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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

House of Lords

Tuesday 9 April 2019

2.30 pm

Prayers—read by the Lord Bishop of London.

Bereavement Benefit
Question

2.37 pm

Asked by ***Lord Polak***

To ask Her Majesty's Government what discussions they have had, and with whom, about the impact of the changes to bereavement benefit for parents with dependent children that were made in April 2017.

Baroness Stedman-Scott (Con): My Lords, Her Majesty's Government will assess the impact of this benefit, including for parents with dependent children, once sufficient evidence is available to consider all aspects of the policy. Work has already begun in this area, but we need to ensure that we build in enough time for the reforms to fully bed in. I am sorry that I am unable to confirm a timetable at this moment, but we are committed to carrying out the assessment.

Lord Polak (Con): I thank the Minister. The new system may help more people, but sadly it helps most children for a much shorter period, and it certainly does not help unmarried co-habiting couples, who are shamefully excluded.

Two years ago, Mark Jaffe, a husband and father—may his memory be for blessing—spoke from his death bed. Today, as he feared, his widow, Emma, and their two school-age children, receive no bereavement support, as a result of the new policy to limit payments to 18 months. I therefore ask the Minister, who is compassionate and works in a department that cares for the vulnerable, to consider introducing a new benefit specifically for the bereaved child, whereby bereaved children's support payments are paid until they finish full-time schooling. This would not only be compassionate but, in those tragic circumstances, the right thing to do.

Baroness Stedman-Scott: My Lords, the situation to which my noble friend refers—being bereaved of a loved one—is pretty traumatic and devastating, and our hearts go out to the bereaved. I would find myself in difficulty if I gave any impression that a new policy will be developed in this field. However, I and my colleagues in the department are very happy to meet to hear ideas about how a benefit could be developed and how it might be funded. The bereavement support payment is designed to help people to re-adjust in the first 18 months after a death, and other income-based benefits are available if a surviving parent is in financial need.

Baroness Thomas of Winchester (LD): My Lords, the Government said several months ago that they were considering what to do following the Supreme Court judgment in favour of cohabiting couples being eligible for the payment. Is it not now time to take action?

Baroness Stedman-Scott: Indeed. The judgment was clear that the current situation remains unchanged, and the ruling does not change eligibility rules for receiving benefits. However, the Government recognise that they have an incompatible law on the statute book and are actively considering options.

The Lord Bishop of St Albans: My Lords, it is two years since this came in, so we have quite a lot of evidence. Will the Minister assure the House that the review is totally independent, and that we will be able to see all the working out of what is proposed and the analysis? A large number of noble Lords are deeply concerned about this. Would the Minister be willing to meet with us to discuss how we might take it forward?

Baroness Stedman-Scott: I must tell noble Lords that in every evaluation I have been involved in I have been absolutely behind an independent process. I do not know whether the department plans to have an independent evaluation, but I will certainly take that point back. As always, I am very happy to meet noble Lords to explore issues and new ideas, and obviously how these are resourced.

Baroness Sherlock (Lab): My Lords, no one doubts the integrity of the Minister, but colleagues from around the House who have been raising this question for years are beginning to worry that the department has lost any sense of urgency in addressing it. The case described by the noble Lord, Lord Polak, was the awful situation of a man who knew that if he died before the reforms came in, his children would be supported until they left school; if he died just the other side of that line, they would not. Sadly, he died before the reforms took place. At the moment, this new payment is not even being uprated, so its value goes down in real terms year on year.

The Minister mentioned money. Although the Government said this was not about money, it was originally scored as saving £100 million a year in steady state after two years. Perhaps the Government could take that money and consider how they might invest it back into the parents of bereaved children. Will the Minister consider both those things?

Baroness Stedman-Scott: I can always rely on the noble Baroness to give me my homework, so I will go straight back to the department to try to get a sense of urgency on this. She has my word on that. The situation described by my noble friend, and the noble Baroness, is tragic, and I accept their points.

On the question of uprating, the bereavement support payment is a death grant benefit, rather than a benefit paid on an ongoing basis. It is not a cost-of-living benefit; it is paid in addition to means-tested benefits to protect the least well off. I take the noble Baroness's point that there are, on the face of it, cost savings, but it was never intended to be a cost-saving exercise. It was intended to provide support in the early days of grieving. It replaced something that was started in 1925 when women were not expected to work but their husbands were. It is right that we reviewed it, but I will take the noble Baroness's points back to the department.

Lord Brooke of Alverthorpe (Lab): Is the Minister aware that there are a number of charities that are active in this field? One in south London, Jigsaw South East, is in constant difficulties over money to keep itself and the services it offers going. Since the Minister is doing exploratory work, would she be kind enough to look at them and see whether further assistance could be given to them?

Baroness Stedman-Scott: Having run a voluntary organisation for many years, I understand the challenge of financing and the different pressures on organisations. I pay tribute on behalf of the whole House to organisations such as Jigsaw, the Church and the Salvation Army for all they do to support people in difficult times. I am very happy to look at, or indeed to visit, the project—if I am allowed to, I do not know—without making any promises about being able to conjure up some money.

Schools: Modern Languages

Question

2.45 pm

Asked by ***Lord Sherbourne of Didsbury***

To ask Her Majesty's Government what progress they have made in ensuring that more pupils study modern languages in primary and secondary schools.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, the take-up of modern foreign languages at GCSE is too low. While the percentage of those studying an MFL GCSE has increased from 40% in 2010 to 46% last year, more needs to be done. To this end we have, among a number of initiatives, created nine MFL hubs and have worked closely with Ofsted on its proposed new inspection framework. This has increased focus on the EBacc curriculum, which includes languages.

Lord Sherbourne of Didsbury (Con): I share my noble friend's concern. The latest survey I have seen shows that half the schools in England and Wales have dropped A-level courses in modern languages. Part of the problem is that our universities are not turning out enough graduates who can teach modern languages, and that is because universities themselves are dropping degree courses in modern languages. What are we doing about that?

Lord Agnew of Oulton: My noble friend is right; however, noble Lords will remember that we in this House passed the Higher Education and Research Act 2017. We have a market-driven higher education system where student choices drive demand. The role of government is to create the right conditions for providers to respond to economic and strategic priorities. To this end, universities need to do more to explain the longitudinal earnings outcomes of language degrees. For example, in a study that my department released in June of last year, language students at the median point, five years after graduation, earned more than those studying law, physical sciences or biological sciences. That sort of awareness needs to get out to potential undergraduates.

Lord Bassam of Brighton (Lab): My Lords, with Ofqual figures showing a drop of 7.3% in students taking foreign languages at GCSE and A-level, I invite the Minister to join me in congratulating our European partners, whose Governments are directly funding the teaching of Italian, German, French and Spanish in our primary schools. Will he tell the House what plans the Government have to encourage that continued economically viable support and commitment post Brexit, so that we can compete more easily in the global economy? Does he appreciate the irony of our seeking to leave Europe while our European partners are funding school posts at a time when we are cutting them?

Lord Agnew of Oulton: My Lords, I think the irony has to lie with the noble Lord opposite, because in 2004 the Labour Government removed the compulsory requirement for modern foreign languages at GCSE. It collapsed from 70% participation to 40% in 2010 and we have clawed it back to 46%. That is not enough, I absolutely accept that, and I give full commendation to the Italian Government who are helping with Italian in this country. The Goethe Institute is also helping with German and we have announced our own scheme, which has been running for three years with the Spanish Government, whereby we bring over young Spanish undergraduates to work in our schools.

Baroness Coussins (CB): My Lords, is the Minister aware that an estimated 35% of our MFL teachers are non-UK EU nationals, and that even if every single one of our students now doing languages at university went into teaching, the shortage of MFL teachers would still not be met? Will he therefore ensure that the shortage occupations list is amended when the new skills-based immigration rules are introduced, so that the list includes teachers of French, German and Spanish as well as Mandarin teachers, who are the only ones on that list at the moment?

Lord Agnew of Oulton: The noble Baroness makes a very good point, and I will certainly take that recommendation back to my department and the Home Office. The noble Baroness mentioned the Mandarin programme, which we began in September 2016. It started with 23 schools; we are now up to 64.

Lord Storey (LD): My Lords, has the Minister seen the survey carried out by the British Council last year, which found that a third of our state schools were not teaching whole classes of modern languages, particularly in year nine? The majority of these schools were academies. Is it not true that academies do not have to follow the national curriculum? Will he consider ensuring that academies and free schools have to teach modern languages as well?

Lord Agnew of Oulton: The noble Lord makes a valid point. He is correct in saying that academies are not obliged to follow the national curriculum, but we insist on a broad and balanced curriculum. The Ofsted changes to their framework will put much more emphasis on the EBacc, as I mentioned in my opening remarks, which includes modern foreign languages.

Lord Kirkhope of Harrogate (Con): My Lords, I am not a fuddy-duddy, but, while I appreciate and support more modern foreign languages being taught, does my noble friend not agree that the standard of English, particularly its grammar, in our schools and universities is now at its lowest level for a long time? Would he not agree therefore that we perhaps also ought to encourage the study of the classical languages, such as Latin, which helps all students understand English grammar better?

Lord Agnew of Oulton: My noble friend is right; I do not think he is being a fuddy-duddy at all. We have seen a degradation in grammar; I am a martinet in the department when I receive poorly written subs—I send them straight back. I commend to the House the small charity Classics for All, which is doing as my noble friend suggested—taking Latin into areas of deprivation. I have a few references to it here which might hearten him:

"What I hadn't expected when I started teaching Latin classes here was the students' sheer joy of learning Latin for its intrinsic beauty and the excitement of etymology! Students actually love declining and conjugating. They see a beauty in the language of ancient poets and warriors".

Even a child, Mohammed, said:

"I just love it. It's just fun".

I did not have the same experience when I was learning Latin.

Baroness McIntosh of Hudnall (Lab): My Lords, does the Minister agree with me that large numbers of children in our schools came into them as non-English speakers. They have learned to speak English, are in fact bilingual or sometimes trilingual, and are generally regarded within the education system as a problem rather than as the resource they actually represent. Can he say in what way the Government are encouraging schools to recognise children who have other languages already available and to use the resource they represent creatively?

Lord Agnew of Oulton: I reassure the noble Baroness that multilingual children are not seen as a problem from my experience in the number of schools I took over—indeed, one of the last free schools I created in Norwich had over 19 languages. It brings enormous diversity and opens the minds of children from different backgrounds. I do not think it is a problem. We have just created a small pilot with Cardiff University to trial MFL undergraduate mentoring in secondary schools to see whether they can be effective in the teaching of modern foreign languages.

Government Debt

Question

2.53 pm

Asked by ***Lord Hunt of Wirral***

To ask Her Majesty's Government what plans they have to ensure that the level of government debt falls.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, as a result of the Government's balanced approach we have been able to reduce debt while supporting public services, investing in the economy and infrastructure, and keeping taxes low. Debt peaked in 2016-17 at 85.1% of GDP and, due to the actions of this Government to reduce borrowing and support to the economy, debt fell in 2017-18. It is forecast to fall further, all the way up to the end of the forecast period in 2023-24.

Lord Hunt of Wirral (Con): What action are Her Majesty's Government taking to ensure a balanced approach to managing the public finances? Does my noble friend agree that it is vital that, while we prudently reduce both borrowing and debt, we invest in public services and keep taxes low for hard-working people?

Lord Bates: I am very happy to do that, and of course my noble friend will be aware that 32 million people have just enjoyed a tax cut as the tax thresholds were raised. There is a balance; we have seen net borrowing come down from a peak of about 10% in 2010 to under 2%, and overall net debt is beginning to fall after having peaked. However, at the same time, as he rightly says, we have seen half a trillion pounds of investment in infrastructure, and the prioritisation of public services, principally the National Health Service, which has had one of the largest budget increases in its history.

Lord Davies of Oldham (Lab): My Lords, why does the Minister not confess that the noble Lord, Lord Hunt, got it absolutely right? The only thing is that it is completely contrary to what Conservative Governments over the last decade have pursued. Austerity has been pursued to the extent that people are poorer and our public services are on the point of breaking down in many areas. Even then the Government do not hit their target for reduction of debt, but are falling many years behind the famous promise made way back in 2010 that they would do it in about five years. Is not the Government both incompetent and wrongly focused?

Lord Bates: If the noble Lord is arguing that we should have gone further and faster in reducing the debt, he is somewhat at odds with his leader down the other end of the Corridor, who has come up with a plan to spend another £1 trillion. We are taking a balanced approach, protecting essential public services and delivering tax cuts while investing in infrastructure, and that is how we will go forward.

Lord Hamilton of Epsom (Con): My Lords, at the moment, the Government are spending about 39% of GDP on public services. In my noble friend's opinion, is that too much, too little or about right, and does he see merit in repaying debt?

Lord Bates: Certainly, the Government see merit in repaying debt; we pay interest rates of about £50 billion a year on debt, so there is a good rationale for trying to do that. However, we need to balance our approach. Primarily, we seek to stop that debt level increasing by bringing it down as a percentage of GDP from around 85% to 73% at the end of the forecast period, but we need to go further on that.

Baroness Kramer (LD): My Lords, do the Government now understand that including borrowing for investment into infrastructure in the deficit number is not only intellectually flawed but has constrained growth in this

[Baroness Kramer]
country by limiting the number of projects in which we can invest, at a time when interest rates have been exceptionally low and a great deal more could have been done to catch up on the infrastructure backlog?

Lord Bates: I do not see how one can take it out of that figure. If it is public expenditure on infrastructure, it is government debt, so we need to reflect that in the numbers.

Lord Hunt of Kings Heath (Lab): My Lords, can I bring the noble Lord back to the NHS? He mentioned the NHS five-year spending agreement that has already been announced, but he will know that that does not cover education and training. The key issue facing the NHS is a large workforce problem, and part of the answer will be more training places. Can he assure me that, in the next spending review, the Treasury will not take the view that the NHS has received everything it is going to receive, and that it will look to increase the amount of money going into education and training?

Lord Bates: Obviously, there will be issues, which will be addressed in the spending review. Simon Stevens made that proposal about what is needed for the NHS, £20 billion—I think—was delivered to meet it, and there has been a significant increase with this further amount. However, we are aware of the pressures, which is why we have been clear that, when it comes to public services, the NHS is our priority.

Lord Wigley (PC): My Lords, is not the key to this the question of labour productivity? The figures for that in the last year were depressing: only 0.2%. What will the Government do to improve labour productivity?

Lord Bates: This is an historic problem that we have debated many times in this House. Because we are a heavily services-oriented economy it is difficult to capture all the value. We set up the national infrastructure investment scheme with £37 billion to help us to tackle those issues.

Lord Hayward (Con): My noble friend referred to the percentage of GDP in this country. How does that compare with France and Italy? Have we not persistently undershot the OBR forecast for what level of borrowing would be required on a month-by-month basis?

Lord Bates: My noble friend follows these matters very closely. We are currently under 85%, with a target to go down to 73%. France is at 98.7% and I think Italy is at 131.1%, but we still need to go further to ensure that we do not leave a legacy of debt for our children and grandchildren.

Protestors' Rights

Question

3 pm

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

To ask Her Majesty's Government what assessment they have made of the interference with the rights of protestors following the Court of Appeal judgment in *Ineos Upstream Limited & Others v Persons Unknown & Others*.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, peaceful protest is a vital part of democratic society. It is a long-standing tradition in this country that people are free to gather together and demonstrate their views, provided that they do so within the law. The granting of injunctions is a discretionary matter for the courts.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for her Answer, and that is of course true. However, one of the big problems with these injunctions is that they are so wide-ranging and some of the decisions are made in secret meetings, which I think anyone would be concerned about. One thing that the Government could do is look at the Civil Procedure Rules and, where persons unknown are included in the injunction—which of course makes it very broad—if a legal representative were appointed to represent those persons unknown, there would be fewer infractions of the human right to protest. Will she commit to reviewing the Civil Procedure Rules?

Baroness Williams of Trafford: I think I know the case to which the noble Baroness refers, and there has been an appeal of the ruling in that case. I recognise the point that she makes about persons unknown. Because an appeal has been upheld, it will be up to the company involved to relook at the prime reason for the application for the injunction. The point about applications being wide-ranging is certainly something the court may take into consideration.

Lord Brown of Eaton-under-Heywood (CB): Last week, in the INEOS case, the Court of Appeal discharged injunctions against two groups of protesters and remitted to the trial judge for his reconsideration on a limited basis injunctions against two other groups of protesters on grounds, allegedly, of trespass, obstruction of access and so forth. Does not the Minister agree that while that litigation continues to run its course, it would be quite inappropriate for the Government to make any assessment of, to quote the Question,

"interference with the rights of protesters"?

The litigation is deciding what the rights of protesters here may be.

Baroness Williams of Trafford: The noble and learned Lord is of course absolutely right—and I wish him a happy birthday.

Baroness McIntosh of Pickering (Con): Does my noble friend agree that it would be much better if INEOS and other such energy companies engaged at the earliest possible stage with local communities, and that it would stand INEOS and those companies in good stead if they would respect the energy law laid down that there will be no fracking in, near, above or below a national park?

Baroness Williams of Trafford: Certainly, any large organisation that needs to impact a community would be well advised to engage with it well ahead of time. During such a process, people who protest have to balance their right to protest with their responsibility to uphold the law.

Lord Paddick (LD): My Lords, why do companies need injunctions? If the protest is lawful, the police should facilitate it. If it is illegal, the police should take action against those involved. Is current legislation inadequate, or are there insufficient police resources?

Baroness Williams of Trafford: Lancashire police received nearly £3 million in special grant in the year 2018-19, so I do not think the resources are inadequate. The two processes need to run alongside each other—both the application to the court by the organisation concerned, and indeed the upholding of law and order by the police.

Access to Medicinal Cannabis

Statement

3.05 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, with permission, I shall now repeat the response to an Urgent Question on medicinal cannabis originally made by the Secretary of State for Health and Social Care:

"First, Mr Speaker, my sympathies go out to the patients and their families who are desperately seeking to alleviate their symptoms with medicinal cannabis. We are working hard to make the right approach. The law was changed on 1 November last year and it is now legal for doctors on the specialist register of the General Medical Council to prescribe cannabis-based products for medicinal use in the United Kingdom.

Whether to prescribe must remain a clinical decision to be made with patients and their families, taking into account the best available international clinical evidence and the circumstances of each individual patient. Indeed, there have already been prescriptions written for the products that the family attempted to bring into the country, and these have been supplied to patients. Without clinical authorisation, it is of course not possible to import controlled drugs, which is why the drugs were seized by Border Force on Saturday. However, we have made available the opportunity for a second opinion and the products have been held and not destroyed, as would usually be the case.

In relation to childhood epilepsy, the British Paediatric Neurology Association has issued interim guidance. NHS England and the Chief Medical Officer have made it clear that cannabis-based products can be prescribed for medicinal use in appropriate cases, but it must be for doctors to make clinical decisions in the best interests of patients. It is they who have the skill and the training to balance the risks and the benefits of any proposed treatment, including cannabis-based products, and to make a decision with patients and their families on whether or not to prescribe.

To date, research has centred on two major cannabinoids: THC and CBD. There is evidence that CBD may be beneficial in the treatment of intractable epilepsy, and over 80 children have already been supplied with CBD products in the UK on the basis of a specialist doctor's prescription. I entirely understand how important this issue is to patients, and I have met and listened to the families and know just how frustrated they are. Therefore, after meeting the parents, I have taken the following actions.

First, I have asked NHS England to rapidly initiate a process evaluation to address any barriers to clinically appropriate prescribing. Secondly, to provide the evidence base and to get medicinal cannabis to patients in need, I have asked the National Institute for Health Research and the industry to take action to produce that evidence in a form that will support decisions about public funding. The NIHR has issued two calls for research proposals on medicinal cannabis, and I look forward to responses to those consultations. This is in addition to the training package being developed by Health Education England to provide every support to clinicians to enable them to make the best decisions with their patients.

This is a very difficult area, with some heart-rending cases. I look forward to working with all Members of this House to ensure that patients get the best possible care".

3.08 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the Minister for repeating the Answer given in the other place by the Secretary of State to the right honourable Member for Hemel Hempstead. While we are not talking only about children, children having up to 300 seizures a day must leave their parents distraught and desperate. The Government must act much more hastily to ensure people who can benefit from medical cannabis have the means to get access to it on prescription. Can the Minister set out for the House the timescale for the process evaluation announced by the Secretary of State yesterday? This issue has been going on for far too long and needs resolving finally in the next few days.

Baroness Blackwood of North Oxford: I thank the noble Lord for his question. The Secretary of State has asked NHS England to act with the utmost urgency and to bring responses forward quickly. I note that this comes in addition to the HEE training model and the NHS England and BSA system to monitor prescriptions for cannabis products. We expect results from that data this month, so we expect more action imminently.

Baroness Walmsley (LD): My Lords, I thank the Minister for the action she is taking. I have some specific questions about what she said. Can she confirm that the second opinion she mentioned will come from a doctor with an appropriate understanding of the safety and effectiveness of these drugs, and that it will be available to all patients in the same situation? Secondly, she mentioned the British Paediatric Neurology Association's interim clinical guidance, which was made very much as a snap judgment straight after the rescheduling last November; in effect, it just said, "No, no, no". Can the Minister encourage the BPNA to consider further the massive amount of evidence from abroad and produce more considered guidance? Thirdly, she mentioned the 80 prescriptions for CBD medicines, but that does not strike me as making much progress, because you can get CBD legally on the internet; the only advantage of such prescriptions is getting the drug for free. The issue concerns medicines containing THC, which are the ones that patients desperately need. Finally, the Minister will probably find that trusts are stopping doctors who would like to prescribe

[Baroness Walmsley]
these medicines from doing so. Getting the NICE guidance a lot sooner than next autumn would probably encourage trusts to allow their employees to do so. Can she encourage NICE to hurry up, please?

Baroness Blackwood of North Oxford: I thank the noble Baroness for her question, and I know that she has campaigned on this issue for some time. NHS England has clarified that clinical guidance does not remove or replace the clinical discretion of the prescriber to act. I know that the process review will look at the impact of clinical guidance, which will hopefully be helpful. We will also look at the role of second opinions. I hope that that has answered some of the noble Baroness's questions; she made a number of points, and I will write to her on the rest.

Lord Hunt of Kings Heath (Lab): My Lords, I want to come back to the point about NICE made by the noble Baroness, Lady Walmsley. My understanding is that, at the moment, the evidence on which doctors can base a decision to prescribe these medicines is very limited. Clearly, relying on the NICE guidance is one way through. My problem is that, if we look at another area such as cataract operations, we see that despite NICE guidance many patients are now being denied treatment that has absolutely proven to be effective. My concern is that the Government seem to be trying to find a way round the evidence relating to these medicines when, up and down the country, patients are being denied interventions that we know will be successful and that can help thousands of people. Can the Minister comment on that?

Baroness Blackwood of North Oxford: The noble Lord is right that it is important that guidance is provided. The point of bringing the guidance forward is to look at the most up-to-date evidence available across the country. The challenge with medicinal cannabis is that the evidence base is developing. Currently, more than 100 clinical trials are ongoing worldwide. We are bringing the NICE guidance forward in the autumn to take all that clinical evidence into account in the most up-to-date guidance, so that patients can benefit and clinicians can have more confidence in prescribing. The NIHR call for clinical trials has been brought forward so that the evidence base can be strengthened even further as we go forward because, in the long term, the only way for us to move from an unlicensed prescribing route, which is where we are now, to a licensed route is through clinical trials and a greater evidence base. That is what the Government are keen to encourage.

Baroness Finlay of Llandaff (CB): Do the Government recognise that, whenever patients take part in a clinical trial, there will also be some patients who access the medication outside that trial? Are the Government establishing a confidential database to monitor the outcomes of every child who is prescribed a cannabinoid to look at its efficacy and any harms reported, so that we can get a cross-population database of the effects that could then feed into the evidence-accruing processes? It may be that a royal college such as the Royal College of Paediatrics and Child Health would be able to assist the Government by providing a confidential haven for such clinical data to be collected.

Baroness Blackwood of North Oxford: I thank the noble Baroness for her comments, and I know that she is expert in this area. Proposals for an observational trial and the collection of observational data have been put forward. I think that the concern is that, at the moment, there is a lack of confidence in the data. What is needed is the highest quality clinical data because, while a large amount of observational data for medicinal cannabis is available, data at the level of randomised controlled trials is required so that there is confidence not only among clinicians to prescribe but also for the funding system to fund within the NHS. At this point, it is that level of data which needs to be gathered, and that is why the NIHR is bringing forward public funding for it and why the Government are encouraging the industry to fund such trials as you would expect in any other area of the pharmaceutical industry.

Baroness Hussein-Ece (LD): My Lords, I declare an interest in that my grandson has intractable epilepsy, so we have been through the whole process, and I have some understanding and experience of this issue. He has recently been prescribed Epidiolex after a long struggle for him to be allowed to use it. Over the past few months, we have seen some incredible benefits from it. Does the Minister accept that rather unfair barriers have been put in place as regards access to this drug for children? I have heard of other cases where the British Paediatric Neurology Association, which she has mentioned, has said that Epidiolex, which is manufactured without THC, could be used for the treatment of childhood epilepsy as long as all other treatment avenues have been explored, including brain surgery and VNS. My grandson has had this treatment, where a device is attached to the spinal cord. These are incredibly invasive, dangerous and risky procedures. Surely it would be better to allow Epidiolex to be tried out rather than insisting on other routes? One mother told me that they are insisting that her child has brain surgery first. That cannot be right.

Baroness Blackwood of North Oxford: I thank the noble Baroness for her comments and for setting out her personal experience. She obviously has expertise in this area which few of us in the Chamber can claim. The reason NHS England has put forward is that individual clinical expertise relating to an individual patient is of the utmost importance, even where the guidance might seem to contradict that judgment. That is why in the autumn we will be bringing forward NICE guidance that will look at the most up-to-date evidence which should, we hope, be of assistance. It is also why we are bringing forward the NICE process review in order to understand what barriers may be in place and to encourage clinically appropriate prescribing and try to assist with cases such as these.

Baroness Warwick of Undercliffe (Lab): My Lords, what Mrs Emma Appleby has done—and I praise her courage—is to show that, whatever relaxation there appears to have been or modification, which we all thought was likely to produce some positive results, in fact that really is not happening. People are being denied medication, with incredibly debilitating results. I have an interest in this because I have a young family member with stage 4 terminal brain cancer. He suffers from sickness as a result of chemotherapy which nothing

else is able to help. He has been refused cannabis. The consultant will not prescribe it because he feels that there is not enough information from the Department for Health and Social Care for him to feel that he is justified in doing so and he does not know what the implications might be. I understand from another consultant that the BMA is in fact advising medical professionals not to prescribe it. What is the alternative for desperate relatives? Is it to buy cannabis off the streets not knowing what the quality is and facing the prospect of a criminal conviction? Speed is of the essence here, certainly for my family member. I hope that the Minister can say a little more about the way in which this is likely to progress and the speed with which it will do so.

Baroness Blackwood of North Oxford: I thank the noble Baroness for her question and for describing her personal experience. I emphasise that we must allow clinical decision-making in this. We have tried to encourage more experience in the system by putting out guidance through NICE based on the latest evidence, by providing Health Education England with the opportunity to bring forward training to share the best quality experience, and by putting through the process review so we can bring down any inappropriate barriers in the system. I hope that encourages the noble Baroness.

UK Convergence Programme

Motion to Approve

3.20 pm

Moved by ***Lord Bates***

That this House approves, for the purposes of section 5 of the European Communities (Amendment) Act 1993, the Government's assessment of the medium term economic and fiscal position as set out in the latest Budget document and the Office for Budget Responsibility's most recent Economic and Fiscal Outlook and Fiscal Sustainability Report, which forms the basis of the United Kingdom's Convergence Programme.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government have a legal requirement to give the European Commission an update of the UK's economic and budgetary position as part of our convergence programme. Given our decision to leave the European Union, some Members may find it odd that we are debating the UK's convergence programme here today, but it is right to do so, because we continue to exercise our full membership of the EU until the point of our exit and because doing so is a legal requirement and one that we must therefore take seriously.

The document before us may look familiar. This is because substantial parts of its content are drawn from the Autumn Budget report and the OBR's most recent economic and fiscal outlook. It is the content, not the convergence programme itself, that requires the approval of the House today.

I remind the House that although the UK participates in the stability and growth pact, which requires convergence programmes to be submitted, by virtue of our protocol to the treaty opting out of the euro we are required only to "endeavour to avoid" excessive deficits. The UK cannot be subject to any action or sanctions as a result of our participation.

Let me provide a brief overview of the information we will set out in the UK's convergence programme. Noble Lords should note that this does not represent new information; rather, it captures the Government's assessment of the UK's medium-term economic and budgetary position, as we set out in the Autumn Budget and again in the Spring Statement.

The UK economy has been growing for nine consecutive years, with the longest unbroken quarterly growth run of any G7 economy. It has added 3.6 million jobs since 2010, has almost halved youth unemployment and has seen female participation in the workforce increase to record levels. The economy is now delivering the fastest rate of regular wage growth in over a decade. Despite the slower global economy, the OBR expects Britain to continue to grow in every year of the forecast period: at 1.2% this year, 1.4% in 2020 and 1.6% in each of the final three years. This represents cumulative nominal growth over the next five years that is slightly higher than the Budget forecast. The OBR forecasts 600,000 more jobs in our economy by 2023. There is positive news on pay too, with the OBR revising wage growth up to 3% or higher in every year.

The Government have made significant progress since 2010 in reducing the deficit, and in 2016-17 reduced the Maastricht treaty-defined deficit below the EU's 3% limit for the first time since the financial crisis. The OBR forecasts it to fall below 2% of GDP in 2018-19 and below 1% in the final two years of the forecast period. At the Spring Statement, the OBR forecast that public sector net borrowing is expected to be £22.8 billion this year—£3 billion lower than forecast in November and £130 billion lower than in 2009-10.

We remain on track to meet both our fiscal targets early, with the cyclically adjusted deficit at 1.3% next year, falling to just 0.5% by 2023-24, and with headroom against our fiscal mandate in 2020-21 increasing from £15.4 billion at the Autumn Budget to £26.6 billion at the Spring Statement.

Less borrowing means less debt, which is now lower in every year of the forecast period than at the Budget, falling to 82.2% of GDP next year, then 79%, 74.9%, 74% and finally 73% in 2023-24. Our national debt is falling substantially for the first time in a generation.

While committed to getting debt falling, the Budget took a balanced approach to government spending, supporting households and businesses in the near term and investing in the UK's economic potential in the medium term. We have made over £150 billion of new spending commitments since 2016, and the Chancellor announced in the Budget that the long but necessary squeeze on current public spending would come to an end at the upcoming spending review, setting out an indicative five-year path of 1.2% per annum real-terms increases in day-to-day spending on public services compared with real-terms cuts of 3% per annum at spending review 2010 and planned cuts of 1.3% in real terms per annum at spending review 2015.

We made our biggest choice on public spending to put the NHS first, in line with the Prime Minister's announcement of £34 billion of additional funding

[Lord Bates]
per year by the end of the period—the single largest cash commitment ever made by a peacetime British Government—to support our long-term plan for the NHS. It will deliver improved cancer and mental healthcare, a transformation of GP services, more doctors, more nurses, and better outcomes for patients.

Following the House's approval of the economic and budgetary assessment that forms the basis of the convergence programme, the Government will submit the convergence programme to the Council of the European Union and the European Commission. The submission of convergence programmes by non-euro area member states and stability programmes by euro area member states also provides a useful framework for co-ordinating fiscal policies. A degree of fiscal policy co-ordination across countries can be beneficial to ensuring a stable global economy, which is in the UK's national interest. The UK has always taken part in international mechanisms for policy co-ordination, such as the G7, G20 and OECD.

Although we are leaving the EU, we will of course continue to have a deep interest in the economic stability and prosperity of our European friends and neighbours. So we will continue to play our part in this process while we remain subject to the acquis, and in other international policy co-ordination processes once we have left the EU.

The Government are committed to ensuring that we act in full accordance with Section 5 of the European Communities (Amendment) Act 1993, and that this House approves the economic and budgetary assessment that forms the basis of the convergence programme, which I commend to the House.

Baroness Kramer (LD): My goodness. I thank the Minister for his statement. I think we can all agree that this is a bit of a paper exercise, as the UK is not a member of the euro. Therefore, no matter how we perform on our structural deficit, there are no enforcement measures that the EU or any part of it can take against the UK. He is also absolutely right that there is nothing new in any of these numbers; they are basically a cut and paste from the last Budget and the OBR forecast. The forecast is slightly differently defined from our deficit numbers, but the cyclically adjusted treaty deficit number actually rises slightly this year, so technically we are actually going into the excessive debt procedure, although probably only briefly. Again, that has no particular consequences.

I find this, like many other debates on the economy, to be utterly surreal, because we will have no idea how the economy will look until Brexit is sorted out. That is so fundamental to creating the terms on which we have to look forward. All that we know is that every forecast that HMT has done of the medium term, in any Brexit scenario, shows us to be significantly worse off than if we had remained in the EU. That includes getting absolutely wonderful and amazing free-trade deals all over the place.

Because we have had so many debates on this issue, I am sure that the House will not mind if I am brief and will make just a few points. First, while I share the Government's pleasure in our good employment numbers, I repeat that it is a lagging indicator, and I wish that HMT would take that on board. But rather more troubling, a recent piece of work by Aston University suggests that established businesses have been shedding employees in significant numbers for some time and that the slack has been taken up by start-ups.

I am delighted with start-ups, but we are all well aware that a start-up is far more volatile, and if we go into any period of recession or rough water it is exactly that start-up arena that will take some of the harshest blows. I had not anticipated that there was a threat to our employment numbers, but it looks to me as if we potentially have something here that the Government should take a very close look at.

Secondly, I want to raise the question of the very sharp drop in business investment. I want to make sure that we do not confuse business investment with oligarchs buying luxury properties in our major urban areas. That pumps the numbers up, but it is not the kind of investment that anybody in this House is particularly keen to see, particularly as it deprives local people of housing opportunities.

3.30 pm

I want to pick up an issue that I have heard mentioned by a number of Brexiteers who have said that they all accept that the investment numbers have plunged but that that means that there is a wall of pent-up investment waiting for the moment we hear that Brexit has been settled. In the companies that I talk to—and I see many Members of this House who talk with companies on a regular basis—if you miss the investment cycle for a particular business, you have missed it. It is not held back and set aside for the UK; it goes elsewhere. Your next opportunity to try to access that money will be in the next investment cycle, which for many companies is five to seven years away. We have to be very serious about the impact of the drop in investment and of missing out on the variety of cycles.

The third problem that has to be addressed is our productivity problem. The Minister referred to this. Productivity is running at around 1.2%. Pre the financial crisis, it was more than 2%, and even then we did not think that was a terrific number. I do not care how you redefine productivity in services; you are not going to get from 1.2% to 2%. We have a problem, and it is better that we recognise it.

The Government are trying to tackle some of this through their industrial strategy, but as I read it the industrial strategy focuses very much on trying to get new cutting-edge technology into our tier-1 companies. Our tier-1 companies are fine on productivity. They are among the most productive companies across the globe. Our problem is that the structure of our economy has a very long tail of medium-sized and small companies, and they are hugely lagging in productivity. For them, productivity may be a matter of getting rid of a 10 year-old piece of equipment and replacing it with a three year-old piece of equipment. It is very different from trying to focus on cutting-edge new technology. There is nothing wrong with that, but if we want to deal with the productivity problem we had better start focusing on where the problem is. I recommend that very much to the Government.

All of that comes together and cumulates in our low growth rate. Yes, we have limped along with a low growth rate for many years, but frankly that is nothing to celebrate. The OBR anticipates that the good news will be that it will rise to about 1.5% in the medium term. Some of that may be undermined. The Purchasing Managers' Index is showing a sharp drop in business confidence. We know from Ernst & Young that in reaction to potential Brexit at least £1 trillion in financial assets have already been moved to the EU 27 and people do not intend to bring them back in any circumstances. Ernst & Young has also confirmed that since March it has seen a steady increase in financial firms publicly committing to move people, assets and operations to the EU 27. When Ernst & Young reports, it is not giving us confidential information, only publicly declared information, so we know the problem is far more fundamental.

I challenge the Minister on his rosy description of additional funding for public services. Every public service seems to be falling apart, whether we are talking about schools, prisons, social care, the NHS or the welfare system with more children in poverty. We have some marginal spending increases starting to come through in the autumn, but it will take a long time even to catch up on that degree of damage and to get a turnaround, given the cuts which, particularly in the past few years, no longer attacked fat but got well into muscle and bone. I believe that there is wide demand to see something far more radical to bring public services up to the quality that we think is necessary.

I repeat my question earlier: for goodness' sake, will the Government please take the borrowing for investment in infrastructure out of their deficit calculation? It had been out of the deficit calculation, but it was brought back in by George Osborne in 2015 for reasons that no one has ever been able to explain to me. It distorts the numbers, because obviously when interest rates are low you borrow to build infrastructure and treat it in a very different way, as capital expenditure, from day-to-day revenue spend. Indeed, if we had not had infrastructure in there, we would have been lighter on the public-spending numbers as well. Coming along with all of this we have the fourth industrial revolution, so the need to ramp up that investment in a very wide range of infrastructure is exceptionally acute.

We are in something of a moment of economic depression. This might be the calm before the storm, but in reality it is Brexit that will set the context, and I hope for goodness' sake that we manage to make sure that we do not let that destroy our hard-won economy.

Baroness McIntosh of Pickering (Con): My Lords, I want to make a comment and ask a question of my noble friend. The comment—actually, I suppose it too is a question—is: is it not ironic that Britain never wished to join the single currency, yet we are probably the closest aligned to the Maastricht criteria that were set in 1992?

My question for my noble friend is as follows. The Government have been fined substantial sums of money over the years for late payments of the single farm payment and countryside stewardship schemes under the common agricultural policy. Only yesterday, the Rural Payments Agency announced that it is going to make bridging payments for the 2018 basic payment scheme claims and the countryside stewardship claims for 2018 advance payments. As we leave the EU and presumably will no longer face fines for late payments of farm support—in so far as they will continue to exist—what will the mechanism be, if Defra fails to ensure that the RPA makes the payments on time, to ensure that the payments are made in as timely a fashion as possible?

Lord Lea of Crondall (Lab): My Lords, as we look forward, it is increasingly difficult to match our view of the future macro economy with the micro economy. I would like to relate this to freedom of movement. Either it is true that a lot of the economy of the south-east is heavily involved in freedom of movement in Europe or it is not. In so far as it is true, everyone is holding their breath at the moment.

I shall give three or four examples of what happens at the moment. A fitter from Barnsley can work freely in Antwerp. A doctor from Guildford is able to work in Paris, her medical qualifications being automatically recognised. Estonian software coders can work in London. Retired teachers from Bromsgrove are able to live in Brittany and receive a pension. An oil engineer from Bergen can establish a business in Aberdeen. Lorry drivers from Wigan can deliver goods across the continent without the need for international driving permits. Injured in Malta, a holidaymaker from Belfast will have their hospital treatment covered by the NHS. Lastly—a subject close to the heart of the noble Baroness, Lady Bull—a violinist from London or Leipzig can catch a plane at short notice and work in either the next day.

I find it very difficult to know about the next few months, as we postpone the final decision and think about how freedom-of-movement issues relate to the other agenda. This is a problem of uncertainty. I ask the Minister to flag up the fact that we really need to have a cockshy at some of the key questions that have yet to be decided under the heading of freedom of movement. We know something about the social chapter of the Maastricht treaty and workers' rights. We even know something about the way in which we can redistribute the macro picture from London to Lancashire, as it were—where I come from originally—so that savings on the EU budget might be redistributed more towards the Midlands, the north of England and so on.

I find it important to get some micro, as well as macro, thinking into these sorts of exercises in the Treasury. Otherwise, we might find that people are working on divergent assumptions about how this freedom of movement thing will work out. I cannot believe what some people in my own party say. It is not the leader's policy, but there are some people who think we can just wave a magic wand and all the examples I have given will disappear and there will be no problem. Surely that cannot be the case. I think every cup of coffee I drink in London is served by somebody from Estonia. All of this relates to the economy. Will the Minister flag up how we will deal with this, as well as looking at the customs union and so on? That is very important, but it is not the only card game in town.

Lord Vaux of Harrowden (CB): My Lords, I want to pick up on a point that the noble Baroness, Lady Kramer, made about financial services. I asked a Written Question on 27 February regarding what assessment the Government had made of the reduction in tax take that would arise from the actions taken by financial services businesses to enable their businesses to operate after Brexit.

The Minister was kind enough to respond, saying:

"The Government has published a detailed set of economic analysis on the long-term impacts of EU exit on the UK economy, its sectors, nations and regions and the public finances. The Chancellor will also be providing the independent OBR's updated fiscal and economic forecasts at the Spring Statement on 13th March".

In anticipation of finding the answer to my question, I ploughed through these analyses. You can imagine my surprise and disappointment when I was unable to find anything that answered it. I must have missed something, I assume.

This is important. The financial services industry is a significant part of our tax base, contributing around £72 billion or 12% of the total annually. My question is not theoretical; I am asking about actions that have already been taken. A study by New Financial has identified 275 firms that have stated that they are moving parts of their businesses out of the country. Only a small number of those firms have said what they are moving, but already the figures are very large: banks have moved or are moving some £800 billion in assets from the UK to the EU, insurance firms are moving tens of billions in assets, and asset managers have transferred more than £65 billion in funds. That £800 billion in bank assets is nearly 10% of the UK banking system. The final tally is likely to be much higher; there are suggestions that more than £1.5 trillion in assets has already been moved.

Studies also suggest that at least 7,000 financial services jobs have already been moved. That does not include the new jobs created in other countries that would have been created here but for Brexit. New Financial expects the headline numbers to increase significantly in the next few years as local regulators across the EU require firms to increase the substance of their local operations. They have also identified hundreds of firms that they think will have to move something somewhere to retain access to EU markets, but which have not yet done so.

It is inevitable that these moves will have an impact on the UK's annual tax take in the current tax year, and that impact will continue and increase. Given the importance of the financial services industry to our tax yield, could the Minister now answer my earlier question and tell us how much of that £72 billion we are going to lose? Could he also tell us to what extent that has been taken into account in the Budget?

Lord Wigley (PC): My Lords, I will follow up briefly on the comments made by the noble Lord, Lord Lea, a moment ago on the performance of the economy and the existing disparity. The efficiency of an economy clearly depends on overall capacity, capacity utilisation and labour productivity and efficiency. When we have as great a disparity as we have at present between the economy of south-east England and the economy elsewhere, clearly, diseconomies will happen. These could well be seriously exacerbated by the consequences of a no-deal Brexit. We are particularly concerned about sectors such as the Welsh tourist industry, where much of the labour is imported from continental Europe. If there is a cut-off it could affect our capacity to deliver.

There clearly needs to be a strategy for the post-Brexit period that addresses the efficiency of the overall economy but also that disparity. Bringing up the poorer-performing areas nearer to the average would clearly be in everybody's interest. In that context, another factor for us in Wales is the loss of the EU structural funds, which will bite after 2020. That is a very serious loss. We are still waiting for a categorical confirmation from the Government that there will be a full replacement of that, not just to 2020 but ongoing thereafter. Without it, it will be impossible to get the economic restructuring we need.

3.45 pm

Lord Gadhia (Non-Afl): My Lords, I welcome the overall thrust of the statement made by my noble friend. It seeks to demonstrate that our seeming political meltdown over Brexit is not matched by an economic meltdown. This was brought home to me recently when I participated in a panel with the former Italian Prime Minister, Matteo Renzi, and the former Greek Prime Minister, George Papandreou. While they were able to have some fun at our country's expense because of our Brexit impasse, I was able to take some reassurance from the fact that the UK's sovereign credit rating is six notches above Italy's and 11 notches above Greece's. Does my noble friend agree that we need to do everything in our power to protect and safeguard the benefits of the fiscal consolidation that has been so hard won since the beginning of 2010 and which he referred to earlier in remarks he made in response to a Question from the noble Lord, Lord Hunt of Wirral?

Lord Davies of Oldham (Lab): My Lords, I was somewhat taken aback by the Minister's opening statement. I of course recognise that the process we are involved in is a largely technical one with a very short duration so far as the United Kingdom is concerned when we leave the European Union, but the Minister addressed himself to issues as if this extraordinary word "Brexit" had never been coined and the phenomenon had never existed. Every single question that has come subsequently related somewhere to the impact of Brexit. I hope the Minister will reply to these questions in full, because his opening statement dwelled on the sunny uplands and what he regarded as favourable forecasts at present. I do not find the OBR's forecast on where growth is at present and where it will be in three years' time as a particularly favourable position. Indeed, it is a lower figure than that which obtained over 30 years or so prior to 2010. I am amazed that the Minister seems to think the Government are on the high road to success with this rather deplorable figure, starting at 1.2%.

The noble Lord, Lord Vaux, indicated that there are real dangers of assets being transferred and the capacity of the British economy reduced during these Brexit developments. There was a great deal of commentary about the fact that that would happen and we should

not be at all surprised that we are getting increasing evidence of it happening. Yet the Minister presented this document—this response to Europe—as if we were pretty well in steady state and the economy was easy to analyse and forecast.

In fairness to the OBR, it made it quite clear that this is a notoriously difficult time to present forecasts of any validity. Yet none of this seemed to cloud the Minister's position in his opening statement. I hope the questions and points that have been made lead him to respond fully to the situation. After all, he knows that we are right at the bottom of the league table on productivity, and have been for most of the Conservative Government's time in office—since 2010. All sorts of strategies have been presented that would go towards improving our productivity, but we are still doing very poorly. It is therefore no small wonder that we have problems with growth and competition.

We are well aware that big decisions are being taken which threaten our economy. The decline in the German economy may give us some comparative advantage, in that for a short period we have had a slightly more secure position. But its decline is overwhelmingly in the manufacturing industry, where we have the greatest difficulty presenting any real competition, and in the motor industry. What solace is that meant to bring to the Minister, given that he is about to be part of the process whereby we cast ourselves on to the international trade situation, while busy disentangling ourselves from our strongest economy—the European one? The two largest economies are pursuing policies of protection and are concerned about the development of trade. So it will not do.

I understand the Minister's point that as far as Europe is concerned, in past years this particular requirement has been treated in a fairly light-hearted fashion in this House. So it should be, in normal times. However, we are not in normal times. We are in times of very real strategic threat to our economy. It will not do for the Minister to think that one can ignore the small aberration of Brexit at present because the economy is under good guidance. After all, he knows better than most of us here how crucial the financial services are—to the Treasury in terms of receipts and to our economy in terms of employment. Therefore, when it is identified that there are clear cases of the financial services transferring their assets from the UK elsewhere, we ought to be worried.

I ask that in his summing up, the Minister replies to each contribution that has been made. Each focused on the important dimension of anxiety about the economy, yet the noble Lord was busy glossing over this in an opening statement which looked as if he was more concerned with "The Wizard of Oz" than with the real economy.

Lord Haskel (Lab): My Lords, the Minister told the House that we are going to have 1.6% growth. I imagine that this is because of lack of investment and low productivity. If we had 2% growth, we would then be faced with inflation, but that word did not appear in the Minister's statement. If we do do better than 1.6% growth, are we going to have to deal with inflation? What are the Government going to do about that?

Lord Bates: Noble Lords have asked some very specific questions. I will follow the injunction of the noble Lord, Lord Davies, and seek to address them as best I can. If my noble friend Lady McIntosh and the noble Lord, Lord Vaux, would allow me the courtesy of writing to them in more detail on their specific points, I will certainly do so. I accept what the noble Lord, Lord Davies, said: we can all agree that we are not in normal times. My noble friend Lord Gadhia made an insightful point when he talked about the difference between what is happening in the political realm—which is not normal—and in the economic realm, which is really remarkable given the headwinds and uncertainty which the economy is facing at present. That confirms the great strength of our entrepreneurial businesses and enterprises and the incredible work that the people in them are doing. This gives us real hope for the future.

I was invited to address the Brexit issue head on; a convergence debate about the European Union seems a pretty good place to do that but I do not want to spend too much time on this. From the Government's point of view, it is clear: if we had had our way, the withdrawal agreement would have been agreed by Parliament in December. We would now be into an implementation period where lots of the issues about free movement, to which the noble Lord, Lord Lea, referred, would have been addressed. We would also be working our way through into a deep and meaningful—

Lord Lea of Crondall: The Minister makes a very interesting point. He is confirming that everything is to play for in the discussion in the coming months about the future relationship. By that I mean that nothing is ruled in and nothing is ruled out on all these matters concerning freedom of movement, et cetera. A lot of people are getting concerned that the Government may have lost the plot.

Lord Bates: The accusation was made that the Government were somehow not addressing the issue of Brexit. Responding on behalf of the Government—which I am entitled to do—we believe we have negotiated a good withdrawal agreement. We have a good and fair financial settlement and a political framework which holds out the real possibility of a strong, deep relationship with our European friends and neighbours that can enable our world-class businesses and entrepreneurs to continue to work.

The noble Baroness, Lady Kramer, made a point about business investment. She asked whether the falls in business investment were explainable as purely related to Brexit or whether there was something more structural in the economy. She almost pre-empted my response—perhaps because we have had many of these debates in the past—which is that any decline in business investment in the OBR forecast is of course concerning to the Government: business investment is critical to addressing the types of productivity concerns that were raised earlier. Without investment, we cannot hope to address those concerns, and I take on board all her points, but the forecast period seems to confirm that while we have had two years of a relatively small drop in business investment, that is against the background of businesses currently sitting on historically high cash reserves.

[Lord Bates]
Therefore, the OBR forecasts that that will pick up to a stronger growth of plus 2.3% in 2020 and continue to grow at this stronger pace in 2021 and onwards. That seems to suggest that business investment is linked to the political issue of the hour and the uncertainty that stems therefrom.

4 pm

Turning to some of the specific points that were raised, the noble Lord, Lord Wigley, talked about the replacement of the structural funds, particularly the situation in Wales. This issue will be considered by the Government as part of the spending review, and we have also announced that there will be other measures. Just in the same way as payments from the common agricultural policy will be replaced, there will be mechanisms, through the growth fund, to provide resources that will match those. The details have not yet been set out; they are a matter for the spending review but they will be forthcoming.

The noble Baroness, Lady Kramer, and the noble Lords, Lord Davies and Lord Lea, talked about productivity. We recognise that productivity is a long-term challenge and that the UK has lagged behind other major advanced economies. All developed countries have experienced sluggish growth. We are tackling the problem head on, investing more than half a trillion pounds in capital investment, cutting taxes for businesses, improving access to finance and reforming technical education, all of which are key drivers of productivity. Many of these policies, including those on education, finance and tax, benefit all sizes of businesses.

The noble Lord, Lord Vaux, asked what the Government are doing about financial services jobs and assets leaving the UK. We are in frequent contact with firms and regulators regarding planning. I pay tribute to the work of my honourable friend John Glen, Minister for the City and Economic Secretary to the Treasury, who has been meeting the financial services industry very regularly regarding its planning. Firms using the passport recognise that steps to legal certainty regarding the future remain and are contingent in the case of no deal. We have carried out extensive preparations to minimise disruption for UK households and businesses. As the Bank of England's Financial Policy Committee set out, the UK's banking system is strong enough to continue to serve the UK. An implementation period is the most effective way of ensuring a smooth and orderly exit, but I take on board, on reflection, the inadequacy of my Answer on 28 February: I will try to do better in writing next time.

My noble friend Lady McIntosh raised the issue of the UK being fined. The UK cannot be fined or sanctioned by the EU in any way under the stability and growth pact we are discussing here today. I think her point related to the Rural Payments Agency and single farm payments: again, I will follow up on that and get back to her. The noble Baroness, Lady Kramer, asked about the excessive deficit procedure—the treaty deficit. I remind her that since 2016-17, the Government have met the annual government deficit condition of the Maastricht treaty that the deficit does not exceed 3%, as I mentioned earlier. Although the OBR's profile for the treaty deficit does increase slightly in 2019-20, there is a sustained fall from that year on until the end of the forecast period.

The noble Lord, Lord Davies, the noble Baroness, Lady Kramer, and a number of other noble Lords mentioned the spending review. With the announcements made in the 2018 Budget, confirmed in the Spring Statement, day-to-day departmental spending will grow on average by 1.2% in real terms in each year of the forecast period. This is the first period since 2010. In addition, public sector net investment is set to reach levels not sustained since 40 years before that date.

I was hoping to turn over the page and find an answer to the noble Lord's point on inflation and productivity. I am looking for some inspiration from behind me—or perhaps the noble Lord can help me with this. I seem to remember from my economics studies that there is a basic curve—I cannot remember its precise name—

A noble Lord: The Laffer curve.

Lord Bates: I thought it was a J curve; I think the J curve is non-inflationary employment growth, and the Laffer curve might be the other one. However, I will take a break there in case I am completely shot down on that—I am not saying it is one or the other.

It is a point that increasing growth feeds through into inflation, just as the historical view was that if you fell below 5% unemployment, the tightening of the labour market would feed through into wage inflation. That we have not seen. Although it is now below 4%, CPI inflation is still at about 1.9%. We are within that constraint. If I can get the exact model from our wizards in the Treasury, I will write in answer to that and other points, and reassure the noble Lord. Perhaps he is about to give me the answer to his own question.

Lord Haskel: Why does the Minister not write to me? It is very difficult. Statements such as the one he just made compartmentalise the economy. Inflation takes it all into account. That is why I raised the point, because the Minister did not mention it in his first statement.

Lord Bates: I am very happy to put it in writing. Also, should the noble Lord be familiar with anyone serving on the Monetary Policy Committee of the Bank of England, I am quite sure they would have the answer completely to hand.

I thank noble Lords for the debate. I am sorry I was not able to answer some of their detailed points; I will put them in a letter, copy it to noble Lords who took part in the debate and place a copy in the Library.

Motion agreed.

Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

4.07 pm

Moved by ***Lord Ashton of Hyde***

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

Relevant document: 23rd Report from the Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, noble Lords will be aware that the Secondary Legislation Scrutiny Committee reported on this instrument on 3 April. Its report drew attention to provisions relating to intra-EU calling, which I will cover in my speech.

I do not anticipate that many of the provisions in the regulations will be of significant interest to the House, as they simply revoke EU legislation which is directly applicable and would be redundant if converted into UK law after exit. Nevertheless, I will cover these briefly. Detailed explanations of each EU instrument being revoked are provided in the Explanatory Memorandum accompanying this instrument.

The redundant EU legislation being revoked here includes, for example, laws governing the workings of EU bodies such as the Body of European Regulators for Electronic Communications, or BEREC, and the European Regulators Group for Audiovisual Media Services, or ERGA. The EU legislation governing these bodies would have no effect if retained in UK law if we were not a member of the EU. Future UK participation in such bodies has already been discussed at length by the House in other debates. This instrument does not impact that future relationship so I do not intend to retread that ground here. Similarly, EU legislation concerning the .eu internet domain would have no effect if retained in UK law.

The regulations also make technical amendments to EU legislation relating to the notification of personal data breaches by providers of electronic communications services. These include matters such as replacing references to the "competent national authority" with references to the Information Commissioner. These amendments are designed with continuity in mind, seeking to maintain the current approach in a way that makes sense once the UK has left the EU.

I turn to those provisions which I expect to be of more interest to the House. These concern the regulation of prices for certain intra-EU communications. I shall refer to these as "intra-EU calls", meaning mobile and landline telephone calls, although they also apply to text messages. New European rules regulating the price of intra-EU calls were legislated for in December 2018. However, while these rules are now in UK law, they become effective only on 15 May this year. These rules regulate the maximum cost of mobile and landline calls and texts made from one EU member state to another. For example, a Spanish person calling from Spain to a friend in Italy would be making an intra-EU call. I highlight the obvious point that this is different from rules on mobile roaming, which apply when people travelling in the EU outside their home country use their mobile phones to make calls, send texts and use their data. The EU exit SI relating to mobile roaming was approved by both Houses and made on 14 March.

I return to intra-EU calls. The new European rules will require communications providers in the EU to charge their customers no more than 19 euro cents per minute for calls and 6 euro cents for texts. As I stated earlier, these rules come into force in the EU from 15 May this year. I appreciate that the intra-EU calls rules can be seen as a benefit to consumers. These rules have been introduced as a single-market measure. The rules establish a reciprocal framework which has the purpose of strengthening the European single market. Obviously, if we leave the EU without a deal, the UK will not be part of the single market, and equally obviously, it would not be appropriate to adopt single-market measures when we are not benefiting from its reciprocal framework. Therefore, this instrument revokes the regulation of intra-EU call prices so that the rules do not come into effect in mid-May this year.

However, consumers will experience no negative impact as a result of this instrument. This is because it is not coming into force, and there are currently a range of alternatives to calls and texts available to them. These include internet-based services if they are worried about the costs of traditional calls and texts. Consumers can also use calling cards or bolt-on deals, which are options that provide cheap calls and texts to the EU on top of an existing phone package. In addition, Ofcom already has the power to regulate international markets in certain instances where it identifies that serious competition concerns have led to market failure. To remove the provisions regulating intra-EU calls from the statute book is therefore the appropriate thing to do.

As a Government we are committed to ensuring that the law relating to electronic communications continues to function appropriately after exit. We must provide clarity and certainty to consumers and businesses. That is what these regulations will do, and I commend them to the House.

Lord Foster of Bath (LD): My Lords, as the Prime Minister traipses around European capitals, seeking to get an extension and, I hope, prevent a no-deal Brexit, I very much hope that today's relatively short debate will be wasted time. None the less, I was somewhat surprised that this SI was before us. It was only on 18 February this year that we debated the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, so I was somewhat surprised that we needed another one.

4.15 pm

Of course, I was aware that since that was laid in November last year, a number of changes made last December had had an impact, so I understand why some aspects of the new SI were necessary. Nevertheless, I was somewhat surprised to be told in a memo from the department that this SI was "a convenient vehicle" to sweep up a number of other small changes which, for various reasons, it had not been possible to include in earlier SIs. For example, I fail to understand why the previous SI did not, as does this one, replace "competent national authority" with references to the Information Commissioner. We knew that we had to do that back in November, so surely we should have done it in the previous SI.

Equally, why are we only now revoking EU legislation establishing the body to which the Minister referred, BEREC, and our membership of the European Regulators Group for Audiovisual Media Services? Why are we only now dealing with the .eu top-level domains? These are all issues that we knew we had to deal with last November, when the previous instrument was laid. What were the "various reasons" why the

[Lord Foster of Bath]
provision and some others contained in the SI could not have been included the previous one? That does not give us confidence that we do not have before us a further example of rushed legislation. Can he assure your Lordships' House that this is the last SI on these issues that will come before us?

The new SI referred once again to the changes under GDPR, so it provides another opportunity for the Minister to give once-and-for-all clarity on the question raised several times in the February debate. After a no-deal Brexit, a UK data controller doing business in EEA countries will, because of the reciprocal obligations, need representation in the EEA. Can he clarify whether that is just one representative in the EEA or does it require representatives in each of the EEA member states in which the UK data controller is doing business? Clearly, that has a huge potential impact on the cost of doing business for UK businesses and leads to the question of why it was not included in the explanation of the costs.

Does the Minister acknowledge that the creation of a new data protection regime in the UK—the UK GDPR—presents additional complexities for controllers and processors who are caught up by both European and UK law? I accept that initially there may be very little difference between the two, but in time they will begin to diverge and that will provide added burdens on UK businesses. Surely that should have led to some comment in an impact assessment which, once again, we see is missing in toto from the SI.

I may have missed it, and I apologise if I have, but I can find no reference in the SI to Article 81 of the GDPR. This relates to situations when the courts in two or more EU countries have both issued proceedings against the same controller or processor. In such circumstances, under GDPR Article 81, one of the courts may well decide to decline jurisdiction or suspend proceedings until the other court has made its determination. As these provisions are now revoked, will that not increase the possibility of costly duplication of court action in both the UK and another EU court?

Finally, the SI relates to two recent changes approved by the EU Council in December last year, as I mentioned at the beginning of my contribution: the Electronic Communications Code and the revised remit for BEREC—the Body of European Regulators for Electronic Communications. These have led to some new initiatives. One is mentioned in the SI and the Minister has given us a detailed explanation of it: the introduction of price caps on intra-EU calls and text messages. I accept entirely the point the Minister made: this will have precious little impact on consumers within the UK, who can use alternative means of communication.

However, the other change is not mentioned: the plan being made within the Electronic Communications Code and under the new remit for BEREC that will require all EU member states to set up public warnings—systems that would send alerts to people's mobile phones in the event of natural disasters, terrorist attacks or other major emergencies in the area. The requirement is that they be in place within three and a half years of the ECC coming into force. Several countries already have some such systems in place—I am sure the Minister already knows this—and in 2013 the Cabinet Office in the UK announced that trials of such a scheme would begin. Given that we are dropping out of involvement in the ECC, could he tell the House whether the Government have plans—notwithstanding the plan to leave the European Union—for such a system to be introduced within the UK, given that trials started way back in 2013?

With those few questions, I just say that I very much hope that this short debate will have been wasted.

Lord Griffiths of Burry Port (Lab): My Lords, I looked behind me in vain for interventions from our side of the House. I am happy to provide as short a contribution to this debate as others, and very happy that my noble friend Lord Foster—if I may call him that—has made some of his usual penetrating comments that leave me free to look at things at another level. As the Minister said, this SI seems a simple matter of tidying up an area that had not been previously dealt with in full. I cannot comment on why some of this was not done earlier, but it is being done now. When I got it and saw the pages and pages of sheer drudgery that our very talented Civil Service has had to give its best time to, my heart sank.

It also occurred to me that debating it today is very ironical because the Prime Minister does not want a no-deal exit—neither do the Lords or the Commons. Nobody wants it, but we look as if we might be in danger of drifting into it. Once upon a time, a Roman emperor played the violin while the city around him burned. Now, our contemporary empress is fiddling in European capitals and burning our boats while she does it. We must ask ourselves very seriously whether this exercise of 500 or more statutory instruments being pushed through our procedures in this way has been beneficial to anybody.

I note the substantive point that the statutory instrument intends to deal with the,

"notification of personal data breaches by providers of publicly available electronic communications service".

I have learned so many acronyms in reading for this debate—indeed, it has been on a par with "Line of Duty", which I watch rather assiduously when I can. The replacing of "competent national authority" references with references to the "Information Commissioner" seems to tidy everything up. I looked and, as has been mentioned by others already, the Secondary Legislation Scrutiny Committee drew attention to the facts about these calls. Indeed, it added an appendix to one of its committee meetings to ask technical questions of the Minister. He has answered those and I need not therefore repeat them.

With the ground adequately covered and tidiness brought to a fundamentally futile exercise, I am happy to rest the case there. I invite the Minister to say some reassuring words and answer our questions so that we can move on to other business.

Lord Ashton of Hyde: My Lords, I am grateful to both noble Lords for their points and detailed questions on a detailed SI.

The noble Lord, Lord Foster, castigated us for bringing these small changes forward at a late stage and asked why we did not bring them forward earlier. The noble Lord, Lord Griffiths, looked at the details, a substantial number of which need to be addressed, not only in legislation but in EU decisions, regulations and directives. That takes time, and we want to get it right. He also asked whether I can categorically assure him that he will not have to deal with these matters again. Of course I cannot give him that assurance, as he well knows, but the point is made and I accept it.

On a serious note, it is important to get these things right. I pay tribute to the civil servants in my department, who have worked very hard to try to do that. Most of the provisions in this statutory instrument are genuinely technical, changing the language so that it makes sense in the event that we leave the EU. Of course, this is a no-deal Brexit SI, so it is contingent on that.

The noble Lord, Lord Foster, asked some specific questions about his favourite subject—the BEREC regulations—such as why we did not bring them forward. The reason is that this SI repeals the 2018 BEREC regulation, which replaced the 2009 BEREC regulation. That regulation was repealed and replaced in December 2018, so it is now necessary to revoke the new 2018 BEREC regulation. It was not ready at the time of the previous SI, which is why we are doing that now. I hope that he can feel happy with that.

As far as the GDPR is concerned, we agreed the data SI in this House some weeks ago. The noble Lord referred to Article 81 on the suspension of proceedings, which is omitted from the UK GDPR. In a UK-only context, that provision becomes redundant, because it is right that breaches of the UK GDPR are brought before UK courts. Of course, amendments to the retained GDPR were debated by this House in February 2019.

Lord Foster of Bath: I will be brief. The Minister is absolutely right: any breach affecting a UK citizen will be dealt with by a UK court. However, it is perfectly possible that the processor could have been guilty of similar offences in other European countries. In those circumstances, will he confirm that both countries will have to take proceedings in their respective courts, and that this is an additional cost that did not exist previously?

Lord Ashton of Hyde: The noble Lord is right. If a data controller causes an offence in two different jurisdictions, two different jurisdictions could decide where they want to hold the controller to account. In the same way, if a person or a company committed a crime in two different countries that are not outside the EU, those countries would be able to take action against them for the law that pertains in their own countries.

The noble Lord, Lord Foster, also asked about the public warning system under the EECC. That is not part of this SI or the BEREC regulation and is therefore not part of the intra-EU core system. Post exit in a no-deal situation, the Government would be minded to implement the EECC where it fits in with UK policy objectives, but there will be no requirement to do that. I will take back his suggestion about the public warning system, but I can make no commitments on it at the moment.

On timing, the GDPR and the Data Protection Act came into force on 25 May 2018. The focus of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, which were debated in this House in February, was on the retained GDPR and the Data Protection Act. I think that was my last point, which I have already answered, so I beg the noble Lord's pardon. I will check the record to make sure that I have answered his detailed questions, and if I have not I will write to him.

Motion agreed.

Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

4.30 pm

Moved by ***Baroness Blackwood of North Oxford***

That the draft Regulations laid before the House on 20 March be approved.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, I thank noble Lords for their consideration of these regulations. The Government's priority is to ensure that the high standards of food safety and consumer protection we enjoy in this country are maintained when the UK leaves the European Union. This instrument forms part of our preparations for a functioning statute book on exit.

Food additives, flavourings, enzymes and extraction solvents are important substances referred to collectively as "food improvement agents" which are used in a wide variety of everyday foods. These substances perform technological functions in or on food during its production or storage. Examples include preservatives, which are highly effective in protecting consumers from dangerous pathogens and help to provide a decent shelf life of products for consumers. Other substances are used to improve the taste, texture, and appearance of food. Common examples are artificial sweeteners, emulsifiers and flavourings added to food where they are considered necessary.

This instrument is made under the powers in the European Union (Withdrawal) Act 2018 to make the minimum necessary amendments to retained legislation that governs the use of food improvement agents and corrects deficiencies in those regulations. I wish to make clear that no policy changes are being made through this instrument, and neither is there any intention to do so at the present time. The instrument was due to be debated on Tuesday 19 March alongside four other instruments on regulated products in food. Minor drafting errors were identified which have now been rectified.

Currently, the European Commission holds a range of powers and functions under the EU legislation to enable new substances to come on to the market, to amend current conditions of use and purity criteria and to remove substances from the permitted lists. This instrument transfers these powers from the Commission to Ministers in England, Scotland, Wales and the devolved authority in Northern Ireland. It also transfers

[Baroness Blackwood of North Oxford]
responsibility for risk assessment from the European Food Safety Authority, EFSA, to the UK "food safety authority". This will be the Food Standards Agency in England, Wales and Northern Ireland and Food Standards Scotland in Scotland, which have a close working relationship.

Risk assessment and the oversight of food safety controls will be essential to ensure that food remains safe, whether imported or produced in the UK. The Food Standards Agency and Food Standards Scotland are responsible for protecting public health in relation to food and will continue to be independent science and evidence-based government departments. These functions will be delivered through the increased risk assessment capacity that has already been put in place. This instrument will ensure that the controls contained in 11 retained regulations governing food improvement agents continue to function effectively after exit day. All existing food improvement agents permitted for use in the UK prior to exit day will continue to be permitted immediately after exit and all conditions and requirements attached to their use will be preserved. There will be no change in how food businesses are regulated or managed.

These regulations will ensure a robust system of controls that will also underpin UK businesses' ability to trade both domestically and internationally. This will ensure continuity and clarity for UK food businesses and those exporting their food products to the UK, while maintaining existing levels of public health protection and food safety. There are no changes to the authorisation process for new substances, except that the roles of the European Commission and EFSA will be replaced by the relevant UK entities. To support industry with these changes, the Food Standards Agency intends to publish detailed guidance on the UK authorisation processes. Scientific data requirements in support of applications will remain the same, so the same package of data can be submitted to the UK and the EU, avoiding any unnecessary additional burden.

It is also important to note that the devolved Administrations have provided their consent for these instruments. Furthermore, we have engaged positively with the devolved Administrations throughout the development of these instruments. This ongoing engagement has been warmly welcomed. A full public consultation indicated support for the proposed approach to retained EU law for food and feed safety and hygiene. These instruments therefore constitute a necessary measure to ensure the continuation of effective food safety and public health controls. I beg to move.

Baroness Wheeler (Lab): I thank the Minister for introducing these important regulations dealing with food improvement agents such as preservatives, anti-oxidants, flavourings, enzymes and extraction solvents. As the Minister explained, this is the second version of the regulations, which have been re-presented to comply with requirements in drafting, elucidation and compliance with proper legislative practice identified by the Joint Committee on Statutory Instruments, which led to their hasty withdrawal and subsequent reissue. The Ministers, both today and in the Commons, described the faults in the original draft as minor, but it is important to underline for the record that the committee made some important stipulations now contained in the draft which are welcome because they assist with the clarity needed to ensure compatibility with other related regulations.

We recognise that this and the related SIs considered so far are necessary to ensure we retain the high-level principles underpinning the day-to-day functioning of the UK's food safety legal framework. Ensuring continuity for business and public health bodies is in the vital interests of the public. However, in discussions across the range of food safety-related SIs from either the Department of Health or Defra, we have repeatedly raised our concerns about the UK's preparedness for additional responsibilities in terms of resources and staffing levels in the Food Standards Agency, Food Standards Scotland and the related bodies that are to assume wide-ranging responsibilities from the EU after Brexit.

Let us remember that, between 2010 and 2017, the FSA saw its budget cut by 26%—nearly £30 million—leaving it resourced, in its own words,

"just to provide a basic statutory service",

without contingency funds and with service delivery likely to be seriously compromised if any further cuts take place. Can the Minister explain how she envisages that an organisation that has been run down in this way so as to be able to carry out just its statutory obligations will, in the short or medium term after Brexit, be able to ratchet up to assume the key responsibilities currently undertaken by the European Food Safety Authority?

We have been told by the Government that both the FSA and the FSS will deliver the widened responsibility for protecting public health in relation to food through,

"an increased risk assessment capacity",—[*Official Report*, Commons, Fifth Delegated Legislation Committee, 1/4/19; col. 5.]

and that additional staff are being recruited to deliver risk assessment and risk management functions from day one of Brexit. Can the Minister tell the House how many additional staff have been recruited, when they started work and what roles they are currently undertaking? What additional funds are being provided to the FSA and FSS to meet these costs, and what transitional management funding is being provided to support their taking on new and wider functions?

We are also concerned about the key issues raised by local authorities during the consultation with stakeholders on the SI, on how extra responsibilities they are taking on will be resourced—particularly if further responsibilities are identified in the course of ongoing negotiations. These so far remain unanswered by the Government. We know just how cash strapped local authorities are, so will the Minister confirm that the additional costs will be on a full cost recovery basis and that any additional financial burden that arises through ongoing negotiations will be funded, especially in the event of a no-deal Brexit?

The Explanatory Memorandum for the SI, in paragraph 2.7, expresses the Government's confidence—which the Minister also expressed this afternoon—that,

"These changes will ensure that the retained legislation remains operable and enforceable within the UK regulatory framework without compromising existing levels of public health protection and food safety".

Paragraph 2.9 reassures consumers that,

"existing levels of public health protection and food safety are being maintained".

It is difficult to see how such supreme confidence can be justified in the light of the scale and extent of the changes that will take place in the food industry and related key industries. Can the Minister advise what steps have been taken on a cross-departmental basis to monitor implementation of the new structures, particularly in the transitional phase?

On the key EFSA re-evaluation programme of approved food additives, can the Minister please explain in more detail why the EU regulation is being revoked and it is not thought necessary to retain this important legislation for the UK? Why is a UK-wide re-evaluation programme not needed? While the EU regulation placing a duty on producers or users of a food additive to immediately notify the UK of any new scientific or technological information that may affect the safety assessment of a food additive is being retained, is the Minister confident that the UK will have sufficient safeguards and expertise in the FSA and FSS to ensure that food additives on the UK's authorised list are kept under review on an ongoing basis? How will we ensure that we continue to keep up to date with and implement recommendations from international assessment bodies such as EFSA and the Joint FAO/World Health Organization Expert Committee on Food Additives?

The Explanatory Memorandum, at paragraph 12, states that the impact of the SI on business, charities or voluntary organisations is "minimal" and does not impact on the day-to-day workload of the small and micro-businesses that make up over 90% of the food industry sector. We are told that only one-off familiarisation costs resulting from the legislative changes are involved; and there is no impact assessment, because the SI has been assessed by the FSA as being below the de minimis threshold expenditure requiring an assessment to be produced. Again, the scale and extent of the proposed change makes these statements seem somewhat complacent. Can the Minister assure the House that the situation will be kept under close review so that swift action can be taken if the burden of introducing and maintaining the new arrangements leads to unsustainable costs for small businesses or voluntary organisations?

Finally, on the consultation exercise undertaken by the FSA on the EU law for food and feed and hygiene, the Minister in the Commons was quick to reassure my honourable friend Sharon Hodgson that the food industry had been fully consulted and understands the minimal impact the changes will have and "is satisfied". Also, that of the 50 responses received,

"some 82% supported the Government's approach".—[*Official Report*, Commons, Fifth Delegated Legislation Committee, 1/4/19; col. 9.]

However, the Explanatory Memorandum, at paragraph 10.2, says that of the respondents,

"82% supported or did not agree with the proposed approach being outlined by the Food Standards Agency".

Can the Minister clarify this? What actions are being taken to ensure that stakeholders' concerns expressed in the consultation that changes will be clearly communicated with urgency and sufficient lead-in times are addressed?

Baroness Walmsley (LD): My Lords, I too thank the Minister for repeating the information that has been debated already in another place. I share most of the concerns of the noble Baroness, Lady Wheeler, particularly those about the resourcing and training of the FSA and local authorities. In fact, I expressed those concerns in debates on every single SI in this group which were responded to either by the Minister or by the noble Baroness, Lady Manzoor, so I will not repeat them. However, I still have concerns about the fact that an organisation that has been so minimally resourced until now will take on such enormous responsibilities in the future.

We are now three days away from the current exit day from the European Union. Like the noble Lord, Lord Robertson, I have a birthday on Friday and I very much hope to have the best possible birthday present when we do not leave the European Union it would be the worst possible one if we do. However, the proximity to Friday is particularly relevant to this SI because of the delay in putting it before the House. It occurs to me that there will be a lag between possible exit on Friday and the coming into force of this instrument. What effect will that have?

4.45 pm

On the re-evaluation process—the ongoing rolling procedure—there appears to be another time lag, because I understand that we are going to keep up with the European process until 2020 before we then take it over ourselves. What measures will be in place in the intervening time for the emergency appraisal of any new additive or for considering any new technological information that comes to light? What if something is banned in the EU in the intervening time? We certainly do not want weaker regulations. Can the Minister say anything about that?

If there is an extension to the date of exit, as we all hope, will the Minister say how the Government intend to keep businesses informed regarding if, when and how they should prepare for a no-deal scenario? Stakeholders have asked whether the Government will commit to a close working relationship with EFSA based on the exchange of information and expertise, contributions to scientific networks and cross-European collaboration. When do the Government intend to make a decision on the UK's involvement in these important intelligence-gathering tools, including the rapid alert system for food and feed, the European food fraud network and EFSA's emerging risks exchange network? We have asked questions about this before. We have had some reassurance, but I do not think firm decisions have yet been made, I suppose because they are subject to ongoing negotiations.

Several important questions were not asked or considered during the consultation. What do the Government intend to do regarding, for instance, legislation surrounding export health certificates and the reference laboratories? Can the Government give more details on the timely and consistent involvement of the devolved nations in the enactment of this SI? We do not want to have divergence among the home nations in relation to these instruments, even for a short time.

Lord Deben (Con): My Lords, are we not very lucky that they managed to put off the date as long as this, otherwise this SI would not have come before us? I just wonder how many SIs are hidden behind this one that would not have been passed in time. It seems pretty remarkable that we are talking today—after the date that the Prime Minister promised that on any basis whatever we were going to leave—and are dealing with this very important matter. It just draws attention to the absolute barminess of the whole process. To be doing this after what we did earlier in the week seems remarkable.

I do not envy my noble friend who has to defend this. When she says there are no changes, there is, of course, a fundamental change in that every small business in Britain that is exporting to the rest of Europe has to get itself passed by both the British and the rest of Europe. Although my noble friend rightly said that she did not believe this will stop people importing things, it could easily stop people exporting things. Indeed, the whole Brexit operation is designed to shoot the exporter in the foot and to enable the importer to have unrestricted access.

My first question is whether my noble friend can conceive of any circumstance in which the British would have different rules from the rest of the European Union on, for example, cocktail cherries. I hope the House has seen that there is a specific reference to cocktail cherries in this SI. I do not know why cocktail cherries should have this applied to them; it would be difficult to eat enough of them to be severely damaged in any way other than what always happens if you eat too much fruit. The issue is this: can we imagine circumstances in which we had a different regime from the rest of Europe?

What we are proceeding to do today is decide that the UK will test and check everything and do it again—or perhaps not. Perhaps what we are really going to do is say, "We accept everything that the rest of Europe says but we're not going to have any part in it at all". Is this not the fundamental issue about the whole Brexit concept—that the only way Brexit would work would be on the basis that we did everything that we do today but we did not have a say in it? I know this is very unfair on my noble friend but it seems important to me that we do not let any of these SIs go past without reminding your Lordships and the public of the fundamental lunacy of this whole policy.

That brings me to the cost and resources. The FSA has been starved of resources; the cuts have been significant. Yet the public are increasingly interested in food safety, and there is a good reason for that. We have lived through a whole lifetime in which food has fallen in price but we are now in a world in which food will be rising in price, by the very nature of the emerging middle classes throughout the world and the fact that resources right across the board are less and less available. In these circumstances, because there is more money to be made by fraud, we are likely to have more of it. The FSA is going to have a great deal more to do even without this additional work being placed upon its shoulders.

It is important for my noble friend to reassure the House that the full costs, both to local authorities and to the FSA, will in fact be provided by the Government. This is another example of the mathematics of Brexit never having been properly explained, because none of this came into the arguments about how much we were going to save by leaving the EU. We still need to have that fundamental reassurance. It is not unreasonable to ask the Minister to give us examples of when our independent FSA is going to make different decisions from the rest of Europe and, if so, how that would deal with the import/export problem to which I have adverted.

No doubt we will have to pass this—and are we not lucky that we have an opportunity to do so?—but, frankly, it is yet another example of the sheer waste of time that we are all involved in due to this Alice in Wonderland position in which we seriously think that a nation 22 miles off the coast of the rest of Europe is actually going to have a different safety arrangement for food products that are, and have to be, freely traded within the EU.

Baroness Blackwood of North Oxford: I thank noble Lords for this fascinating debate. I want to be the first to wish the noble Baroness, Lady Walmsley, a happy birthday, and I thank the noble Lord, Lord Deben, for disclosing to the House his passion for cocktail cherries.

Our approach to EU exit when it comes to the FSA is underpinned by three principles. The FSA has been working hard to ensure that UK food remains safe and is what it says it is; that the high standard of food and feed safety and consumer protection we enjoy in this country is maintained when the UK leaves the EU; and that from day one a robust and effective regulatory regime will be in place, meaning that business can continue as normal.

As has been debated, this instrument was subject to parliamentary scrutiny through the affirmative procedure and requires affirmative approval. It needed redrafting and I would like to go into some detail on that, given that the issue was raised by the noble Baroness, Lady Wheeler. Some drafting errors were identified. I have been advised that they were minor. They mainly related to drafting style, rather than content. That is why the instrument was withdrawn. The errors have been rectified and the amended draft was brought back today. They related to an error in Regulation 16(b), where an obligation to inform the authority—the FSA or the FSS—of the receipt of an application for a product to be included in the list of products authorised for smoke flavourings was not included. That has been addressed. The FSA felt that the changes were minor, including a correction to remove a quotation mark at the end of a definition, which had been overlooked.

It was also said that the draft required elucidation relating to the requirement for definitions of appropriate authority and the authority prescribed for certain regulations. The FSA felt that this was not necessary as definitions are inserted by other draft EU exit regulations, but this has been actioned to make sure that it is absolutely as it should be. A final comment was about the failure to comply with proper legislative practice. This related to whether some text should be presented as a footnote instead. Again, the FSA considered that this was not required when originally drafting the instrument, as it replicated how the text was presented in the European Union (Withdrawal) Act 2018. However,

the comment was taken on board and the amendment has now been made. I hope that clarifies what the amendments were.

I turn to the questions raised by the noble Baronesses, Lady Walmsley and Lady Wheeler, about the FSA's preparedness and about funding, which was also raised by my noble friend Lord Deben. Extra funding—£14 million last year and £16 million this year—has been allocated to the FSA to help it prepare for the additional requirements it will have to take on board. This has enabled it to put in place some additional risk assessment tools and risk management experts and to replace some EFSA procedures on which it previously relied. It is important to understand that the FSA has always had a robust risk assessment system in place and has always undertaken evidence-based risk management decisions for the future of food and feed safety issues. It has now built into its capacity the ability to provide robust risk assessment and management advice post exit, using the additional funding provided. That is why we have been able to provide reassurance as these SIs have gone forward, and this has been taken into account as we have prepared for negotiations going into the implementation period, whether in a deal or no-deal scenario.

Obviously, we are considering what kind of relationship we will have with EFSA and what the situation will be regarding the RASFF. At this point, no decision has been made about our future relationship with EFSA, because it will be subject to forthcoming UK-EU negotiations. However, departments have undertaken an analysis to understand the impact that withdrawal from the EU will have on our relationship with EFSA and the EU agencies. This is why the FSA has ensured it has robust risk assessments in place, no matter what the scenario may be. However, it is our preference to have a close relationship with EFSA and access to the RASFF. That is the ideal scenario, which we will be working towards.

The noble Baroness and my noble friend Lord Deben raised the consultation with industry. It is important to point out that this was a thorough six-week consultation, undertaken by the FSA, which took place in September and October last year. Late responses were also taken into account. There was significant support for the approach the FSA has now taken with the SIs. That is why we are confident that the industry and stakeholders will be able to take on board the approach taken in this and other SIs, which have been fully debated in the House. That approach has also involved the devolved Administrations, and the FSA will continue to have close working relationships with the Administrations in Scotland, Wales and Northern Ireland as we go forward. That is why we are confident that, in practice, it will be possible to make arrangements and operate a framework for food and feed safety regulations across the UK, whatever exit scenario we have.

The noble Baroness, Lady Walmsley, asked about contingency arrangements should there be changes in regulation within the EU. If noble Lords support these regulations they will be on course to come into force this week. But if there is a short delay to food law they will not be fully operable, amendments to authorised products could not be made and urgent action might be required on unsafe food. The Food Safety Act and already corrected retained EU law would then continue to provide food safety protection for consumers, and enforcement action could be taken against the placing of unsafe food on the market. I hope that reassures the noble Baroness on that point.

I thank noble Lords for their consideration of these regulations, and I hope I have answered their questions. As I said, the Government's priority is to ensure that the high standards of food safety and consumer protection we enjoy in this country are maintained when the UK leaves the European Union. This instrument performs an important part of our preparations for a functioning statute book on exit. Food additives, flavourings, enzymes and extraction solvents are important parts of substances referred to as "food improvement agents". We must ensure we have the correct protections in place to protect public health after exit. This instrument makes no change to public policy—pace my noble friend Lord Deben—and I hope noble Lords will therefore accept it as it stands.

Motion agreed.

Geo-Blocking Regulation (Revocation) (EU Exit) Regulations 2019

Motion to Approve

5.01 pm

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

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

Relevant document: 22nd Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

Baroness Vere of Norbiton (Con): My Lords, this statutory instrument will revoke EU regulation 2018/302, commonly known as the geo-blocking regulation, and the Geo-Blocking (Enforcement) Regulations 2018 in the event of the UK exiting the EU without a withdrawal agreement. This recognises that, in the event of a no-deal exit from the EU, there would be no way to effectively enforce the geo-blocking regulations on behalf of UK customers.

"Geo-blocking" is the term used to describe traders discriminating against customers on the basis of the nationality or location of the customer. The EU's geo-blocking regulation prohibits certain forms of geo-blocking. This includes through mandating access to all versions of a website in the EU; preventing discrimination between EU customers when distance shopping, online or otherwise; and preventing discrimination in payment terms accepted.

In practice, the geo-blocking regulation means that a UK consumer who wants to buy a toy train from a German retailer can do so in the same way as a German customer. For example, a German toy retailer cannot redirect a UK customer to the English version of the website without their explicit consent and needs to grant the customer access to all other versions of the website. Moreover, the toy retailer cannot apply different prices for the same product—excluding VAT—or refuse payments with a certain brand of credit card from a UK customer if that brand of credit card is

[Baroness Vere of Norbiton]
accepted from German customers. The German retailer is not under any obligation to deliver the goods anywhere beyond their existing delivery area. If delivery is not offered to the UK, the UK customer will have to either collect the product from the retailer's premises or make their own arrangements for onward delivery.

This regulation came into effect on 3 December 2018. The geo-blocking regulation does not apply to copyrighted online content, such as movies, e-books and video games. This would include services such as Netflix and Spotify.

The Geo-Blocking (Enforcement) Regulations 2018 are complementary, and enable the domestic enforcement of the geo-blocking regulation, giving powers to certain regulators and acknowledging the right of consumers to bring claims directly against infringing traders. These regulations came into force on 3 December 2018, the same day that the other geo-blocking regulation came into effect. In the event of a no-deal exit from the EU, the geo-blocking regulation will be transposed directly into UK law under the European Union (Withdrawal) Act 2018 as retained EU law. The Geo-Blocking (Enforcement) Regulations 2018 will also continue to have effect, unless revoked.

It is necessary to revoke both these pieces of legislation, as it will not be possible to effectively enforce the geo-blocking regulation on behalf of UK customers after a no-deal exit from the EU. This is because EU regulators would no longer be obliged to bring actions against businesses through EU mechanisms for cross border co-operation, UK civil and commercial judgments would no longer be automatically enforced in EU member state courts, and the UK Government cannot unilaterally enforce the geo-blocking regulations across the EU.

It is not possible to replicate the benefits of the geo-blocking regulation for UK customers in domestic law. The provisions of the regulation do not apply to transactions occurring solely within one country. Therefore, there is no benefit to UK customers in retaining a version of the geo-blocking regulation which applies only to the UK. Furthermore, if we do not revoke the geo-blocking regulation, it would result in a competitive disadvantage for UK traders. They would have to continue giving EU customers preferential treatment, while EU traders would not need to do the same for UK customers. For example, without revoking the regulation, in a no-deal scenario a UK theme park would continue to be obliged to offer the same prices and conditions to both a French family and a British family. However, even if we retain the regulation, a French theme park would be able to apply discriminatory practices—in terms of pricing, for example—between a French family and a British family. To avoid this asymmetry in the EU's favour, we propose revoking the geo-blocking regulation in the UK.

The effect of this statutory instrument is simple—the retained EU law version of the geo-blocking regulation and the Geo-Blocking (Enforcement) Regulations 2018 will be revoked in the event of a no-deal exit from the EU. The substantive rules contained within the regulation will no longer have effect in the UK after that regulation is revoked.

It is important to note that this legislation will continue to operate in the EU. As such, UK businesses operating in EU markets will still have to comply with the EU regulation when dealing with EU consumers. This means, for example, that a UK trader will have to offer the same conditions for customers in the Netherlands and Spain. However, the UK trader will be able to offer different conditions to UK customers.

The Geo-Blocking (Enforcement) Regulations 2018 made changes to the Enterprise Act 2002 to allow for the domestic enforcement of the Geo-Blocking Regulation. This SI does not undo the changes made to Schedule 13 to the Enterprise Act 2002 by the Geo-Blocking (Enforcement) Regulations 2018. These changes were already undone by a separate statutory instrument; namely, the Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2019. These regulations were debated and approved by your Lordships' House on 15 January 2019, and were made on 6 February 2019.

It is important to highlight that failure to revoke the geo-blocking regulation and the Geo-Blocking (Enforcement) Regulations 2018 would not preserve UK customers' rights. Those rights will, in effect, be lost if the UK leaves the EU without a deal. The only effect would be to continue to impose obligations on UK traders, while providing no benefit to UK customers.

The subject matter of this statutory instrument is partially devolved in Scotland, Wales and Northern Ireland. It has been consented to by the Welsh and Scottish Administrations. The Northern Ireland Civil Service was notified in line with the protocol agreement in place during the absence of the Northern Ireland Executive. I take this opportunity to warmly thank the devolved Administrations and the Northern Ireland Civil Service for their ongoing co-operation.

I beg to move.

Lord McNally (LD): My Lords, as this is the last item of business it would be very easy to nod it through. However, in the debate on the previous SI, the noble Lord, Lord Deben, made the point that this House is playing a very important part in what he described as the Alice in Wonderland situation of Parliament legislating on Monday to prevent a no-deal Brexit, and then on Tuesday legislating to avoid the worst consequences of a no-deal Brexit. It is important that these statutory instruments are probed. They may seem to be simply belt-and-braces exercises, and the Minister delivers her arguments with such an upbeat lilt that you think there cannot be any problems, but it is worth probing a little deeper and showing the absolute absurdity and danger of what is proposed.

Let us remember that this is part of a great creation of the European Union: the single market and its operation. That single-market concept was the great work of Lord Cockfield, actively supported by Mrs Thatcher, in the 1980s. It was one of the great pieces in the puzzle of creating the European Union. Yet, as the Minister explained in her positive manner, no benefits are forthcoming from this SI—or from any of them. We are doing an exercise in damage limitation.

The Minister clearly explained what geo-blocking means. It is,

"the term used to describe traders discriminating against customers on the basis of the nationality or location of the customer".

That is the very heart of the single market. She was fair in frankly pointing out—as did the Minister in the other place, Kelly Tolhurst—that, so far as the consumer is concerned, by leaving the European Union we move out of the protections which this legislation provided, and that:

"UK businesses operating in EU markets will still have to comply with the EU regulation when dealing with EU consumers … A failure to revoke the geo-blocking regulation and the Geo-Blocking (Enforcement) Regulations 2018 would not preserve UK customers' consumer rights. Those rights will in effect be lost if the UK leaves the EU without a deal. The only effect would be to continue to impose obligations on UK traders while providing no benefit to UK customers".—[*Official Report*, Commons, 2/4/19; col. 977.]

It is lose, lose, lose. In short, EU traders would not have any obligations to treat UK customers in line with the geo-blocking regulation.

As the Minister also explained, this regulation does not require a company to deliver a physical product to all EU locations. It also exempts digital copyrighted content, including e-books, computer games and streaming services such as Netflix, and audio-visual content and transport services. However, the EU is obliged to assess whether to lift these exemptions in 2020. This is a perfect example of the lunacy of Brexit. We are moving into a data revolution—an age of e-commerce. Yet we are now stepping back; we will not be at the table when the EU sets the standards in these areas. We will again be left, as the noble Lord, Lord Deben, rightly put in another context, waiting, watching and listening for what others decide.

Lord Howarth of Newport (Lab): I got the impression that we were, in important respects, setting the standards for legislation in relation to data issues—for example, the duty of care that has just been proposed by the Government. Does the noble Lord not agree that what is sauce for the goose is sauce for the gander? EU traders wanting to do business in the UK following Brexit will have to obey our laws, just as we have to obey their laws when trading within the EU, so there is actually a reciprocal balance here.

Lord McNally: I have heard the noble Lord intervene time and again over the last year about this reciprocity—I am getting like President Trump in my pronunciation. We are talking about a market of 70 million and a market of 500 million. One of the things that was said in 2016 was that they need us as much as we need them. Oh, do they? How pathetic. Something I used to say when I worked in public relations, talking to big companies, is that it takes years and decades to build a reputation and you can lose a reputation in an instant. We built 700 years of competent parliamentary democracy and we have lost it in two years of madness, mostly egged on by people such as the noble Lord, who has this strange idea that the rest of the world is just waiting to co-operate with our wisdoms. I think I might have provoked him, but I do not know.

5.15 pm

Lord Howarth of Newport: I just gently put it to the noble Lord that Brexit is about recovering our democracy. Also, surely sensible people are going to want to go on doing business and trading with each other, whether or not one particular bloc is larger than the other.

Lord McNally: We have heard it all. If you seek your memorial, look about you at the mess and the chaos that that kind of arrogance has led this poor country into.

We face a data revolution. One thing that our retail industry is having to grapple with now is how we deal with the move of retail from the high street to online and the repercussions of that. All that is going to be far better dealt with in co-operation with our nearest neighbours, and we will miss out not just on the benefits to the UK consumer but on the power to engage and influence the implementation of the digital single market.

I said this in one of the earlier debates but I will repeat it. I was the Minister for Data Protection from 2010 to 2013 and I went to one of the early meetings discussing the GDPR in Lithuania. I remember sitting through a whole afternoon and noticing at the end of the day that one of the people round the table had neither intervened, spoken nor voted or anything. I turned to the British ambassador and said, "The guy at the end of the table has not said anything or taken any part". He said, "Ah, that's the Norwegian. They can attend, they can listen but they can't involve themselves in the decisions". Welcome to the world we are about to enter. So much for sovereignty; so much for bringing back power. You are in power when you are at the table where the big decisions are made. That is where the noble Lord is wrong and I think history will judge him harshly.

As is the custom in such circumstances, we will of course see this instrument go through. The noble Baroness explained how the devolved part of it will be done and explained about Northern Ireland. The only other clarification I would like is this: if the shutters came down, what about processes that were already under way? If you had already purchased something or you were already selling something, how would the law apply in those circumstances? I am not going to say that we have no objection otherwise, but let us say that we give a wry grin as we let this go through.

Lord Griffiths of Burry Port (Lab): My Lords, I begin by refuting what the noble Lord, Lord McNally, said about himself. There can be no comparison between him and the President of the United States; it may be that neither of them knows how to pronounce reciprocity, but the President would not know what it meant either. Let it be said also that the little exchange between my noble friend Lord Howarth and the noble Lord, Lord McNally, is indicative of where our manner of conducting these discussions has got us. Two people, for whom I have respect—and, indeed, affection—are capable of having a real bout of reciprocal hostility, if not animosity—

Lord Howarth of Newport: I have absolutely no hostility towards the noble Lord, Lord McNally. I am very fond of him; please correct the record.

Lord McNally: There is no animosity on my side.

Lord Griffiths of Burry Port: In my professional life as a mediator, I used to succeed in instances such as this. Clearly I have done it again.

[Lord Griffiths of Burry Port]

On the question before us, we on these Benches and many on the other side believe there should be a permanent and comprehensive UK-EU customs union, a close alignment with the single market, dynamic alignment on rights and protections, and clear commitments on participation in EU agencies. Earlier this afternoon we were talking about the break-up of such reciprocal arrangements. Worries have been expressed about what will happen in areas where we have fruitfully collaborated over the years if and when we come out of the European Union.

Hundreds of Brexit-related statutory instruments have been laid since June 2018. How much time in this and the other Chamber have we spent debating them? I refer again, as I inevitably do when talking about an SI, to the talented people working in our Civil Service who have been required to do the work of a drudge—trawling through legislation, instruments and regulations going back over 40 years—to bring the statute books into alignment with each other. It is a sheer waste of time.

Yesterday, when I stood here to make my contribution to the debate about the new White Paper on online harms, it was such a relief after what had preceded it to talk about something proper again. We miss all of that. For example, today I have been told when we will be able to discuss advertising and the internet—a debate that was put back from last Thursday, when it was scheduled, to later in April because we had to replace it with seven amendments to the European Union (Withdrawal) (No. 5) Bill which were full of animosity and sheer vindictiveness. I have never heard a debate like that in my life.

We regret the fact that these exit SIs have become a manic tick-box exercise. The Government have wasted two and a half years to sort out a deal. We have been buried in Parliament by the mountain of work that has ensued for those of us sitting here. Before I came, and yesterday, I read endless documents about not particularly interesting details simply to create the impression that I know what geo-blocking is. The Government have recklessly pushed through EU legislation with no proper consultation, no impact assessment and wholly inadequate parliamentary scrutiny. It will come home to haunt us. Mistakes will have been made. We cannot possibly get it all right under this pressure and without the normal, conventional delays that are necessary in taking through amendments to legislation. We will make mistakes, and we will recognise that as we go on.

It worries me that people have been so worried about betraying the conventions and the constitutional arrangements of the workings of this and the other House when they have been so cavalier in the way they have flouted convention in presenting these statutory instruments.

This instrument is, I have to admit, a logical measure to cope with the needs of our statute book in the event of a no-deal Brexit, 72 hours before the most recent date set for us to exit. We can assume only that since nobody wants a no-deal exit, we will get one only if we allow ourselves to wander into it. The danger is that even so, that is exactly what will happen.

This SI raises the same old questions which other and previous ones raised. On the matter of consultation, for example, in the explanatory document we are told that on 18 January this year a letter was written to Ministers in the Scottish and Welsh Governments and to the civil servants in the Northern Ireland Department for the Economy. The Minister said that the Welsh Government had given their assent, which I am aware of from my contacts with the Assembly in Cardiff. However, while I know some of the concerns that were raised by the Welsh, I would love to have known about the other questions and concerns; in other words, we are told that consultations took place between the Government and these bodies, but we who have to debate the instrument have no knowledge of the ground covered in those consultations or where the sticking points might have been so that we might perhaps apply our minds to those areas for consideration.

Similarly, "interested business groups" were consulted —the CBI, the Federation of Small Businesses, the British Retail Consortium and, listed in a footnote, the Association for UK Interactive Entertainment—but again, there is no mention of the concerns that might have been raised during these consultations. That would have helped me much more than much else I have had to read as I have tried to shape my mind in response to the instrument before us. We are told that the consultation took place, but there is nothing to help us with the material and the ground that was covered in those consultations.

It is more than a tad ironic that we now find ourselves needing to revoke a regulation which became effective a mere four months ago. Think of all the work which British as well as other officials put into the careful framing of this regulation. Now, so soon, we are preparing to send it into oblivion. It is vital that the reciprocity envisaged by this regulation should somehow be maintained in the event of our leaving the EU. This is such an important area of collaboration and a joint approach to handling our business affairs that it seems a travesty for British customers and businesses to be left with fewer rights than they now enjoy, or rights that have to be recreated and reconstructed from the ground upwards when they already exist. I would like to know from the Minister whether the perceptible shortcomings with regard to the advantages to British businesses and customers can and will be corrected, and in what manner.

On this last matter, the Explanatory Memorandum suggests:

> "Regulators in other EU states would be very unlikely to enforce the Regulation on behalf of UK customers as the framework for cross border cooperation will be repealed in a 'no deal' exit from the EU".

Later in the same document, we read that, if we fail to revoke this regulation,

> "UK traders would continue to have obligations to EU customers under the Regulation while UK customers are unlikely to receive any of its benefits".

I have noticed this question of likelihood in previous SIs. It is such an odd word to have in a document that states how the law will be modified in order to harmonise it with the demands of our statute book. Likely or unlikely? Who thinks that it is unlikely? What level of

unlikelihood is there? Who has asked anyone any questions to lead them to think that it would be either likely or unlikely?

5.30 pm

We also take note, with increasing alarm and disquiet, at the absence of representatives from Northern Ireland. I am very tired of the fact that we apologise again and again that we make our decisions in the absence of appropriate representation from the Northern Ireland Assembly, and I wonder at what point we reach the toleration threshold on this matter. It is not fair; it is not right. It is deeply regrettable that we can mention Scotland and Wales but not Northern Ireland. Constantly, we have to make assumptions on their behalf and work through civil servants.

In the Explanatory Memorandum—as happens again and again—one sentence narks me:

"The territorial application of this instrument includes Scotland and Northern Ireland".

"Duw, Duw", as we say in Wales—"There's a terrible thing, isn't it?" Where has Wales gone? What have they done with Wales? There is no Wales in there. I know that later on it mentions the entire United Kingdom, but a Welsh person wants to know that Wales is included. I am looking for some pity from the Minister at this point, and I have it—I am really contented now. And how does this question affect the cross-border relationships between the Republic of Ireland and Northern Ireland, where we do not have even 22 miles between us and the rest of Europe—it is at the border? Will it have a deleterious effect? Will things be damaged?

All this said, all passion spent, "Tomorrow to fresh fields and pastures new". I do not need to say that I have quoted John Milton—everybody will know that—but I do not think that the noble Lord, Lord McNally, is in any danger of losing his marbles as, on his feet, in response to the non-hostile interventions from the noble Lord, Lord Howarth, he quoted Christopher Wren just like that. That makes him a very special person in my book.

All this said, we agree to these proposals and we will therefore not withhold our support.

Baroness Vere of Norbiton: My Lords, I thank all noble Lords who have taken part in this short debate this afternoon. I was certainly not intending that the House would nod this one through, but I must be honest with the noble Lord: of all the exit SIs that I have done—and there have been plenty—this one feels fairly straightforward, in that the plan B not to revoke it would not have been fair. I was not expecting that today would be a mini-Brexit debate on the benefits or otherwise of leaving. I thought we had come to an end of those for the time being, but we had one none the less, which is, as always, a pleasure.

I am happy to answer as many questions as I can relating to the SI. A bit of ground was covered. The noble Lord, Lord McNally, talked about the single market, which we are of course the architects thereof, one of whom was the late Baroness Thatcher. UK customers could—I am not saying that they will—benefit from this move. They could get lower prices or better terms; I am not promising that. We cannot necessarily say that it will all be bad news.

Furthermore, UK traders may be able to offer differential pricing that benefits them and UK customers, so I am perhaps not as "doom and gloom" as some noble Lords. While I am not promising that, we must make sure that we do not always think when we debate such legislation that things will necessarily work out badly.

The noble Lord, Lord McNally, talked about the 2020 review. Whether or not we have a close relationship with our near neighbours, we will always look at what they are doing—we would be foolish not to. If we do not have a deal, the 2020 review will be a question of us looking at the situation from far away, but if we do have one, we hope to work in partnership with them in developing the future for digital. Again, I am not quite as miserable as the noble Lord, Lord McNally, regarding digital services and markets for digital content. I believe that the UK is a very significant player in this regard and that we will continue to be so. There is a glass-half-full, glass-half-empty situation going on here.

The noble Lord, Lord Griffiths, asked if we have been able to quantify this at all. Given what I have just said, we have not, because the situation is not entirely clear. It looks as though some 75,000 traders affected by this, in that they will have to think about the way they interact with consumers in different parts of the UK versus the EU. Again, it is not possible to quantify because we do not know how markets and different traders will react. That comes back to the point the noble Lord made about unlikely versus likely—it would depend on future arrangements as well. If there is no deal, in many years' time we could have future arrangements in digital services and in this area that allow certain things to happen. I am afraid that that is all fairly nebulous, but it is pretty much where we are, given that we do not know where we will be in a few years' time.

The noble Lord, Lord McNally, asked about proceedings that had already started—or, as I like to call them, in-flight complaints. Our understanding is that claims initiated before exit day that relied on the geo-blocking regulation would still be valid in the UK after exit day, and we will seek to provide legal certainty for businesses, families and individuals who are involved in ongoing cases on exit day.

The noble Lord, Lord Griffiths, talked about the time taken to debate all the SIs. I agree with him on this and I sincerely wish it was not the case. I too desperately miss talking about other things, because there are many other things that I would love to talk about at the moment. However, if there is an upside—I am full of upsides today; generally, this is not like me—it could be that this whole exercise has given our excellent Civil Service a very good opportunity to get to know our legislative framework well. In doing so, I hope it has seen that if—goodness knows—we end up in a no-deal situation, there are opportunities for us to improve our legal framework as we move forward.

The noble Lord, Lord Griffiths, also talked about the consultation and he is right. He quoted the Explanatory Memorandum, which mentions the businesses and groups we have spoken to—the Federation of Small Businesses and the Confederation of British Industry—and I am not aware of any sticking points.

[Baroness Vere of Norbiton]

The note I have received from the Box says that no concerns have been raised, either by the devolved Administrations or the business organisations; both were neutral on this policy. I presume they looked at plan B and thought, "No, we don't want that, so we might as well have plan A", so the consultation for this seems to be fairly uncontroversial.

On Northern Ireland, I take note of the comments made by the noble Lord, Lord Griffiths, and I agree with many of them. I think we would all like to see an Executive restored in Northern Ireland as soon as possible. We are acting within the bounds of the protocol and regulating only where it is necessary. On the future relationship and how Northern Ireland and Ireland work together, we will have to have a conversation with the Irish Government on this and many other areas.

I hope I have answered noble Lords' questions.

Motion agreed.

House adjourned at 5.39 pm.

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