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PARLIAMENTARY DEBATES
(HANSARD)

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

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House of Lords

Wednesday 10 April 2019

3 pm

Prayers—read by the Lord Bishop of London.

Plastic Pollution Question

3.06 pm

Asked by **Baroness Jenkin of Kennington**

To ask Her Majesty's Government what steps they are taking to tackle plastic pollution.

Baroness Vere of Norbiton (Con): My Lords, our priority is to prevent plastic from entering the environment in the first instance. The resources and waste strategy published in December last year sets out our plans to eliminate all avoidable plastic waste by 2042. To do this we are currently consulting on a suite of measures that include making recycling easier and financially incentivising producers to take greater responsibility.

Baroness Jenkin of Kennington (Con): My Lords, I declare an interest as a trustee of WRAP, which has convened the UK Plastics Pact, which is now supported by 68 of the UK's largest businesses and organisations. In light of the Government's proposed plastic packaging tax, which is currently being consulted on, and appreciating that it is not my noble friend's normal brief, how do the Government intend to ensure that the Plastics Pact and the plastic packaging tax will work together to best effect?

Baroness Vere of Norbiton: My Lords, I can actually answer that question. The plastic packaging tax will provide a clear economic incentive for businesses to use recycled material in the production of packaging. Subject to consultation, any business that produces or imports plastic packaging that does not contain at least 30% recycled content will have to pay a tax from 2022. The UK Plastics Pact has pledged to meet the same target of 30% recycled plastics in its packaging by 2025. This is a voluntary arrangement, and of course the Government support it, but we want to ensure that all businesses achieve this ambitious target and that they do so as quickly as possible.

Baroness Jones of Whitchurch (Lab): My Lords, does the noble Baroness understand why we are so frustrated about this issue? We have debated it here time and again, yet we seem to be stuck in an endless cycle of consultations. There is broad cross-party support right across the country on this, and it would be very popular with the public, so why do the Government not just get on with, for example, introducing a bottle deposit scheme, which all the evidence shows would cut the number of plastic bottles littering our countryside and waterways? As I say, this would be extremely popular. Why the delay?

Baroness Vere of Norbiton: I agree that many of the things the Government are proposing are extremely popular—these things are popular, and the Government

are doing them—but I have to be honest with the noble Baroness: this is a very complicated, complex area and we must not introduce one of these things on its own without looking at the whole environment for recycling plastic. That is why the resources and waste strategy sets out the three different areas—from production to consumption and end of life. We are consulting on the deposit return scheme; we have to make sure that the local authorities are on board and can do it too, and we need to understand exactly what sort of DRS we will have.

Baroness Boycott (CB): My Lords, the supermarkets convince us that we need plastic in order to preserve the life of vegetables, yet a quarter of all food that is thrown away is still wrapped in its plastic—it has not been undone—so we are convinced in the wrong ways. Most fruit and vegetables have perfectly good skins that keep them alive. Why is this not mandatory? We pay for plastic bags, which has been effective. It is a cost to the consumer which I think we all agree with. Why are supermarkets not taxed en masse for the kind of plastic they produce? If they had to pay for it, they would surely as hell change their habits.

Baroness Vere of Norbiton: The noble Baroness raises a number of different questions. Of course, she is absolutely right that much of the packaging we use may not be necessary. That is why the UK Plastics Pact is working on ways to reduce supermarket packaging, and we absolutely welcome that. One thing we are consulting on is extended producer responsibility. This is really important; we will look to the people who produce packaging to pay the full net costs of that packaging. That will include the collection and transportation of waste recycling, the sorting and the treatment, the clean-up of litter, and the collection of data about packaging. A lot can be done, we are doing it, and we are looking to work with the supermarkets to reduce packaging as much as we can.

Baroness Parminter (LD): My Lords, creating genuinely sustainable alternatives to polluting plastics is vital. What is Defra doing to ensure that BEIS's industrial strategy challenge fund is making money available to fund R&D for such innovation?

Baroness Vere of Norbiton: The noble Baroness is quite right. There is a huge amount of innovation going on around plastics. Again, it is a very complicated area. The industrial strategy challenge fund has put aside £66 million, which will be match funded by industry, to develop smart, sustainable plastic packaging.

Baroness Chalker of Wallasey (Con): Can my noble friend find a way to get local councils and the organisers of public events to clear up plastic waste after major events? It was disgusting along the banks of the River Thames after the boat race.

Baroness Vere of Norbiton: I thank my noble friend for that question. As someone who is running the London marathon this year, I will be appalled at the number of plastic bottles there will be by the roadside, but we have been told that if we empty them out they

[BARONESS VERE OF NORBITON]

will be recycled. My noble friend makes a very good point: we have to clear up after our events. One thing that is happening right here, right now, which all noble Lords could participate in, is the Great British Spring Clean; 450,000 volunteers have signed up, and it will go on until 23 April. We can all be out there picking up litter, and indeed plastic.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, can my noble friend advise the House what efforts the Government are making on British waste to encourage new, more imaginative technologies that convert plastic waste into energy, such as those in town centre schemes in Copenhagen and Stockholm? They could mitigate some of the harm that this plastic mountain is inflicting.

Baroness Vere of Norbiton: My noble friend raises a very important point. Energy from waste is potentially one of the solutions. However, we do not want to see items being sidetracked from recycling and reuse into energy from waste. Certainly, if we can stop products going to landfill, we will look at incineration. We are working with the Environment Agency and looking at how plastics are burned and any emissions that are released. We understand that Public Health England's position on carbon dioxide release, for example, remains that modern, well-managed incinerators are not a significant risk to public health.

Lord Dubs (Lab): My Lords, everything is in the future—we are going to do it some time. When will all this happen? Years ago when we pressed the Government on charging for plastic bags in supermarkets, they said, “No, no, no, we are never going to do it”. Eventually they changed their minds. Can we get a move on? It is a crisis.

Baroness Vere of Norbiton: I am not entirely sure that the Labour Government did it either. The reality is that it was the Conservative Government who banned microbeads and introduced the 5p charge on plastic bags, which has reduced their usage by 86%. We are consulting on increasing the charge to 10p and for it to cover all different retailers. It is wrong to say that nothing has been done, but it is right to say that the Government have great plans for the future, and we will be tackling plastic pollution.

Lord Robathan (Con): Has my noble friend noticed, in the Great British Spring Clean, the great enthusiasm with which children, particularly primary school children, have signed up to go out and clean up the lanes and byways of this country? Does she agree that the *Daily Mail* has done rather well in encouraging people to do it?

Baroness Vere of Norbiton: Indeed, and I understand that my noble friend has a Question on this particular issue coming up very soon, so we will be able to debate this in greater detail. He is absolutely right: we have to get everybody involved. Children are brilliant at picking up litter, and we must make sure that their parents encourage them to do so.

British Citizenship: Children Question

3.15 pm

Asked by **Baroness Berridge**

To ask Her Majesty's Government what steps they have taken to review the access to legal redress and humanitarian protection of children whose parents have been deprived of British citizenship.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, if a parent is deprived of British citizenship, this does not affect the citizenship status of their child nor a British child's ability to access legal support or humanitarian protection.

Baroness Berridge (Con): My Lords, I am grateful to the Minister for her Answer. The story begins for all these British children with their parents—such as the parents of nine year-old Sara—taking them out to join IS. My noble friend has not explained why these British children, who cannot make their own way home or access consular services, do not benefit from a decision-making process in the Home Office on whether it is in their best interests to remain with that parent, potentially in a refugee camp, or to return home. Nor, as far as I am aware, has the inherent wardship jurisdiction of the family courts been exercised on behalf of these children, which would relieve the Home Secretary of that legal conundrum. Will the Minister please agree to meet with concerned Members of your Lordships' House? I am grateful that there is concern on all Benches about the situation of British children finding themselves in refugee camps.

Baroness Williams of Trafford: I share my noble friend's concerns about children who find themselves, in many cases through no fault of their own, in Syria. She is absolutely right to point out that there is no consular access, which is why the FCO advises against all travel to Syria. There is humanitarian protection out there in the region—it is not an ideal place for a child to be—and the UK has provided £40 million towards that protection in Syria. I would be very happy to meet with my noble friend, and I am grateful for the meeting I had with her and the right reverend Prelate the Bishop of Durham to discuss this matter previously.

Lord Soley (Lab): I wrote to the Minister about this some time ago. My concern is not just the humanitarian side, which is very important, but also security. The longer those children and their mothers are in those camps in eastern Syria, the more likely they are to be brought back into ISIL. I appreciate that action has to be international and not just by the UK, but this is both a humanitarian issue for the children and a security issue for the UK and other countries.

Baroness Williams of Trafford: The noble Lord raises two very vital points about the whole crisis in Syria, both the humanitarian issue and the security issue of anyone who might come back to this country

after engaging in activity out there. This is, of course, of international concern, as the caliphate disintegrates. As international partners, we must all discuss with each other what the best way forward is. In the humanitarian area, the UK is providing, as I said, a lot of assistance.

Lord Carlile of Berriew (CB): My Lords, does the Minister agree that the lack of clarity indicated by this Question might have been resolved much better if the Government had not delayed for nearly five months appointing a new Independent Reviewer of Terrorism Legislation, who would have been on hand to give expert advice as to the proper resolution of the important issues raised?

Baroness Williams of Trafford: I agree with the noble Lord and thank him for all he does in this area. The sooner that appointment is made, the better.

Lord Paddick (LD): My Lords, families are key to the prevention and deceleration of radicalisation. Does the Minister not think that to allow foreign fighters to return from the so-called Islamic State to face justice, deradicalisation and reintegration is far more likely to make the UK safer, rather than depriving them of British citizenship, which runs the risk of maintaining or increasing hostility towards the UK?

Baroness Williams of Trafford: Obviously, people do return, and those who return face the most robust force of the law on why they have travelled to Syria. On deprivation, these decisions have been made 150 times since 2010, and the Home Secretary does so with the most robust information and advice before him.

Lord McConnell of Glenscorrodale (Lab): My Lords, as the Minister has said, the Home Secretary has had to face this kind of decision on a number of occasions over recent years. Given the legitimate reaction there has been to the most recent decision that we have discussed in your Lordships' House, is it not time for the Government to introduce a system whereby mothers and children who are located elsewhere in the world, in a refugee camp or anywhere else, have some form of advocacy, legal or otherwise, in the Home Office at the time the decision is made, rather than having to appeal afterwards? Surely we would not tolerate that in a situation which might separate mothers and children if they were living in this country. If British citizens are living elsewhere, surely they have the right to advocacy, as I think the noble Baroness, Lady Berridge, suggested, before the Home Secretary makes a decision on citizenship in the future.

Baroness Williams of Trafford: Of course, when people travel to countries like Syria, when, as I have said, the FCO advice is that under no circumstances should people travel there, and they do so knowing that there is no consular access, what the noble Lord suggests is very difficult. After decisions are made, they may be appealed, but one cannot appeal a decision before it has been made.

Baroness Butler-Sloss (CB): My Lords, what will the Government do about young children with British citizenship whose parents have been deprived of British citizenship? It will be extraordinarily difficult to look after the children if you do not also look after the mother.

Baroness Williams of Trafford: The noble and learned Baroness is right to point out the issue of the needs of children. If a child finds itself in, say, al-Hawl refugee camp, that is a difficult situation to be in, and quite often their parents have put them in that situation. As I said, humanitarian assistance is available, and we have put a significant amount of money into providing that assistance.

Businesses: Technology *Question*

3.22 pm

Asked by Lord Holmes of Richmond

To ask Her Majesty's Government what steps they are taking to ensure the attraction of the United Kingdom as a place to establish and scale businesses based on artificial intelligence, FinTech and distributed ledger technology.

Lord Holmes of Richmond (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare my interests as set out in the register.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, we are creating an attractive environment, building the foundations and skills, data and ethics to allow businesses based on AI to start and scale. It is encouraging to note that inward investment to the UK AI sector increased by 17% last year—more than the whole of Europe combined.

Lord Holmes of Richmond: My Lords, there are obviously many factors involved, not least our excellent higher education institutions and our approach to immigration, to international students and to funding, to name just a few. Does my noble friend agree that we need to optimise all these factors and more if we are to realise this fantastic opportunity for companies to come here to start and scale in the UK?

Lord Henley: My noble friend is quite right to draw attention to our strengths, particularly those in the university sector; for example, he will know that on a league table based on research we have three of the top 10 universities, which certainly makes it attractive for businesses to come to this country and for businesses here to upscale their businesses in AI. He pointed to other factors as well, but I assure him that the Government are doing their bit with the AI sector deal, which is worth some £1 billion to the sector—half from the Government and half from the industry—and I hope that we will see yet further support for it.

Lord Grantchester (Lab): My Lords, before asking my question, I congratulate the noble Lord the Government Chief Whip on the achievement of his family business, Taylors Bulbs, in reaching the celebratory milestone of 100 years in business. My best wishes to him and his business for the next 100 years.

The noble Lord, Lord Holmes, is correct to identify and endorse huge commercial opportunities. However, a PwC report in 2017 highlighted that AI and wider automation could result in up to 30% of UK jobs being dispensable. Change can be painful. What steps are the department taking to ensure that all employees benefit from these developing technologies, such as by an improved leisure/work balance, and that AI does not simply lead to mass redundancies?

Lord Henley: The noble Lord takes a depressingly pessimistic view of that PwC report. It pointed out that advances in that sector could lead to growth of £230 billion between now and 2030. That is to be welcomed. It also pointed out that jobs would disappear, but I think it went on, as did another report to which I referred the other day, to point to a very large number of new jobs in the sector, which would probably be more highly paid and more highly skilled and which we could provide in this country.

Lord Fox (LD): My Lords, will the Minister focus on the scale-up part of the Question? The British Business Bank is there to help the scale-up process. I understand that it loans about £2.5 billion through other institutions. How much of that money proportionately is going into the AI industries to help them scale up, and does he expect that proportion to increase or decrease?

Lord Henley: My Lords, I cannot give any precise figures about how much is specifically targeted on the AI industry. The important point is to recognise, as did the PwC and other reports, what will happen in that industry: the advantages for it, how much it will grow and how well this country is doing. That is why I cited in my Answer the massive increase in inward investment—which is obviously an indication of what is happening to not only start-ups but scale-ups—of 17%, which is more than the rest of Europe combined.

Lord Hamilton of Epsom (Con): My Lords, has my noble friend noticed that although the Opposition are complaining about the redundancies that will be caused by new technology, they are on the other hand complaining about the lack of productivity growth in this country, which will of course be achieved by the introduction of new technology?

Lord Henley: As always, my noble friend makes a valid point. We will see new jobs, better jobs, greater productivity and a general growth in the sector.

Lord Mountevans (CB): My Lords, fintech is a great story for Britain. Later this month, we have the Innovate Finance FinTech summit marking the beginning of UK FinTech Week, but 42% of those working in the sector come from overseas. Does the Minister agree that access to this country for the young innovators

from abroad is essential, and that we should have an immigration regime which permits them to come to this country?

Lord Henley: My Lords, the noble Lord rightly points to the importance of the fintech sector and the fact that London is its leading world player. We shall have to look carefully to ensure that we can attract the right people not only from abroad but from the UK. That is why skills will be important. I am sure that my noble friend from the Home Office will have noticed what he had to say on bringing in people from overseas.

Lord West of Spithead (Lab): My Lords, I raise a slightly different aspect. We are ahead of most countries in the world on AI, particularly at our universities, but a large number of university courses are getting very full with Chinese students. Is there any concern about this vast number coming in, bearing in mind their input to a large number of other areas of high tech within our nation?

Lord Henley: The noble Lord takes me slightly wider than the original Question. Again, it is a sign of the success of the university sector that it attracts people paying large fees into universities, to the benefit of those universities and of this country. I hope that universities will then be able to consider expanding those courses.

Viscount Ridley (Con): My Lords, is my noble friend aware of just how highly respected the UK artificial intelligence sector is around the world in not just research but application? It is generally trusted more than both China and the United States, and has a stronger digital industry than both Germany and France. Can the Government give something of a lead to this nascent industry through their procurement policies?

Lord Henley: My Lords, that will certainly be considered. In one of my earlier answers I referred to the AI sector deal, but I can also refer to the fintech sector strategy launched a year ago by my right honourable friend the Chancellor. Again, it set out our commitment to that sector remaining the leading centre for fintech.

Passports Question

3.30 pm

Asked by **Baroness Ludford**

To ask Her Majesty's Government why not all newly issued passports have the words "European Union" printed on them.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, as part of the long-term operational arrangements to prepare for the UK leaving the EU, burgundy British passports that do not include "European Union" on the front cover were introduced as planned from 30 March. Whether their passport does or does not reference the European Union makes no difference to British citizens: both are equally valid for travel.

Baroness Ludford (LD): My Lords, not only are we still in the European Union but, after tonight, we may be so for another nine months—perhaps even a year. During that time, the UK and the Government will enjoy all the rights and obligations of EU membership, including that of sincere co-operation. Why are the Government refusing to pass on those rights to their citizens, who want “European Union” on their passports? Why are they refusing to co-operate sincerely with their citizens or respect the will of those people?

Baroness Williams of Trafford: With respect to the noble Baroness, this has absolutely nothing to do with the will, or otherwise, of the British people, but everything to do with them voting to leave the European Union and the Home Office making preparations in changing passports. I really think that her point is not very good.

Lord Forsyth of Drumlean (Con): My Lords, this is a topical Question. The noble Baroness, Lady Ludford, obviously thinks that it is an urgent and important matter for discussion. Will my noble friend the Minister perhaps consider getting the Home Office to produce disposable, peel-off stickers saying “European Union” for the people who feel concerned about this matter?

Baroness Williams of Trafford: My noble friend makes a very practical point. In fact, one can purchase passport covers in any colour and saying anything that anybody wants; the noble Baroness is quite at liberty to do so. It is right that the Home Office prepares for the UK leaving the European Union.

Lord Blunkett (Lab): My Lords, will the Minister consider an alternative solution? Given the limbo in which the country finds itself, would it not be sensible to put a question mark after “European Union”? Then we could Tippex it out in due course.

Baroness Williams of Trafford: The noble Lord makes a funny point. I do not think that we should deface our passports, just to put that out there, but we can buy covers and put pretty much what we want on them.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend agree that the Government website and the adverts the Government have put out are confusing? If you have six months’ validity on your passport, can you still travel to the European Union? Would the Government mind extending it so that new passports would be valid for 10 years and six months henceforth?

Baroness Williams of Trafford: My noble friend makes a good point. Countries such as the US offer travellers leave to go for a fixed period of time so they can use their passport right up to the 10-year limit. It would therefore be rather confusing to make ours valid for 10 and a half years. I know exactly the point she is making, though.

Lord Paddick (LD): My Lords, by the end of the year, some British passports will be blue, some will be maroon, some will have “European Union” on the front and some will not. Does the Minister agree that this will be confusing to not only British passport-holders

but foreign security personnel, and that this increases the risk of forged passports going undetected because of the variety of official documents?

Baroness Williams of Trafford: I give the British public more credit for their intelligence than does the noble Lord. Of course, the Croatian passport is not burgundy, it is blue, and there is a reason for that. The Croatians did not want the association with communism writ large on their passports in the form of the red colour. Some people might rather like it, though. I do not think that it is confusing. The wrong thing to do would be to scrap a load of remade passports. There is absolutely no law against what we are doing. We intend to continue to make the blue passport available from later this year, and I look forward to ordering mine.

Lord Marlesford (Con): My Lords, perhaps I may turn for a moment from the cosmetics of passports to the national security implications. On 12 March, my noble friend Lord Wasserman asked the Government, “how many holders of UK passports also hold passports issued by other countries”?

The reply was:

“Her Majesty’s Passport office does not hold a central record or database of persons holding both a UK passport and foreign passport”.

Is it not time that the Government put this right?

Baroness Williams of Trafford: I thank my noble friend for his persistence. It is perfectly legal to hold a passport from more than one country and the Government do not have any plans to change that.

Baroness McIntosh of Hudnall (Lab): My Lords, can the noble Baroness confirm for the benefit of us all that the important information, including all the security information, is included inside the passport, not on the cover?

Baroness Williams of Trafford: I thank the noble Baroness for returning the debate to some common sense. She is absolutely right and of course our standards are set in consultation with the International Civil Aviation Organisation.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the noble Lord, Lord Marlesford, has raised an important point. Why does the Home Office not collect this information? Also, can the noble Baroness help me? I read somewhere that the European Union is going to change all of its passports to blue. Is that true?

Baroness Williams of Trafford: Would it not be a wonderful day if the Europeans followed our lead and changed EU passports to blue? I look forward to that. I think that the noble Lord is just having a bit of fun with me, but it is very difficult to gather the data establishing how many people are holders of passports from other countries. However, I shall look again into why that is so.

Lord Grocott (Lab): Does the Minister share my guess that if British citizens abroad are in difficulties, they are more likely to go to the British embassy for assistance than to the European External Action Service, which has grown rapidly over the past few years, at great expense? Will it not be a nice day as and when we

[LORD GROCOTT]
no longer have to make financial contributions to that service so that the money can be transferred to strengthen further British embassies and consulates throughout the world?

Baroness Williams of Trafford: I totally agree with the noble Lord.

Communications Committee

Membership Motion

3.37 pm

Moved by The Senior Deputy Speaker

That Lord Bethell be appointed a member of the Select Committee in place of Baroness Bertin, resigned.

Motion agreed.

Hong Kong: Pro-democracy Activists

Statement

3.38 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given to an Urgent Question in another place on the guilty verdict handed to pro-democracy activists in Hong Kong. The Statement is as follows:

“At the outset, I emphasise to the right honourable Gentleman and the House that the UK Government are acutely aware of our enduring responsibilities to Hong Kong. We were a joint signatory to upholding the joint declaration between the UK and China some 35 years ago. That joint declaration is lodged, of course, with the UN. As such, we remain absolutely committed to monitoring and ensuring the faithful implementation of the joint declaration and, indeed, the principle of ‘one country, two systems’.

I reassure the House that we clearly and consistently raise our concerns with the Chinese and Hong Kong authorities. Parliament is updated on developments in Hong Kong through our six-monthly reports submitted by the Foreign Secretary, most recently on 27 March, just over a fortnight ago. We always stand ready to comment publicly and robustly when appropriate.

Yesterday the Hong Kong courts gave their first verdict on the nine key figures in the Hong Kong Occupy movement. These protesters were arrested after large-scale protests in 2014. Yesterday, each was found guilty of at least one public nuisance offence. Now such offences carry a maximum sentence of seven years in prison. We shall have a better understanding of the severity of the sentence, and therefore the signal this purports to send to others who choose to exercise their rights under Hong Kong’s Basic Law and Bill of Rights, once sentences have been handed down. Sentencing is due on 24 April, and the defendants have the right to appeal. It would therefore not be appropriate to comment further or in detail on these ongoing legal cases. Suffice to say, this could be a very protracted legal process, which could take years rather than months.

I have visited Hong Kong twice as Foreign Office Minister, and have held meetings with a number of senior legal figures. When I visited in November I raised the issue of the rule of law with the deputy chief justice, as well as with representatives from the legal, political and business communities. All staunchly defended the independence of the judiciary, and it remains our position that Hong Kong’s rule of law remains robust, largely thanks to its world-class independent judiciary. Many Members know that Baroness Hale, Lord Hoffmann and others are members of that independent judiciary.

Hong Kong citizens are guaranteed the right to freedom of assembly and demonstration under the Sino-British declaration of 1984 and the Basic Law, and in a democracy it is important that these things are respected. Hong Kong’s success and stability depend on its high degree of enduring autonomy and respect for the fundamental rights and freedoms enshrined in the joint declaration and the Basic Law. The Foreign Secretary pronounced recently that he was,

‘concerned that on civil and political freedoms, Hong Kong’s high degree of autonomy is being reduced’.

It would be deeply concerning if this ruling discourages legitimate protest in the future, or indeed discourages Hong Kong citizens from engaging in political activity”.

3.41 pm

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for repeating the response. A serious discussion on the situation in Hong Kong is overdue. China’s erosion of the rights and freedoms guaranteed by the Hong Kong Basic Law has been growing since the Umbrella Movement protests in 2014. The last few years have seen an increasing crackdown on dissent and protest, political parties banned, pro-democracy candidates blocked from standing and journalists expelled.

The conviction of nine leaders of the Hong Kong Umbrella Movement, who could face seven years in prison for organising peaceful protests, as the Minister said, is totally disproportionate and clearly politically motivated. The proposal to change Hong Kong’s extradition laws means that they could serve sentences thousands of miles away in mainland China.

The Sino-British joint declaration is a legally binding treaty registered with the United Nations, and the British Government are the joint guarantor, with China, of the rights of Hong Kong citizens, so I have one simple question for the Minister: how are the Government going to fulfil their legal responsibility to the citizens of Hong Kong?

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for raising these issues. As he will be aware—as I said in the Statement—we produce six-monthly statements as required. In his recent statement on this, the Foreign Secretary said:

“It is very welcome that in the areas of business and the independence of the judiciary, the ‘One Country, Two Systems’ model is working well. However, I am concerned that on civil and political freedoms, Hong Kong’s high degree of autonomy is being reduced”.

I assure the noble Lord that we are cognisant of the recent issues, particularly the events concerning protesters from the 2015 protests. As I have said, it would be

inappropriate to comment on that case specifically, but I reassure the noble Lord that we are using all our offices—through the consul-general and direct visits that my right honourable friends the Foreign Secretary and the Minister of State have made to Asia and Hong Kong—and we will continue to speak bilaterally to the Chinese as well.

Baroness Northover (LD): My Lords, I too thank the Minister for repeating the Statement made in response to an Urgent Question from my right honourable friend Alistair Carmichael in the other place. This is, yet again, an occasion when we miss my friend Paddy Ashdown, who fought long and hard for the people of Hong Kong.

Those in Hong Kong are guaranteed the right to freedom of assembly and demonstration, as the Minister said. Surely we must be very concerned about these verdicts in the light of that. Does he agree that any sign that members of the independent judiciary—the noble and learned Baroness, Lady Hale, the noble and learned Lord, Lord Hoffmann, and others—feel unable to continue would be very serious indeed? The Minister will know—the noble Lord has just made reference to this—of proposals to change Hong Kong’s extradition laws to enable suspected criminals to be extradited from Hong Kong to the mainland. Does he agree that that is extremely concerning, certainly for political activists but even for local and international businesspeople?

Lord Ahmad of Wimbledon: I agree with the noble Baroness that we all remember Lord Ashdown for a variety of reasons and this is one of those occasions. On the specific issue that she and the noble Lord raised about extradition, yes, we are acutely aware of the proposed change to legislation. We are fully considering the implications of that and how it may impact UK citizens and, in particular, as the noble Baroness said, people operating within the business community. In that regard, the British consul-general in Hong Kong has spoken to senior figures in the Hong Kong Administration to seek clarity on what the proposals will mean, particularly for UK citizens, and we continue to make a case to them. It remains the United Kingdom’s view that for Hong Kong’s future success it is essential that Hong Kong enjoys—and is seen to enjoy—the current autonomy under the agreement that was signed not only by the United Kingdom but by the Chinese Government.

Lord Pannick (CB): My Lords, in the light of those questions, will the Minister emphasise that those who have been convicted have the right of appeal; that the basic law protects the independence of the judiciary; and that, in practice, the Hong Kong judiciary is as independent as any judiciary in the world? I declare an interest as a frequent advocate in the Hong Kong courts both for and against the Government of Hong Kong.

Lord Ahmad of Wimbledon: My Lords, the noble Lord speaks with immense expertise and experience in this regard. I can assure him on all three of those statements in terms of the autonomy and independence of the judiciary. Since this agreement has been in place over the past 30 years, there has been only one occasion,

in 2016, when we had formally to call out a lack of adherence to the principles of the treaty. He asked about the right of appeal. The people who have been convicted are currently out on bail. Sentencing is due on 24 April and they will have 28 days thereafter to lodge a formal appeal.

Lord Lea of Crondall (Lab): My Lords, on the status of the original agreement, co-signed by our Government and the party which has contact with Peking, how is a dispute about the interpretation of that agreement settled? Do such agreements have some sort of implicit or explicit arbitration or other clause about how to enforce the agreement if there is a dispute about its enforceability?

Lord Ahmad of Wimbledon: My Lords, I am sure the noble Lord heard me say in response to the previous question that there has been only one occasion in the past 30 years when we have had to call in a contravention with regard to the treaty and its obligations. In terms of its implications and application in international law, as was raised by the noble Lord earlier, the joint declaration is lodged directly with the United Nations. Therefore, the obligations on both the British Government and the Chinese Government are clear.

Lord Hope of Craighead (CB): My Lords, following the point made by the noble Lord, Lord Pannick, is it not worth stressing that one of the strengths of the current system in Hong Kong is the presence of the non-resident judges in the Court of Final Appeal? Some names have been mentioned already and there are several more. It is part of the system that exists and I believe that it is not under any challenge whatever.

Lord Ahmad of Wimbledon: My Lords, I totally concur with the noble and learned Lord in that respect. That is why we have stood firm on the “one country, two systems” application and will continue to do so. As I said in response to an earlier question, we ensure that any concerns are raised bilaterally with the Hong Kong authorities or directly with the Chinese Government.

Lord Wilson of Tillyorn (CB): My Lords, I agree with my noble friend Lord Pannick and my noble and learned friend Lord Hope that the system in Hong Kong has remained remarkably stable in the courts despite some choppy waters politically over the last few years. That rule of law is enormously important—for the people of Hong Kong and for commercial relations with Hong Kong. It is wise to do our utmost to bolster the rule of law and not rush too quickly into criticising until we know how that has worked out.

Lord Ahmad of Wimbledon: I totally concur with the noble Lord. That is why I have resisted commenting in any great degree of detail on the case. It is right that we see due process take its course, and we are confident, certainly thus far, that we have seen little demonstration of any contravention of the agreement signed with the Chinese. While concerns remain, as articulated by my right honourable friend the Foreign Secretary, we have no reason to believe that the Chinese authorities will not uphold what the court system decides.

Lord Woolf (CB): My Lords, in view of what has already been said, I hesitate to intervene, but having been a judge of the Court of Final Appeal in Hong Kong and having served my term there, so to speak, it is important for me to acknowledge that my experience is the same as the other experiences the House has heard about. Hong Kong deserves great credit for the way it has ensured that the rule of law functions efficiently.

Lord Ahmad of Wimbledon: I am sure I speak for the whole House in paying tribute to the noble and learned Lord's contribution in that respect and to the judges who continue to do such a sterling job and play such an important role in Hong Kong today.

Lord Ricketts (CB): My Lords, the noble Lord, Lord Wilson of Tillyorn, is too modest to say that he was one of the key architects of the joint declaration and put many thousands of hours into negotiating it. I agree with other noble Lords that we can be proud as a nation of what the JD has delivered in terms of stability in Hong Kong, but the price of that is eternal vigilance. The Minister has already assured us that the Government are going to continue to press very hard on this crucial issue.

Lord Ahmad of Wimbledon: I assure the noble Lord that that will be the case. On a lighter note, I am reminded that when I joined the House in 2011 I was advised, as a Minister answering in the House of Lords, "When you give a response, Tariq, make sure you look around you because as a minimum someone has probably written a book about the subject". The experience in your Lordships' House has been clearly demonstrated on this issue.

Offensive Weapons Bill

Commons Amendments

3.50 pm

Motion A

Moved by **Baroness Williams of Trafford**

That this House do not insist on its Amendments 27 and 28, to which the Commons have disagreed, and do agree with the Commons in their Amendments 27A to 27K in lieu.

27A: After Clause 17, page 18, line 10, at end insert the following new Clause—

"Delivery of bladed products to persons under 18

(1) This section applies if—

(a) a person ("the seller") sells a bladed product to another person ("the buyer"),

(b) the seller and the buyer are not in each other's presence at the time of the sale and the seller is within the United Kingdom at that time,

(c) before the sale, the seller entered into an arrangement with a person who is a body corporate by which the person agreed to deliver bladed products for the seller,

(d) that person was aware when they entered into the arrangement that it covered the delivery of bladed products, and

(e) that person delivers the bladed product to residential premises pursuant to that arrangement.

(2) For the purposes of subsection (1)(b) a person ("A") is not in the presence of another person ("B") at any time if—

(a) where A is an individual, A or a person acting on behalf of A is not in the presence of B at that time;

(b) where A is not an individual, a person acting on behalf of A is not in the presence of B at that time.

(3) For the purposes of subsection (1)(b) a person other than an individual is within the United Kingdom at any time if the person carries on a business of selling articles of any kind from premises in any part of the United Kingdom at that time.

(4) In subsection (1)(e) "residential premises" means premises used solely for residential purposes.

(5) The circumstances where premises are not residential premises for the purposes of subsection (1)(e) include, in particular, where a person carries on a business from the premises.

(6) The person mentioned in subsection (1)(e) commits an offence if, when they deliver the bladed product, they do not deliver it into the hands of a person aged 18 or over.

(7) A person guilty of an offence under subsection (6) is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

(8) This section is subject to section 18 (defences)."

27B: Clause 18, page 18, line 14, at end insert—

"(1A) It is a defence for a person ("the seller") charged with an offence under section 17(2) of delivering a bladed product to residential premises to prove that—

(a) at the time the offence is alleged to have been committed, the seller had procedures in place which were likely to ensure that any bladed product delivered by the seller to residential premises would be delivered into the hands of a person aged 18 or over, and

(b) the seller took all reasonable precautions and exercised all due diligence to ensure that the product to which the charge relates would be delivered into the hands of a person aged 18 or over.

(1B) It is a defence for a person ("the seller") charged with an offence under section 17(2) of arranging for the delivery of a bladed product to residential premises to prove that—

(a) the arrangement required the person with whom it was made to have procedures in place which were likely to ensure that any bladed products delivered to residential premises pursuant to the arrangement would be delivered into the hands of a person aged 18 or over, and

(b) the seller took all reasonable precautions and exercised all due diligence to ensure that the product to which the charge relates would be delivered into the hands of a person aged 18 or over."

27C: Clause 18, page 18, line 26, at end insert—

"(4A) It is a defence for a person charged in England and Wales or Northern Ireland with an offence under section (*Delivery of bladed products to persons under 18*) to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4B) It is a defence for a person ("the accused") charged in Scotland with an offence under section (*Delivery of bladed products to persons under 18*) to show that—

(a) the accused believed the person into whose hands the bladed product was delivered to be aged 18 or over, and

(b) either the accused had taken reasonable steps to establish the person's age or no reasonable person could have suspected from the person's appearance that the person was under the age of 18.

(4C) For the purposes of subsection (4B)(b), the accused is to be treated as having taken reasonable steps to establish the person's age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (4D), and

(b) the document would have convinced a reasonable person.

(4D) Those documents are any document bearing to be—
(a) a passport,

(b) a European Union photocard driving licence, or
(c) such other document, or a document of such other description, as the Scottish Ministers may prescribe by order.”

27D: Clause 18, page 18, line 29, leave out from “(6)” to “if” in line 30 and insert “A person is to be taken to have shown a matter for the purposes of subsection (4B) or (5)”

27E: Clause 18, page 18, line 35, leave out “the offence under section 17” and insert “an offence under section 17 or (*Delivery of bladed products to persons under 18*)”

27F: Clause 18, page 18, line 45, at end insert—

““residential premises” has the same meaning as in section 17.”

27G: Clause 19, page 19, line 7, leave out “and” and insert “to”

27H: Clause 19, page 19, line 12, leave out first “and” and insert “to”

27I: Clause 19, page 19, line 18, leave out “and” and insert “to”

27J: Clause 19, page 19, line 26, leave out “and” and insert “to”

27K: Clause 41, page 38, line 31, after “4(8)(c)” insert “, 18(4D)(c)”

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Commons amendments we are considering today follow on from debate on the Bill in this House at Third Reading in respect of the amendments proposed by the noble Lord, Lord Kennedy, for a trusted courier scheme. During that debate I set out the reasons why the Government could not support the proposition of a trusted courier scheme. In summary, I undertook that the Government would continue to reflect on the issue in respect of the delivery of bladed products in advance of the Bill going to, and returning from, the House of Commons. This we have now done and, accordingly, I trust that the amendment we have tabled in lieu, and that we are about to consider today, will have the support of noble Lords across this House.

We have given considerable consideration to the views expressed by Members in both Houses and business on the provisions relating to the sale of knives and the prohibitions on residential delivery throughout the passage of this Bill. I am most grateful to the noble Lord, Lord Kennedy, and to the Sheffield knife manufacturers for the time they spent in discussion with me on this matter. They and the points made by the noble Lord, Lord Paddick, were very helpful to me.

Following this further consideration, the Government have tabled Amendments 27A to 27K. These amendments allow a remote seller to deliver a bladed product to a residential premises by providing a defence where they have arrangements in place with a deliverer not to hand them over to a person under the age of 18 or, if the seller is delivering the item themselves, that the seller has procedures in place that are likely to ensure that any bladed product delivered to residential premises would be delivered into the hands of a person aged 18 or over. The seller must also have taken all reasonable precautions and exercised all due diligence to ensure that the bladed product would be delivered into the hands of a person aged 18 or over.

The amendments also place a criminal liability, which is corporate and not individual, on the delivery company that enters into such an arrangement with a seller. The delivery company will commit an offence if it does not deliver the bladed product into the hands of a person aged over 18.

The amendment is similar in effect to the existing offence in the Bill on delivery companies relating to overseas sales, although this new offence is limited to bladed products—products that have a blade and are capable of causing serious injury by cutting the skin—and to deliveries to residential premises, whereas the measures in the Bill relating to overseas sales apply to deliveries to all premises and to all bladed articles, which are articles with a point or blade. For UK sales, the Bill already permits the delivery of bladed articles that do not meet the definition of a “bladed product” to residential premises. These amendments have addressed the concerns that have been raised by businesses within the UK.

The liability attaches only to delivery companies that enter into arrangements to deliver bladed products; a delivery company could simply choose not to do so. This new offence is subject to the defences set out in Clause 39 of the Bill. The amendments that we have made ensure that an individual’s age is verified at the point of delivery irrespective of whether the seller delivers themselves or uses an external delivery company. Should a seller decide not to enter into an arrangement with a delivery company, or put the necessary procedures in place to enable them to deliver bladed products themselves, the provisions in the Bill that prohibit delivery to residential premises of a bladed product will still apply: that is, the seller will not be able to send a bladed product to residential premises and the bladed product will still have to be collected in person at a collection point.

Amendments 62A and 63A are both consequential to Amendments 62 and 63, which already form part of the Bill as a result of Amendments 27A to 27K. Amendment 62A adds to Amendment 62 in the Bill the new offence of delivery of bladed products to persons under 18. Amendment 62 provides trading standards with a power to enforce various existing and new offences relating to the sale and delivery of bladed articles, offensive weapons and corrosive products. It also confers on trading standards investigatory powers under Schedule 5 to the Consumer Rights Act 2015—the CRA, as it is known—for the purpose of enforcing these offences.

Amendment 63A is another consequential amendment to Amendment 63 and is similar in purpose to Amendment 62A as it adds the new offence of delivery of bladed products to persons under 18. Amendment 63 in the Bill enables businesses to enter into partnerships with a local authority that will act as the primary authority for that business in relation to an area of regulation. This will enable the primary authority to provide advice and guidance on compliance to the business in areas of regulation covered by the partnership, on which the business can rely.

In summary, these amendments will ensure that bladed products can be delivered to residential premises, while at the same time addressing the risk that the product ends up in the hands of a person under 18 because the delivery company has not verified age or has simply pushed the bladed product through the letterbox. I again thank the noble Lords, Lord Kennedy and Lord Paddick, and I hope that the House will feel able to support the amendments. I beg to move.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I am delighted to be able to support the Motions before the House today in the name of the Minister.

This is an issue that I raised at Second Reading and which I persisted with throughout the passage of the Bill through your Lordships' House. As I have said many times before, I support the general aims of the Bill, but the proposals to prevent British businesses in all circumstances from selling and sending their knives and other bladed products to UK home addresses was just damaging to business while contributing nothing to dealing with the terrible incidences of knife crime.

I am grateful that the noble Baroness, Lady Williams of Trafford, engaged so positively with me, the Members for Sheffield Central and Sheffield South East in the other place and representatives of the knife manufacturing industry, including James Goodwin and Alastair Fisher.

To get this concession, we had to win a vote here in the House of Lords, and I am grateful to noble Lords from my own Benches, the Liberal Democrat Benches, the Cross Benches and the Conservative Benches who supported my amendment. I am also grateful to those Conservative Peers who told me they were with me and then very kindly abstained on the vote. It all helped to show the other place that we had a lot of support for this sensible proposal, and it means we are able to support British businesses and the jobs they provide.

I am particularly grateful to my noble friends Lord Rosser and Lord Tunnicliffe, the noble Lords, Lord Paddick, Lord Scriven and Lord Lucas, and the noble Earl, Lord Erroll, as I am to the noble Baronesses, Lady Williams of Trafford and Lady Barran. That brings me to the end of my contributions on this Bill.

4 pm

Lord Paddick (LD): My Lords, I am very grateful to the Minister for explaining these amendments. I was going to say that, from the first day of this Bill, I pointed out that treating UK companies differently from overseas companies on delivery of bladed articles to residential premises was not sustainable. However, it was not on the first day but on the first day in Committee that I first raised the issue—and on the first day of Report and at Third Reading. Finally, the message has got through.

We supported the amendments tabled by the noble Lord, Lord Kennedy, relating to the trusted courier scheme to ensure that the Government thought again about this issue. I am glad that, at last, they have agreed that it was not fair to say that overseas companies could deliver knives to residential premises but UK companies could not. These amendments address this issue and we therefore support them.

The Earl of Erroll (CB): My Lords, I have spoken on this before, so I just want to say how much I welcome the movement by the Government on this Bill. It is very sensible and will go a long way. I make only two little points.

First, it is a pity we do not treat all items in this way. This could be a template for the delivery to a home of any age-restricted items. They may be age-restricted at various different levels: for some, the age restriction is 16; for others, it is 18. We could have had a template

in a law somewhere which could be used and referred to by all other Acts of Parliament which place an age restriction on goods. It is a good opportunity. From that point of view, it seems a bit funny that we have this provision for knives, but not corrosive liquids, but that is as it is. I do not think corrosive liquids are such a big problem, because they tend to be delivered to commercial premises, as they are not household goods on the whole. This is very much to be welcomed. I think it is a good start.

Secondly, I am not sure whether to feel sorry for the Scots. The defence in England is worded generally enough that it could cover electronic means if, for instance, they complied with the British standard specification PAS 1296. That would be a good defence in court that you had verified things properly. However, I see that in Scotland it has to be a document, and I do not know whether that includes something electronic or not. I am not worried about that at the moment; it is a point for the future. I am not quite sure whether the Scots are being a little old-fashioned about it.

Motion agreed.

Motion B

Moved by Baroness Williams of Trafford

That this House do agree with the Commons in their Amendment 62A.

62: After Clause 39, insert the following new Clause—

“Enforcement of offences relating to sale etc of offensive weapons

(1) A local weights and measures authority may enforce within its area a provision listed in subsection (2).

(2) The provisions mentioned in subsection (1) are—

(a) section 1(1) of the Restriction of Offensive Weapons Act 1959 (penalties for offences in connection with dangerous weapons),

(b) section 1 of the Crossbows Act 1987 (sale etc of crossbows to persons under 18),

(c) section 141(1) of the Criminal Justice Act 1988 (offensive weapons), (d) section 141A of that Act (sale etc of bladed articles to persons under 18),

(e) section 1 of the Knives Act 1997 (unlawful marketing of knives),

(f) section 2 of that Act (publication of unlawful marketing material relating to knives),

(g) section 1 of this Act (sale of corrosive products to persons under 18), (h) section 3 of this Act (delivery of corrosive products to residential premises etc),

(i) section 4 of this Act (delivery of corrosive products to persons under 18),

(j) section 17 of this Act (delivery of bladed products to residential premises etc), and

(k) section 20 of this Act (delivery of bladed articles to persons under 18).

(3) For the investigatory powers available to a local weights and measures authority for the purposes of enforcing a provision listed in subsection (2), see Schedule 5 to the Consumer Rights Act 2015.

(4) Nothing in this section is to be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.

(5) In paragraph 10 of Schedule 5 to the Consumer Rights Act 2015 (duties and powers to which Schedule 5 applies), at the appropriate place insert “section (*Enforcement of offences relating to sale etc of offensive weapons*) of the Offensive Weapons Act 2019.””

Commons Agreement and Amendment to the Lords Amendment

The Commons agree with the Lords in their Amendment 62 and propose Amendment 62A as an amendment thereto—

62A: Line 22, after “etc),” insert—

“(ja) section (*Delivery of bladed products to persons under 18*) of this Act (delivery of bladed products to persons under 18),”

Motion agreed.

Motion C

Moved by Baroness Williams of Trafford

That this House do agree with the Commons in their Amendment 63A.

63: After Clause 39, insert the following new Clause—

“**Application of Regulatory Enforcement and Sanctions Act 2008**

In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 (relevant enactments for the purposes of relevant functions to which Parts 1 and 2 of that Act apply) at the appropriate places insert—

“Criminal Justice Act 1988, sections 141(1) and 141A”;

“Offensive Weapons Act 2019, sections 1, 3, 4, 17 and 20”;

“Restriction of Offensive Weapons Act 1959, section 1(1).”

Commons Agreement and Amendment to the Lords Amendment

The Commons agree with the Lords in their Amendment 63 and propose Amendment 63A as an amendment thereto—

63A: Line 7, after “17” insert “, (*Delivery of bladed products to persons under 18*)”

Motion agreed.

Northern Ireland (Extension of Period for Executive Formation) Regulations 2019

Motion to Approve

4.03 pm

Moved by Lord Duncan of Springbank

That the Regulations laid before the House on 21 March be approved.

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

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, as I have said many times, restoring the Northern Ireland Executive remains the Government’s key priority in Northern Ireland. My right honourable friend the Secretary of State has spoken to the Northern Ireland parties and the Irish Government on a number of occasions over recent weeks.

In those discussions, all five parties have been consistent in their commitment to restore power-sharing as set out in the Belfast agreement. The five main parties will undertake a further series of talks with the aim of restoring devolution at the earliest opportunity. The Irish Government also support this approach. These talks will involve the UK Government, the five main parties and the Irish Government, in accordance with the established three-stranded approach.

The Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 extended the period for Executive formation to 26 March. The Act gave the Secretary of State the option to extend that period once for a period of up to five months. On 21 March she laid before Parliament the statutory instrument that extended that period to 25 August, subject to the approval of both Houses of Parliament.

That step was taken reluctantly. However, as 26 March approached without agreement to form an Executive, only three options were available to the Government: calling an Assembly election, undertaking direct rule, or extending the period for Executive formation. The Government believe that an extension is the best route toward restoring an Executive.

During this period, the Secretary of State will continue to work with the five parties and the Irish Government to create the right conditions and the best possible framework for successful talks. As a first step, the Secretary of State intends to invite the MLAs of all parties to two sets of briefings, one on issues related to the programme for government and the other on the petition of concern.

Before I conclude, I want to explain why the Government chose to use the made affirmative procedure in this instance. Our preference would have been to bring forward this instrument in the usual way, using the draft affirmative procedure, but that procedure carries with it a longer lead time. We would have had to lay the instrument weeks earlier than we did. The Government took the view that laying the instrument at that earlier stage would have been prejudicial and disruptive to the private work the Secretary of State was undertaking with the parties during February and March. Of course, the instrument cannot remain in force without this House’s approval, which is why we are discussing this today. That is the reason I beg to move.

Lord Cormack (Con): My Lords, extensions are clearly the flavour of the day. We at least know the exact date for this one. However, I regret this infinitely. I am extremely grateful to my noble friend for what he has said on the Floor of your Lordships’ House and in private conversation. I do not for a minute doubt his total commitment. However, it really is not good enough that we have to keep revisiting this matter.

The history of our country over the last year would probably have been different had we had a Northern Ireland Assembly functioning where people would have been able to express the view of the largeish majority recorded in June 2016. We touched on this before. As it is, we have heard only one view and one voice in parliamentary assembly. The only parliamentary Assemblies we have been able to hear are your Lordships’ House and the other place.

Several times, a number of us, including my noble friend Lord Trimble and the noble Lord, Lord Alderdice—neither of whom is here at the moment—have strongly endorsed the plea that I have made many times to my noble friend. Can we at least make some real progress by having the Assembly meet? Of course, it is a second best to having the Executive as well. We all recognise and acknowledge that. The sooner we can have an Executive, the better. Until we do, why can we not have an Assembly—the Members of which are paid; I am not complaining about that—meeting in Stormont and able to discuss the issues of the day, even if they will not have the legal authority they would have if we had fully restored devolved government? We touched on one issue only a week ago when we were talking about flags. The noble Lord, Lord Bruce, moved an amendment to the Motion, which I was happy to support. I yet again ask my noble friend to please do his utmost

[LORD CORMACK]

to persuade the Secretary of State that this really would give out a signal that would be warmly welcomed throughout the United Kingdom and, I believe, Northern Ireland. It is not impossible; it should be done.

I very much hope that my noble friend will also be able to say something about progress towards appointing some highly respected neutral individual—I hate the word “facilitator”—who would be able to try to move things on towards the restoration of the Executive. I make no criticism of anybody’s integrity, but the perception, because of the official link-up between the Government and the DUP, is that the Government are somehow involved in partiality. I do not believe it—I certainly would not believe it of my noble friend in a thousand years—but it is a perception, and perceptions are important. Therefore, to have someone who would command the respect of all potential participants could be only helpful. When he comes to reply to this brief debate, I ask my noble friend to be kind enough to touch on both those points.

Lord Dubs (Lab): My Lords, I have a lot of sympathy with the points made by the noble Lord, Lord Cormack. It is sad to have to yet again ask the Minister why the Government cannot do what is so obvious: to appoint an independent person—call it what you will—such as Senator George Mitchell, who will bring the parties together. I have talked to Sinn Féin and to the DUP—they all blame the other side. That is understandable in the present situation, but surely we need a new initiative. I understand what the Minister said about calling people together in Belfast, but surely we can appoint a person. I understood that there was sympathy for that proposition from the Government and the Irish Government. Why can we not just do it?

The present situation is absolutely intolerable. We are relying on civil servants to make the decisions. They, having been challenged once in the courts, will understandably be cautious about not breaking new policy ground. It is a natural reaction and I do not criticise them for that, but we are in a really difficult situation. I cannot think of any situation in the last 100 years or maybe longer—I am sure that there are historians here who can give me a better perspective on this—where there has been no democratic recourse at all for a part of the United Kingdom. The people in Northern Ireland have nobody to go to when they want to challenge government decisions. It is intolerable that there is no way forward at all. In the past there has always been some form of Administration, whether direct rule or a devolved Assembly. It is a unique situation that, for two years, there has been no democratic accountability at all. There is a total democratic deficit, and that has to be dealt with, because it is critical.

The suggestion from the noble Lord, Lord Cormack, of getting at least the Assembly Members together might do it, although I doubt whether they or even the committees would have the authority to make decisions. Maybe they would; it is at least worth exploring.

The Minister will be aware that this question is coming: could I press the Government on an area where no decisions are being made? I had a letter from the Immigration Minister to say that it was impossible for Northern Ireland to accept unaccompanied child

refugees in the absence of an Administration at Stormont. I have talked to people involved in local authority and health board decisions in Derry and Belfast. They all say that there would be a willingness in Northern Ireland to take unaccompanied child refugees. I cannot understand why that cannot happen. I am told that the only way is a judicial review. That is a cumbersome, costly and miserable expedient. Surely the Minister could suggest something better. We have the Home Office desperate for unaccompanied child refugees to be given foster accommodation in the United Kingdom and Northern Ireland people are willing to do it, yet between the two of them nothing is happening. Please can we get on with this?

4.15 pm

Lord Adonis (Lab): My Lords, the issues raised in this order are serious and indeed grave. It will not have escaped the House’s attention that there is no representative from Northern Ireland in the Chamber, as far as I can see—which rather brings home the gravity of the situation we are talking about and the need to get the devolved institutions working. Clearly it is not satisfactory that these issues should be determined in the absence not only of one part of the community of Northern Ireland, which alas is always the case in this House and in the other place, but frequently in the absence of any representatives from Northern Ireland at all.

In respect of the way forward, those of us who do not follow the politics of Northern Ireland day by day were under the impression several months ago that the Government were making progress in agreeing with the parties in Northern Ireland for there to be a mediator. However, nothing appears to have happened since. I am sure that a lot has happened behind the scenes, but certainly nothing has happened in public. Can the Minister give Parliament some encouragement that this might happen? He will have heard clearly a real sense of concern around the House that weeks will turn into months and years, the status quo in Northern Ireland will remain that of no Executive and no sitting Assembly, and obviously there will come a point where the situation simply breaks down.

Lord Bruce of Bennachie (LD): My Lords, the Minister may feel that there is an element of Groundhog Day about this debate—but that was a comedy and this situation is becoming increasingly tragic. I echo all the speeches expressing concern about the lack of progress. We need, through the Minister, to press the Secretary of State for some more positive signs of action and creative, imaginative thinking. Neither the Government nor this Parliament have any real credibility as honest brokers in this situation. The Government, as has been said, are perceived, frankly, to be under the thumb of the DUP. Everybody knows that when one deals with the DUP, they do nothing without exacting a price, whether it is visible or invisible. As the noble Lord, Lord Cormack, said, whether or not anything is happening, the perception is that it is—and indeed, looking at the practice, it would not be surprising for people to have that perception.

As has also been said, this Parliament has little credibility, because the majority of the parties in Northern Ireland are not represented here. This also makes the possibility of direct rule almost unthinkable. How can

Ministers accountable only to this Parliament be at all credible as brokers of direct rule on behalf of the people of Northern Ireland when the people of Northern Ireland have very little representative voice?

Lord Cormack (Con): Does the noble Lord agree that it is a great pity that, with the disappearance of the SDLP in the other place, there is no voice of moderate nationalism in either House?

Lord Bruce of Bennachie: Indeed—we lost the SDLP and the Alliance in the House of Commons, and that absolutely adds to the problem. We have to recognise that, as does the Secretary of State. Frankly, she alone does not have the capacity to call the parties together and get a result without looking more widely. It has been said in previous debates that there is no momentum or willingness to bring the Northern Ireland Assembly back together until Brexit has been resolved and there has perhaps been an election in the Irish Republic. Well, that is looking an increasingly distant prospect, and those who take that view have to explain how they can possibly justify waiting for such an indeterminate, indefinite time before they are prepared to engage in this process. Pressure needs to be brought to bear by those who have the ability to pressurise each of the parties and to whom those parties are most likely to respond—and I have to say that the British Government and Parliament do not feature in that particular calculation. So I suggest that we should not be expected to wait for Brexit or the Irish elections to be resolved.

My question is very consistent with the other points that have been made. Is it not time for the Government to recognise that we need to bring the guarantors of the Good Friday agreement—all of them—back together? We need to bring together those agencies that made it possible to get a peace agreement in difficult circumstances 20 or so years ago. Of course, that means the UK and Irish Governments and all the political parties. I have to say the European Union as well, because it has been part of that process, and the United States. All of them need to be brought together, and that is why we need some kind of independent chair for those discussions who will command credibility on all sides. Why on earth is that not happening?

This has been delayed because the Secretary of State has been having conversations. I am sorry, but the Secretary of State's conversations will lead nowhere, because she does not have the authority to make sure that they do. The question, therefore, is: will the Government consider practical steps, along the lines that have been suggested, to bring Assembly Members together, either in a full Assembly or in committees—preferably both—so that they actually engage with each other on practical, day-to-day issues?

I read in the Explanatory Memorandum the assertion made by the Secretary of State—perhaps on this point I should accept the assertion—that the provisions of these regulations are compatible with the Convention on Human Rights. It is beginning to become questionable whether the human rights of the people of Northern Ireland are actually being put at risk by this long delay. The Explanatory Memorandum says:

“There is no, or no significant, impact on business, charities or voluntary bodies ... An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact”.

Well, I beg to differ. I think that there is a very significant impact on all those bodies in Northern Ireland from the continuation of this complete stalemate, and the total lack of effective government.

Every day that goes by, the people of Northern Ireland suffer more and more from the lack of decision-making, and the situation becomes more fraught and more dangerous. We have seen, only in the last 24 hours, that a mortar was found on a roadside in County Down. As far as one can tell, it was left by the roadside to be collected by another party with a view to perpetrating a terrorist attack. All the main parties, of course, have denounced that, but that is the problem: the main parties are not engaged, the Assembly is not functioning and other bodies may feel they have some kind of dispensation to take control. The situation is extremely dangerous and I plead with the Minister to recognise that this Government and this Parliament cannot solve the problem. We need to turn to all the international bodies that were instrumental in bringing peace to Northern Ireland in the first place to try to ensure that we break the deadlock. We cannot wait for Brexit or for an Irish election; we have until August or we are in deep, deep trouble—and I really think that the Minister has to accept that.

Lord Lexden (Con): My Lords, I must apologise for not being here at the start of the debate, other business having moved on so quickly. I shall be very brief. Our debate has made clear that signs of encouragement are hard to find at the moment. The Secretary of State herself made the lack of any serious current activity absolutely plain when, on 21 March, she was forced by the Opposition in another place to make a Statement about this order, which was brought forward with unseemly haste, I think. Ms Bradley said:

“I intend to spend the next few weeks working with them”—she was referring to the local parties in Northern Ireland—

“on actions that can be taken so that, when we are able to start a formal talks process, we are able to do so in a way that gives us the best chance of success”.—[*Official Report*, Commons, 21/3/19; col. 1229.]

Our fellow countrymen and women in Ulster have had to endure the absence of democratic control over their vital public services—education, health, social welfare—for two and a quarter years. What does the Secretary of State tell them as these services continue to deteriorate? That she hopes to start a formal talks process at some unspecified point after preliminary discussions with Ulster's five main parties. Have we not been here many times before since January 2017?

Our recent debates on Northern Ireland have shown wide agreement across this House on two points above all. They have been mentioned in this debate in particular by my noble friend Lord Cormack, former chairman of the Northern Ireland Affairs Committee in the Commons, who speaks with such authority. First, we are at one in doubting whether a serious talks process can be brought to a successful conclusion without the help of an eminent individual from outside Northern Ireland who will be able to command full respect across the Province. Secondly, it is widely felt that the existing Assembly should meet so that its Members can themselves consider what role they might play in

[LORD LEXDEN]

bringing about the progress that is so badly needed. I associate myself fully with those two points, which have again been brought out so well in this debate.

I will raise one further matter with my noble friend. He promised a Written Statement following our debate on the acute problems surrounding the renewable heating scheme in Northern Ireland. Could he say when that Written Statement might become available?

This order provides another five months in which a path back to full democracy in Northern Ireland can be found. We all hope for success, but as things stand today it is difficult to feel great optimism.

Lord Morrow (DUP): My Lords, I, too, apologise for my late arrival. As with the noble Lord, Lord Lexden, it also was due to unavoidable reasons. It is most disappointing to find ourselves debating again today something that we debated some months ago. It is regrettable that devolution has not been restored to Northern Ireland.

I have said before, and it bears repeating, that my party is ready to go back to Stormont tomorrow with no red lines and no preconditions to be met before talks commence. Unfortunately, Sinn Féin pulled the whole thing down. I said before that that was one of the big weaknesses in the Belfast agreement: one party has a monopoly and can destroy everything that others attempt to bring together.

The Assembly was established with great pain. When it was established, I was not the greatest supporter of the way it was brought together, because I could see that the whole edifice was built on sand. When you give one party a degree of spower such that it can bring the whole edifice down at one call, there is something fundamentally wrong with that type of democracy.

There are issues that need to be sorted, but surely the place to sort them is around the table in Stormont. I have heard it said here today that we need some eminent person to bring all the parties together. I am not opposed to that, but I do not think it is necessary; it would further exaggerate and complicate the whole situation in which we find ourselves. Northern Ireland is in dire need of government. We are falling behind on issues; our health and education systems urgently need attention. Why can that not happen? It is because Sinn Féin has decided that a few of its impossible red lines must be met.

Of course, this is not the first time Sinn Féin has pulled down Stormont. It did it before over welfare reform; it did not like it, so it walked out of Stormont and everything ground to a halt. It has done it on this occasion. Make no mistake; it will do it again and again. It is doing it because it does not want Northern Ireland to be portrayed as a good place to do business and where parties can work together. It was not easy for the parties, all coming from different positions, to work together. However, that Rubicon was crossed and progress was made. Important decisions were delivered on behalf of the people of Northern Ireland.

I served on the Northern Ireland Assembly for some 18 years, when it was very difficult because of the system that we had and because of the two opposite positions:

one wanted to destroy the union and the other wanted to keep it intact and in place. It is very difficult to work with partners who take up those diametrically opposite positions. However, it was done and it was achieved for a period of time. Oh that it could be again.

4.30 pm

However, we find ourselves in this position today because Sinn Féin does not like taking unpopular decisions. It has an election pending sometime in the Irish Republic. It has to be careful that it sends the right message out to its grassroots, and that is exactly what it is doing at the moment. All the time, the people of Northern Ireland, no matter what position they come from, whether it is unionist or nationalist, are the sufferers as a result of this.

The Secretary of State has been less than progressive in taking issues forward in Northern Ireland. She could and should be doing much more. It is regrettable that we have to come here today, but although I regret the order I understand why it is before the House. Surely, however, Northern Ireland deserves to be governed like any other region of the UK. Some might say that, with Brexit in the torment that it is in, there may be a whole lot of regions of the UK that are not being properly governed, but Northern Ireland certainly is not.

I appeal today to the noble Lord, Lord Duncan, to take the initiative, step forward boldly and let the Assembly be resumed. Let those talks begin around the table, and let all the issues, whatever they are, large or small, be discussed so that Northern Ireland can move forward.

Lord Murphy of Torfaen (Lab): My Lords, I very much support this Motion. It is necessary and it means that we can move ahead over the next few months to try to get a resolution. It is not about a no-deal Brexit situation, but it is about Europe in many ways, because we could have resolved the issue of the backstop if there had been an Assembly and an Executive in place. I believe that the nationalist and unionist parties in Northern Ireland would, over a period of two years, have come to an agreement. The border between Northern Ireland and the Republic of Ireland is central to the negotiations over the European Union and Brexit. Brexit has polarised opinion in Northern Ireland in the same way that it has done in Great Britain, except that there is a Northern Ireland tinge to it.

Sinn Féin and republicans believe that Brexit will enable a united Ireland. Only this week, the president of Sinn Féin said that she believed that we would see that united Ireland very quickly because of Brexit. The unionist community in Northern Ireland purports to speak on behalf of the whole of Northern Ireland, whereas 56% of the electorate of Northern Ireland voted to remain in the European Union. The failed negotiations in Brussels, therefore, are intimately linked with the failed negotiations in Belfast.

The problems have been mentioned many times in this Chamber, and I will repeat them, because I hope that the Minister will engage the Secretary of State on the issues that are important by way of process over the next few months.

Neither the Prime Minister nor the Taoiseach has been sufficiently engaged in trying to solve the situation in Northern Ireland. There is a mechanism: the British-Irish Intergovernmental Conference, which was part of strand 3 of the talks leading up to the Good Friday agreement. As the noble Lord, Lord Bruce, said, the guarantors of the Belfast agreement are the two Governments. I suppose it is a matter of debate as to whether the Prime Minister's involvement would be beneficial or not; the point is that she is the Prime Minister. We would not have seen progress in Northern Ireland over the last 20 years had not successive Prime Ministers, from John Major onwards, been intimately involved in negotiations. There is no evidence that that has occurred in the last couple of years. Insufficient time has been given to the negotiations, if we can call them that, over the last two years.

The other day I heard the Secretary of State giving evidence to the Northern Ireland Select Committee. I do not for one second deny her sincerity or purpose in wanting to resolve the issues of Northern Ireland. However, in answer to a question from Lady Hermon she said that she spent one day a week in Northern Ireland. You cannot make peace in a part-time way. We would never have got the agreements—Good Friday, St Andrews, or any of them—unless there had been much fuller engagement by the British Government. You cannot make peace by making telephone calls—you have to meet face to face and engage in round-table, all-party talks. There is no evidence that over the last two years the parties have faced each other to discuss the issues that confront them.

There has been no attempt to get an independent chair or facilitator, in my view; the Minister can tell us whether there has been. We need them because people, rightly or wrongly, believe that the DUP cannot be an independent arbitrator, because it has an agreement with the Government. I do not think that the Government deliberately set out to be partisan for one second, but it is a perception, so an independent chair or facilitator is essential. It seems that there has been no plan, structure, timetable or shape to the talks to set up the institutions in Belfast, which should have been concluded long ago.

It is not all the Government's fault—obviously, the parties have to take their share of the blame. Sinn Féin, which was a signatory to the Good Friday agreement, is breaking it by not taking part in strand 1—by not taking their seats in the Assembly or having Ministers in the Executive. Obviously there was an issue with the DUP on the RHI scheme, which caused a collapse in confidence as well, but it is prepared to have no preconditions to go into talks, as the noble Lord, Lord Morrow, said. However, important issues were dealt with and need to be dealt with. No—we are drifting towards direct rule as every week and month goes by, and if that occurred it would be a disaster.

As I have said many times—the noble Lord, Lord Lexden, touched on it today—Northern Ireland is the least democratic part of our country and of the European Union. No nationalist Members of Parliament, or, for that matter, Members of this House, take their seats; there is no Assembly or Executive to deal with the important issues of education, health and all the rest of it; and people have to rely on councillors, who

are members of local authorities that have less power than their counterparts in Great Britain, as the only existing democratic institution in Northern Ireland, which is a disgrace. There has to be more intensity about the talks, more energy and commitment, and more evidence that the Government have an actual plan. I therefore hope that the Minister, who I know is very attached to his job and committed to bringing about devolution in Northern Ireland, can perhaps tell us what that plan is.

The Minister touched on one example: the two committees of MLAs which the Secretary of State will meet. That is a start. It does not go as far as the point made by the noble Lord, Lord Cormack, about bringing the Assembly together—which is possible: I did it when I was a Minister in Northern Ireland and I am sure it could be done again. The absence of the Executive and the Assembly and the possible destruction of the Good Friday agreement because of it, is a hugely serious matter which, at the moment, is taking second place because of what is happening on Brexit. The collapse of those institutions is important not only to the future of Northern Ireland but to the future of the United Kingdom as well.

Lord Duncan of Springbank: My Lords, this has been a short debate but, as always, instructive and thought-provoking. I am reminded that 21 years ago to the very day, 19 unforgettable words were stated:

“I am pleased to announce that the two Governments and the political leaders of Northern Ireland have reached agreement”. I would love to be standing here before you to say that very thing, but I cannot.

I believe there is support for the extension: that it is seen as the least worst option of the three on the table. I think that around this House there is general acceptance that those five months may yet afford an opportunity for the parties to come together and for an Executive to be struck. I think it is accepted that that is the least worst option before us.

A number of other points were raised today, and let me address them as best I can. Noble Lords will recall that, in the past, my noble friend Lord Cormack and others spoke of bringing together the Assembly in some capacity and said that that could well have an influence on events. I also recall that the noble Lord, Lord Murphy, has said more than once that, truthfully, had there been an Executive and a fully functioning Assembly, there would have been a change in the weather over Brexit. I agree: I think that is correct.

I said at our last gathering that we should find a way to discuss the notion of an Assembly in that capacity, and I will make sure that we continue that idea: that we find time to see how we can advance that and bring something comparable to discuss. I think there is merit in that. As is rightly pointed out, we see in Northern Ireland the least democratic part of the United Kingdom.

As to the question of a facilitator, the words I cited at the outset from George Mitchell are a reminder of what someone can do when they are able to bring the parties together. The role of a facilitator is under active consideration, and I believe that we will move forward on it in the coming weeks and months of the five-month extension.

[LORD DUNCAN OF SPRINGBANK]

Noble Lords are correct to point out that it is very difficult for the Government to appear entirely neutral when so many noises off suggest otherwise. Perception can in many cases be more challenging than the reality. We need to find a way to explore that to bring to bear an opportunity of trust restoration which can, one would hope, bring about the breakthrough that we all need.

In Northern Ireland, there are plenty of individuals at whom one could point fingers and say, “If only you had done more”. I suspect that everyone could do that, pointing in very different directions. The challenge before us today is: what can we do now to move things forward? Five months is a very short time. Five months would be a challenge at the best of times. Five months today, with all that is going on around us, not just in Northern Ireland but beyond, is a reminder of the challenges we face.

As we look at those challenges, we recognise what five months means. It is only a few weeks until we begin the marching season. We have the local government elections in Northern Ireland, which will place stresses on the body politic. We have Brexit, ever present, looming over us. Each of those challenges us to bring about the very thing that we all so clearly wish for—that all parties seem to wish for, yet cannot find the magic moment to come together to break through the wall that has separated them. That is a frustration.

A number of noble Lords made points about the Assembly. I will do all I can to see how we can move that matter forward. I believe that the time for a facilitator is fast approaching, and that we need to figure out how to make it so.

The noble Lord, Lord Dubs, asked about unaccompanied asylum-seekers. I do not have the information to hand but, if he will allow me, I suggest that we sit down together and discuss that point when I have more information to hand. That would be useful and I would be happy to share the results with noble Lords after our meeting.

In listening to the debate, I am conscious of how many times I have stood here, trying my best to explain what appears to be inexplicable. None the less, we have to recognise that we are where we are.

4.45 pm

On the RHI, I had hoped that by now we would have had a written report for this House, setting out the conditions outlined at the previous meeting. However, noble Lords will recall that its drafting rests with civil servants in Northern Ireland. Unfortunately, I cannot instruct them to do so against a timetable but I assure noble Lords that it will come and that, when it does, I will ensure that it is laid before the House so that noble Lords can see exactly what it looks like.

It is not a pleasure to do this. I would dearly love there to be an Executive in Northern Ireland, now more than ever. The opportunity presented by the next five months needs to be grasped because if it slips through not our fingers but the fingers of those in Northern Ireland, we will end up, in short order, with direct rule. That is not the answer to Northern Ireland's problems. We need to ensure that the people of Northern Ireland grasp the opportunity afforded to them to

create an Assembly that works—and, noting the point made by the noble Lord, Lord Morrow, a sustainable Executive. If we can achieve that, we will have done a great deal.

I know that my right honourable friend the Secretary of State for Northern Ireland comes in for a degree of criticism in this Chamber and elsewhere, but I assure noble Lords that she remains committed to the task before her. It is a challenging task that is exacerbated by Brexit, as noble Lords who sit here and who have experience of that same suite of challenges will recognise. There is no point pretending otherwise. If Brexit could be resolved, we would make progress but, in truth, if the Northern Ireland question could be resolved, we could make progress on Brexit. Perhaps it is the other way round.

I am afraid that I can give noble Lords no more to lift their spirits in this regard, but I hope that the five months secured today can be used to deliver the very thing that we want and that the people of Northern Ireland are crying out for: the return of sustainable, decent government to deliver on the issues that are piling up in Northern Ireland and that need to be resolved.

Lord Cormack: My noble friend always impresses. He has the regard of all Members of your Lordships' House. However, we must move things forward. Will he undertake to make a statement to the House after we return from the all-too-brief and already-truncated Easter Recess so that we know exactly what is happening?

Lord Duncan of Springbank: I am always content to return to this House and explain what is going on at any particular point. I would hope to do so on the basis of news to report. If my noble friend will allow it on that basis, we can keep this House updated on what is unfolding. I do not wish to place pressure on the parties by so doing, of course, but it is right and appropriate that this Chamber understands how events are unfolding—particularly when we have only five months. When these regulations were introduced in the first instance, we had five months in the bank that we could potentially draw upon. Now we do not. This is the five-month period and the sand is trickling through the hourglass. It is appropriate that we keep this House updated so that noble Lords understand what is happening. I will do my utmost to ensure that your Lordships are kept fully abreast of these issues when there is news to report.

Motion agreed.

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2019

Motion to Approve

4.49 pm

Moved by Lord Duncan of Springbank

That the draft Order laid before the House on 25 February be approved.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, it is necessary to bring forward this order to confirm the regulation-making

powers of the Scottish Ministers under Section 2(2) of the European Communities Act 1972. This order is made under Sections 30 and 63 of the Scotland Act 1998 and seeks to confirm the powers of the Scottish Ministers regarding environmental impact assessments on certain public and private projects—I shall call these EIAs. These assessments are carried out in relation to renewable electricity generating stations located in the Scottish part of the renewable energy zone under regulations that implement an EIA directive.

The UK Government and the Scottish Government have agreed to take this order forward following an initial request from the Scottish Government. The order specifies functions which are to be treated as exercisable in or as regards Scotland and transfers these functions to the Scottish Ministers. While the generation, transmission, distribution and supply of electricity are reserved matters, since 1999 functions relating to electricity have been transferred to the Scottish Ministers. This order provides confirmation that the Scottish Ministers have EIA regulatory functions in respect of the Scottish part of the renewable energy zone, thus confirming that the UK meets its obligations to transpose the 2014 EIA directive.

The Government have worked closely with the Scottish Government at ministerial and official level to ensure that the order confirms the current legal position of the Scottish Ministers. On that basis, I beg to move.

Lord Hope of Craighead (CB): My Lords, I do not think that anyone could possibly object to this order or indeed the order which the Minister will bring before us as the final business today. However, I should like to pay tribute to the procedures which have brought it before the House.

Some 21 years ago, I was dealing with the Committee and Report stages of the 1998 Scotland Bill in this Chamber. It was a very carefully drafted statute, and it is of great interest to me to see the way in which the various provisions in the latter part of that Act and in the schedules are brought together, both in this order and in the one that follows it, to allow necessary little corrective steps to be taken without any delay or disruption to the devolution system which was laid down.

We are told in the head note to this order that it is to be approved by the Scottish Parliament as well as by each House of the United Kingdom Parliament, and that is as it should be. However, it is worth paying tribute to the draftsmen of the 1998 Act that the procedures are available both for a draft statutory instrument as well as for an order to be laid under the other provisions which are referred to in the regulatory reform order that we will consider later. These are working out to the good of the system.

Beyond that, I welcome the order and I am glad that the Minister has been able to introduce it so briefly.

Lord Bruce of Bannachie (LD): I echo what the noble and learned Lord, Lord Hope, has said. This is the way we hope things will work with a devolved Parliament and Administration but where there is shared decision-making. I have only one question, because the powers are concurrent. When the Minister responds, will he

explain what happens in the unlikely event that there is a matter of dispute? It is territorial and this order effectively devolves the power to Scottish Ministers, but if “concurrent” means what it implies, in theory the Secretary of State in the UK Government could say, “I do not agree”. That is unlikely in the circumstances, but I wonder if the Minister can clarify what would happen.

Lord Davidson of Glen Clova (Lab): My Lords, I thank the Minister for his exposition of the order. As the noble and learned Lord, Lord Hope, has said, no one could disagree with it.

We are coming up to the 20th anniversary of the creation of the Scottish Parliament and of Scottish Ministers. At some point, it might be interesting to hear the view of Her Majesty’s Government of the performance of the devolved Executive over the past two decades, with some focus on its delivery in devolved areas such as education and health. That might be both interesting and instructive.

As for the order, the noble Lord, Lord Bruce, has raised a good and sensible point. Concurrence of Scottish Ministers and the Secretary of State in relation to the functions raises the possibility, although it may be remote, of differences of view and possibly a dispute. Do Her Majesty’s Government envisage that any disputes might arise and how, if they arose, they might be resolved?

I have asked a question about resolution of disputes. As the Minister may recollect, I asked a similar question when the forestry order came up, but I do not recall getting an answer—perhaps matters will alter. It may simply be—this is to a degree foreshadowed by the observations of the noble Lord, Lord Bruce—that this is an area where Her Majesty’s Government do not detect the possibility of differences arising between Scottish Ministers and the Secretary of State.

Lord Duncan of Springbank: My Lords, it is right that we as a Government reflect on the success of devolution. Devolution working is inherently a good thing, and in this order—and, I hope, the one to follow—we see how the nuances of that can work. Whisper it not, but the Scottish and UK Governments really do get on remarkably well at official level and at ministerial level—only occasionally are buns thrown. That is necessary within the devolution settlement. The noble and learned Lord, Lord Davidson, is right to say that we as a Government should perhaps do more to reflect on the successes and, indeed, some of the shortcomings of devolution to date. I know that, in the various discussions we have had in this House, challenges have been expressed by the Scottish Government about certain elements of future policy. We will need to cast our eye to the horizon and give consideration to how devolution—which is, of course, a process—can continue.

On this order, I am happy to echo the words of the noble and learned Lord, Lord Hope, when he talks of the skill and quality of the draughtsmanship and the drafters themselves of the original Scotland Act 1998. It is a good Act that has stood the test of time; the fact that we are here is testament to that. I am very happy to make that statement.

[LORD DUNCAN OF SPRINGBANK]

The noble Lord, Lord Bruce, asked a question about concurrent powers. I asked that question too. I will give noble Lords an answer—they may or may not decide that this is a good answer, but it is the answer I have. There are no known intentions for UK Ministers to exercise any functions relating to this order on behalf of Scottish Ministers. This is almost like the unknown unknowns and the known unknowns of the former US Secretary of Defense. As things presently stand, it is not anticipated that that will be an issue, but the noble and learned Lord is quite correct that that does not mean it will never be an issue. I say only that, should that arise, I do not doubt that it would need to be taken forward through the proper channels between the two Governments to ensure that it does not become a constitutional problem or a constitutional crisis. The Government today do not anticipate that, and nor do I.

I will go back and read *Hansard* to check what I did not answer last time. I will make sure that the noble and learned Lord, Lord Davidson, gets an answer; I would not like to leave anything hanging there. On that basis, I beg to move.

Motion agreed.

Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2019

Motion to Approve

4.57 pm

Moved by Lord Duncan of Springbank

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

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, it is good to be with you again. I beg to move that the draft order laid before the House on 4 March 2019 now be considered. The order is necessitated by the Regulatory Reform (Scotland) Act 2014, which sought to accelerate the procedure for how certain appeals are determined: namely, appeals on applications for consent for renewable energy generating station development and appeals against decisions to hold a public inquiry.

Today's order will ensure that the same appeal mechanism applies whether there is a challenge against a decision of the Scottish Ministers on either an application for a marine licence or an application for a Section 36 consent for energy developments in Scotland's waters.

This order makes two amendments to the Electricity Act 1989 to ensure that this same appeal mechanism applies.

The UK and Scottish Governments have worked closely together to ensure that this order makes necessary amendments in consequence of the 2014 Act. This order demonstrates that the UK Government remain committed to strengthening the devolution settlement and shows Scotland's two Governments working together. On that basis, I beg to move.

Lord Davidson of Glen Clova (Lab): My Lords, I commend the Minister on the brevity of his exposition of this particular order. Again, it is one that Labour is not inclined to oppose. The Explanatory Memorandum describes part of the amendment as being in relation to a legislative oversight. Have any issues arisen as a result of this oversight? For example, is the Minister aware of any decisions that have been made affecting the Scottish part of the renewable energy zone that excluded Scottish Ministers from the decision-making process? Additionally, are any appeals currently outstanding regarding decisions that in fact affect the Scottish part of the renewable energy zone?

Lord Duncan of Springbank: My Lords, the noble and learned Lord, Lord Davidson, is quite right that this is a very short correction. In discussing this with my officials, we came up with the phrase "a technical tidy-up", which is broadly what it is meant to do. The oversight mentioned by the noble and learned Lord—my word, I actually know the answer to this one—refers to the definition of "waters". Because it was a reference to part of an earlier order, it was incorrect in so far as it did not encompass all of Scotland's waters, but instead just the inshore waters. The purpose of this order is to ensure that, in essence, the entire zone out to 200 nautical miles is covered—the waters in their entirety.

As to the specific issues, there have been no occasions on which Scottish Ministers have been affected by this technical oversight. In essence, they have been exercising the powers as they assumed the provision had been drafted rather than as it was actually drafted. Only when we discovered that there was a technical problem did we recognise that this needed to be brought back to give clarity in law. So no outstanding appeals are affected in any way by this particular decision, and Scottish Ministers have not in any way been excluded from the decision-making process. In essence, we have just been diligent in correcting, literally, the letter of the law. On that basis, I commend the order to the House.

Motion agreed.

House adjourned at 5.01 pm.

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