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

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

House of Lords

Monday 7 October 2019

2.30 pm

Prayers—read by the Lord Bishop of London.

Asylum Seekers: Employment
Question

2.36 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what plans they have to review the length of time asylum seekers have to wait before being permitted to undertake paid employment.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, this is an important and complex issue, which we need to consider in detail. As the Prime Minister has said, the Home Office is currently reviewing the matter, and we are continuing productive discussions with partners, listening carefully to the arguments and considering the evidence put forward on the issue.

Lord Roberts of Llandudno (LD): Can I ask the Minister why, when other countries manage to hold their asylum seekers only for three months or perhaps for six months without being able to work, we keep them for 12 months before we allow them to work? What is the reason? These are people of great skills, and I meet many of them in different ways; some are ministers, there are teachers and there are engineers. They have many skills that we could use to our advantage here in the UK.

Baroness Williams of Trafford: My Lords, I do not doubt that asylum seekers have a range of skills; just because they are asylum seekers, it does not mean they do not possess skills. But it is important to distinguish those who need protection from those who want to work and not to blur the two.

Baroness Lister of Burtersett (Lab): My Lords, surely it is in the interests of the economy, as well as those seeking asylum, to enable them to work. All the evidence, from other countries and here, suggests that is important to their mental health and future integration. It is supported by the general public and a majority of the senior managers who were recently surveyed on this.

Baroness Williams of Trafford: I agree with what most of what the noble Baroness says. Asylum seekers can do voluntary work, which would certainly improve their mental well-being, but I disagree about the benefit to the economy.

Baroness Finlay of Llandaff (CB): My Lords, can I ask the Minister how many of those waiting in the system are healthcare professionals at any level? While they are waiting, are they being provided with English language skills and tuition to enable them to take the examinations they need in order to work subsequently in their own profession?

Baroness Williams of Trafford: I do not have disaggregated figures on what types of skills people claiming asylum possess, but I agree with the noble Baroness that anyone settling in this country should have English language proficiency. It is the best route to economic empowerment.

Lord Kirkhope of Harrogate (Con): My Lords, is it not important for us to differentiate between the sanctuary that we have been proud to offer over a long time—we are one of the leading countries in that sense—for those who are in terrible danger and comply with the 1951 United Nations convention criteria for granting asylum, from those who come to this country under ordinary Immigration Rules and meet those rules to benefit economically? Surely the two things should not be mixed.

Baroness Williams of Trafford: I could not agree more with my noble friend, and that is what I tried to say to the noble Lord, Lord Roberts. These are two different things and should not be conflated.

Lord Reid of Cardowan (Lab): My Lords, I do not for one moment underestimate the difficult complexities here, particularly in distinguishing, as has been said, between genuine asylum seekers and those who come for other reasons, but can the Minister tell us whether the extended and elongated period of requirement prior to being allowed to work, as compared with other nations, is a matter of process? In other words, to what extent is the elongation the result of a lack of personnel, resources or procedures for these processes?

Baroness Williams of Trafford: By the elongated period, I assume that the noble Lord means 12 months. Actually, the best system of all would be for people's asylum claims to be determined quickly and work towards our new service standard of four months. It is not a good thing if someone waits for 12 months for their asylum claim to be heard, so I agree with the noble Lord in that sense.

Baroness Boycott (CB): My Lords, can the Minister give an assurance that the current position whereby the children of asylum seekers do not receive free school meals is going to be reconsidered? This seems to be extremely unfair, especially when parents are unable to work.

Baroness Williams of Trafford: I will have to get back to the noble Baroness on that point, because off the top of my head I am not certain whether the children of asylum seekers can receive school meals. Local authorities have a duty of care and a safeguarding duty for children, and therefore I think that there will be certain circumstances where they can have free school meals.

Lord Rosser (Lab): My Lords, I think I am right in saying that the then Home Secretary said last December that he was reviewing the right for asylum seekers to work, and in June of this year he confirmed that that was the case and that he would update Parliament in due course. I know that the Minister has said on behalf of the Government that this is a complex issue, but it is now quite a long time since the then Home Secretary said that he was looking at the matter. Does that mean that, with a change of Home Secretary, there is now less enthusiasm for doing anything? If that is not the case—let us assume that there is no imminent general election—when do the Government expect to complete this review?

Baroness Williams of Trafford: It was the Prime Minister who said that the Home Office was reviewing the matter, and therefore I do not assume that there is a change in the position. I hesitate to say this to the noble Lord, but I am sure that it will be done in due course.

Lord Paddick (LD): My Lords, while the application is being processed, the Government give some seekers of sanctuary no support at all—they can stay but with no recourse to public funds—or they provide them with such low subsistence that it is impossible for them to buy essentials such as clothes or shoes. Either they have a legitimate claim to be here or they should be deported, but why should they be made destitute while their application is being considered?

Baroness Williams of Trafford: The noble Lord is absolutely right that either their claims should be considered or not, and that should be done swiftly, which is what I was saying to the noble Lord, Lord Reid. The sooner that people's applications are considered, the sooner these things can be determined.

The Earl of Sandwich (CB): My Lords, can the Minister update us on the serious situation of the Syrian refugees whom we agreed to accept?

Baroness Williams of Trafford: I do not know the exact figure, but at the last count we had brought something like 26,000 children over here. Of course, the situation in Syria is dire, the caliphate is collapsing, and therefore those children might be even more in need now than ever before.

Modern Slavery (Victim Support) Bill

Question

2.45 pm

Asked by ***The Lord Bishop of London***

To ask Her Majesty's Government what steps they are taking to facilitate the enactment of the Modern Slavery (Victim Support) Bill within the next 12 months.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government have given serious consideration to the issues raised in the Bill from the noble Lord, Lord McColl, and to how to ensure that victims have the support they need to begin rebuilding their lives. However, the Government do not believe victims should be given an automatic grant of leave. Consideration of whether an individual is a victim of modern slavery and any decisions regarding their immigration status are, and must remain, separate.

The Lord Bishop of London: I thank the Minister for her reply. Churches across the UK are providing some exceptional support to victims of modern-day slavery, such as Tamar at All Souls Church here in Westminster. On a recent visit to Tamar I was struck by how essential it was that victims were provided with assistance, healthcare, housing and mental health support. Can the Minister comment on what progress is being made to cost and evaluate provision so that victims can not only receive adequate care but recover in the best way possible?

Baroness Williams of Trafford: I pay tribute to the ministry the right reverend Prelate describes, because I know that both the Church and the voluntary sector do a fantastic job in this area. Children can receive support through the independent child trafficking guardians that have now been rolled out in a third of local authorities in England and Wales—they are very welcome—and follow-on support, through the victim care contract, that victims can expect to receive after the trauma of their experience.

Baroness Nicholson of Winterbourne (Con): I am sure the Minister will agree that modern slavery cannot be confined to these shores; it is a global horror story. I welcome her statement, but did she by chance catch sight of the particularly painful programme that BBC Arabic put forward on modern slavery of children under nine under sharia law in Iraq? Is she aware that there have been cases of this kind—I know of them myself—here in the United Kingdom? May we spread our work and share it with other nations in the same way that the right reverend Prelate has offered?

Baroness Williams of Trafford: I did see that programme, and it was very disturbing: children as young as eight and nine being married for an hour, effectively so that they could be abused. In this country we would call it child abuse, and of course those girls suffer even worse because it damages the rest of their lives.

Lord Anderson of Swansea (Lab): My Lords, how do the Government respond to the claim that there is a loophole in current modern slavery legislation that is being exploited by county lines networks and that allows young people to pose as victims when in fact they are not?

Baroness Williams of Trafford: The noble Lord raises an interesting point, because quite often in county lines those children are both victims and perpetrators of some of the offences. Interestingly, the majority of referrals into the NRM are from the UK and are suspected to be from county lines gangs.

Lord McColl of Dulwich (Con): My Lords, is the Minister aware that the University of Nottingham conducted a cost-benefit analysis of my Bill and showed that it would have saved £25 million in the past two years had it been implemented? A 12-month period of support would allow victims to get into work, supporting themselves and contributing to the economy.

Baroness Williams of Trafford: I thank my noble friend for that question. He refers to a period of 12 months, but the two initial phases—when someone has received positive reasonable grounds, and conclusive grounds—each give a minimum of 45 days' support. Together, that is a minimum of 90 days. Someone may well receive a longer period of support.

Baroness Hamwee (LD): My Lords, the recent independent review of the Modern Slavery Act discussed the need to develop our domestic infrastructure to protect victims. The Independent Anti-slavery Commissioner has said that we should,

"ensure that all child victims of slavery are fully supported towards safety".

The Minister mentioned independent child trafficking guardians. Is the piloting and evaluation of the scheme going so slowly as to jeopardise the full rollout recommended by the independent review?

Baroness Williams of Trafford: Not that I know of, but we should note that when something is rolled out, it is important that it be done properly, in the sense that it is ultimately effective. To me, piloting and rolling out further seems to be the best way of doing this. I do not think it is too slow, but I do think we need to get it right.

Lord Kennedy of Southwark (Lab Co-op): My Lords, as a Labour and Co-op peer and a member of the Co-op, I am delighted to support the Bill of the noble Lord, Lord McColl, which will bring the law in England and Wales up to the same standards that we enjoy in Northern Ireland and Scotland, giving victims 12 months' support and assistance. The Co-operative Group has worked closely with the noble Lord on his Bill. However, it is certain to be lost in the Commons due to the usual suspects on the government Benches, who take great pleasure in wrecking Private Members' Bills. Why will the Government not help to get this much-needed reform through to help victims of modern slavery, following the example of the Church, the Co-operative Group and others?

Baroness Williams of Trafford: My Lords, in response to the independent review of the Modern Slavery Act, which was of course cross-party, the Home Office launched a public consultation. The proposals under consideration would require changes to primary legislation, and we at the Home Office intend subsequently to make any necessary legislative changes as soon as we can, with parliamentary time.

Railways: Trans-Pennine Freight

Question

2.52 pm

Asked by ***Lord Greaves***

To ask Her Majesty's Government what proposals they have for TransPennine freight in the next 10 years.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the provision of capacity and capability for cross-Pennine freight is a key priority for the Department for Transport. We are considering how best to enhance the current capability and capacity for cross-Pennine bulk and intermodal rail freight between a range of origins and destinations. This includes consideration of the potential freight demand via a reinstated Skipton-Colne route. This piece of work is due to report soon and will include a wider assessment of cross-Pennine rail freight.

Lord Greaves (LD): My Lords, I refer to the Colne-Skipton gap in the network. The then Secretary of State, Chris Grayling, came to Colne at the beginning of last year and again at the beginning of this year to announce two studies. On 19 September, the Department for Transport said:

"An initial study, which was completed in December 2018, found that it is technically feasible to re-open the line. We are now working to assess the freight demand and the commercial viability of the scheme",

as the Minister said. The new team of consultants attended a routine meeting of the high-level project development team at Peel Ports in Liverpool on 26 September this year. According to people present, the new contractors said that the route was entirely unsuitable for freight of any kind. Can she investigate what is going on? Will she arrange for the publication of the original Steer group report, so that we all know what is in it?

Baroness Vere of Norbiton: I can indeed update the noble Lord about what is going on: work is continuing apace to understand the amount of freight demand that is not currently being and may be met in future by reopening this line, as well as to look at the commercial viability of the scheme. I undertake to him that we will publish all the reports when these important issues have been fully explored and we understand the full picture.

Lord Adonis (Lab): My Lords, can the Minister confirm or deny the story on the front page of the *Financial Times* that the HS2 review is considering axing its eastern leg? Is she aware that this report is being treated with great alarm in Edinburgh, Newcastle, Durham, York, Leeds, Sheffield, Nottingham, Derby and Birmingham?

Baroness Vere of Norbiton: I am sure that the noble Lord knows better than me that one should not believe everything one reads in the newspapers. However, as he will also know, the Oakervee review is taking a detailed look at all elements of HS2 and its phasing and will report soon.

Baroness McIntosh of Pickering (Con): My Lords, will my noble friend the Minister take this opportunity to comment on HS3 and its implications? I am sure that she and I are both subscribed to the northern powerhouse and its rail element: that we need to increase capacity on rail for both passengers

[Baroness McIntosh of Pickering]
and freight. As the noble Lord pointed out, the spur to Leeds and Sheffield is crucial in this regard. Will she confirm that both HS2 and HS3 will proceed as planned?

Baroness Vere of Norbiton: I thank my noble friend for raising further questions around HS2. She referred to HS3, which is known to most noble Lords as Northern Powerhouse Rail. It is an incredibly important, complicated and extensive project. It works closely with the trans-Pennine route upgrade, and indeed with HS2. The Government have already committed £60 million of funding to Transport for the North to develop the proposals and a further £300 million to ensure that HS2 can accommodate Northern Powerhouse Rail. As she made clear, Northern Powerhouse Rail could bring huge benefits.

Lord Wallace of Saltaire (LD): My Lords, some weeks ago, I asked someone from Transport for the North where they could find extra freight rail capacity between Liverpool and Hull. The answer was that they had identified that, if you took container traffic through Daventry, you could take it from Liverpool to Hull; that is an interesting diversion. Meanwhile, freight container traffic goes along the M62, which becomes even more crowded. Can we therefore raise the awareness and importance of increasing freight paths on rail through the north of England without having to go via either Scotland or the southern Midlands?

Baroness Vere of Norbiton: We are deeply aware that there are a number of freight routes for rail and are doing what we can to improve their usage. For example, I am not sure whether the noble Lord is aware of the W7A gauge clearance project, which is going on at the moment. We are building a business case with industry to develop a W7A gauge clearance which would run along the trans-Pennine rail route via Huddersfield and Stalybridge. I hope that meets with his approval. If there is a positive business case, we will proceed with it forthwith; it could be in place by late 2020.

Lord Rosser (Lab): My Lords, capacity for rail freight is a key priority. Will the Government show that through an undertaking that that they will give the same priority, with the same timescales, to increasing capacity for rail freight across the Pennines as they say that they intend to do for rail passenger traffic across the Pennines?

Baroness Vere of Norbiton: I thank the noble Lord for his question but, of course, it is not either/or; the two must be developed together. We often end up looking at a single mode for freight; what we must do is look at all the options, which will include road and, obviously, rail. But he brings up an important point. We will look very closely at cross-modal freight across the country in a strategy for the future starting this autumn.

Lord Cormack (Con): My Lords, as we are moving around the country, I take this opportunity to thank my noble friend's predecessor for the new services which begin a fortnight today: four trains a day between Lincoln and London and, from December, six trains a day. I also renew the invitation to her and her colleagues to pay a visit to Lincoln on one of these trains in the fairly near future.

Baroness Vere of Norbiton: I thank my noble friend for his intervention. I was not aware that we were anywhere near Lincoln, but I am happy to discuss it. I am grateful for his words of thanks. These are just some examples of the extra services that the Government are putting back on the track. I will take noble Lords back up north: on the Northern and TransPennine Express franchises, we are delivering extra capacity of 40,000 passengers a week across 2,000 services.

Elections and Referenda: Protection Against Corruption

Question

2.59 pm

Asked by ***Baroness O'Neill of Bengarve***

To ask Her Majesty's Government what progress they have made with ensuring adequate protection of (1) elections, and (2) referenda against corruption by (a) disinformation campaigns, and (b) digital technologies.

The Earl of Courtown (Con): My Lords, the Government take online manipulation and disinformation very seriously, particularly in relation to our democratic processes. The Department for Digital, Culture, Media and Sport is leading work across government to tackle this. Working more broadly, we have set up a Defending Democracy programme in the Cabinet Office. This pulls together work and expertise from across government to strengthen the integrity of our electoral system and defend it from hostile activity, including disinformation.

Baroness O'Neill of Bengarve (CB): My Lords, time is moving on. During May, the Government replied to a number of questions from various Benches about preventing online corruption of future elections and referenda. The noble Lord, Lord Young of Cookham, always gave careful and considered answers and assured the House that the Government were already taking steps to ensure that there was no such corruption. He talked about ensuring that we have,

"a robust framework for our election process, which is resistant to corruption and enhances public confidence".—[*Official Report*, 1/5/19; cols. 962-63.]

Since then, the evidence of online disinformation campaigning has grown very greatly. Some of it is anonymous and some is traceable to hostile states. It has been documented in some part by a very recent report from the Oxford Internet Institute. What steps have Her Majesty's Government taken since May to ensure that future elections and referenda are not corrupted at source, and that the electorate can have confidence that results are not being secured by foul means?

The Earl of Courtown: My Lords, the noble Baroness makes some very good points. I have read with interest past exchanges between her and my noble friend Lord Young—who I wish was here at the moment. I know that I am repeating to a certain extent what my noble friend said. We do take the situation very seriously and realise the urgency of it. It is very important that we do something about this, act correctly and get it right. In my initial Answer, I brought up the Defending Democracy programme. This was announced in July and its whole point is to pull together existing work and expertise from a number of departments, to protect and secure UK democratic processes, strengthen the integrity of UK elections and encourage respect for open, fair and safe democratic participation.

Lord Tyler (LD): My Lords, given the advice from the Electoral Commission, the Information Commissioner's Office and the DCMS Select Committee that our electoral legislation is no longer fit for purpose, will the Minister commit to implementing the Electoral Commission's excellent codes of practice, which were published in July? They would improve transparency, give clarity to parties, agents and candidates, and move some way to meeting the point made by the noble Baroness. Would the noble Earl give strong representations to his colleagues that the necessary secondary legislation should be included in the Government's programme next week?

The Earl of Courtown: I thank the noble Lord for his question, and I will pass on his concerns to the relevant Minister whose responsibility this is. Some important work is being carried out. As the noble Lord mentioned, the Information Commissioner's Office published its draft code of practice for the use of personal data in political campaigning for public consultation on 9 August. The consultation closed on 4 October and it is good to see that some of the social media platforms have their codes of practice already in place.

Baroness Hayter of Kentish Town (Lab): Will the Minister assure the House that no government spending will be used to promote a partisan approach to Brexit, particularly as we are likely to have an election fairly soon? It appears to be the case now, because a whole lot of ads are being funded by taxpayers' money saying that we will leave on 31 October, despite legislation passed, including by this House, which makes that unlawful unless certain conditions are met. Can the Government assure us that taxpayers' money is not being used as part of the upcoming general election campaign?

The Earl of Courtown: My Lords, the important fact that the noble Baroness mentions is that the advertising campaign concerning leaving the EU on 31 October is to ensure that the country as a whole, and business in particular, is aware that this is our plan.

Lord Deben (Con): Does my noble friend agree that Britain is—or has been—looked at by the rest of the world as an exemplar not only for good government but for perfect electoral practice? As we cannot manage the good government now, could we please get the electoral practice right?

The Earl of Courtown: My noble friend raises a couple of points. This is why I will reiterate what we announced in July—our Defending Democracy campaign—which will bring everything together in all departments to seek various areas of security and safety on the internet.

Lord Wallace of Saltaire (LD): My Lords, does the Defending Democracy unit have a clear definition of what it means by democracy? At present we are in a situation in which the question of whether the rule of law is an important part of democracy is under challenge and the relative weight of referenda and elections is also under challenge. It would be good to know that the Defending Democracy team has some clear definitions to contribute to the public debate.

The Earl of Courtown: I think I made it quite clear where the Defending Democracy programme is moving towards. It is protecting and securing our UK democratic processes. That is my top line on this issue and the most important thing—to protect our democratic processes.

Lord Howarth of Newport (Lab): My Lords, is not the very nature of this corruption that tech businesses operating anonymously and with no legal limits on what they are able to spend are gathering personal data with the intention not just of predicting the emotions and behaviour of individuals but of influencing them? At the same time, people are unaware of what is being done to them. Is this not a violation of personal freedom? Do the Government intend to legislate to curb these abuses or do they just see electoral advantage in allowing them to continue?

The Earl of Courtown: The noble Lord mentioned data and how it is being utilised. I watched "The Great Hack" last night and recommend it to noble Lords—it is an interesting film. This is why it is so important that we work closely with the Information Commissioner, as we did during the Data Protection Bill and in the wake of the Facebook/Cambridge Analytica controversy, to make sure that she had the powers she needed to investigate complex data breaches in our increasingly digital economy and society. The important thing is transparency. When these imprints and ads come up on various sites, we have to know where they come from. The other day, for example, I was looking at a site and up came an add relating to a hoover. I was trying to buy a hoover the other day and looking for it online. That was not important, but the important thing here is that, if we have political ads coming up on our screen, we know where they come from and they are transparent.

Hong Kong: Emergency Powers

Private Notice Question

3.08 pm

Asked by ***Baroness Northover***

To ask Her Majesty's Government what discussions they have had with the devolved government of Hong Kong about its decision to introduce Emergency Powers, which includes introducing a ban on face masks.

Baroness Northover (LD): My Lords, I beg leave to ask a Question of which I have given private notice.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we have regular discussions with the Hong Kong Special Administrative Region Government about their response to the protest, including their most recent measures. We are, of course, monitoring the situation closely, including the implementation of a ban on face masks under the emergency regulations ordinance. We believe political dialogue is the only way to resolve the situation. While Governments need to ensure the security and safety of their people, they must avoid aggravating and, instead, seek to reduce tensions.

Baroness Northover: My Lords, I thank the Minister for that reply. Does he agree that the very worrying use of emergency powers is a breach of the Sino-British joint declaration, which guaranteed rights and freedoms in Hong Kong, including the freedom of assembly and the right to protest? If not, why not? Does he agree with his noble friend, the noble Lord, Lord Patten, who said on the "Today" programme this morning that what is happening in Hong Kong is "the destruction of a great international city created by Chinese people" and that the UK Government must urge China to give the Hong Kong Government the scope to resolve the conflict through the political means he mentioned?

Lord Ahmad of Wimbledon: I totally agree with the noble Baroness about the importance of reaching political agreement. I share her deep concern and that of my noble friend about the situation unfolding in Hong Kong. To call it disturbing would be an understatement. We have seen a real increase not just in tensions, but in the attitude shown towards the protesters. Indeed, the new law has caused deep concern. I reassure the noble Baroness that we are fully committed to upholding Hong Kong's high degree of autonomy and its rights and freedoms as enshrined in the "one country, two systems" framework, which is also enshrined in Hong Kong's basic law. On specific actions, we are in almost daily contact with the Hong Kong Government through our consul general on the ground and I know that my right honourable friend the Foreign Secretary will seek an early call with the Foreign Minister, State Councillor Wang Yi, at the earliest opportunity.

Lord McNicol of West Kilbride (Lab): My Lords, the latest draconian crackdowns on protesters in Hong Kong have failed to deter tens of thousands of people taking to the streets and instead have served only to further inflame tensions. Following my PNQ last Tuesday, I asked the Government to speak urgently to the Hong Kong Government. The House may remember that the Minister responded that although the Foreign Secretary had not spoken to Carrie Lam in nearly two months, he hoped that that would happen in the coming days. I am not clear from the Minister's response whether that conversation has taken place. Can he confirm whether the Foreign Secretary has in fact spoken to the Hong Kong Chief Executive and expressed the concerns raised across this House over the potential infringement on human rights?

Lord Ahmad of Wimbledon: As I said in my earlier answer, as the noble Lord will be aware, the Foreign Secretary has spoken to, among others, Carrie Lam. To my knowledge, he has not spoken to her since that Question was asked. We are certainly seeking urgent calls not only with Carrie Lam, but with Foreign Minister Wang Yi. I will certainly come back to the noble Lord on that. The last formal contact was between the consul general in Hong Kong and Carrie Lam's deputy on Friday, but I assure the noble Lord that we are very much engaged at all levels to ensure that this issue, which we have seen on our television screens, is kept at the forefront and we are consistently raising it with the Hong Kong and Chinese Governments.

Lord Howell of Guildford (Con): Does my noble friend agree that, while we are absolutely right to argue strongly for the right to peaceful protest and to say that we have the right to talk directly with Beijing about the conditions of the original joint declaration, we cannot condone actions that involve throwing rocks and petrol bombs, smashing up legislatures, blocking the airport and moving from peaceful protest to outright violence? There are those who point out, as, indeed, my noble friend Lord Patten has, that this is the path to the self-destruction of Hong Kong as millions of dollars will leave the area as no one will invest there. We should point out to the Government of Hong Kong and the protesters in Hong Kong that they are destroying themselves.

Lord Ahmad of Wimbledon: I agree with my noble friend that any kind of violence—I am sure that I speak for every Member of your Lordships' House—is to be condemned totally, but it is also vital that the response to any action is proportionate. That is why we stress again that the only resolution to this matter, as was reiterated by the noble Baroness, Lady Northover, is political dialogue. That remains the Government's primary objective.

Baroness Kennedy of The Shaws (Lab): My Lords, I am the director of the International Bar Association's Human Rights Institute. It has just had its annual conference, in South Korea. Many lawyers from around the world were there, and we awarded the human rights and rule of law award to Margaret Ng and Martin Lee, two leading members of the Bar in

Hong Kong who argue for the rule of law and who will be known to many people in this House. It was interesting to hear from them. They said that the young are protesting about the absence of genuine democracy now and the continuous erosion of the processes that were put in place at the time of the handover. I strongly urge the Government to seek a dialogue and that China is reminded that the rule of law is not rule by law. I am afraid that often Chinese lawyers do not fully understand that the rule of law is not simply law and order but is also protecting the rights of people and strengthening democracy in a place that is going to be important to them as we go forward.

Lord Ahmad of Wimbledon: I totally agree with the noble Baroness. She has great experience and insight on these matters, and I fully associate myself with her sentiments and her remarks. Let me make clear that it has always been the position of the United Kingdom Government, irrespective of political affiliation, that all elements, including the elections that take place for the Chief Executive and the Legislative Council, are provided for in Hong Kong Basic Law. Our view is that the transition to universal suffrage should be applied wholesale. That is enshrined in Hong Kong Basic Law .

Lord Wilson of Tillyorn (CB): My Lords, what has been happening in Hong Kong recently is deeply depressing and very worrying indeed. It is understandable that the Hong Kong Government should wish to deal with people disguising themselves, particularly if they are engaged in violence, but it is not really possible to see how that is going to be an effective move. It is more likely that it will be widely disregarded and therefore seen as a weakness on the side of the Hong Kong Government. That said, and given that these situations are all very worrying and that we must all be concerned about the direction of travel in Hong Kong, does the Minister accept that Her Majesty's Government would be well advised to be cautious about the way they deal with this publicly, lest they build up a picture—which some people would like to paint—of a lot of this being due to outside interference? That is not something that we would wish to do.

Lord Ahmad of Wimbledon: My Lords, the Government have shown that diplomacy is the way forward. Ultimately, in any public statement that we make, we consistently make the point that political dialogue is the solution. We are very mindful of the history of Hong Kong, but, speaking as the Minister responsible for human rights, when we see human rights being usurped in those countries with which we have a strategic relationship—and yes, that includes China—we stand up for them, and make those views known.

Lord Anderson of Swansea (Lab): My Lords, to avoid the ultimate disaster of intervention by the People's Liberation Army, and to give all sides a ladder down which to climb without losing face, is there, in the judgment of the Government, any prospect of outside conciliation or conciliation by respected individuals?

Lord Ahmad of Wimbledon: Reflecting on the previous question as well, first and foremost we need to see the restoration of law and order but, within that, guarantees of political dialogue. It is clear that the current law, as well as the "one country, two systems" principle, provides for the very notion of ensuring that people's rights are protected and strengthened and that the autonomy enjoyed by Hong Kong continues. We believe that is enshrined in Hong Kong law. It is an agreement which has also been deposited with the United Nations, and all parties must have due regard and respect for it.

European Travel on Parliamentary Business (House of Lords Commission Report)

Motion to Agree

3.19 pm

Moved by ***The Senior Deputy Speaker***

That the Report from the House of Lords Commission *European travel on Parliamentary business* (3rd Report, HL Paper 423) be agreed to.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the report before us today invites the House to agree changes relating to European travel on parliamentary business within the scheme of financial support for Members.

The current House of Lords rules are covered by a resolution of the House agreed on 5 March 2003, which specifically links the travel to national parliaments of European Union states or candidate countries and EU institutions in Brussels, Luxembourg and Strasbourg. Since then, the eligible countries and institutions have been revised to also include: national parliaments of Council of Europe member states; national parliaments of European Free Trade Association member states; any EU institution or agency—removing the restriction to those based in Brussels, Luxembourg and Strasbourg —and Council of Europe institutions in Strasbourg.

This report proposes the removal of the existing requirement for a link to national parliaments and EU or Council of Europe institutions and agencies and proposes that the countries eligible for support for European travel on parliamentary business should be defined as member states of the EU, member states of the Council of Europe, member states of the European Free Trade Association, and the Holy See. It also proposes that the resolution of 5 March 2003 be accordingly no longer operative. The requirements on eligibility of travel for reimbursement under the scheme, and for advance approval, would remain.

These proposals would more closely align the rules of the House in relation to support for European travel on parliamentary business with the rules for Members of the House of Commons. The report also proposes that the provision of support in relation to European travel on parliamentary business be reviewed in a year. I beg to move.

Motion agreed.

Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.22 pm

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

That the Regulations laid before the House on 9 September be approved.

Relevant document: 69th Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank): My Lords, the extension to Article 50 requires changes to legislation made earlier this year to ensure continued confidence in our consumer safety system. This statutory instrument will amend three earlier regulations: first, a number of product schedules in the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, made in March 2019; secondly, the Pressure Equipment (Safety) Regulations 2016; and, thirdly, the Conformity Assessment (Mutual Recognition Agreements) Regulations 2019. I will now take noble Lords through the detail of the changes made to each of these regulations—I can see the excitement building.

The change in exit day has created ambiguity for the personal protective equipment industry, necessitating revision to the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019. The opportunity has also been taken to refine the instrument based on stakeholder feedback and ongoing developments in the sector, notably clarifying the continued use of data from pre-March 2013 as it affects cosmetics and ensuring that the UK will be able to update the lists of prohibited or restricted substances in all circumstances going forward.

I am concerned that, following publication of the main product safety instrument, stakeholders drew to our attention a number of these issues. I wish to apologise that these errors were identified by stakeholders after our own internal scrutiny processes had been cleared. Once alerted to these issues, we held meetings with the representative bodies from across the product areas to discuss the drafting errors identified and review the relevant product schedule for any other potential points that might require clarification. Eight meetings were held and a number of phone calls and emails were exchanged with relevant stakeholders. We have sought to do all we can in this regard to catch any issues that might not have been caught in the first instance.

Consequently, minor amendments regarding outdoor noise, recreational craft, toys, electromagnetic compatibility, electrical equipment, radio equipment, simple pressure vessels, machinery, measuring instruments and accreditation will be made. We will also correct the error whereby pressure equipment manufacturers would have been deprived of the option of having their manufacturing processes of base materials certified by a competent body.

Details of the technical changes are included in paragraph 7 of the published Explanatory Memorandum. These could ordinarily have been addressed through guidance. However, the extension to exit day meant that we were required to make an instrument to address specific exit-related issues, and we decided that it would be good practice at the same time to bring these minor changes into legislation to give full clarity for business.

We have also taken the opportunity to update the Pressure Equipment (Safety) Regulations 2016 to ensure full implementation of the importer labelling requirements to make it clear that an importer must put their information on both pressure equipment and assemblies. Post exit, UK importers in some circumstances will be able to put their details on a document accompanying the equipment or the assembly.

The instrument also implements into domestic law obligations that the UK currently has as an EU member state with regard to certain goods imported from Switzerland. This was originally implemented through a global provision in the Conformity Assessment (Mutual Recognition Agreements) Regulations 2019. Following further departmental legal analysis, we considered it more appropriate to make it explicitly clear in the law itself. This instrument will allow UK importers of relevant products from Switzerland to put their details on accompanying documentation rather than on the product for a period of 18 months after exit and extend recognition of Swiss authorised representatives to act on behalf of manufacturers to comply with regulations on noise emissions from outdoor equipment in line with the existing EU/Swiss mutual recognition agreement.

A full impact assessment has not been prepared for this instrument because no provisions trigger changes to in-scope operational costs. The impact is limited to familiarisation costs for business, which were previously assessed in a full impact assessment on the earlier instrument as de minimis. A copy of that full impact assessment is publicly available on legislation.gov.uk.

On consultation, the department has benefited from significant stakeholder feedback following the passage of the original regulations, all of which has been taken into account in the revised instruments. However, clearly, this was the wrong way round. As I said when taking forward regulations last week, my department will reflect carefully on ensuring adequate consultation before bringing forward such complicated legislation. This commitment from the Dispatch Box follows on from issues raised by the Joint Committee on Statutory Instruments, whose comments we welcome and will take fully on board.

The amendments made by this instrument will ensure that instruments are correct and that our high standards are maintained after our exit from the European Union. I beg to move.

Lord McNicol of West Kilbride (Lab): My Lords, moving between topics as varied as Hong Kong to product safety is one of the joys of being a Front-Bencher in the House of Lords.

The House is again debating an instrument to rectify problems with previous no-deal regulations, this time on the crucial issues of product safety and metrology. Before I delve into the specifics of the instrument on mutual recognition, I ask the Minister to explain why the House is still debating regulations which will apply only in the event of no deal when the recent European Union (Withdrawal) (No. 2) Act will prevent such a scenario. This feels both disrespectful of Parliament and a little bizarre.

Much of the instrument is intended to ensure that previous regulations will be operable for the latest exit date. As he was asked last week, can the Minister confirm that Parliament will be asked again to revisit these issues if the exit date is again changed?

According to the department's Explanatory Memorandum, the regulation strives to ensure that products placed on the UK market continue to meet,

"substantially the same essential requirements".

Why is it only "substantially" the same requirements, not exactly the same ones? If there is no difference, will the Minister clarify this? If there is a difference between substantially copying over requirements and completely doing so, which ones are not required to be copied over?

3.30 pm

These regulations cover a wide range of products, from civil explosives to children's toys. It is imperative that Parliament can fully scrutinise all legislation. I fear that the Government have crammed in amendments to so many items of secondary legislation, some of which have little relation to each other, that it may be difficult for the House to examine each necessary reference. How many separate pieces of legislation are within this instrument? I ask because I had a shot at trying to decipher some of the language. I understand the complex nature of this and how difficult it is, but we are debating important statutory instruments week after week. In Part 3, Regulation 11 states:

"In Schedule 12— … (e) in paragraph 30 … (i) in paragraph (b)(iii) before 'third' insert 'second paragraph and the'".

That is not simple or straightforward.

I understand that the Minister has come to the House to explain that a number of difficulties and issues have arisen with this since my noble friend dealt with it the first time round. It is important that these are rectified, but its complex nature makes it neither easy nor simple. Did the department give any consideration to splitting the regulations into separate affirmative instruments, which may have made it a bit simpler?

Finally, the Government have claimed that no consultation was necessary on the drafting of this instrument. In his opening remarks, the Minister talked about "stakeholder feedback", but paragraph 10 of the Explanatory Memorandum, headed "Consultation Outcome"—which the Minister touched on—states that there was no consultation. If there was a need for stakeholder feedback and if that fed into changes to the SI, why was there no wider consultation with the industry?

We have no intention of opposing this instrument, but I would welcome any attempt by the Minister to clarify the Government's intentions on some of my previous questions. As the House again finds itself debating legislation that will enable a no-deal exit, which Parliament will not sanction, will the Minister offer an estimate of how many further redundant instruments it will be asked to consider?

Lord Fox (LD): My Lords, once again I associate myself with the comments of the noble Lord, Lord McNicol, about the necessity for this debate, but now that it is here it is important to get it right so I am happy to have it.

I refer noble Lords to my entry in the register of interests. I am not actually sure whether I have any interests which coincide with this instrument, but it seems impossible for there not to be, given that it covers ear-plugs to aftershave and toy trains to industrial pumps via explosives. The breadth of this SI is its weakness, because it is trying to bring together a compendium of things that need to be cleared up. I have complete respect for the team that has worked hard on trying to do this, because it really has a very broad remit. It seems unlikely to me that there is not another issue or two in here, so I welcome the Minister's undertaking to continue to be vigilant on it. Perhaps he could undertake, in the event that further issues are uncovered, that further versions of this will be brought forward.

The point made by the noble Lord, Lord McNicol, about stakeholder involvement is absolutely right. The threshold of monetary value used is not always the right threshold when we are dealing with statutory instruments of this complexity; the problems and issues it creates for business are hard to monetise, and in this case the Government would have been best advised to err on the side of involving as many people as possible. I suspect that there is still a need to do that.

I shall make a couple of general comments and then focus on one particular issue—I am very pleased that the noble Lord, Lord Gardiner, is in his place, because it crosses over into the next instrument, and he will guess what it is about. My first point concerns the Explanatory Memorandum, which talks at paragraph 2.3 about manufacturers having to have either self-certification or third-party conformity assessment. It is not clear whether that is a change from the current situation—in other words, what was acceptable for self-assessment, will that remain, or will people either have to have increased or indeed, decreased third-party conformity assessment as a result of this change?

My second point mirrors exactly what the noble Lord, Lord McNicol, said about paragraph 2.6 of the Explanatory Memorandum and,

"substantially the same essential requirements".

That means that not all of them are, yet there is no list of what is materially different. I think noble Lords should be aware, in detail, of what is actually the difference between this andwhat it seeks to replace.

I come to the issue I want to talk in some detail about. Regulation 8 talks about CMR chemicals; those which are,

"carcinogenic, mutagenic or toxic to reproduction".

Much of the change the regulation makes is around labelling, but the reference to Schedule 34 talks about "historic animal testing data" and starts to stray into

[Lord Fox]
issues that the noble Lord, Lord Gardiner, will know we have discussed around REACH and the rollover use of historic data. It seems strange to me that we are trying to cover similar issues in two separate statutory instruments. What consultation has gone on between BEIS and DEFRA in the drawing up of this, and why should it all not be covered in one instrument?

That also causes me to raise, yet again, that in essence the SI brought by DEFRA, the REACH etc. (Amendment etc.) (EU Exit) (No. 2) Regulations 2019, which has yet to be tabled, has very severe financial consequences for the chemicals and cosmetics industries in this country. In the case of the chemicals industry, the relationship is managed, I think, by BEIS, rather than by DEFRA, so it seems to me that there is a lot of crossover here which is not necessarily finding its way through in the statutory instrument.

So there is work to do. First, it must be explained how this has come about as a separate part of a different SI, whereas it is not part of the one that dealt with that the substantive issues of chemical regulation. What awareness does BEIS have of the scale of costs that will be imposed on the chemicals industry by the implementation of the chemical regulation statutory instrument brought by DEFRA? We need an overall look at the process of delivering a sensible statutory instrument that is able properly to use existing data. There are extreme issues around the portability of potential data that seem to have been overlooked and will cause problems for the industry, and indeed for consumers who use the chemicals that are made by the chemicals, cosmetics and consumer chemicals industries.

Therefore, I ask the Minister—who I see is talking to his colleague—to undertake to do something that actually brings these together and gives us some clarity.

Lord Harris of Haringey (Lab): My Lords, I draw attention to my interest as chair of National Trading Standards, which, as far as I know, is not involved in any of these regulations—but for all I know it might be.

I would like some clarity on two specific points. First, the Minister said that no specific impact assessment was drawn up for this statutory instrument, but that it was covered by the previous impact assessment and that the main impact would be in explaining these changes, which we all look forward to, to the businesses affected by them. Did that assessment also look at the role of explaining these changes to those who are responsible for enforcing the regulations and for ensuring proper compliance? It seems to me that this is quite an important area, particularly when we are talking about product safety.

Secondly—I hope this is not frivolous—as I understand it, according to the report of the Joint Committee on Statutory Instruments, there is an error in the instrument. The reference to regulation 15 should have been to regulation 18. The department accepts that this is an error but says that it probably does not matter—I am paraphrasing. I think it is implying that there will be a 24-hour gap during which the mutual recognition agreements will not be in force. If that is the case, will the Minister tell us how frequently the mutual recognition agreements referred to in this SI are in fact employed in this country, and whether an issue really is unlikely to occur during the 24-hour gap?

Lord Duncan of Springbank: My Lords, this suite of regulations is quite technical, as the noble Lord, Lord McNicol, said. The original suite was a bundle, and anyone who has managed to carry it around will recognise that it could be measured in depth of inches. The important thing to stress is that I have recognised what a challenge it is to face such a large document. I would not wish to see us go forward on that basis again, for the very reasons flagged here today. I am very happy to say that, as far as I can influence the situation, I will do that very thing.

It is also important to stress—this comes back to the notion of why we are where we are—that the date changes which were necessitated by the change in the exit date were necessarily made in the document we are debating. It has now been—I am going to use the term—Brexit-proofed, in so far as we will not have to revisit these dates because of the manner in which they have been drafted. I reiterate, however, that it is the Government's policy to leave the European Union on 31 October and noble Lords would expect me to say that, so I am saying it again.

I will go through some of the points raised in the order they were made. The noble Lord, Lord McNicol, again raised the issue of "substantially" versus "exactly". My team tells me that broadly they are the same. Noble Lords might notice that I used the word "broadly" in that particular context, but they are the same, so they should not be interpreted as being in any way different. As to the question of the stakeholder feedback—

Lord Fox: "Broadly" and "substantially" are broadly the same phrase, but why is that phrase being used? Is it because the department is not aware that there are any differences but thinks that there might be unintended differences, or is it aware that there are actual differences between the two situations?

Lord Duncan of Springbank: My team has helpfully provided a note on that, just in case someone was querying whether they were indeed the same. On "substantially the same" and an essential requirement, certain essential requirements require the involvement of notified bodies. Post exit, these same essential requirements will require the involvement of UK-based approved bodies, in line with the UK-only system developed under the no-deal legislation. We are therefore at that stage of approved versus notified. There will be differences, in essence, but the substance of those differences is textual rather than meaningful in that context—I hope that is helpful and makes sense.

3.45 pm

Lord Fox: We are getting there, but I am not sure that I know the difference between an approved and a notified body. Perhaps the Minister could write to me and the noble Lord, Lord McNicol, and place a copy in the Library, explaining what difference the word "substantially" makes regarding which organisations are involved in future versus those involved now.

Lord Duncan of Springbank: I would be happy to do so, because we are stepping into the etymological element of the debate. As I understand it—I will happily put this in writing—the notion of a notified body and an approved body differs in so far as which is recognised by which entity. The UK itself has a recognised approved body whereas the notified body stems from the earlier legislation. However, rather than going too far down the rabbit hole of exactly how that works, if the noble Lord, Lord Fox, will allow, I will write to him on that point.

On the question of stakeholder involvement, in truth, this is why I apologised. We did this the wrong way round—there should have been greater engagement in advance of such a complex and dense series of materials, to ensure that we had captured all the elements the first time. We did not do that, and we were blessed by the fact that a number of directly affected organisations raised with us the substantive points which have led to the minor changes we have before us today. In truth, although I say they are minor, they are none the less changes we would wish to make to the body of the law—to the instrument itself. However, I acknowledge that this is the wrong way round, and I have said that on the record.

I am grateful to the organisations which have come forward. I am also aware that, once that began to happen, my departmental team therefore recognised that it had to do a thorough combing exercise of the substantive element of the original instrument. I asked the question which I think a number of noble Lords will have asked: "Is there a risk of institutional blindness? If you missed it the first time, will you miss it the second time?" That is why, again, I was assured that the manner in which the second, third and fourth iterations were conducted involved different groups to ensure that we were able to bring before you what we believe to be the comprehensive elements of the corrections which need to be made. I can go through them with your Lordships if you like, but I have a feeling that you probably do not want that. If noble Lords allow, I will therefore put that record into the Library for your consultation. However, noble Lords will be aware that it covers the full range, as the original instrument did, and as we are learning today, it is quite a broad range.

The final point raised by the noble Lord, Lord McNicol, was whether there are any other redundant statutory instruments. The answer to that is, not to my knowledge. There you are.

Noble Lords: Oh!

Lord Duncan of Springbank: Noble Lords will discover that I am full of these lines.

The noble Lord, Lord Fox, raised a couple of points. There should be no change to self-assessment whatever. On the question of the carcinogenic, mutagenic and reprotoxic elements—CMR—the rollover of the historic data rests within this particular body because it affects the elements within the EU-defined law which we have brought across. However, the noble Lord is right to note that clearly, the ingredients which are part of these elements rest within the wider EU REACH directive, and therefore will fall under the jurisdiction and leadership of Defra. Happily, I can confirm to the noble Lord, Lord Fox, that my noble friend Lord Gardiner will indeed facilitate such a meeting with him regarding the costs of the wider registration or reregistration of chemicals by a British entity. In due course, therefore, such a meeting will take place, and thereafter I hope that we will place on the record useful information for the entire House.

The noble Lord, Lord, Pickles—

Noble Lords: Lord Harris!

Lord Duncan of Springbank: I apologise. My goodness, I would not wish the noble Lord to be seen as dallying with the other side. The noble Lord, Lord Harris, raised two specific questions, including on the impact assessment in its broadest sense. The detailed impact assessment was specific to the original material. He asked about the familiarisation costs and whether they encompass the costs resting on bodies responsible for enforcement and compliance. The answer is yes, they need to do so, for obvious reasons, because they will have to take forward the management or oversight of this broad area.

As to the question of the 24-hour gap—this feels a bit like the Richard Nixon tapes: a gap during which something has gone on—my team tells me that the answer is no. Immediately before exit date means exactly that. The gap will be a few seconds, and my team assures me that in those few seconds, very little should interfere with the continuity which this suite of instruments represents.

I hope that that answers the questions raised. I also appreciate that this is a technical instrument. This is not the way I wish to do things in future, and I will ensure that there is adequate consultation not just with your Lordships but with wider interested parties. I will learn that lesson and will ensure that my department learns it. On that basis, I commend the Motion.

Motion agreed.

Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019

Motion to Approve

3.51 pm

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

That the Regulations laid before the House on 5 September be approved.

Relevant documents: 56th and 61st Reports from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, both statutory instruments before your Lordships serve three purposes. They make a number of technical operability changes to existing instruments to ensure that retained EU law continues

[Lord Gardiner of Kimble]
to operate effectively after the UK leaves; they ensure that our statute book is closely aligned with the EU to support our application for third-country listing for live animals and animal products; and they make minor corrections to earlier EU exit SIs. These technical amendments will have no effect on existing policy, and bring over only those powers that already reside with the European Commission.

Both SIs were made under the urgent, made-affirmative procedure. This is because both instruments support the UK's application to the EU Commission for third-country listed status for animal and public health purposes for consideration at a meeting due to take place this Friday, 11 October. While we are working hard to secure a deal with the EU, we should prepare for all scenarios—including, for instance, that the EU will not accept a request for an extension.

The European Commission considered the UK's third-country listing application at a meeting of the relevant committee, SCoPAFF, on 9 April, based on the relevant animal health legislation in place on that date. The United Kingdom was able to assure the Commission that all relevant legislation had been made, and member states voted unanimously to list the UK as a third country. Following the Article 50 extension, another vote is due to be held this Friday. To ensure that we are fully prepared for this listing, both these SIs must already be on the statute book to provide the necessary reassurances of our readiness. These instruments support that requirement, and the Government's commitment to ensuring that we have a fully operable statute book for day one, whatever.

The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019 serve three broad purposes. First, they make technical changes to existing instruments to ensure that retained EU law continues to operate effectively after the UK leaves the EU. This includes, for example, changing "Community" to "United Kingdom" or "an official language of a Member State" to "English".

Secondly, they transfer legislative powers that give the Secretary of State, with the consent of the Ministers from the devolved Administrations, power to amend, vary or add to the list of third countries that can export animals and animal products into the United Kingdom. This will ensure that we can act swiftly to prevent any imports from a certain country should the biosecurity risk change. This will support our existing ability to apply import controls and add to our robust armoury of biosecurity measures.

In practice, the Secretary of State would look to the UK's Chief Veterinary Officers, supported by expert advice from the Animal and Plant Health Agency, to make any recommendations for changing the lists. These decisions would be based on the most expert scientific and veterinary advice, in the same way as they are currently with the Commission. Similarly, they amend previously made EU-exit SIs regarding animal and animal product imports. This allows the Secretary of State, with the consent of appropriate devolved authorities, to publish lists of animals and products that require border veterinary checks. Both these measures are intended to support the UK's biosecurity. These powers currently reside with the Commission and we are simply making them operable in the UK context. They will further support our application for third-country listing by aligning our statute book with the EU.

Thirdly, the SI changes the previously laid Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019, by correcting a reference to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 to enable certain EU, EEA and Swiss veterinary surgeons to register with the Royal College of Veterinary Surgeons. A paragraph had been wrongly labelled "43" when it should have been "44". It is very important to get these things right. I assure your Lordships that being a person of detail is irritating, but it is important that we get these things right.

The other statutory instrument, the Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019, makes technical operability changes to existing instruments. These ensure that regulations for animal by-products, ABPs, transmissible spongiform encephalopathies, TSEs, and genetically modified organisms, GMOs, are operable. These amendments are of a purely technical nature and make no changes to existing policy. They include recent changes to ABP and TSE legislation that were published in the EU's *Official Journal* too late to be included in earlier EU-exit SIs. As with the other instrument, this will enable our statute book to be up to date and accurate, which is a requirement of our third-country listing by the EU.

These changes include, for example, substituting "appropriate authority" for "Commission". Similarly, they amend references to the EU's import and export system, TRACES, by adding the wording "or any replacement system in operation in the United Kingdom". The UK is launching a new system called the import of products, animals, food and feed system, IPAFFS, to ensure that imports of live animals, products of animal origin, animal by-products, germplasm, and high-risk food and feed not of animal origin can continue should there be a no-deal exit. This became available to the public at a beta stage of development only on 30 September. It is important to note that this system has proved popular with stakeholders, and we think we would look to it in the long term, regardless of a deal for access to TRACES, as a way forward. This SI also makes minor corrections as recommended by the JCSI. Again, I apologise for these, and will explain their nature in more detail.

There are three highly technical changes to EU law being made operable by this instrument. These include: changing recently introduced law, as mentioned, so that TRACES or any replacement system could alter certain lists; making operable provisions to permit the export of products containing processed animal protein derived from ruminants and non-ruminants; and making operable provisions that add Egypt to the list of third countries from which gelatine, flavouring innards and rendered fats can be imported.

The final purpose of this instrument is to make minor corrections to previous instruments which were, as I said, helpfully picked up by the JCSI. I am most

grateful to the committee for drawing our attention to these. For instance, one correction will change the style of the paragraph numbering from (a) to (d) to (1) to (4) which is intended to help the reader to identify changes. I should also say that both instruments apply to the whole of the United Kingdom and that the devolved Administrations were closely engaged in their development and have given their consent for them to be laid.

4 pm

I understand that we will go on to discuss the amendment tabled by the noble Baroness, Lady Jones of Whitchurch, but, to open the debate, I want to say that I understand absolutely the context of what she is about to say. My task is to do everything possible as regards the issue of being ready for Friday. This is why, picking up on a comment made in a previous debate, I do not seek to waste the time of noble Lords; that is not my intention. Rather, it is to try to fit us for whatever scenario arises. For all the certainty we desire, it is important that we in Defra have everything ready for when this comes forward for consideration on Friday. Everything that I can do should be done, and that is the background for my bringing forward these instruments.

I would also say that a lot of what we are seeking to do would apply to whatever scenario should arise. It is also intended to be part of our work to enhance and support our biosecurity, on which I know every noble Lord places enormous importance. Obviously, I recognise that the made-affirmative route is something that we want and should use sparingly. However, given the date of the meeting, which I thought was even further into October but as far as I know will be on Friday, it has become even more imperative that our team should be able to say categorically at that meeting that we have all the legislation on the statute book, which again would be desirable, so that we are aligned in this area. On that basis, I beg to move.

Amendment to the Motion

Moved by ***Baroness Jones of Whitchurch***

At end insert, "but that this House regrets that the Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019 have been laid under the made affirmative resolution procedure to come into effect on 17 October to support the United Kingdom's application to be listed as a third country by the European Union for the export of live animals and animal products, in preparation for leaving the European Union on 31 October, despite Parliament passing the European Union (Withdrawal) (No. 2) Act 2019 which requires the Prime Minister to seek an extension to the United Kingdom's membership of the European Union if he fails to secure a deal by 19 October; expresses concern that Her Majesty's Government maintains that the United Kingdom will leave the European Union on 31 October with or without a deal contrary to the previously expressed view of this House and the provisions of the Act; and notes the grave concern of the food and farming sectors regarding the potential catastrophic impact of a no-deal Brexit."

Baroness Jones of Whitchurch (Lab): My Lords, I am grateful to the noble Lord for introducing these two SIs. However, as he said, we have tabled a regret amendment and I would like to explain why. The trade in animals and animal products regulations transfer widespread legislative functions from the EU to the Secretary of State, and have been laid under the affirmative procedure to be in place before exit day. Indeed, the Secondary Legislation Scrutiny Committee considered that they were sufficiently important that they should be upgraded to the affirmative procedure.

However, the SI and the accompanying Explanatory Memorandum take no account of the subsequent passing of the Benn Act, which was overwhelmingly supported in this House and which, as noble Lords know, requires the Prime Minister to seek an extension of Article 50 if he fails to secure a deal by 19 October. In contradiction to that, paragraph 2.2 of the Explanatory Memorandum states explicitly:

> "Given the change in exit day to 31st October 2019, we are using this opportunity to ensure we are as prepared as we can be to support all possible requirements of listing".

Unless the Prime Minister is going to ignore the will of Parliament or somehow seek to subvert it, we are not exiting with no deal on 31 October.

This SI could therefore have been tabled in the normal manner, with proper scrutiny, rather than being rushed through. I say that because this really matters. As the farmers and food manufacturers have all made clear, leaving the EU without a deal would be disastrous for their businesses.

The Minister says the urgency is because the EU is considering our request for third-country listing on 11 October, but this meeting was clearly set up to consider the animal trade protections if we were to leave on 31 October, which we are not now going to do. The Minister has said that the EU already approved third-country listing in preparation for the April exit date—a decision that then became obsolete. It seems that this rushed SI is going to suffer a similar fate.

Given that there seems to be a growing political consensus that, if we leave, it should be based on a negotiated settlement, with a transition period, we may find ourselves back here all too soon with another version of this SI, with new terms of trade and a new start date. Can the Minister confirm that it is the Government's intention to abide by the terms of the Benn Act in letter and spirit, in keeping with the wish of Parliament? Does he accept that the Benn Act, if implemented, would take a no-deal scenario off the table and make this SI obsolete? Can he clarify whether the request for third-country listing being considered by the EU later this week is specifically aimed at a start date of 1 November, or does it have flexibility for an alternative date if the negotiations continue? Does he accept that, even with third-country listing, a no-deal Brexit could have catastrophic impacts on food and farming, as British exports will still face significant barriers and the imposition of high tariffs as outlined in the Government's own Yellowhammer paper?

As I said, this SI matters because it represents the transfer of wide-ranging legislative functions relating to biosecurity, giving the Secretary of State powers to make substantial changes to policies after exit day. In

[Baroness Jones of Whitchurch]

fact, it deals not just with the basics necessary to achieve EU listing; it goes further. For example, paragraph 2.9 of the Explanatory Memorandum explains that the Secretary of State will have the power to vary our listing of third countries to ensure that,

"we can adapt in the longer-term should we assess that biosecurity risks presented by third countries have fundamentally changed after we leave the EU".

This would allow us to deviate from the third countries recognised by the EU.

Clearly, the trade in animals and animal products is of significant importance to the UK's food security and economy, as well as being highly politically controversial. We have seen once again in the papers today details of a leaked Defra briefing detailing the consequences of a rushed trade deal with the US, which Liz Truss is promoting but which could irreparably damage the environment and public health. The leaked paper states that weakening our sanitary and phytosanitary standards to accommodate the US would damage our trade with the EU. Does the Minister accept that if the Secretary of State amends UK standards using the powers set out in this SI, it could jeopardise our third-country listing with the EU? Can he explain the circumstances in which we might deviate from the accepted EU listings in the longer term?

I move now to the detail of these two SIs. As I said, the trade in animals and animal products and veterinary surgeons SI gives the Secretary of State far-reaching powers to amend the list of third countries with which we will trade in future, but the only consultation that seems to be necessary is with the devolved Ministers in relation to trade in their own countries. Unlike many other Brexit SIs we have considered over the last 18 months, there is no requirement written into the SI to consult expert bodies or seek scientific advice, so there is real concern that the pressure to secure new trade deals will lead the Secretary of State to water down their assessment of third-country animal welfare and public health protections. For example, Chapter 5, which deals with future poultry imports, refers in paragraph (2) to,

"taking into account … the assurances which the third country can give with regard to compliance with poultry health requirements".

It is vital that we rely not simply on the assurances from would-be trading partners but on the facts.

The Minister said that advice would be taken from independent and scientific bodies. That guarantee is not spelled out in this SI in the way that has been done in many SIs before us. There is therefore a question mark about whether the UK public can be properly assured that our future imports will be safe and continue to meet our high welfare standards.

These regulations also include a sub-delegated power that enables the Secretary of State to publish and amend lists of animals and products that require or are exempt from border veterinary checks. Can the Minister clarify the circumstances in which the lists of animals requiring veterinary checks might be amended? There does not seem to be any need for it, but will he commit to a prior consultation with the industry, particularly veterinary professionals, before this step is taken?

The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations update the rules regarding TRACES, the EU's TRAde Control and Expert System, which notifies member states of the movements of animals and animal products through their territories to ensure compliance with animal health and public health obligations, as the Minister described. Last month, Defra requested that the EU give limited continued access to TRACES for imports. Can he advise whether this request was granted?

Meanwhile, as the Minister said, the Government have been trialling the alternative system, the Import of Products, Animals, Food and Feed System. He advised that this went live on 30 September. Is he confident that this system is robust and fully operable? How can it be fully tested when not all businesses have yet signed up? How many businesses have signed up? Are they currently expected to use both TRACES and IPAFFS? At what date will businesses be expected to transfer completely to IPAFFS? How will this be communicated to them?

Notwithstanding the detailed concerns that I have just outlined with these proposals, we believe that businesses are overwhelmingly against a no-deal exit—with all the chaos that will ensue. The Benn Act gives the Government a route out of no deal and will provide the continuity that food and farming businesses crave.

I hope that the Minister will heed this message and concede that these SIs should not have been laid in this manner and within this timescale in contravention of the Benn Act. I therefore beg to move.

Baroness Parminter (LD): My Lords, I associate myself with the comprehensive remarks of my colleague on the Labour Front Bench and support the intention behind the amendment. It is absolutely clear that businesses in the farming and agribusiness community are extremely concerned about the potential impact of a no-deal Brexit on their businesses. Bringing these SIs forward under the affirmative procedure seems to fly in the face of the proposals agreed in the other place and supported broadly here—the Benn proposals—which would not enable Brexit to take place on 31 October.

I do not want to reiterate the detailed points made by the noble Baroness, Lady Jones of Whitchurch. However, I want to add a couple of extra detailed points about the Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

I am grateful to the Joint Committee on Statutory Instruments, which pointed out that we have these regulations because of defective drafting. Clearly, with the number of SIs that Defra has had, those things are bound to happen. I was grateful to hear the Minister's apology—in a sense—for having to bring this forward, but I query whether this SI is just about defective drafting. If we look at one of the paragraphs that is changing, it removes an existing requirement in EU legislation for companies that deliberately release GMOs into the environment.

4.15 pm

At the moment, EU law says quite clearly:

"The competent authority shall encourage notifiers to provide the report in an electronic form".

This SI deletes that. That is not just technical; it changes the operability of the present the European Union regulation. Why are the Government seeking to remove the requirement so that companies deliberately discharging GMOs into the environment no longer have to produce that information in an electronic form? Given that this area is seen as controversial by a number of members of the general public and, indeed, by a number of stakeholder environmental groups, it seems to me that such information should be in an electronic form so that, from a freedom of information and transparency point of view, people can be aware of where these GMOs are being released. That would be particularly important if you are an organic farmer concerned about any releases in your locale. Why have the Government chosen to remove this requirement on businesses? To me, this is not an issue of defective drafting; it is a decision taken by the department to lighten the burden on companies that release GMOs.

The reason I might sound a little suspicious is that paragraph 10.02 Explanatory Memorandum states not that Defra had undertaken a consultation but that it,

"has engaged with the Devolved Administrations and … with the main industry representative organisations".

Again, this is a controversial area. I accept that, in the scheme of things, a major consultation was perhaps outwith scope, but if the department has met the main industry representative organisations, I must ask whether they are lobbying for this change to lighten their burden in relation to information they need to provide to broader society about where these GMOs are being released. So who were these "main industry representative organisations" that Defra met, and was it as a result of their lobbying that this change was made to the SI?

I shall add a small point following that made by the noble Baroness, Lady Jones of Whitchurch, about the IPAFFS system. The Minister used the phrase that we are now at the "beta stage of development". That means nothing to me. Can he say few more words about exactly what stage we are at with the IPAFFS system? I was pleased to hear him say that stakeholders like the new system, which replaces the perfectly serviceable system that we have had from the European Union for many years. Can he say how many stakeholders are using it presently so that we can get a sense of how many are liking it?

Finally, does the Minister have a cost for the IPAFFS system, which is replacing the TRACES system, the European Union's tool for managing the safety of trade, which has served this country well for so long?

Lord Hope of Craighead (CB): My Lords, I do not wish to speak directly to the amendment moved by the noble Baroness, Lady Jones, but it provides a context for a point that I would like to raise for the consideration of the Minister about the trade in animals and animal products regulations. I do so against the background of what is said in paragraphs 10 and 11 of the Explanatory Memorandum. We are told that the amendments in this measure are "technical in nature" with "no policy changes", so no public consultation has been undertaken. According to paragraph 11.1:

"As no policy changes are included in the instrument no guidance specifically related to this instrument is required".

The point I want to raise arises under Regulation 19(3)(d). It deals with an amendment introduced in light of Council Decision 2011/408/EC, which lays down simplified rules and procedures on sanitary controls for certain fishery products. The regulation states that the following new paragraph is to be substituted for paragraph (2) of the legislation:

"Products listed in paragraph 1 that originate from Greenland and enter the United Kingdom are not subject to veterinary checks that would otherwise apply to products originating from countries that are not EEA States, provided that the following conditions are satisfied".

Noble Lords can see what these conditions are in new paragraph (2)(a), (b) and (c). I am particularly concerned about who is to be satisfied that these conditions are indeed satisfied, because there is no explanation of who will consider whether these various tests are met.

The point arises particularly in relation to new paragraph (2)(c), which refers to,

"consignments of such products dispatched to the United Kingdom from Greenland".

which should,

"conform with the requirements of EU legislation concerning animal health and food safety relating to the products".

This is a context in which there are to be no veterinary checks, so in the interests of biosecurity and eliminating biosecurity risks, it is very important to know who, other than a veterinary expert, is going to be satisfied that these consignments conform to the requirements of the EU legislation. I know I am putting a question to the Minister which is very difficult to answer now, but the point really arises in relation to paragraph 11.1 of the Explanatory Memorandum. This is perhaps something about which guidance could be given so that everybody knows who will undertake the responsibility of checking that these consignments conform to the regulations. At first sight, without broader context to put it into perspective, it seems very strange that products from Greenland—much though one respects their quality—should be exempt from these veterinary checks by some other means when there is no clarification about exactly how anybody will be satisfied that these other means are actually being met. Had there been more consultation, somebody else might have raised this point and it would have been more thoroughly investigated. At the moment, it looks as though there is a gap that needs to be addressed. If the Minister cannot do so now, it could be done through guidance at some later stage. It would be very helpful if he would undertake that the matter will be examined and addressed in guidance if it is thought appropriate.

The Duke of Montrose (Con): My Lords, I declare an interest as a farmer. As somebody who has lived a long time in the farming industry and who was a spokesman for the sheep industry, I am glad that the two opposition spokespeople raised the question of this great uncertainty and the agricultural industry's reliance on imports and exports. We want to have everything right.

I think most of us find it very difficult to follow exactly what is likely to go on in the weeks ahead. Focusing on the Benn Act is not the full story, because presumably there could be a settlement before we get to the end, or the EU might offer some changes, and

[The Duke of Montrose]
we would like to be sure that our legislation is fully up to date. So the farming industry will be extremely grateful to the Government for taking all precautions. Churning out this legislation in the event that something might happen is becoming a bit of a habit. At the same time, the farming industry would be very unhappy if a loophole were left that might surprise us.

I am very interested that we have up-to-date legislation on spongiform encephalopathies, because we are very much bound by what the EU has said on that. At the same time, the sheep industry is being rather hamstrung, in that it has its own encephalopathy, which has caused the fact that all sheep exported have to be split down the middle and the spinal cord removed. This is putting quite a lot of extra cost on to exports at the moment. The EU is moving towards removing this requirement and we would like to be kept fully up to date on that element. So I support the Government in their efforts on this matter.

Baroness McIntosh of Pickering (Con): My Lords, I thank the Minister and the department for bringing forward these statutory instruments. I also thank the House of Lords Secondary Legislation Scrutiny Committee for its work in preparing for today's debate. As regards the amendment, I think the whole House will accept that it is not the wish of the farming industry, any rural business, or any business or individual or family, that we crash out of the European Union without a deal. However, I do not think this is the occasion when we should be pressing this forward, and I hope it will not come to that.

I have three or four specific questions. A number of noble Lords have spoken today about the ban on free movement and alternative arrangements to TRACES. When this was raised in the House of Lords Secondary Legislation Scrutiny Committee, the department said that,

"a pre-final version of the UK's new 'Import of products, animals, food and feed system' went live on 30 September".

When will the final version be introduced and when will it be operational and trialled to make sure that it works seamlessly on 1 November, if required?

Under the new procedures which require the issuing of certificates, as I understand it, I have a particular question in the context of Northern Ireland's exports to southern Ireland. In the absence of the Stormont Assembly, which bodies have been consulted by the department to make sure that Northern Ireland industry and Northern Ireland-equivalent producers are satisfied that the requirements are in place? According to the Northern Ireland DAERA office, 18,000 certificates a year are issued, which potentially could rise to 1.9 million or more. Can the Minister assure the House today that there will be the capacity to issue the increased number of certificates that will be required in view of the fact that we will be listed as a third country—or will we be covered by any arrangements? Obviously, we do not know what the final arrangements will be.

My particular question to the Minister is whether there will be a sufficient number of vets or alternative qualified officials to process and issue these certificates. Reading the Irish press last Thursday, it appeared to me that there was grave concern that there are not enough vets, not just in the whole of the UK but particularly to address the issue in Northern Ireland.

Will the Minister outline the arrangements that were announced in a consultation for ending the transport of live animals when the United Kingdom leaves the European Union? I accept that the Secretary of State, representing Chipping Barnet, as she does, will not have been exposed to many suckler cows or spring lambs. However, she must be aware, as the department alludes to in these two statutory instruments, that many of these movements of live animals are for purposes other than for slaughter, such as breeding, showing et cetera. Even when spring lambs are exported from the north of England, Scotland, Wales and, I imagine, Northern Ireland as well, for example, to France, this is a very limited trade. For every live animal that is transported, it used to be said that there were seven in carcass form—I have been unable to get the up-to-date figures.

4.30 pm

It is also highly regulated, and I understand the wish to keep a high level of regulation, but I simply want to ask what the purpose of such an abrupt end to live transport would be. It was some time ago that I personally witnessed the transport of live animals from the Port of Brightlingsea, when this trade was ended some 20 years ago from Dover. I have to say that the animals are often better looked after than many of us who take cross-channel transport by other means. So I do not think that there could be any concern about their welfare under these very robust regulations. I put on record—it is a matter of note and I am sure that the department is aware of it—that animals such as spring lambs that are sent to France are not immediately sent for slaughter but are further fattened and finished before they are slaughtered in their end destinations. Could the Minister reassure me that the minimum amount of live trade of this nature will be permitted?

Finally, paragraph 2.5 of the Explanatory Memorandum goes to the very essence of what I imagine the position will be post Brexit. The provisions under the regulations will set out those animals or products that will require or will be deemed to be exempt from border veterinary checks. In the context of the current debate about the deal that is being proposed, I have to ask where these checks will take place. Will they be at the border or at some other place? I understood that the essence of the Belfast agreement was that there would be no checks on the island of Ireland, either at the border or anywhere else for that matter.

Baroness Masham of Ilton (CB): My Lords, I declare an interest since I have a farm. I am very concerned about the welfare of live animals being transported. What happens if there are hold-ups at ports, which might happen very easily? Is this included in the regulations? I am pleased to see the amendment to the Motion. I want to add to my voice to those saying that it will be a disaster to go out without a deal. I just wish that the whole Brexit saga would go away.

Lord Gardiner of Kimble: My Lords, I should have declared my farming interests as set out in the register. That was remiss of me.

The noble and learned Lord, Lord Hope of Craighead, took your Lordships to Greenland and asked who is to be satisfied. Unless I get precise detail on that point, I assure the noble and learned Lord that I will write to him with an explanation and place a copy in the Library. We are seeking to bring forward and put on to our statute book that which has gone through the Commission in the agreement. We are not suddenly deciding that we, out of some whim, will add trade with Greenland. We are adopting, refining and getting on to our statute book what has already gone through that rigour.

I will get chapter and verse on who is to be satisfied, but we are not adopting anything new in these instruments. I agree that this is one of the nightmares of having the statutory instrument alongside the Explanatory Memorandum. Statutory instruments sometimes become a source of considerable confusion to me. I am very grateful for a proper Explanatory Memorandum. Of course, what we want to do is to ensure that we have the top biosecurity and that consumers and the people of this country are safe with all products, whether from home or abroad—including, indeed, from Greenland. The whole basis of what we are seeking to do is to ensure that we have those very strong measures in place.

On the points made by the noble Baroness about the recent legislation, the Government will abide by the law. However, our task, and my task, which I alluded to in my opening remarks, is to prepare for any eventualities. We think we might get an extension if one is ever required; I cannot guarantee that today. I am sorry to be so punctilious, but our task—I am looking particularly at the noble Baronesses, Lady Jones of Whitchurch, Lady Parminter, and Lady Bakewell of Hardington Mandeville—has been to be able to say, in all sorts of scenarios, that we have done everything possible. My noble friend the Duke of Montrose rightly said that if we did not get our listing on Friday, many farmers up and down the land would say, "You mean you didn't even try? You didn't even take the precaution of seeking a listing?" We did.

I understand the thrust of what the noble Baronesses have said and the comments made about the amendment to the motion. However, I want to make it clear that this is about ensuring that Defra does everything it can to ensure that the Commission sees our bona fides in adopting all the law which it has adopted since we went through the exercise of seeking a listing earlier in the year.

As I have said, the majority of the Brexit SIs are needed whether we leave with or without a deal. If they are no longer needed on exit day, they will be deferred until the end of a transition period. There have been many hundreds, and a lot of our work has been about getting the statute book to where we need it to be. We do not see the affirmative route as being used anything other than extremely sparingly. It is not a desirable route unless, with the buffer of timing, we think it in the best interests of the United Kingdom. Obviously, it is not something I would ever want to deploy unnecessarily or wantonly.

The noble Baroness, Lady Jones of Whitchurch, made a number of points. On the scrutiny of the variation and the Secretary of State's powers, having met Ministers from the devolved Administrations, it is important to say that the Secretary of State could vary the list of third countries or alter the import requirements only with the consent of all the devolved Administrations, so it would need to be deemed in the interests of all the Administrations. As I explained, those decisions, and the decisions that Ministers would be required to make, which currently reside with the Commission, will be informed by the four UK Chief Veterinary Officers, who are our top veterinary experts on animal health, and the Food Standards Agency, which is our expert on the public health aspects. The Chief Veterinary Officers would, in turn, be supported by the scientific analysis of the Animal and Plant Health Agency. Given the international respect with which both the FSA and the APHA are regarded, I feel confident that these decisions would be in the appropriate hands. Also, Regulation 18.4 makes it clear that to change these lists, the Secretary of State must bring forward a negative SI, which, if anyone is concerned that this is not a step in the right direction, enables us to scrutinise it.

Noble Lords will understand that the line is that we do not comment on leaked documents. However, I say to the noble Baroness, Lady Jones of Whitchurch—and as I have said very often—that the UK is a world leader on animal welfare and environmental standards. We will not water down our standards as part of trade negotiations. We have a reputation for quality that is built on those standards and on the dedication of farmers and growers to meeting UK consumers' expectations. With what is already on the statute book, the current UK import requirements—

Lord Purvis of Tweed (LD): I have been listening carefully to this debate. Given what the Government have submitted to Brussels at the moment, might the Minister reflect on his terminology? He has referred to the UK on a number of occasions, most recently in his last few comments. The Government's policy is that it would no longer be the UK, as Northern Ireland would operate under one regulatory regime and Great Britain under another. Can the Minister be clear what the legislative relationship would be with this instrument because, for the first time since the 1920s, one part of the United Kingdom would not have the same approach as the rest of it? Will he reflect that these commitments no longer refer to the UK as a whole?

With regard to the point from the noble Baroness, Lady Jones, about Northern Ireland, can the Minister explain what might happen if there is a no-deal scenario—which he says he has to prepare for—when it comes to some of the checks that would be required in Northern Ireland, given its relationship to the Republic of Ireland? The temporary measures that the Government published in March indicated checkpoints. These would be off the border, but nevertheless those taking and receiving goods would have to go to designated hard areas. Are those temporary measures still planned by the Government if there is a no-deal Brexit? If we are faced with that on 31 October, are the Government indicating that from 1 November there would be hard areas in the United Kingdom to check goods covered by this statutory instrument?

Lord Gardiner of Kimble: My Lords, I will return to that because I want to make sure that I have on the record precisely the point that the noble Lord has asked. I will wait for some strong advice to get the form of words right to satisfy your Lordships. The instruments relate to all parts of the United Kingdom. That is precisely why in all cases—particularly the issue I referred to—it would be the chief veterinary officers from all parts of the country who would take a view about the variation of lists.

Quite rightly, there was also some consideration of IPAFFS and TRACES. If there is a deal and an implementation period, we will continue as currently. In the event of no deal, the UK would replace TRACES with IPAFFS, which will be operational for all third-country imports on the day we leave the EU. The noble Baroness, Lady Parminter, asked about public beta—quite rightly, as I have asked the question myself. IPAFFS is in public beta and users can register for the system and check their log-in details if they have registered previously. As it is in public beta, IPAFFS is monitored to assess performance and to investigate any issues raised by users. There have been no downtime events or high-severity incidents since public beta commenced.

So far, in terms of feedback on IPAFFS and the status, 155 users have participated in business readiness sessions. Importers and their agents, the FSA and the port health authorities are taking part in sessions around the country. Users were asked to express as a mark out of 10 how confident they would be in using IPAFFS from day one. After the readiness session, the average confidence score was nine. Since launching public beta on 30 September, we have seen a further 127 registrations, bringing our total to 1,198 users registered for IPAFFS. We think that engagement so far has gone well, as has the rate at which users have registered.

4.45 pm

The noble Baroness, Lady Jones of Whitchurch, asked how confident we were that IPAFFS would be ready. As the system was operationally ready prior to 31 March and work on its development has continued since April, and given the amount of work that has gone on with potential users, we think that IPAFFS is in a good state. That is precisely why, as I said, it appears to be well regarded by those who will use it in the longer term.

The noble Baroness, Lady Parminter, asked about engagement on GMOs. I will want to look into some of this, but we have undertaken industry engagement on multiple EU exit issues, including with interested parties representing companies active in agricultural biotechnology, establishments interested in research in GMOs, non-government organisations and a selection of environmental campaigning communities. A non-extensive list of those contacted includes GM Freeze, GeneWatch and the Agricultural Biotechnology Council. We have also engaged with industry in relation to TSEs and ABPs. These statutory instruments do not introduce policy changes. I will look into the point raised by the noble Baroness, but this is not on the back of some representation on an electronic basis. A note before me states that there is no policy change and that the correction merely effects the deletion intended in statutory instrument 2019/90—but I think that the note suggests that I should come back to the noble Baroness, which would perhaps be a more suitable approach.

I should respond to my noble friend the Duke of Montrose and to an element of what the noble Baroness said in her opening remarks. Any negative impact for farming is why we would consider intervention if necessary. It is important that the arrangements give time for farmers to adjust, but it is why I personally think that a deal is hugely important.

The noble Baroness's amendment refers to 17 October. For the sake of the record, I should clarify that each SI comes into force either immediately before exit day or on the day itself. It will therefore come into force on 31 October or at the end of an implementation period, and not on 17 October. As a "made affirmative", each SI was made on the date it was laid.

The noble Baroness asked whether we would inspect third countries for imports. The UK will continue to accept EU approvals for commodities and establishments until such time as the UK Government introduce new import controls for animals, plants and their products. Trading partners will be kept informed of changes that may impact on them. If there was to be a need for co-ordination of audit and inspection, that would be undertaken by Defra. The UK's CVO will write to third countries to set out arrangements that will apply on exit and provide contact details.

The noble Baroness, Lady Jones of Whitchurch, asked when, and in what circumstances, we might amend the list of animals. The list could be amended. If there were a disease outbreak or evidence of non-compliance in a third country, I think noble Lords would agree that that would be the moment to remove it. Additionally, if our audit of a third country's guarantees met full compliance with UK requirements, it could be added. I promise to come back to the noble and learned Lord on public consultation and guidance on who checks that consignments conform to the EU import regulations.

My noble friend Lady McIntosh of Pickering raised the issue of sufficient capacity to handle additional inspections of imports. The only additional inspections will apply to products of animal origin that originate from a third country. Port health authorities are able to meet the extra demand with existing food inspectors. We have made a decision that, on the basis that the EU has high standards and that we are adopting those standards, we are not proposing, on day one, to bring forward checks that would be unnecessary at this time. In future years, we will judge what is best based on the scientific and veterinary advice. That is why the port health authorities think that, in the circumstances, the additional inspections relating to third countries are sufficient.

Baroness McIntosh of Pickering: The thrust of the outcry in the Irish press was that, if we have no deal, imports from southern Ireland into Northern Ireland will be deemed to be from a third country. That is why they have evaluated that they will need 1.9 million certificates or, potentially, inspections. That raises the question of where such inspections would take place.

Lord Gardiner of Kimble: The Republic of Ireland remains in the EU. As I said, we will not be inspecting, because we believe that the EU's standards are high. We are addressing this matter in these statutory instruments precisely because imports from the EU will not require additional inspection as they are of a suitable standard.

Lord Purvis of Tweed: My Lords—

Lord Gardiner of Kimble: No. I am going to make progress, if the noble Lord will forgive me. I have had a lot of interventions and I will address his point.

My noble friend Lady McIntosh also raised the issue of veterinary surgeons. We are offering free training for official vets to sign EHCs for food products. Some 736 have been registered with the APHA to assess free training, of which 564 enrolled on the course for this qualification; 152 have since qualified. The total number of official veterinarians who can sign EHCs for food products has increased by 200 to 835 since 8 February. We have also created a new certification support officer role to assist official vets and are offering free training. To date, 170 have registered and 47 have qualified. We have published a list of official veterinary services on GOV.UK to help businesses find official veterinarians. I am absolutely clear that vets are vital in this. That is why the statutory instrument tidies up the position in relation to veterinary surgeons, as I have said.

My noble friend Lady McIntosh asked about animal welfare and transport. There is considerable concern about the welfare of animals in transport and we will continue to recognise EU transport welfare authorisations for an interim period, to mitigate the risk of friction at the border from EU consignments arriving. This is an area where the Government will look in future to see how we can enhance animal welfare. We have been clear that we understand the issues about transport and the Scottish islands, but we think that there is considerable room for improvement, and this is a work in progress. I understand the point my noble friend makes about farming interests as well, but we need to be mindful, clearly, that our standards of animal welfare are clearly understood.

The noble Lord, Lord Purvis of Tweed, spoke about the legislative relationship if there were different regulatory regimes in Northern Ireland and Great Britain. The Prime Minister recently highlighted that there are ongoing negotiations, and it would not be appropriate to pre-empt those at this stage—I suspect that the noble Lord expected me to say that. The statutory instruments deal with third-country listing and, specifically, operability amendments.

To answer the point of the noble Baroness, Lady Masham, we are absolutely clear on this and it is central to our border delivery group work. We absolutely understand it, which is why I mentioned animal welfare to my noble friend Lady McIntosh. We are very conscious of the importance of planning to ensure that we have the facilities in place and do not have animals held up. There must be alternative ways, including by using other ports, because we all understand that the straits between Calais and Dover, in particular, are going to be pressure points. It is important that we work to make sure we have capacity in place at other ports, including rerouting to EU ports and airports that have the appropriate border inspection facilities. We are very mindful of the importance of our animals coming from this country, where we want them to be well looked after, and moving to other parts of Europe. I know that there will be some details that I have not adequately addressed. Some are detailed and I want to make sure that I get the absolute chapter and verse, so that in no way have I verged into my own personal view, but instead given a distinct expression of view.

I understand everything that the noble Baroness, Lady Jones of Whitchurch, said, but I do not believe that, in bringing forward the statutory instruments, I have done anything other than the best I can to ensure, in whatever circumstances we are presented with, that we are in a position to say clearly to the Commission that we have done everything possible to secure its consent for a listing if there were a circumstance in which that was necessary. I entirely back up my noble friend the Duke of Montrose. I think I know farmers quite well, coming from that stock, and if we had not bothered to do this, with its nearly £5 billion consequence, and had not put this forward in the way we have, there would have been very considerable alarm and disquiet that we had not done everything possible, for any scenario. One thing about these times is that nothing is particularly certain, and therefore we have to cover all eventualities. So, I understand the noble Baroness's amendment, but I hope she will feel able to withdraw it.

5 pm

Baroness Jones of Whitchurch: My Lords, I think that we would all accept the Minister's sincerity on this issue and the courtesy he has shown in answering the many questions that we have thrown at him this afternoon. I do not have a problem with the request for listing; if we withdrew it at this stage, it would be misinterpreted. Our concern is what is riding on the back of that, and some of the other detail in the SIs that is being put forward as a package. That is why we have raised these concerns today.

Of course I understand the need to be cautious about the whole biosecurity issue. The noble Lord has done a significant amount of work in championing that cause. He said—and of course he would say that—that the Government never respond to leaked press releases, but he should understand our concern, because this press release and the leak have a ring of truth. We can all see politically what is happening here: on the one hand there is the desire of Liz Truss and the Department for International Trade to get a new trade deal with the United States and, on the other hand, that is in contradiction with a lot of things that the Minister has been saying this afternoon about high welfare and food standards.

The Defra briefing says that the Minister and the department will come under "significant pressure" from the Department for International Trade to weaken the UK's food and environmental standards to secure a trade deal with the United States. We cannot ignore that, and we look at the SI partly with that in the back of our minds. We could debate how likely that is, but we can see the culture and policy clashes that are going on there. That is all I will say about that.

[Baroness Jones of Whitchurch]

Our concern, however, is that these SIs go further than simply ensuring compatibility with current EU rules. We have debated this—this is not new in these SIs—but to compare the European Commission, with all the checks and balances that it has before it makes a final decision, with the Secretary of State, who is one person, and, in the words of these SIs, has a great deal of autonomous power, is always a cause for concern. That is why we like to see the checks and balances that go behind that. When we have debated other SIs—and the noble Lord and I have reflected that we have considered at least 100 Defra SIs, and there are many more, so we have been through the mill on all of these—it has been made clear that the Secretary of State will not act alone but will take soundings and advice. Our concern now is that that was not spelled out in that way in these SIs today. The wording is not consistent with wording that we have seen before. But it was helpful that the Minister spelled out the role that the Chief Scientific Officers would play in all of that, and that that is now on the record.

As the noble Baroness, Lady Parminter, said, the concerns about these SIs are not just about defective drafting: there are a number of other issues as well. It is misleading to say that these SIs are just technical: they are more than that. I was interested in the comments of the noble and learned Lord, Lord Hope, about who decides whether the conditions are satisfied, because throughout the SIs—perhaps it is too strong to talk about "sloppy wording"—there are words that can be interpreted in a number of different ways. Throughout the SIs, for example, it says that the Secretary of State will "take account of" a number of factors. But that could mean, "I took account of it but I took no notice of it", to put it bluntly. So it would be helpful for the future, perhaps in guidance, to make it more explicit where the responsibility will stand and who will have the final say on things.

I agree with the noble Duke, the Duke of Montrose, and the noble Baroness, Lady Masham, that the amount of uncertainty in the farming community is huge. We do not want to add to that or to inadvertently open the door to cheap imports that would undermine the existing farming community or lose that very precious EU market for our farmers going forward. That is why we are so sensitive about this issue and why it is important to have this debate today.

I am grateful for the answers that the Minister has given on a number of the issues I have raised. It is certainly early days for IPAFFS—if that is how you pronounce it. The number of users that the Minister talked about is not that great in the big scheme of things; we will find out whether it is really robust enough to take the amount of trade that we are going to be dealing with only when people do not have another option. Nevertheless, I am grateful for that information.

I agree with a number of the concerns of the noble Baroness, Lady McIntosh. Again, this is not just a concern about this SI; Northern Ireland trade across the border was an ongoing issue way before this became the new political touchstone of issues. On the one hand, there are the huge political connotations of what should happen in Northern Ireland regarding trade—but there are also the practical issues of all those people who have not had to take their produce to a third place that is not on the border but might be, and then of course you get into the complications of people who are food manufacturers and who constantly cross the border. It feels like nobody is reaching out to those people to say, "We understand, and we will do whatever we can to try to make that easier". All the political solutions that are being proposed at the moment certainly do not make it sound like trade in Northern Ireland will be anything like as easy as it is today.

I do not think that I have missed any points. We have had a good debate and I am grateful to all noble Lords who have spoken. I will not push this to a vote. Although there are issues in the SIs that I still feel need to be addressed, if we do not put in a request for the listing, that would also be misinterpreted. I am grateful for the Minister's response and I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Motion agreed.

Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.07 pm

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

That the Regulations laid before the House on 5 September be approved.

Relevant document: 61st Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Arrangement of Business

Announcement

5.07 pm

The Deputy Speaker (Baroness McIntosh of Hudnall) (Lab): Repeat of an Urgent Question asked in the House of Commons on proposed changes to the withdrawal agreement and the political declaration—

Lord Bethell (Con): We would like to move on to the capital requirements SI, please.

The Deputy Speaker: My Lords, there may have been a change in the order of business as expressed in my brief, for which I apologise. I therefore assume that we will now hear the repeat of an Urgent Question—the tariffs? I hope that the House will bear with me while I discover what I am supposed to be asking the House to consider. Right—let us have another go.

Capital Requirements (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.09 pm

Moved by ***Lord Bethell***

That the Regulations laid before the House on 5 September be approved.

Relevant document: 61st Report from the Secondary Legislation Scrutiny Committee

Lord Bethell (Con): I beg to move that the House considers the Capital Requirements (Amendment) (EU Exit) Regulations 2019 and the Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019.

Lord Tunnicliffe (Lab): Perhaps I may help the Minister. I think he wants to move that they be approved. His speech has been prepared for a different venue.

Lord Bethell: I beg to move that they be approved.

As the House will be aware, the Government had previously made all the necessary legislation to ensure that in the event of a no-deal exit on 29 March 2019, there was a functioning legal and regulatory regime for financial services from exit day. Following the extension to the Article 50 process, new EU legislation has come into force and, under the European Union (Withdrawal) Act, it will form part of UK law at exit. Further deficiency fixes are therefore necessary to ensure that the UK's regulatory regime remains prepared for exit. The two instruments being considered today deal with two new pieces of EU legislation that have recently come into force.

The first instrument resolves deficiencies in the EU's prudential regime for credit institutions and investment firms to take account of revisions the EU has recently made to the capital requirements regulation. This regime sets out how much capital institutions, such as banks and investment firms, need to hold. The CRR is a directly applicable EU regulation that has applied since 2013. An exit instrument correcting the deficiencies in retained law was laid and approved by Parliament in 2018. Earlier this year, the EU finalised a revised banking package, which included amendments to the CRR made by an amending instrument known as CRR2. This gives effect to some of the internationally agreed Basel reforms, which are the centrepiece of the post-crisis reforms aimed at making banking safer. Similar changes are expected in all G20 countries that follow the Basel guidelines.

Through the UK's membership of the G20 and its Financial Stability Board, we have committed to the full, timely and consistent implementation of the Basel 3 reforms. Our deficiency fixes for CRR therefore need to be updated to take account of CRR2. There are three main areas where fixes are required: third country treatment, transfer of functions and updates to definitions.

Consistent with the approach taken in the 2018 exit instrument to amend the CRR, the regulations remove the preferential capital treatment given to the largest banks and investment firms in the EU 27 to reflect the fact that the EU and UK will treat each other as third countries in a no-deal scenario. In line with the approach that the Government are taking to all onshored financial services legislation, the instrument transfers a number of functions currently within the remit of EU authorities to the appropriate UK bodies. Functions such as the development of detailed technical rules on certain provisions of CRR will now be carried out by the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England. Where CRR2 confers a delegated legislation-making power on the Commission, these powers are converted into regulation-making powers conferred on the Treasury. Use of those powers by the Treasury will need the approval of Parliament. Finally, CRR2 amended some definitions used in CRR. The instrument corrects those updated definitions so that they can operate in a UK-only context.

The Treasury, financial regulators and industry agree that it is critical to have deficiency fixes in place by exit day for these new CRR provisions. Without them, there will be considerable legal uncertainty around the capital requirements that apply to banks and investment firms, particularly those that apply to global, systemically important banks. The powers of our regulators to supervise and enforce capital requirements would also be in doubt, increasing the risk of financial instability.

I now turn to the second financial services instrument we are considering today. In January this year, the Solvency 2 and Insurance (Amendment, etc) (EU Exit) Regulations were approved by Parliament. Those regulations addressed deficiencies in Solvency II as it will form part of UK law at exit. Since then, revisions by the EU to the Solvency II delegated regulation have updated aspects of the approach to setting insolvency requirements for insurance funds, including the simplification of capital calculations and greater alignment of capital requirements across insurance and banking legislation. These revisions took effect on 8 July 2019 and will form part of UK law after exit. The substance of the revisions will not result in deficiencies after exit, and the updated provisions will continue to operate in the UK as they do now.

5.15 pm

However, routine deficiency fixes, including removing references to the EU and EU institutions, will be needed to ensure the Solvency II regulation continues to operate effectively in the UK after exit. Nevertheless, the fixes are essential to ensure clarity and legal certainty around the procedures that insurers must follow to set their solvency requirements and certainty around the Prudential Regulation Authority's ability to supervise and enforce the requirements. This comes at a critical time in the Solvency II calendar. Firms are currently preparing their annual supervisory reports, which must be submitted to the PRA by 31 December. Without clarity around the basis on which these important reports should be prepared, the effectiveness of the prudential regime for insurance in the UK would be undermined.

I will now cover the fixes to the UK's Risk Transformation Regulations 2017 which were introduced to set up a new regime for insurance-linked securities or ILS. ILS are an innovative form of risk transfer that allows insurers and reinsurers to transfer risk to a

[Lord Bethell]
special purpose vehicle. The new regime for ILS was introduced as part of our efforts to ensure that the UK remains a leading global centre for specialist reinsurance business. As the Risk Transformation Regulations were designed to follow Solvency II requirements for insurance special purpose vehicles, they include references to and definitions in EU law. This instrument fixes them by using references to relevant UK legislation and importing certain definitions from Solvency II, as it will form part of UK law at exit, with those definitions adapted to work in a UK stand-alone regime.

In addition, the Risk Transformation Regulations established two regulatory regimes: one for the transfer of risk by EEA insurers or reinsurers, and one for the transfer of risk by non-EEA insurers or reinsurers. This reflects the Solvency II directive, which applies only to EEA insurers and reinsurers that transfer risk to EEA special purpose vehicles. The provisions of this instrument remove this distinction, which will no longer be necessary once the UK leaves the EU, but the Solvency II-derived requirements will still apply to all transfers of risk to a UK special purpose vehicle after exit. In the drafting of these instruments, the Treasury has been working closely with the financial services regulators, and we have engaged extensively with the financial services industry, taking account of feedback from industry players that would be significantly affected.

Before I conclude, it is important that I address the procedure under which these instruments have been made. This and two other financial services exit instruments were made and laid before Parliament on 5 September, under the made affirmative procedure provided for in the European Union (Withdrawal) Act. This is an exceptional, urgent procedure that brings an affirmative instrument into law immediately before Parliament has considered the legislation, but the procedure also requires that Parliament must consider and approve a made affirmative instrument, if it is to remain in law. The Government have not used this procedure lightly and it must be remembered that, across departments, we have already laid more than 600 exit instruments under the usual secondary legislation procedures. However, as we draw near to exit day, it is vital to have all critical exit legislation in place, including legislation necessary to ensure that our financial services regulatory regime continues to function effectively. It would have been reckless to leave this until the last minute. Industry and our financial regulators need legal certainty on the regime that will apply from exit. Both the instruments before the House today are also being considered in another place this afternoon, consistent with the Government's objective to ensure all critical legislation is in place before exit.

In summary, these two instruments are essential to ensure that the prudential regimes applying to UK credit institutions, investment firms, insurance firms and insurance risk transfer work effectively if the UK leaves the EU without a deal on 31 October. I hope that colleagues will join me in supporting the regulations.

Baroness Bowles of Berkhamsted (LD): My Lords, these capital requirements regulations and indeed the solvency II ones follow a well-trodden path in terms of allocation of powers from the EU to UK regulators, as relevant. By and large I have no problem with that, apart from the fact that it occurs to me that this might be one of the very few occasions on which there would have been a possibility—I will save noble Lords by not indulging in it—to debate in this Chamber some very important things about bank resolution and bailing. For such important things following the financial crisis not to return, shall we say, with more frequency to this place is not the way it should be with our largest industry.

I shall give an interesting bit of history about the particular requirements here. Country-by-country reporting was inserted in CRD, as is mentioned in the Explanatory Memorandum. We had been told how damaging such revelations would be to the banks, but nevertheless I found a way to get country-by-country reporting included so that if there were proof of damage, the Commission could come in and stop that provision from coming into force. And—guess what?—that provision was never exercised. So it is just a question of being persistent. Of course, I had hoped that country-by-country reporting would extend still further into other areas, but I was not the person in charge of those negotiations.

A lot of the substance of the capital requirements regulations 2019 now relates to minimum requirements and eligible liabilities—the so-called MREL—that banks must hold so that in resolution they can both recapitalise themselves and hopefully proceed as a new bank or make funds available for resolution. Under those rules, as the Minister said, there are ways in which assets and liabilities from within the EU receive preferential treatment. They receive, if you like, better valuations, but those priorities will go when we are no longer in the EU, which will mean higher provisioning. One assumes that a reciprocal thing will happen at the EU end so that it will no longer be giving favourable treatment to UK assets and liabilities.

The Bank of England is proposing to postpone those changes. I do not necessarily object to that, but some of the changes in terms of how the MREL is to be held within subsidiaries merit a little more examination. That is because I have been trying to work out in my own head, and I tried to explain this to the Minister in the Tea Room, I am afraid rather badly, what actually happens to the group when the MREL additional provision is waived. We could have a situation where, because we are giving a kind of transitional relief in the UK to a subsidiary of a UK business, but corresponding relief is not given on the other side of the Channel to a UK bank with a significant EU subsidiary, although we are not going to be asking the EU bank to find more MREL, the EU could be asking for that to happen.

What would happen to the UK group and its MREL when a greater amount of it is going to be allocated to the subsidiary that is in the EU? One thing that could happen is that it just uses up some of the spare MREL in the group. But, realistically, if there is no change happening at the UK end to increase the required MREL, that means that there is now more MREL backing what happens in the EU on resolution than what happens in the UK on resolution.

It may be that this is very minor or technical, because many of these changes are still being phased in, and I strongly suspect that the period in which we are not going to impose it will be covered, at least in part, by the fact that there is this transformation. I suppose it boils down to this bottom-line question: can we be sure that there is not an additional risk being imported to the UK end of things in resolution?

I noted that the response to the Secondary Legislation Scrutiny Committee's second question seems to make it look as if these things are irrelevant for large groups where they base things on internal models, because they make up or compute their own risk. I would like to know whether that is the case and whether this is therefore yet another occasion when the smaller organisations will find that their costs are going up and the larger organisations will find that theirs are not.

The other point is that if we do not have equivalence provisions with existing third countries with which the EU has equivalence decisions—if we have not remade those equivalence decisions—a similar kind of change of treatment will come about. Do we have all those equivalence decisions under way or queued up, ready to happen at the relevant point?

I will switch now to risk transformation and solvency II; I have very little to say on that. It seems right that a UK special-purpose vehicle has the same rules no matter from which country it is going to receive assets. I do not think I believe in the notion that you give better treatment in any particular circumstance. Giving shoddy treatment if the assets are coming in from one country, better treatment if they are coming in from another and different treatment again if it was entirely UK-based would be a way to get a bad reputation, so that seems to be a highly sensible outcome. No doubt the other way around is also true: our insurers and reinsurers are likewise not able to transfer assets into any kind of what one might term a less rigorously regulated special-purpose vehicle.

Baroness Kramer (LD): My Lords, I will be very brief. We on these Benches are obviously not going to oppose either of these SIs. We understand why they have been produced in such a hurry. Like my colleague, I really have no issue with the risk transformation and Solvency II SI. It genuinely seems to be simply technical and not to raise any non-technical questions.

I have two sets of questions about the capital requirements regulations, some of them picking up on my noble friend's comments. The first is a democratic deficit comment. Reading this, it looks as though the European Banking Authority and European Securities and Markets Authority, which would have been supervisors of many of these functions within the European Union, have quite a strong accountability relationship with the European Parliament. In the process of transfer, initially to Treasury and then on to the FRA and FCA, that is lost. It looks as if we now have a series of fundamental and important decisions and issues removed from the purview of any democratic body at all. Can the Minister comment on that? Frankly, it is an underlying problem with quite a few of the SIs that we have seen and the kind of changes they make.

My second set of issues—around trying to get to the bottom of the impact—has been well described by my noble friend, so I will not go through it in detail. The problem with the impact assessments is that they do not really tell us what happens to the industry, just the admin cost of making a change. I share my noble friend's concern that one of the costs involved would be making it more expensive to do business in financial services than it has been, and it therefore being advantageous for financial services companies to move that business out of the UK to the EU. That seems a rather awkward and pointless way to set up future arrangements.

5.30 pm

To pick up my noble friend's points, small companies will find their flexibility in meeting higher capital requirements constrained because of the complexity of dealing with organisations whose subsidiaries are groups that have grown up across borders. They will therefore incur greater cost, which they will have to pass on to their customer base. Bigger companies will have a lower burden, having much greater flexibility because the rules are different for them and because they can manage themselves in a more complex way. Are we almost deliberately disadvantaging the financial services facing towards corporations and others across the European continent through the changes that we are making? Are we effectively putting in place a disadvantage for a small organisation compared to a large one?

Lord Tunnicliffe: My Lords, I agree with the noble Baroness, Lady Bowles of Berkhamsted, that we debate the whole issue of resolution too infrequently. The tone of much of the paperwork here is concern about whether we are putting burdens on the industry that put it at a disadvantage, but one must remember that the whole issue of resolution is about catastrophe. We have had a serious resolution issue only in the 2008-09 crisis, and that was a frightful example of the taxpayer taking the losses in an area where the banks had previously taken the profits. Therefore, resolution is a very important issue, which we should perhaps bring to more democratic discussion more often. I say that with some trepidation because I am at some disadvantage compared with my Liberal Democrat colleagues, since they are professionals and tend to know what they are talking about in this area.

I have to glean the essence of the debate from the Explanatory Memorandum, which I therefore look to a more robust test of the quality of. The problem with British legislation is that so much of it is a statutory instrument that modifies another that amends another that amends a previous Act of Parliament which is by now a decade or so old. It is almost impossible to understand the meaning of this particular statutory instrument from looking to the instrument itself; one is entirely dependent on the Explanatory Memorandum to bring out the essence.

On Saturday—a lovely day to be in, reading an Explanatory Memorandum—I therefore set out and got about as far as paragraph 2.2:

"The EU's prudential policy regime for banks, building societies and investment firms consists of the CRR"—

[Lord Tunnicliffe]

the capital requirements regulation—

"and the Capital Requirements Directive IV … together with a range of Binding Technical Standards (BTS). CRR is directly applicable while CRDIV was implemented in UK legislation, predominantly through the Capital Requirements (Country-by-Country Reporting) Regulations 2013 … the Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014",

at which point I went to the guidance for Explanatory Memoranda. The best bit of guidance comes from the Secondary Legislation Scrutiny Committee in May 2015:

"The purpose of the EM is to provide members of Parliament and the public with a plain English, free-standing, explanation of the effect of the instrument and why it is necessary. It is not meant for lawyers, but to help people who may know nothing about the subject"—

that is me—

"quickly to gain an understanding of the SI's intent and purpose".

I have said things like this before: at its best, the Treasury produces some excellent documentation, but the real burden of these SIs is getting some feel for what they mean.

As has already been mentioned, we will not object to or vote against the statutory instrument. That would produce a constitutional crisis, and we have got enough people creating those at the moment without the Labour Front Bench in the Lords doing it. Accordingly, the Minister may have no fear of a Division. I am therefore going to do no more than pick out one or two issues that concern me.

The first is about the commencement. Regulation 1 states:

"(1) These Regulations may be cited as the Capital Requirements (Amendment) (EU Exit) Regulations 2019.

(2) Parts 1 and 2 come into force on the day after the day on which these Regulations are made.

(3) Part 3 comes into force on exit day".

I have a real problem with that. My understanding is that this is a no-deal-only SI for. I do not understand what happens if we exit the European Union—as is the declared intention of the Prime Minister and many others on the Government Front Bench—with an agreement. Perhaps the Treasury has decided that it is an unreal possibility. If we leave with an agreement, we surely go into a transition period during which this SI would not apply. Can the Minister explain what happens on 31 October if we in fact leave with a deal?

I plodded on through the document and more or less understood what it was about until I got to paragraph 2.16:

"A resolution-specific example of the removal of preferential treatment for the EU27 relates to provisions introduced by CRRII regarding MREL. CRRII imposes additional internal MREL requirements for *non-EU* G-SIIs"—

which I understand to be global systemically important institutions.

"This has the effect of increasing the amount of MREL that material subsidiaries of non-EU G-SIIs should maintain from a range of 75%-90%, to 90% of the full amount of external MREL that the entity would be required to maintain if it were a resolution entity".

Since it is in the EM, I assume that that is important. However, I do not have the faintest idea what it means. I would be grateful if the Minister could explain. Lest Members feel that I am being unfair to the Minister, I did alert him to this point this morning.

Later in paragraph 2.16, I found it slightly worryingly that it says:

"The Bank of England, supported by HM Treasury, has proposed to apply its transitional powers to delay the impact of this change until 31 December 2020, giving affected firms in the UK time to adjust to changes to meet their obligations".

That seems to say in plain language that the MREL reserves will be less than is required in the long term under these regulations, during a period when the world is likely to be particularly turbulent. This seems somewhat unwise. Granted, it has the effect of reducing the burden on the appropriate firms, but I would like to have seen in the document some examination as to what inquiry the Government have made to assure themselves that the increases in risk due to the reduced reserves have been thought through and are deemed to be satisfactory. While I can see that the Treasury has moved with respect to the burden on the industry, it does not seem to have considered the possible increase in risk.

At paragraph 3.1, we are told that this is an "urgent 'made-affirmative' procedure". It is obviously urgent now, but it seems to me that it did not need to become so; it was possible to see somewhat earlier that this statutory instrument was needed. Why were these problems not anticipated? Why could this instrument not come to us under the normal procedure?

I turn to the second statutory instrument. Paragraph 2.1 in the Explanatory Memorandum says:

"This instrument also addresses deficiencies in the UK's Risk Transformation Regulations 2017 ('the RTR') and related legislation. The RTR implements a competitive UK regime for Insurance Linked Securities … business".

That sounds to me as though it is introducing policy, although it is too complicated for me to be sure. One of the almost sacred tenets of the withdrawal Act was that it would not introduce policy; it would essentially only use the appropriate powers where necessary. That assurance is repeated in paragraph 7.2, which says:

"The financial services onshoring SIs are not intended to make policy changes, other than to reflect the UK's new position outside of the EU, and to smooth the transition to this position".

What I found even more confusing was that I could not find where this promise in paragraph 2.1 was. I wondered—as they are in quite separate places—whether it was anything to do with the various references to "special purpose vehicles". I know that the financial services industry is comfortable with special purpose vehicles—more than at the receiving end in industry—but, having come across them, I slightly shudder. I hope there is no material change to the use of special purpose vehicles brought about by this instrument.

5.45 pm

Lord Bethell: I thank noble Lords for this powerful debate on a highly technical subject. I endorse the noble Baroness, Lady Bowles, in her opening comment that this Chamber does not see enough discussion of

financial services and this critically important industry. By this afternoon's account, that is a very great shame; there is a huge amount of expertise in the Chamber and it would be great if that could be put to use more often.

I take on board completely the comments of frustration about the Explanatory Memorandum. I too spent some of Saturday negotiating it and share that frustration; it is incredibly difficult to navigate. I reassure the noble Lord that there is no deliberate effort to obfuscate or be unclear. This is simply a very technical area where, unavoidably, one layer of legislation is on top of another in the British manner. There is no simple explanation for technical SIs such as this without running through the narrative in the way that he, frustratingly, found.

I start by answering the questions of the noble Baroness, Lady Bowles, and the noble Lord, Lord Tunnicliffe, about the MREL, which is possibly the most delicate and central issue raised by these SIs. The noble Lord, Lord Tunnicliffe, questioned the timing, and whether that opened up some form of gap or concern, where Britain might be underregulated. I reassure him that that is not the case. The SI does not in itself delay the change until 31 December 2020. Rather, the Bank of England, like all financial regulators, has a general legal power to phase in Brexit-related changes by law. In this case, the Bank has proposed to delay the MREL requirement until 31 December 2020.

The Treasury is very sympathetic to this proposal because it gives the industry the ability to make arrangements for compliance instead of facing some kind of cliff edge, which would create uncertainty and a rush to do things on 31 November 2019. The industry is also completely sympathetic to the Bank's proposals. In other words, this SI does not introduce new risk or appreciably increase existing risk. If anything, it reduces risk by phasing the introduction of a difficult measure in a reasonable, pragmatic and sensible way.

The noble Baroness, Lady Bowles, raised questions about the use of subsidiaries and whether capital in one subsidiary in one country might in some way be favoured over capital in another subsidiary in another country. I reassure her that the Bank of England may waive requirements for UK subsidiaries of UK banks without reciprocity but only if, in the Bank of England's judgment, it would be a means of preserving UK financial stability rather than importing risk from the EU. That decision lies with the Bank of England and hopefully provides some reassurance.

The noble Baroness, Lady Kramer, raised the question of democratic deficit. Under the new arrangements, the European Parliament will not have oversight over British arrangements. However, both the FTA and the PRA are creatures of statute. They are both accountable to Parliament through existing primary legislation. They must both act within their statutory objectives; this provides scrutiny that we believe is comparable to that exercised by the European Parliament.

The noble Baroness, Lady Bowles, asked about MREL equivalence. I reassure her that the Treasury has legal powers to replicate any existing EU equivalence decisions and import them into UK law vis-à-vis third countries. The Treasury is in the process of reviewing all these decisions before retaining them.

The noble Baroness, Lady Kramer, asked about the impact on business. I reassure her that we are absolutely not hurting small firms; these firms do not hold capital across borders and therefore do not need to worry about the scope of these changes. More generally, this SI seeks to preserve legal stability, so any impact on commercial profits will be a function of a firm's response to the business environment.

The noble Lord, Lord Tunnicliffe, asked about the affirmative procedure. I share his concern about such measures being used without need or care. I reassure him that in this instance the use of the affirmative procedure was reviewed very carefully and only because this was felt to be extremely important. The Government have laid over 600 Brexit SIs to ensure that we have a functioning statute book when we leave the EU, in all scenarios. We have been incredibly careful and very limited in our use of the "made affirmative" urgent procedure under the EU withdrawal Act, using it for a tiny percentage of the total figure. In this instance, using the "made affirmative" procedure was really the only reliable way we could make the necessary legal changes given the uncertainty around the number of sitting days. The timetable was also driven by fresh EU legislation which made it difficult for us to lay these at an earlier stage.

Lastly, I reassure the Chamber that these SIs are not the vehicle for new policy. They are very much about implementing existing policies. They are supported by industry after a large amount of engagement with all the major players and in no way is this an effort to try to cook up new ways of doing things. The Government believe that these instruments are essential to ensure that prudential regulation of UK credit institutions, investment firms, insurers and insurance risk transfer continues to operate safely. I hope that the House has found today's sitting informative and that it will join me in supporting these regulations.

Motion agreed.

Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019

Motion to Approve

5.51 pm

Moved by ***Lord Bethell***

That the Regulations laid before the House on 5 September be approved.

Motion agreed.

Brexit: Withdrawal Agreement and Political Declaration

Statement

5.52 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, with the leave of the House, I will now repeat in the form of a Statement the Answer given by my honourable

[Lord Callanan]
friend the Parliamentary Under-Secretary of State for Exiting the European Union to an Urgent Question in the other place. The Statement is as follows:

"Mr Speaker, we are unconditionally committed to finding a solution for the north/south border which protects the Belfast/Good Friday agreement and the commitments which can best be met if we explore solutions other than the backstop. The backstop risks weakening the delicate balance embodied in the Belfast/Good Friday agreement between both main traditions in Northern Ireland, grounded in agreement, consent and respect for minority rights.

Any deal ahead of Brexit on 31 October must avoid the whole of the UK or just Northern Ireland being trapped in an arrangement without consent in which it is a rule taker. Both sides have always been clear that the arrangements for the border must recognise the unique circumstances of the island of Ireland and, reflecting that, be creative and indeed flexible. Under no circumstances will the United Kingdom place infrastructure, checks or controls at the border.

On Wednesday 2 October, the Government proposed a new protocol on Ireland/Northern Ireland. These were serious and realistic proposals that reflect the core aims put forward by both the UK and the EU. These proposals are consistent with the Belfast/Good Friday agreement and deliver our aim of avoiding any checks or infrastructure at the border. These proposals were set out in detail in an explanatory note and in a letter to the President of the European Commission, Jean-Claude Juncker. The Prime Minister deposited both of these documents in the Library of the House on Wednesday 2 October and published them in parallel on GOV.UK. To support these negotiations, a draft legal text was also shared with the Commission on a confidential basis.

The Prime Minister's Europe adviser, David Frost, and UK officials have been in intensive discussions with the Commission for some time now and will continue meeting with their counterparts from taskforce 50 for further technical talks this week. These meetings will cover our proposals on the protocol and the political declaration to reflect the goal of a comprehensive free trade agreement. The previous withdrawal agreement and political declaration would have trapped the United Kingdom within European regulation and customs arrangements. The Prime Minister is continuing talks with EU leaders today, including the Prime Minister of Sweden, the Prime Minister of Denmark and the Prime Minister of Poland. My right honourable friend the Secretary of State for Exiting the European Union is also travelling to EU capitals, including Amsterdam and Valletta, over the course of this week.

Discussions with the Commission are ongoing and sensitive, and we must ensure that we as a Government act in a way that maximises our chance of success in these negotiations. We will of course keep the House informed as these discussions continue. The legal text that we have shared with the Commission will be published only when doing so will assist the negotiations. We hope that those in Brussels will decide to work with us over the upcoming days. If they do, we will leave with a new deal. If they do not want to talk, we are prepared to leave without a deal. We need to get a new deal or a deal, but no more delays. We must get Brexit done so that the country can move forward and focus on the cost of living, the NHS and other domestic priorities".

5.55 pm

Baroness Smith of Basildon (Lab): My Lords, I feel I have heard some of those words before in many other Statements. To be clear, what the Urgent Question asked was when the Government intend to publish the full legal text of proposed changes to the withdrawal agreement and the political declaration. MPs will be asked to make a judgment on this and consider the Prime Minister's offer. I am not going to call it a deal, because a deal to me is something that is agreed between two parties. At the moment, this is an offer from the Government which, as I understand it, has not found favour with anyone yet except the Government's partners, the DUP. Unfortunately, they are not in the Chamber.

The Prime Minister's language on this has changed. First, he said he would die in a ditch rather than ask for an extension beyond 31 October, then this was going to be a take-it-or-leave-it offer and now he talks about negotiations and having a basis for discussion. There are probably three things to ask here. First, there is the issue of confidentiality. My understanding is that both the President of the European Commission and the Irish Prime Minister have called for the legal text to be published. It is just the British Government who are saying that they do not want to publish it.

Secondly, in two different places, the Statement says that:

"Under no circumstances will the United Kingdom place infrastructure, checks or controls at the border".

"At the border" is very specific. I have two questions for the Minister about that. Could the offer that is being made to the EU, which we do not know the details of, mean that the EU would need to put checks or infrastructure in place? Is the UK considering checks or infrastructure at locations other than the border? Those are very important questions, given how specific the Statement is.

People also want more information on employment, consumer and environmental rights—that is why seeing the detail of the legal text, rather than just brief Statements, is so important. Can the Minister confirm that we will maintain the levels of protection we have and keep pace with the EU in future?

My final point relates to the Northern Ireland Assembly and Executive having to consider the arrangements on the border every four years. Can the Minister give any examples of such arrangements being in place, or reference any treaty or agreement, in respect of which the parliament or assembly that has to make the decisions is not active? It seems an extraordinary way forward.

It would help the House if the Minister could respond to these questions. I struggle to understand why the legal text cannot be published to parliamentarians in this country so that we can see the detail of it.

Lord Callanan: I thank the noble Baroness for her questions. Of course, implicit in her first question was the fact that discussions are continuing; she was quite

right about that. These are proposals from the United Kingdom, as she says. It appears that they may not have found favour with the EU, so talks will continue and the texts may change. She can rest assured that, as soon as we have any concrete proposals, we will bring them back to the House and we are considering whether they should be published before then. As soon as it is helpful to the negotiation process, we will indeed do that.

The noble Baroness asked whether the EU will put checks or infrastructure in place. I do not know. It is a question for the EU. How they choose to interpret their regulations is a matter for them. We very much hope not. We have said that we are prepared to work with them.

We have no plans for any infrastructure at the border, as I said. We have always said that there will have to be customs checks, but they can be done in traders' premises and places such as haulage depots and others away from the border, similar to the way in which we conduct excise checks now. I remind the noble Baroness that there is already a VAT border, an excise border, a currency border. The excise regulations are currently enforced by both sides, by co-operative, pragmatic, low-profile, intelligence-led policing, in co-operation with the Irish authorities. We envisage something similar.

The issue of social and environmental protection goes back to a question that I answered last week from the Liberal Democrats. I remind the noble Baroness that we already exceed EU minimum standards in a whole range of areas—be it holiday pay, maternity protections, workers' rights, et cetera, our standards are already higher than those mandated by EU minimum standards. That also applies to environmental standards; our climate change targets are higher than the whole of the rest of the European Union.

Lastly, on the noble Baroness's question about the consent procedure, clearly, it is a challenge that the Northern Ireland Assembly is not sitting, and we are working hard to get it reinstated. We are prepared to discuss the details of these proposals but we believe that, when one is going to subject an area of the United Kingdom of Great Britain and Northern Ireland to control by an external body through alignment with EU single market standards, which we are proposing in a compromise for Northern Ireland, it is right that the people of that area should have the opportunity to give their consent or otherwise to those proposals.

Baroness Smith of Basildon: My Lords, by way of explanation, I said that the DUP were not represented here. I see that they have now taken their seats, and we look forward to hearing from them.

Lord Wallace of Saltaire (LD): My Lords, I hope that the Minister understands that part of the reason for our demand to see the full text is that many of us neither trust the Government nor are convinced that they understand quite where they are going. In answer to my question last week, the Minister insisted, as he just has again, that the Government are aiming for higher standards than common European standards. Yet, since he gave that any answer, I have seen a number of briefings for the press from Ministers and sources in No. 10 which suggest that we want more flexible standards to be able to open up to a range of things, which suggests lower standards. It says here that we are not prepared to be a "rule-taker". It also says that we want to renegotiate the political declaration so that we can have our own regulations.

When I was following Margaret Thatcher's proposals for the single market in the early 1980s—the Minister is probably too young to remember that period—the argument which was made by those around Margaret Thatcher was that we were a rule-taker. We by and large took US regulations and taking part in creating European regulations would give us much more of a handle on questions such as how we coped with the internet, and what is now the whole digital economy, and we would therefore be able to take part in making our own regulations.

There seems to be a fantasy in the Government that we are not going to follow American regulations or European regulations but we will be a wonderful island with our own special regulations in this whole area, which will make it much more difficult to trade and produce services in collaboration with others. Is that the direction we are going in, or are we going back, as some Ministers seem to have suggested at the weekend, to following American regulations instead?

Lord Callanan: I thank the noble Lord for his question and particularly for his age compliment, although I am not sure I am that much younger than he is; I accept it none the less.

I said last week, and repeated to the noble Baroness, Lady Smith, that we already have higher standards in virtually all those areas than the EU minimum standards. What standards we have in the future is one of the great opportunities of Brexit. What standards we might like to have is a matter for this House. The great thing about Brexit is that we no longer have to have these things dictated for us by the European Union. This is about taking back control. We can decide these matters for ourselves.

I am not clear why the Opposition think that this is such a bad thing. We can decide whether we have much higher standards, different standards, alternative standards. The opportunity to better regulate new and emerging areas of technology is one of the great opportunities of Brexit when we are no longer attached to the lumbering dinosaur of the EU. We can decide these things in a nimble and flexible way.

In terms of the noble Lord's general comments about standards, obviously it is the case that if we want to export to the US market, the Chinese market, or the Indian market, we have to follow those standards in those particular areas. For the vast bulk of our trade and commerce which goes on within our own internal economy, we can determine those standards for ourselves.

Lord Hannay of Chiswick (CB): My Lords, will the Minister address this issue about standards? He seems not to have properly understood, if I may say so, what actually happens. We have higher standards now in many cases than the EU, but we are in the EU. Being

[Lord Hannay of Chiswick]
in the EU has not stopped us having higher standards. We are not stuck with a dinosaur at all. We are setting our own standards. The only reason that I can see for removing this passage from the political declaration about the level playing field is so that we may be able to have lower standards than the EU in future; otherwise, there is no need for it. Will the Minister will reply to that point?

Lord Callanan: I thank the noble Lord for his question, but I understand the issue very well. I have taken part—as he did—in the standard-setting procedure in the European Union and understand very well how it works and how cumbersome it is. I maintain my point. I do not understand why we need to dynamically align to have exactly the same standards as the European Union. We may want to have different standards. Who is to take a view or a judgment on whether standard A is appropriate, different, lesser, or higher than standard B? That is something for this House to decide. We might decide to have an alternative policy which regulates some things in a different way. It is the flexibility to do that which is appropriate. I maintain the commitment of this Government to have higher standards than the European Union, as we do now.

Lord Liddle (Lab): My Lords, one reason why I think your Lordships believe we need to see the legal text concerns the arrangements that are being proposed for democratic consent in Northern Ireland. As I understand the arrangements under the Good Friday agreement, a majority in both communities have to agree to any major change. Why is it that this is being briefed as giving the DUP a veto? Why should not Sinn Féin also have a veto on any change that might introduce a hard border in the island of Ireland?

Lord Callanan: The arrangements for decisions in the Northern Ireland Assembly are set out. This is one of the areas that we are prepared to have detailed and intensive discussions on, and we are doing so. I take the noble Lord's point about publication. I am not ruling out publishing the legal text. We will do so when it is helpful to the negotiation and when we can aid discussions in this House.

Brexit: No-deal Tariff Schedules

Statement

6.08 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, with the leave of the House I will now repeat in the form of a Statement the Answer given in the other place earlier today by my honourable friend the Minister of State for International Trade. The Statement is as follows:

"On 13 March, the Government announced that they would implement a temporary tariff regime in the event of a no-deal Brexit. This regime would apply equally to all imports that are not subject to alternative trade arrangements and would apply for up to 12 months while a full public consultation will take place to inform long-term tariff arrangements.

The Government would prefer to leave with a deal, and will continue to work energetically and with determination to get that better deal. This will require the European Union to show the same spirit of compromise that my right honourable friend the Prime Minister is demonstrating in his engagements with our European friends and allies.

As the UK leaves the EU the Government are stepping up their preparations to get the UK ready to trade if there is no deal. The temporary tariff regime would maintain open trade on the majority of UK imports, helping to support consumers, business supply chains and sensitive sectors of the UK economy. Due regard has been given to the five principles set out in the Taxation (Cross-border Trade) Act 2018: the interests of consumers in the UK; the interests of producers in the UK; the desire to maintain and to promote external trade of the UK; the desire to maintain and promote productivity in the UK; and the extent to which these goods are subject to competition. It reaffirms our commitment to become a free-trading nation. It realises the benefits of an independent trade policy to support increased trade and investment with partners new and old around the world, and increased choice for British shoppers.

At the same time, Her Majesty's Government recognise the importance of retaining some tariffs. Tariffs would therefore apply on just over 10% of imports, supporting sectors facing unfair global competition, mitigating otherwise significant adjustment costs for the agriculture sector, supporting the strategically important automotive sector, and maintaining our commitments to developing countries. Preferential access to the UK market is important for our developing country partners and tariffs have been retained on a set of goods, including bananas, raw cane sugar and certain kinds of fish, to demonstrate the Government's ongoing commitment to countries in the developing world. During the Article 50 extension, the Government have remained responsive to the concerns of business and have reviewed the tariffs that would come into effect if the UK left the EU without a deal.

To answer the honourable gentleman, the Government will publish the final tariffs shortly. It would not be appropriate for me to comment on any amendments being considered prior to that announcement. As he will understand from his former guise as shadow Chancellor, to do so would be irresponsible. The Government will ensure that Parliament is informed as soon as practically possible once a final decision has been made".

6.11 pm

Lord Stevenson of Balmacara (Lab): Ah, "shortly"; that wonderful word.

My Lords, I thank the Minister for repeating the Answer. Tariffs are, of course, the simplest and most direct of the tools of trade policy. They are taxes on imports. Higher tariffs shelter domestic industries; lower tariffs increase competition and benefit consumers, so Governments should be interested in them. We are interested in the announcements that are about to be made.

Having apparently lost interest in the Trade Bill—maybe it just got lost—we should perhaps not be surprised by the way the Government have been treating tariffs. The interim announcement in March was done without consultation and with very limited debate. We have yet to see an impact assessment or even an Explanatory Memorandum. Can the Minister confirm that these important documents will be published for the next round?

There are rumours about changes that will be made to the original list, which was heavily criticised from all sectors in industry. Can the Minister say more about that? He said that he would not comment on it, but can he give us a timeline rather than just "soon"? We know that the rumour is that the statutory instrument dealing with this is to laid on 21 October, although it will be a made affirmative SI, which I understand to mean that this House will not have a chance to comment on it. Can the Minister confirm that?

Do the Government intend to have our final WTO schedules formally ratified by the WTO this time, or is this just another temporary announcement? On a related issue that bears on the same point, have we reached an agreement yet on our tariff rate quotas? We know that significant challenges by other countries have already been logged that may require substantial compensatory offers. Where are we on that? What assessment have the Government made of likely new tariffs on our exports which will be introduced by our new trading partners? Does this not just mean that UK companies will face competition from a flood of cheap imports that undercut them, putting thousands of UK jobs at risk? What remedies do the Government have in mind to counteract that?

Lord Callanan: I thank the noble Lord for his comments. He will understand my difficulty as I cannot comment on a specific date for the announcement, but it will be made shortly.

On his question about SIs, there will be one made affirmative SI and 10 made negative SIs to implement the tariff schedules. We will introduce them as soon as possible following the tariff announcement, which, as he will know, is market sensitive. We expect to liberalise roughly 87% of tariff lines and that tariffs will be applied to roughly 13%. We do not expect to have significant changes from the previously announced regime from March. As always in these things, there is the difficulty of getting a balance between the interests of consumers and the interests of producers.

Lord Purvis of Tweed (LD): The Minister repeated the estimates from March of how this would impact British business. I remind the House of how the business community described those figures. The CBI described them as a "sledgehammer to our economy", and said that they show,

"everything that is wrong with a no-deal scenario",

and that there had been no input from businesses. The Federation of Small Businesses described them as "undercutting". When I took the textile firms that I used to represent in my former constituency through what the implications would be, they described them as devastating for the remainder of that sector.

If these measures are a "contingency"—as the former Business Secretary described them to the BEIS Committee in the Commons when it asked him about them in March—rather than anything definite, what consultation has there been with the business community? If the figures have not changed, as the Minister indicated, then we can assume that there will be no changes, so we would start to feel their dramatic impact almost immediately if there is a no-deal scenario.

Secondly, the Minister will recall that these "contingency measures", as they were called then, were published alongside what would have been the emergency measures for the Northern Ireland border, because we cannot have this tariff regime in place without mechanisms for what would be our land border with the European Union. Can the Minister be very clear: would the contingency arrangements covering the Northern Ireland border that the Government also published in March be implemented in a no-deal scenario?

Finally, the Minister rather glibly said "shortly". If this measure is put in place, it will be because there has been no deal. That could be in a little more than 10 days in which Parliament can consider the implications of the next European Council. If businesses are not to see a repeat of the lack of input that they described in March, will the Government at least publish what the responses from the business community have been if we are to take the Government at their word that it has been consulted?

Lord Callanan: I thank the noble Lord for his questions. I genuinely would like to be helpful, but I cannot go further than to say that the announcement will be made shortly. We have been responsive to business concerns. We have been listening to businesses and sectors since the original announcement, but, as I said in response to the first question, there is always a balance to be struck between the benefits for consumers and for industries that rely on imports for their productivity and domestic producers. These are difficult decisions; I am not hiding that. I did not say that there would be no changes; I said that there would be no significant changes. I can confirm that we will not be implementing these tariffs on the Northern Ireland border.

Lord Davies of Stamford (Lab): How can our Irish and continental partners possibly be expected to take seriously the document they received from the British Government last week when it promises "an open border" but at the same time provides for customs controls internal to the island of Ireland?

Lord Callanan: I think the noble Lord is a Question behind. That is on the previous Question; on this Question we are talking about the tariff regimes.

Baroness Neville-Rolfe (Con): As my noble friend knows, I have been concerned all along about the tariff schedule. As has been said, business and consumer interests need to know what charges will be levied if we have no deal. I know that there are some concerns about the detail in some sectors, so I am very glad to hear that the SIs are on their way. I hope that business will have been listened to by the new Government.

[Baroness Neville-Rolfe]

My concern is actually a longer term one, which I raised with my noble friend the Leader. Assuming that we go down the road of free trade agreements, as has been promised, there has to be an incentive for countries to agree to them. We might be talking, for example, about an FTA with the EU, which sends us so much more in the way of goods than we send it, or about Canada or Japan, which would do very well out of the temporary schedule published in March. When I was a business executive, I was involved in a successful EU FTA with Korea and a failed one with India. I know how difficult it is if you do not have strong levers and protections that the other side wants lifted. How are we going to win in these difficult circumstances?

Lord Callanan: I thank my noble friend for her question. She speaks with great knowledge in this area. I remind her that the announcement, when it comes, is a temporary tariff regime lasting for up to one year. We will still have considerable levers over the countries that she mentions because we can revise it in the future if they are not interested in a free trade agreement. We are a free trading nation and we want to have tariffs as low as possible on a mutual basis, but we retain the levers because they will want long-term certainty for their businesses.

Lord Lansley (Con): My Lords, following on what my noble friend Lady Neville-Rolfe was saying, my noble friend will be aware that if we have a temporary tariff regime of our own we need to establish at an early stage what our notified schedule with the WTO is going to be in the longer term. In the unhappy event that we have to go out of the EU without a deal, will the Government commit to consult rapidly and substantively on what that longer term schedule with the WTO should look like?

Lord Callanan: My noble friend makes a very powerful point. We will want to move to permanent arrangements as quickly as possible and to consult widely with both business, consumers and parliamentarians before we do so.

Lord Empey (UUP): My Lords, can the Minister respond to the point made by the noble Lord, Lord Purvis of Tweed? How is a Northern Ireland farmer expected to compete when the Republic's farmers will be able to bring produce into Northern Ireland tariff-free, whereas they will not be able to send it to Great Britain tariff-free? Surely common sense dictates that our market will be used to dump because they can bring in products for next to nothing. How can the Government maintain the pretence—particularly after last week's documentation—that Northern Ireland is being treated the same as the rest of the United Kingdom? It blatantly is not.

Lord Callanan: I thank my noble friend for his question. As I said in a previous answer, this will not be a permanent arrangement. We will want to look at it and revise it in the light of circumstances, but we remain of the view that it is the best thing to do in the short term to ensure that the Northern Ireland border works smoothly with no infrastructure or controls put in place there.

Baroness Berridge (Con): My Lords, as we have three Urgent Questions to follow, I remind the House that the procedure for Urgent Questions is as a Private Notice Question so there should be questions rather than speeches.

US-imposed Trade Tariffs

Statement

6.23 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, with the leave of the House, I will now repeat in the form of a Statement the Answer given to an Urgent Question today by my right honourable friend the Minister of State for International Trade in the other place. The Statement is as follows:

"The UK continues to be a champion of the international rules-based order of which the WTO is a cornerstone. However, the UK Government are clear that resorting to tariffs is in no one's interests. Low tariffs and free trade underpin prosperity and jobs in the UK and globally. That is why we are pursuing an ambitious free trade agenda, lowering tariffs and quotas where possible, and working on an ambitious package of bilateral free trade agreements. Our Government are disappointed by the US Administration's announcement that they intend to impose tariffs on the UK and our European partners following the recent ruling.

My right honourable friend asks what communications there have been between the Government and the United States. We have continued to raise the issue at the highest levels. My right honourable friend the Secretary of State has herself spoken to US Trade Representative Lighthizer, Commerce Secretary Ross and Vice-President Pence. My right honourable friend the Chancellor raised the subject of Airbus tariffs with US Secretary of the Treasury Mnuchin in July. My right honourable friend the Member for Maidenhead raised the issue with President Trump during his state visit to the UK in June of this year.

This dispute has a long history, going back to 2004. I will not detain the House by setting out that history, but it is long and complex. It has led to this WTO judgment, and although the UK, France, Germany and Spain took steps to bring their support into compliance with the WTO, the WTO ruled last year that further steps were required to bring this support fully into compliance.

Following this ruling, the UK and other Airbus nations have now taken steps to bring their support fully into line. The Airbus nations are seeking confirmation from the WTO in ongoing proceedings that these steps are sufficient to achieve compliance. A ruling is expected in the coming months. However, WTO procedure allows for the US to seek authorisation to retaliate on the EU in parallel to these proceedings, and therefore the WTO has confirmed whether the Airbus nations have now complied with their WTO obligations.

On 2 October, the WTO announced that the US can be authorised to impose up to approximately $7.5 billion annually in tariffs. Following this, the US

published a list of tariffs on the EU, targeting products produced by the Airbus nations and wider EU. These measures are not in the interests of the UK, the European Union or the United States. Tariffs would only inflict damage on businesses and citizens on both sides of the Atlantic, and harm global trade and the broader aviation industry at a sensitive time. We are working closely with the US, the EU and European partners to support a negotiated settlement to the Airbus dispute, along with the separate Boeing dispute. I would like to reassure the House that we will continue to press this issue at the highest levels and urge the United States to withhold tariffs until the WTO has confirmed that we have complied in the compliance proceedings, something we expect to happen in the next few months.

Single malt scotch whisky has been tariff-free with the US for more than 25 years now, and whisky exports to the US are worth over £1 billion annually. Single malt producers are often small and medium-sized businesses, and these tariffs will hit those who can afford them least.

We will continue to talk to the US at the highest levels to press for a settlement and for the US to hold off applying these tariffs until the WTO has had time to rule".

6.27 pm

Lord Stevenson of Balmacara (Lab): My Lords, with this episode we move from the sunny uplands of the free trade world, which we so often hear about, to the reality of trade activity. It should not be a surprise that this is happening. It is no secret that the American President has sought to define his Administration on a trade warfare basis. He seeks to put the interests of America first and to repatriate jobs and industry to the USA. What else could we expect? We should not be surprised at this latest démarche. We saw the United States' negotiating objectives for a future trade agreement with the UK. It was obvious that the language of the UK-US document was extremely aggressive, demanding concessions but offering little in return. The introduction says it all:

"The United States seeks to support higher-paying jobs in the United States and to grow the US economy by improving US opportunities for trade and investment with the UK".

We have seen it all before.

The measures being imposed by the United States will see tariffs on a range of food, drink and textile products including olives, cheese, wine, jumpers and Scotch whisky. Many of these products are subject to geographical indications, appellations awarded under trade agreements to protect products of cultural heritage. American producers have made no secret of their desire to apply iconic labels such as Stilton cheese or Scotch whisky to products made wholly in the USA using similar production techniques.

I have a question about this. During the proceedings on the Trade Bill, we got the Government to agree to support the continuation of EU GIs. Is that still our policy?

Lord Gardiner of Kimble: My Lords, I repeat what I said before to the noble Lord and I declare my interest in the register of a shareholding in the drinks industry.

Resorting to tariffs is not in the interests of this country, the EU or the United States if we are to have the productive economic relationship with the United States which we are working on and want to have. It is already our largest trading partner outside the EU. It is clear that we need to have a positive, mutually beneficial relationship with the United States. We believe that that is the way forward because the United States is an important market for our produce.

Geographical indicators is not my specialist subject, I am afraid, but it seems to me that Scotch whisky comes from Scotland and Bushmills comes from Northern Ireland. We should cherish our produce and I am grateful to the noble Lord for his remarks.

Lord Purvis of Tweed (LD): My Lords, given the indicators under WTO rules that these products are unique, they will become even more vulnerable to a tariff regime that the United States may play across the European Union. This industry is uniquely Scottish and British. As with distinct elements of our cashmere industry, which was referenced in the Answer to the Statement—I represented many mills in my former constituency—the industry has been able to flourish in the past, certainly within textiles, because when it has been a victim of international trade disputes, European structural funds have supported it. What are the Government's contingency arrangements for rural businesses and the whisky industry?

The noble Lord gave figures for the Scotch whisky industry showing that single malts account for one-third of the £1 billion in whisky exports. There are 7,000 rural jobs in that sector, and the cashmere and textile industry is particularly vulnerable. Will the Government give a commitment that whatever the European Union decides, we will be in lock-step with it? If so, the tariff proposals we have just been questioning the noble Lord, Lord Callanan, on will have to be amended to be in lock-step with the EU response to the United States. I hope that Ministers have given that commitment to our interlocuters from the United States. It would be helpful if the Minister could clarify that that commitment has been given.

Lord Gardiner of Kimble: My Lords, as I have said, we are working with the EU. This issue concerns tariffs imposed on the EU, and we are part of the Airbus quad that I have been learning about. We are working very strongly with our EU friends and partners, in working with our American friends and partners, on something that we in this country do not think is beneficial for American trading interests or our own. Whatever our status—whether a member of the EU or not—we are clear that we do not believe that this is right or beneficial. If we have left, we will also be saying that this is not a basis on which we should be working. These tariffs are not beneficial to the EU, the UK or the third party in this, the United States.

Baroness McIntosh of Pickering (Con): My Lords, does my noble friend agree that, according to the figures from the Food and Drink Federation, Scotch whisky is the single most successful export across the world? Is he not as concerned as I am that the US seems to have chosen to pick on UK brands such as

[Baroness McIntosh of Pickering]
Bushmills from Northern Ireland and Scotch whisky? Why has it not been extended to products from another Airbus nation, such as French champagne or brandy? Does the Minister share my concern that this does not augur well for our future trade relations after the UK leaves the EU?

Lord Gardiner of Kimble: My Lords, my understanding is that tariffs will be levied on the Airbus nations and the EU. The data shows me that 38% of French trade is directly targeted, compared to 10% of ours. These tariffs will affect the EU as well. My noble friend is right—to repeat it and put it on the record—that Scotch whisky is the UK's largest agrifood export, at £4.7 billion in 2018. It is the largest contributor to the UK's balance of trade in goods and, thinking of Scotland, it provides 7,000 rural jobs and 11,000 in total. It is very important to Scotland.

Lord Browne of Ladyton (Lab): My Lords, I thank the noble Lord for his answer but I cannot help but contrast it with the answer given by the Leader of the House, Jacob Rees-Mogg, on Thursday when asked a similar question about 25% tariffs on Scotch whisky. He saw the opportunity to attack the EU for what he calls its illegal acts and he stated that the Scotch whisky industry would be better off post-Brexit—if we can believe that, given the amount we sell to Europe.

In his answer, the noble Lord substantially reflects the press release the Government put out when the WTO ruling was made. I am reassured that he has repeated the Government's view that they are not acting illegally, and that no European nation is; that is very important. If we can get the WTO to establish that, that is good. There is no question of illegality, despite what Jacob Rees-Mogg said, but now there is a question about support for engineering jobs in Airbus. He was disparaging about them. Some 124,000 people in the United Kingdom are employed or supported by Airbus. Will the Minister join me and the Unite union and write to every one of those 124,000 to say that the Government still support that industry?

Lord Gardiner of Kimble: My Lords, the Government are clear that the United Kingdom is compliant with WTO rulings in the Airbus dispute. That is where we pitch our line. We think we are compliant so it is not right that the US Administration should impose tariffs when we are clear that we are acting lawfully. I use this opportunity to encourage our friends in the United States to see that this is a time when we should be seeking free trade and encouraging these industries, wherever they are, whether they are small rural ones or large industrial ones.

Customs Safety and Security Procedures (EU Exit) (No. 2) Regulations 2019

Motion to Approve

6.38 pm

Moved by ***Lord Bethell***

That the Regulations laid before the House on 5 September be approved.

Relevant document: 61st Report from the Secondary Legislation Scrutiny Committee

Lord Bethell (Con): My Lords, this statutory instrument is part of the Government's package to prepare for the possibility of the UK leaving the EU without a deal. The instrument relates to safety and security declarations on goods imported and exported between the UK and the EU. The Government's aim is to leave the European Union on 31 October 2019 with a deal that works for citizens and for businesses. Until that final deadline, we will do everything in our power to reach an agreement with the EU. However, as a responsible Government, we have a duty to plan for all scenarios and to prepare comprehensively for Brexit. I note that the Secondary Legislation Scrutiny Committee has included this instrument in its report of 3 October 2019 as an instrument of interest.

I will set out the context of the provision we wish to introduce for managing the safety and security risk of goods entering and leaving the UK. These measures maintain many of the aspects of the current safety and security regime. They help facilitate the flow of trade while ensuring the continued safety and security of our borders.

In 2005, the World Customs Organization adopted the SAFE Framework of Standards as a deterrent to international terrorism, to secure revenue collections and to promote trade facilitation. As a result, safety and security declarations became a requirement when goods moved across borders. The UK as part of the EU has previously required safety and security declarations only for goods leaving or entering the EU. If the UK leaves the EU without a deal, UK importers and exporters will be required to complete safety and security declarations for goods moving to and from the EU as well as the rest of the world.

This instrument has four key purposes. First, HMRC has listened to industry concerns about the readiness of business to comply with safety and security requirements on UK-EU trade from day one. Therefore, the instrument gives businesses more time to prepare to start to submit declarations to HMRC for movements to and from the EU. It introduces a 12-month transitional period until 1 November 2020, during which there will be no requirement for entry summary declarations for goods imported from territories where the UK does not currently require them. This means that entry summary declarations will not be required for imports from the EU.

Entry summary declarations will continue to be required for goods imported from the rest of the world. Therefore, the UK will receive the same safety and security import declarations in no deal as it does today. The transitional period introduced by the instrument applies to declarations that the UK does not currently receive. As a result, there is no increased security risk to the UK from this approach.

Secondly, the instrument gives HMRC a discretionary power until 1 November 2020 to allow businesses to submit safety and security declarations for certain exports after the goods have left the UK. This is a contingency power subject to HMRC's discretion, and the specifics will be set out in a public notice. The power would be used if required in combination with a similar power granted in a previous statutory instrument to extend the time to provide the export customs

declaration. Together, they could allow an extended time, if needed, to provide the combined export customs declaration and the export safety and security declarations. HMRC would use the power if needed to facilitate movement of goods to assist in the continued free flow of trade.

Thirdly, the instrument removes until 1 May 2020 the requirement for exit summary declarations for empty containers, empty pallets and empty vehicles moving from the UK to the EU. They are not also required for any spare parts, accessories, equipment, pallets, containers and means of transport. Such declarations are not required at present, so we are giving businesses a longer time to prepare.

Fourthly and finally, the instrument also clarifies that a combined export safety and security declaration can be accepted when exporting goods. This ensures that exporters are not required to submit separate exit summary declarations.

The instrument does not apply to movements of goods between Northern Ireland and Ireland. A previous statutory instrument set out that, in no deal, there would be no safety and security declarations between Northern Ireland and Ireland. The Government are committed to supporting the all-Ireland economy by avoiding checks and infrastructure at the border between Northern Ireland and Ireland. Under no circumstances will the Government put in place infrastructure checks or controls at or near the border between Northern Ireland and Ireland.

This instrument strikes the right balance between giving traders time to prepare for new arrangements with the EU and maintaining the safety and security of the UK. I beg to move.

6.45 pm

Lord Purvis of Tweed (LD): My Lords, to give a degree of context about the scale of smuggling into the United Kingdom, the Government's most recent figures, from August 2019, suggest that there was lost revenue to the United Kingdom of £2.5 billion in smuggled tobacco alone. To put it into further context, HMRC estimates that lost duty on smuggled tobacco represents 14% of all duties. For alcohol, HMRC considers 8% of all duty revenues being lost through smuggling and crime.

How does this happen? It is because of the context that the Minister described—this is my first opportunity to interact with him, so I welcome him to his position. As he said, these measures and security checks have been there for a purpose. Yes, we have seen progress in the form of a reduction, but the figures are still stark. Any one of us during the short debate on this statutory instrument could do a quick news check: "HMRC", "crime", "smuggling". With the checks, mechanisms and security procedures uniform and in place across the European Union, the Government take credit for the reduction in organised crime. Parts of our national security strategy are contingent on eradicating organised crime from the Balkans and thereby smuggling into the United Kingdom. I sit on the International Relations Select Committee. During our inquiry last year on the Balkans, we were told by the Government that their top priority in respect of the Balkans was smuggling into the United Kingdom from organised crime. It was therefore no surprise that when this issue was debated in March there was considerable disquiet that a waiver for a year would, in effect, put in place a new regime. That was debated in March and those concerns were highlighted, so it is almost breathtaking that this is considered an urgent matter. As the noble Lord, Lord Tunnicliffe, said in the previous debates on statutory instruments, it is urgent only because the Government have not acted earlier, and we may be in a position of crashing out of the European Union. The terminology of urgency in relation to bringing forward this measure is not a result of our not being unaware of these issues, it is just that the Government and HMRC do not have mechanisms in place.

The Minister said that there would be a transition period for businesses which were not prepared, but what have the Government been doing over the past seven months in order that there is heightened preparedness? In all our debates in this House since March on what the Government claimed was no-deal planning, they have spoken of heightened preparedness. We saw most recently that HMRC had to auto-enrol businesses to have an economic operator registration number; now there is a waiver for security procedures. What proportion of trade in goods into the United Kingdom will this measure cover? Have the Government prepared an impact assessment with regard to law and order and our strategies for reducing organised crime? If the Minister were able to highlight where that is, it would be helpful. I was not able to find it, so it would be helpful to know whether the Government have prepared such an assessment. The Government's own Explanatory Memorandum states:

> "This instrument will be covered by an overarching HMRC impact assessment".

It then gives a link. I looked at the link, but I could not see anything relating to this instrument, so it would be helpful if the Minister were able to state what the position is.

The Minister's terminology was interesting. He referred to the measure being "transitional", but if you have a transition you start from the status quo until a new mechanism is in place. This is the new mechanism; a waiver is a new mechanism. It is not a case of the status quo carrying on until there was some form of agreement with the European Union as to what the procedures would be for imports from the European Union, because that would be covered if we had a withdrawal agreement. If we do not have one, this is not a transition—it is a new system that may well last for 12 months, as the Minister said. Can the Minister give clarity on that? He said that this is for 12 months, but Regulation 3(3) suggests that there could be,

> "different extensions for different exporters, goods, places or means of transport, or any combination of these",

if a further public notice is provided. I may have misread the measure, but it would be helpful to know where the restriction of it being only for a year is: that is a genuine question.

The Minister referred to one element of the declarations being waived for empty containers. How will we know if they are empty? If no declarations are required, what is the distinction between an empty container

[Lord Purvis of Tweed]
and a full one? How will our authorities be able to know? The Minister is suggesting that there would be no checks, on any grounds whatever, on any containers coming across the Northern Ireland border. I remind the Minister that, according to Northern Ireland government figures, there were 46 million transport crossings at 15 points on the Northern Ireland-Ireland border last year. What mechanisms are in place to ensure that none of the containers that cross the border will have any kind of determination for their security, at destination or source? Not only would there be no checks, there would be a waiver at source and on receipt at the destination. What will that mechanism look like? Nothing that the Minister said today gives clarity on what that would be and how it would cover many elements of 46 million vehicle crossings. There is also little in the revised Northern Ireland protocol. It is of concern that the Government did not do specific impact assessments.

One element raised by the business community in March, in relation to the other measure to which the Minister referred, was the reciprocal nature of this. Can the Minister confirm that this is indeed part of a reciprocal agreement with the European Union? If there are to be no mechanisms and if this is a unilateral waiver—which would, I suspect, have to be applied to all other countries under WTO rules—it opens up the European Union market via Northern Ireland. If the Minister can clarify that this is part of a reciprocal arrangement, some in the business community may be slightly eased. If not, there are considerable difficulties in having a unilateral system and none of the benefits referred to by the Minister will apply. Presumably, they will apply only to those wishing to export to the United Kingdom—our economic competitors—rather than the British businesses which wish to export from the United Kingdom. Given that the Government have been very coy in giving information about how many British businesses have registered with their destination countries for an EORI number, it would be helpful to know about the reciprocity of this too.

Finally, 40% by value of UK imports and exports are from air freight. How will this mechanism apply to the European aviation single market, which we are also leaving, and the interaction between the security procedures and checks that many businesses have had to comply with? Given that, as the Minister indicated, this should be in place if there is no deal, what response have the Government had from the air freight industry?

In many respects, these are very concerning measures. As the Government say, they could last 12 months but potentially longer and are, potentially, unilateral rather than reciprocal. They potentially open up many areas of abuse, especially on the United Kingdom's land border with the European Union. As the Minister indicated at the outset, this mechanism does not apply to goods between the Republic of Ireland and Northern Ireland. What mechanisms will? I hope that the Minister is able to respond to these points.

Baroness Neville-Rolfe (Con): My Lords, I echo the comments that have been made welcoming my noble friend to the Front Bench. I support the regulations that we are discussing today but I have some questions; I hope my noble friend can reassure me.

If we have a no deal, the culture at the ports and on the border in Ireland could change. Other member states may be less concerned about what is sent to us in the UK than they have been in the past. I note that there will be a 12-month period when no safety and security declarations will be required. That is probably sensible, to keep the lorries rolling, but, to put it simply, we in this House need to understand what will happen with the enforcement of important laws at the ports and on the border. How will we stop the import of illegal migrants, dangerous knives, machine guns and cocaine—all the things that the Home Office, very sensibly, tries to keep out—let alone illegal cultural works, exotic plants and animals that are prohibited from coming into the UK? What will happen at the ports and on the Irish border? Can the House have some reassurance about how these laws will be enforced in the transitional period and in the longer term?

Lord Tunnicliffe (Lab): My Lords, I congratulate the Minister on his new role. It will be interesting to see if he will be the permanent Treasury representative; it is an onerous task that has worn out many a noble Lord.

I am generally unhappy with Explanatory Memorandums and the Minister has gone out of his way to make my point for me. His speech illustrated how an Explanatory Memorandum should be. It is about imports, exports, empty bits and combined declarations. That I can understand but not much more because I do not understand the export and import business. I hope the Minister forgives my somewhat naive questions. It seems that these regulations are designed to create frictionless trade. Unlike the other instruments, there is no problem with deal or no deal because the powers are discretionary in all cases; if there is a deal HMRC can withdraw its discretion.

Taking imports first, the regulations say that there will be no requirement for declarations on any imports from EU countries for 12 months. That is simple and straightforward. What I do not understand is whether EU countries—I was about to say the French—will require the declarations to be generated, even if we do not want them. I do not understand what WTO rules say on things like that. Is there a worldwide agreement that these declarations should be flying about unless there is an equivalent mechanism, which the EU has internally? I hope the Minister will be able to answer the question of whether the French will feel the need to require declarations to be made. The reverse of that is the key question the noble Lord, Lord Purvis, asked. We may not want to make declarations for 12 months for our exports, but how will EU countries react to that? Are these declarations pieces of paper? I do not really understand. When you get to Calais do you say, "Here is my declaration; the British have said this is good"? Will lorries without these declarations, having avoided a friction problem on this side of the Channel, end up in a big lorry park while they somehow or another overcome this process?

Finally, I did go through all the paragraphs and paragraph 3.2 talks about public notices being issued when these discretionary factors come into effect. I have trouble with the fact that it is being done by the

made affirmative process; clearly, had the Government started earlier it would not be urgent. If there is a need for a public notice for these things to happen, should that public notice not already have been published?

7 pm

Lord Bethell: My Lords, I thank noble Lords very much for a really intense debate on a key Brexit measure that has been brought to the House. A lot of expertise has been brought to it, and it is my intention to try to reassure the House that this important statutory instrument has been carefully thought through, that it is very much a product of consultation with the haulage industry and that it works as part of the Government's Brexit programme in a thoughtful way.

The noble Lord, Lord Purvis, spoke about the very large amount of smuggling that there already is and asked what proportion of trade is affected by the waiver. Goods moving to the UK from the EU are not currently subject to safety and security declarations: that is a key point of this debate. This is a new measure that will introduce new requirements on imports to the UK. It is difficult to measure exactly, right now, what proportion is involved, but I undertake to write to the noble Lord about the exact proportion of trade affected by this transitional period in which entry summary declarations will be required. I will get back to him with a precise figure, since he asked such a specific question.

The noble Lord, Lord Purvis, asked about the impact on air freight. Interaction with air freight is exactly the same as it is with land ports. Entry and exit summary declarations apply to air freight in exactly the same way, and these easements will also apply in exactly the same way. Declarations will still be required for the rest of the world. On whether these waivers are something new, the waiver is not currently a requirement for hauliers. Declarations are not required by importers in any case so deferring them for a year is not thought to have a big impact on either smuggling or crime.

Baroness Neville-Rolfe: Can I could seek further reassurance? Will the rules that are currently applied to keep these heinous crimes at bay continue, or will that actually be a problem because of the sheer scale of no-deal activity? That is my concern. Obviously, the security notice, once introduced, will help as well, because there will be a further item that can be checked, but is there going to be a problem in the interim? If the Home Office and its people at the borders are going to continue to do all they are doing at the moment, that would be good to know.

Lord Bethell: The sheer scale is enormous, but the feedback from the haulage industry and HMRC is that they are putting in place the measures necessary for the highest level of declarations. Most of the measures put in place to tackle crime and smuggling are intelligence and data-led; they do not involve inspection of vehicles on a mass scale. The noble Lord, Lord Purvis, referred to 46 million crossings of the Northern Irish border. Quite clearly, only a very tiny proportion of those could possibly involve any kind of inspection. So, in answer to my noble friend's question, the same intelligence and data-led measures will be in place, even during this deferment.

The noble Lord, Lord Purvis, asked whether the 12-month waiver could be extended by Regulation 3(3). I reassure him that Regulation 3 is for exit summary declarations only. A 12-month waiver for any entry summary declaration is in Regulation 4 and I reassure the noble Lord that this cannot be extended under the SI. Let me clear up some confusion about the impact assessment. The HMRC impact assessment was republished this morning. I would be happy to share a link to it and a copy of it. It was widely distributed and makes important reading.

Lord Purvis of Tweed: Does the Minister think, in all honesty, that for a measure laid before Parliament on 5 September the publication of an impact assessment only on the morning that it is debated in this House is in any way appropriate, whether or not it is urgent? Is it not really rather an abuse?

Lord Bethell: The noble Lord makes a very fair point, but I reassure him that this impact assessment is not solely on this SI and is not an effort to try to mislead the Chamber. It is the overall HMRC impact assessment that covers, I believe, duties and the impact of all these measures. Its publication today is an effort to get it out as quickly as possible, and it is coincidental to the fact that we are discussing this specific SI. It is the updating of a previous impact assessment which is, I believe, more than six months old and has been available on the website for some time. If I can provide some clarification on where it can be found, I would be happy to share it. It refers to all the measures contained in this SI.

Lastly, the noble Lord, Lord Purvis, asked why we are using the urgent procedure under the EU withdrawal Act after giving assurances that we would not do so. The truth is that the number of times we have used the urgent procedure is very low indeed—minimal, even. I pay tribute to officials at HMRC and the Treasury for getting through a huge amount of work to get the legislative frameworks in place to prepare for a potential no-deal Brexit. On the eve of prorogation, when certain clocks on SIs that were laid before the House are ticking down, it made sense to use the urgent procedure to make sure that the request of industry and HMRC could be reassuringly executed so in this instance we decided to do that. This has been a really valuable debate—

Lord Tunnicliffe: I hate to be picky, but I asked only one substantive question, which is whether the French have to agree to any of this.

Lord Bethell: The noble Lord asked a very good question. I apologise for not putting it at the top of the list because it is absolutely right. No. This is a matter for the UK. France and other EU member states will have their own requirements for safety and security which UK businesses will have to comply with if entering or leaving those countries. No waiver from them is necessary as this is purely domestic law. I hope that that answers the question clearly.

Lord Purvis of Tweed: That is very illuminating and I am glad that the noble Lord, Lord Tunnicliffe, reminded the Minister of that point. I hope that this information on the impact on British business will be considered in any form of impact assessment. If the wavier is not part of a reciprocal agreement, what is the benefit of export for British exporters? Clearly, the waiver will be a benefit for those who are receiving the goods and for exporters to the United Kingdom. What is the benefit of no waiver from our European export markets?

Lord Bethell: The noble Lord puts it very well. The truth is that, in order to execute the SI before us, we do not require EU permission, which I think was the substance of the noble Lord's initial question.

Lord Tunnicliffe: My question is on very much the same point. We are creating this SI, and I entirely accept that it is within domestic law to create a frictionless border, but if at the other side of the border there is a piece of EU bureaucracy—I must call it that rather than French bureaucracy—then the exercise becomes a bit pointless.

Lord Bethell: My Lords, in this Chamber we can execute only what is within the realms of our legislative ability. These are the measures that the industry and HMRC have sought from us. Negotiations with the EU to create the right kind of border will take place in the future. What we are trying to do here is to put in place whatever we can do as a country to have the best possible framework for our importers and exporters.

Lord Tunnicliffe: Perhaps the Minister might like to reflect on this conversation and see whether any of his colleagues could add some colour to that answer. There are quite a lot of deals relating to no-deal situations—I believe the EU calls them bonus deals—and I would be grateful, if there is further information, if he could write to us both.

Lord Purvis of Tweed: This will be the last time I jump to my feet. If the Minister is coming back to the very sensible suggestion by the noble Lord, Lord Tunnicliffe, might he expand a little on our discussions with the Irish Government? The European Union is land-bordered with the United Kingdom, and if this is applying only to those who are importing goods from the European Union, which would cover the Northern Ireland border, but there is no reciprocal mechanism for those exporting, then this would apply to the Irish Government, who are the European Union. What discussions have there been and where would we, in Parliament, be able to understand the position of the Irish Government where this 12-month period could be completely intolerable? Of course, it can be solved by not leaving without a deal, but if we do leave without a deal—which is prohibited by law, but if the Government are determined to get around it—what is the position of the Irish Government and how do we know?

Baroness Neville-Rolfe: I see the point of passing this order, even if we do not have a reciprocal situation. Business has asked for it. We rightly have done what is necessary. HMRC has done that. I also think that if we behave in a good way, the other member states will be able to see that we have done this, which helps, as it were, to keep the lorries rolling. That could be helpful in forward discussions in a difficult situation of no deal, which I do not think any of us want to see.

Lord Bethell: My noble friend puts it very well. I note the obvious disquiet in the Chamber, and I am very glad to undertake to write, as requested by the noble Lords, Lord Tunnicliffe and Lord Purvis, to try to clarify this. However, I can only present to the House what is before me. I cannot bring to noble Lords a trade agreement with the EU and I cannot resolve our future trading arrangement with Ireland because those two things are massively out of the scope of this statutory instrument and well beyond my pay grade or my ability to answer in the debate this evening. As my noble friend put it, all I can do is to present to noble Lords a statutory instrument that has been asked for by the industry and HMRC. I hope that it will provide some kind of example and format for our trading partners to lock into and set an example on energy and oomph and on technical jigsaw-making that they can connect with. The Treasury thinks that this is the kind of format that we should aspire to in the future to create the right kind of statutory framework for a successful trading future for the country. It is in that spirit that I commend these regulations to the House.

Motion agreed.

Draft Heavy Commercial Vehicles in Kent (No. 1) Order 2019

Motion to Approve

7.15 pm

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

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

Relevant document: 61st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the draft Heavy Commercial Vehicles in Kent (No. 1) Order 2019 and the Heavy Commercial Vehicles in Kent (No. 2) Order 2019, along with the Heavy Commercial Vehicles in Kent (No. 3) Order 2019, which requires the negative procedure, are a package of measures and it is important that they should be debated together. I am grateful to the House for facilitating this.

As noble Lords will be aware, the Government have been supporting partners in Kent to develop Operation Brock. Brock is a co-ordinated multi-agency response to cross-Channel travel disruption, specifically when capacity for heavy goods vehicles to leave the UK through the Port of Dover or the Channel Tunnel is

significantly restricted. We are prepared to use Brock should cross-Channel disruption occur because of the UK's departure from the EU in a no-deal Brexit, although it could, of course, also be deployed as a result of disruption resulting from bad weather or industrial action. These orders are a vital part of Operation Brock, as they will significantly expand and strengthen the enforcement regime that underpins it.

Operation Brock replaces Operation Stack, and the difference is that it has been specifically designed to keep the M20 motorway in Kent open in both directions, with access to junctions, even in periods of severe and protracted disruption. Operation Brock consists of three phases, the first being a contraflow queuing system on the M20, between junctions 8 near Maidstone and junction 9 near Ashford. The contraflow system enables all other traffic to travel in both directions of the M20 on the London-bound carriageway when cross-Channel heavy goods vehicles are stored on the coast-bound carriageway. When the M20 queuing system—the first phase—is reaching capacity, cross-Channel heavy goods vehicles bound for the Port of Dover would be diverted to Manston Airport. That is the second phase. The third and final phase is the use of the M26. If needed, the M26 can be used as a last resort to store trucks heading to Europe via the Channel Tunnel.

It is important to note that the Kent Resilience Forum, which comprises bodies such as the county council and the police force, is responsible for the Operation Brock plans. Any decisions relating to the activation and timing of the different phases of Operation Brock will be taken by Kent Police as the Gold Command, in consultation with the Kent Resilience Forum.

We are undertaking an extensive communications programme to inform traders and hauliers of new requirements resulting from our departure from the EU. We recognise that if there is widespread non-compliance, it could lead to serious congestion on Kent's roads. In the summer of 2015, when Operation Stack was deployed for an extended period of time, compliance with the traffic management system was low. Almost a third of cross-Channel heavy goods vehicles avoided the system, causing serious traffic problems on the local road network, with parts of Kent becoming gridlocked. Over the past year, the department has held regular discussions with the Kent Resilience Forum and other stakeholders in Kent. They have been keen to see gaps in the legislative framework addressed and measures to strengthen the enforcement of Brock.

A final consultation on the package of measures was undertaken this summer. This was targeted to affected stakeholders in Kent, such as Kent County Council, the Port of Dover and Eurotunnel, and freight and road haulage associations. As mentioned in the Explanatory Memoranda, the responses received were broadly supportive and provided helpful points of detail that assisted us in drafting the orders, such as refining when the new restrictions and powers should be used, as well as raising wider points on the deployment of Operation Brock, such as on the provision of welfare for truck drivers. I would like to thank everyone who responded.

It is crucial that these instruments are brought into force by 31 October to ensure that the scheme operates as efficiently as possible and to reduce the impact on businesses and local communities in Kent. I am grateful that time has been found for these debates to take place so quickly and for the speed with which the Joint Committee on Statutory Instruments and the Secondary Legislation Select Committee have scrutinised these instruments.

I will now set out what the two orders we are considering today, as well as the associated third order, provide. Under order No. 1, traffic officers in Kent will be able to require the production of documents to establish a vehicle's destination and readiness to cross the border. If the driver can produce the appropriate documents, they will be given a permit for onward travel. In addition, the order provides powers to direct drivers to proceed to a motorway, removing the vehicle from the local road network, and powers to direct drivers not to proceed to the Channel Tunnel or the Port of Dover except via a specified road or route. Document checks to help make sure that a haulier has the right documents will be carried out on the M20 by temporary traffic officers contracted by, and under the direct supervision of, Highways England, while broader traffic management and enforcement will be dealt with by permanent staff and the police.

This order also sets the amount of the financial penalty deposit for offences relating to Operation Brock, so it may be helpful if I briefly explain the roadside enforcement regime. A driver with a UK address who commits a road traffic offence can be issued with a fixed penalty notice, which must normally be paid within 28 days or it can be enforced by a local magistrates' court. If a driver does not have a UK address and therefore could avoid that follow-up enforcement action, the police or the Driver and Vehicle Standards Agency—DVSA—can require the immediate payment of a financial penalty deposit. If a driver cannot pay the deposit, their vehicle is immobilised. This regime is used for many road traffic offences and ensures that penalties are paid. The amount of the deposit introduced by the other two instruments for breaching the traffic restrictions or for failing to comply with a traffic officer exercising the new powers is set at £300. The fixed penalty notice amount is also set at £300 by the No. 3 order, to which I will return later.

Order No. 2 prohibits cross-Channel heavy goods vehicles using local roads in Kent other than those on the approved Operation Brock routes. To facilitate traffic flow, the legislation also requires cross-Channel heavy goods vehicles to remain in the nearside—left-hand—lane when using those parts of the Brock routes that are dual carriageway local roads. Appropriate exceptions to this prohibition have been provided after consultation with the Kent Resilience Forum and freight associations. For example, a vehicle on a cross-Channel journey can make a local collection or delivery provided the driver can provide information sufficient to satisfy a constable or traffic officer that the vehicle is being driven on a particular road for that purpose alone.

To complete the whole picture, order No. 3, which has been laid using the negative procedure, prohibits cross-Channel heavy goods vehicles accessing

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the coast-bound carriageway of the M20 between junctions 9 and 13 unless the driver is displaying a permit. As I said, this permit will be issued in the Brock queue between junctions 8 and 9, enabling a driver to demonstrate that they have followed the approved Brock route and have complied with any border document checks that may be undertaken in the queue. This order also prohibits cross-Channel heavy goods vehicles joining the M20 contraflow between junctions 8 and 9 of the London-bound carriageway. It also sets the amount of the fixed penalty for offences relating to this series of instruments.

We have provided that the new powers and traffic restrictions in the orders will cease to have effect at the end of December 2020. This date coincides with the end of planning permission for the holding of heavy goods vehicles at Manston Airport. Manston is of course an integral part of the Brock system, so this is a suitable and consistent date for them to cease to have effect.

Crucially, these instruments introduce powers to require the production of border documents and the obligation for drivers to comply with any readiness check before using the roads leading to the ports. If the UK leaves the EU without a deal, the UK will become a third country, and the customs authorities in EU member states will introduce EU border and customs rules. For goods to move smoothly across the border, traders will therefore need to complete new processes for customs and provide documentation to their hauliers, who will need it when carrying goods. If drivers try to take goods across to the EU without the right documentation, it is possible that they will not be able to complete their journey. That may be because the UK port turns them away because they do not have the required documentation; for example, some of the customs documentation must be scanned at Eurotunnel before the vehicle can board the train. Or they may be blocked from progressing through an EU port by a member state customs authority; vehicles could be delayed and fined or returned to the UK, or goods could be destroyed. Both scenarios could lead to congestion at UK and EU ports. This could be particularly severe at the Channel ports of Dover and Calais, given the volume of traffic that they handle and the existence of French passport controls on the UK side of the Channel at these ports, and could lead to significant delays on Kent's road network.

We propose conducting border readiness checks in the Brock queues. In practice, this means that: if Brock M20 is active, HGVs heading to Dover and Eurotunnel will undergo checks on the M20 between junctions 8 and 9; if Brock Manston is active, because congestion at the ports has worsened, Dover-bound heavy goods vehicles will be queued at Manston Airport, where checks will take place, and Eurotunnel-bound heavy goods vehicles will continue to queue on the M20 and be checked there. A haulier who is deemed to be ready to cross the border will be given a permit that allows them to go to the port. Hauliers who try to go to the port without a permit could be stopped, directed to the back of the relevant Brock queue and receive the proposed on-the-spot £300 fine by the police or the DVSA.

These orders are of vital importance to allow sensible traffic management in Kent. It is critical that we demonstrate to the public and to business that Operation Brock will be ready, fully operational and enforceable on day one should it be needed to deal with the impact of cross-Channel disruption. I beg to move.

Baroness Randerson (LD): My Lords, I welcome the fact that there has been local consultation on this. However, my word—this conjures up a depressing and distressing picture of the world we might be entering into, and the people of Kent need to be seriously worried about the way in which this will impinge on their lives.

It is worth noting at this point that the Secondary Legislation Scrutiny Committee drew these orders to our attention, noting that it believed that the use of Section 8 powers of the Traffic Management Act 2004 was a "significant" issue that the House should be aware of.

The Minister referred to the fact that the third order was not before us. I hope she will forgive me but I could not hear her explanation of why we do not have it. However, I want to hear clearly from her that the third order is being made at the same time. Could she also please address the fact that, as part of this whole package of activity, there are three special development orders which apply to Manston Airport, Waterbrook in Ashford, and car park D at Ebbsfleet station? They all allow the use of land for the stationing of vehicles, for facilities for drivers and for the pre-processing of papers required in order to export goods if there is no deal. As they are an intrinsic part of the package—although I realise that they will not be part of the Minister's responsibilities—I think it is important that we know how that will all fit together and when all the information will have come to us that needs to.

7.30 pm

The picture that the orders conjure up is of martial law for traffic and of roadblocks on the roads of Kent. I understand the attempt to avoid chaos at the ports. In 2015, the impact that chaos at the ports had on the whole of Kent was obvious, way beyond the motorways. I fear that unaddressed concerns here could lead to the disruption on the motorways spreading to other roads in Kent. The whole of Kent traffic will essentially be under emergency control at such times.

The power to direct vehicles is fine, but the inspection of documents is not as easy as you might think. If we leave with no deal, dozens of technical documents will have to be considered. Prior to the establishment of the single market, you needed dozens of documents to get a lorry load of goods from one country to another. The whole supply chain has become much more complex these days. An Amazon lorry will have 1,000 different consignments within it, which could well need separate and individual pieces of paper. Traffic police are traffic police; they are not customs experts. What training will be given to the police to ensure that they are customs-ready?

The Minister is making a face at me to suggest that I am not raising realistic concerns, but they have been raised with me by people in the industry who regard

them as legitimate, and I think the Government need to take them into account. If you have a lorry load of widgets going to Romania, how will you know that they have the right set of documents for that trip?

It is also important to remember that 80% of lorries in that area are driven by foreign nationals. The Government have gone to the trouble of saying that they will produce documentation and information in 11 different languages, but our police do not all speak those 11 languages, so what about translation issues?

The Minister referred to the contraflow on the M20. I take this opportunity to raise the inconvenience of that contraflow on a permanent basis and ask her how long she thinks that will be the Government's solution to potential disruption in the area. I had the unfortunate experience of having to drive along that contraflow in the summer—15 miles of white-knuckle ride with two narrow lanes of traffic, nowhere for traffic when it breaks down and extremely large lorries overtaking each other on those two lanes. I know that those who use that route regularly find it a very disconcerting journey. If that is the Government's permanent response for that area of Kent, something needs to be done to widen the lanes.

Why is there no impact assessment? The Explanatory Memorandum states that the order is not expected to impact on the private, public or voluntary sectors. I would say that it will impact on people throughout Kent, and that there should be an impact assessment because of the effect on Kent's economy.

Many drivers on return trips will not be carrying documents because they are not carrying goods, but there will still be lorries waiting in a long queue to get through the ports. How will the Government deal with empty lorries? Will there be a different process for them?

Given the high percentage of foreign drivers to which I referred earlier, what are the Government doing—beyond translation into 11 different languages—to ensure that the information about what is to happen is available not just to hauliers but to the manufacturers and companies that provide them with the goods? They need to be aware that their hauliers are likely to be held up in this way. If this is to work, it is very important that the lorry drivers are not put under unrealistic pressure by their employers. They must not be made to feel under pressure to complete their journeys more quickly than they are able.

Finally, I ask the Minister about local lorries. The second order specifies that drivers making local collections and deliveries will have to supply evidence. If you are, let us say, taking materials from one building site to another, there is no reason why you should have any documentation with you. It will be a real issue for local lorries to have to provide sufficient evidence to prove that they are not on a longer journey and intent on going abroad. The impact of that is that all lorries in Kent will have to carry significant legal documentation at all times to prove that they are complying with those regulations.

Viscount Hanworth (Lab): My Lords, the regulations on custom safety and security, which we have already discussed, have arisen from HMRC's assessment that the haulage industry and ferry operators will be unable to meet the new requirements that will be imposed on imports and exports in the event of our leaving the EU by 31 October. The regulations will give them leave to submit the necessary safety and security declarations with a delay of up to 12 months.

Of course, these easements are on the side of the UK, and there can be no presumption that they would be met by similar easements on the side of the European Union—a point made persistently by my noble friend Lord Tunnicliffe—but perhaps it is now more interesting to consider the associated statutory instruments that concern the heavy goods vehicles that carry our exports and imports to and from the Channel ports. Some 90% of this traffic passes through the Port of Dover. The roads leading to the port would be subject to severe congestion in the event of a hard border with the European Union. The statutory instruments speak of the likelihood of utter chaos. They are a belated wake-up call, albeit that warnings arose months if not years ago. An indication of what is in store arose as long ago as 2015, when the French ports were beset by strikes. Then, there were tailbacks on Kentish roads of 12 miles or more. These circumstances were met by a set of powers and provisions given to the transport authorities that were described as Operation Stack. The controls were widely evaded, as we have heard, and huge costs were entailed.

To meet the eventuality of a hard border with the European Union, much more extreme powers are now envisaged. The new enhanced powers that supersede those of Operation Stack are known collectively as Operation Brock. Tailbacks much longer than those of 2015 will occur. I talk of a "hard border" because that is what we must envisage in Ireland in the event of the Brexit deal being proposed by the Government, notwithstanding their protestations to the contrary. In this case, logistical difficulties of the sort I have been describing will affect the Irish border. We must also contemplate extreme political difficulties of a sort familiar to those such as me, who witnessed them directly in the 1970s and 1980s, but which are being wilfully ignored by many of the party in power.

Lord Rosser (Lab): I thank the Minister for setting out the reasons for and intended objectives of these two statutory instruments. As has been said, the department laid three instruments, each with an Explanatory Memorandum. The first is a draft affirmative instrument, which confers new powers on traffic officers that will enable them to identify cross-Channel heavy goods vehicles and control their movements in Kent. It also makes provisions relating to enforcement. The second order is also an affirmative instrument and allows for the use of such vehicles to be restricted to the motorway network and other approved routes by prohibiting access to local roads in Kent. The third order follows the negative procedure and allows for the use of such vehicles on the M20 motorway in Kent to be restricted, and makes other provision to facilitate more effective enforcement.

As the Minister has said, these three instruments form a package that allows for the movement of cross-Channel heavy goods vehicles in Kent to be

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regulated during periods of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover. As has been said, the DfT has indicated that it,

"has worked closely with the Kent Resilience Forum on developing traffic management plans, known as Operation Brock, to be used as a contingency in the event of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover. These instruments support Operation Brock",

which has been designed to ensure that the M20 motorway in Kent will be kept open and traffic will continue to flow in both directions. Operation Brock is intended as a replacement for Operation Stack during periods of severe and protracted disruption. Operation Stack did not prove an unqualified success, hence the new Operation Brock.

As I have said, the first draft order enables the movement of cross-Channel heavy goods vehicles in Kent to be controlled during periods of severe disruption by conferring new powers on traffic officers. These new powers will be used to tackle non-compliance with the scheme, which would cause or contribute to severe traffic congestion. The new powers are conferred under Section 8 of the Traffic Management Act 2004. Apparently, the draft No. 1 order is the first use of the Section 8 power. As has been indicated, these powers will enable traffic officers to detect and direct vehicles that are not compliant with the traffic restrictions imposed by the second and third orders.

The Explanatory Memorandum notes that, in particular, traffic officers will be able to require the production of documents to establish a vehicle's destination and to demonstrate readiness to export goods. Powers to direct the driver of a heavy goods vehicle in Kent to proceed to a specified motorway in Kent, or to direct such a driver not to proceed to the Channel Tunnel or Port of Dover except via a specified route or road, are also provided to traffic officers. This order also creates an offence of failing to comply with a traffic officer exercising such powers. The noble Baroness, Lady Randerson, has already said that in many ways, it is difficult to understand the full potential consequences of these orders on the movement of goods and traffic in Kent.

7.45 pm

Traffic officers will be deployed to ensure compliance with Operation Brock, but I am not clear—and would be grateful if the Minister could clarify—how many additional traffic officers there are going to be. I think I am right in saying that the order enables people carrying out existing roles to be designated traffic officers. I do not know in how many circumstances it is envisaged that traffic officers will be created in this way and how many new jobs there are going to be, in reality. So how many traffic officers will be needed? Have they already been recruited or so designated? Will these be permanent posts or short-term posts and, if so, for how long will those contracts last?

As the noble Baroness, Lady Randerson, has said, the Explanatory Memorandum also indicates that:

"It would not be an offence for a driver to fail to produce documents if such documents were not carried, which would be a common occurrence as many vehicles leaving the United Kingdom on the 'return leg' of a journey do not carry goods."

I understand that, but I think traffic officers will be able to require the production of documents to establish a vehicle's destination and demonstrate readiness to export goods. Would a vehicle that was leaving the UK on the return leg and not carrying goods still be required to have a document setting out its destination to establish where it was going? If that were the case, would the traffic officer have some responsibility for checking that a driver without any goods nevertheless had a document indicating the destination of that vehicle? The inference is that the document with the destination would not be required if the vehicle were not carrying goods, but I would be grateful if that could be clarified. Will the traffic officer have power to check that a vehicle is not carrying goods? Presumably, it will not be good enough for the driver of a vehicle to announce, "I haven't got any goods on the vehicle", and for that just to be accepted, when there might be goods on the vehicle. Could that point be clarified as well?

The amount of the financial penalty deposit for failing to comply with a traffic officer exercising new powers under this order is set at £300. Is that £300 for each failure to comply or breach, or is it a total financial penalty for one or more breaches at the same time? The No. 3 order—the one on a negative basis—prohibits such vehicles from accessing the coast-bound carriageway of the M20 motorway between junctions 9 and 13 unless the driver has complied with checks of border documents and is displaying a permit issued after using an approved route. The noble Baroness, Lady Randerson, has already referred to the considerable complexity of the documents that that vehicle may require. I have no doubt that the Minister will respond to that point.

The No. 2 order before us supports Operation Brock by restricting access to the local road network. The paragraph in the Explanatory Memorandum covering consultation states:

"A good level of response was received … Responses were broadly supportive of the proposals to provide additional powers and traffic restrictions to ensure compliance with Operation Brock".

However, the department notes:

"Concerns were expressed as to the need to provide clarity on what being 'border ready' involves",

as I understand it, in relation to documentation. That clarity was being sought,

"so that hauliers are not unfairly penalised. The Government will clarify this in the development of communications in preparation for the United Kingdom's departure from the European Union on 31st October".

Has that clarity now been provided or is it still awaited, and if it has been provided, are the documents providing that clarity in the public domain and will we be able to see copies of them?

Going on with the issue of communications, the Explanatory Memorandum accompanying the first draft order notes that the department will,

"undertake extensive communications activity from September onwards",

to make persons who could be affected by this series of instruments aware of their impact before they come into force. I am not sure whether those documents are

the same ones about providing clarity of what being border ready involves or whether they are separate documents, but when the Secondary Legislation Scrutiny Committee asked the DfT how the department would ensure that UK and non-UK hauliers or persons affected by these instruments would be made aware of their impact before they came into force, the DfT said in response that it would be,

"producing guidance for hauliers setting out what the legislation entails and what happens if they fail to comply. The guidance will be made available in 11 languages and will be published on gov.uk as soon as possible before 31st October".

Once again, given that I am not sure whether there are two sets of documents or only one, has that guidance been published, who has copies of it, and are they available to us?

In its reply, the department also said that it would,

"work with other key stakeholders such as the Road Haulage Association and Freight Transport Association to help them disseminate the guidance to their members".

Does the reference to "key stakeholders" include trade unions representing drivers? It seems to me that drivers might be quite interested to know what documents they will be expected to have and what clarity the Government are offering on what the procedures should be. Once again, it would be helpful if the Minister is able to clarify that point.

I think that I am right in saying that the SIs do not specifically reference leaving the EU without a deal. Can the Minister confirm whether the Government think that it is more likely for Operation Brock to be initiated if we leave the EU with a deal or more likely for it to be initiated if we leave without a deal? What do the Government consider "severe disruption" to look like? I appreciate that what is being said is that in effect that will be a decision for Gold Command, but presumably the Government have some idea of what they mean by severe disruption when they use the term in a statutory instrument. It would be helpful to have more clarity on that point.

I come back to the point about whether this relates to both leaving without a deal and leaving with a deal. Obviously, the further question is: can the powers be used if we get a deal or are they only in relation to no deal? Do some of the powers go further than the existing powers because they refer to disruption being caused by "severe weather" or "strike action"? The powers in these orders could be implemented or introduced if there was severe weather or strike action took place, and at the end the phrase creeps in about disruption caused by not having a deal with the EU or the consequences presumably also of having an agreed deal because that too may cause some difficulties. Is this an extension of the existing powers? Do the powers in these statutory instruments apply at the present time in relation to severe weather or strike action, because they are being put forward in relation to leaving the EU on 31 October, but two items are referred to which have applied before that date and could apply after it irrespective of the kind of deal we have? Is this in fact bringing powers in through the back door that do not already exist as far as this SI is concerned? It would be helpful to have clarity on that.

I think that I am right in saying that one of the Transport Ministers—I think it was George Freeman—said that the Government's planning assumption was that no-deal disruption would roughly halve the traffic able to pass through Britain's main trading link for three months. What do the Government expect will happen after three months in the light of his comment? Could severe disruption last for much longer than three months in Kent, or are the Government telling us that severe disruption would last only for three months? What would be the cost to the UK economy as well as the local economy in Kent for every week that Operation Brock is operational? Do the Government envisage a scenario where these powers would need to be extended beyond the end of 2020?

The Explanatory Memorandum also states that there were "Wider concerns" about the welfare of hauliers during Operation Brock, and I have to say that those concerns are shared on this side of the House. One of the interpretations of hauliers' welfare could mean, for example, the provision of refreshments, toilet facilities and things of that nature in the event of severe traffic congestion and lorries not being able to move. However, hauliers' welfare could also be impacted by the directive on working hours. Can the Government explain how the directive will work during periods of severe disruption? Am I right that, while a driver sits in traffic, those hours still count as work hours and that they are required to take a 45-minute break after 4.5 hours of driving? How can they take breaks if they are stuck in traffic and are still responsible for their vehicles, which may be moving, albeit at a very slow pace?

There are of course certain circumstances in which the hours under the working hours directive can be suspended. As I understand it, they can be suspended in emergency events. Would serious disruption defined by Operation Brock qualify as an emergency event? Do the Government expect the working hours directive to be suspended during Operation Brock? Have the working hours under the directive ever been suspended before as a result of either severe weather or industrial action, which as I have said are referred to in this SI? Bearing in mind the possible impact on working hours, which is obviously subject to the answers I am given, can I have an assurance that in the consultation that has taken place, the relevant trade unions representing drivers have been consulted, because if there is an impact on working hours, I think that such consultation should have taken place? However, I have not detected any reference to it in the Explanatory Memorandum. Perhaps I may have the Government's response to that point.

Finally, on the question of costs, the Explanatory Memorandum states that there will be no "lasting impact on business" from the measures contained in this series of instruments and that they would be used only during temporary activations of Operation Brock. But bear in mind that traffic officers will now have the power to direct traffic to different routes from the motorway, which would most probably take longer than usual. A longer route, and even traffic on the new route, will surely amount to additional short and medium-term costs. For example, some of the goods carried by heavy goods vehicles can be time-sensitive,

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such as food and medicines. Do the Government accept that there will be short and medium-term costs? I repeat a question I have already hinted at: have the Government estimated what these costs are? This comes back to the point that the noble Baroness, Lady Randerson, made: why has an impact assessment not been published? Surely it is stretching the grounds of credibility a bit to suggest that these orders will not have some impact on costs as far as businesses are concerned.

Those are my points on these orders. Like the noble Baroness, Lady Randerson, and my noble friend Lord Hanworth, I look forward to the Minister's response.

8 pm

Baroness Vere of Norbiton: I thank all noble Lords who have contributed to a very thorough debate today. A number of issues have been raised. I will do my absolute utmost to cover as many issues as I possibly can, but of course I will write, as I am already fairly sure that there are certain issues I cannot cover in great detail.

I start with the issues raised by the noble Baroness, Lady Randerson. She started by painting a rather grim picture that this is some sort of a takeover of Kent by the Government. It certainly is not. She mentioned that there has been local consultation, but the request for these powers very much came from the local resilience forum.

Baroness Randerson: I specifically welcomed the fact that there had been local consultation. I am afraid the Minister misheard me.

Baroness Vere of Norbiton: I am sorry if I phrased that incorrectly. I know that the noble Baroness welcomed the local consultation. The point I was trying to make is that this was more than the Government just going to Kent and saying, "What do you think of this?". This was more about Kent saying, "Actually, given what happened with Operation Stack, we'd really like these powers, and if the Government could sort it for us, that would be great". So that is what the Government are trying to do today. As has been mentioned by a number of noble Lords, these powers are available in the event that there is congestion at the border caused by a no-deal Brexit, but they can also be used for bad weather and/or industrial action.

The noble Viscount, Lord Hanworth, noted the use of Operation Stack in 2015. I, too, was unfortunate enough to drive through Kent at the time, and it was a nightmare. It caused great trouble, so we are well aware of the issues that can happen, and they do not have to be Brexit-related. Having said that, however, these powers are limited to 31 December 2020. That is right, in that we would not want to extend powers then leave them hanging for a long period of time if they are not needed in future. Certainly, should we or a Government in the future decide that they are useful and benefit the people of Kent, I would expect similar legislation to be passed again in future, once these powers have fallen away on 31 December 2020.

As I have mentioned, these powers are very much for the benefit of businesses, residents and people who—like me—travel through Kent. They are being made under a variety of different Acts, which is why—I am sure noble Lords understand—one is draft affirmative, one is made affirmative and one is negative. They stem from different parts of our legislative scope and the different things we have available to us. They are a series of instruments and will not come into effect without Parliament's approval, so the negative does not come into effect on its own.

The noble Baroness, Lady Randerson, mentioned the SDOs and referred to three different sites. The SDOs are in place for Manston, which has been in place since January 2019; Ebbsfleet, which has been in place since September 2019 and will be used as an HMRC transit site; and Ashford, which has been in place since September 2019 and is an HMRC transit site and turnback site so that HGVs that arrival at Eurotunnel and are found to be not compliant will have somewhere they can go that will have facilities for them to try to get themselves compliant, so that they can be border-ready and can head across to the border.

The noble Baroness, Lady Randerson, and the noble Lord, Lord Rosser, mentioned empty lorries. These will be treated the same as other lorries. I will be honest with noble Lords: we looked at whether we could treat empty lorries separately, but there are various issues around, for example, packaging. Some packaging, although it is empty, must have the relevant certification with it because obviously there is no way of making sure that that packaging is empty. Therefore things such as beer kegs need some customs documentation. An empty lorry that does not carry beer kegs will not need it.

This brings us on to the general discussion about the documentation needed, who is checking it and how qualified these people are. There are levels—layers—to this entire system. The traffic officers, whether they be temporary or permanent, will look for the existence of certain documents. This is not a shadow French or EU customs operation; they are looking for the existence of the documents. If those documents exist, they assume that that HGV is compliant; it will get a permit and continue. They do not have to be experts. However, I take the point: training is under way and is being done in order that the traffic officers, whether permanent or temporary, recognise the documents that we will require when they get to the border.

The classes of documents we are looking for are fairly straightforward: for travel documents, it is a passport or ID card, and for customs, it is the movement reference number from two different types of document. Only in the case of phytosanitary certificates, export health certificates or export licences for chemicals and drugs will we look for additional documents. The training is under way and will continue. To do the checks, the traffic officers will have screens. It is done online. The software is translated into 11 different languages so that if the traffic officer speaks to somebody who does not speak English but perhaps speaks one of the languages in front of them, we can make sure that the person has the documents and can be on their way with a permit as quickly as possible. To help noble Lords' understanding, the traffic officers are doing the checks; they are also responsible for traffic movements. We are looking to the police for enforcement, not checks, and to the DVSA, which has similar powers.

The noble Baroness, Lady Randerson, went on to talk about the contraflow. We are very seized of the issue that the contraflow brings to the M20. We completely understand that it is not a permanent solution. I can give the noble Baroness some hope. I have seen some proposals for what the permanent solution may be. We are getting to the bottom of them, and I very much hope that in the not too distant future we will be able to share with noble Lords what the permanent solution will be. I do not believe it will be as terrifying—as the noble Baroness mentioned—as driving down that stretch of the M20 can be at this moment in time.

Turning to the local lorries, I suppose there are two issues here. First, there are lorries that need to do a delivery or pick-up within Kent before they proceed to the border. I would expect them to have all the appropriate documents because they are heading to the border. In all this there is an overarching assessment of reasonableness. They should have the right sort of documents. We spoke to the Kent Resilience Forum about the other local lorries, and the police are well aware of the rat-runs that HGVs trying to get to the border might use. They know where people are going. They will not be covering every single road in Kent. Most of the local traders in Kent will be able to get from A to B with no trouble. Many noble Lords have recognised that a lot of these hauliers—well over 80% —will be operating businesses based out of the EU. I suggest to noble Lords that the number plate might be a bit of a giveaway anyway, but of course it is clearly not 100% fool-proof.

I turn to the impact assessment or lack thereof. A de minimis assessment was undertaken with these SIs about the actual or potential imposition of this contingency plan. We followed the approach agreed with Defra advice. The more general issue of potential disruption in Kent in the event of no deal has been assessed by the Kent Resilience Forum with input from the border delivery group and DfT.

I turn to points raised by the noble Lord, Lord Rosser. I have what I hope are some helpful numbers that will put his mind at rest about the additional staff. If operational, it is true that this will need a significant number, but remember that these powers are only needed if Operation Brock is in. We are probably looking at 125 temporary traffic officers. They will do the traffic checks on the M20 and will be on three-month contracts extendable by three months. We will be looking at about 130 DVSA enforcement staff, 60 of whom will come from outside Kent. There will 120 Highways England traffic officers. There will be 350 police officers, 160 of whom will come from outside Kent, given the very well understood structures that exist for when police forces need to help one another. Any deployment from outside the Kent area will be time limited. Appropriate arrangements will be put in place to ensure that roles are covered as people move to different responsibilities.

Lord Rosser: The Minister made reference to 125 traffic officers and three-month contracts that could be extended. Does that indicate that problems may arise immediately after 31 October that the Government think will diminish—not disappear—sufficiently over the three-month period so as to not need 125 traffic officers?

Baroness Vere of Norbiton: The noble Lord is right: if there are impacts from a no-deal Brexit, we expect them to fall away. The issue here is the readiness of traders and hauliers—the former obviously being more important, as they are responsible for the documentation. If a haulier is caught by this system and has to go back to the end of the queue—for not being trader-ready and not having ready the right documents—he or she is unlikely to do that again. I suspect not only that the jungle drums between the different hauliers will be saying, "You need to have your documents ready if you're going to get out of the UK in one piece", but that, because of the work that we are doing with traders to make sure that they are ready as possible, we will see a significant decrease over the three months in the number of hauliers approaching the border who are not ready.

The noble Lord, Lord Rosser, asked how the £300 penalty was built up. He was quite right: it is for every contravention for which that person is caught. However, again there would be a test of reasonableness. If a haulier was consistently breaching the regulations and taking routes that they should not, I suspect that being penalised many times would probably be appropriate, because we have to stop the behaviour. At the end of the day, the hauliers do not want to get to the border without being border ready—so, to a certain extent, this is for their benefit. When the noble Lord asked whether one could look in the back of empty lorries et cetera, it is for the haulier to benefit from getting the permit, so that they can crack on and get to where they want to be. It is not really in their interests to act against what the traffic officers are trying to do.

I turn to communications and guidance. We are in an active programme of communications at this time. As noble Lords will know, communications with traders have already started, as have those with hauliers. We have pop-up stands throughout the country encouraging hauliers to get ready for a potential no-deal exit on 31 October. Guidance for the hauliers will be available shortly, subject to these SIs going through—once that happens, guidance will be available. It will be sent to the haulage associations, with whom we have a very good relationship. As the noble Lord mentioned, we will send it to unions as well. I am not sure of the extent to which this is a highly unionised industry. To the extent that it is, we will make sure that the unions have those documents.

On that subject, we have not specifically spoken to unions about this. We have a good relationship with Unite, for example. In normal circumstances, we find that it generally comes to us if it has specific concerns—we have not heard about any on this. However, at the noble Lord's prompting, we will make sure that they are looped into the information as it is available.

8.15 pm

Lord Rosser: I appreciate that the Minister has not had a chance to get around to answering this point. I am sure that there are a number of areas that unions representing drivers will be interested in. I am sure that they would be interested if it turned out that the working time directive went for a fourpenny one—to use that expression—immediately the severe disruption

[Lord Rosser]
powers were activated. If the Government's answer is that that will be the situation, have the trade unions been advised of that?

Baroness Vere of Norbiton: It is not the Government's intention to suspend the regulations on drivers' hours or any other regulations around working time. We would do it only if we needed to. The noble Lord asked whether they had been suspended before; I am not aware that they have been. I think the issue arises where the rest times for hauliers are often required to be spent outside of the cab et cetera. When they are in a long queue of trucks that is not moving, they will have the opportunity to get out of their cab—although I understand that it might be winter and they may not want to.

Lord Rosser: The context in which I asked whether the powers had been used before—bearing in mind that there is now a reference to severe weather or industrial actions—was about whether they had been used in the context of severe weather or industrial action. If they have not, the power in these SIs is not related purely to Brexit; it is, in fact, a new provision being brought in. In other words, you can use these powers if you want to, in relation to severe weather or industrial action. I do not think that the Minister understands my point. The Government have said that these powers to suspend the working time directive have not been used before. But we have a reference here to the possibility of them being suspended in relation to severe weather or industrial action—which is not something necessarily related to Brexit.

Baroness Vere of Norbiton: I am doing my best, but I might have to go back through *Hansard* to try to understand the noble Lord's exact point. To my mind there are two separate issues here. The first is whether these powers—the operation block enforcement powers—can be used in circumstances of industrial action or severe weather: yes, they can. Secondly, and entirely separately, there is the issue that we might get to whereby drivers' hours or working time directive regulations might need to be suspended. We do not want that to happen, obviously. I thought that the noble Lord had asked whether that had happened before; I am not aware that is has and will have to write to the noble Lord on that. In doing so, I will ask whether those circumstances arose.

I believe that I have covered as much as I am able to today. I will certainly go back through the notes—

Viscount Hanworth: Are the Government confident that they will be able to recruit a sufficient number of officers, with a sufficient commitment to their duties, if they are going to offer only a three-month contract with a possible extension? It strikes me that rather few people would be prepared to accept those terms of employment.

Baroness Vere of Norbiton: The noble Viscount raises an important point, but those people are already recruited. Although it sounds like a huge and responsible role, the temporary traffic officers will have a very specific role—which is for the M20, to do the border-readiness checks. They are recruited and are undergoing training.

Baroness Randerson: I would like to press the Minister for a little more information about what information is currently on the GOV.UK website to help hauliers. The Minister referred to warnings about getting ready for a no-deal Brexit. That brought to mind those irritating adverts on the television that tell you absolutely nothing; they tell you to get ready for a no-deal Brexit but do not say what you should be doing. We need much more precision in this case. Is that information on GOV.UK already, so that hauliers and their employers can look at it?

Baroness Vere of Norbiton: I thank the noble Baroness for reminding me to go back to this. I know that I am not supposed to have extra documents in the Chamber, but I have one here. There is a document, which has been available for quite some time, and there is also a shortened version. This document, *Transporting Goods Between the UK and EU in a No-deal Brexit: Guidance for Hauliers*, is available on pop-up stands as well as on GOV.UK. On the basis of my answers to these questions, and that I will write, I hope noble Lords will see fit to approve these regulations.

Motion agreed.

Heavy Commercial Vehicles in Kent (No. 2) Order 2019

Motion to Approve

8.21 pm

That the Order laid before the House on 4 September be approved.

Relevant document: 61st Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Air Services (Competition) (Amendment and Revocation) (EU Exit) Regulations 2019

Motion to Approve

8.21 pm

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

That the Regulations laid before the House on 5 September be approved.

Relevant document: 61st Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, the Government are working to secure a new

deal with the EU. However, if we have to leave with no deal, the Government are committed to preparing for this outcome.

With regards to commercial aviation, we have already conducted intensive work to ensure that there is a functioning legislative framework and an effective regulatory regime for this critical part of the UK economy. This new instrument will ensure that the legislative framework and regulatory regime for this sector remain robust. The Government have given very careful consideration to the appropriate procedure for progressing this instrument. For the reasons I will shortly outline, it is important to have this instrument in place by exit day. That is why we have selected the "made affirmative" procedure which, while allowing for parliamentary scrutiny, should ensure that outcome. These draft regulations will be made under the powers conferred by the European Union (Withdrawal) Act 2018, and amend EU regulation 2019/712, which sets out an approach to safeguarding competition in air transport.

Fundamentally, this instrument ensures that, w responding to anti-competitive practices, the UK will have the same powers to protect UK airlines as will be available to the EU to protect EU airlines. Previously, regulation 868/2004 provided for redressive measures to be imposed when subsidisation and unfair pricing practices by third-country airlines caused injury to EU airlines. The previous SI on this subject introduced corrections to that regulation to ensure it would apply when the UK left the EU. However, since the extension to the UK's departure from the EU, regulation 868/2004 was repealed and replaced with regulation 2019/712. The reasons given were that the previous regulation was judged to be ineffective in respect of its underlying general aim of fair competition. For instance, there was a lack of definition around the initiation and conduct of investigations or the criteria for doing so.

The new EU regulation provides the European Commission with the power to conduct an investigation where there is prima facie evidence of anti-competitive practices causing or threating to cause injury to EU air carriers. Areas where discrimination could occur include the allocation of slots, administrative procedures and the arrangement for selling and distribution of air services. If such evidence is found, redressive measures can be taken to offset any injury. Such redressive measures include financial duties.

The withdrawal Act will retain regulation 2019/712 in UK law in its entirety on exit day. The draft instrument being considered today makes the changes necessary so that this EU regulation continues to function correctly after exit day. The policy content of the retained regulation will remain substantially unchanged. The changes that have been made are primarily technical and necessary to ensure the correct application of these measures after the UK leaves the EU.

As part of these changes, the UK Civil Aviation Authority will assume some of the responsibilities previously placed on the European Commission. For instance, the UK Civil Aviation Authority will examine and investigate any complaint of this nature. The UK CAA will report on these findings to the Department for Transport, where the Secretary of State will take a decision whether to adopt any redressive measures. Such measures will be adopted by statutory instrument, using the affirmative procedure.

In the event of no deal, the EU could apply its regulation to the UK or its airlines if they were engaged in the practices described in the regulation. Therefore, the changes being made by this SI also ensure that EU member states and their airlines will be subject to the UK's measures. This preserves a level playing field from exit day and is why we have selected the "made affirmative" procedure, which ensures this important measure is in place on 1 November, if required. While we would prefer to leave with a deal, this instrument will ensure that, in any scenario, the UK and UK airlines will have equivalent access to the type of measures EU member states and EU airlines can take against anti-competitive actions. I beg to move.

Baroness Randerson (LD): I thank the Minister for her introduction. I am sure she will be delighted to hear that I have only one substantive question. However, I want to comment in passing that this statutory instrument applies a rule to ensure a level playing field, as the Minister said. It ensures that the CAA will examine complaints in future, rather than the European Commission. The CAA comes in at every possible turn, and I question whether it has the expertise and the resources needed for this. It is used by the Government for a wide variety of activities—everything from repatriating air passengers to space travel—and is therefore extremely broadly stretched. My concern is always that it should be given the resources it needs for this.

The Explanatory Memorandum says that, while the CAA will investigate in future if there is no deal,

"it is possible that the Department for Transport will play a supporting role".

Exactly what supporting role do the Government envisage the Department for Transport playing? It strikes me that this is an unsatisfactory blurring of the edges. The proposal that the CAA does this follows a well-established principle: you have an independent or arm's-length body that investigates a situation, makes a recommendation to the Minister and the Minister makes the decision. However, if the Government now envisage some kind of blurring of the situation, with the Department for Transport involved in a supportive role with the CAA and the Secretary of State making the final decision, you have a mixing of roles in a way that is not normal and which could lead to discussion, argument and even court action if a company is accused of anti-competitive practices. Could we have a little more detail on that from the Minister? That is my significant concern on this.

8.30 pm

Lord Rosser (Lab): Once again, I thank the Minister for her explanation of the content of this SI, its purpose and objectives. As she said, it revokes and replaces an SI already passed by this House and it is necessary because the EU has revoked and replaced its own regulations on this issue. This SI makes the necessary changes to the new version of the EU regulations.

[Lord Rosser]

I, likewise, only have a couple of points to raise. The first relates to paragraph 7.8 in the Explanatory Memorandum, which says:

"In Regulation (EU) 2019/712, it is the Commission that both conducts the investigation and then, if appropriate, pursues redressive measures. The effect of the changes in this instrument is that the CAA will make a recommendation to the Secretary of State following its investigation, and the Secretary of State may then decide to adopt redressive measures. Such redressive measures will be adopted by regulations in a Statutory Instrument, subject to the affirmative procedure in Parliament".

Does the reference to the regulations being adopted in a statutory instrument refer to the form that the redressive measures can take that will be adopted by an SI, or should the redressive measures be imposed in a particular case that will be adopted by the statutory instrument referred to in paragraph 7.8?

Secondly and finally, the "Consultation outcome" paragraph, paragraph 10.1, is not terribly specific about whether the consultation resulted in support from those consulted for this SI or not. For the purpose of clarity, will the Minister say whether any objections or issues were raised about this SI by the aviation industry, the travel industry and consumer representatives, or were they all happy with its content as it stands?

Baroness Vere of Norbiton: I thank both noble Lords for their contribution to this short debate. I hope I will be able to answer all the questions that have been raised. The noble Baroness, Lady Randerson, asked about the CAA. I agree with her—at the moment the CAA can do no wrong in my eyes, quite frankly. It brought our people home without fuss or nonsense and mostly without error—all credit to it for its work on Operation Matterhorn. However, it has the expertise in this area. It is a substantial organisation with a lot of people with expertise in a range of areas and it understands the air services markets particularly well.

The noble Baroness was concerned about resourcing. That is always my concern with the CAA as well. Section 11 of the Civil Aviation Act 1982 permits the CAA to make a scheme for determining charges. These charges would be met by those airlines that would be harmed by the anti-competitive practices. In essence, resources for the CAA would be met by those airlines that would be harmed by this action. Officials have worked very closely with the CAA in the development of this instrument and we believe it is content.

The Department for Transport might have a role in the investigatory stage. It will get involved only if it has the relevant expertise and, as importantly, only if its assistance is requested by the CAA. It is not as though the department will get in there and stick its nose in where it is not welcomed. We do not envisage a proactive role in the investigation. There will be a specific request. For example, sometimes the CAA can feel that it is more appropriate for the DfT to request information from third-party Governments. That sort of request comes better from the Government than from the CAA. But as I said, the department would very much be there in a supporting role.

I turn to the points made by the noble Lord, Lord Rosser, about the SIs that might be tabled in the unlikely event that the CAA recommends that redressive measures should be adopted. I point out to noble Lords that we do not expect that the provisions in this SI will be needed—it is very much a safety net just in case—but if that happens the Secretary of State will put forward regulations in the form of a draft statutory instrument. If there was one airline involved, it clearly would be a single airline instrument that would set out the redressive measures proposed. It would be up to Parliament to decide whether it was appropriate. If there are multiple airlines, they could be within the same SI or they might not be. It would really depend on the circumstances. As I said, it is slightly uncharted territory because these sorts of issues rarely get to the stage where one would use an SI such as this. Usually they would be sorted out in air services agreements much in advance of getting to this stage.

The noble Lord asked about the engagement we have had with industry stakeholders. I reassure him that we meet the aviation industry very frequently. Indeed, I was the Aviation Minister for a while and I had the honour of meeting the industry on many occasions. At each of the groups we had—for example, the round-table meetings we had on 18 February, 10 July and 16 September—we put forward where our future legislative programme might impact the industry to ensure it responds appropriately where it has concerns. I have to be frank: I have found the aviation industry to be extremely responsive. It is represented very well by various trade bodies. For that reason, we believe that there are no concerns, since none was raised with us.

I thank noble Lords for their consideration of these regulations.

Motion agreed.

Operation Midland

Statement

8.37 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat in the form of a Statement the response to an Urgent Question given by my honourable friend the Minister for Crime, Policing and the Fire Service in another place. The Statement is as follows:

"Mr Speaker, this is a deeply concerning case. Operation Midland was the Metropolitan Police Service investigation into allegations of child sexual abuse made by Carl Beech against a range of public figures. Beech is now serving an 18-year prison sentence for perverting the course of justice. He has appealed his conviction and sentence, which is a matter for the courts to consider. This case has had a devastating impact on those he accused and their families.

Sir Richard Henriques's report of how the Met handled this investigation raises many concerns. The Met has already apologised for failings in the investigation and acted on many of Sir Richard's recommendations. We very much welcome the publication by the Met on Friday of the fuller detail of what Sir Richard found. I note that the Commissioner of the Metropolitan Police Service has issued a further statement and apology today.

It is now vital that the public receive independent assurance that the Met has learned from the lessons identified in Sir Richard's report and has made the

necessary improvements. This is crucial in restoring public confidence that police handling and investigation of such sensitive matters is both fair and impartial. That is why my right honourable friend the Home Secretary wrote last week to Her Majesty's Chief Inspector of Constabulary and Chief Inspector of Fire & Rescue Services to ask him to undertake an inspection at the earliest opportunity to follow up on Sir Richard's review.

It must be right that a body independent of the Government takes this work forward. She has also asked that this inspection take account of the findings of the report of the Independent Office for Police Conduct, which was published this morning and which we will be considering carefully.

The public must have faith in the impartiality of their police service, and no one should have to suffer the ignominy of public false accusations of the most heinous kind. This Government are determined to ensure that lessons are learned and that the failings of this investigation are never repeated".

8.40 pm

Lord Rosser (Lab): I thank the Minister for repeating the Answer to the Urgent Question. Clearly, false allegations of serious crimes are deplorable, and all those who promote them without evidence should face the appropriate consequences. However, any lessons that are to be learned from what has happened must not lead to any downplaying of the seriousness or prevalence of the rising crimes of child sexual abuse and serious sexual assault, including rape. We cannot go back to a culture of not believing victims.

There are a few specific questions that I wish to ask the Minister. They concern the reference in the Statement to the inspection that the Home Secretary has asked Her Majesty's Chief Inspector of Constabulary and Chief Inspector of Fire & Rescue Services to undertake. What exactly is he inspecting that would be different from a normal inspection of a force? Will he be taking the findings of the Henriques report as read or will he be able, if he so chooses, to consider whether some of its findings are valid criticisms or comment? What is meant by him taking into account the findings of the Independent Office for Police Conduct report, which has just been published? Does it mean that he will take its findings as read, or will he be able to consider, if he so wishes, whether some of its conclusions or statements are, in his view, valid or not?

Baroness Williams of Trafford: I thank the noble Lord for those questions. On the point about the impact of false accusations on people who are accused, he is absolutely right: the impact must be devastating, and we have heard many a time in this House of people who are falsely accused. It is important in the context of this case to say that the case of Carl Beech is not a typical one. On the contrary, in the context of sexual offences, it is the under-reporting of the crime to the police that is known to be particularly acute. I think that that is what the noble Lord is driving at. He will know that great progress has been made in encouraging people to report crimes. In responding to the issues raised by this case, it is important that we do not undermine this progress, and that victims continue to feel confident about coming forward and that they will be listened to and taken seriously. We do not want any diminution in that, I agree.

Regarding the HMICFRS investigation, obviously, it is a matter for the inspectorate, and we now need to allow it the space to take its work forward as it sees fit. The purpose of the inspection is to consider the Metropolitan Police Service's progress in learning from the points made by Sir Richard's report and the learning recommendations of the IOPC report.

Lord Beith (LD): My Lords, I, too, thank the Minister for repeating the Answer and agree that the inspection could bring some useful results. However, we are still left with the fact that Operation Midland seemed to take no account of the inherent implausibility of so many well-known people supposedly acting together to carry out child rape and murder without the knowledge of anybody except Mr Beech. Is the Minister not worried that there is such a wide gap between the conclusions that Sir Richard Henriques drew and those that the IOPC has drawn?

To give one example, Sir Richard points out that it was possible that senior officers knew full well that no judge would grant the applications for search warrants if they were accurately drafted, setting out the undermining factors, and that junior officers with incomplete knowledge of the operation were deployed to make the applications. That is one example among many of his reaching different conclusions. Surely the Minister cannot be satisfied that there is such a wide gap between the IOPC's conclusions and those of Sir Richard, particularly when the IOPC investigation appears to have been dilatory and lacking interrogation of officers and full examination of documents. Of course, because it was dilatory, some officers would not have appeared in front of disciplinary proceedings, even if they had been recommended. Given the amount of damage done to so many people and their families in this case, can that really be accepted?

Baroness Williams of Trafford: The noble Lord points to the need for an institutional overview in the body of the HMICFRS to look into this. Clearly, the Government will look into its findings. We received the IOPC report this morning and will be looking at it with great interest. He is right that the warrants are the most contentious issue in the Henriques report. Was the district judge misled into signing off warrants to search the homes of Lord Brittan, Lord Bramall and Harvey Proctor? He is clear that the IPCC—now the IOPC—should investigate this issue.

Lord Lexden (Con): In view of the immense public concern created by Operation Midland, with the delay in producing the full report, the further report published today, is it not important that the chief inspector's work proceeds thoroughly but as swiftly as possible? Should he not extend his inquiry to include grave police misconduct during Operation Conifer, when some of the evil fabrications of Carl Beech seemed to have helped besmirch the reputation of Sir Edward Heath? Have the Government noted the resolution I tabled for debate last December, calling on them to

[LORD LEXDEN]
establish an independent inquiry? I have been denied a debate, but I have no doubt that the House would have supported the resolution overwhelmingly. Let the inspector of constabulary examine Operation Conifer.

Baroness Williams of Trafford: To answer my noble friend's question, Operation Conifer has been subject to considerable external scrutiny and although Carl Beech was one of those who made allegations against Sir Edward, Wiltshire police has made it clear that they were discounted by Operation Conifer. Beech's conviction is not therefore relevant to the seven unresolved allegations from the investigation and the Government do not consider that there are grounds to intervene. On my noble friend's point about swift action, I know that the HMICFRS is keen to proceed swiftly.

Nazanin Zaghari-Ratcliffe
Statement

8.48 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 to an Urgent Question asked in another place on the case of Nazanin Zaghari-Ratcliffe. The Statement is as follows:

"I start by congratulating the honourable Lady on her Urgent Question. I also thank her for the passion and persistence that she has brought to Nazanin Zaghari-Ratcliffe's case. Her constituent can be sure that she and her family have been well served by her as a constituency MP.

In recent weeks, we have seen further cases of unwarranted detentions of foreign nationals in Iran. These cases are completely devastating for the individuals concerned and are deeply upsetting for their families. However, we are of course delighted to hear that Joely King, a British-Australian national, has been released from detention in Iran. This is good news, but it invites us to think about others who are detained in Tehran. But equating the cases of foreign nationals in detention in Iran and the cases of British-Iranian dual nationals is unlikely to be helpful, since Iran perceives the two to be quite distinct, and it is Iran with which we have to deal.

We want to do everything we can to resolve Nazanin's case. We also want to see the resolution of the cases of other British-Iranians detained in Iran. The trouble is that the Iranian authorities do not recognise dual nationality. They consider Nazanin simply to be an Iranian national. Consequently, they do not grant us consular access nor give us sight of the legal process or charges, despite all our efforts. The House will be fully aware of the lengthy chronology of representations made at ministerial level on this issue. On 11 September, the Foreign Secretary again raised his serious concerns with the Iranian ambassador to London about Iran's practice of detaining foreign and dual nationals. The Prime Minister raised his concerns with President Rouhani on 24 September, and my right honourable friend the Foreign Secretary did so with Foreign Minister Zarif on 17 September. My colleague Lord Ahmad of Wimbledon hosted an event at the UN General Assembly on 25 September to bring attention to these incredibly important issues; and I did so myself in Tehran earlier this year. I can assure the House that our efforts to raise the plight of those detained with the Iranian authorities at ministerial and ambassadorial level will continue.

It is a matter of deep regret that a country such as Iran, with such a rich history, is failing to uphold its basic international obligations. That this sophisticated and cultured country is arresting individuals on unclear charges, failing to afford them due process and, in some cases, committing acts of torture and mistreatment, not only on dual nationals but its own citizens, is deeply disappointing to put it mildly. Dealing specifically with dual nationals, we are absolutely clear that Iran's behaviour is beyond unacceptable. The treatment of our dual nationals, including Nazanin, is unlawful and unacceptable and it must end. Be in no doubt, this matter remains a top priority for the UK Government. We will continue to lobby at all levels for Nazanin's unconditional release so that she can return to her patient, long-suffering family in the UK".

8.52 pm

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for repeating that Answer. The family of Nazanin Zaghari-Ratcliffe continues to raise concerns over her mental health, and reports emerging today suggest that this may be exacerbated by solitary confinement and being deprived of medicine. Nazanin is awaiting the outcome of her appeal to an Iranian health commission, in which she is seeking release from jail on the grounds of ill health. Can the Minister confirm when the FCO expects the judgment and what exact support is being offered in relation to the appeal?

Lord Ahmad of Wimbledon: I thank the noble Lord for his questions and for the consistent support that has been offered on this important issue. It is difficult to predict the specific date on which we will hear the next update on this matter. However, I can assure the noble Lord that we are offering full assistance to Nazanin Zaghari-Ratcliffe's family. I met Richard Ratcliffe when I was at the UN recently and reassured him again of our full support. As I said in the Statement, we are continuing to raise this bilaterally and internationally, to ensure that we get consistent support. Unfortunately, Nazanin's case is different because the Iranians refuse to recognise dual nationality and regard her as simply Iranian.

Baroness Northover (LD): My Lords, I too thank the Minister for repeating that Answer. Nazanin Zaghari-Ratcliffe is indeed in a desperate situation. As the Minister mentioned, it is expected that her daughter is about to come home, but her exit has not yet been approved. Can he update us as to what the Government are doing? Of course, Gabriella is not a dual national but a British citizen—but obviously, her departure leaves Nazanin in an even more vulnerable position. She had a medical assessment today, as was just mentioned. Can the noble Lord tell us whether she was seen by an independent doctor? Above all, how is the UK working with other countries to try to end this pattern of hostage taking in Iran—a country that we are actually trying to support as the Americans have pulled out of the nuclear deal? In particular, do the

Government regard Nazanin and the others who are being held as hostages under the terms of the UN convention on hostages?

Lord Ahmad of Wimbledon: First, I thank the noble Baroness for her comments and I very much share the sentiments she expressed. She raised the important issue of the return of Gabriella. I am sure that she will understand that I am not going to go into specific details, but I assure her that we are working directly with the family to ensure that Gabriella can come back to the UK at the earliest opportunity. We will continue to work directly in support of that. On her other questions, of course we are working with other countries. The recent release of the dual British-Australian national was very welcome and we will continue to ensure that we share information in this respect.

The noble Baroness rightly raised the issue of the JCPOA. We are also making it very clear to the Iranians that the British Government, along with our colleagues in Europe, are absolutely committed to keeping the JCPOA alive. I assure her that, in our bilateral exchanges with the Iranian Government, this point is reiterated time and again. The continuing taking of hostages, as we have seen, and the holding of detainees in Iran is not helpful to the situation; it works against Iran and against the Iranian people. I assure the noble Baroness that we will continue to ensure that in every case, not all of which receive the publicity that this case has, we will continue to work directly with the families to ensure that when we can agree consular access, we gain that, and, where we do not, we continue to raise the issues of those detainees directly, bilaterally and internationally.

Lord Lea of Crondall (Lab): My Lords, did I understand the Minister to say that within this there is some sort of technical disagreement about the concept of dual nationals? In the UN system, the world's system, the Vienna Convention or whatever, is it possible for a country to say, "We do not recognise the concept of a dual national"? Or is it the position that people recognise that there is such a concept but think it does not apply to them? In the case of Iran, does it not recognise that someone is Anglo-American, or something like that? At the bottom of all this, is there some disagreement about the fact that there is an obligation to accept that there is such a thing as a dual national in international conventions? I am not clear what the answer to that is.

Lord Ahmad of Wimbledon: Perhaps I can help. It is very much down to the countries themselves. We in the United Kingdom recognise the basis of dual nationals and react accordingly. However, the Iranians do not recognise it. If someone is Iranian and British, as in the case of Nazanin, they do not recognise her British nationality; they regard her as Iranian and that is why they do not provide us consular access. There is a difference, quite clearly, in how we view dual nationals in this country and how Iran views dual nationals in Iran.

Lord Lea of Crondall: And that is okay?

Lord Ahmad of Wimbledon: I am sorry—I did not quite catch that.

Lord Lea of Crondall: Is it perfectly legitimate for a country to say that it does not recognise the same concept of a dual national that we and many other countries do? Is it perfectly legitimate to say that it does not recognise that?

Lord Ahmad of Wimbledon: That is Iran's position but not ours.

Baroness Watkins of Tavistock (CB): My Lords, if Gabriella is successfully repatriated to this country, which appears to be desirable, it is pretty clear that that will disproportionately affect the mental health of her mother, who has said very publicly that the visit, once a fortnight, is what keeps her going. I think any mother or father would still wish their child to return to the UK under those circumstances, but I wonder whether we could make a significant offer of immediate mental health support for her mother if she were repatriated to this country. Indeed, I wonder whether somebody, either from this House or a very distinguished nurse or psychiatrist with experience and a mental health background—noble Lords will know that I have 40 years of such experience—would be willing to support the mother in her return if that would help Iran in any way in considering repatriating her on mental health grounds. I am sure that many people in this House would be willing to support such a venture: I know I would, and I know of at least one psychiatrist who would as well.

Lord Ahmad of Wimbledon: On the return of Gabriella, speaking as a parent I know that the hardest choice that a parent has to make is sometimes separation. That applies to any parent, father or mother, if they need to make a sacrifice for their child. I am sure that that sentiment is very relevant to anyone who has experienced parenthood: their first thought would be for their child. I cannot speak for either Richard or Nazanin, but having met Richard, I know where he stands on these issues.

On the other point, I very much welcome the noble Baroness's suggestion. We seek the return of Nazanin at the earliest opportunity and she will be afforded every support when she returns to the UK. The sad reality is, however, that this issue does not hold with the Iranians. They are preventing a mother being reunited with her daughter and a family reuniting altogether. That is why we implore the Iranian authorities, and we will continue to do so, leaving no stone unturned, to ensure that we eventually see the safe return of Nazanin Radcliffe to her family here in the United Kingdom.

Baroness Northover: May I press the Minister further? He did not answer my question on whether the Government regard Nazanin and others being held in Iran as hostages under the terms of the UN hostages convention.

Lord Ahmad of Wimbledon: I know that she has the status of a detainee. I cannot say anything more specifically because I do not want to speak inappropriately and I want to ensure that I get the right answer to the noble Baroness, so I will write to her specifically on that issue.

House adjourned at 9.02 pm.