"All EU member states operate the European Convention on Extradition with Council of Europe countries that are not EU member states".—[*Official Report*, 12/3/19; col. GC 196.]

To be fair to the Minister, this did not answer the question. The former DPP said that many member states have repealed domestic legislation underpinning the convention, which could limit their ability to extradite to the UK. Perhaps the Minister could tell the House what further information she has that was not available to the DPP when she gave her evidence to the House of Lords committee.

We will also lose access to the Schengen Information System II and the European Criminal Records Information System, which currently allow the police and Border Force staff instantly to check whether the individual before them has a criminal record in any EU country, is wanted for a criminal offence or is suspected of terrorism anywhere in the EU. In March 2016 alone, 809 people were flagged on SIS II to the UK, including 192 who were wanted, 96 who were reported missing and 358 who were believed to be involved in serious organised crime. That was in just one month.

It is interesting to note that one of the main planks of the Brexit argument is that we will be able to take back control of our borders. As we will discuss later today, in practice EU citizens will be given automatic entry to the UK for three months. While the UK after Brexit will be able to exclude those who have spent more than 12 months in prison for a criminal offence, Border Force will no longer have access to the databases that tell it whether those entering the UK have spent 12 months or more in prison for a criminal offence in any EU member state.

This instrument covers many very important areas, so why have the Government taken an all-in-one approach? The Government explain:

"The changes made by the regulations are in linked policy areas and cover three subject areas … The three areas are: security, law enforcement and judicial co-operation in criminal matters currently underpinned by EU legislation".

I note that security, law enforcement and judicial co-operation are three areas, but the Government count them as one. The Minister went on to describe the other two of the five as,

"security-related EU regulatory systems for which the Home Office is responsible; and domestic legislation affecting the police and the investigatory powers made deficient by EU exit".

She went on to say that in regard to the first policy area, which is,

"security, law enforcement and judicial co-operation in criminal matters, the regulations address deficiencies in connection with EU measures with a justice and home affairs, or JHA, legal base"—

even though home affairs and justice are covered by different Ministers of State and departments. She continued:

"Reflecting their shared underlying legal base, these measures all relate in some way to law enforcement and security in their subject matter, and in many cases interact at an operational level".

If we include all measures that,

"relate in some way to law enforcement and security",

we would be ruling even more policy areas into this SI. The Minister went on:

"For example, as the noble Lord, Lord Kennedy, mentioned, SIS II circulates European arrest warrant alerts. The regulatory regimes, while not having a JHA legal base, have a similar underlying purpose".

Having said that these matters are grouped together because they have a JHA legal base, the example the Minister then chooses to illustrate the rationale for the Government's approach does not have a JHA legal base.

I will not go on. Suffice it to say that when the Minister said that,

"we considered that combining them in a single instrument would assist scrutiny",—[*Official Report*, 12/3/19; col. GC 193.]

she was describing the legislative equivalent of an own goal. If the Secondary Legislation Scrutiny Committee can make neither head nor tail of this, how earth are we expected to? This is not an acceptable way to deal with secondary legislation. I beg to move.

Lord Marlesford (Con): My Lords, I too was unable to attend the debate on this instrument in Grand Committee but it seems that this is an opportunity to make some general remarks about its purposes. Frankly, I can think of no area of importance where our impending departure from the European Union needs to be less of an obstruction to our national security than the exchange of intelligence, as regards both policy and administration. These are all matters of mutual interest, not only between the United Kingdom and other members of the European Union but between the United Kingdom and other nations of the world. I therefore believe that what is needed is some sort of White Paper from Britain to take advantage of our departure from the EU to set out fresh targets of practical achievement—better security, better exchange of intelligence and better safeguarding of rights. However, we have seen many recent examples of where the present system simply does not work; the noble Lord, Lord Paddick, gave some but there are others. I suggest in particular something I have been pursuing for many years in this House: the need for the United Kingdom passport agency to be aware of other passports held by British passport holders.

This is self-evident to most people, but the Government, or rather the Home Office, have objected again and again to implementing it. Current regulations require that if you apply for a British passport, you must declare what other passports you hold. Not only is that information not retained—I have been told that by Home Office officials—but it is certainly not available, as it should be, to those charged with administering the security of our borders.

What should happen, of course, is that the electronic screening of the passport of anyone who passes through border control, into or out of the United Kingdom, should reveal what other passports they hold. In most cases, that would mean no further action, but there could be cases where it would be crucial to improving our national security. There has been a lacuna in creative thinking on this whole subject by the British Government, and the opportunity for us now to get a grip on it is provided by our impending departure from the EU.

Baroness Ludford (LD): My Lords, my noble friend Lord Paddick comprehensively covered a point I raised in Grand Committee. He is quite right to say that I fear the Minister did not answer my question, which was: do the EU 27 countries have to change domestic legislation in the same way as us as we shuffle between Parts 1 and 2 of the Extradition Act to operate Council of Europe Convention 57? Subject to what the DPP said, we know that they have the Council of Europe convention in their domestic legislation to operate with non-EU countries. We need to know whether that will be available to operate with us if we are no longer in the EAW.

Interestingly, I discovered that the noble Lord, Lord Jay of Ewelme, chairman of the EU Home Affairs Sub-Committee—on which I do not have the pleasure of sitting; I am on the Justice Sub-Committee—wrote to the right honourable Nick Hurd MP, Minister of State for Policing, last week on 13 March. The committee had held an evidence session on 27 February. One point was in response to an official I remember working with when I was an MEP but is now, I think, in the Home Office. The letter states that,

"we remain concerned by the extent to which the effectiveness of, as Ms Ellis put it, the 'plumbing' put in place by the UK to move cooperation to non-EU mechanisms is 'dependent on the position of other member states'. Whatever the extent of the UK's preparations, it is not at all clear that our European partners would be ready to cooperate with us on the basis of the alternative mechanisms the Government intends to rely upon in a 'no deal' scenario".

I have not had the opportunity to catch up on all the evidence, but that letter is in the public domain; it is published on the committee's website.

Our distinguished colleagues on the EU Home Affairs Sub-Committee are obviously well apprised of the issue, and the Minister's colleague, the Policing Minister, will presumably have to reply within 10 days. We are interested in precisely the same point. It would cover issues such as extradition of own nationals and political exemptions as well as the basic plumbing, as it was put.

The letter of the noble Lord, Lord Jay, also said:

"We would also be grateful for further information on the UK's current operation of the Council of Europe Convention on Extradition—which witnesses indicated would be the 'fallback' mechanism for future cooperation on extradition with EU countries—with countries such as Norway".

To inform our knowledge of how this alternative plumbing mechanism would work, how is it working at the moment with Norway?

5 pm

That is about extradition, but I would like to ask about human rights law. When I raised the issue of human rights in Grand Committee, the Minister said:

"As the White Paper and the political declaration make clear, the UK is committed to membership of the ECHR, and we will remain party to it after we have left the EU".—[*Official Report*, 12/3/19; col. GC 196.]

[Baroness Ludford]
Given my background in these issues and my 15 years in the European Parliament, I consider this very important. The human rights context in the UK will be very pertinent to the extent of closeness in security co-operation that we will be able to have if we are outside the EU. Unfortunately, the political declaration does not quite back up the Minister's assertion. To the mystery of some of us—this came up in an EU Justice Sub-Committee evidence session last week in our current inquiry about human rights after Brexit—the draft political declaration says:

"The future relationship should incorporate the United Kingdom's continued commitment to respect the framework of the European Convention on Human Rights".

That had changed from the draft summary of a fortnight previously last November. We are all quite mystified as to why that change was made, but it could not have been an accident that it changed from the UK being committed to the European Convention on Human Rights to respecting the framework of the convention, which is a diluted commitment. We have had correspondence with the Government on this and they just say, "It means the same thing as a commitment to stay in the ECHR"—in which case, why was the wording changed? Perhaps the Minister can enlighten us.

I have two other questions. Apparently, we propose to keep data that we have acquired under these EU measures and the Government give assertions about how it will all be protected under the Data Protection Act 2018. Are the EU and our EU partners content that we should retain this data when we leave the EU? Do we have ownership that can continue without challenge? Has there been any consultation over the legality of retaining data that we have been able to access while we have been a member state? Perhaps we could get an assurance on that.

Lastly, no costs are monetised in the impact assessment. Assertions are made, particularly on extradition: every extradition will be more costly than it is now under the European arrest warrant. Everybody knows and accepts that. The Government say, "But we will not monetise it". I keep hearing the argument that because these SIs do not deal with the policy of no deal in general, the Government will not tell us what the precise impact of each SI would be. So you get these series of SIs, but the goalposts are being moved all the time because the Government keep saying, "No, we don't have to give you details of the impact of this one because it's all wrapped up globally". Where will we find out what the extra costs of extradition are? I am afraid that is a bit of wheeze and we are owed some calculations and estimates of the extra costs for all the justice agencies, including the Ministry of Justice, which will have to get involved. It does not at the moment because it can leave it all to the operational people—the judges, the DPP and so on. Some work must have been done, so we should be privileged with some information.

Lord Kennedy of Southwark (Lab Co-op): My Lords, these matters were debated in Grand Committee on 12 March. I expressed then, as I do now, that I very much agree with the report of the Secondary Legislation Scrutiny Committee, Sub-Committee A. It expressed the concerns about the way this regulation has been brought forward. It is fair to say that it was quite damning of how the Government presented the regulations to both Houses of Parliament.

Recommendation after recommendation highlighted how inadequately information was presented to Members of both Houses. In Committee, I very much agreed with the comments of the noble Baroness, Lady Hamwee. I supported everything she said, except that if the measures came before the House, I would not vote to stop them coming into force. However, at the end of the day, we do not have a fatal Motion here. The regulations are badly drawn up, with little regard to the needs of either House. As I said, that point was made by the sub-committee but endorsed by everyone who spoke in Committee. I also concur with the comments of the noble Lord, Lord Paddick, from the Liberal Democrat Front Bench.

I have a few other points to make. I do not intend to go into them in detail because I made a lot of them in Committee. I am very concerned that we could lose access to the European arrest warrant and may have to go back to relying on the 1957 Council of Europe Convention on Extradition. That is a retrograde step; the only people who would welcome it are criminals—no one else. I am also concerned about the loss of access to databases. In Committee, I also mentioned the issue of the Schengen information system and Prüm. I do not recall whether I got an answer to my questions. What will be the situation there? Can the Minister comment on Europol and Eurojust? Again, I want to hear more than just, "We are working on it". These issues are important and we want to know where we stand.

The report is damning, as I said. I hope that the department will learn a lesson from it. I do not think that committees put forward such suggestions lightly. We want proper scrutiny. We want to ask questions and put everything together in one place but it has not worked and I hope that we will not see anything else like it in future. I will leave it there.

Baroness Williams of Trafford: I thank noble Lords for their points, many of which were made the other day in Committee. It is important to be clear from the outset that the regulations play no part in bringing about the UK's withdrawal from the EU, about which many comments were made. I just want to clear that up. Obviously, the consequences flowing from that include ceasing our ability to co-operate with EU member states through this suite of tools and measures.

As I said the other day, the instrument's purpose is to make amendments to the UK's domestic statute book, including retaining EU legislation to reflect the new situation. The changes we are making in the instrument are ones that we cannot and should not avoid in the event of a no-deal exit. The regulations do not contain significant policy choices. For that reason, as I have already said, we do not accept that the changes introduced by the instrument should be of concern to this House.

The noble Lord, Lord Paddick, suggests in his amendment that,

"Her Majesty's Government have provided insufficient information in relation to the statutory instrument's policy objectives and intended implementation".

That point was made by the Secondary Legislation Scrutiny Committee, at whose request the Government produced a second, revised Explanatory Memorandum in addition to both the original one and the impact assessment published alongside the instrument.

The noble Lord, Lord Kennedy, has been consistent on the committee's comments; he made the same point today as he did the other day. I took it on board the other day and I do so again today. As we made clear in writing to the committee, the original, longer Explanatory Memorandum was provided in good faith to provide the committee and other users of it with a thorough explanation of each provision in the instrument. We anticipated that the level of detail provided would be helpful to anyone with an interest in a specific part of the instrument. However, we took on board the committee's view that we had not struck the right balance and that the Explanatory Memorandum was too long, and therefore provided the shorter one. The committee confirmed in its report that it considers the revised Explanatory Memorandum to be "more accessible" and "more user-friendly".

All these documents, both Explanatory Memorandums and the impact assessment, attempt to isolate and describe the practical effect of the regulations themselves—what difference it makes if we do or do not legislate as proposed in these regulations—rather than the wider impact of EU arrangements in this area falling away as a consequence of a no-deal exit. But in publications, debates and Select Committee hearings we have provided and continue to provide information to Parliament about those wider impacts. Overall, the making of this instrument will provide legal and operational certainty for the public sector, including law enforcement and criminal justice partners across the UK, such as the NCA and our police and prosecution services.

I will address policy areas. I reiterate that the regulations cover three subject areas: security, law enforcement and judicial co-operation in criminal matters currently underpinned by EU legislation; security-related EU regulatory systems for which the Home Office is responsible; and domestic legislation affecting the police and affecting investigatory powers made deficient by EU exit.

On security, law enforcement and judicial co-operation in criminal matters, the noble Lord, Lord Paddick, pointed out that the regulations address deficiencies in connection with EU measures with a justice and home affairs legal base. Reflecting their shared underlying legal base, these measures all relate in some way to law enforcement and security in their subject matter, and in many cases interact with each other at an operational level. For example, the Schengen Information System, which the noble Lords, Lord Kennedy and Lord Paddick, referred to, circulates the European arrest warrant alerts. The regulatory regimes, while not having a JHA legal base, have a similar underlying purpose: to prevent, detect and prosecute criminal activity and to maintain security. Given that they are linked policy areas and that the changes being made are very similar across most parts of the instrument, we considered that combining them in a single instrument would assist scrutiny by providing as complete a picture as possible in one place. I accept the points made today by the noble Lord, Lord Paddick, and the other day and today by the noble Lord, Lord Kennedy.

The noble Lord, Lord Paddick, then went on to talk about contingency planning. Our contingency arrangements in this area are largely outside the scope of the specific changes introduced by these regulations. However, they are clearly and properly a matter of great interest to Members of this House. They have undergone detailed scrutiny by the EU Home Affairs Sub-Committee of the European Union Select Committee in this House and the Home Affairs Select Committee in the other place. As the Government have made clear in both Houses, the continued safety and security of both UK and EU citizens remains our top priority. That is why we are preparing to move our co-operation with EU member states in a no-deal scenario from EU channels to alternative, non-EU mechanisms. Broadly speaking, this would mean more use of Interpol, the replacement for Europol—the noble Lord, Lord Kennedy, asked about this—Council of Europe conventions and other forms of co-operation with European partners, such as bilateral channels. Our contingency plans are largely tried and tested mechanisms that we already use for co-operating with many non-EU countries. However, as we have made clear, they are not like-for-like replacements for EU tools and would result in a reduction of mutual capability in both the UK and the EU. For the most part, the legal framework for these contingency arrangements is already in place: the non-EU mechanisms we are moving to already exist and we already use them with other countries.

One thing that noble Lords brought up on contingency was extradition, which was brought up the other day. The regulations support implementation of the no-deal contingency in this area. They will ensure that in the event of a no-deal exit, we have the correct domestic legal underpinning to operate the no-deal contingency arrangements for extradition—the 1957 Council of Europe Convention on Extradition—with EU member states. To be clear, the amendments under the Extradition Act are not purely discretionary. Once we leave the EU and cease to be bound by the EAW regime, our rights and obligations towards EU member states under the 1957 convention will revive. Under international law, we will be under an obligation to be able to fulfil them and to equip ourselves to do so.

5.15 pm

As I said the other day to the noble Baroness, Lady Hamwee, the convention is already in place and in use by the UK with other countries. The small difference is that these regulations will categorise EU member states for the purposes of the Extradition Act 2003 so that we can administer requests from EU member states under Part 2 of that Act rather than Part 1 as at present.

The noble Lord, Paddick, asked about own nationals escaping justice. Countries that refuse to extradite their own nationals generally have wider ranging extra-territorial jurisdiction to try their nationals for offences committed overseas. The European Convention on Extradition specifically provides a duty for contracting parties to submit the case to their authorities to consider prosecution if they refuse to extradite someone due to their nationality.

[Baroness Williams of Trafford]

The point was made about member states being able to operate the European convention. All EU member states operate the Council of Europe Convention on Extradition with Council of Europe countries that are not EU member states. No member state that requires legislation to apply the convention has revoked or repealed the legislation. Some countries may need to make minor legislative changes—for example, to designate the UK as a Council of Europe country—just as we are doing to reverse these regulations. Other EU member states will revert to the European convention automatically because of the way their domestic law interacts with international law. I will not speak on behalf of other member states as to their systems, but we anticipate operating the EU Convention on Extradition with EU member states.

The noble Baroness, Lady Ludford, asked how the convention operates with countries such as Norway. We currently operate it with Norway and Switzerland, and we routinely turn round extradition cases in a matter of months—although I appreciate that, as we talked about the other day, it takes longer than under the European arrest warrant.

The noble Baroness asked also whether we are committed to the ECHR, because she seems to see different wording in the same documents at different times. As the White Paper and the political declaration make clear, the UK is committed to membership of the ECHR and we will remain party to it after we have left the EU. I add that this country has some of the strongest human rights legislation in the world, and I remain confident that we will stay world leaders in this. That is consistent with what I said in Grand Committee. I cannot shed further light on why the wording in the political declaration has changed, but I say to the noble Baroness that it does not reflect any change in the Government's position. That remains as set out in the White Paper.

The noble Baroness asked about data protection rules. The SI confirms that we will adhere to the rules under which we receive the data, and I think the member states will welcome that.

On the noble Lord's point about the contingency arrangements not being as good as the European arrest warrant, he will recall that I said in the debate the other day that I accept that there will be an increase in the cost of and time taken for extradition. I have been clear about that. The cost impact is not related to our leaving the European Union but to this statutory instrument.

I think I have answered all the questions. I thank all noble Lords, particularly the noble Lord, Lord Paddick, for again bringing this matter to my attention. I beg to move.

Lord Paddick: My Lords, I am grateful for the support of my noble friend Lady Ludford and the noble Lord, Lord Kennedy of Southwark.

The Minister kept on about the regulations not containing any major policy areas. We have not said that they provide major policy changes—we accept what the Government say about that—but what we and the Secondary Legislation Scrutiny Committee are complaining about is that far too much legislation is contained within one statutory instrument. I specifically criticised what the Minister said in Grand Committee about the three policy areas and the common legal framework. In response to that criticism she simply repeated exactly what she said in Grand Committee.

I am grateful that the Minister admits that the contingency arrangements will result in a mutual reduction in capability of the UK and the EU, but it leaves an important question unanswered. I accept that she cannot speak for other individual EU states, but one of the purposes of the statutory instrument is to ensure that the alternative extradition arrangements under the 1957 convention can legally operate—that is, that the UK can extradite people to EU states or other signatories to the convention. However, we do not know whether EU states' domestic legislation will allow them to extradite people to the UK.

As the Minister acknowledges, they may have to redesignate the UK as a Council of Europe member rather than as an EU member state in their domestic legislation in order to make the 1957 convention work. However, we still have no reassurance that the contingency arrangements the Government are relying on will work in practice. I accept that they are doing what they can on their side of the agreement, as it were, but we still do not know whether EU countries will be able to extradite people to the UK under the 1957 convention.

We are getting into the detail but the point is that it does not matter how long or short the Explanatory Memorandum is: if there is too much content in the statutory instrument itself, you will never get an Explanatory Memorandum that will assist the House because it will be either too superficial or too detailed to enable sufficient scrutiny. I believe the Government accept that and hopefully we will not face this situation in the future. On that basis, I beg leave to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Immigration (European Economic Area Nationals) (EU Exit) Order 2019

Motion to Approve

5.25 pm

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

That the draft Order laid before the House on 11 February be approved.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I beg to move that the House approves the draft Immigration, Nationality and Asylum (EU Exit) Regulations 2019. Delivering a deal with the EU remains the Government's priority. We are nevertheless preparing for a range of scenarios. As the Prime Minister has pointed out, the legal default in UK and EU law is that the UK will leave without a deal on 29 March unless something else is agreed.

UK domestic law has given effect to our obligations in the fields of immigration, nationality and asylum arising from our membership of the European Union. The UK has also been subject to directly effective EU law. When we leave the EU, aspects of our legislation and retained direct EU law will fail to operate effectively. They will contain deficiencies if they are not modified or revoked by this instrument.

These regulations make changes to a range of measures in domestic primary and secondary legislation to prevent, remedy or mitigate deficiencies in law arising from the UK's exit from the EU. They ensure that our statute book operates on exit day if the UK leaves the EU without a deal until new legislation on these issues is commenced.

First, the instrument makes the technical changes required to correct wording in our legislation that describes the UK in terms of our membership of the EU or the European Economic Area. The changes do not alter the effect of the legislation. Similarly, it makes technical amendments to domestic legislation that refers to EU rights that are retained by the European Union (Withdrawal) Act 2018.

Secondly, this instrument revokes relevant retained EU legislation relating to immigration. It also revokes a number of instruments that give effect to the UK's membership of EU asylum acquis and which will be inoperable on exit. This is because, by leaving the EU, the UK also leaves the asylum acquis. This instrument therefore revokes the Dublin regulation and the Eurodac regulation.

The instrument makes a number of transitional and saving provisions—

Lord Paddick (LD): My Lords—

Baroness Barran (Con): It is the other instrument.

Baroness Williams of Trafford: Ah. Do noble Lords mind if we do this one first?

Viscount Waverley (CB): I think that every Member who has taken an interest in this has been in the Chamber, so the Minister can probably be allowed to continue. That is my view, but other Members may think differently.

Baroness Williams of Trafford: I have just taken advice and apparently I cannot do that. Please ignore everything I have just said.

On a day when you have three statutory instruments, an Urgent Question, a Question and a speech to deliver to the LGBT conference, this is what happens. I apologise to noble Lords that I have got the right speeches but in the wrong order. I will sit down for a minute to make sure that I have got the right instrument.

Lord Kennedy of Southwark (Lab Co-op): Might I suggest a short adjournment?

5.29 pm

Sitting suspended.

5.35 pm

Baroness Williams of Trafford: Take two, my Lords. The Government's priority is to protect the rights of EEA and Swiss citizens who are already here. Deal or no deal, they will be able to stay and apply to the EU settlement scheme, which will be fully open from 30 March.

Delivering a deal remains the Government's priority. We are nevertheless preparing for a range of scenarios. In a no-deal scenario, we will end free movement as soon as possible after exit, subject to parliamentary approval of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. Once free movement has ended, transitional immigration arrangements will be in place until the new skills-based immigration system is introduced from January 2021. The intention is to minimise disruption at the border and avoid a cliff edge, providing initial continuity for EEA and Swiss citizens and for businesses. The Government announced these arrangements on 28 January.

I make it clear that these transitional arrangements will not apply to EEA and Swiss citizens resident in the UK before exit. These citizens will be able to apply to secure their status under the EU settlement scheme. Nor will they apply to Irish citizens, who, under common travel area arrangements, will continue to be able to enter and remain in the UK without requiring leave.

Those who are not eligible for the EU settlement scheme will require leave to enter once free movement has ended, and this order provides the mechanism by which that leave to enter will be granted. Such citizens will be granted leave to enter for a period of three months, automatically, upon arrival at the border. This means that they will be able to cross the border much as now, including using e-passport gates. They will not be questioned routinely or have their passport stamped. This leave will allow them to work, study or visit for short periods as we transition to the new skills-based immigration system to be introduced from 2021.

For many individuals, a single three-month period of leave will be sufficient. Others, such as regular business visitors or frontier workers who live in the EU but work in the UK, may wish to come on more than one occasion. The order will enable them to do so by granting leave to enter automatically on each arrival. As now, there will be some EEA and Swiss nationals whom we will not wish to enter the UK—for example, where their presence in the UK is undesirable on criminality or non-conducive grounds. Those who are the subject of exclusion or deportation orders or other specified decisions will not benefit from the automatic leave provisions, and Border Force officers will be able to cancel automatic leave where an individual's presence in the UK is deemed to be non-conducive. Those who wish to remain for longer than three months would need to apply for European temporary leave before the end of the initial three-month period. This would give them a further 36 months' leave to remain. These arrangements are a contingency plan, necessary only in a no-deal scenario, to allow us to transition smoothly from the end of free movement to the future skills-based immigration system.

The order also makes changes to support the EU settlement scheme in both a deal and a no-deal scenario. It provides that those granted settled status may be

[Baroness Williams of Trafford]
absent from the UK for up to five consecutive years without it lapsing. For Swiss citizens granted settled status or their family members, this period will be up to four consecutive years, in line with the citizens' rights agreement negotiated with Switzerland. It also ensures that scheme leave granted to a Crown servant, to a permanent member of the British Council who is an EEA or Swiss national or to a member of Her Majesty's forces will not lapse as a result of an overseas posting. This will also apply to a person with scheme leave accompanying them, or accompanying a British citizen, on such a posting. The order facilitates overseas applications to the scheme and clarifies that scheme applicants will not need to pay the immigration health charge.

These are important measures to support the delivery of the EU settlement scheme and our no-deal contingency plan. I beg to move.

Amendment to the Motion

Moved by ***Lord Kennedy of Southwark***

At the end insert "but that this House regrets that the draft Order provides for changes to the status of European Economic Area nationals entering or resident in the United Kingdom that should be made with the full scrutiny of both Houses in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill; and that Her Majesty's Government have failed to provide details on the practicalities of the varying types of leave to remain, including how they will be enforced, the length of an application process for extended leave to remain, and the impact on individuals who may be asked to prove their status".

Lord Kennedy of Southwark: My Lords, the Minister is so liked and respected in the House that we were all sitting here listening with complete attentiveness to every word she said, and it was only when the word "Dublin" was mentioned that we realised we were dealing with the wrong instrument. We all like the Minister very much and know that she is very busy outside the House as well.

An immigration Bill is going through Parliament, and there is a theme here: yet again, we feel that the Government are hiding from scrutiny and have come up with a patchwork of complicated law through secondary legislation, which we do not think is the right thing to do. They will argue that these provisions need to go through very quickly but, as we have heard, the immigration Bill provides for the end of freedom of movement, so the provision in the order for automatic leave to enter for EEA nationals after freedom of movement has ended can come into force only once the Bill has been passed into law. The timescales are identical, so these provisions should have been up for debate and amendment in that legislation.

The Secondary Legislation Scrutiny Committee has raised questions about how the three-month period will be enforced because, as the Minister said, those entering the country will not be stamped on entry. I have heard the term "light-touch enforcement" used. Could we have an explanation of what that means in practice?

The House of Commons was told that to remain longer than the initial three months, an EEA national would have to apply for temporary leave to remain for up to 36 months. After that, they would have to apply through the new immigration system that should be in place by then. Can we know how long an application will take for temporary leave to remain? If a person goes over the initial three months while waiting for leave to remain, what happens then?

EEA nationals will be over here under three different systems: settled status, the three-month visa and temporary leave to remain for longer than three months. In light of the Windrush scandal, are the Government doing everything they can to ensure that individuals with the right to be here are not routinely and wrongfully challenged or adversely affected, and that they will have no problem proving their right to be here if necessary? This is a most regrettable statutory instrument, which is why I have tabled my amendment. I beg to move.

Lord Paddick: My Lords, the first extraordinary thing to say about this statutory instrument is that the Secretary of State did not consider it necessary to consult anyone about it. The second is to make clear its effect and to contrast it with the Government's often-repeated mantra, not just for leaving the EU but for the dead horse that is Theresa May's withdrawal agreement, both of which the Government and those in favour of leaving the EU describe as "taking back control of our borders". The only sense in which this instrument can be interpreted as taking back control of our borders is that the Government have decided by themselves to give up control of our borders without any influence from the EU.

The other contradiction between what the Government claim to be doing and are actually doing is that they say that they are going to create a level playing field for EU and non-EU citizens regarding entry to the UK. This instrument gives preferential treatment to EU citizens after we leave the EU. It grants automatic entry to the UK for EU and EEA citizens even after we leave the EU, with leave to remain for a period of three months. EU and EEA citizens do not even have to have a passport; they can travel on a national identity card. If they do have a passport, they can use the automatic e-gates at airports. In other words, they are as free to enter the UK as they were under freedom of movement. Can the Minister confirm this?

5.45 pm

The instrument says that a person given leave to enter under its rules may be examined by an immigration officer in the usual way to see whether there are grounds for cancelling leave. The Minister mentioned foreign-national criminals and those whose presence may not be conducive to the well-being of the UK. Can the Minister confirm the difference between the current ability of the UK to stop such individuals, including EU nationals, entering the UK under the freedom of movement rules, and our ability under the rules of this statutory instrument?

The instrument exempts those granted leave to enter from the Immigration (Health Charge) Order 2015. My understanding is that the charge is payable

only for a stay of six months or more. As this instrument grants leave for only three months, can the Minister explain why there needs to be an exemption?

The Explanatory Memorandum says that there will be no restriction on the activities that EU and EEA citizens can undertake, which means that they can work, study or visit while in the UK after we have left the European Union. Can the Minister confirm that non-EU, non-EEA citizens will not be given automatic entry to the UK with no restrictions on the activities they can undertake?

Can the Minister tell the House how long an EU or EEA citizen will have to spend outside the UK before they would be eligible to enter again for another three months, with no restrictions on the activities they undertake? For example, could a French citizen go to Calais for the weekend, then return for another three-month unrestricted stay in the United Kingdom?

The instrument has no impact assessment, as,

"no, or no significant, impact",

on the private, voluntary or public sector is foreseen. Bearing in mind that EU and EEA citizens will effectively be allowed to live and work in the UK unrestricted, bar the occasional weekend outside the UK, without having to pay the immigration health charge, is the assertion that there will be no impact on the private, voluntary or public sector sustainable? In addition, if this instrument were not implemented, and EU and EEA citizens were not granted automatic entry, surely there would be a significant impact on the Border Force. Should the impact assessment not reflect this? Can the Minister explain how the Government intend to prevent EU and EEA nationals entering and remaining in the UK for more than three months, and how they intend to monitor and enforce this restriction?

Noble Lords should not misinterpret our position: we want free movement to continue. What I object to is the Government claiming to be taking back control of our borders, ending free movement and creating a level playing field for those entering the UK from EU and non-EU countries, when this instrument appears to do exactly the opposite. Saying "well, the difference is that now we are deciding to throw open our borders, not the EU", is an interesting position to take. However, removing the cap on the number of skilled workers entering the UK, as the Government are suggesting in their year-long consultation on their future immigration policy, is at least consistent with this SI. We support the SI, but not the apparent hypocrisy of the Government.

Lord Green of Deddington (CB): My Lords, we risk getting somewhat lost in the detail here. It seems that the Government are now proposing to open up some 9 million jobs to worldwide competition, while at the same time effectively continuing with free movement to the European Union, as the noble Lord, Lord Paddick, said. As I said before, the risk is that this will run straight out of control. We really need to get hold of this, stay on the main points and be quite sure that the Government are ready to react if the numbers start getting really difficult.

Baroness Ludford (LD): My Lords, I add to what my noble friend Lord Paddick said—it is the disjuncture and hypocrisy that upsets us. Of course, this is a one-way continuation of free movement. Many of us were extremely distressed when the Prime Minister cited the top reason for celebrating her ill-fated draft withdrawal agreement and political declaration last November; apparently, its top benefit was ending free movement. In fact, this is not happening—at least, not into the UK—and no consideration was given to the benefits of free movement for UK citizens in the rest of the EU. This instrument says nothing about those opportunities, which are being torn away from UK nationals. This will particularly affect young people and those of all ages who want to work or retire in the rest of the EU. It is the Government's inconsistency which strikes such a difficult note.

Had I had the opportunity to ask my noble friends on the Front Bench, who know a great deal more about immigration law than I do, I may not have needed to ask this question, which concerns the difference between Articles 3 and 7, which I do not really understand. Article 3 is entitled:

"Grant of leave to EEA and Swiss nationals".

Article 7 is entitled:

"Grant of leave by virtue of Appendix EU to the immigration rules".

I simply do not understand the difference between those legal bases for extension of leave, as "EEA nationals" covers EU nationals as well. Perhaps the Minister could help me. That also spills over to the health charge, because Article 10, on exempting from the health charge, appears to apply only to those who acquire leave to enter or remain,

"by virtue of Appendix EU to the immigration rules".

It does not appear to cover those who get leave under draft Article 3. As I say, it may just be that I do not understand how all this interacts, but perhaps the Minister can enlighten me.

Lord Deben (Con): My Lords, I thank my noble friend for the careful and charming way in which she introduced this SI. But we had better remind ourselves what "free movement" actually means. It means that people can move from one part of the European Union to another—but in fact, of course, at some stage they have to have a job. You can remove them from one country to another if they do not have one. That is part of the arrangement.

My worry about this is that we say that we are ending free movement, but actually we have not included the one thing that is a perfectly proper restriction on free movement that we have had up to now. So we are removing the one thing that most people would find unacceptable, which is the mechanism whereby you make sure that people move around the European Union with a purpose and do not become a burden on a particular country they have chosen to go to. I find that bit really very peculiar. No doubt the Government have thought that all through, so we will hear exactly how it works.

Although I shall say this as politely as I possibly can, I think that this is a load of old nonsense. I really do think that the idea that we will grant these opportunities for the rest of Europe but are putting ourselves into a position in which none of these opportunities might be granted to any of our citizens seems to be one of

[Lord Deben]
the best examples of the fact that Brexit is a mechanism for shooting ourselves in the foot. The reason we are doing this in a one-sided way is exactly the same as with every other SI we have had: the only things we can do with SIs are the things that affect us, rather than anything in the rest of Europe that affects our people. What better exemplar of the stupidity of leaving the European Union can there be?

My noble friend is of course bound to defend the Government's policy—although I have to say that I am not really sure what the Government's policy now is. Indeed, I have not really been sure for some long time, and today it seems even less clear than it was yesterday. No doubt tomorrow it will be more opaque still. But the reality is that this SI displays the fundamental problem that, during the referendum campaign, a lot of promises were made. One of them was, as the noble Lord, Lord Paddick, said, that we would "take back control". So we are taking back control to allow other people to travel into our country, but removing our right to travel into their countries. As a piece of control taking back, that seems somewhat limited in its attraction.

I often ask myself how I would speak on a platform if I was asked a question about these SIs. Indeed, it is a way I think when I look at what we are proposing on the climate change committee. I say to myself, "How would I explain that on a platform?" It is a useful thing for a long-term politician. So I am standing on a platform and somebody says, "Can I go to the rest of Europe like I have always done?" The answer is, "We don't know, because we haven't done a deal on that". "Can my aunt, who happens to be French, come to Britain even if she hasn't got a job?" The answer to that is probably yes. "How do they make sure she's here for only three months if she doesn't have to show her passport or have it stamped?" The answer is that they probably cannot. "Well, will they look out for her?" "No, we've agreed that there's not going to be any looking out for people; it's not going to be like that at all".

How does that draw that into the same position as somebody who comes from the United States? Of course, that is entirely different; they have to show a passport and make the arrangements. I do not mind that, because we do not have a mutual arrangement with the United States—but at least we do not have a one-sided arrangement with the United States. At least we do not say that Americans can come here and do all these things and we have no willingness to go there.

I really got up to say to my noble friend how sorry I am that she has had to defend this SI—because it is indefensible. It is a nonsense. It is quite wrong to give other people the rights to enter our nation and say that that is taking back control, and it is quite wrong to give those rights without having previously arranged that we should have the same rights in the rest of Europe. To hide it behind the use of the phrase "free movement" is, of course, the really serious thing, because free movement has always been restricted. If the Government have not used those restrictions effectively, that has been the fault not of the European Union but of United Kingdom Governments of all denominations and types. So I say to my noble friend: okay, no doubt the SI will be passed, but do not think that it does any honour to this Government—and it certainly does no honour to Britain. I am getting more and more embarrassed at the way the rest of the world is seeing us.

Viscount Waverley: My Lords, following on from the point made about stamps in passports, and as a procedural point, would the Minister confirm that all persons exiting the UK are now properly registered as having left the UK? There was a point in recent times when that was not the case. There were stamps for entry, but I understand not for exiting. Clarification at an appropriate time would be helpful.

Lord Marlesford (Con): I would like to follow up that last point. It is what I have been talking about for years. We have totally inadequate means of knowing who has come in, when they have come in, when they should leave and whether they have left. The whole system is a shambles. This is an opportunity to get it right.

Baroness Williams of Trafford: I thank noble Lords for their contributions to this debate. My noble friend Lord Marlesford is correct; this is an opportunity to get it right.

It would probably be helpful to start by stating the purpose of this statutory instrument, and that, I hope, will go to some extent to my noble friend Lord Deben's point. This statutory instrument is essentially a temporary arrangement in a no-deal situation, until free movement ends under the immigration Bill. In a no-deal scenario, we will end free movement as soon as possible after exit, subject to parliamentary approval of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. In a no-deal scenario, once free movement has ended, there would be a transitional period until the new skills-based immigration system is introduced in January 2021. This order ensures that during this period, we would minimise disruption at the border and provide initial continuity for EEA and Swiss citizens, and for businesses. The Government announced these transitional arrangements on 28 January. Regarding the points made by the noble Lord, Lord Paddick, about seeming to favour EU nationals, the whole point of this is to provide that transitional certainty.

The noble Lord, Lord Kennedy, talked about how the three-month period would be enforced. Obviously these are transitional arrangements, to be put in place only in the event of no deal. We cannot switch things off and on overnight, so we need to ensure that the correct legislation and operational plans are in place. It will take some time to prepare for our new skills-based immigration system, but the Government have been clear that our intention is for it to be in place by 2021.

These arrangements lay the foundations for the future. We cannot control European immigration until all EEA and Swiss citizens here have a UK immigration status, which will take some time. In a no-deal scenario, those resident here by 29 March 2019 will have until the end of 2020 to apply to the EU settlements scheme. These arrangements enable us to move from a rights-based system of free movement to a UK system where everyone requires permission to be here. Accordingly, until the new system is introduced, a proportionate, light-touch enforcement approach will be taken in respect of EEA and Swiss citizens. The noble Lord asked me to define "light touch"—I assume that it

means without too much bureaucratic involvement in form filling and other matters that make life very difficult.

If an EEA or Swiss citizen is found not to have appropriate status, we will encourage them to make the relevant application. I am absolutely clear on the importance of clear communications so that individuals understand their status. This is imperative for those resident in the UK before we leave the UK on 29 March, and those who arrive here afterwards. Our focus is on encouraging and supporting EEA and Swiss citizens to acquire an appropriate status and ensure that they have sufficient time to do so. We are committed to a fair immigration system which operates with integrity and which welcomes those who are here legally. But we are clear that compliance with UK immigration laws and rules is essential in supporting this.

For those who arrive after free movement ends, we will make it clear that they need to apply for European temporary leave to remain before their three months' automatic leave expires. Where they have good reason for not doing so, we will encourage them to make this application, or to leave the UK voluntarily, but where there is abuse of the system, we will consider enforcement action.

The noble Lord, Lord Kennedy, asked how long the application will take. Applications for 36-month temporary leave to remain will use the EU settlement scheme infrastructure, which allows them to be determined within a period of days. He also asked what will happen at the end of the three months to those who will have applied for 36 months' leave. If a person applies for 36 months leave within three months, they can still stay lawfully in the UK until their application is decided.

The noble Lord, Lord Paddick, asked why the exemption from the immigration health surcharge is needed. The exemption in this order applies to those applying for leave under the EU settlements scheme, not those who obtained three months' leave to enter under part 2 of the order. The noble Lord also asked if people could leave the UK, then return and obtain a further three months. The answer is yes.

The noble Lord, Lord Kennedy, asked about the three months' automatic leave to enter. The order provides that in a no-deal scenario, three months' leave to enter would be granted to EEA and Swiss citizens who required such leave once free movement has ended. It would be granted automatically upon arrival at the border, allowing them to work, study or visit for short periods as we transition towards the new skills-based immigration system, to be introduced from 2021.

The noble Lord, Lord Paddick, asked about consultation on the order. These are transitional arrangements to ensure that the border remains fluid after the end of free movement, and until we move to the order arrangements, from 2021 onwards. These plans were set out in the Government's White Paper, *The UK's Future Skills-Based Immigration System*, and the Government intend a 12-month period of engagement on such plans. The noble Lord also asked about the exit checks on EU nationals now. They will be introduced when we leave.

Lord Paddick: I am a little confused. At points, the Minister appeared to say that this was a temporary arrangement in the event of no deal; at other times, she talked about a temporary arrangement pending the introduction of a skills-based scheme. At some points, she talked about that scheme being in place by January 2021; in other places, she talked about it being our intention to have a skills-based scheme in place by January 2021. Is it definite or an intention?

On the light-touch regulatory regime, does that mean that there is a mechanism to enforce the three-month limit on stays in the UK or that there is no such mechanism? Light touch and non-existent are two different things.

Lord Kennedy of Southwark: I thank all noble Lords who have spoken in support of my amendment. The inconsistency, the lack of scrutiny and the whole basis on which the Government are making the regulations are the issues in question for me. The noble Lord, Lord Deben, said much more eloquently than me everything that I wanted to say and I agreed with every word. The only thing I would add is that I am equally confused by the position of my own party on these matters, but that is probably for another place. I am happy to withdraw my amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Immigration, Nationality and Asylum (EU Exit) Regulations 2019

Motion to Approve

6.09 pm

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

That the draft Regulations laid before the House on 11 February be approved.

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, delivering a deal with the EU remains the Government's priority. We are nevertheless preparing for a range of scenarios.

UK domestic law has given effect to our obligations in the fields of immigration, nationality and asylum arising from our membership of the European Union. The UK has also been subject to directly effective EU law. When we leave the EU, aspects of our legislation and retained direct EU law will fail to operate effectively. They will contain deficiencies if they are not modified or revoked by this instrument.

These regulations make changes to a range of domestic primary and secondary legislation to prevent, remedy or mitigate deficiencies in law arising from the UK's exit from the EU. They ensure that our statute book operates on exit day if the UK leaves the EU without a deal until new legislation on these issues is commenced.

[Baroness Williams of Trafford]

First, the instrument makes technical changes required to correct wording in our legislation that describes the UK in terms of our membership of the EU or European Economic Area. The changes do not alter the effect of the legislation. Similarly, it also makes technical amendments to domestic legislation that refer to EU rights that are retained by the European Union (Withdrawal) Act 2018.

Secondly, this instrument revokes relevant retained EU legislation relating to immigration. It also revokes a number of instruments which give effect to the UK's membership of the EU asylum acquis and which will be inoperable on exit. This is because by leaving the EU, the UK also leaves the asylum acquis. The order therefore revokes the Dublin regulation and the Eurodac regulation—that is where I got up to last time.

The instrument makes a number of transitional and saving provisions in relation to the measures being amended by it. This is so that the amendments do not have an inappropriate effect in respect of decisions or other action taken before their commencement.

Finally, this instrument applies the UK rules for criminality to EEA, Swiss and Turkish nationals; the amendment applies only to their conduct after exit. Our intention to apply the same rules to new arrivals, irrespective of the country from which they come, has already been announced by my right honourable friend the Home Secretary.

The Government believe that we must plan for every eventuality, including a no- deal scenario. Through introducing this instrument, they are taking practical steps to ensure that the UK statute book operates effectively on exit in the event that the UK leaves the EU without a deal.

This instrument will prevent deficiencies in immigration and asylum law arising from the UK leaving the EU. It ensures continuity until the Immigration and Social Security Co-ordination (EU Withdrawal) Bill allows the Government to introduce the new future borders and immigration system. I beg to move.

Baroness Lister of Burtersett (Lab): My Lords, the Secondary Legislation Scrutiny Committee states that the Home Office anticipates that loss of provisions of the Dublin regulations will have a minimal impact on how those seeking asylum in the UK are handled, yet the British Red Cross, which does invaluable work with asylum seekers in the UK, has raised real concerns in its briefing. I propose to raise just one—that which it says concerns it most.

As I understand it, the Government have committed only to maintaining the Dublin III regulation for unaccompanied children. Of course, that is welcome. However, it will leave many who are currently able to use Dublin III's family reunion provisions excluded. In 2018, of 1,215 Dublin III arrivals, only 159 were unaccompanied children under Article 8, and 869 were wider family reunion cases under Article 9, which allows people who claim asylum in another Dublin member state to join a relative in the UK who has been granted protection. Will the Minister give a commitment that the Government will retain these Dublin protections in our domestic law post Brexit? I believe that this would require an amendment to our family reunion legislation. This would give substance to the Home Office's assurance that loss of the Dublin provision will have minimal impact—or, in the words of the Explanatory Memorandum,

"a small impact on net asylum transfers".

If the 2018 pattern continues, we would otherwise be excluding more than 70% of Dublin III arrivals if this commitment is not given. Is this really what the Government intend?

6.15 pm

Lord Paddick (LD): My Lords, the Secondary Legislation Scrutiny Committee's Sub-Committee A has drawn two issues to the special attention of the House. The first is that there are EU specifications for certain documents, notably the uniform format for biometric residence permits for third-country nationals. The Home Office explained to the sub-committee that the EU is in the process of switching from the current design, the switch to be completed by all member states by the end of 2019, but the UK will not issue the new EU design. In addition to the questions raised by the sub-committee as to whether immigration officials conducting exit checks in foreign countries to establish whether someone has the right to enter the UK before they depart will be notified of such a change, and whether confusion will be created by deviating from the standard EU format, would a potential delay to the UK's departure from the EU for 12 months or more require the UK to adopt the new EU design despite what is contained in this instrument?

The other issue is the withdrawal of the UK not only from the Dublin regulation but from the Eurodac regulation. Currently, under the Dublin regulation, an asylum seeker must seek asylum in the first safe country arrived in. The Eurodac regulation covers the use and operation of the Eurodac biometric database, which notifies participating member states of a match if a person has been fingerprinted as an asylum seeker in connection with an illegal crossing into a country participating in the Dublin regulation. My understanding is that this instrument makes the necessary legislative changes to acknowledge that the UK will no longer be party either to the Dublin regulation or the Eurodac regulation, as the UK will no longer have access to the mechanism for returning asylum seekers to the first country they arrived in; nor will they be able to establish by fingerprints that they sought asylum in another safe country, as the UK will no longer have access to that database. Will the Minister explain the practical implications of the Home Office's response to the sub- committee that asylum claims may still be deemed inadmissible to the UK if the claimants have already been recognised as a refugee or could have claimed asylum elsewhere? How, in the absence of the Eurodac database, will the UK establish this?

If EU member states are no longer obliged to accept transfers from the UK under the Dublin regulation, what is the Home Office going to do with those asylum seekers? If by some other means the Home Office determines that an asylum seeker could have claimed asylum elsewhere, or has already been recognised as a refugee elsewhere, they are presumably genuine

refugees and so cannot be returned to their country of origin. As the UK will no longer be a member of the Dublin regulation, presumably they cannot be transferred to the EU member state where they first sought asylum either. I eagerly await the Minister's response.

The Lord Bishop of Durham: My Lords, it is striking how small a part asylum and resettlement have played in the conversation about a post-Brexit immigration system. Assuming—and praying—that we do not leave without a deal, I hope that discussion of these vital areas will not be limited to the margins of an already limited engagement with the immigration White Paper and the SIs. I have a series of questions for the Minister.

It might just be me, but I often struggle to see evidence of the Home Office applying the family test in SIs and other areas. Can the Minister assure me that the family test has been applied to these SIs? There is potentially a bit of a catch for people who have made an asylum application in an EU member state prior to 29 March, and who might have chosen to use the Dublin process for the purpose of family reunion. For such people, that might fall out if we leave on 29 March. Can the regulations be amended to ensure that, if they have made an application before 29 March, they will be able to use the Dublin process afterwards?

I endorse the questions of the noble Baroness, Lady Lister, and shall add a couple more. Of the 1,215 people reunited in the UK under the Dublin system in 2018, more than 800 arrived under Article 9, which allows people who claim asylum in another Dublin member state to join a relative in the UK who has been granted international protection. What assessment has the Minister made of how many of those people may have been eligible to be reunited under Part 11 of the UK's Immigration Rules? Article 9 also allows people in other EU member states to join relatives in the UK who have been granted refugee status. It is concerning that people in these circumstances have had to travel to Europe to reunite, rather than being able to apply for refugee family reunion under the UK's own Immigration Rules. What plans does the Minister have to improve access to refugee family reunion under Part 11 of the Immigration Rules, including by expanding eligibility and reducing the costs that families face?

I fully accept that we have to withdraw from the Dublin arrangements, but it is about protecting people, as the Government have promised, into the future. Like the noble Baroness, Lady Lister, I am grateful to the British Red Cross for its advice on this.

Baroness Ludford (LD): My Lords, the right reverend Prelate makes a good point about the continuity of claims that have already commenced. If memory serves, the law enforcement regulations we were discussing earlier make provision for the continuation of cases that have already started. I too am interested in the answer to that question.

When we were discussing the previous SI, several of us were rather struck by the contradiction between the rhetoric about ending free movement and the reality that the Government actually intend to continue it on a one-way basis with no supervision or control whatever, which seems rather perverse. I am also struck by the proposal to pull out of Eurodac and the Dublin regulation, over which I sweated many days, weeks and months as an MEP—but that is neither here nor there.

The Home Secretary made several assertions on this earlier this year—not least when he curtailed his Christmas holiday to come back and deal with what he claimed was the major incident of a few hundred migrants crossing the channel. When addressing the other place on 7 January, he said that the first safe country principle is,

"at the heart of the EU's own common European asylum system",

which underpins the 2005 procedures directive and 2004 qualification directive. He went on:

"It is also a principle that underpins the Dublin regulation. The whole point of the Dublin regulation is that if someone has passed through another EU safe country, it is expected that they claim asylum first there".—[*Official Report*, Commons, 7/1/19; col. 89.]

Both in that speech to the other place and in numerous instances of press coverage, not least in the *Daily Telegraph*, a great deal of emphasis was placed on the ability of the UK to send back to other EU countries, particularly France, people whom he thought might be designated economic migrants and would not qualify for asylum. How he could know their status in advance is another question. He made a great deal of this ability of the UK to send people back rather than allowing them to seek asylum in Britain. I found another assertion as recent as a few weeks ago; defending his call to declare a major incident in January, he suggested on 21 February on a visit to Dover that,

"those seeking asylum in the UK should have done so in France or elsewhere on the continent".

A great deal of emphasis has been placed by the Government, particularly the Home Secretary, on the mechanisms of Eurodac and the Dublin regulation. Suddenly, they are going to disappear.

The Government have made some claims about what they hope to put in its place. Indeed, in the report of the Secondary Legislation Scrutiny Committee we are told in Paragraph 8—apparently this was supplementary information supplied to the committee—that the Home Office said:

"We are also mindful of the obligation in section 17 of the European Union (Withdrawal) Act 2018 (family unity for those seeking asylum or other protection in Europe)".

As the noble Baroness, Lady Lister, pointed out, under Section 17 of the EU withdrawal Act this would apply only to children. The Home Office went on to say:

"We currently work bilaterally on returns with France where for example the Sandhurst Treaty, and the subsequent Joint Action Plan, features a mutual commitment to return more migrants to France who have used boats to illegally cross the Channel".

Could the Minister tell us how the family unity provisions under Section 17 of the EU withdrawal Act will work in the absence of the Dublin regulation? How will the arrangements with France, or with any other member state, work—sending people back whom the UK claims need to direct their claims towards the authorities in an EU state? What is the state of play on any replacement measures? Will we just have a blank space where Eurodac and the Dublin regulation currently exist?

Lord Kennedy of Southwark (Lab Co-op): My Lords, this SI makes changes to 21 separate pieces of primary legislation. Again—and this has been a running theme through many of the SIs today—that is just wrong. Can the Minister explain why there is no suitable Bill which this could have formed part of? Can she also explain why the immigration Bill passing through the other place is not a suitable vehicle?

Putting these changes in a Bill would have allowed Members of this House and the other place to scrutinise exactly what they mean for each of these different Acts, and to table amendments if necessary. If we are to be told that these are just technical, that is fine—we get technical matters in legislation all the time and, as noble Lords will know, they are nodded through without any fuss. But it is this House which should take the decision, not the Government, on whether they should be nodded through or not.

I am aware of the concern about how the rules affect individuals. It is sometimes almost impossible for lawyers, judges and Home Office officials to understand the rules and regulations, let alone the average person applying for a visa with or without the help of legal aid. Good parliamentary scrutiny helps to improve legislation, but by bringing these instruments forward in this manner the Government are not allowing themselves the benefits of that, as there are many experts in this House who can help the Government improve what they want to do.

It could also be said that the instrument seems to be overreaching itself. The immigration Bill has not yet completed its parliamentary passage—it has certainly not got to this House. This statutory instrument makes changes for a post-Brexit immigration landscape that is not yet assured.

6.30 pm

Finally, as noble Lords have heard before, this statutory instrument revokes the Dublin III regulation, which determines which EU member state is responsible for determining an asylum claim. I accept that leaving the EU will mean leaving Dublin III, but I would have liked continuing co-operation on family reunion, even in a no-deal situation. Dublin III has been a crucial mechanism for reuniting refugee families. As we have heard, in 2018, over 1,000 people were reunited with their family members in the UK under that regulation, including over 150 children. If the UK leaves the EU with a deal, Dublin III will remain in place until the end of the transition period, during which the Government have committed to negotiate reciprocal arrangements on separated children. This should not be so much of a narrow agreement; it should be expanded to include all the family reunion cases allowed under Dublin III.

If we leave without a deal, we will immediately cease to be part of Dublin III, and many refugees will not be able to reunite with their families from 29 March. The UK Immigration Rules make provision for refugee family reunion, but evidential requirements are higher than under the Dublin regulation, and the definition of a "family member" is broader. Therefore I support the calls for the UK's Immigration Rules to be more generous in family reunion cases. I look forward to the Minister's response to the points raised.

Baroness Williams of Trafford: I thank all noble Lords who have taken part in the debate. By far the biggest area that noble Lords concentrated on was of course the Dublin regulation. The regulation contains rules to establish the criteria and the mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national or stateless person and the legal framework for returning and accepting asylum seekers to and from the EU. As I said, the instrument ensures that the statute book will continue to function effectively in a no-deal scenario for asylum and provide transitional arrangements.

In the event of a no-deal scenario, retained EU law becomes deficient, and with respect to asylum, the regulations we use to repeal the Dublin regulation and other common European asylum system measures that we are part of—for example, Eurodac, as the noble Lord, Lord Paddick, pointed out, and the European Asylum Support Office temporary protection directive—will reflect that we will no longer be part of the acquis. This SI ensures that the statute book will continue to function. However, should the UK leave without a deal, Dublin requests relating to family reunification still pending resolution will continue to be considered under the existing provisions, and that will apply to any take-charge requests that we have received before exit day.

The noble Baroness, Lady Lister, asked whether the Dublin regulation will apply in the event of no deal. I will give an example of the numbers we are talking about. Clearly, we will not be a participating state in the Dublin regulation. While this presents a challenge, it also presents in some ways an opportunity to seek new agreements with the EU on asylum which better reflect our position as a third country. Since 2016, we have accepted more Dublin transfers than we have returned to our EU partners. The latest statistics, published in March of this year, show that 209 people were returned to the EU 27 under Dublin in 2018, making up around 5% of the total asylum returns. The Government have committed under the European Union (Withdrawal) Act to seek to negotiate an agreement with the EU that will permit unaccompanied asylum-seeking children to join family members. It would replicate a similar mechanism in the Dublin regulation which would allow children under 18 to join close family members where it is in their best interests.

On returning any individuals under other routes—I think the noble Lord, Lord Paddick, asked me about that—we will always seek to return those who do not require international protection or have the right to be here in accordance with domestic law. We will continue to make returns to countries where appropriate, and on a case-by-case basis.

Continued co-operation on migration issues is in the shared interests of the UK and the EU. We will work to secure a comprehensive returns agreement with the EU to replace our obligations under Dublin once we leave the EU. If unsuccessful, we will look to work bilaterally with EU member states to strengthen our relationships. For example, we will look to build and strengthen our reciprocal agreements with France as set out in the Sandhurst treaty.

The noble Baroness, Lady Lister, talked about family reunification without Dublin, as did the right reverend Prelate the Bishop of Durham. We strongly support the principle of family unity, and there are several routes by which families can be reunited safely. The UK's family reunion policy is generous, and we continue to reunite refugees with their immediate family, including by granting over 26,000 family reunion visas over the last five years. We are considering the options to ensure effective co-operation on family reunification of asylum seekers after exit. Deal or no deal, Dublin requests relating to family reunification still pending resolution will continue to be considered under the existing provisions, and, as I said, this would apply to any take-charge requests that we received before exit day.

Baroness Lister of Burtersett: Before the Minister moves on, can I be clear that the Government will look at the broader family reunion position? Can she give us an assurance that the aim will be that there should not be any diminution of rights for family reunion that currently exist under Dublin III?

Baroness Williams of Trafford: I can give an absolute assurance to the noble Baroness that those obligations, which we take seriously and have done for decades, will continue to apply in giving people who need it asylum or refuge. That is why I just went through the various channels and resettlement schemes that we have engaged in. It does not diminish our will to give people who need it refuge and asylum in our country.

I shall move on, but I stay on Dublin. I think it was the noble Lord, Lord Paddick, who asked about any other international agreements affecting asylum that would be affected by Brexit.

Lord Paddick: No, it was not.

Baroness Williams of Trafford: No, it was not; I am making that up, but I think someone asked it. As a signatory to the 1951 UN refugee convention and the ECHR, we are committed to continuing to fulfil our responsibility. The UK is part of a number of EU readmission agreements with third countries; we are working to replace a number of them with bilateral agreements.

I think this goes to the point made by the noble Baroness, Lady Lister. Our attitude is not changing towards asylum seekers because of Brexit. She will know, because I have said it before, that in 2017, the UK received the fifth highest number of asylum claims in the EU, and since 2016, we have accepted more Dublin transfers than we have returned, as I referred to earlier. In the year ending June 2017, we resettled more than 16,000 refugees from outside the EU, more than any other EU member state and more than a fifth of all resettlement to the EU. We can also be proud of our leading role in supporting children affected by the migration crisis. Since the start of 2010, the UK has granted more than 51,000 children resettlement, refugee status or alternative forms of protection.

The noble Lord, Lord Paddick, definitely asked about admissibility, and I think the noble Baroness, Lady Ludford, referred to it as well. We have always believed that people should be prevented from making claims in more than one country and on multiple occasions. Asylum should always be claimed in the first country that a migrant reaches, as the noble Baroness said. It is vital that our new system does not encourage asylum-seekers who have already reached a safe country to choose to move elsewhere, so we will continue to assess each asylum claim on its individual merits, as set out in the Home Secretary's Statement to the House on 7 January.

If an individual has travelled through a safe third country and failed to claim asylum, that will be taken into account in assessing the credibility of their claim. This is a widely held principle accepted by the UNHCR, and it is important to send a clear message to smugglers and traffickers and discourage secondary movements. The standards for protection and assistance will in no way be diminished by the UK's exit from the EU.

On returning asylum-seekers, the UK is attempting to negotiate an ongoing EU-UK readmission agreement which will replace the current Dublin return capability, and this would ideally be underpinned by a biometric system like Eurodac, although clearly it will not be identical to Eurodac. Inadmissibility rules are domestic law and will still be in place regardless of whether the UK leaves the EU.

Finally, the noble Lord, Lord Kennedy, asked why we are using an SI, not the Bill, to legislate. It is important to ensure that the statute book is operable on exit date, especially in a no-deal scenario. As the Bill has just completed its Committee stage in the Commons, we do not expect it to make it in here by 29 March. With that, I hope that I have answered all the questions and I commend the Motion.

Motion agreed.

Terrorist Attack: New Zealand

Statement

6.42 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I shall repeat an Answer to an Urgent Question asked in the other place earlier today. The Answer is as follows:

"Thank you, Mr Speaker, and I am grateful to the honourable lady for asking the Question so that the Government can set on record our position towards extreme right-wing, neo-Nazi and other types of violent terrorism. The Home Secretary would have liked to respond personally to this Urgent Question, but he was visiting Regent's Park mosque with the Communities Secretary today to show support for British Muslims, following last week's horrific terrorist attack in Christchurch. The attack was a sickening act of terrorism which this Government condemn, as we do the incident reported in Utrecht today and the attack in Surrey on Saturday evening.

The Government take all forms of terrorism and extremism seriously. Our counterterrorism strategy, Contest, does not differentiate between what motivates the threat. It is designed to address all forms of terrorism, whatever the ideology, be it Islamist, neo-Nazi, far-right or extreme left-wing.

[Baroness Williams of Trafford]

If we are to tackle terrorism in the long term, we must challenge those seeking to radicalise people. The Prevent policy is designed to safeguard our vulnerable citizens from being recruited or motivated into terrorism. That is why I always urge people to get behind the policy. Our counterterrorism strategy is agnostic to the threat. It is not relevant to us what name terror strikes; it is the use of violence and hate that we seek to stop. Government and law enforcement will direct their funding wherever the threat emerges, and if we are to stay one step ahead as the threat changes, so must the funding. We will continue to keep funding for protective security measures under review as that threat moves, and will indeed consistently be reviewed for places of worship and other areas that may be vulnerable.

Social media platforms should be ashamed that they have enabled a terrorist to live-stream this evil massacre and spread this mantra of hate to the whole world. As the Home Secretary has made clear, "Enough is enough". We have been clear that tech companies need to act more quickly to remove terrorist content and ultimately prevent new terrorist content being made available to users in the first place. This must be a wake-up call for them to do more. There can be no safe spaces for terrorists to promote and share their sick views. The online harms White Paper will be published imminently and it will set out clear expectations for tech companies to keep users safe, and what will happen if they fail to do so. This Government take the growing threat of the extreme right wing extremely seriously, and I can assure the House and our Muslim communities that we will stand together to counter it wherever it manifests itself in our society".

6.46 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first, I condemn the terrorist attack in Christchurch, the attack in Utrecht and the attack yesterday in Surrey. All the victims of these incidents are in my thoughts and prayers. Terrorists can never be allowed to win; we utterly reject their message of hate, violence and killing. I also express my anger and disappointment at the actions of the social media companies following the terrorist attack in Christchurch—time and time again, they fail us. They are publishers and are responsible for the content on their platforms. Can the Minister confirm that the White Paper she referred to in her Statement will be the start of putting on the statute book the toughest laws possible in the UK to ensure that these companies understand their responsibilities and that there will be serious consequences where they fail to take them seriously?

Baroness Williams of Trafford: I absolutely confirm to the noble Lord that the White Paper and its consequent legislation will tackle this. I have had numerous contacts with CSPs; on each occasion, I have made this point most strongly. They have heard submissions from the honourable Member Luciana Berger about some of the disgusting content about her that has been put online. I have only to look at Twitter to see some of the absolutely appalling comments that people make, particularly about Members of either your Lordships' House or of the other place. To put such a video online is the final straw, so I totally agree with my right honourable friend the Home Secretary, and the sooner this legislation comes, the better.

Baroness Hussein-Ece (LD): My Lords, I also associate myself with the remarks of the noble Lord, Lord Kennedy. The absolutely shocking events in Christchurch last Friday sent shockwaves right around the world, particularly in this country—Muslims here were fearful of going to a mosque on Friday as well. It is clear now that Muslims need more than thoughts and prayers because many fear that this can and will very likely happen in the UK.

I am glad the Minister highlighted social media responsibilities. The media and some politicians have created a climate in which far-right ideology and commentary can flourish—by giving platforms to right-wing hate preachers and to journalists who write racist opinion pieces, and to those who support Islamophobia on TV. Words have consequences—these events did not happen in a vacuum—and these are no longer fringe ideologies but ideologies tolerated and dressed up as freedom of speech. Will the online harms White Paper that the Minister mentioned include looking at mainstream media? The comments on online mainstream media pieces, such as those on *Mail Online*, are equally disgraceful and as disgusting as those on social media. That needs to be seriously looked at.

The Minister mentioned the Prevent programme, but it has, until recently, failed to challenge or change the attitudes of those on the far right. We urgently need an anti-extremism strategy that addresses the subversive far-right activity that has been allowed to flourish. Will the Government use their powers to take direct action to tackle these far-right extremists, and will the review of the Prevent programme investigate how the far right has been mainstreamed? As I mentioned, it has been given regular platforms, especially on channels such as the BBC. Last Friday on "Newsnight", disgracefully, a hate organisation called Generation Identity was invited to comment on the murders. What will be done about this?

Baroness Williams of Trafford: I thank the noble Baroness for her comments. To start with her last point, I understood that some of Generation Identity's members were supposed to be speaking at an event last year in this country and that the organisers cancelled the event so that Generation Identity could not have a platform to spread its hate. None the less, the mainstream media invited a comment from it.

The White Paper is entirely the platform from which to discuss—effectively, it is a pre-consultation on the legislation—whether mainstream media should be included. Mainstream media should also get its religious literacy right. The noble Lord, Lord Singh, who is not in his place, always talks about it: people are very sloppy with language. We all have a responsibility to be careful about that. The noble Baroness talked about people saying things in the name of freedom of speech, but with freedom of speech comes the responsibility to not let hate take hold. I have often heard freedom of speech used as an excuse to mete out hate and division towards other people—wherever they might be, but particularly in communities where they seem to have a grip.

She also talked about Muslims living in fear—and Muslims are in fear. In Manchester on Friday, I felt a terrible sense of unease. However, there was a lovely vigil on Friday evening, where people of all faiths came together—it was really touching. While people were out celebrating St Patrick's Day in one bit of Manchester, in another part, just nearby, everyone of any faith and none was coming together to think and pray for our friends in New Zealand.

The noble Baroness also talked about Prevent, which is as much about the far right as it is about Islamist extremism. In fact, we are absolutely cognisant of the referrals to Channel on that issue over the past couple of years having increased significantly, going from 30% to nearly 50% of all referrals. We cannot talk about Prevent without talking about the far right.

Baroness Warsi (Con): My Lords, I add my voice to the sentiments of all three Front-Benchers. Does my noble friend agree with the comments made by the most reverend Primate the Archbishop of Canterbury, who described those who co-opt Christian language in their hate and speak about a Europe of Christendom against Muslims as "blasphemous"? Does she also agree that, despite numerous mentions of Christianity, biblical teachings and crusade references in the manifesto and act of the New Zealand terrorist, we do not believe this to be a Christian terrorist, nor do we believe that Christianity and Christians are to blame?

I hear my noble friend's sentiments about being shocked, but does it surprise her that I am neither shocked nor surprised by this act? It has been a long time coming. Many of us have warned the House about the rise of Islamophobia. Therefore, would my noble friend consider some real action to come out of this tragedy? I do not necessarily expect an answer today, but will she take back and consider the Government adopting the definition of Islamophobia as detailed by the All-Party Parliamentary Group on British Muslims? That definition has now been adopted formally by the Liberal Democrats and is being considered and supported by the Labour Party. The party in government is the only party refusing to accept it.

Will she also ask her department to end its policy of disengagement with British Muslims, which has now been in place for more than a decade? Will she send out an unequivocal message that Islamophobia will not be tolerated in politics, specifically not by the party in government? We can do that by ending the culture of denial in our party and instigating an independent inquiry.

Baroness Williams of Trafford: I thank my noble friend for her points. On her last point about Islamophobia, I think she knows that any hatred towards anybody, regardless of their colour or creed, is absolutely deplorable to me. Certainly, if she or anyone else refers to me any examples of Islamophobia they have witnessed or had reported to them, I will take action and follow up on it immediately.

My noble friend asked about the policy of disengagement. We will engage with people who share our values, abide by the rule of law and are committed to the tolerance of different faiths in our society. I know that my right honourable friends the Home Secretary and the Communities Secretary held an Islamophobia round table last week, which discussed the Anti-Muslim Hatred Working Group working on a definition of Islamophobia. I am sure that the definition the APPG came up with will provide food for thought.

My noble friend talked about being shocked but not surprised. I am shocked but not surprised every day of the week by some of the things happening in society. Two years ago, it started in earnest on the streets of this country. We must constantly be shocked by it, otherwise I do not think that anything would be done. I have just been told that I am out of time, but I will finish on the words of the most reverend Primate the Archbishop of Canterbury about Christianity. Christianity, or any other religion, can never be used as an excuse to do the sort of things we have seen on our streets and on the streets of other countries.

Lord Blunkett (Lab): Are we out of time?

Noble Lords: Yes.

Brexit: Article 50 Period Extension Procedure

Statement

6.58 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, with the leave of the House I shall now repeat in the form of a Statement the Answer to an Urgent Question given earlier today in another place by the Parliamentary Under-Secretary of State for Exiting the European Union, the Member for Spelthorne. The Statement is as follows:

"Mr Speaker, as set out in a Written Ministerial Statement and in accordance with the Motion approved by this House on 14 March, the Government will now seek to agree an extension with the European Union. The extension process has been set out in a government paper, published last Thursday. While Article 50 does not set out how either party should request an extension, the Government believe that it would be appropriate for the Prime Minister to write to the President of the European Council.

It is highly likely, and expected, that the European Council will require clear purpose for any extension, not least to determine its length. The European Council also has to approve an extension by unanimity. With this in mind, we will look to request any extension in advance of the March European Council. It is the Government's expectation that the European Council will decide whether to agree to any UK request at this meeting.

As soon as possible, following agreement at the EU level, we will bring forward the necessary domestic legislation to amend the definition of "exit day". That legislation will take the form of a statutory instrument. If agreement is reached at the European Council, the statutory instrument will be laid in Parliament next week. It will be subject to the draft affirmative procedure

[Lord Callanan]
and will need to be approved by each House. I hope that this reassures honourable and right honourable Members about the procedure that will be followed this week and next".

6.59 pm

Baroness Hayter of Kentish Town (Lab): Well, I think we all feel rather sorry for the Minister, who has, after all, said again and again that we will leave on 29 March and now knows that we will not—and that is because of the Prime Minister's failed strategy of running down the clock to get her own way.

We are told that, if the Government are allowed to table the existing deal yet again in the Commons and it wins approval—the Speaker has just suggested that he is not minded to permit a third meaningful vote without a substantial change to the deal; we hear that perhaps we will have to prorogue and then come back—they will apply for an extension to 30 June.

The more likely eventuality is that the Government will fail to get their deal agreed and thus request a longer extension, such that we will need to participate in the European Parliament elections. Given that returning officers must publish notice of the poll by 12 April, with the Government announcing the date beforehand, can the Minister inform the House which date is planned for these elections, whether the Electoral Commission is geared up for this and when purdah will commence?

Baroness Ludford (LD): My Lords, I think the Speaker in the other place will tonight be a national hero for—

Baroness Goldie (Con): This is an Urgent Question; the Minister must respond.

Lord Callanan: The noble Baroness stated that we will not leave on 29 March. Of course, she cannot say that definitely. UK law still requires that we do, and any extension—which we have said we will apply for—has to be agreed unanimously by the European Council. She asked about the European elections; I will give her a detailed answer. EU law requires European parliamentary elections to be held between 23 and 26 May, and the new European Parliament will meet on 2 July. For the UK to participate in the elections, notice of the poll must be published by 12 April. This is set out in Schedule 1 of the European Parliamentary Elections Regulations 2004. In advance of this date—in other words, by 11 April—the Government would have to set the date of the poll by making an order under the European Parliamentary Elections Act 2002.

Baroness Ludford: My Lords, as I was saying, I think that the Speaker in the other place will tonight be a national hero for stopping this Government prolonging their manipulative games playing and making a mockery of parliamentary sovereignty. Over the weekend we heard attempts by the Attorney-General to claim that Article 62 of the Vienna convention could be invoked to get out of the backstop early and that this was a substantive change. That has been shot down by all good legal opinion.

MPs have already had two votes on Mrs May's deal, having been permitted to reassess the information on Brexit and update their views. If the Prime Minister had had her way, it would have been three or four votes. Meanwhile, the voters are denied even one opportunity for a rethink. So is it not finally time to allow the people to have the same opportunity for review and reassessment that MPs and the Government are permitting themselves? This weekend a poll showed that almost six in 10—57% of voters—wanted that opportunity.

Any extension sought under Article 50 must be for a democratic purpose, which does not mean only the European Parliament elections. It is as clear as day that the most legitimate purpose must be for a people's vote, and that the extension sought must be long enough to facilitate the holding of such a vote, with an option to stay in the EU on the ballot paper. It is rumoured that the Government will seek a nine-month extension. Can the Minister confirm whether that is true?

Lord Callanan: No, I cannot confirm that. I can also reassure the noble Baroness that we will not be seeking permission to hold another people's vote. We have already had a people's vote, and the people voted to leave. We are still committed to implementing the results of that decision.

Lord Wigley (PC): My Lords, what happens if the European Union turns down an application by the United Kingdom for an extended period of time for Article 50 and it comes back here? Will we not then need primary legislation to avoid a cliff edge on 29 March? Do the Government have a Bill ready for that eventuality?

Lord Callanan: We will then have the choice of either passing the meaningful vote or we will leave by the normal operation of the law that this House has voted for.

Lord Bridges of Headley (Con): My Lords, what purpose will the British Government tell the European Union that a long extension would fulfil? What is the precise purpose that the Prime Minister will say she needs this period for?

Lord Callanan: This will be something the Prime Minister will want to address in her discussions with the European Council. The reason we are requesting this is the request by the House of Commons in the vote it had last week.

Lord Browne of Ladyton (Lab): My Lords, I assume that the Government were aware that the other place had a convention dating back to 1604 that you could not bring a proposition substantially the same as one that had already been decided in the same Session of Parliament. If that is the case, why is the Solicitor-General going about today saying that the House of Commons Speaker's restatement of that convention—that is all he did—has generated a "constitutional crisis"? Is it not the Government's intention to get the House of Commons to breach its own convention repeatedly until they got their preferred deal through the House of Commons that generated the constitutional crisis, not the restatement of the convention?

Lord Callanan: I am not aware of the Solicitor-General making those comments. I have not seen them; I have been briefing for this session and listening to the debate in the House of Commons. The procedures of the House of Commons are a matter for the Speaker and the property of the House, and nobody is in any doubt about that.

Viscount Waverley (CB): Can the Minister confirm whether any extension of Article 50 could be rescinded on the same terms as the original Article 50 was applied for?

Lord Callanan: If the noble Lord is asking whether it can be withdrawn once it has been agreed, I do not think so. We are allowed to apply for an extension, and it has to be agreed unanimously. Once that is done, we will need to amend the appropriate legislation in this country, which is the EU withdrawal Act.

Lord Dobbs (Con): My Lords, perhaps I might ask my noble friend the Minister—and he is a friend—a gentle but serious question. How can he expect noble Lords from these Benches to support the policy that is now being advocated, which the Government themselves have consistently opposed and repeatedly promised to never bring before this House?

Lord Callanan: My noble friend makes a very good point and he knows I have some sympathy with his view. However, the will of the House of Commons was clear; it refused to pass the withdrawal agreement that would have resulted in us leaving in a satisfactory manner, and it has requested the Government to seek an extension to Article 50. That is what we will do.

Lord Davies of Stamford (Lab): My Lords, the Government have had two and a half years to resolve this matter. They have spectacularly failed to do so, in such a way that we have now become a byword throughout the world for incompetence at the highest level of government. Parliament has now been trying to solve the problem for a few weeks, and has so far failed to do so. Is it not time to go to the final stage—the one that will produce the highest degree of legitimacy for a final decision—and ask the British people, knowing all that we now know about the conditions that would apply if we had an arrangement with the European Union, and so much more than any of us knew in 2016? Is it not time to let the British public take a considered and final decision?

Lord Callanan: I refer the noble Lord to the answer I gave earlier to the noble Baroness, Lady Ludford. I do not agree that there should be a further people's vote; we have already had a people's vote and we should implement that one first.

Lord Tugendhat (Con): My Lords, the Minister is of course quite right to say that a majority of people voted to leave the European Union. Does he not therefore think it rather ironic that it is, by and large, Members of Parliament who are strongly in favour of leave who are doing so much to undermine the Prime Minister's plans to get us out of the European Union on the date that the Government promised and now look as though they cannot deliver?

Lord Callanan: There are indeed many ironies in this process, and that is one of the largest.

Non-Domestic Rating (Rates Retention and Levy and Safety Net) (Amendment) and (Levy Account Basis of Distribution) Regulations 2019

Motion to Approve

7.10 pm

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

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

Relevant document: 19th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Lord Young of Cookham (Con): My Lords, the regulations before the House do a number of things, the most of significant of which are to give effect to the new 75% rates retention pilot authorities that we are creating for 2019-20, and to set out how we will share £180 million of the levy account surpluses between authorities. They also make a number of more minor changes to the administration of the business rates retention scheme, not least to reflect the changes to the structure of local government that will come into effect from 1 April.

The regulations are highly technical, but what they do, as opposed to how they do it, can, I hope, be easily explained. The Government have a clear commitment to giving local authorities more control over the local tax income they raise. In 2013-14, for the first time since 1990, we allowed authorities to keep a proportion of locally collected business rates and to then benefit from the growth in their local tax base. Subsequently, we announced that we would increase the proportion of business rates kept by local government, and we have set out our intention that, from 2021, authorities should be able to keep 75% of local business rates.

Pre-shadowing that wider reform, as part of the recent local government finance settlement we announced that we would create 75% business rates retention pilots for 2019-20. We are creating these pilots in London and 15 other areas. In those areas, authorities will keep 75% of the local business rates they collect in 2019-20, instead of the 50% they would normally keep under the rates retention scheme. Based on authorities' own estimates of the business rates income they expect in 2019-20, those 75% pilots—the GLA, the London boroughs and 122 authorities outside London—will have additional revenue of £490 million in 2019-20, compared to what they would have received under 50% rates retention.

For this to happen, however, we need to make changes to the regulations that govern the day-to-day administration of the business rates retention scheme. The regulations before the House today make the

[Lord Young of Cookham]
necessary amendments; principally, to the relevant percentages of business rates income due respectively to central and local government and to the percentages due to billing and major precepting authorities. The percentages set by the regulations for 2019-20 are those proposed by the pilot authorities themselves at the time they applied for pilot status in the autumn, and have been confirmed with them subsequently. They will ensure that the 75% pilots operate as we, and local authorities, intended. They reflect the budgets those authorities have set, on the strength of which they have set the level of council tax set out in the bills being sent to council tax payers.

Under the rates retention scheme, authorities are entitled to a safety net payment if their business rates income falls below a certain level. The cost of safety net payments is met by charging authorities a levy of up to 50% of any business rates growth they achieve. In the past, we have also top-sliced an amount from the settlement to supplement the levy income and ensure that there is sufficient funding from which to make safety net payments. Since 2013-14, we have top-sliced a total of £255 million that would otherwise have been distributed to authorities through the settlement.

The top-slice and all the levy and safety net payments are made into, or from, a levy account which is kept by central government. The primary legislation that provided for the levy account requires that any surplus in the account should be distributed to local government or carried over until the next year. At the end of 2018-19, the levy account will have a surplus of £188 million. We announced at the 2019 local government finance settlement that we would distribute £180 million of that surplus to the sector.

7.15 pm

The legislation requires that we set out in regulations the basis on which any surplus will be distributed. The regulations provide that all authorities will get a share of the £180 million in line with their share of settlement funding in 2013-14—in other words, in line with need. We fully consulted local authorities on the proposed basis of distribution at the time of the provisional settlement in December: 93% of respondents agreed with what was proposed.

As your Lordships know, there will be alterations to the structure of local government in Dorset, Somerset, Suffolk and Northamptonshire from 1 April 2019. In Dorset two unitary authorities—Bournemouth, Christchurch and Poole; and Dorset—will be responsible for the delivery of local government services from 1 April. In Suffolk and Somerset, some existing district councils will be merged to create the new authorities of East Suffolk, West Suffolk and Somerset West and Taunton. In Northamptonshire, the fire and rescue function will pass from the county council to the Northamptonshire Police, Fire and Crime Commissioner.

The existing regulations that govern the day-to-day administration of the rates retention scheme need, therefore, to be changed to provide for the new authorities. The regulations before the House make those changes and ensure that the new authorities will, from 1 April 2019, get the sums to which they are entitled under the rates retention scheme.

The regulations also make two more minor, but important, changes. First, they make changes to levy and safety net calculations. The existing calculations set out in regulations reflect the fact that we compensate authorities directly, through Section 31 grants, for the changes that the Government have made to the business rates system, including changes made to small business rates relief. Changes made to the small business rates relief scheme from 2017-18 have had the effect of increasing the relief available to ratepayers. In turn, this has increased authorities' loss of income and, hence, increased the compensation paid to them through Section 31 grants. These higher amounts of compensation need to be recognised in the calculations of an authority's levy and safety net payments to ensure that authorities receive, or pay, the safety net and levy amounts that are due to them. The regulations amend the calculation of levy and safety net payments to reflect the changes to small business rates relief.

Finally, the regulations increase the Isles of Scilly's baseline funding level. This will ensure that, in the event that they lose significant business rates income, the safety net will protect them to a slightly greater extent. This is in line with decisions made by this House in the last two local government finance settlements.

These are highly technical but important regulations. They will ensure that the business rates retention scheme operates in 2019-20 as was intended and as local authorities expect. I beg to move.

Lord Shipley (LD): The Minister will be grateful for paragraph 8.1 in the Explanatory Memorandum, which states:

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

It is the first statutory instrument today that does not have that status. However, as the Minister said, it is technical but important.

I remind the House that I am a vice-president of the Local Government Association.

I understand that this statutory instrument has to be brought forward every year to enable the rolling 75% business rates retention pilots to take place, which are now being extended to new areas for 2019-20. In that respect the SI is fine. As the Minister stated, it also allows for the new authorities being created out of reorganisation, such as Dorset, to levy business rates. Obviously that is essential. It allows for the return to councils of money which had previously been levied by central government through the business rates account. The total sum amounts to £180 million, which means that the Government will make themselves popular with those receiving it.

Although this is a technical SI, we should reflect that the basis of business rates is under question and under stress, not least because of the pressures on the retail sector. No doubt we shall have opportunities in the future to discuss that issue in greater depth. However, as the Minister said, this is a technical but important statutory instrument and it has our support.

Lord Beecham (Lab): My Lords, I declare my local government interests as vice-president of the LGA and as a councillor in Newcastle.

The noble Lord, Lord Shipley, referred to the present situation in respect of business rates. There is a bland assumption by the Government that there is a uniform approach to what can be raised locally, either by domestic rates or business rates, but that is not the position. The amounts that can be generated vary considerably between authorities and the Government have paid little attention to that disparity, in terms of either council tax or business rates.

The Government are making much of the £180 million they are going to restore to authorities. That is £100 million less than the loss that Newcastle City Council alone has sustained in grants from central government since 2010. It is a pitifully small amount and will make little difference to the efforts of local councils—of all political characters—to maintain local services. This is not a substantial change in favour of local government and the Government have to look again at the wider issues of funding a sector of the economy which has been substantially underfunded for the last eight years.

Lord Kennedy of Southwark (Lab Co-op): My Lords, as the Minister said, the regulations are technical and in that sense I am happy to support them as they stand. I concur with the comments of the noble Lord, Lord Shipley, and my noble friend Lord Beecham and I am sure the Minister will respond to the points raised.

The only issue I want to raise concerns Northamptonshire being in the list of council areas that are involved in this scheme. I know the county council is the precept authority, or the collecting authority, but equally it is a council in crisis. The local government reorganisation is happening because the county council has effectively almost gone broke. Is the Minister confident that we should be doing this in this area, in view of the problems that have been widely reported over the past year? That said, I am very happy to support the regulations.

Lord Young of Cookham: My Lords, I am grateful for the contributions of all three noble Lords. As the noble Lord, Lord Shipley, said, this is the first non-Brexit SI, although I noticed it emptied the House as I rose to my feet. He mentioned that the announcement of £180 million going back would be popular with local government. We are always seeking to court popularity with local government, although we do not always achieve it. I am grateful to hear that on this occasion, we have.

The noble Lords, Lord Shipley and Lord Beecham, raised slightly broader issues about the pressures confronting local authorities, which I recognise. We have had to take difficult decisions on public expenditure over recent years, and they have impacted on local authorities and government departments. There will be an opportunity to discuss that.

Finally, the noble Lord, Lord Kennedy, mentioned Northamptonshire. The change in Northamptonshire is relatively minor and switches responsibility for one service from A to B. I do not think it detracts from the more structural changes that are now having to take place in that county.

Lord Shipley: My Lords, I am not sure whether I declared my interest as a vice-president of the Local Government Association. I feel I should do so and remind the House of it.

Lord Kennedy of Southwark: I, too, forgot to remind the House that I am a vice-president of the Local Government Association.

Lord Young of Cookham: I was a vice-president of a preceding local government association, but I was expelled when I introduced rate capping.

Motion agreed.

Services of Lawyers and Lawyer's Practice (Amendment) (EU Exit) Regulations 2019

Motion to Approve

7.24 pm

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

That the draft Regulations laid before the House on 12 February be approved.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, this draft amending instrument forms part of our ongoing work to ensure that, if the UK leaves the EU without a deal, our legal system will continue to work effectively. Your Lordships will be aware that, in preparation for leaving the EU, the Government have signed a UK-Switzerland citizens' rights agreement, as they have done with the EEA states that are outside the EU. This instrument will modify the way in which relevant retained EU law is revoked in order to retain regulatory provisions for those in scope of the UK-Switzerland citizens' rights agreement if a withdrawal agreement with the EU is not agreed and implemented before the UK's exit from the EU. This draft instrument makes changes to the relevant legislation in England and Wales and in Northern Ireland. Scotland is legislating separately with the same policy intention.

Noble Lords will be aware that the UK, as an EU member state, is required to implement two European directives for legal services which are extended to Swiss nationals under the EU-Switzerland free movement of persons agreement. As part of preparations to leave the EU, the Government laid a statutory instrument to amend the domestic legislation implementing these two directives. The original statutory instrument revokes the relevant provisions in the event that the UK leaves the EU without a deal.

This draft instrument amends the way in which the domestic legislation is revoked, retaining some provisions for Swiss lawyers and those in scope of the UK-Switzerland citizens' rights agreement. This is to ensure that retained EU law operates effectively in the event that the UK leaves the EU without a deal, and that deficiencies in retained EU law are remedied in a way that reflects our agreement with Switzerland.

The UK-Switzerland citizens' rights agreement grandfathers recognition and establishment rights for UK and Swiss lawyers, provided that they have transferred into a legal profession of the other state before exit day. It also protects the rights of UK and Swiss

[Lord Keen of Elie]
lawyers who are established, registered and providing services under their home title. So long as they remain registered, they will be able to continue to provide services as they do now. It also provides a transition period of four years for lawyers to register as registered European lawyers or to transfer into a legal profession of the other state under these arrangements. These arrangements include citizens who have started but not finished studying for professional legal qualifications.

Finally, it allows lawyers and law firms to continue to provide up to 90 days' temporary services a year for at least five years, where a contract to provide such services was agreed and started before exit. Swiss lawyers will also be able to apply within four years of exit day to join an English and Welsh or Northern Irish profession on the basis of three years' qualifying experience as a registered European lawyer, in addition to routes available to foreign-qualified lawyers. For Swiss lawyers and law firms with interests in the UK, this instrument will bring legal certainty. It will effectively implement in domestic law the obligations that we have undertaken at the level of international law pursuant to the UK-Switzerland citizens' rights agreement, which is why it is necessary to bring forward this instrument at this time. I beg to move.

Lord Thomas of Gresford (LD): My Lords, I congratulate the Ministry of Justice team on producing an impact assessment which would meet the deepest desires of the noble Lords, Lord Adonis and Lord Foulkes. It is excellent. It fully covers the material and, combined with the evidence base, must have involved a great deal of work. The tragedy is that it refers only to 10 Swiss lawyers in this country—and not only that but it has no effect unless we leave the EU without a deal, which looks increasingly unlikely, having regard to the Motions passed in the House below. However, in itself this instrument contains nothing objectionable.

7.30 pm

Lord Beecham (Lab): My Lords, it is ironic that our departure from the EU, if it occurs, will necessitate an agreement with Switzerland, which of course is not a member. Can the Minister indicate the extent of the problem that the regulations seek to address? How many Swiss lawyers currently practise in the UK—my understanding is that there might be as few as 10—compared with EU lawyers, and how many UK lawyers do so in Switzerland? How do these figures compare with those of other EU states?

The regulations are described as resulting "in the short term" with parties avoiding,

"the costs of adjusting their business models".

How long is this short term expected to be, and what is the estimate of the cost of adjusting business models?

Paragraph 12 of the Explanatory Memorandum avers that there are all of 10 Swiss registered European lawyers in England and Wales. How many is it estimated will be here after Brexit? The impact assessment states that clients seeking legal services from them will not be allowed to obtain them unless the lawyers are "permanently established in the UK". How is that status to be established? How many are deemed to fit that description now—presumably there are 10—and how will that be judged in the future? What is the rationale of the provision that Swiss lawyers will have only four years after Brexit to apply for REL status? Why will Swiss lawyers with contracts be able to serve clients for 90 days a year for up to five years? Why just 90 days? Will they have to abandon their clients in the midst of cases, for example?

The impact assessment fails to live up to its title when it explicitly states that:

"The cost of this change cannot be quantified as no data exists showing the number of Swiss lawyers providing regulated services in the UK on a temporary basis",

and that the,

"cost to regulators is not quantifiable".

Can the Minister indicate which provisions of these regulations, if any, are quantifiable? What is the anticipated impact on UK lawyers practising, or seeking to practise, in Switzerland, given that they will have a four-year period to register or, if not yet in Switzerland, to apply to transfer to Swiss professional status? UK law firms will be able to continue to serve existing Swiss clients for up to 90 days a year for five years after Brexit subject to written contracts being in place before exit day. What is the estimate of the number, and proportion of the existing number, that Her Majesty's Government envisage will do so?

The Law Society points out that there is no provision to allow UK law firms to operate in Switzerland under their current structures. What, if any, estimate have the Government made of the impact of this position? The society suggests that some firms will have to amend their corporate structure and that a future trade agreement with Switzerland will have to be negotiated. What, if any, plans do the Government have to deal with this eventuality? What estimate have the Government made of the impact of the changes on the international standing of UK legal services and the contribution they make to the standing of our legal services and to our economy?

Lord Keen of Elie: I am obliged to noble Lords. I think the answer to the question posed by the noble Lord, Lord Beecham, is that we are implementing an international treaty, and that is why these steps have been taken. However, to respond to the point made by the noble Lord, Lord Thomas of Gresford, no Swiss lawyers are registered with the Bar Standards Board. We understand that 10 are registered with the SRA, and that is where that figure comes from.

It is not necessary for Swiss lawyers coming into the United Kingdom to carry out temporary work to register and therefore it is not possible to monitor the number, because they are entitled to come in on a temporary basis to provide legal services. The period of four years reflects the fact that it is possible for a Swiss lawyer to transition into membership of the relevant professional body in the United Kingdom in under four years—I understand that at present it is three years—and therefore there is full allowance for that.

With regard to English lawyers practising in Switzerland, at the last count, which I think goes up to 2015-16, in the region of 236 lawyers practising in Switzerland full-time were English-qualified.

With regard to the future corporate structure of English firms operating in Switzerland, I would not venture a view as to what the precise structure would be in the future. However, from engagement with the major legal firms in England and Wales over the last year or so, it is quite clear that they have made provision in anticipation of our leaving the EU, with the consequent effect that that will have on the EU-Swiss agreements on which we rely. We can therefore be reasonably confident that their structures will be compliant with the requirements of Swiss law.

On the question of the international standing of our legal profession, we see no reason to doubt that it will be maintained after Brexit, nor any reason why the terms of the UK/Switzerland citizens' rights agreement as implemented by this SI should in any way derogate or detract from the standing of our legal profession in England and Wales, and indeed in the UK as a whole.

In these circumstances, we consider that this is a relatively technical amendment to the existing provision that is being made in anticipation of our departing from the EU without a deal. Of course, in the event that the deal is implemented and we go into a transition period, the application of this instrument will be deferred until the end of that period. We will then determine at that time whether in fact we have in place the relevant free trade agreements with both the EU and Switzerland.

Lord Beecham: Before the Minister sits down, obviously I was throwing questions at him that he may not have been able to answer, so will he perhaps cover those that have not been answered in a letter to me in due course?

Lord Keen of Elie: I will consult *Hansard*. If it appears that there is a question that the noble Lord posed that is relevant to this instrument then I will respond.

Motion agreed.

Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Motion to Approve

7.36 pm

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

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

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, this draft instrument forms part of the Government's work to ensure there are functioning domestic laws in the event that the UK leaves the EU without a deal on cross-border co-operation on family law. The instrument relates solely to the Government's no-deal exit preparations. Again, should we reach an agreement on our future relationship with the EU, the Government will review the instrument and amend or revoke it as necessary at the end of a transition period.

This instrument gives effect to a commitment that I gave on behalf of the Government during the debate on 29 January on the Government's main no-deal family law instrument, the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019. That family statutory instrument has now been made. It puts in place the arrangements in cross-border family law cases that will apply if we leave the EU without a deal. That instrument revokes the retained EU law in relation to Brussels IIa and the maintenance regulations and makes consequential changes to domestic law, including changes to ensure that the jurisdiction rules for cross-border maintenance matters are restored to their pre-EU form.

This small amending instrument addresses a technical issue raised by family law stakeholders. Some family law stakeholders have raised concerns that by the amendments to the Children Act 1989 and the Children (Northern Ireland) Order 1995 made by the main family instrument, we have inadvertently narrowed the jurisdiction of the court and the range of financial remedies that the court may order when compared to the position that currently exists under the EU maintenance regulation. That was not the Government's intention. Without fixing this issue, the consequence would be that in some cases the court would be limited in terms of the financial remedies that it may grant. For example, the court would be able to make an order only for periodical payments and not for a lump sum or a property settlement or transfer. I extend thanks to the family law practitioners for bringing this issue to our attention.

While the existing approach is workable, the Government have decided to address those concerns to ensure that jurisdiction grounds and remedies are not reduced as a result of a no-deal exit because these are jurisdiction grounds and remedies that emerged after we had engaged with the relevant EU regulation. The instrument therefore amends the principal 2019 regulation so that, post exit without a deal, the courts in England and Wales or Northern Ireland will be able to order all types of financial remedies available under the Act or the Northern Ireland order in circumstances where either a parent, a guardian or the child is habitually resident or domiciled in England and Wales or Northern Ireland at the date of the application. The amendments also ensure that the court has jurisdiction to order a financial remedy in respect of a child where the parents are not married, in a similar way to when child maintenance is being considered ancillary to divorce.

The impacts of the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 were set out in an impact assessment published on 24 January 2019. This instrument amends those regulations so that the unintended impact of the amendments to the Children Act 1989 and the Children (Northern Ireland) Order 1995 on the court's jurisdiction and remedies is rectified. As amended, the impact of the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 will be as described in the original impact assessment. In other words, we had assumed that they would operate in the way in which they now operate in light of this supplementary instrument.

[Lord Keen of Elie]

As I said, the instrument addresses concerns raised by stakeholders. My officials met these stakeholders to discuss their concerns. A draft of this instrument was provided to the statutory Family Procedure Rule Committee. Its members include some of the family lawyers who raised these concerns about the amendments to the Children Act 1989 and they were invited to comment on the draft. Those comments were taken into consideration before the instrument was finalised and laid. In addition, my officials have spoken to officials within the devolved Administrations.

In these circumstances, I stress that this is a highly technical instrument, which is intended to take us to the point we believed we would get to with the principal instrument. I beg to move.

Lord Hope of Craighead (CB): My Lords, the amendment which the regulation seeks to make is obviously highly desirable. However, I have a question for the Minister, because I cannot for the life of me see how it achieves its purpose in expanding the financial remedies available under domestic legislation. As far as I can see, the only passage which might possibly have a bearing is Regulation 2(2)(a), where we are told that the words,

"in relation to matters relating to maintenance",

are being deleted. Without more context, it is extremely difficult to see whether this achieves what the regulation seeks to do. I am happy to take the Minister's assurance that it does, or perhaps he can explain it a bit more. It is characteristic that these instruments are so economically worded that, without a whole lot of legislative material in hand, it is sometimes hard to make sense of them.

Lord Thomas of Gresford (LD): My Lords, this is a necessary rectification of the earlier regulations. Subject to what has already been expressed, we have no objection to it.

Lord Beecham (Lab): My Lords, I join my colleague in the House of Commons, and others in your Lordships' House, in welcoming these amendments which meet concerns raised by family law practitioners, as mentioned in the Explanatory Memorandum. They were concerned about the prospective narrowing of the jurisdiction for financial remedies and the type of remedies which would be available.

This raises the question of what consultation took place before paragraphs 14 and 16 of the EU maintenance regulation were originally amended. To be fair, the Government have been persuaded by family law practitioners that the concerns raised were valid, hence the revised amendment in this statutory instrument, but surely adequate consultation in advance of drafting it would have avoided the need to amend it. What consultation, if any, took place? What assurances can the Minister offer that this scenario will not be repeated?

This is not quite the MoJ equivalent of the fantasy ferry projects subscribed to by the former Lord Chancellor, Chris Grayling, but it is rather disturbing. It comes, after all, only some seven weeks since the original regulations were approved by both Houses, and just over four weeks since they came into force.

The Law Society is content with the changes, which effectively revert to the relevant Hague conventions and some English law extant before 2011. I am glad that the Government have recognised the problem, just about in time, and made the necessary change. However, it underlines the need for proper consultation before laying new regulations to comply with the fate which appears to await the country.

Lord Keen of Elie: I am obliged to noble Lords for their contributions. As the noble and learned Lord, Lord Hope, observes, the supplementary instrument is distinguished by its brevity. Nevertheless, I can assure him that it has the effect indicated by making the deletion from the relevant provision regarding maintenance. That was raised with the Family Law Committee as well. We consider that this will be effective. I will look at the point he raises and will write to him if there is further elaboration and assurance I can give him on it.

Regarding consultation, this issue arose at a very late stage when we were proceeding with the principal instrument. It is a highly technical issue. Indeed, there is some uncertainty as to whether the principal instrument did in fact cover these issues. It therefore proceeded, but, in the light of the concerns that had been expressed, we consulted further with family law stakeholders and brought it to the committee's attention. It was determined that we should, on any view, take the line—I was going to say "of least resistance"—that, come what may, there was no technical deficiency in the instrument in the event that we exited without a deal.

There was consultation with relevant stakeholders when the principal instrument was considered. Their response on these points came rather late in the day as far as we were concerned. The principal instrument therefore proceeded but I remind noble Lords that when I moved it I drew this point to the attention of the House quite specifically and said that we were giving consideration to a further instrument to address it. It has been at the forefront of our minds for some time. In the circumstances, I commend the regulations to the House.

Motion agreed.

Civil Partnerships, Marriages and Deaths (Registration etc) Bill

Returned from the Commons

The Bill was returned from the Commons with the amendments agreed to.

House adjourned at 7.46 pm.