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The following abbreviations are used to show a Member's party affiliation:

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

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

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House of Lords

Monday 16 November 2020

The House met in a hybrid proceeding.

1 pm

Prayers—read by the Lord Bishop of Salisbury.

Retirement of a Member: Lord Ahmed

Announcement

1.07 pm

The Deputy Speaker (Lord Lexden) (Con): My Lords, I should like to notify the House of the retirement, with effect from 14 November 2020, of the noble Lord, Lord Ahmed, pursuant to Section 1 of the House of Lords Reform Act 2014.

Arrangement of Business

Announcement

1.08 pm

The Deputy Speaker (Lord Lexden) (Con): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, respecting social distancing, others are participating remotely, but all Members will be treated equally. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Oral Questions will now commence. Please can those asking supplementary questions keep them to no longer than 30 seconds and confined to two points? I ask that Ministers' answers are also brief.

Covid-19: University Students

Question

1.09 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government what assessment they have made of the impact on the spread of Covid-19 of students returning to their universities.

Lord Parkinson of Whitley Bay (Con): My Lords, the virus has the potential to affect all corners of society and we all have a role to play in reducing the risk of transmission. The Government have provided detailed guidance on reopening to the higher education sector, informed by SAGE, and have ensured that universities have outbreak plans, have bolstered testing provision and are planning for the end of term and the return of students in January. We are keeping the position under review and are monitoring developments closely.

Lord Storey (LD) [V]: The Minister will be aware of the outbreak of Covid cases in universities and colleges across the UK, with students having to self-isolate, often in very difficult circumstances. Can he give an assurance that there will be sufficient testing capacity for students returning home for Christmas? What plans do the Government have for testing every student again before they return to their colleges and universities in January so that they are kept safe, as well as those in the communities in which they live?

Lord Parkinson of Whitley Bay (Con): My Lords, we have established walk-through testing sites and deployed mobile test sites so that almost all universities are within 1.5 miles of a testing site. This means that staff and students alike will have access to tests if they develop symptoms. As part of our ongoing work, we have also started a series of pilots on lateral flow tests and are working with the Department of Health and Social Care to target mass asymptomatic testing at universities. The ambition is to work with universities to build testing provision, including through the use of lateral flow devices.

Viscount Hanworth (Lab): My Lords, the advice of the SAGE committee in September was that unless teaching in colleges and universities was moved online, Covid outbreaks in them would be inevitable. Given what has transpired there is now the likelihood that, after Christmas, many students will remain at home. Can the Government assure these students that they will not be bound by contracts for accommodation that they do not need, and will they also indemnify universities against the claims of companies that have provided new-build student accommodation for rents that they have been guaranteed?

Lord Parkinson of Whitley Bay (Con): My Lords, throughout the pandemic we have been working closely with universities to make sure that they have plans in place locally, shared with local directors of public health, to manage the specific risks in their area. We have been keen to keep universities open so that students and young people are not putting their lives on hold or finding that their education is disrupted. We are therefore keen for face-to-face teaching to continue as much as possible. Universities have risen to the challenge by providing a blend of online teaching and of course by working closely with students on accommodation and other issues.

Baroness Fox of Buckley (Non-Afl): My Lords, last week, 192 academics from the University of Manchester wrote to the vice-chancellor saying that they were ashamed and humiliated at the erection of a metal fence literally locking students into their residences. The student slogan said it all: "Paid, Blamed, Caged." This incident might be extreme, but it is not a one-off. Will the Minister explain to vice-chancellors that such invasive and heavy-handed security measures are not necessary when Covid is not a lethal risk to the lives of students? I also draw the attention of noble Lords to a letter from a student, Harry Butcher, to the UCU noting the limitations of low-quality online teaching. He says

"how impossibly demotivating it is to be educated in front of a laptop; most likely in the same room that you sleep … sat on a chair half a metre from your bed."

Can the Minister encourage more face-to-face teaching, because it is both safe and necessary?

Lord Parkinson of Whitley Bay (Con): On the first question put by the noble Baroness, I saw the occurrence at Manchester University, but that was a decision made by the university and was not encouraged in government guidance. I understand that the university is undertaking an inquiry of its own on the decision that it took and the communications around it. That will be reported by the end of this month so that it can learn the lessons it needs to. On face-to-face teaching, the Government's expectation is that high-quality education should be maintained. Moving delivery online does not automatically mean that the quality of the provision is inferior, but we are keen to see face-to-face teaching, particularly in those subjects where that is important. The Office for Students has a role in monitoring this. It is keeping the matter under active review and, if it has any concerns, it can investigate further.

Baroness Warsi (Con) [V]: My Lords, I draw the attention of the House to my relevant interests as set out in the register. Could my noble friend update the House on the progress of the plans for the mass testing of students in readiness for the travel window proposed for early December? What is the Government's thinking on the arrangements that will be put in place for the return of students to universities in the new year?

Lord Parkinson of Whitley Bay (Con): On 7 November, my honourable friend the Universities Minister wrote to the universities with details on the mass testing programme. We are working closely with the sector on that, targeting mass testing at universities based on factors such as the local prevalence of Covid-19 and the proportion of high-risk students at their institutions.

Lord Clement-Jones (LD): My Lords, as the chair of a university governing body, I pay my own tribute to the staff and students in universities who are adapting so well to these exceptionally difficult conditions, and I welcome the Christmas travel window guidance. But urgent guidance is needed so that staff and students are able to return after Christmas, to ensure minimum disruption of the new term. When will that be available?

Lord Parkinson of Whitley Bay (Con): My honourable friend also wrote this week to universities and to students about the plans for returning home for Christmas at the end of term. The noble Lord is absolutely right that people will want a bit of certainty about the resumption of education in January. Our hope is to be able to provide that guidance before the end of term so that everyone knows the situation going into the Christmas holidays. But of course, like everything, that will depend on developments in the virus and the pandemic.

Baroness Blackwood of North Oxford (Con) [V]: My Lords, rolling out mass testing in time for the proposed travel window, even in a targeted manner, is an enormous undertaking, so universities are naturally keen to understand the details. For example, will students be required to have two negative tests, as in Scotland, before being cleared to travel, or will one suffice? Also, will there be any liability on universities?

Lord Parkinson of Whitley Bay (Con): My Lords, we are working closely with universities in line with the guidance that my honourable friend the Universities Minister has released. We are also working with the devolved Administrations and the Department of Health and Social Care. The guidance for students in England is that only one negative test is required.

The Earl of Clancarty (CB): My Lords, what arrangements are the Government advising universities to carry out in the way of practical and mental health matters for students isolating at university, including over the Christmas period? Student Space may be able to advise on who is around, but the right people, not just fellow students, need to be close by in the first place.

Lord Parkinson of Whitley Bay (Con): The noble Earl is absolutely right to point to the problems that many students are facing in mental health and well-being. Student Space, with funding from the Office for Students, is helping, while higher education providers can also access the £256 million-worth of funding for this academic year that is to go towards student hardship funds and to provide support for the mental health of those affected by the pandemic.

Lord Bassam of Brighton (Lab) [V]: My Lords, it has been tragic to hear the stories of so many Covid outbreaks at universities, which have clearly impacted on learning and on students' mental health. Universities were asked to plan for a return based on a fully functioning test, track and trace programme, which did not happen. Can we be assured that the lateral flow devices will be available to universities? How many of them will need to be provided? What steps will the Government take to ensure a safe return in January, with a staggered returning system? Will students require a testing service in the January period?

Lord Parkinson of Whitley Bay (Con): My Lords, part of our work is developing new testing technology. We have already started a series of pilots on lateral flow tests and are working with universities and the Department of Health and Social Care to roll them out. We welcome the efforts of universities to develop their own testing, which have shown the sort of innovation that we would expect from universities.

Baroness Thornhill (LD) [V]: My Lords, I offer a local government slant. How much consultation was done with local authorities before the decision was made to take the "business as near to normal as possible" approach? Were there any financial considerations given to those towns and cities that rely heavily on university students as part of their local economies, as they will surely be affected?

Lord Parkinson of Whitley Bay (Con): We have required universities to have plans in place which have been signed off by their local directors of public health. This has obviously involved liaison with local authorities, local representatives and health professionals in their local areas.

The Deputy Speaker (Lord Lexden) (Con): My Lords, the time allowed for this Question has now elapsed.

Child Trafficking

Question

1.19 pm

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

To ask Her Majesty's Government what assessment they have made of the efficacy of the process for child victims of trafficking to seek leave to remain in the United Kingdom.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, UK children continue to account for a large proportion of national referral mechanism referrals. Children from overseas who are victims of trafficking may benefit from a grant of leave to remain under a number of different routes, depending on their individual circumstances. Unaccompanied children are only ever returned to their country of origin if safe and adequate reception arrangements are in place.

Lord Roberts of Llandudno (LD) [V]: The Minister will be aware of the ECPAT UK report in the *Guardian* which spoke of those seeking solace in this country between 2016 and 2019. Of the 4,695 victims of people trafficking who applied for status in the UK, 2,000—half of them—are likely to have been children, yet only 28 were granted leave to remain in the UK? Why only 28? Also, what has happened to the other 2,000 who applied? Does the policy remain the same, or will we have a change of policy and a bigger heart?

Baroness Williams of Trafford (Con): I assure the noble Lord that we have a very big heart indeed; 81% of decisions on asylum claims from unaccompanied children resulted in a grant of some form of leave, 75% of which were grants of asylum or humanitarian protection. The article to which he refers is slightly misleading, in that many of the children who come to this country get leave under asylum grants.

Lord Wigley (PC) [V]: My Lords, can the Minister publish and place in the Library a copy of the analysis that she has just given? She indicated that the situation is very different from the figure of 28 to which the noble Lord, Lord Roberts, referred. Given the Prime Minister's announcement last week that he wished to see a kinder, gentler, more inclusive approach by his Government, would this not be the right place to start? With Christmas coming, can the Government not give some good news to these children?

Baroness Williams of Trafford (Con): I hope that I have explained that the broader context shows this country to be incredibly generous. The FoI might be looked at again to provide that broader context analysis. I am sure that it will be placed in the Library for noble Lords to see.

Baroness Buscombe (Con) [V]: Can my noble friend confirm whether the Home Office removes unaccompanied children, including victims of trafficking?

Baroness Williams of Trafford (Con): As I said to the noble Lord, Lord Roberts of Llandudno, it is important to highlight that 75% of unaccompanied asylum-seeking children who seek protection are granted it. It is our long-standing position that we will return unaccompanied children to their country of origin only where it has been established, including by the courts, that the child has no lawful basis to remain in the UK and where safe and adequate arrangements are in place in their country of origin.

Baroness Goudie (Lab) [V]: My Lords, child victims of human trafficking should always be considered for the grant of leave to remain in the United Kingdom, as was agreed some time ago, indefinitely. Their best interests should be looked at as the primary factor in determining their length of stay or whether they stay indefinitely. They are victims of a crime. They do not choose to be trafficked.

Baroness Williams of Trafford (Con): I am not sure what the question was. All I can say is that I absolutely agree with the premise that, first and foremost, they are victims of a crime. In supporting them, that is exactly how they should be treated—as victims first.

Lord Dholakia (LD): My Lords, human trafficking is more lucrative than indulging in drugs. There is substantial evidence that women are brought into this country, particularly from countries such as Romania, and used for sexual trafficking by those who exploit them. Now that we have anti-slavery legislation, what is being done to stop the vile trafficking in human beings?

Baroness Williams of Trafford (Con): The noble Lord is absolutely right that crime is at the heart of this and that women play a big part in the lucrativeness of that crime. We have our modern slavery Bill, and the Home Secretary will be having further discussions with my noble friend Lord McColl on how we deal with victims of trafficking. This country has been a very safe refuge for people genuinely fleeing traffickers.

Baroness Sanderson of Welton (Con): My Lords, where does the backlog on NRM cases currently stand? How long does my noble friend estimate it will take to clear?

Baroness Williams of Trafford (Con): The single competent authority recently launched a recruitment campaign to bring in 371 new operational staff members. This will significantly reduce the decision-making period so that victims can be given certainty, which is absolutely right.

Lord Rosser (Lab) [V]: The Minister said that the figures quoted by the noble Lord, Lord Roberts, were misleading. Could she give some more specific information? How many identified child victims of trafficking were denied leave to remain by the Home Office between 2016 and 2019? Are they in the tens or

[Lord Rosser]
the hundreds? How many identified children of human trafficking have been deported by the Home Office over the last four years?

Baroness Williams of Trafford (Con): As I said to the noble Lord, Lord Roberts, the grant rate is 75%. No child is deported; a child will be returned to their country of origin only if there are safe and adequate reception arrangements in place. It is important to realise that there is a far more generous leave provision under an asylum claim than under discretionary leave to remain. Discretionary leave to remain is always the last consideration and leave of asylum is quite often the first—and a far more generous—one.

Lord McColl of Dulwich (Con) [V]: My Lords, the importance of certainty and stability for victims of modern slavery cannot be overestimated. Not having a secure immigration status not only causes great anxiety and harms the well-being of victims but means that they are unlikely to engage with police investigations, with vital intelligence and evidence thereby being lost. When will the Government offer all confirmed victims of modern slavery a guaranteed period of leave after they leave the support of the victim care contract?

Baroness Williams of Trafford (Con): I agree that certainty is crucial for anyone who has undergone such a trauma. A discretionary leave to remain provision is already in place. On the question of when a conclusive grant decision is made, this Government are committed to supporting people who have undergone that trauma, but the two do not necessarily go together. Sometimes they do, but we should not conflate immigration with the support needed for victims of modern slavery. They do not necessarily go hand in glove. However, I understand my noble friend's premise—that people need support when they are most vulnerable.

Lord Dubs (Lab) [V]: My Lords, the Minister referred on more than one occasion to the generosity of the British Government in that 75% of unaccompanied child refugees are given a status to remain here, usually asylum status. Does she not agree that the majority of them have been trafficked, and that it would be far better to give them safe and legal routes to the UK rather than having them become victims of traffickers, with all the risks of the dangerous journey across the channel?

Baroness Williams of Trafford (Con): The noble Lord goes to the heart of the problem: traffickers are at the heart of all these awful crimes, some of which result in the deaths of people crossing the channel and suchlike. Safe and legal routes are at the heart of our philosophy, as my right honourable friend the Home Secretary has laid out.

The Deputy Speaker (Lord Lexden) (Con): My Lords, the time allowed for this Question has now elapsed.

Visas: Visitors from Peru

Question

1.30 pm

Asked by ***Baroness Coussins***

To ask Her Majesty's Government what plans they have to remove visa requirements for visitors to the United Kingdom from Peru.

Baroness Coussins (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as president of the Peru Support Group.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, there are no plans to change the visa requirements for citizens of Peru. Visas are a key part of the UK's border and national security system. The UK keeps visa regimes under regular review. A visa regime does not set a higher bar; it merely changes where the decision is made.

Baroness Coussins (CB): My Lords, the UK is now the largest foreign investor in Peru, and the Government agree that they should strengthen their engagement with the Pacific Alliance, of which two other members, Mexico and Chile, are visa free. The requirements for Peru inhibit business, academic exchanges and tourism. Out of enlightened self-interest, would the Minister agree that on all economic and security criteria it is time now to restore visa-free status to Peru or, at the very least, remove short-term visa requirements as recommended by the international relations committee report last year?

Baroness Williams of Trafford (Con): My Lords, a visa regime is not necessarily a barrier to trade. We have really good trading relationships with many countries whose citizens require a visa to come to the UK. All non-EEA visitors to the UK are assessed against the same immigration rules, regardless of their nationality and whether there is a visa requirement. The processing times are very quick: 97% of non-settlement visa applications were decided within our 15-working-day processing time. As I have said before to the noble Baroness, we keep the regime under review.

Baroness Anelay of St Johns (Con): My Lords, in keeping the visa regime under review, have Home Office Ministers had discussions about the position of visas for Peruvian citizens with the Prime Minister's trade envoy, Mark Menzies MP, and the DIT's trade commissioner? If not, would my noble friend agree to facilitate such meetings?

Baroness Williams of Trafford (Con): My noble friend obviously thinks I am far more influential than I am, but I know that bilateral relationships are very good with the countries that she mentioned. Those are certainly the sorts of countries with which we would like to see further trade relationships continue and expand.

Viscount Waverley (CB) [V]: [*Inaudible*.]

Lord Ashton of Hyde (Con): My Lords, we cannot hear the noble Viscount, Lord Waverley, in any meaningful sense, so I suggest we move on to the next speaker.

Lord Reid of Cardowan (Lab): My Lords, responding to the report that the noble Baroness, Lady Coussins, referred to from the international relations committee, on the United Kingdom and Latin America, the Government accepted the assertion of the committee that there is huge commercial potential in a relationship with Latin American countries. Indeed, they went further, saying that

"Latin America has huge potential for trade and investment with the UK. As we leave the EU, we … have been increasing our focus on Latin America."

Given that that is absolutely contemporary, would it not be beneficial from that point of view to have a more flexible and less restrictive regime? Will the Minister—who I am sure is far more influential than she admitted—press for that in any future review?

Baroness Williams of Trafford (Con): Since the noble Lord asked so nicely, I will certainly take that back. I do not disagree with him at all that Latin America has great potential. I went to Mexico last year and I know that the Foreign Secretary has had talks with Peru. There is great untapped potential.

Lord Alderdice (LD) [V]: My Lords, I draw attention to my involvement with the Peru Support Group in the UK. The Minister indicated that security concerns were a prime issue in maintaining visas for Peruvian citizens coming to the UK. In 2016, Peru introduced a world-class biometric passport that complies with international security and control standards. Surely we now have the technical facilities needed to ensure that visa-free travel between Peru and the UK can be secure, or is there some other requirement that Her Majesty's Government are looking to be fulfilled in order to facilitate visa-free travel—if so, what is it?

Baroness Williams of Trafford (Con): A number of considerations are taken into account when decisions are made to review visa requirements. They include, among other things, security compliance returns and prosperity. The noble Lord will understand that I cannot discuss the fine details of visa review changes on the Floor of the House, but these are just an example of some of the things that might be considered.

Lord Kennedy of Southwark (Lab Co-op): My Lords, following on from the point made by my noble friend Lord Reid of Cardowan, travel to the UK has understandably been devastated by the Covid-19 crisis, with knock-on damage to the economy through lost revenue and from reduced business, academia, commerce, tourism and travel. In the light of that, what action are the Government taking to ensure that there are no unnecessary barriers to Peru, Latin America or anywhere else in the world, so that, when we can enjoy travel again, trade and commerce can take place unhindered?

Baroness Williams of Trafford (Con): I can agree with almost everything the noble Lord says. Travel has been absolutely devastated and economies have been devastated through this period. I also agree with him that travel should be made as easy as possible, with no barriers in place. Having a visa requirement is not, in and of itself, a barrier. As I say, the grant rates are very high, and speedy, and visa requirements are kept under review.

Baroness Hooper (Con) [V]: My Lords, in asking whether the Home Office ever speaks to the FCDO or the Department for International Trade—or indeed, as has been said, to the Prime Minister's trade envoy—I would also like to ask about the Department for Education. The number of students coming from Peru is currently diminishing. The process of getting a visa is lengthy and expensive, and the fact that Peru is treated differently from most other countries in Latin America for visa requirements is perceived as presenting a difficulty.

Baroness Williams of Trafford (Con): My Lords, as I say, a visa is required if you come to the UK from China, India, Turkey and the UAE. A visa should not be a barrier to travel. I understand the feeling that, if there were no visas, it would be better, but the situation is kept under review. I am sure there are noble Lords in this Chamber who look forward to the day when travel from Peru is visa free.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, to quote the UNHCR, Peru remains an important host country for large numbers of refugees. In the light of that, what changes do Her Majesty's Government plan to make in Peru and other places around the world in response to the British Red Cross report last week on family reunion visas titled *The Long Road to Reunion*, calling for an initial online application process, noting that the cost, dangers and distance of travel to the visa application centre were the main challenges faced by families?

Baroness Williams of Trafford (Con): My Lords, I understand the noble Baroness's point about visa application centres and some of the distances that people have to travel. We continually review our global visa operation to improve performance and accessibility so that people can make their applications as easily as possible.

The Deputy Speaker (Lord Lexden) (Con): My Lords, the time allowed for this Question has now elapsed.

UN Convention on the Rights of the Child

Question

1.41 pm

Asked by ***Baroness Massey of Darwen***

To ask Her Majesty's Government what plans they have to incorporate the United Nations Convention on the Rights of the Child into legislation.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, the Government are fully committed to protecting and promoting children's rights. Our existing domestic legislation already protects children's rights. We have acted to strengthen and

[Baroness Berridge]
enhance legislation, including through the Children Acts 1989 and 2004, secondary legislation and statutory guidance to promote children's welfare. It is not usual practice in the UK for international treaties to be incorporated into domestic law, and we therefore do not have plans to incorporate the UNCRC into legislation.

Baroness Massey of Darwen (Lab) [V]: My Lords, last year, Ministers stated that the promotion of children's rights is essential and promised to redouble their commitments to strengthening protection for children. We have been consistently criticised by the Committee of Ministers for deficiencies in our implementation of the UNCRC. Wales has now committed to incorporate the convention into legislation; Scotland is working on this. What is England doing? Statements of intent are not enough.

Baroness Berridge (Con): My Lords, since the UK ratified the United Nations Convention on the Rights of the Child in 1992, successive Governments have not incorporated it directly into domestic law. However, breaches of that convention can form the basis of actions in the domestic courts, and we have taken seriously any criticisms from the UN in relation to protecting children's rights here in the UK.

Lord Haskel (Lab) [V]: My Lords, in the Second Reading debate on the CHIS Bill, the Government made it quite clear that in order to catch criminals and terrorists, they will continue to permit the use of children in covert and, yes, even criminal activities. This is despite the acknowledged danger to their mental and physical well-being, even with the promised safeguards. Is the reason why the Government will not incorporate the convention and make the well-being of the child paramount that they would have to stop the use of children in those activities?

Baroness Berridge (Con): My Lords, I have outlined the usual practice, which is why this convention is not incorporated directly into domestic law. As the noble Lord outlined, there are safeguards in relation to juveniles in those circumstances. We are known throughout the world as having one of the best systems to protect the rights of children in law.

Baroness Walmsley (LD) [V]: Last week, the Scottish Government put an end to the legal defence of justifiable assault, which could be used by those committing violence against children. Will the UK Government follow suit and put an end to the equivalent defence of reasonable chastisement, which is against the convention and confusing to parents, and which discriminates against some children?

Baroness Berridge (Con): My Lords, the Government of course do not condone any violence against children and have clear laws and policies to deal with it. We have one of the best children's social care systems in the world. There are no plans to legislate to remove this defence in England.

Lord Lucas (Con) [V]: My Lords, since 1995, when more than 800 children gathered in the UK for the first United Nations pilgrims' conference on the environment, the United Nations' willingness to listen to children's voices has greatly declined. Will my noble friend encourage the UN and our COP 26 team to change this and listen to children's voices at scale next year?

Baroness Berridge (Con): My Lords, the voices of children domestically and on international platforms are course important—we can look at the role models of Malala and Greta Thunberg in this regard. We are working closely with the Italian Government, our partners, on the pre-COP youth event in Milan, where we will bring together 400 youth delegates. The Cabinet Office has already set up a dedicated youth engagement team responsible for co-ordinating our strategy to ensure that youth voices are heard at COP 26 and in its legacy.

Baroness D'Souza (CB) [V]: My Lords, while I continue to hope for a full and direct incorporation of the CRC into domestic law, will the Government now make statutory provision for school holiday meals and well-being activities for children in need? Given the forthcoming spending review, will the Government, as promised in 2018, commit the total income from the sugary drink tax to a healthy school food fund?

Baroness Berridge (Con): My Lords, since the outbreak of the pandemic, the Government have spent more than £340 million on food vouchers for those who needed free school meals while schools were closed. There has also been the recent announcement of £170 million for the Covid winter grant scheme, and 80% of that fund is reserved for food and bills for the most disadvantaged families. The money is to be distributed by local councils, not schools.

Lord Watson of Invergowrie (Lab): My Lords, I have to say that the Conservatives' commitment to children's rights is very much open to question, not least since 2018, when the post of Minister for Children and Families was downgraded from Minister of State to Under-Secretary level. The Government have refused to introduce a statutory obligation to conduct children's rights impact assessments on all new legislation, despite being called on to do so by the United Nations Committee on the Rights of the Child in 2016 and the Government-appointed Children's Commissioner in 2019. This Friday is UNICEF's World Children's Day. Would that not be a suitable occasion for the Government to announce a change of heart?

Baroness Berridge (Con): My Lords, as I outlined, the UK Government take seriously the input from the United Nations. Children's rights impact assessments have been devised in accordance with the recommendation in 2016 and are valuable in enabling civil servants—who have also undergone training—to consider children's rights in policy and legislation. So the recommendation has been enacted, but it will not be put on a statutory basis. We have taken other measures that were advised, such as updating in 2018 the statutory guidance *Working Together to Safeguard Children*.

Baroness Tyler of Enfield (LD) [V]: My Lords, the Civil Service training on children's rights that was introduced in England in 2018, to which the Minister

has just alluded, was a welcome step but was not mandatory. Can she say how many civil servants have now completed the training and whether it is available in all departments, and is the Department for Education actively monitoring the take-up of the training and its effectiveness?

Baroness Berridge (Con): My Lords, the training was one of the recommendations from 2016. I will have to write to the noble Baroness on her specific questions.

The Lord Bishop of Durham [V]: Regarding the voice of children and young people, if Article 12 had been in law, what might their input have been on their own situation in schools, universities and the like through the pandemic?

Baroness Berridge (Con): As I outlined with regard to the UN Convention on the Rights of the Child, there are protections in domestic law, and we have protected children's right to education. Our schools, unlike those in many countries, were open to vulnerable children during the pandemic, and I am pleased to say that 83% of children who were in contact with a social worker were in school as of 5 November. Moreover, by the time delivery is complete, over 500,000 laptops will have been delivered to enable disadvantaged and other children to access education.

Baroness McIntosh of Pickering (Con) [V]: My Lords, at Second Reading of the CHIS Bill there was great unease and unhappiness at the seeming lack of protection for children who are used as CHIS agents. Will my noble friend explain, in view of these concerns, what special protections the Government envisage, as the Bill proceeds, for children in these circumstances?

Baroness Berridge (Con): My Lords, there are safeguards, as I have outlined, but I will have to write to my noble friend on the specific issue of protection. We have invested substantially in relation to children who are vulnerable to becoming victims of county lines crime, but I will have to come back to my noble friend on her specific question about covert human intelligence sources.

Baroness Kidron (CB) [V]: My Lords, I declare my interest as chair of the 5Rights Foundation. During the passage of the Data Protection Act 2018 this House introduced an amendment to create a data protection regime for children which specifically bound the legislation to the UNCRC. This provided an impenetrable barrier from what was to become a co-ordinated attack of global tech companies trying to water down the protections. It was impenetrable because government regulators and officials were bound by the convention being part of the legislation. Does the Minister accept that spoken assurances from government would not in this case have protected children to the same degree, and therefore that that explains the reluctance of Her Majesty's Government to incorporate the protections of the UNCRC as a norm?

Baroness Berridge (Con): My Lords, the Government's position is that the protections afforded by the UN convention are already present in domestic law. Specifically on the *Online Harms* White Paper, there will be a response later this year, and we plan to legislate to introduce a new duty of care on companies which will be overseen by an independent regulator. Protecting children is at the heart of what we are seeking to do in that regard.

The Deputy Speaker (Lord Lexden) (Con): My Lords, the time allowed for this Question has now elapsed.

Covert Human Intelligence Sources (Criminal Conduct) Bill

Order of Consideration Motion

1.53 pm

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

That it be an instruction to the Committee of the Whole House to which the Covert Human Intelligence Sources (Criminal Conduct) Bill has been committed that they consider the bill in the following order: Clauses 1 to 3, Schedule 1, Clauses 4 and 5, Schedule 2, Clauses 6 and 7, Title.

Motion agreed.

1.54 pm

Sitting suspended.

Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2020

Motion to Approve

2 pm

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

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

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, in this group of three statutory instruments, the first relates to type approval and the remaining two to carbon dioxide emissions from cars and vans and heavy duty vehicles or HDVs. The instruments have been considered by the Secondary Legislation Scrutiny Committee and the Joint Committee on Statutory Instruments, and neither drew them to the attention of your Lordships' House.

First, the Road Vehicle and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2020 will be made under the European Union (Withdrawal) Act 2018 and the Road Traffic Act 1988 and are needed for the end of the transition period. This instrument amends the previous regulations relating to type approval approved by your Lordships' House on 20 February 2019, which I will call the 2019 regulations.

There are two main areas of amendment in this first SI. The first is to change the regulations so that they apply in Great Britain and not in Northern Ireland. This is to implement our Northern Ireland protocol obligations and is so that we maintain control

[Baroness Vere of Norbiton]
over the registration of vehicles and ensure unfettered access to Great Britain for businesses in Northern Ireland after the transition period.

Currently, most new vehicles can be registered and placed on the UK market only with a valid EU type approval. Existing EU exit legislation provides for a provisional UK-wide type-approval scheme to maintain control of vehicle registration after the transition period. It must now be amended to implement our Northern Ireland protocol obligations. The protocol applies EU type-approval legislation to Northern Ireland, so this instrument disapplies the 2019 regulations in Northern Ireland, essentially leaving the status quo in place there, while ensuring unfettered access for goods produced in Northern Ireland to the GB market. Vehicles sold in Northern Ireland will continue to be registered using an approval issued against EU standards, either by an EU authority or by the UK's Vehicle Certification Agency, known as VCA.

The second area of amendment in this SI is that it removes an EU restriction limiting the height of mass-produced vehicles and trailers to four metres. This rule was introduced by the EU to protect infrastructure such as overhead tram wires in some member states. Manufacturers can currently produce vehicles taller than four metres for the UK, such as double-decker buses, but must use a more cumbersome national approval scheme that is designed for low-volume producers. This change will allow the main type-approval scheme to be used, which is more straightforward and economical for manufacturers.

The second instrument in the group is the Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2020, covering the setting of carbon dioxide emission targets and their enforcement on new car and van manufacturers. These regulations will create requirements in Great Britain only, given that they are also covered by the Northern Ireland protocol.

EU regulation establishes mandatory fleet average carbon dioxide emissions targets for all new cars and vans registered in the EU per calendar year. Manufacturers receive individual fleet targets based on this top-level target by comparing the average weight of their fleet against the average weight of all relevant vehicles registered in the EU. As only the fleet average is regulated, manufacturers may sell vehicles with emissions above their target, provided that the emissions of their entire fleet balance out. Fines are levied on manufacturers for non-compliance.

The draft instrument corrects deficiencies in the EU regulation as well as in associated delegated regulations and implementing decisions, providing the Government with the ability to set and enforce emissions targets that are

"at least as ambitious as the current arrangements for vehicle emissions regulation",

which the Government committed to in 2018. It also amends a prior EU exit SI, the Road Vehicle Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2019, reflecting changes to the EU regulation since that SI was laid.

Finally, the New Heavy Duty Vehicles (Carbon Dioxide Emission Performance Standards) (Amendment) (EU Exit) Regulations 2020 establish carbon dioxide reduction targets for new heavy duty vehicles or HDV fleets designed to encourage the uptake of zero-emission vehicles and to promote efficiency improvements in new internal combustion engines. There are no Northern Ireland protocol considerations with this instrument.

Manufacturers receive individual fleet targets that match the EU-wide carbon-reduction targets in the legislation. As only the fleet average is regulated, manufacturers may sell vehicles with emissions above their target, again provided that the emissions of their entire fleet balance out. Fines will be levied on manufacturers for non-compliance from 2025.

As with cars and vans, this instrument ensures that the Government can set and enforce emissions targets on new HDV manufacturers that are

"at least as ambitious as the current arrangements".

It also amends a 2019 EU exit SI on the collection of data from new HDVs to reflect subsequent changes to EU legislation.

The changes made in the type-approval and the carbon dioxide emissions standards SIs ensure that we retain control of the registration of vehicles, maintain continuity of vehicle approvals and emissions, minimise costs to industry and implement the Northern Ireland protocol. I commend these regulations to the House.

2.06 pm

Lord Whitty (Lab) [V]: My Lords, I thank the Minister for her explanation of these regulations and recognise the urgent need to get them through in time for the end of the transition period, so I intervene not to oppose or amend the transposition, but to get a clearer idea of how the Government intend to proceed in this area, once we have a so-called independent system of regulation, and to put these regulations in a wider context.

My first concern relates to the degree to which any future revisions of these regulations can, in reality, be completely unilateral here in the UK. For example, just this week, the Government announced that they intend to phase out all new diesel and petrol cars by 2030. Presumably, in advance, the Government will tighten the regulations in stages to make a smooth transition away from fossil-fuel-based cars and lorries by making the worst carbon emitters, in effect, illegal first and then by making, in stages, all new vehicles, whether manufactured here or imported, illegal from 2030. Can we do that if the EU is not doing so on the same timescale or in the same stages?

The vast majority of cars and commercial vehicles registered in this country are made by EU-based companies, such as Volkswagen, Renault, Volvo and BMW, or by non-EU companies that have Europe-wide subsidiaries, such as Honda, Toyota, Ford and General Motors. Car production systems are, in effect, an integrated European shop floor, in which different components are produced in different countries, with assembly in different places according to the model. They are traded across Europe without regard to their final assembly location.

In the emissions area, EU regulations are, perhaps notoriously, set with the interests of German manufacturers firmly in mind. That is unlikely to change much after Brexit. It is possible, nevertheless, that the EU's new commitments on climate change will impose tougher regulations on new models. It is possible, but not certain and probably not likely. So how, in this integrated world of cross-border manufacturing and trading of new models, is it possible for UK carbon-emissions limitations to be seriously out of sync with EU-regulated limits? I am talking about the 10-year period from now until 2030. In reality, can the UK move to tighter limits than Europe during that run-in period? If not, the target to phase out all new fossil-fuel-based vehicles by 2030 looks seriously more difficult.

Another query relates to integrating limits on carbon emissions, as the second and third regulations here do, with other vehicular emissions under air quality rules. In a different context, the Government have already announced in the Environment Bill that they will at some point require levels for area-based exposure limits on a number of exceedances of noxious emissions, from NOx and NO_2 to particulates, in a way that would be better than current EU standards and closer to the WHO recommended maximum. At this point, I declare my honorary presidency of the Environmental Protection UK charity.

There are other sources of air pollution but clearly the biggest contributors to excess pollution and most level exceedances are vehicle emissions and the concomitant traffic problems. While the origins of particulates in the combustion system are different from carbon monoxide and carbon dioxide, the filtering systems are not very different. The engineering therefore could be combined. The history of successive phases of government attitudes towards diesel shows that, if not managed properly, there can be a conflict between air quality ambitions and carbon reduction ambitions. Would it not be better to seek a unified system of regulation and specification to cover all vehicle emissions? Are the Government considering this either unilaterally or with the EU or, indeed, the Japanese and American regulatory authorities? If not, why not?

Underlying all this, in all vehicular emission regulations, are the Government really committed to an enhanced system of real-world testing of the actual level of emissions on the road, rather than relying on the results of laboratory trials? These are conducted largely by the manufacturers and, as we saw in the Volkswagen case, the results can be illegally distorted by them. Unless we guarantee the real-world accuracy of emissions claims, no amount of improvement in the regulations will deliver, in terms of either carbon saving or cleaner, healthier air.

2.13 pm

Lord Bradshaw (LD) [V]: My Lords, my questions, of which I have given the Minister notice, relate almost entirely to the enforcement of standards. Can she tell us who enforces these regulations? Are the bodies that enforce them up to strength? Can they conduct real-time, on-the-road tests, other than occasional visits to vehicle inspection points, occasionally police ones? Also, when an offending vehicle is found, which I think in most cases will likely be a vehicle registered outside the United Kingdom, do the arrangements we have with Europe allow the European courts to process the offence or will that be one of the things we will lose on leaving the European Union?

2.14 pm

Lord Kirkhope of Harrogate (Con) [V]: My Lords, here we are again, debating yet more of the necessary instruments ahead of the end of the transition period, following our leaving the EU. Of course, they are necessary; without them we would have no suitable regulations in place to replace those where the ultimate arbiter at present is the European Commission. However, these changes, like so many others in this plethora of statutory instruments, present us with a number of questions. I intend to concentrate on the third instrument, which deals with carbon dioxide emissions from heavy-duty vehicles.

To prepare for this debate, I took it on myself to consult logistics managers and vehicle constructors. I have also looked with interest at some of the Department for Transport's own plans and ideas for the future of road transport in the UK. The statement by the UK Government that they now aim to see the end of sales of new diesel and petrol engine cars and vans by 2030, not as previously planned, is interesting but it does not extend to heavy-duty vehicles, including buses and trucks. These are covered, as we all know, by the current EU regulations that set out targets for CO_2 emission reductions of 15% in 2025-29 and 30% from 2030. It is those regulations that we seek to retain, but under UK control.

We must realise that in recent years EU truck standards have tended to focus on air quality rather than CO_2 emissions, hence the current Euro 6 standard for new trucks, which has radically and successfully reduced emissions of nitrogen oxide and visible soot but has made much smaller impacts on CO_2 emissions. Transport emissions of CO_2 in the UK have fallen by only 3% since 1990, compared with total domestic CO_2 emissions, which have reduced by 43%. The provisions before us say nothing about the replication or replacement of Euro 6 standards. Can my noble friend point us in the direction of how this will change? Will we need to replace Euro 6 with "UK 6"?

UK logistics providers work on the basis of investment in trucks with useful lifespans to them of at least 10 years. This means that new diesel vehicles being ordered now will still be in service in 2030. Many of these vehicles that reach the age of 10 are then placed in a world marketplace and can enjoy many more years of active service in other parts of the world. In the case of UK trucks, that is normally in other right-hand drive markets, in Africa and elsewhere in the developing world.

As my noble friend knows, the DfT is working on an interesting set of future possibilities in its transport decarbonisation plan, which is promised by the end of this year. Can she confirm that, in the deployment of the regulations we are debating today, the outcome of that plan will be part of the process of future guidance to logistics operators and manufacturers? Among the areas being considered as replacements for petrol and diesel power are battery electric, hydrogen

[Lord Kirkhope of Harrogate]
fuel cells, electric road systems such as trolley buses, biogas and synthetic fuels. Bearing in mind the long lead time for investment, the heavy-duty vehicle industry needs as much certainty as possible as to what the future direction will be.

The UK is lucky that we have many experts in engineering and academia who are willing to assist, but in order to meet future emissions standards we must be clearer as to our desired direction soon. With the hosting of COP 26 next year, the UK has a great opportunity to find a new set of objectives, not only for cars and vans but for HGVs. These regulations do what they have to do but, like so many other EU SIs, they answer only half the question. I mentioned the Euro 6 standard for nitrogen oxide and we have here specific targets for limiting CO_2 but even if we adopt the agreed EU position now, how do we intend to maintain the standards which might be enhanced by the EU in future? Will we always agree to maintain international standards? If not, we could be left on our own in a gloriously isolated way, with implications for our manufacturers and operators of vehicles.

I note, and my noble friend confirmed this in her opening speech, that the Government maintain that the instrument has been designed to

"ensure the UK can meet its commitment to ensuring that UK CO_2 emissions regulation is at least as ambitious as current arrangements; and … provide certainty to vehicle manufacturers".

This is welcome but will my noble friend explain how, if we wish to improve on EU regulations, we will ensure that those improvements will be acceptable to the EU so as not to disadvantage our businesses? HGVs currently do not have the same time limits on their propulsion systems as cars and vans, but it is in everybody's interest to deal with their emissions as part of our environmental improvements. I just want to be sure that after the end of the EU transition period we do not end up with confusion, contradiction or a deprivation of our businesses' ability to succeed in this new and challenging international marketplace.

2.20 pm

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I support other noble Lords who have already spoken. These statutory instruments cannot be argued with, because they are necessary and even innocuous. However, they raise the wider problems that we have with our transport system, one of which is air pollution.

We have a national problem with air pollution. It hits the poorest and most vulnerable hardest of all. Often, those who are more vulnerable are children, and when we affect children's growth and lung capacity, we are storing up problems for the next 50 or 60 years, or possibly longer—problems for the individuals but also of course for the National Health Service. Therefore, reducing air pollution has to be a priority, in which case the Government's idea of cutting out petrol and diesel by 2030 sounds very good, but of course it is not part of a coherent plan. It is no good saying that electric vehicles are a comprehensive answer to this, because clearly they are not; carbon emissions are inherent in their manufacture and their running, and it all depends on where their electricity comes from, how many times they are used and whether the number of cars on the road is reduced.

The other big problem is that we really have to reduce the amount of traffic. It is a problem for our city centres and for our towns and villages, and it is time that the Government came up with some sort of plan. Road pricing, launched today, is a very good idea. The Green Party has advocated it for many years, but the fact is that it has to be done properly. People have to have a guarantee of privacy—they do not want to sign up to something or use a system that will reduce their privacy.

There is also the issue of exceptions for people who need to use their cars—for example, those who run small businesses and people with disabilities. We must reduce the growing volume of traffic but, at the same time as the Government have come up with this plan for theoretically reducing traffic with road pricing, they have also given the go-ahead for the Salisbury tunnel. There seems to be no coherence in the government policy structure. I would be grateful if the noble Baroness could tell me who is putting together a strategic view of our transport system and if she could give me their name and address, so that I can write to them.

2.23 pm

Baroness Randerson (LD): My Lords, I had some sympathy with the noble Lord, Lord Kirkhope, when he started with the words, "Here we are again". These SIs are part of the mountain of paperwork, which is part of the bureaucratic nightmare we have created for ourselves in leaving the EU. Those of us who deal with transport issues have been patiently working our way through a very large number of SIs to make it possible for us to leave the EU while, apparently, keeping everything exactly the same.

We thought that we had completed the first of these SIs last year. We had gone through it and replaced "EU Commission" with "Secretary of State", but, thanks to the Northern Ireland protocol, it now has to be amended again to allow for the continued operation of vehicle and engine type approval schemes in Northern Ireland based on EU rules. Ironically, they will be operated by the UK approval authority, the Vehicle Certification Agency, which will also operate separate Great Britain-type approval schemes. This is a detailed first glimpse at the complexity of trying to operate two different systems across the UK. The SI allows Northern Ireland manufacturers to access the Northern Ireland market by using either an EU-type approval or a Northern Ireland approval issued by the VCA.

I conclude that all that means is that Great Britain as a whole will shadow EU standards; otherwise, Northern Ireland will, in practice, become a separate market, with much stronger links to the EU than to Great Britain. In addition, the Explanatory Memorandum confirms that, as standards are identical, Northern Ireland manufacturers will be able to sell and register vehicles in Great Britain using either an EU or a Northern Ireland VCA approval. We can begin to see from the discussion of the issues that the operators of

big businesses such as Sainsbury's and Tesco, in a very different field, are expressing concern about how the standard system will operate in the future.

However, there is, just for once, a plan to diverge from EU standards. As the Minister mentioned, there will no longer be a maximum vehicle height of four metres. It appears from the Explanatory Memorandum that we already have a lot of vehicles higher than that, but, of course, not having to adhere to that standard will mean that there will be a general tendency for vehicles to get higher.

A consultation was held. Were Network Rail or any of the train operating companies consulted on removing the four-metre limit on vehicles? I ask that because there are increasingly frequent collisions with bridges, which have a hugely disruptive effect on the railways. I know that Network Rail and the train operating companies are extremely concerned about the frequency with which these collisions occur. Almost all of them occur because someone tries to drive a vehicle that is too high under a bridge that will not accommodate it. Therefore, this is of great relevance to our railways. I hope that they were included in the consultation, or at least that the Government have informed them of this.

I now move to the issue of CO_2 emission performance standards. These regulations are designed to ensure that the Government can continue to regulate CO_2 emissions for newly registered cars and vans. As other noble Lords have made clear, CO_2 emission standards have been the subject of huge controversy and could undoubtedly be measured a great deal more realistically. The move to on-the-road standards is important. This SI deals with the change in the way that manufacturers apply exemptions. It is pretty obvious that, if you have too many exemptions, the standards will not be as effective as they should be.

I understand entirely the practical issue, which the Minister explained to us, that the system will not work at the end of this year, so the UK will have to give each manufacturer an individual threshold based on their EU shares of sales and registrations in the UK, but newly registered vehicles that are moved permanently to Northern Ireland or elsewhere outside Great Britain are removed from Great Britain's emissions target. That leads me to ask the Minister: how will the emissions target for Northern Ireland be set? We will have a target for Great Britain, but obviously there needs to be a target for Northern Ireland. It also leads me to say to the Minister that this is a genuine opportunity for Britain to do better, to set higher standards than the EU. It is our chance to be different and to move faster.

I was delighted to hear suggestions that the Government are now committed to the 2030 target for the end of petrol and diesel vehicles. Other noble Lords have referred to that. I agree with their questions, so I will not repeat them in detail, about what plans the Government have to ensure that they take forward this obligation very swiftly. If it is going to work, it has to be adopted quickly.

On the final SI, I have a couple of questions relating to heavy duty vehicle emission standards. First, these regulations apply to the whole of the UK. I read the notes very carefully. Why does Northern Ireland not need a separate system as it has in the previous two SIs? Secondly, can the Minister clarify what the impact of the change of dates for the reporting year will be? The reporting year will move from the end of February to the end of September. Will the Minister explain why and how that extra six months will be taken into account?

I am pleased to see that the consultation has led to a change in approach from the Government on the number of data fields to be reported—in other words, I am pleased to see that the Government have responded to the consultation. However, the respondents suggested a study of the UK fleet as a comparator to the EU baseline. Will that study be taken forward?

2.33 pm

Lord Rosser (Lab) [V]: My Lords, I, too, thank the Minister for her explanation of the purpose and content of these regulations. As has been said, certain regulations on vehicles and carbon dioxide emission targets are currently regulated by the EU. The draft Road Vehicles and Non-Road Mobile Machinery (Type-Approval) (Amendment) (EU Exit) Regulations 2020 amend temporary regulations from 2019 to enable the continued operation after the transition period of

"vehicle and engine type approval schemes"

in Northern Ireland, to allow vehicles and engines produced in Northern Ireland that meet EU standards to be sold in Britain as well as to permit vehicles over 4 metres to be sold here. The regulations amend the 2019 regulations so that they apply to Great Britain only. There is a need to bring these regulation into effect to enable us to meet our obligations under the Northern Ireland protocol. EU rules relating to vehicle and engine type approved schemes will still apply to Northern Ireland.

The draft New Heavy Duty Vehicles (Carbon Dioxide Emission Performance Standards) (Amendment) (EU Exit) Regulations 2020, in essence, retain two EU regulations regarding heavy duty vehicles' CO_2 emissions in UK law. One sets out targets for reducing HDV CO_2 emissions and the other sets out monitoring and reporting requirements. As has been said, these regulations apply to the whole of the UK.

The draft Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2020 amend retained EU regulations designed to lower CO_2 emissions over the next decade so that the UK Government can regulate emissions from newly registered cars and vans in Great Britain after the transition period ends. In particular, these regulations change the way manufacturers can apply for exemptions from their CO_2 targets. Under the current EU system, manufacturers can apply for an exemption if their total registrations for that year fall below a certain predefined threshold. After the end of the transition period, the UK will give each manufacturer an individual threshold based on its share of EU sales in the UK in—I think—2017.

Car CO_2 emission regulations lowering such emissions that are permitted, backed up by penalties, are an important driver for manufacturers to increase the supply of electric vehicles, and sales of electric cars have grown considerably in the first nine months of this year compared with last year. The Government

[Lord Rosser]
say they are setting, and will enforce, emissions reductions that are at least as ambitious as under the current EU arrangements for vehicle emissions regulation.

However, the independent Transport & Environment think tank has contested that claim on two principal counts. First, the regulations we are considering use the average mass of cars in the EU to set targets for future carbon dioxide emissions rather than the average mass of cars in the UK. This, Transport & Environment argues, will result in setting lower targets for the UK than under the current EU regime because UK cars are, on average, heavier. Secondly, these regulations allow manufacturers to use an additional 3.5 grams of carbon dioxide per kilometre of super-credits—or free credits—as an additional allowance for producing CO_2 for some battery and plug-in hybrid vehicles that, in many cases, also have internal combustion engines. The effect of this, Transport & Environment says, is that replacing EU regulations with the proposals in these draft regulations will mean that one-fifth fewer electric vehicles will be sold in the UK because the incentive for manufacturers to increase the supply of electric vehicles will be less, as they will not need to produce so many to enable them to comply with the lower carbon emission reduction standard.

As we all recognise, reducing the carbon dioxide produced by road transport needs to be a central priority for government. If it is the case—I repeat, if it is the case—that in reality these regulations in relation to cars and vans water down the existing EU requirements on reductions in CO_2 emissions, that would be a backward step. This question was raised during the debate in the Commons on these regulations, but it did not really get a response from the Commons Minister to the case being made by Transport & Environment and the reasons why that case was either correct or incorrect.

I very much hope that the Minister will be able to address this question in more detail, either in the Government's response or subsequently in writing. I also await with interest the Government's response to the questions that have been posed by other noble Lords, not least the important questions raised by my noble friend Lord Whitty on the extent to which we will, in reality, be able to determine our own emissions standards and the phasing out of sales of new petrol and diesel vehicles.

2.40 pm

Baroness Vere of Norbiton (Con): My Lords, I thank all noble Lords for their consideration of these draft regulations. I will respond to as many points as I am able in the time available and will of course follow up with a letter if needed; there have certainly been some questions on which I know I do not have the information to hand—but I will do my best.

I turn first to the role of the VCA. The noble Baroness, Lady Randerson, noted an interesting point about how the VCA was going to do both GB-type approval and UK/NI-type approval. She may be interested to know that it also does EU-type approval, in conjunction with other EU member states. The VCA is a really high-quality certification agency and I am really proud of the work that it does. So, although I am grateful for the concerns that the noble Baroness raised, I believe that being able to respond to different type approvals in different countries with different requirements is well within the grasp of the VCA.

The noble Baroness talked about the impact on trade with Northern Ireland and what it is going to look like over time. I agree that we are in quite an interesting moment as we settle down to the new regime and how it will all work, but it is the case that the role of the Northern Ireland protocol is to make sure that certain elements are reflected where needed and that trade can continue as much as possible, so unfettered access ensures that Northern Ireland businesses do not need additional approvals to sell in GB. However, we will monitor the situation and consider applying anti-avoidance measures if concerns are raised about goods potentially arriving into GB that have come from elsewhere via Northern Ireland. For the time being, though, we are perfectly confident that the new regime will work very effectively.

On the issue of the removal of height restrictions, the noble Baroness, Lady Randerson, asked if we felt that vehicles were going to get higher. We do not. The whole purpose of the removal of the height restriction is purely so that the vehicles can be approved under the more standard type approval process rather than the small-volume type approval process, so it is really just to make it easier for manufacturers. I do not expect our double-decker buses or trailers to get taller any time soon, although I recognise her concern about bridge strikes. They concern me too, particularly when they involve double-decker buses that could have passengers on them. That issue is a big concern for the industry; I have written to bus operators about it and asked them to make sure that their vehicles are going down the roads that they should be.

I turn to the carbon dioxide SIs. I reiterate that the Government are committed to our international and national environmental obligations. We absolutely recognise the need to go further than the existing regulatory framework, but of course what noble Lords are discussing today relates to the carbon dioxide framework in EU law as is, which we are just bringing across and making sure that it works—so it does not really apply to future considerations.

The noble Lord, Lord Rosser, said his opposite number did not get a good response from the Commons Minister. I am going to do my best, but I fear that I will need to follow up with a letter. On the standards for cars and vans, the headline targets are 95 grams of carbon dioxide per kilometre for cars and 147 grams of carbon dioxide per kilometre for vans. Those are being retained, as are the formulae setting out the individual manufacturer targets—so those things are set in stone. However, these formulae set individual targets by comparing the weight of a manufacturer's new vehicle fleet against the average EU vehicle, and the UK average vehicle mass is above the EU average vehicle mass. One of the consequences of adopting the current regime is that the sum of the individual manufacturer targets in the UK will be slightly higher than the sum of the targets in the EU. So, while this may appear to be a loosening of standards, that is incorrect; it simply ensures that manufacturers must apply the same carbon ambition that they currently

employ in the UK. Effectively, manufacturers will be able to sell the vehicles that they would otherwise have been able to sell in the UK after the transition period has ended. Noble Lords will note that we did a consultation around the carbon dioxide standards and this mechanism was felt to be the most appropriate, although it was recognised during the consultation that there was an issue.

I turn back very briefly to Northern Ireland and the issue raised by the noble Baroness, Lady Randerson, about where NI-registered vehicles would count. They would count towards the manufacturer's EU totals; NI will all be part of that. So it will not be that they are lost; they will just go into another bucket to be counted. That is what happens when a vehicle ends up in Northern Ireland; it may be manufactured in GB but then goes to Northern Ireland and it is very important that that figure is not counted twice, as it might otherwise have been.

The noble Baroness asked why Northern Ireland was not in the third SI, or why it is not pulled out of it. That is because heavy-duty vehicles are not included in the Northern Ireland protocol and therefore do not need to be dealt with in the same way that we are dealing with cars and vans. The UK-wide totals apply, so there will just be a different reporting requirement.

The noble Baroness also asked why the dates had been changed from March to September. I am reliably told that the reporting dates for HDVs have been changed at EU level. The EU legislation has changed, so we are simply transposing what has been changed at the EU level. Why the EU changed it from March to September, I do not know. If the noble Baroness would like a letter, I will send her one—but I am not sure I will be able to shed much light.

The noble Lord, Lord Bradshaw, asked who does roadside testing and enforcement. Emissions testing at the annual test is of course carried out by the DVSA for lorries and buses, while for cars and vans the DVSA obviously oversees all the MoT testing centres that we have around the country. The DVSA carries out a visual assessment of the emissions control system and visible exhaust smoke at roadside inspections but does not yet have emissions-testing equipment to measure emissions or smoke at roadside checks—although it does for the annual test. The DVSA is looking at trialling some new equipment that would be able to look at that in more detail, and we will have more on that soon.

On the number of spot checks that the DVSA has made, there were 172,000 checks on vehicles and drivers last year. I am not 100% sure about the arrangements for vehicles registered in the EU; I presume that they can be fined pretty much as well as anyone else can, but I will write to the noble Lord on that.

A number of noble Lords asked what we are going to do after the end of the transition period. While that goes slightly beyond the scope of the SI today, it is worth noting that we have great ambitions for our future UK carbon emissions regulation. As noble Lords will know, we have consulted on ending the sale of new petrol, diesel and hybrid cars and vans by 2035, or earlier if a faster transition appears feasible. The results of that consultation are coming in due course.

The matter of regulation and EU standards is very important. It is also something that troubles me greatly in terms of global standards. Vehicle standards are increasingly harmonised now at a global level—for example, through the UN and UNECE. The UK plays an active and leading role in UNECE and will continue to do so, so the majority of EU regulations actually arrive at the EU from a UN process that the UK is very involved in. So any changes to the regulatory regime would consider the views of and implications for all manufacturers and other interested parties, as well as having the UK regulations interact with the EU regulations and indeed the UN regulatory regimes.

Currently, carbon dioxide emissions are measured in the same laboratory test that is used to measure pollutant emissions—nitrogen oxides and particulates—and there are no plans to change this.

The noble Lord, Lord Kirkhope, mentioned Euro 6, and, of course, that standard will be retained in UK law after exit.

I was delighted when the noble Baroness, Lady Jones of Moulsecoomb, said that these SIs could not be argued with: I took that as a result. However, she then went on to ask who was looking after the transport strategy and to whom she could write. I would be very happy to receive letters from the noble Baroness, and I will pass them on to my fellow Ministers, depending on which portfolio she is writing about.

The Government have great ambitions both for reducing air pollution and for increasing the use of electric vehicles. There is an interesting dichotomy that the noble Baroness always comes up, which is about reducing road traffic, as if that in itself has to be a goal. While I agree that congestion in certain places is absolutely terrible and road-space allocation is really important, I am not entirely sure that I would wish just yet to take away an individual's right to transport themselves from A to B in a non-polluting vehicle.

Motion agreed.

Road Vehicle Carbon Dioxide Emission Performance Standards (Cars and Vans) (Amendment) (EU Exit) Regulations 2020

Motion to Approve

2.50 pm

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

That the draft Regulations laid before the House on 13 October be approved.

Motion agreed.

New Heavy Duty Vehicles (Carbon Dioxide Emission Performance Standards) (Amendment) (EU Exit) Regulations 2020

Motion to Approve

2.51 pm

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

That the draft Regulations laid before the House on 13 October be approved.

Motion agreed.

2.52 pm

Sitting suspended.

European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020

Motion to Approve

3.01 pm

Moved by ***Lord Bethell***

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

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, these regulations relate to the recognition of professional healthcare qualifications in the UK and social work qualifications in England. They are part of the Government's preparations for the end of the transition period. As noble Lords will be aware, the Government have signed agreements with the EU, the three EEA EFTA states and Switzerland in relation to the UK's withdrawal from the EU. These agreements include provisions that protect the rights of EEA EFTA state professionals with qualifications covered by the directive, and Swiss nationals living and working in the UK, and vice versa.

European healthcare professionals have played, and will continue to play, an important role in the delivery of health and care services in the UK. We have been clear throughout the EU exit process how valued these professionals are and how we would like them to remain in the UK. It is for that reason that the previous SI, which we are amending today, maintains automatic recognition of relevant European healthcare qualifications for a limited time after the end of the transition period. It is also why a number of health professions, including doctors, nurses and social workers, are on the shortage occupation list.

These regulations specifically implement the agreements that we have signed with Switzerland and the EEA EFTA states, and as such affect a very small number of professionals. For example, on 30 June 2020 there were 80 doctors and 32 nurses and health visitors among a total of 134 Swiss healthcare professionals working in the UK. This legislation also makes some minor amendments to the provision for EEA EFTA-qualified professionals, of which there were 230 working in the UK on 30 June this year.

While the number of professionals impacted is very small, it is important that there is legislation in place to protect the rights of these healthcare workers wishing to come and play a part in the UK healthcare workforce. On 14 September 2020, the House considered legislation brought forward by the Department for Business, Energy and Industrial Strategy which set out arrangements for the recognition of professional qualifications from Switzerland and the EEA EFTA states. These regulations now cover a similar area. They implement the Swiss citizens' rights agreement and the EEA EFTA separation agreement, in relation to the recognition of professional qualifications for healthcare in the UK, and social work in England.

Regarding the current framework, I will remind noble Lords of the background to the recognition of professional qualifications, or RPQ. The current system for this recognition is derived from EU law. It allows UK professionals to have their qualifications recognised in the EEA and Switzerland, and vice versa, with minimal barriers. There are seven professions where standards are harmonised under the relevant EU directive. This means that qualifications must comply with minimum agreed standards. Five of these harmonised professions are health professions: doctors, nurses, midwives, pharmacists and dentists. The recognition arrangements under the directive have supported the movement of European health and care professionals to the UK. Between 1997 and 2019, more than 77,000 EEA and Swiss qualifications in the professions of doctors, nurses, midwives, dentists and pharmacists have been recognised in the UK. At the end of the transition period, the EU directive will cease to apply to the UK and the mutual recognition of professional qualifications will end.

Last year, in preparation for the UK leaving the EU, Parliament passed regulations to amend the domestic law that implements the current EU system for RPQ. This included regulations in relation to recognition arrangements for health and care professional qualifications—namely, SI 2019/593. These regulations, which come into force at the end of the transition period, include provisions which, first, ensure that healthcare qualifications which are currently recognised continue to be recognised automatically, for up to two years after the end of the transition period. Secondly, they protect previous recognition decisions. Thirdly, they allow applications for recognition submitted before the end of the transition period to be concluded. Fourthly, they remove the provision for healthcare professionals to deliver temporary and occasional services in the UK once such current registration comes to an end.

Since the passing of the previous regulations, the Government have secured agreements with Switzerland—the Swiss citizens' rights agreement—and the EEA EFTA separation agreement. These agreements go further than the arrangements set out in the regulations that were passed last year. Therefore, the regulations before the House today amend the previous SI to implement the terms of the Swiss and EFTA agreements.

I will explain the main changes. First, they provide a four-year period of continuation of the automatic recognition system for Swiss nationals. Secondly, they allow Swiss healthcare professionals to continue to provide temporary and occasional services under certain conditions. Thirdly, these regulations will require UK regulators to co-operate with their EEA EFTA state and Swiss counterparts to ensure that EEA EFTA state EU-qualified professionals and Swiss nationals whose professional qualifications are recognised are treated on the same basis as UK nationals. These arrangements will be reciprocated by the EEA EFTA states and Switzerland respectively.

These regulations also make a minor amendment to ensure that the frameworks for RPQ will function as intended after the transition period. This makes sure that GP qualifications obtained before the reference date specified in the mutual recognition of professional

qualifications directive are recognised in the same way as specialist medical qualifications obtained before that date, and are not eligible for automatic recognition.

UK regulators of healthcare professions have been consulted on an informal basis throughout the development of RPQ EU exit legislation, including these regulations. The devolved Governments were consulted regularly throughout the process. They are supportive of our approach and consent has been given by the Scottish Parliament to take this legislation forward.

These regulations are necessary to implement the Swiss citizens' rights agreement and the EEA EFTA separation agreement, in respect of the recognition of professional qualifications. These agreements were signed after the passing of previous EU exit legislation on this matter. These regulations enable health and social care professionals and businesses to prepare for the end of the transition period. I commend them to the House.

3.08 pm

Baroness Walmsley (LD) [V]: My Lords, my understanding is that these regulations are a tidying-up exercise to continue to recognise existing Swiss and other EFTA health professionals with qualifications after the end of transition this year. This does not address plans for future pathways of recognition. However, I would like to focus on professionals of whom we need more to clear the backlog of treatments—that is, dentists, who are a bit different from other health professionals. Can the Minister confirm that, irrespective of any new agreement made with the European Union, the General Dental Council will be able to continue to recognise the qualifications of all graduates of dental schools within the EEA, without the need for candidates to sit the overseas registration exam?

Can the Minister also tell me what steps have been taken by the General Dental Council to resume overseas registration examinations for non-EEA overseas dentists, which have been halted due to Covid, and ensure a continuing pathway for recruitment of EEA and non-EEA dentists? In light of the backlog of 15 million treatments, surely we need all the dentists we can get.

As the Minister will know, the NHS dental service does not have a registration system like the medical services do. Each course of treatment is a separate contract. Even with the same dentist, there is no obligation for either party to continue the relationship after a course of treatment ends, except to sort out any issues relating to a recent course of treatment. The patient is free to go to another dentist, and the dentist is free to decline further NHS courses of treatment.

The result of the lack of any registration system is that after a course of treatment ends, nobody has any obligation to find another NHS dentist for any patient. This gives NHS patients no security whatever about continuity of treatment, either preventive or responsive. Given that this situation has been made worse by Covid-19, and given the shortage of NHS dentistry in some areas, does the Minister's department have any plans to ensure we have enough dentists going forward after the end of the transition phase of exit from the EU?

3.11 pm

Baroness Jolly (LD) [V]: My Lords, there is much to be welcomed in these regulations. It is essential that there are minimal disruptions in the NHS and social care workforce at the end of the transition period. The coronavirus pandemic has shown us that these workers are the most essential among us, and any measure that encourages workers to come to the NHS and our social care services is needed.

I am pleased the Government are going beyond the 2019 SIs to ensure that Swiss and other EEA workers have longer periods to apply for recognition and can continue to provide services. However, some detail is still in the dark. First, it is unclear what reciprocity there will be for UK nationals wanting to work in EEA countries. Will UK qualifications be recognised in EEA countries following the transition period?

Secondly, these are temporary measures, but individuals who wish to come and work in the UK need certainty for the long term. The health and social care sector needs sustainable and reliable immigration to fill posts with high-quality professionals. Can we get any indication today of what the long-term plan is for immigration from these countries?

There is a staffing crisis in our NHS and in social care. We are all well versed in the figures: 122,000 vacant posts in English trusts alone and a pledge of more than 50,000 nurses from this Government. Workforce issues that already existed have been exacerbated by the referendum result and the pandemic, meaning that wards are often understaffed as staff isolate. With the Government's immigration Act receiving Royal Assent last week, I must use this debate as an opportunity to ask the Minister what steps the Government are taking beyond this legislation to encourage immigration within the health and social care sector.

As this legislation relates to Swiss nationals, it is worth remembering that in September Swiss voters decisively rejected an accord that would end free movement. This is something our neighbours in Europe value, and we need to be shown to be making immigration as fluid and free of barriers as possible. That is not the current impression.

Finally, I would like to make a remark about parliamentary scrutiny. In 2019, we saw a huge number of SIs come through this House preparing for the worst-case scenario—leaving the EU with no deal. Debating the 2019 SIs was seen as almost pointless, since crashing out of the EU seemed so unlikely and, as the Prime Minister said, would be a case of failed statesmanship. However, we are now in mid-November and no deal is appearing more and more likely, with little news from Brussels or this Government about the progress of negotiations. Has adequate thought been given to what was initially seen as contingency planning? And was there enough parliamentary scrutiny of the 2019 SIs? I sincerely hope so.

3.15 pm

Baroness Thornton (Lab): Many of the issues I wanted to raise with the Minister have been raised by the noble Baroness, Lady Jolly. I accept that we will be supporting this regulation and that it is necessary as a tidying-up exercise.

[Baroness Thornton]

As we know, nationals of the EU and other countries make up 9.1% of doctors in England's hospitals and community services. They account for 6% of all nurses and 5.8% of scientific, therapeutic and technical staff. As the noble Baroness, Lady Jolly, says, we have 106,000 vacancies across the NHS, including—according to my figures—44,000 nursing vacancies. And we have about 120,000 vacancies in social care. My question, echoing that of the noble Baroness, Lady Jolly, is: what will happen if we have no deal? What will happen to the ability of people to come to this country and work?

When we debated the previous regulations more than 18 months ago, we asked the then Minister what assurances could be given that the NHS would be able to stem the huge losses of those important health and social care staff. Given the numbers I have mentioned, can the Minister confirm whether any study has been made of the costs and barriers that might prevent applicants from the EEA and Switzerland entering the country and the possible impact on the health service? This might be a good opportunity to ask for progress and an update on the issue of the social care workers with which the Government agreed during the course of the immigration Bill.

It is clear that the regulations are temporary, but there is no clarity about the plans to introduce sustainable, long-term arrangements for registering and licensing EEA and Swiss nationals. Will the Minister give us some further information about what longer-term plans there are in the current timeframe and the four-year period provided by this statutory instrument?

3.17 pm

Lord Bethell (Con): My Lords, I am enormously grateful for the searching questions of the noble Baronesses. They have covered an enormous amount of ground, and I am not sure whether I can cover it all in my remarks. I will endeavour to write to them on some of their specific questions.

The noble Baroness, Lady Walmsley, asked a large number of pertinent, relevant and searching questions on dentists. We are extremely conscious of the provision of dentists during Covid, the ongoing commitment to improving Britain's dentistry and the significant contribution of those from overseas to the dentistry practice. Provisions such as this SI and many others like it are there to ensure that dentists from overseas continue to be welcome in the UK and that we can meet the needs of the British public. I would be happy to write to the noble Baroness with some detailed answers to her questions.

The noble Baroness, Lady Jolly, rightly referred to the challenge of recruitment in health and social care, which we take extremely seriously. We have put in place an enormous marketing campaign to build the substantial and important NHS brand. We are recruiting more than ever before, and rather than reducing numbers, Covid has led to an increase in people stepping forward.

As I said in my opening remarks, we remain committed to workers from overseas. They make an invaluable contribution to health and social care, and nothing that we are doing through these provisions, the immigration Bill or any of our other provisions in any way diminishes that enormous contribution. As reciprocal arrangements will be subject to negotiated outcomes, I cannot make the commitments that the noble Baroness requested. However, I assure her that the regulations put in place in these statutory instruments and the others like it ensure that registration is possible and is part of our commitment to those who come to Britain from overseas to work.

I emphasise that the changes contained in these regulations are essential to ensuring that the UK meets its commitments, not only to overseas workers in general, but also, specifically, under the Swiss citizens' rights agreement and the EEA-EFTA separation agreement. In response to the noble Baroness, Lady Thornton, that is part of a general commitment to those who come to Britain from overseas to work in health and social care. The UK Government are committed to protecting citizens who benefit from rights under the Swiss and EEFA agreements, many of whom make valuable contributions to the UK workforce. These regulations maintain existing rights for EEA, EFTA and EU-qualified workers and Swiss nationals beyond the end of the transition period and ensure that the UK's existing EU exit regulatory frameworks for RPQ will function effectively at the end of the transition period.

I am enormously grateful for the support shown by many noble Lords for these measures, and I commend these draft regulations to the House.

Motion agreed.

3.21 pm

Sitting suspended.

Reciprocal and Cross-Border Healthcare (Amendment etc.) (EU Exit) Regulations 2020

Motion to Approve

4 pm

Moved by ***Lord Bethell***

That the draft Regulations laid before the House on 30 September be approved.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, this instrument amends regulations from 2019 to remove provisions that have now been superseded by the protections for people contained within the withdrawal agreement. It makes some technical fixes to reflect this and ensures that the statute book is fit for purpose. It also provides protections for people benefiting from the cross-border healthcare directive, as the directive was not carried forward in the withdrawal agreement.

Before I turn to the details, I will start with an overview of current reciprocal healthcare and our steps to prepare for the end of the transition period. Reciprocal healthcare arrangements with the EU have continued during the transition period. This means that people will see no changes in their access to healthcare for the rest of the year. From 1 January 2021 healthcare arrangements will also continue for those within the scope of the withdrawal agreement. I hope that this provides much welcome reassurance. State

pensioners and workers who have moved from the UK to the EU or vice versa, and are residing there before 31 December 2020, will have lifelong reciprocal healthcare rights for as long as they remain in scope of the agreement. That includes the use of the European Health Insurance Card, the EHIC.

The agreement also protects those who are in the EU on a short stay at the end of the transition period. For example, someone who travels to an EU country before the end of the year can continue to use their EHIC there until they return to the UK. UK students on a stay in the EU, beginning a course of study before 31 December 2020, can also use their EHIC in that country for immediate and necessary healthcare for the duration of their course. Finally, people receiving planned treatment can commence or complete their treatment if authorisation was requested by 31 December 2020. All this provides much-needed certainty for UK nationals already living in the EU and vice versa.

As noble Lords are aware, future reciprocal healthcare arrangements are subject to ongoing negotiation with the EU. We understand the value of access to healthcare when travelling on holiday or for work, and I know that this is particularly important for those with pre-existing or long-term conditions. This is why the UK has been clear that it wishes to establish necessary healthcare arrangements such as the EHIC for tourists, short-term business visitors and service providers. I am sure that noble Lords will be aware that these discussions are continuing. I reassure them that, should these discussions not conclude with a healthcare agreement, we will continue to look at this issue carefully.

Should we not achieve an EU-wide deal, we would seek to agree reciprocal arrangements with EU and EEA countries bilaterally. But we cannot start these discussions until the negotiations with the EU have concluded. The one exception to this is of course Ireland. I am very pleased to report good progress on agreeing a healthcare arrangement with Ireland, under the common travel area. These arrangements will mean that residents of the UK and Ireland can continue to access necessary healthcare when visiting the other country, and it will cement co-operation between UK and Irish healthcare providers.

The instrument that we are debating today is a technical instrument to update legislation made in 2019. This now needs updating to reflect the terms on which we are leaving the EU. We need to ensure that our legislation is ready for the end of the transition period. We also need to ensure protections for those accessing cross-border healthcare on an ongoing basis at the end of the year, as this is not covered in the withdrawal agreement.

In April 2019 the Government made three statutory instruments to correct deficiencies in retained EU law relating to reciprocal healthcare. This was part of the UK's preparations for leaving the EU without a deal. Those instruments made provision to revoke that body of retained EU law, protected people in the middle of a course of treatment and provided a mechanism for the UK to maintain bilateral reciprocal healthcare arrangements on a transitional basis until 31 December.

Some of this has now been superseded by the transition period and the withdrawal agreement protections. If we do not agree this instrument, the retained law will be incoherent and unworkable. There will also be uncertainty over protections for patients in the middle of a course of treatment.

As such, the first change our SI makes is a series of consequential and technical amendments to four EU exit instruments to make them workable and coherent. These instruments are: the Social Security Coordination (Reciprocal Healthcare) (Amendment etc.) (EU Exit) Regulations 2019; the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc.) (EU Exit) Regulations 2019; the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019; and the Health Services (Cross-Border Health Care and Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019. The second change is that this SI updates EU references in NHS legislation that will no longer be appropriate at the end of the year. Thirdly, as I mentioned, it will clearly set out transitional protections for people accessing healthcare under the cross-border healthcare directive.

The directive gives patients the right to receive healthcare in another EEA country and receive reimbursement from their home country. It is separate from broader reciprocal healthcare under EU regulations and was not included in the withdrawal agreement. This means that the directive will no longer apply from 31 December 2020, and it is therefore important that patients who are in the course of being treated are appropriately protected. This instrument will specifically allow the Government to fund patients in the middle of treatment, or who have already applied for authorisation, at the end of this year.

Turning to the impact on industry, as this instrument proposes no significant changes to the current regulatory regime, there would be no significant impacts on industry or the public sector. As this instrument makes technical amendments and does not introduce new policy, we have not conducted an impact assessment.

The instrument also makes provision in relation to Northern Ireland and Wales. The devolved Administrations have been consulted. There has been excellent engagement between the department and the devolved Administrations and I am confident that we have clear arrangements in place.

I am pleased to say that we have worked openly and collaboratively with NHS England and NHS Improvement, as well as the NHS Business Services Authority. They are our key delivery partners and have continued delivering their day-to-day operations, such as issuing EHICs to people, while making changes to successfully implement the withdrawal agreement.

In summary, the overarching aim of the instrument is to ensure that UK legislation is functional and reflects the withdrawal agreement. It also ensures that there will be appropriate protections for people accessing treatment under the cross-border healthcare directive at the end of the year. I beg to move.

4.08 pm

Baroness Ludford (LD): My Lords, I thank the Minister for his introduction. The removal of free movement rights in the recent Immigration Act is a matter of great regret to millions of British people, who knew their value. It will also become a matter of regret to many more Brits once they realise that their

[Baroness Ludford]
dreams of working in Germany or retiring to Spain without hassle or paperwork have been torn from them. The triumphant tweet from the Home Secretary celebrating the end of freedom of movement was a tasteless mistake.

The loss of the European Health Insurance Card will be understood and felt immediately by any British person wanting to travel within the EEA next year. If the promise of the vaccines is borne out and travel opportunities open up, people will want to spread their wings. But they will get a nasty shock from the travel insurers, as the price of a policy will be whacked up to account for the loss of free emergency healthcare under the EHIC. In the other place, it was mentioned that some 30,000 people on dialysis can currently travel throughout Europe and receive their dialysis free of charge thanks to the EHIC. This is not covered by commercial travel insurers and in future it will cost them up to £1,000 a week. The Minister in the other place talked about a recently launched directory of specialist insurers covering serious medical conditions. Well, maybe—but the premiums are likely to be eye-watering.

Brits are also losing the ability to go to another EEA country for, say, an operation when the NHS waiting list is too long. Can the Minister tell me how many procedures have been done under the cross-border healthcare directive since it was implemented in 2013? It is perhaps appropriate that the amendment to domestic legislation entails deletion of references to "EU rights" because, very sadly, rights are being torn from British people in the healthcare sector as in so many others.

The only brighter news is that, thanks to the withdrawal agreement, some people will retain rights after the end of the transition period. First, UK nationals living and working in the EEA on 31 December 2020 will continue to be entitled to healthcare funded by their member state of residence and get an EHIC issued by that state. Can the Minster clarify whether that EHIC will grant that UK national free emergency healthcare wherever they travel in the EEA or only in their member state of residence? Will those British nationals get free NHS care when they visit here?

Secondly, British pensioners resident in the EEA on 31 December 2020 who hold a so-called S1 form will continue to be entitled to UK-funded healthcare, including a UK-issued EHIC. Will that EHIC be usable throughout the EEA, and will the S1 form mean they will get free NHS care in this country? EEA nationals resident in the UK on 31 December 2020 will continue to be entitled to access the NHS, which I assume means free of charge. They will also get a UK-issued EHIC, which will surely make their British friends very jealous indeed.

Lastly, a British national who has previously worked in an EEA country can get a UK-issued EHIC plus planned treatment in an EEA country under the S2 scheme. They can also apply for an S1 form—this debate has a horrible amount of jargon—issued by the UK once they reach state pension age, on the same terms as now. Is there a specified minimum length of time that they would need to have worked in an EEA country, or could it be for as little as, say, a week? Again, there will be some jealousy from their British friends that a British national, by virtue of having worked for I do not know how long in an EEA country, will be able to get a new EHIC.

I welcome the agreement with Ireland that the Minister referred to. I was not sure whether the agreement had been finalised, but it is of course good news.

As the clock ticks down to 31 December, we know that even if a deal is reached with the EU, it will be a skinny one. How confident is the Minister that it will include any provision to continue reciprocal healthcare, including the EHIC? Discussion about rules of origin or customs arrangements might seem arcane to many people, but losing access to free healthcare if ill on holiday will hit home to most Brits. The Minister said that no impact assessment has been done because the instrument makes only "technical" amendments. British holidaymakers might disagree when they get their bill from their travel insurer. A Government celebrating "getting Brexit done" through gleeful tweets about the loss of rights might find themselves not so popular if they tweeted about the EHIC. They might think that the loss of free movement is popular, as many people have yet to discover that free movement is a two-way benefit, but the loss of the EHIC card will not go down well at all. I hope the Minister will be able to give us good news about continued arrangements.

4.15 pm

Lord Greaves (LD) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Ludford. I thank the Minister for setting out what this technical amendment does. As the noble Baroness said, it may be very technical, but it will hit a lot of individuals hard when they suddenly realise that Brexit is about more than sovereignty, taking back control and all the things people talk about. It is one of the first things that people will realise hit them personally.

Brexit has happened and we have to live with it, but it is very disappointing that on something such as this, with only a few weeks to go before the end of the transition period, the future systems have not been sorted out. With the best will in the world, it seems there will be a gap in which existing rights to emergency healthcare and other rights for British citizens who do not live in Europe or fall into the categories that will be protected will be lost. Nobody knows what the future will be.

My first question follows on from the noble Baroness's speech: where are we with negotiations on future arrangements? Are they part of the discussions taking place now, which are concentrating on level playing fields, fishing and so on, or will they have to wait until those are concluded—either with no deal or with some sort of skimpy Canadian deal or whatever—and new negotiations take place? How long will it be, assuming everything goes well and negotiations take place on a friendly and co-operative basis, before a new system is in place? Does the Minister believe that an EEA-wide system—or perhaps an EU plus British system, or whatever it will be—will replace the present system, or will it be a series of bilateral arrangements between the UK and individual European countries which might be different from one country to another,

some perhaps having arrangements and some not? That seems a recipe for chaos. There will be a number of instances where people come up against things that affect them personally in ways they had not expected. This is perhaps the first and one of the most important.

It is important that the impact assessment to the original regulations, which was published in October 2018—it was certainly an impact assessment then—said that the number of uses of EHICs in the EU by UK residents in 2016, which was a few years ago but I do not imagine these things change terribly, was 233,000. That is a lot, although it is concentrated in a few countries. It does not seem to say how many were in the protected categories and how many were just people like me; I once fell down a hillside, went to the local health centre in the Pyrenees, got some excellent emergency treatment and was able to reclaim a substantial amount of the cost afterwards. That is extremely useful. I do not know how many people it affects. It may be that it does not affect all that many, but even if that is the case, it is a very important backdrop.

People living in the European Union, people who organise trips via package holidays, people who visit regularly, semi-residents—of whom there are a lot; people say there are 1.3 million UK citizens living in the EU, and it is fairly well known that the number who live in the EU for at least a substantial part of the year is considerably more than that—regular visitors and people with jobs there are likely to have health insurance over and above their EHIC. They will continue to have that, although, as my noble friend said, it might cost a bit more.

However, many people are going to be at a severe disadvantage: casual visitors; people on shopping trips to Calais, if people are still going to do that; people going for weekends in Paris; those taking long weekends, borrowing a cottage or house from friends; people on short family trips to see students on a gap year or an Erasmus year in Europe; those going to stag parties in Prague, where people go at the last minute; and people who, because they have long-term health conditions, are not easily able to get economical combined health and travel insurance. Even people in the protected categories will be protected only up to the end of this year—after that, they will not be protected at all. The world is going to be very different.

Then there are all the European citizens living in this country who will not be protected if they come to live here after the end of this year. They will be involved in a whole new range of National Health Service bureaucracy. Questions have been asked about how much that is going to cost and nobody seems to be able to give any answers. What I am really asking is this: what is the timescale for sorting all this stuff out? How long will the gap that people are going to fall into be?

4.21 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a great pleasure to follow the noble Lord, Lord Greaves, who, typically, has come up with some very important questions. I thank the Minister for setting out the terms of the regulations and their implications. I can see that, on one level, these are technical points, but in reality they are going to make a substantial difference to the lives of many millions of Britons. It is that that concerns me at the moment.

I accept that we are obviously moving out of the EU: that is a given. What is not clear is whether we are going to have an agreement at the end of the transition period, which is only some six weeks away. I can see that the six weeks of remaining rights relating to travel are not, in the great scheme of things, that significant, given that very few people will be travelling at the moment. But given the great news that we have had on the vaccines—and I pay tribute to the people who have worked on them, particularly the children of Turkish immigrants in Germany working for BioNTech, who made a massive breakthrough—the likelihood of increased travel, certainly towards the end of next year and thereafter, is very much in play, and we all welcome that.

Having heard the Minister setting out the position, I find it somewhat obscure, involving a rather confused set of rights and obligations. It is confused in the sense that there is any number of different combinations of obligations and rights according to how one looks at this; it is a positive Rubik's cube of different obligations and rights, and is anything but simple.

What is clear—and it is good news—is that UK nationals living and working in the EU will be entitled to member-state-funded healthcare. That is good news. What is less clear—this was a point touched on also by the noble Baroness, Lady Ludford—is whether, if they return to the UK, they will be entitled to free healthcare here. Perhaps it is very much the case that that is so, but I would be grateful if the Minister could confirm it so that we all know, because it has not been set out very clearly. There are rights for EU citizens in the UK on a similar basis, and I certainly welcome that.

It is also clear that UK citizens who go on holiday or visit an EU member state for a business trip from the beginning of next year, in the absence of a comprehensive agreement, will no longer be able to use their health insurance card or a comparable card, and so will have to take out insurance to ensure proper cover in the absence of that EU-UK agreement, or in the absence at least of bilateral agreements with each of the other states—I think it would be 26 states in this instance, because Ireland is separately catered for. That is anything but simple, if we are going to have 26 separate agreements with different states. I hope we reach a position where there is cover with all of them, but it would be good to know that it is going to be the same cover; otherwise, the insurance position of, for example, young travellers or students on Interrail travelling overseas, having to get different insurance for different countries, will be anything but straightforward and anything but just technical.

I ask the Minister also about whether there has been proper publicity and promotion of the information that will be very much in play at the beginning of next year. If we have no agreement, then there is a need for insurance to ensure proper cover. I am not sure that people appreciate that, and I do not think there has been a sustained publicity campaign about this. I appreciate that we are still hoping for an agreement, but I think that some contingency arrangements should

[Lord Bourne of Aberystwyth]
be put in place to ensure that people are aware of the position that will apply at the beginning of next year. The consequences otherwise could be horrendous. It is not simply the cost of insurance, which people will not welcome; it is the cost of what happens if you do not have insurance that is really serious. I would be grateful if my noble friend the Minister could say something on that.

I too am concerned about the position for people with deep-seated medical issues. The noble Baroness, Lady Ludford, mentioned dialysis, and it is a point well made. What is being done to cater for people in this category, who have been previously able to travel without massive insurance costs because of reciprocal rights being applicable? Are we doing anything in that regard? I appreciate the timescales here but, given that we have known these timescales for some time, it would be good to hear that some contingencies are being put into place in relation to these situations.

The last point I wish to raise is in relation to the healthcare that we provide throughout the United Kingdom—not just within England. The UK was, of course, a member state and was subject to reciprocal arrangements for reimbursement of costs that are applied by the healthcare systems of the four nations in relation to travellers from the EU. Are we liaising with the devolved nations to ensure that we have some sort of common approach to the recovery of any costs? It seems to me that there is a recipe here for red tape and bureaucracy beyond what is needed. It would be good to hear that we are on top of this and looking at how we go about seeking reimbursement of these costs. As I say, that is something that I hope does not need to happen, but it may need to happen.

I thank the Minister for confirming that the devolution arrangements are working well with the devolved nations and that that is happening on a very good basis. I am pleased to hear that; it is certainly music to my ears. It would be good to hear that we are on top of that reimbursement issue.

With those thoughts, I rest the case. There are obviously some concerns, but I thank the Minister for setting out the position as clearly as he did.

4.28 pm

Lord Willis of Knaresborough (LD) [V]: My Lords, I thank the noble Baroness, Lady Ludford, and the noble Lords, Lord Greaves and Lord Bourne, for their very useful and sensible comments at the beginning of this debate. I also thank the Minister for his, as ever, very courteous and thorough explanation of the SI. It would have been wonderful if this evening he had had a road to Damascus moment, realising that, whatever new arrangements are being put in place, and no matter how complicated and effective they are, they are likely to be inferior, more costly and more inconvenient than what already exists. However, I suspect that that moment has gone. I therefore wish to seek guidance and reassurance from him on a small number of points.

The first is on cross-border healthcare. This is perhaps at its best and most innovative on the island of Ireland, where co-operation on everything from research to critical care, staff training and development has helped transform services for all residents, north and south of the border. Indeed, seeing one of my relatives in a very remote village in Donegal being offered one of the most up-to-date cancer treatments at the Altnagelvin Hospital in Derry, rather than having to travel to Dublin, was a very personal example. Another was the opportunity to address an all-Ireland nursing conference alongside Health Ministers from both sides of the border, where the discussion was on how to improve nursing services for all residents. It made me realise that cross-border healthcare was more than a political ideal; it is the bedrock of a more civilised society.

I was delighted when the Minister, in his opening remarks, mentioned that an agreement had been made with the Republic on cross-border healthcare. But are we getting exactly the same arrangements as we have now? Will they be translated into a legal document? If not, can he identify what will change for residents both in the United Kingdom and on the other side of the Irish border?

Secondly, I recognise that from 1 January UK and EU nationals who are working or studying in either the EU or the UK will be able to continue to be in receipt of the current reciprocal healthcare arrangements—I am delighted that that has been clarified again. However, most UK nationals, particularly in areas such as IT, are working as fixed-term contractors and not as permanent employees—they are not permanently in the country of their work. Will the Minister clarify whether any fixed-term contractor who currently works between the UK and the EU but is currently fulfilling a contract in the UK before returning to one in the EU will qualify for continuation of reciprocal cross-border healthcare arrangements, or will they have to be working in the EU on 1 January, as mentioned earlier?

Will EU au pairs who currently reside with UK families—their number has gone down from 90,000 to around 20,000 since the Brexit agreement—continue to receive free healthcare, should they, as is very likely, return home over the Christmas period? I realise that they will get it if they continue to stay after 1 January but, if they go home for Christmas for two or three weeks, will they then be denied that healthcare when they return to their families in the UK after Christmas?

Thirdly, I am incredibly worried about the cross-border flow of students. The noble Lord, Lord Greaves, mentioned the Erasmus programme, but it is not just that programme that has brought huge benefits to the UK, as well as to the EU over a great many years. Clearly, existing students will continue to enjoy reciprocal arrangements, provided that they continue in their course this year, but will universities—I use as an example Hull, which offers its German language undergraduates a year's experience in Germany—as institutions have to fund health insurance? Will they pass on that cost to their students or will they be able to purchase exactly the same arrangements in some cross-border arrangement?

Finally—the noble Lord, Lord Bourne, referred to this briefly—will the Minister now, or in a note placed in the Library, say how successful the NHS has been in recovering health-related fees from non-UK residents over the past five years and what the administration costs have been as a proportion of overall recovered

costs? I ask this because I have not seen anywhere assessments relating to the recovery of costs from the huge rise in claims that will be made by hospitals and other healthcare institutions when EU visitors, students and workers not currently operating in the UK do so after 1 January 2021. I am sure your Lordships would agree that it would be perverse if we had a system that costed the NHS in the UK far more than at present, simply because of the administration and bureaucracy surrounding those recharging facilities. As ever, I look forward to the noble Lord's—as usual—courteous reply.

4.34 pm

Baroness Jolly (LD) [V]: My Lords, these regulations are quite technical in nature but relate to a very important issue for many. I am grateful to my noble friends Lady Ludford, Lord Greaves and Lord Willis of Knaresborough, and to my friend the noble Lord, Lord Bourne of Aberystwyth, for their comments, questions and common sense.

Reciprocal healthcare has been and always will be of vital importance to those who travel between and live across European nations, in particular workers and students, as has already been mentioned. It ensures that health coverage is available as individuals undertake activities that are beneficial across our societies. However, it is extremely important that individuals are informed about their healthcare rights abroad, whether they need to be supplemented with insurance and whether they are covered by direct payment or a reimbursement system.

Could the Minister confirm the arrangements on the island of Ireland? He will be aware that, at present, residents in both the Republic and Northern Ireland have been treated freely on either side of the border. I do not mean "freely" in the financial sense, but in the sense that the border does not exist: ambulances travel from north to south without let or hindrance, and treatment for a single condition can be delivered in both the north and the south. I wonder whether the Minister could clarify whether the financial arrangements will have to change or be renegotiated—and will they be ready with effect from 1 January 2021?

I sit on one of the House of Lords Select Committees that has been looking at various issues relating to the situation in Northern Ireland with effect from 1 January next year. With a lot of despair, we have found that some departments have been very slow in working with the Assembly in the north. They are feeling abandoned by departments and anxious about whether things will be ready for 1 January. Could the Minister confirm that, as far as health is concerned, all arrangements will be completely wrapped up by the time 1 January comes?

Concerns have been raised that those with existing and underlying health conditions may not be covered when they travel to the EU. Can the Minister confirm whether any reciprocal coverage will be available, for those with a learning disability in particular? It is concerning if coverage is not complete for some individuals, as it will add extra pressure to an already stretched NHS resource, as well as having an impact on these individuals. Of course, a comprehensive deal with the EU, securing reciprocal coverage just as we have at the moment, would resolve any uncertainty there is. Can the Minister assure the House that the Government are still committed to negotiating such a deal? Can he confirm that agreeing a reciprocal healthcare scheme is a priority in these negotiations, as it is in the interest of both parties?

The withdrawal agreement agreed in October 2019 and ratified in January 2020, and separate agreements with other EEA states and Switzerland, made some provisions relating to this. First, the existing arrangements continue until the end of the transition period on 31 December this year. Can the Minister clarify who will retain rights after the transition period? What conversations have the Government had with the insurance sector, which I am sure is waiting for new business with bated breath? As was suggested by the noble Lord, Lord Bourne of Aberystwyth, this issue is important. I am concerned that there will be some less-than-ideal arrangements and wonder what assurance the public have that insurance offerings are reasonable and do not take advantage of the situation.

There are some provisions for health at the 23rd hour. UK and EU nationals in a cross-border situation over 31 December 2020—part-way through a holiday, maybe—can continue to use the EHIC to access needs-arising treatment, until they leave the country by travelling to another EU member state or returning to the UK.

People visiting the UK or EU for planned medical treatment under the S2 route can commence or complete their treatment if authorisation was requested on or before 31 December. If a UK national has paid social security contributions in a member state in the past but is not living in the EU on 31 December 2020, the rights that flow from those contributions, such as benefits, pensions and reciprocal healthcare rights, will be protected. This means that someone who has previously worked in an EU EFTA member state can apply for a UK S1 as well as EHIC S2 once they reach state pension age, on the same terms as now. So, we have a clearer picture of what the future arrangements of the EU on healthcare will be.

Many noble Lords have outlined how they have used their EHICs. My noble friend Lord Greaves has clearly had far more exciting experiences than I have in the Alps. I have managed to spend the last 50 years travelling happily around the EU without any problems at all and my EHIC has stayed happily in my wallet. These Benches regret that we are in this position, but we have to put our trust in the Government to arrange as good a reciprocal deal or series of bilateral arrangements as soon as possible. Will this be sorted by the end of the transition period? Can the Minister confirm that we will not be disappointed?

4.41 pm

Baroness Thornton (Lab): I thank the Minister for his introduction. I also thank all noble Lords who have taken part in this debate, raising an unenviable number of questions that the Minister will need to answer. I want to be clear that I understand the situation here. I am a veteran of this debate. I had a look and I have had this debate in one form or another at least four or five times in the last three years. This is the third Minister I have had dealing with it, so I hope noble Lords will pardon me for my sense of déjà vu.

[Baroness Thornton]

My understanding is that we are all okay for the next six weeks while we are still covered by the transitional agreement, but on 1 January we are okay in terms of healthcare and other provision only if it already exists. If it does not exist and you are not resident in a European Union country—or, presumably, a European Union resident in this country—you will have to make new arrangements.

I remember being in a meeting with one of the noble Lord's colleagues, probably about two and a half years ago, who assured us that, if necessary, we would have 27 absolutely rock-solid agreements on reciprocal healthcare, and that it would be okay. I have to say that I greet some of this with a certain amount of scepticism because I feel as though I have been led up this particular mountain at least three or four times in the last few years. I would like to know whether my assumption is right: that those of us who do not live in Spain, have not paid into the Spanish system and are not eligible to do so but who might want to retire there next year, will have to make our own arrangements. I suggest to the Minister that the way people will feel about Brexit will be judged partly on how this works, because healthcare and access to healthcare across the European Union is very personal to all of us.

I put on record some of the concerns that have been raised with us by a range of patient groups and healthcare organisations, who feel that the regulations do not go far enough in protecting the rights to healthcare of British citizens who travel in the European Union. As other noble Lords have said, this could leave some people with underlying health conditions not completely covered. The noble Baroness, Lady Ludford, used an example from Kidney Care UK that 30,000 people on dialysis can currently travel through Europe and receive their dialysis free of charge because of EHIC, even though dialysis for life-sustaining treatment for kidney failure is not covered by travel insurance; without reciprocal healthcare arrangements, it may cost up to £1,000 per week. I would like the Minister to answer the question of what will happen to people who receive dialysis after 1 January. How many more thousands of people with pre-existing health conditions will not be able to get insurance and could be put in the same situation if the Government fail to reach a deal?

If they fail to reach a deal in the next two weeks, will there be 27 agreements in existence? Are they there and ready to run? I would really like to know. The Brexit Health Alliance—a group of organisations that want to ensure that the views of healthcare users and providers are reflected in the Brexit negotiations, including the Academy of Medical Royal Colleges, NHS Providers, the Richmond Group of Charities and the Association of the British Pharmaceutical Industry—says:

"The current arrangements involve minimal bureaucracy for patients and healthcare providers, underpinned by well-established systems for reimbursement between member states. The NHS will face unwelcome increased resourcing burdens, if it is required to handle new, more complex administrative and funding procedures when providing care to EU citizens in future."

The British Medical Association says that failure to reach a deal would,

"lead to significant disruption to … individuals' healthcare arrangements, an increase in costs of insurance, and uncertainty regarding accessing healthcare abroad. Moreover, the NHS would face a drastic increase in demand for services, which could dramatically increase its costs and place greater pressure on doctors and clinical staff."

I said those words to the Minister's predecessor about two years ago. I said if we do not sort this out, there will be increased pressures on the NHS. Two years later, having increased pressures on the NHS is even more serious than it was.

Those organisations have been completely consistent in what they have been saying to the Government about this issue for the last three to four years and here we are now, weeks from possibly falling off a cliff. It is very important that the Minister not only answers some of the very relevant questions he has been asked by other noble Lords but seeks to reassure us that we are not all going to find ourselves faced with huge costs and, possibly, not being able to travel at all in Europe because we have failed to reach an agreement.

4.47 pm

Lord Bethell (Con): My Lords, I express admiration and gratitude for the stamina of the noble Baroness, Lady Thornton, for sitting through this debate several times. I have also sat through it several times. I fear that some of my answers will be the same as those the noble Baroness and others will remember.

I am grateful for this debate. It is a quite reasonable and touching reminder of a key fundamental that travel is massively valued, particularly by those who travel for work, for study and to see relatives, but also by the population generally. Travel is of huge personal and financial value and protecting your health when you travel is incredibly important. People have a close association with that and are naturally deeply concerned about it. I agree with those noble Lords who emphasised the importance of these arrangements and in no way do I undervalue the importance of the EHIC programme and its successor to the British public.

In the withdrawal agreement we have a robust framework for some reciprocal rights that include significant long-term and traditional protections for EU and UK nationals. This piece of legislation is very much in that spirit. It is there so that UK legislation remains functional by reflecting the withdrawal agreement and the transition period and ensures that there are appropriate protections in place for those accessing healthcare under the cross-border healthcare directive. As veterans of this area will know—I apologise if this creates a sense of déjà vu—I remind noble Lords that the changes in this instrument do not concern the future relationship with Europe. The UK has made it very clear, and we continue to work on the fact, that we want to agree clear arrangements for providing healthcare cover for tourists, short-term business visitors, service providers and for all manner of British people who are travelling to the EU and vice versa.

However, any agreed arrangements will be entirely subject to the outcome of those negotiations. There is nothing I can do at this Dispatch Box to answer the great many perfectly valid but completely unanswerable questions that have been put about what those future

arrangements might look like. However, I can update the House: the UK has had constructive discussions with Switzerland and the EEA/EFTA states of Norway, Iceland and Liechtenstein on our future relationship, including social security co-ordination and reciprocal healthcare. Those are promising and reflect well on our conversations with the EU. The progress of those discussions is, however, linked to the outcome of the EU negotiations on social security co-ordination, so I cannot offer concrete guarantees in that department.

To answer a point made by the noble Baroness, Lady Thornton, some people will be eligible for a UK EHIC under the terms of the withdrawal agreement. A new EHIC has been developed for those who are eligible, including people living, working and studying in the EU before the end of the transition period. We made that very clear very early on. Anyone with an S1 form or studying in a member state can apply for the new EHIC on the NHS website. For those not covered by the withdrawal agreement, the EHIC may not be valid from 1 January 2021, as the noble Baroness rightly pointed out. The Government are open to working with the EU to establish necessary healthcare arrangements that provide healthcare cover for tourists, short-term business visitors and service providers, but those conversations have not been finalised.

Future healthcare cover for tourists is subject to the future relationship. I understand that it is extremely frustrating not to be able to find exactly what that will look like. I acknowledge that one group which is particularly concerned will be those with pre-existing conditions; they will find it the most challenging to find the right travel insurance if there is no arrangement with the EU on necessary healthcare. This is something we are looking at closely. On a practical note, we know that getting insurance can be more difficult for those with long-term conditions. To support people, the Money Advice Service has recently launched an insurance directory for people with a serious medical condition, which brings together specialist firms with the aim of making it easier to find travel insurance that provides the right health cover. I understand that that service is proving of value.

In response to my noble friend Lord Bourne, communication has been incredibly important and we have gone about it in an energetic way. We have sought to prepare citizens for the change at the end of the transition period with advice tailored for different audiences, helping them to understand their choices and to act in their own best interests. Information is available and has been updated regularly on the NHS pages and GOV.UK to ensure that people are clear about their reciprocal healthcare rights. The Foreign, Commonwealth and Development Office has been leading a campaign, supported by DHSC reciprocal healthcare advisers, to UK-insured people living in the member states, and my understanding is that those communications have been effective.

The noble Lord, Lord Greaves, asked about readiness to implement the withdrawal agreement. I reassure him that the DHSC has made good progress, working openly and collaboratively with other social security departments and its operational delivery partners in NHS England, NHS Improvement and the NHS Business Services Authority, to ensure that reciprocal healthcare arrangements will be successfully implemented for those covered by the agreement. I also confirm that UK S1 holders in the EU and UK students studying abroad can now apply for their new EHIC under the withdrawal agreement.

The noble Baroness, Lady Jolly, asked about Ireland, and it is good news that we seem to have made progress on our arrangements for Ireland. The UK and Irish Governments have been discussing future arrangements for healthcare co-operation within the common travel area. Great progress has been made in these talks. These arrangements will ensure that residents of the UK and Ireland will continue to be able to access necessary healthcare when visiting the other country and benefit from co-operation between UK and Irish healthcare providers, regardless of the outcome of the negotiations with the EU. The example the noble Baroness gave of ambulances travelling across the border was very powerful.

These arrangements build on previous commitments that UK and Irish citizens who are living in the other country will continue to be able to access healthcare on the same terms as local citizens. The Healthcare (European Economic Area and Switzerland) Arrangements (EU Exit) Regulations 2019, which we debated previously, provide the mechanisms to implement these arrangements, so there should be no interruption in healthcare arrangements between the UK and Ireland.

The noble Lord, Lord Willis, asked about money reclaimed from other countries. That amount has grown substantially over the last five years. I cannot give the precise number that the noble Lord asked for, but the amount recovered from overseas healthcare visitors has risen to £760 million in 2019-20. That is a substantial amount, but we are continuing to work to make sure that all that money is reclaimed effectively.

These essential measures are being put in place to protect those who seek to travel abroad. For that reason, I beg to move.

Motion agreed.

4.55 pm

Sitting suspended.

Her Majesty the Queen's Platinum Jubilee

Statement

The following Statement was made in the House of Commons on Thursday 12 November.

"With your permission, Mr Speaker, I would like to make a brief and important *S*tatement about the Government's plans to mark Her Majesty the Queen's Platinum Jubilee in 2022. The 6th of February 1952 marked the dawn of a new Elizabethan age in our United Kingdom. For a nation emerging from the rubble of the Second World War, the new monarch represented an opportunity for a fresh start and a brighter future. The seven decades since have seen a huge amount of change, progress and—at times—turmoil. Fashions, technologies and many Prime Ministers have come and gone, but throughout there has been one constant: Her Majesty has been the golden thread that binds us, uniting our kingdom.

As you said, Mr Speaker, 2022 will represent an extraordinary milestone for Her Majesty, for the country and for the Commonwealth. No British monarch has ever celebrated 70 years on the throne, and I know the entire country will want to come together to celebrate Her Majesty's remarkable reign, reflect on her legacy and look forward.

To honour this extraordinary historic occasion, the Government are working with the Royal Household and devolved Administrations on an extensive programme that will unite every generation in all 54 countries of the Commonwealth, from the south Pacific islands to the Canadian Arctic, in celebration of Her Majesty. There will, of course, be the traditional nationwide fanfare of street parties and celebrations, building up to a special four-day Platinum Jubilee weekend that we will celebrate by moving the late May bank holiday to Thursday 2 June and adding an additional bank holiday on Friday 3 June.

We are working with the United Kingdom's leading creative minds to make this a jubilee weekend to remember—one that mixes the best of British ceremonial splendour and pageantry with cutting-edge artistic and technological display, recognises the global contribution made under Her Majesty's reign, and offers thanks for her seven decades of unwavering public service. It will involve a mixture of spectacular moments in big cities, as well as local events in towns and villages across all our United Kingdom.

We will of course continue to honour some proud jubilee traditions. When Her Majesty's great, great grandmother, Queen Victoria, reached her 50th year on the throne, she issued a special medal to mark her golden jubilee. Her Majesty has graciously approved plans to issue her own Platinum Jubilee medal, to be given to those who work in public service, including the Armed Forces, the emergency services and the prison services.

As you said, Mr Speaker, Parliament is preparing its own jubilee gift, organised by you, sir, the Lord Speaker and, of course, my right honourable and learned friend the Member for Northampton North, Michael Ellis, and we are working on a series of legacy projects that will serve as an enduring tribute to Her Majesty.

We will of course unveil further plans in the coming months as they develop, but 2022 will be a landmark year for the United Kingdom. The Platinum Jubilee will be the jewel in the crown of a series of events showcasing the very best of this country to its people and to the rest of the world, including the Birmingham Commonwealth Games and Festival UK 2022. After a very difficult year where we have come together to fight the common enemy of coronavirus, I am sure that the House will want to join me in looking forward to happier times for our great nation, when we will be united in celebration instead."

5 pm

Lord Bassam of Brighton (Lab) [V]: My Lords, I very much welcome the Statement and the announcement that has been made. I thank the Secretary of State for setting out the plans for the celebration, and I am sure I join other noble Lords in looking forward with optimism to this happy event. We warmly welcome the good news that Her Majesty's Platinum Jubilee will be recognised by an extra bank holiday, as I am sure will many people up and down the country.

The Secretary of State, in a recent newspaper article on the celebration of the 2012 Olympic Games, referred to a time that evoked much happiness for us, and one where we all came together to celebrate and mark our shared values. We all look forward to a time when we can enjoy collective events such as street parties, festivals and carnivals, enjoy live performances, listen to live music and be together to celebrate the very things whose absence is so keenly felt at the moment, particularly as we approach Christmas, usually another time of coming together.

Of course, 2022 is already shaping up to be a big year for celebration, with the centenary of the BBC and the hosting of the Commonwealth Games in Birmingham. It is in very large part due to the Queen herself that we see the success of the Commonwealth as a group of nations working together despite their huge differences and the cultural and historical context from which the Commonwealth was formed. We look forward to hearing more about the plans for these celebrations, bringing together our whole United Kingdom, as well as the Commonwealth, as we get nearer to 2022.

The numerous qualities displayed by Her Majesty throughout her long reign of dedicated service—particularly her incredible work ethic, kindness and patience—represent the very best of our values as a country. As we live through one of the most difficult periods of her reign, I am sure it was a source of comfort to many millions when the Queen addressed the nation earlier this year. Her promise that "we will meet again", echoing the words made popular by Dame Vera Lynn, were especially poignant for millions of people for whom the Queen has been a constant presence during their lives.

The Opposition echo the Government's hopes that the country will emerge from this dark period in time for these celebrations. Our hope is that they become in comity a wonderful way to mark a new optimism for our future as we seek to build back better and reflect more deeply on the great changes that have taken place over the past 70 years.

Baroness Bonham-Carter of Yarnbury (LD) [V]: My Lords, we also welcome this Statement and the fact that the celebration—

The Deputy Speaker (Baroness Henig) (Lab): Would the noble Baroness turn up her microphone, please?

Baroness Bonham-Carter of Yarnbury (LD) [V]: I am so sorry, I did not put my headphones on. We welcome this Statement and the fact that the celebration of Her Majesty the Queen's extraordinary reign and Platinum Jubilee will embrace and showcase our nation's creativity. The Secretary of State harked back to the Cultural Olympiad, which was a triumph—a celebration that made us proud to be British and, more importantly, a unified nation. Since then, things have not gone so well on that front, so how very important it is to try to regain that moment.

Who can forget Danny Boyle's opening ceremony—a beautiful, brilliant spectacular, with our monarch jumping out of a helicopter? What is she going to do to top that, I wonder? The ceremony was shot through with recognition of our creative accomplishments and was a huge one in itself—and of course, so presciently for today, it celebrated our wonderful National Health Service.

The Cultural Olympiad as a whole was a uniting experience. It pledged to encompass thousands of local and regional events as part of the nationwide celebration, and it did. The Olympiad was an inclusive experience; there was street art and high art, hip hop and ballet. Everywhere, it attracted new audiences. We must ensure that the innovative partnerships that creators forged happen again. So will the Minister confirm that the Platinum Jubilee will also pledge to encompass and reflect the whole nation—local, regional and diverse in every sense? Can the noble Lord update us on his department's plans to convene key partners—cultural arm's-length bodies, lottery distributors and others such as Channel 4 and the BBC—to help co-ordinate efforts?

The year 2022 is the centenary, as the noble Lord, Lord Bassam, said, of the BBC. It has been a staple of Her Majesty's life and reign and, during the pandemic, it has been a lifeline. I am sure it will play an equally unique and crucial role in the Platinum Jubilee celebrations in bringing the nation together.

In announcing this central role for the UK's leading creatives in these celebrations, the Government demonstrate that they understand their importance. However, for this to succeed, we need a healthy, functioning creative sector. As we know, the present Covid crisis is taking a terrible toll there. While we welcome the support the Government have given the sector, does the noble Lord agree that the quicker we get live events up and running the better? They will, of course, be central to these forthcoming celebrations. Does he also accept that securing affordable insurance is key to this?

We need to ensure that talent and skills do not leave these industries. Help is needed for the many creative freelancers and self-employed who cannot access support due to gaps in the system. We need them to be able to plan, produce and contribute to the festivities of 2022. Will the noble Lord commit to this Government helping the excluded?

Does the Minister agree there is talent everywhere in this area but that this cannot be said for opportunity, particularly for those from diverse ethnic and economic backgrounds and those with disabilities? Does he not agree that the Queen's Platinum Jubilee can provide the opportunity for celebration across all our communities? Will the Government commit to working with cultural institutions and community groups to achieve this? I am a trustee of the Lowry in Salford, and I have seen how its outreach programme works across social and economic divides to support creativity. I am sure that my noble friend Lady Benjamin can bring a lot of experience and knowledge from the work she does with the Windrush Commemoration Committee.

Finally, there is Brexit—and, worst of all, a no-deal Brexit. The creative industries have massively benefited from our membership of the EU. As we reach the endgame, can the Minister assure the House that the creative industries are at the top table so far as negotiations are concerned?

We on these Benches join in congratulating the Government on raising our spirits with the tantalising prospect that we might be celebrating communally in the not-too-distant future. Let us make sure that there is proper support for those who will be so essential to those celebrations—our creative artists. Culture and creativity are jewels in the UK's crown.

Lord Parkinson of Whitley Bay (Con): My Lords, first, I thank the noble Lord and the noble Baroness for their warm and enthusiastic welcome for the Statement and the announcement in it, and for the cross-party support they have given to the Government's plans. It is not surprising but it is very welcome, and a fitting tribute to the unifying figure who is Her Majesty the Queen, as we come together to prepare to celebrate this milestone jubilee.

As the noble Lord, Lord Bassam, and the noble Baroness, Lady Bonham-Carter, said, the occasion of the Diamond Jubilee in 2012 was indeed a very happy time. I remember it fondly although damply, having watched the Thames river pageant from a very rainy Southwark Bridge. We all hope for better weather this time around, although there was something distinctly British about it. They are right to point to its combination in that year with the London Olympics, which led to a truly special year for the United Kingdom. We want 2022 to be a landmark year as well. As the noble Lord said, we will also be seeing the Commonwealth Games in Birmingham that summer and we have Festival UK, which we will be celebrating throughout that year. We want 2022 to be a truly historic year to remember, celebrating all the things that make our nation so great. The noble Lord and the noble Baroness mentioned institutions such as our National Health Service and the BBC, which celebrates its centenary in 2022, and of course we want those institutions to form an important part of the celebrations. We will be liaising with them, along with the Royal Household, as the plans are firmed up.

The noble Baroness, Lady Bonham-Carter, in particular, talked about the creative accomplishments of the country. I am pleased to say that, in relation to Festival UK*2022, this very morning the 30 selected consortia for the £3 million-funded R&D phase were announced. The 30 consortia that have been picked include an exciting mix from a number of different sectors, including organisations and individuals, freelancers and emerging talent from, as the noble Baroness said, the diverse communities that make up our nation—that is absolutely right—and from all four corners of the United Kingdom. They include universities, TV and film organisations, museums and galleries, tech companies and environmental organisations. The final commissions will be announced next year, but we can see already that plans are afoot for that to be a very special undertaking.

The noble Baroness is right: we want the opportunity for all of Her Majesty's subjects to get involved in the celebrations, to pay tribute to the qualities that the noble Lord, Lord Bassam, mentioned in his question. The Queen is indeed a shining example to us all, and

[Lord Parkinson of Whitley Bay]
that is the reason why I am sure all of us, in a grateful nation, will want to come together to pay tribute to her as she reaches this Platinum Jubilee, and indeed to say thank you.

The Deputy Speaker (Baroness Henig) (Lab): We now come to the 20 minutes allocated to Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

5.13 pm

Lord Lingfield (Con): My Lords, it is welcome news indeed that the Queen has approved plans for a Platinum Jubilee medal. The Diamond Jubilee medal was given to some 465,000 people from the Armed Forces, to the fire, police, ambulance and lifeboat services, to coastguards and those working for mountain rescue. Would my noble friend consider increasing the number of medals, perhaps to 550,000, and widening the criteria to mark the extraordinary work of so many people during the pandemic, including NHS front-line personnel and, possibly, postal and other workers?

Lord Parkinson of Whitley Bay (Con): My noble friend is right to point to the nearly half a million of Her Majesty's subjects who received a medal on the occasion of her Diamond Jubilee, following the example set by her great-great-grandmother, Queen Victoria, when she celebrated her Golden Jubilee in 1887. As with previous jubilee medals, the Platinum Jubilee medal will be given to those who work in public service. That includes: the Armed Forces, the emergency services and those working in Her Majesty's Prison Service. The qualifying criteria will be announced in due course, and further details will be set out by each of the government departments that have responsibility for each of those important parts of the public sector.

Lord Bilimoria (CB) [V]: My Lords, it is serendipitous that the 2022 Commonwealth Games, originally meant to be held in Durban, are taking place not just in the UK but in Birmingham. I am proud to be the chancellor of the University of Birmingham, which will be playing a major role in hosting the Games. Can the Minister inform us how the Commonwealth Games will play a very prominent role in the Platinum Jubilee celebrations for Her Majesty the Queen?

Lord Parkinson of Whitley Bay (Con): The Commonwealth Games will take place in July and August 2022 in Birmingham. It will be the biggest sporting event ever held in the city, featuring thousands of world-class athletes from across the Commonwealth and over 1 million spectators. It will be an opportunity for competitors and spectators from all over the Commonwealth to come to the United Kingdom and celebrate what should be a very happy and historic year.

The Lord Bishop of Salisbury: My Lords, I speak for all the Lords spiritual in welcoming this Statement about the Queen's Platinum Jubilee. It is a great privilege for me to be here in person this week and to pray each day with 30 or so Members before the business of this House commences in a way that is currently not allowed in any of the churches or cathedrals in this country. Has ever a prayer been so fully answered as that for the Queen?

> Grant her in health and wealth long to live … Long to reign over us. God save the Queen.

Before becoming the Bishop of Salisbury, I used to be the vicar of St Martin-in-the-Fields, which is known as the royal parish church. Like every parish church, the whole community belongs there—the homeless and royalty. In praying for the Queen, we pray for the whole community. I particularly pay tribute to Her Majesty's recent visit to Porton Down in recognition of the remarkable role played there in addressing the issues faced by the people of Salisbury following the Novichok poisonings.

At her Coronation, the Queen was consecrated like a priest. She rules under God and the Government rule under the Queen, not in the self-referential way in which a nation is its own arbiter. In welcoming the proposals to celebrate a long and remarkable reign, I am sure that we will all pray and sing

> May she defend our laws,
> And ever give us cause,
> To sing with heart and voice,
> God save the Queen.

In the light of all that, how does the Minister see the religious nature of this Platinum Jubilee celebration of Her Majesty's central role as a religious figure?

Lord Parkinson of Whitley Bay (Con): I agree wholeheartedly with everything that the right reverend Prelate has said, and indeed, he did so earlier in Prayers before the Sitting of your Lordships' House. He is absolutely right that the role of Her Majesty the Queen as Defender of the Faith and Supreme Governor of the Church of England is central to her role as monarch, and she has taken that extremely seriously since her coronation. The Royal Household and Her Majesty's Government are in discussions with the Church of England to ensure that that too is properly recognised in the Platinum Jubilee.

Baroness Rawlings (Con) [V]: My Lords, in a moment of darkness and gloom, the proposed Platinum Jubilee for Her Majesty is a ray of light. Does the Minister agree that there is no better way to celebrate and thank Her Majesty for seven decades of dedicated and wise service than with a Commonwealth walkway in all four parts of her United Kingdom? Her Majesty has celebrated all her jubilees with walkways—1977, 2002 and 2012—and she opened all of them. With the Commonwealth canopy, you look up, but with a Commonwealth walkway, you look down, guided by permanent bronze markers.

It is a perfect legacy and gift for everyone to help them to get back on their feet post Covid. Let us not just fly a flag or plant a tree, but go for a walk with families, friends, politicians, athletes and film stars, and thank God with every step for the 70 years of steadfast leadership by Her Majesty Queen Elizabeth II, our Queen and Head of the Commonwealth.

I hope that many of your Lordships will support this idea. I ask the Minister to take this suggestion seriously and talk about walkways in his Ministry.

Lord Parkinson of Whitley Bay (Con): My Lords, I thank my noble friend. She is right to say that walkways have been an important part of the Queen's previous jubilee celebrations. Indeed, having walked around London rather more this year than I do in most, I have seen many of the plaques over recent months. I will certainly take that idea back to the department.

Baroness Prashar (CB) [V]: My Lords, Her Majesty epitomises continuity and stability. With her wisdom and steadfast commitment, she has held the Commonwealth together and earned the deep affection of all its nations. More than anyone else, Her Majesty understands the significance of the Commonwealth and all that we hold in common. More than ever, we must nurture our common bonds. Can the Minister please ensure that Her Majesty's outstanding role as head of the Commonwealth, and what she cherishes about its people, will be marked enthusiastically and meaningfully?

Lord Parkinson of Whitley Bay (Con): The noble Baroness is right, and of course the 54 nations of the Commonwealth will want to make their own plans to celebrate the jubilee in their own ways. The Foreign, Commonwealth & Development Office is liaising with them as they prepare to do so.

Lord Boateng (Lab) [V]: My Lords, the Queen is patron of the Commonwealth Parliamentary Association and of the English-Speaking Union, of which I am the immediate past chair. As such, she has championed effective communication and friendship between peoples and parliaments. So long has been her reign that, both as a child and as a Minister, I have witnessed her addressing the Parliament of Ghana. Will the Minister assure us that his department will consult with Commonwealth associations based in the UK, including the CPA and the English-Speaking Union, to ensure that this aspect of Her Majesty's long and glorious reign is reflected in this jubilee year?

Lord Parkinson of Whitley Bay (Con): That is a very important aspect of Her Majesty's reign. The Commonwealth Games give us an opportunity to reflect that, but as the noble Lord points out, the Commonwealth is so much more than those sporting endeavours that we will be celebrating through that event. We will ensure that, through the Foreign, Commonwealth & Development Office, we are speaking to all the Commonwealth nations in the run-up to the platinum jubilee.

Lord Howell of Guildford (Con) [V]: My Lords, six of your Lordships have mentioned the Commonwealth in the last few minutes. Given the increasing importance of the Commonwealth network in this country's future, and in global peace and stability generally, will my noble friend the Minister reassure us that as this excellent initiative unfolds, the 15 other countries or realms of which Her Majesty the Queen is also the sovereign, as well as the wider Commonwealth network of nations of which she is the head, will all have a very full opportunity to share in planning the event and in the event itself when it comes about, and in dovetailing their own plans in whatever way they choose?

Lord Parkinson of Whitley Bay (Con): I am very happy to reassure my noble friend on that point. As my right honourable friend the Secretary of State said in the Statement, the Government are working with the Royal Household, the devolved Administrations and the Commonwealth on a programme of events that will unite every generation in all 54 countries of the Commonwealth, from the South Pacific islands to the Canadian Arctic, in celebration of Her Majesty. That is the depth of our undertaking.

Lord Berkeley of Knighton (CB) [V]: My Lords, as a composer and broadcaster, naturally I very much support the comments made by the noble Baroness, Lady Bonham-Carter of Yarnbury. I suggest to the Minister that if the Arts Council, the DCMS and the BBC joined hands, they could commission a huge raft of artists in this country who have been stymied from producing creative work. Choreographers, composers and designers could join hands to make something substantial. In order to make something substantial, we must move quite soon, because these people are very busy, and creating great work takes time.

Lord Parkinson of Whitley Bay (Con): The noble Lord is absolutely right. The Statement is being made now to give people advance notice, so that they can get planning to make the most of a truly important occasion and to make these celebrations to remember. We are working with the UK's leading creative minds on exactly the sorts of things that the noble Lord mentioned, to make the Platinum Jubilee a weekend to remember.

Lord Clark of Windermere (Lab) [V]: My Lords, it goes without saying that we need to ensure an even distribution of events throughout the nations and regions of the UK. In particular, will HMG engage much more deeply than they have in the past with local authorities, which know their localities best?

Lord Parkinson of Whitley Bay (Con): I completely agree with the noble Lord. My family tell happy tales of celebrating Her Majesty's Silver Jubilee on the north side of the Tyne opposite the constituency which the noble Lord represented for many years. He is absolutely right: we want the celebrations to take place up and down the length of the United Kingdom and more broadly. We will be liaising with local authorities and elected representatives at every level.

Baroness Kennedy of Cradley (Non-Afl) [V]: My Lords, a huge part of this fantastic jubilee celebration will be underpinned by the talent, knowledge and expertise of the music, entertainment and creative industry sector. In his opening remarks, the Minister mentioned a consortium, with commissions to be made this year. Can he expand on that? Is it envisaged that spending on the preparations will be brought forward, so that support can be given as soon as possible to those in the music and creative industries, who need it now to survive?

Lord Parkinson of Whitley Bay (Con): The point I made earlier was about today's announcement in relation to Festival UK*2022 and the consortia that have been selected for its R&D phase. Further announcements

[Lord Parkinson of Whitley Bay]
about the festival will be made over the coming months. The noble Baroness is right; as I said to the noble Lord, Lord Berkeley, we have made the announcement now so that we can begin to engage with people at every level to have the sort of creative outpouring that we want to see in the run-up to, and at the celebration of, this important milestone.

Lord Mackay of Clashfern (Con) [V]: My Lords, I believe that, as Lord Chancellor, I may have held the nominal title of Keeper of the Queen's Conscience. Will thanks for the highly conscientious way in which Her Majesty has performed her duties form an important part of this very welcome platinum celebration?

Lord Parkinson of Whitley Bay (Con): Her Majesty's conscience will have been in very safe keeping in my noble and learned friend's hands in the decade that he served as one of her Lord Chancellors. He is absolutely right. This is a moment for a grateful nation to pay tribute to Her Majesty and to thank her not only for her years of service but for the great leadership that she shows as an individual in the qualities that she has brought and the shining example that she sets to everybody in public life.

Lord Loomba (CB) [V]: My Lords, it is fantastic news that the Government are spearheading plans for celebrations to mark Her Majesty's Platinum Jubilee in 2022. Does the Minister agree that on such a momentous occasion it would be a huge honour for Members of both Houses to be able to celebrate Her Majesty's 70-year reign by hosting a reception in Westminster Hall, paid for with contributions from the attending Members?

Lord Parkinson of Whitley Bay (Con): As the noble Earl, Lord Kinnoull, said on behalf of the Lord Speaker, as at the Diamond Jubilee, your Lordships' House and the other place are joining together to think how best we as parliamentarians can celebrate Her Majesty's jubilee, and, under the leadership of the right honourable Member for Northampton North, Michael Ellis MP, to think of a gift that we might be able to contribute towards. I would encourage the noble Lord to speak to the Lord Speaker about that and the other ways that Parliament can play its part in thanking Her Majesty at this important time.

Lord Caine (Con): My Lords, during the 2012 Diamond Jubilee celebrations I was privileged to be at the Lyric Theatre in Belfast for the historic handshake between Her Majesty the Queen and the late Martin McGuinness. Does my noble friend agree that such events demonstrate two of the defining characteristics of Her Majesty's glorious reign: devotion to duty and an ability to bring people together from across our United Kingdom? Will my noble friend guarantee that Northern Ireland will play its full part in the Platinum Jubilee celebrations?

Lord Parkinson of Whitley Bay (Con): I wholeheartedly agree with my noble friend. I remember that occasion and indeed the state visit of 2012 to Ireland, in which I know he played a part working in government. He is absolutely right. All four nations of the United Kingdom will play an important part in celebrating the Platinum Jubilee.

Baroness Andrews (Lab) [V]: My Lords, I very much welcome the Statement and the prospect of celebrating Her Majesty's Platinum Jubilee. Does the Minister agree that the best jubilee legacy will be not monuments or memorials but, as he said, the opportunity for the whole country to put Covid behind us and to celebrate the identity and the diversity that we see in the heritage of every place and every community every day? Heritage has suffered badly over the past year, as have the heritage organisations, and yet they will—as I hope he will agree—have a great place in the celebrations themselves. Can he tell us what opportunities there will be for heritage organisations to make their mark on the jubilee? They are, after all, the foundations of our future as well as our past.

Lord Parkinson of Whitley Bay (Con): The noble Baroness is absolutely right. We want heritage organisations to play an important role in the jubilee celebrations, commemorating our past, celebrating the present and, indeed, safeguarding everything that is great about this country for the future. She is right too that Her Majesty the Queen's address during the darker days this spring when the pandemic was new was such an important thing for so many of us across the country. As we grapple with the pandemic, it is nice that we have something to look forward to in 2022. We all hope for celebrations that are befitting of such an important occasion.

House adjourned at 5.32 pm.

Grand Committee

Monday 16 November 2020

The Grand Committee met in a hybrid proceeding.

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): My Lords, the hybrid Grand Committee will now begin. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally. I must ask all Members in the Room to wear face masks, except when seated at their desks, to speak sitting down, and to wipe their desks, chairs and any other touch points before and after them. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I shall immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

The microphone system for physical participants has changed. Members' microphones will no longer be turned on at all times to reduce the noise for remote participants. When it is your turn to speak, will noble Lords please press the button on the microphone stand? Once you have done that, wait for the green light to flash and turn red before beginning to speak. The process for muting and unmuting from remote positions remains the same.

Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

2.31 pm

Moved by ***Lord True***

That the Grand Committee do consider the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020.

Relevant document: 31st Report from the Secondary Legislation Scrutiny Committee

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, procurement by the Government and public sector bodies represents a significant part of the UK economy. It is essential to the day-to-day running of government and should be appropriately regulated. The Government are committed to ensuring the continued functioning of this important marketplace when we leave the EU.

This statutory instrument will ensure that the UK will meet the requirements of the withdrawal agreement and the Northern Ireland protocol and replaces the earlier statutory instruments that did not take these matters into consideration. This legislation is essential to provide legal clarity for public procurement and certainty going forward, as we look at the possibilities for wider procurement reforms, which may be brought into domestic legislation.

The majority of this SI is unchanged from the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019, as amended by a second SI made in 2019, instruments that were debated in both Houses before being signed. Those instruments however, addressed deficiencies in a no-deal scenario. This instrument consolidates the first 2019 SI as already amended, incorporating further changes and new provisions, where relevant. The amendments made by this instrument do not amount to a material change in procurement policy. They will ensure that the UK's procurement system continues to function as intended at the end of the transition period. UK contracting authorities will be able to continue to procure goods and services without substantial changes in the process. In that way, the Government are ensuring that those entities can continue to be able to obtain value for money for UK taxpayers.

The instrument makes amendments to the three sets of regulations that implement the EU directives on awarding contracts and concessions in the public and utilities sectors outside the field of defence and security. Your Lordships debated a separate instrument amending the Defence and Security Public Contracts Regulations last week. Where this instrument differs substantially from the 2019 instrument is that it seeks to provide a level of continuity for procurement procedures which began before the end of the transition period. Procurements that fall within this category, including orders from ongoing contracts, will continue in substance to follow the unamended procurement regulations. We do not expect that there will be many procurements which fall into this category; however, it would be difficult to measure these exactly. A number of new technical amendments have also been included in this instrument.

This instrument makes it clear that specifications with an information and communication technology component can continue to refer to the common technical specifications recognised by the EU Commission. This is an extremely dynamic area of technical specifications, and the EU's process for recognising them is based on accepted best practice that the UK Government have been instrumental in developing. We have decided that, pending a mechanism to identify these domestically, retaining the reference to the EU's standardisation process is deemed the best solution.

The thresholds that govern the award of public contracts came into effect in the UK on 1 January 2020, and the sterling figures in this instrument reflect those updated figures. The procurement of certain legal services by a lawyer as defined by the lawyers' services directive are excluded from the procurement regulations. So that EU lawyers do not receive preferential treatment over those from third countries, this instrument amends the definition of lawyer to mean a person practising as an advocate, barrister or solicitor in any part of the UK or in Gibraltar. That includes those Swiss lawyers entitled to practise under their domestic designation in accordance with the Swiss citizens' rights separation agreement.

This instrument also makes various amendments to the procurement regulations to reflect recent amendments made to other domestic and retained direct EU legislation —for example, in relation to the acceptable formats for advanced electronic signatures, and the applicable

[LORD TRUE]
rules for determining the origin of products. To enable the procurement regulations to reflect technological developments and full and ongoing interoperability in electronic invoicing, a power has been conferred on the Minister for the Cabinet Office to make regulations to substitute a different e-invoicing standard, a different reference from the same standard or make changes to specific syntaxes for e-invoices.

The instrument disapplies rights derived from Article 18 of the Treaty on the Functioning of the European Union and parallel provisions in other agreements, to the extent that they are not disapplied in other domestic regulations. Retaining these rights would leave a lack of clarity as to whether EU parties within the scope of Article 18 of TFEU would have additional rights in the UK compared to non-EU countries. For example, suppliers from the EU may be provided with additional rights compared to third-country suppliers.

The UK has been invited to accede to the government procurement agreement, or GPA, in its own right. This instrument repeats the contingency arrangements set out in the 2019 EU exit statutory instrument, in case we are unable to legislate for GPA accession, resulting from any delay to the Trade Bill. One of the amendments ensures continued guaranteed access, rights and remedies on current terms for suppliers from existing GPA parties who would no longer have the guaranteed access, rights and remedies that they currently enjoy. This will mitigate the risks of a short gap in GPA membership by facilitating continued market access. Due to delays to the Trade Bill, we have also included a similar measure to this in relation to certain bilateral trade agreements between the EU and third countries to which the UK is currently party via its membership of the EU. This will keep alive the existing obligations towards suppliers from countries with which the EU has, before the end of the transition period, entered into a trade agreement with provisions relating to public procurement by which it is bound. The period in the 2019 EU exit SI was set to 18 months. This has been reduced to 12 months in this instrument to reflect the progress made in the Trade Bill.

In summary, this instrument seeks to ensure that the current public procurement regimes will continue to function after the end of the transition period, and to implement the relevant sections of the withdrawal agreement. It does not seek to make major policy changes or introduce new frameworks; instead, it makes largely technical changes to correct the deficiencies that will naturally emerge within our legislation at the end of the transition period. Left unamended, the existing regulations would not work as intended, and the EU exit regulations made last year in the context of a no-deal scenario would come into force. This would amount to a breach of our international obligations as well as a cause of confusion and uncertainty for procurers and suppliers, hampering the public sector's ability to obtain value for money from procurement. I commend the regulations to the Committee and beg to move.

2.39 pm

Lord Blunkett (Lab) [V]: My Lords, the Minister has spelled out very clearly the rationale for this instrument and I do not think that anyone this afternoon will object to taking this forward and providing for the next 14 months the certainty critical to business, commerce and our future trading arrangements.

I should just like to lighten the afternoon a bit by explaining that last week I was responding to a student who had asked me about the lead-up to Brexit. In replying to her, I dictated on to my digital recorder, for download by my assistant, my thoughts, which included the word "Brexiteers" several times. On every single occasion the predictive text provided us with a bit of a smile by downloading "bringing tears" rather than "Brexiteers". For many of us, those tears continue to run down our cheeks.

This afternoon's measure is very practical and I merely want to raise three points. First, there is the importance, highlighted by Paul Blomfield, my former parliamentary colleague from Sheffield, when this was debated in the Commons, of widening the issues that we would want to take forward in future. I hope that in the Trade Bill and any instruments arising from it we will be able to do that in terms of social value, the carbon agenda and environmental impact, and therefore be able to widen the current harmonisation and continuation of existing practice, including through the GPA.

The second is to ensure that we continue the process of recognising that harmonisation and alignment are a benefit to us rather than a disadvantage. The Minister spelled out why that was the case for the next 14 months and I think most of us recognise that it will be the case for many years.

The third and slightly more controversial point, which I could not resist making in my short intervention on these regulations, is that we are in a bit of a mess in this country at the moment on procurement. We have seen examples—understandable, given the speed of operation—of procurement in dealing with Covid that are completely unacceptable and place civil servants in an impossible situation. I would like the Minister to take back to his colleagues people's genuine worry about how procurement is operating and the real danger of nepotism and worse. We really do need transparency, as well as systems that do not allow those in the know, or those who know the people in the know, to be the ones who get the contracts.

2.42 pm

Baroness Boycott (CB) [V]: My Lords, it is a delight to follow the noble Lord, Lord Blunkett, and I agree with his point about the need for transparency in awarding contracts. If the last few months have shown us anything, it is the enormous power of procurement and what it can do when aligned with the right motives.

Following on from what the noble Lord, Lord Blunkett, said, I have a few brief remarks about widening the remit and taking into account both the environmental and public health impacts, effectively, of the things we buy. The Government's buying standards for public procurement are closely aligned with the EU's Green Public Procurement programme, but they are not mandatory and therefore do not have enough teeth. A recent report from Sustain, the alliance for better food

and farming, shows that two-thirds of councils have left food out of their climate emergency plans, only 20% include the climate implications of procurement at all, and only 13 councils are considered to have suitable plans in place, given that we face a climate emergency. This report is about to be released but, apart from the statistics above, about 67% of council climate action plans contain no new or substantial proposals on food. I think everyone has learned in the last few months or years just what that means for biodiversity and climate change.

Also, for public health, a good diet in the public sector needs to be normalised at a national level. At the moment this generally means councils going against the grain, with limited budgets to implement change. We should have mandatory standards for serving meals high in fruit and vegetables and low in ultra-processed foods and serving less meat across the public sector. We need to make it easier and quite normal to serve better meat and dairy and to work more locally. This has a lot of benefits for both the environment and the sustainability of small farms. When I ran the London Food Board, we set up a big buying scheme among a bunch of schools and were able to deliver cheaper and better food through intelligent purchasing.

The Government's other great big success story is the buying standards for sustainable fish. We now have strong, clear rules and they have been adopted by caterers in the public sector in workplace and university restaurants, and by a lot of retailers. This has shown the great potential for public sector food to establish and embed high standards in the new normal. In 2017, however, a Department of Health report found that only 52% of hospitals, of all places, were actually compliant with Government's own buying standards. I urge the Government to do something about it.

Before I finish, I have some questions. Will the Government commit to all public procurement tendering processes for contract renewals being aligned with our net zero 2050 target? Finally, can the Minister confirm whether all government departments have a specific sustainable procurement policy in place? If the answer is "not all departments", can the Minister tell me which departments have it and which do not?

2.46 pm

Lord Wigley (PC) [V]: My Lords, I am delighted to follow the noble Baroness and I very much agree with her comments on working more locally. I want to raise three points with the Minister in the limited time we have.

First, I ask for an assurance that no procurement contracts currently in force will be undermined, nullified or constrained by these regulations, and that no new contracts entered into by devolved Governments in Wales and Northern Ireland—I realise that Scotland may be different—will be made void by any part of these regulations if such contracts are a renewal of existing procurement contracts or are issued based on the same principles.

Secondly, I draw attention to paragraph 10 of the notes accompanying these regulations, which refers to "regular engagement" having been undertaken with the Welsh, Scottish and Northern Ireland Governments, but does not say whether agreement was reached on these matters with those Governments. Perhaps that could be clarified.

Thirdly, I draw attention to Regulation 16, which refers to:

> "The Water Industry (Specified Infrastructure Projects) (English Undertakers)"

and puts the Minister for the Cabinet Office in place of the European Commission. Does "English Undertakers" refer to undertakers operating in England, or does it include operators based in England who may be operating in Wales? If so, should there not be some reference to Welsh Ministers in that context? Those are the three points I wish to raise.

2.48 pm

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I am grateful to the Minister for his introduction and for the very helpful Explanatory Memorandum to the regulations, which tells us that the EU regulations have ensured that the

> "public procurement market is open and competitive and that suppliers are treated equally and fairly."

It goes on to say that in most respects that will remain substantially unchanged; any changes will be to correct minor deficiencies. Therefore, I should like to follow up on my noble friend Lord Blunkett's third point and ask the Minister whether he can explain some recent public procurement decisions in light of this.

Why, for example, was a contract for hand sanitiser given to TAG Energy without competitive tender, especially as that company was reported dormant on 25 February and the contract was awarded on 1 March? Why were contracts awarded without tender to Public First and to Topham Guerin, the company that ran the social media campaign for the Tories in the 2019 general election? Was there any tendering before Randox, which employs Owen Paterson MP at over £8,000 a month, was given a £133 million contract for Covid testing? Did Serco, for which the Health Minister Edward Argar used to work, have competition before it was awarded contracts for contact tracing and call centres totalling over £150 million? Finally, although I could ask about many more, did the company of the noble Baroness, Lady Mone—PPE Medpro—face competitors for the contract for 25 million gowns? Was it advertised to any other bidders?

These are just a few of many examples where it seems the proper procedures were not followed. I understand the urgency at the moment, but it is no excuse to say that we are in the middle of a pandemic when lucrative contracts have been given to companies with no experience in that area, many of which seem to have only one thing in common: a link with the Tory party. It is small wonder that the media have again said today that there appears to be a new virus around—"crony-virus". I look forward to the Minister's answers to my questions with keen anticipation.

2.50 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it was extremely tempting, in preparing for my three-minute slot, to talk about the endless stream of disastrous public procurement decisions in the Covid

[Baroness Bennett of Manor Castle]
pandemic, which made the term "chumocracy" such a figure in media headlines, as the noble Lord, Lord Foulkes of Cumnock, just reflected. But I have chosen instead to follow the noble Baroness, Lady Boycott, by taking this opportunity to focus on the impact of procurement on the dangerous, disastrous state of public health; the UK's responsibility, as chair of COP 26, to show the way in public procurement that benefits our poor, fragile, battered earth; and to add to that, as the noble Lord, Lord Blunkett, did, the need for procurement that adds social value in our poverty-wracked society.

The Government tell us they want to be world leading in every area they mention, yet we are, once again, at the back of the pack in using public procurement to improve public health and the environment. Back in October 2019, I asked Written Questions of the respective Ministers about what percentage of food served in schools, prisons and hospitals was organic or locally sourced. On schools, I was told that the Government had no information at all. The noble and learned Lord, Lord Keen of Elie, was able to tell me quite a bit on prisons, although not the specific information that I asked for. On hospitals, I was pointed to a forthcoming independent review of NHS hospital food that did indeed report last month. Henry Dimbleby's initial food strategy report highlighted similar issues.

So it is good that there are signs that the Government are catching up with this agenda, even though they are many years, even decades, behind. In Latvia, for example, since 2014 it has been mandatory to apply green public procurement criteria in food and catering services in state and local government institutions. Finnish procurement for public food aims to assist the national goal of every adult consuming half a kilo of fruit, vegetables and berries every day. The city of Copenhagen aims to serve 90% organic food in public kitchens, favouring seasonal and diverse produce. For example, one tender included 86 different varieties of apple from seven different wholesalers.

What is striking about all these examples is that there is, tied to health and environmental criteria, a desire and outcome that focuses on local, small, independent producers, rather than the giant multinational producers of dull, tasteless, ultra-processed pap, which forms so much of British institutional diets. The health and environmental advantages are obvious, but since the Government tell us they aim to build back better and to level up, that must mean spreading out the economy, breaking up the hold of giant multinational companies and building up market gardens, local manufacturing and small independent businesses across the land. EU membership never stopped this, as my examples show, so the continuity the Minister referred to still provides a chance for a fresh start and a bid to catch up with so many of the nations that have raced ahead of us.

2.54 pm

Lord Hain (Lab) [V]: My Lords, in October 2019, the Prime Minister agreed the political declaration on the UK's post-Brexit relationship with the European Union, which committed Britain and the EU each to adopt "common high standards" in state aid, competition, employment law and social legislation. In November 2019, the Prime Minister boasted that Brexit would free him to make fundamental changes to Britain's public procurement rules. The implication was clear: he planned to relax the current rules on procurement and state aid and introduce some kind of "buy British" policy to echo Donald Trump's "buy America" policy.

We are told that this week could be when the EU-UK trade talks finally come to a conclusion. We know that Ministers are already discussing a draft Green Paper on procurement and that the Cabinet Office is consulting stakeholders on future procurement rules, including new criteria for awarding contracts. Perhaps the Minister could say what those criteria might include. They ought to include setting stronger employment standards, delivering a fairer deal at work, and doing more to help those hit hardest by technological change.

Achieving record rates of employment is not enough. The last Labour Government did it and, despite a decade of austerity, the coalition Government and the post-2015 Tory Governments have done it too. Until the virus crisis there have been lots of jobs, but too many have been insecure, with nearly a million people struggling to survive on zero-hours contracts and a million in temporary work or doing second jobs. Many more have been vital jobs done by key workers filling essential roles but receiving unfairly poor pay and scant recognition. The Institute for Fiscal Studies reckons that key workers receive significantly lower pay than other workers. Surely the Government must use their procurement power to deliver a fair deal to their own employees, such as health workers, and to staff employed by private sector firms working on public sector contracts, such as care workers, delivery drivers and cleaners.

Many communities have missed out, having been hit hard by technological change and economic disruption, such as those in the south Wales valleys and in former centres of heavy industry in the north of England. Successive Governments have struggled in vain to counter the uneven impact of structural change, which has left millions of industrial casualties in its wake as old industries fade and new ones locate elsewhere. Public procurement has a really big part to play in steering new jobs to places left bereft by globalisation and technological change. Can the Minister confirm that regulations such as these will drive that very objective?

2.57 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I thank my noble friend the Minister for introducing an important SI to the Committee. Could he set out, as page 9 of the Explanatory Memorandum mentions, the sequence of events for Britain applying to join the GPA? Is there any possibility that our application might be refused? What is the procedure for signing up to the new arrangements? I note that paragraph 7.30 of the Explanatory Memorandum says that the Trade Bill is

"highly unlikely to have completed its parliamentary passage"

and its implementing regulations adopted. Paragraph 7.32 then says that

"it is likely that the extension of existing duties … will be revoked and replaced."

That begs the question of what the sequence of events will be. It would be helpful to know that there will be a smooth transition to the GPA.

I note that the Minister set out today and in one of the stages of the Trade Bill that the threshold for the GPA and EU public procurement arrangements are virtually the same—about €135,000. This is obviously a multi-million pound business. I wonder to what extent the Government encourage our businesses to bid in particular for food and agricultural products to supply schools, hospitals, prisons and other public bodies in other countries. Without this public procurement there would be huge benefits to our local farmers and producers supplying our very own schools, hospitals, prisons and other public bodies with locally sourced meat. It would be helpful to know that they will be encouraged to bid for this wider market in so far as it is feasible.

One remaining question, to which my noble friend referred—and I declare that I am a non-practising Scottish advocate—is that the definition of "lawyer" has been changed. Is that to take account of the United Kingdom Internal Market Bill? I just wondered for what particular reason the definition has been changed at this stage.

I would like to know what the sequence of events is for us joining the GPA, to be sure that it will be a smooth transition, and that the Government are doing everything in their power to bring these contracts for public procurement to the attention of the relevant businesses to enable them to apply for what could be a costly tender.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): I call the noble Lord, Lord Bhatia. Lord Bhatia, are you there? I call the noble Baroness, Lady Wheatcroft.

3 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, as others have done, I thank the Minister for introducing these essential regulations—clearly, we have to fill the gap that we are creating somehow.

It was good news on 7 October when the World Trade Organization agreed to the UK's accession to the government procurement agreement when we can legislate effectively to join that agreement. The agreement covers contracts worth £1.3 trillion, so it is clearly important that we should have access to those contracts on a level playing field basis.

The noble Baroness, Lady McIntosh of Pickering, asked whether our Government are encouraging our businesses to apply for the appropriate contracts as they come up under the GPA. I would be glad to hear from the Minister exactly what the Government do on that front. Clearly, it is important that we export to the biggest possible market.

But I am concerned about that level playing field basis—and the noble Lord, Lord, Lord Hain, mentioned his concerns about this. Last year, the Prime Minister said that he would like to "fundamentally change" the public procurement rules to "back British business". A Green Paper is expected shortly. Perhaps the Minister could tell us exactly when we might see it. Could he also tell us whether it is right to be concerned, as the noble Lord, Lord Hain, is, that we may well jeopardise our access to GPA contracts if, as the Green Paper will suggest, we move very strongly towards favouring British business?

Others have referred to the dubious nature of some of the contracts that have already been issued for PPE. I understand that the Government had to move quickly, but I do not understand why, as the Good Law Project has exposed, there had to be special procurement channels set up for "VIPs". The Cabinet Office was directly feeding its contacts into the procurement process. Speed is one thing, but handing contracts to favoured friends is very different. Could the Minister tell us whether "VIP" channels exist in other procurement areas, not just PPE?

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): I call the noble Lord, Lord Bhatia. Are you there, Lord Bhatia? We will move on to the noble Lord, Lord Wallace of Saltaire.

3.03 pm

Lord Wallace of Saltaire (LD) [V]: My Lords, this is the third version of a public procurement EU transition SI since January 2019. Later this afternoon, we will be dealing with the third version of a parallel exit SI on data transparency. My colleagues tell me that they have also been responding to the third version of a whole succession of EU exit SIs in many other areas. This looks like indecision and incompetence across government, with Ministers failing to provide clear direction to their officials or to decide what the hard detail of our future relationship with the EU will be.

The impression of confusion and indecision is heightened by the references in the Explanatory Memorandum to the not yet enacted Trade Bill, which means, as has been explained, that there will be an unavoidable gap in the legislative framework from 1 January. As the Minister knows, the delays to the passage of the Trade Bill are due to government hesitation, not parliamentary obstruction. We are now well over four years since the EU referendum and two years since the passage of the withdrawal Act. I can easily imagine the scorn that Conservatives in opposition would be expressing about any other Government that had drifted like this.

We are also being asked to approve this SI without having certainty about the nature of the UK's future relationship with the EU. Can the Minister explain what differences in the applicability of this SI will follow from the absence of any deal with the EU, rather than a continuing legal framework for our relationship? Will UK companies and service providers retain any rights to compete for public procurement contracts within the EU in the event of a breakdown in relations? Will they retain such rights if there is some sort of minimalist deal?

In this case, an instrument that refers repeatedly to previous amendments and to the further amendments now proposed is deeply obscure, and will no doubt provide good fees for lawyers as they struggle to interpret it. Worse, it includes repeated phrases such as, "The Minister for the Cabinet Office may make further regulations"—combining legislative complexity with excessive executive powers.

[Lord Wallace of Saltaire]

I note that the SI provides for

"the continued application of the general principles of Union law applicable to the award of public contracts".

That is very sensible, since the principles of Union law on public procurement were negotiated by UK Ministers and officials under previous Conservative Governments, including when Margaret Thatcher was Prime Minister. But that of course does not fit in with the absolutist definition of sovereignty that the noble Lord, Lord Frost, now expounds every week. There are continuing international obligations, as the SI recognises, which cannot easily be ignored when the UK Government wish.

I also note that the intention in this SI

"is to treat non-UK economic operators on a level playing field."

That is also an abrogation of UK sovereignty, of course. Are we refusing to accept the concept of a level playing field in our future relations with other European states but reasserting it in our relations with contractors from Turkey, the Middle East and China?

The SI also touches on delicate questions about the relevance of international agreements in environmental, social and labour law. The EU is moving ahead in developing policies on how to include calculation of the embedded carbon in imported goods and international contracts. Will this also be a factor in calculating the value of bids for UK public procurement from foreign contractors? And on "social value", will the Government take into account the political, labour and social conditions that contractors tolerate in their own home countries?

Several noble Lords have mentioned recent concern about public procurement by this Government. That raises wider questions about the outsourcing of public services and the management of public procurement. On another occasion, we must debate the contracts awarded without open competition to contractors linked to the Conservative Party through personal links or donations, or to overseas companies without relevant expertise or experience.

I was particularly struck by the award of one of the first test and trace contracts—

Baroness Sanderson of Welton (Con): I am sorry to interrupt the noble Lord, but we will have to move on. There is a three-minute time limit.

Lord Wallace of Saltaire (LD) [V]: I think that I have six minutes.

Baroness Sanderson of Welton (Con): I apologise.

Lord Wallace of Saltaire (LD) [V]: I was particularly struck by the award of one of the first test and trace contracts to a multinational company with its headquarters in Miami to manage a service that self-evidently depended on detailed local knowledge within England. But there have been many other surprising awards, which demand further scrutiny.

I have one last question, on which the Minister may wish to write to me. These SIs frequently refer to the United Kingdom and Gibraltar but rarely, or never, to the UK and the Crown dependencies, which of course were not members of the EU. I note that companies headquartered in Jersey or Guernsey are frequently awarded UK government contracts. Are UK companies also guaranteed a level playing field in return? Do the Crown dependencies follow and observe UK practice in this field? If not, should the UK Government not take back control of that aspect of British sovereignty?

3.10 pm

Baroness Hayter of Kentish Town (Lab): My Lords, we can support this draft instrument, but I am afraid that I have to raise the bigger question that is around. It was touched on by my noble friends Lord Blunkett and Lord Foulkes as well as by the noble Baroness, Lady Wheatcroft, and the noble Lord, Lord Wallace, and it is whether this Government can be trusted to adhere to public procurement rules. The Grand Committee hardly needs me to repeat what it read in the papers yesterday and again today; that has been mentioned. However, the record of Ministers bringing in their friends and relatives, whether paid or unpaid, to advise on or carry out government-funded work is making a mockery of our Nolan rules in procurement processes, and any integrity in the use of taxpayers' money. I note that, in introducing this instrument, the Minister particularly mentioned the importance of value for money. This is partly why we make sure that we have competitive tendering.

We have read of lobbyists and their clients benefiting from vital information from such advisers before either the public or Parliament knows; of investors at a paid-for conference getting a heads-up on vaccine developments; and of £1.5 billion of taxpayers' money being awarded to companies linked to the Conservative Party during the pandemic—companies with no record as government suppliers before this year. Urgency is not really sufficient excuse; I understand that it may have worked for the first couple of weeks, but not for this long after. In normal times Ministers must advertise contracts for privately provided services, so that any company has a chance of securing the work. A person's connections are not supposed to help. Today it sometimes seems that unless you have a close connection with a Minister, it is not even worth tendering. My colleagues in the other place have endless stories about their local firms—firms with a track record—not even being considered. Sometimes their phone calls are not even answered.

It is not as if all this playing footsie with friends produces good results. Test and trace is hardly a success and we have had stories about unusable PPE. The noble Lord, Lord Evans of Weardale, chair of the Committee on Standards in Public Life, has just said that

"the perception is taking root that too many in public life, including some in our political leadership, are choosing to disregard the norms of ethics and propriety that have explicitly governed public life for the last 25 years, and that, when contraventions of ethical standards occur, nothing happens."

Can the Minister assure your Lordships' House that whatever the rules agreed in this instrument, or any other, good governance and ethics, not chumocracy, will determine how contracts are awarded?

On the issue itself, I emphasise just two points. One is about the devolved authorities. Have they agreed with this SI and were they involved in its preparation? I know that in Wales, for example, they have been worried about whether they will be able to use procurement to raise standards, along the lines suggested by my

noble friend Lord Hain about a fair deal for employees of outsourced companies. There are also the issues raised by the noble Baronesses, Lady Boycott and Lady Bennett, about the use of procurement to promote healthy or local services, including for food. When is the Green Paper likely to appear and is it also being drawn up together with the devolved authorities?

I also have a question to which I ought to know the answer but do not. I apologise as it is a genuine question, and I am not trying to make any point at all. Who oversees this instrument? I know that it is always far too difficult to expect SMEs, which feel that they have been excluded, to take action. What will be the supervising and enforcement authority to ensure that all tendering keeps to this or any other instrument concerning procurement?

3.15 pm

Lord True (Con): My Lords, I thank all those noble Lords who have spoken in the debate, and for their general welcome for these regulations. I will obviously try to answer at least some of the points made, but a number of them have been extremely detailed and not ones of which I have had prior notice. Where I cannot answer, I will obviously follow the usual conventions.

I was taxed about this being the third version of a procurement EU exit SI; I sought to explain in my opening speech the reason why. As I thought that I had explained, the previous two SIs were prepared for no deal, while this SI is to reflect the obligations in the withdrawal agreement and is within the powers provided under the European Union (Withdrawal) Act. It can correct deficiencies caused by our exit from the EU and it acts to implement the withdrawal Act. It is not dependent on the deal's outcome.

Crown dependencies are not members of the EU and therefore are not subject to the public procurement regulated by the EU. The exception is Gibraltar, where the EU directive has been implemented. That is why Gibraltar is specifically included.

I am not going to follow the rather more political comments about alleged aspects of procurement. It is clear that a number of noble Lords are close readers of aspects of the press. No doubt a number of journalists will be gratified by the reference to allegations in the press. What I say on behalf of Her Majesty's Government, and so far as I am concerned, is that no one would defend any form of impropriety in public life. That is a fundamental position to which all political parties have subscribed and, I trust, will subscribe. As the noble Baroness opposite generously observed, a number of the allegations relate to the procurement of PPE and other materials in the early stages of the Covid outbreak. In repeating what I have said—that no one will defend any improper or inappropriate action—I am sure that there will, quite rightly, be a long and continued examination of these aspects and allegations.

The reality is that the Government have been working tirelessly to protect people and save lives. Our approach has meant that we have secured 32,000 million items of PPE for now and in the future, as well as developing the biggest testing system per head of population of all the major countries in Europe. We have processes for carrying out proper due diligence for all government contracts. The noble Baroness asked for more specific information about this and we take these checks extremely seriously. For contracts relating to equipment such as PPE, we have a robust process in place ensuring that orders are of high quality and meet strict safety standards, but I am happy to provide her with further information.

I was asked about the devolved Administrations. Noble Lords will know that I attach great importance to them personally. I assure the noble Lords, Lord Wigley and Lord Hain, and the noble Baroness, Lady Hayter, that the devolved Administrations were consulted on the amendments to the procurement regulations and that they agreed with this SI. They support it and were, I am advised, involved in the drafting.

On the undertakings that the noble Lord, Lord Wigley, asked me about, those covered previously will continue as before. Essentially, that is the overall purpose of the statutory instrument before us.

I was asked about the GPA. Obviously, the UK currently participates in the GPA via its EU membership. The UK needs to accede to the GPA in its own right to maintain legally guaranteed access to the public contract opportunities that the GPA provides. The offer that we have made to GPA parties maintains our existing commitments in the UK part of the EU schedule. As noble Lords know, the withdrawal Act aims to ensure as much continuity as possible. The UK has approval to join the GPA in its own right and a number of international agreements with procurements chapters have been signed. Therefore, all suppliers should continue to be treated equally and fairly through open competition. We expect a smooth transition, having received agreement for UK accession from January 2021. I acknowledge, as I did in my opening remarks, that delays to the Trade Bill have led to the instrument having a 12-month contingency to avoid any gap.

On advertising GPA opportunities to British firms, a national portal is a requirement of the GPA. Each GPA party will have space to advertise its opportunities and suppliers will have open access to them. The e-notification service is free of charge and will be openly accessible.

The noble Lords, Lord Blunkett and Lord Wallace, the noble Baronesses, Lady Boycott, Lady Bennett and Lady Hayter, and others made important points about the nature of future procurement. One advantage of where we are and where we hope to go is that we will be able to govern our own approach. We will use opportunities offered by our exit from the EU to consider carefully long-term options for reforming the procurement rules. I am sure that my colleagues will keep in mind the issues that have been raised, such as social value and the environment. We cannot provide further details on the possible outcomes at this stage but I can tell the noble Baroness that the Green Paper to consult on the proposed future changes to the procurement rules is currently being prepared. The plan is to publish it before the end of this year. Any changes will obviously be subject to separate legislation, which will enable your Lordships to probe these issues further.

I agree that not all the material is absolutely central but obviously I agree with the importance of high-quality food. Long ago, I worked with my noble friend Lord Goldsmith, then the MP for my local authority area, to promote the importance of good-quality food

[LORD TRUE]
in public sector bodies. The Government are extremely mindful of the importance of these issues.

I was asked about the definition of lawyers. I believe that I included some remarks about what "lawyer" meant in my opening speech but if that is not the case, we will let the noble Baroness, Lady McIntosh, know. I think that I answered that point.

We need to ensure that the public procurement regulatory regime will function after the end of the transition period, providing continuity and legal certainty for UK public procurers and suppliers and signalling to suppliers from GPA and other countries that those regulations will guarantee them continued access, rights and remedies.

I know that I have not been able to answer all noble Lords' questions in this short time but I hope that I have given the Committee some assurance and clarified the implications of the amended legislation. I trust, therefore, that noble Lords will support this statutory instrument.

Motion agreed.

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): My Lords, the Grand Committee stands adjourned until 3.45 pm. I remind Members to sanitise their desks and chairs before leaving the Room. Thank you.

3.25 pm

Sitting suspended.

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, while others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down, and to wipe their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. The time limit for debate on the following statutory instrument is one hour.

Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

3.46 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2020.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the regulations were laid before the House on 14 September 2020. Our negotiations with the EU continue. As previously set out, we want a relationship with the EU based on friendly co-operation between sovereign equals and centred on a trading relationship based on free trade. These draft regulations form part of the important and necessary work being done to update our legislative framework in readiness for the end of the transition period. This will ensure that retained EU legislation continues to work effectively here in the UK.

The primary purpose of this statutory instrument is to update the 2019 EU exit regulations on consumer protection enforcement given changes in EU and domestic law since those regulations were considered and approved by this House on 15 January 2019. This SI does not alter the approach of the 2019 exit regulations; it merely enables them to work given those changes.

The 2019 exit regulations dealt with the collective redress regime for consumer protection laws. This regime applies where the infringement of certain consumer protection laws causes harm to the collective interests of consumers. It deals with systemic infringements of consumer law rather than any individual disputes.

The EU's consumer protection co-operation regulation, known as the CPC regulation, provides for reciprocal arrangements between enforcement bodies in member states, such as the UK's CMA. It allows them to investigate and, if requested by an enforcer in another member state, to take action to end cross-border infringements of EU consumer law which harm the collective interests of consumers.

In the UK, the Enterprise Act 2002 allows enforcers to seek court orders to ensure the cessation of and, where appropriate, redress for infringements causing collective harm. The 2019 exit regulations revoke the CPC regulation, which will not apply to the UK once the UK is no longer bound by EU law. The revocation is also necessary to prevent UK enforcers being obliged to assist their EU counterparts while, of course, EU enforcers are not under the same obligation. The 2019 exit regulations also amend the 2002 Act to allow the domestic collective redress regime to function effectively once EU law no longer applies in the UK. Those regulations replace the concept of a Community infringement—the breach of consumer protection laws in the EEA—with a Schedule 13 infringement for breaches of UK consumer protection laws.

Since the 2019 exit regulations were made, a new EU CPC regulation, the 2017 CPC regulation, has come into force. This statutory instrument updates the 2019 exit regulations so that they revoke this new CPC regulation. This new exit regulation ensures that the UK collective redress regime will continue to apply to those retained EU-derived consumer protection laws to which the 2017 CPC regulation has been extended.

This statutory instrument also ensures that the 2019 exit regulations amend the new material added to the 2002 Act by the CPC implementation regulations. That new material includes express online interface powers under which the Competition and Markets Authority can seek court orders requiring the removal

of online content from, or restriction of access to, websites. This statutory instrument will ensure that the 2019 exit regulations amend that Act as it stands now, and the improvements made to that Act are therefore retained. None of these changes alters the approach of the 2019 exit regulations.

This SI also makes a number of other changes to EU exit regulations relating to consumer protection. First, it makes a small number of changes to two previous UK-wide exit regulations that amend legislation relating to crystal glass, footwear and textiles. These are specified in the Northern Ireland protocol. These changes ensure that those regulations do not impact on the operation of the Northern Ireland protocol.

Secondly, this SI makes technical changes to replace references to "exit day" with "IP completion day", which will now be 31 December 2020, and is necessary in the context of the transitional provisions of those exit regulations.

Finally, this statutory instrument makes some minor amendments to clarify drafting in the Enterprise Act 2002. This is in response to the 14th report for this Session by the Joint Committee on Statutory Instruments in relation to this year's regulations implementing the new CPC Regulation.

My departmental officials have undertaken the appropriate assessment of the impacts of this instrument on businesses and relevant bodies. This showed there is likely to be a negligible impact on business. These amendments do not bring about a wider policy change or impose any new liabilities or obligations on any relevant business, organisations or persons.

Although consumer protection is devolved in Northern Ireland, following consultation, the Department for the Economy, Northern Ireland, has agreed for the SI to include Northern Ireland provisions which relate to areas that are devolved to Northern Ireland. Consumer protection is reserved for Scotland and Wales, although officials in both the Scottish and Welsh Governments have also been advised of these regulations and they have raised no objection.

This instrument is a sensible and necessary use of the powers of the withdrawal Act which will ensure that the law in this area continues to function effectively after the end of the transition period. I therefore commend the regulations to the Committee.

3.52 pm

Lord Moynihan (Con): My Lords, the regulations being updated address systemic infringements of consumer law. Currently, they allow the Government to investigate and, if requested by another member state, take action to end cross-border infringements of EU consumer law that harm the collective interests of consumers. Consumer protection co-operation—the CPC regime—will ensure, as the Minister said, that the law in this area continues to function effectively after the transition period, not least through the CMA.

Unscrupulous trading practices have for too long been a feature in society, despite EU consumer law. It is right that UK standards should apply where EU-based traders target their activities in the UK. It is critical that the UK and the EU continue to work together to safeguard high standards of consumer protection once EU CPC regulation ceases to apply to the UK. This is critical in the context of ticket abuse. Here I declare my interest as co-chair of the All-Party Parliamentary Group on Ticket Abuse, where I work with my impressive co-chair, Sharon Hodgson. Our aim is to promote and provide a forum for the discussion of issues relating to the sale and resale of tickets for events, with a particular focus on devising solutions to the problem of modern-day ticket touting.

If we are to be successful in this context we have to co-operate closely with our European colleagues. Together we adopted the first secondary ticketing law banning bots, which came into effect last December as part of the directive on better enforcement and modernisation of consumer protection rules. As FEAT—the Face-value European Alliance for Ticketing—has argued, we need to establish a European watchdog that has the resources and powers to regulate online marketplaces, ensure compliance and issue effective penalties for breaches of law. The UK should still be part of that.

We need to put an end to the bulk-buying of tickets and resale at a higher price, which is still practised illegally by ignoring the terms of resale. That practice distorts the primary market, with tickets often selling out within moments of going on sale, only to be listed on secondary platforms at many times their face value. This is a huge business. The ticket resale market in Europe is estimated to be worth €12.14 billion last year.

I hope the Government will confirm that, in all their future dealings with the EU Commission, co-operating and liaising with our European friends will remain the highest priority, because this cross-border crime requires parallel and aligned legal frameworks and within-day co-operation. For that to happen, the CMA needs more powers from the Government on consumer protection. The CMA is more powerful when it comes to competition laws but does not have the same powers for consumer protection.

Does my noble friend agree that the time is overdue for the CMA to receive powers to impose fines? We need to change the powers of the CMA. It needs powers similar to those of National Trading Standards, or the police, to investigate cases with criminal powers. Consumer rights in this context are there to be protected, and wherever possible to be strengthened. There are still too many inadequacies in consumer protection law. It is not just consumers who suffer from modern-day ticket touts. Reputationally, sport, the music industry and the arts suffer as well.

In many respects these are framework regulations for the future, so I should like to set down one marker in particular. The noble Baroness, Lady Hayter, will recall that I have long believed that the only way we can address the worst excesses of corruption on the secondary market platforms is to have an individual booking reference on each ticket, and to enforce that requirement. That would enable an individual to check with event organisers whether a specific ticket was valid. Yet too often, enforcement is absent.

We have made progress with the details on tickets—the row, the seat, the face value, the age restrictions and the original seller—although those legal requirements are all too frequently flouted, again through lack of adequate enforcement. The regulations are limited and welcome in their objectives, and they are very

[LORD MOYNIHAN]
specific. We now need parliamentary time and government commitment to address and update consumer protection in this country. The regulations are a welcome and necessary start, and I hope the Minister will be able to signal that the Government take these issues seriously, and intend to act once the transition period is over, while always working exceptionally closely with the European Union to ensure that, as far as possible, we take a harmonised and unified approach to this cross-border problem.

3.57 pm

Lord Empey (UUP) [V]: In this Committee last week we discussed the Common Rules for Exports (EU Exit) Regulations 2020, which deal with the Government's ability to prevent the export of particular products in an emergency—such as PPE products being sent out of the UK. In his opening salvo then, the Minister, the noble Lord, Lord Grimstone, talked about

"the ability of the EU Commission to exercise these powers in Northern Ireland."—[*Official Report*, 10/11/20; col. GC 421.]

The Minister said that the devolved Administration in Northern Ireland had powers over consumer affairs in Northern Ireland; that is correct. What I want to find out from him is: who, in practice, will be making the totality of consumer law in Northern Ireland, and who will implement it? For instance, under the protocol we have a "zone of regulatory compliance", consisting of the 27 EU member states plus Northern Ireland.

The issue, it seems to me, is that in the regulations before us there are specific references to Great Britain and not Northern Ireland. For the sake of clarification, can the Minister, in his winding-up speech, tell us whether the European Commission will have any role in consumer affairs in Northern Ireland, given that, after the IP completion day, it clearly will have a role in other areas? I do not quite understand how it is consistent with taking back control if what will, on 1 January, become a foreign power, is to exercise executive authority in a part of the United Kingdom.

Can the Minister assure the Committee that that will not be the case here? Or, because we now have a regulatory border in the Irish Sea—which the Government continually try to deny exists—will the regulations continue to be made in Brussels, where we have no representation or say? If not, who will make them, for the parts of consumer law that are not dealt with by the devolved Administration?

It seems to me that there is so much potential with these SIs, which are so terribly complex and not things that the general public would normally have access to or an interest in, but which are exceptionally important. There is a big issue of principle here. Are we actually effecting significant constitutional change that is against the principles of the Good Friday agreement without the knowledge or consent of those who would be directly affected? I would be most obliged if the Minister would address those matters in winding up.

4 pm

Lord Naseby (Con): My Lords, I read this SI in the context of the internal markets Bill, which we are wrestling with on Report on Wednesday. I have a couple of questions. Paragraph 2.9 of the Explanatory Memorandum refers to particular industries that were, in a sense, left out or were not ready at the right time. My eye fell particularly on "footwear". I had the privilege of representing Northampton South, a town steeped in footwear, and which still has the UK's leading footwear brand in Church's, along with a host of others and the ancillary trades that go with it. I also noticed the reference to "crystal glass", because I go down to the West Country quite often—and, of course, Dartington is also involved in crystal glass.

My first question is whether these new regulations for Northern Ireland affecting those two industries—and, presumably, textiles—mean that they are the same as regulations in the rest of GB, or are they different? It is not entirely clear from reading this what the situation is. Secondly, was there any response, when the new regulations were tabled, from any of the trade associations affected by these industries? Footwear is obviously one, and I am sure that there are trade associations for glass and textiles.

So that is that area—then there is paragraph 2.12. The question that arises in my mind is whether this measure means that the exit regulations are on the basis of no deal or a deal. In other words, it does not make any difference for paragraph 2.12 whether there is or is not a deal or no deal.

Just to make an observation on paragraph 2.14 in the context of the internal markets Bill, it says:

"Those sections provide that where a court in one Part of the United Kingdom makes an order under Part 8 of the 2002 Act that order is, in another part of the United Kingdom, to be treated as an order made by the court in that other part of the United Kingdom."

It is so good to see that there, and well done to those involved in that process.

I have another small point, which is that I am never too sure what the definition is of a small business. It keeps coming up, and I would be grateful if somebody would write to me and tell me what the definition is within the department.

Finally, it is nice to see my colleague here, my noble friend Lord Moynihan. I suspect that he and I and perhaps one or two others are particularly involved in the world of sport. We know that industry extremely well. He is so right to raise the problems of ticket touting and resales. It is a growing problem and really needs tackling. If we are talking about increasing the powers of the CMA, that has to be done. I hope that my noble friend, who may not be able to give us a strong answer on that today, will recognise that this is a big and a growing problem. Given the size and importance of sport to British citizens, it really needs tackling.

4.04 pm

Lord Bowness (Con) [V]: I thank my noble friend for his introduction of this instrument, one which was certainly needed for me. To follow all the cross-references proved very difficult, and I shall not pretend that I could do so in every case. In parenthesis, I wonder why this instrument, which is an amending instrument in respect of the earlier 2019 regulations, is not the subject of a consolidated instrument.

The whole thing is a very good example of how difficult it is properly to scrutinise what is going on in the Brexit proceedings. I am speaking this afternoon because I believe that consumer protection is an area on which Brexit may have considerable impact, and it is not mentioned very often. I do not believe that there is an awareness among people, whether for or against Brexit, who appreciate what may be lost without a comprehensive agreement with the European Union. I entirely endorse the call for co-operation with the EU 27 made by my noble friend Lord Moynihan.

I have some specific questions for my noble friend. If they are answered in the footnotes or in an equally opaque statutory instrument, I apologise. First, what is happening to the European Consumer Centres Network, which was created to provide advice if things go wrong with a cross-border purchase? Furthermore, what is the position of the UK European Consumer Centre, funded jointly by the UK and EU to give free advice to consumers who have bought goods or services in another EU country? Similarly, what is happening to the online dispute resolution platform, enabling consumers to locate suitable alternative dispute resolution providers to handle their complaints?

In an answer to a Written Question, my noble and learned friend Lord Keen of Elie told me

"Existing EU instruments in the area of civil judicial cooperation (including—"

this is important—

"disputes in family and consumer matters) will continue to have effect between the UK and EU member states during the Implementation Period."

There is no surprise about that. He went on to say:

"The position after 11pm on 31 December 2020 will depend on the outcome of negotiations".

But where are we on that matter, apart from running out of time? I hope that my noble friend will be able to confirm that these are all matters that have been discussed and, although we may say that nothing is agreed until everything is agreed, there is an agreement in principle to maintain these important areas.

I have put down Written Questions about a very important consumer right relating to air travel—namely, EU Regulation 261/2004, which deals with passenger rights in the event of flight delays and cancellations. I have been told by my noble friend Lady Vere of Norbiton, speaking from the Department for Transport, that the rules apply until 31 December. I think we have all got that message. She said that, after that date, the rules are

"retained in domestic law and will therefore continue to apply."

I have great doubts as to whether this, being a regulation, can be retained without amendment and requiring some domestic legislation. I have asked about this but have not yet had a reply.

I understand that, as of 31 December, the EU law on passenger rights no longer applies to passengers departing from a UK airport to an airport in the EU 27, unless—and this is important—the airline is a union carrier. Yet again I ask, in a different forum, what is the position on that regulation, and how do the Government intend to replicate in full the rights currently enjoyed?

4.09 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I offer my thanks to the Minister for updating us and giving us the background to these regulations. It is clear that they update the legislative framework for consumer protection, and I note that their principal purpose is to make changes to a previous statutory instrument, the Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2019.

However, several questions arise as a result of this, and I would like to pose them to the Minister. The first is general: I have increasingly found that many, particularly older, people are subject to scamming. As a result of this, they could provide money to—shall we say—undisclosed sources, thinking that there could be problems ahead for themselves. Could the Minister detail whether this statutory instrument will prohibit this sort of activity or whether the Government are considering future legislation to deal with this element of consumer protection? This form of scamming is now happening on a continuous and persistent basis, leaving many people vulnerable, and it needs to be addressed.

In relation to the statutory instrument under discussion, do the Minister and the Government feel and assert that the provisions within these regulations are equal to, better than or substandard compared to the EU regulations that they seek to replace? How will this statutory instrument intersect with the common frameworks process? I declare an interest as a member of the Common Frameworks Scrutiny Committee. The process is meant to allow devolved Administrations to come to a common approach on how they manage divergence. Following the enactment of this SI and bearing in mind the restrictive nature of some of the provisions within the United Kingdom Internal Market Bill, will the devolved Administrations have a voice in any consultation on outlining frameworks for consumer protection?

I note that the Northern Ireland Assembly has given consent to the UK Government to legislate for it in respect of this piece of legislation, and that that involved it passing a legislative consent Motion. How do the Government intend to work with the Northern Ireland Executive and Assembly in relation to the general issue of consumer protection following the enactment of these regulations? How will the Northern Ireland protocol play in relation to these regulations, with specific reference to the regulation in Part 4B? I think that the noble Lord, Lord Empey, has already presented the political conundrum in relation to the protocol. I suggest that that should be further added to the common frameworks process.

With reference to the Northern Ireland protocol, and with particular reference to crystal glass, footwear and textiles, these regulations have been redrafted to ensure that they do not affect the operation of the Northern Ireland protocol, according to the Explanatory Memorandum. I understand that that is important for ensuring that business can be pursued without being hindered or hampered.

There is also a need to ensure that flexibilities are inbuilt to ensure that Northern Ireland retailers and consumers are protected, are not subject to undue prohibitions or severe tariffs as a result of the protocol

[Baroness Ritchie of Downpatrick]
and do not end up in prohibitive lists. Can the Minister assure me that this not will be the case and that business activity and transactions can take place unhindered, that consumers would still have access to high-quality goods and that their rights will be protected at all times?

Finally, with regard to the views of the Joint Committee on Statutory Instruments on defective drafting, with special reference to the Enterprise Act 2002, to allow lower and superior courts in all UK jurisdictions to make interim and final online interface orders as part of that enforcement, is the Minister confident that these are now adequately drafted and will be resistant to legal challenge?

4.14 pm

Lord Randall of Uxbridge (Con) [V]: My Lords, I do not need to detain this Committee long. My noble friend the Minister has done an excellent job of explaining these regulations. I spent most of my working life in retail, as the fourth generation in our family store, which sadly no longer exists. I am sure that my noble friend Lord Naseby would be delighted to know that we stocked Church's shoes as well as Dartington glass and many very good quality items from Northern Ireland. As a result, I have always taken a keen interest in consumer rights. I hope that we always put consumers at the forefront of our service commitment and would always go further than any legal requirement. Of course, consumer law is not always clearly written, but that is not relevant to this particular discussion today.

As far as I can see, these regulations are only relevant to ensuring that

"reciprocal arrangements for Member States to cooperate in investigations and enforcement actions in the case of cross-border infringements of consumer laws causing collective harm to consumers"

that are in force up to exit day can continue. Can my noble friend confirm that, with the passing of this instrument, regardless of whether there is no deal, consumer rights in the UK will not be affected in any way as a result of us leaving the European Union? I understand that this is being brought in

"to allow domestic legislation on collective redress to function effectively in relation to EU-derived consumer law after EU exit."

Presumably, however, if our consumer law is tougher than the EU law, this redress is not applicable.

Finally, I wonder how many UK consumers are actually aware, in any case, of these rights and where they could find out more about them and have them explained in a simple way to understand them within the current regulations? Even with my noble friend's excellent introduction, I have to say that it is all rather confusing.

4.16 pm

Baroness Hayter of Kentish Town (Lab) [V]: I also thank the Minister for his excellent introduction to this statutory instrument. I know that he will be unsurprised by the two issues I will raise. First, I raise the question of the full involvement of the devolved Administrations in the adoption as well as the monitoring and enforcement of aspects of the emerging new architecture of our cross-UK market. It is particularly important, given that this measure amends the Enterprise Act 2002, to ensure that consumer-protection-related enforcement orders are recognised across all four Administrations. As they need to operate there, the CMA will, obviously, also have a role, which I think strengthens the case we will make shortly, on the United Kingdom Internal Market Bill, about why the devolved Administrations should be represented on the CMA. It is clearly going to be important that there is joined-up thinking about this.

During our membership of the EU, as the Minister probably knows better than most, the many very welcome consumer protection measures were always agreed via the Council, Commission and European Parliament, so all parties that had a subsequent duty to implement any such rules were party to their determination. We will want to be very sure, as we enter our new arrangement for an internal market, where consumers also need appropriate protection, on standards, complaint handling and redress, that any provisions are developed with the full involvement of the four Governments and legislatures that would then have to adopt and work with such measures. Could the Minister outline the involvement of the three devolved authorities, in the case of this instrument, and how future measures will be handled across the four nations?

I was particularly interested by the point raised by the noble Baroness, Lady Ritchie, about whether this should be added to the list of the common frameworks, if it is not already. Hopefully, consumer protection can be such a framework, but I am also hoping that, on Wednesday, we will be able to support the amendment that I know will be proposed so that common frameworks would be included in the United Kingdom Internal Market Bill. It seems that this would be a very good way of ensuring that consumer protection is automatically, if you like, handled in that very consensual way. That was my first point about the devolved authorities.

Secondly, I want to take up the points made by the noble Lords, Lord Bowness and Lord Randall, and others about how consumers have benefited enormously from a swathe of measures introduced in the EU, affecting trade across the borders between us and other EU countries and raising standards, protections and rights within each country. The consultative way of producing directives may have taken time across the EU, but it meant that consumer representatives were able to engage with the process both here in the UK, by working with our Government, and through pan-European consumer groups in relation to both the Commission and the European Parliament. I am sure that the Minister was often lobbied by consumer interests when he was there. Those representatives were also able to work with UKRep. Can the Minister detail what discussions have been held with Which? and other consumer organisations in relation to this instrument? Can he also outline the Government's plan to involve them in future preparation of regulations relating to their area?

I want briefly to touch on two other things. The first is redress, which has been mentioned. We have a bit of a hotchpotch in this country at the moment. Some bits of redress come under the Minister's department—a number of different departments, actually. Plans for a public sector ombudsman were with the Cabinet Office, I think, but have gone nowhere.

I understand that the Government are rather busy at the moment, but it would be useful if this could be looked at at some point because it is an important part of consumer protection. Specifically, there was a directive that consumers should be informed of the relevant redress system for their industry, even where a provider was not part of it. It would be interesting to know what will happen to that.

Finally, I want to add my name to the points made by the noble Lords, Lord Moynihan and Lord Naseby. Things like the ripping off of consumers through ticket touts and bots is bad for consumers and involves a lot of criminality. I hope that the Minister has heard those pleas for action on this matter and a strengthening of the CMA's powers to deal with this and other issues.

4.22 pm

Lord Callanan (Con): I thank all noble Lords and noble Baronesses who contributed to this debate.

Of course, the UK has left the EU to take back control on these and other matters and make decisions as a sovereign independent state. As I said in my opening speech, since the 2019 exit regulations on consumer protection enforcement were made, a new CPC regulation has come into force. This statutory instrument is therefore necessary to update the 2019 exit regulations so that the new CPC regulation is revoked. As I also said earlier, it also makes a small number of changes to two other exit regulations so that they do not have an impact on the operation of the Northern Ireland protocol. These amendments will allow the domestic collective redress regime to function effectively once EU law no longer applies in the UK. They will prevent UK enforcers being required to assist EU counterparts who are not under the same obligation. I reiterate that none of these changes alters the approach of the 2019 exit regulations.

I can confirm for the noble Baroness, Lady Hayter, that we have one of the strongest consumer protection regimes in Europe. It ensures that consumers' interests are safeguarded with a comprehensive set of consumer rights and through strong advocates for consumer interests and other well-developed advice services. Of course, we remain firmly committed to the strong consumer rights and high standards that have benefited UK consumers for many years; these regulations do not change that. The political declaration between the UK and EU sets out the parties' determination to continue working together to safeguard high standards of consumer protection; the UK remains fully committed to this undertaking.

We are continuing and enhancing global co-operation on consumer protection through our trade policy and through the CMA continuing to take an active role in many international fora. Our recently signed trade agreement with Japan illustrates this and includes consumer co-operation measures that go beyond those in the EU-Japan agreement, for instance.

My noble friends Lord Moynihan and Lord Naseby and the noble Baroness, Lady Hayter, referred to the ticket resale market and the importance of co-operation with the EU; I know that my noble friend Lord Moynihan in particular has been an extremely influential voice on this issue. The CMA has already taken enforcement action under UK consumer law against foreign-based secondary ticketing websites, such as Viagogo and StubHub, and enforcements of these provisions do not rely on the CPC network.

The domestic enforcement powers that we currently have will be retained. For instance, a new online interface order remains available to our enforcers; among other things, it allows a court to order the removal of content or restrict access to websites and software used by traders in selling services. Effective co-operation on consumer protection will be an important part of the UK's future relationship and is of course in the interests of all parties. The CMA will continue to take an active role in many of the international fora that regulate these matters. We will look at the CMA's powers of enforcement, but they are separate from this instrument; my department is engaging directly with the CMA on that question.

The noble Lord, Lord Empey, and the noble Baroness, Lady Ritchie, asked about the EU's role in making consumer law in Northern Ireland. These regulations will ensure that three specific EU-derived laws—relating to crystal glass, footwear and textiles—continue to apply as required under the Northern Ireland protocol. Most consumer protection law is not affected by the protocol. Going forward, the UK Government will set the rules overall, subject to commitments in the protocol.

My noble friend Lord Naseby asked about footwear and related issues. In Great Britain, these regulations will continue to be subject to amendments made by previous exit SIs, which are largely narrow and technical, as the Northern Ireland protocol does not apply in this area. Substantial divergence in the GB and Northern Ireland protocol rules is not currently envisaged.

I will reply in writing to my noble friend Lord Naseby's question on the definition of small and micro-businesses.

My noble friend Lord Bowness noted the complexity of the rules. I agree with him on this one. It is a technical area, but we have had a good discussion today. We have produced a substantial amount of explanatory material, but if he does not feel he has enough and wants to write to me, I would be happy to send him even more of it if he wishes for some bedtime reading.

We want consumers and businesses to continue to feel confident and empowered in cross-border transactions. The Government have committed to fund the UK European Consumer Centre for at least another year after the transition period ends to help consumers resolve cross-border disputes. We will use this time to assess the most effective way to provide consumers with advice about cross-border purchases in future.

My noble friend also raised passenger rights, which, as I am sure he understands, are not addressed by the instrument. As he probably also understands, consumer protection for flight passengers is a matter being considered by the Department for Transport. I know that he is in correspondence about it with my noble friend Lady Vere, who is a Minister in that department.

The noble Baroness, Lady Ritchie of Downpatrick, asked about protection for older people at risk of scamming. We have worked closely with Citizens Advice to run a National Consumer Week to help raise awareness

[Lord Callanan]
of scams. I totally agree that this is a vital piece of work. On her point about consultation with Northern Ireland, this has been central to the formation of the SI, as I indicated. We will of course continue to engage with Northern Ireland and the other devolved Administrations, as the noble Baroness, Lady Hayter, asked, in response to the future development of consumer law.

On the rectification of problems raised by the JCSI on the previous 2020 regulations, we are satisfied that the redrafting of the previous regulations reported by the JCSI now satisfactorily deals with its concerns. It has of course received the usual pre-laying quality assurance procedures.

My noble friend Lord Randall asked about domestic consumer law. This will be retained in full as a result of a series of these exit-related SIs and, of course, by our domestic legislation regime, which, as he notes, in many cases already exceeds that required by EU rules.

The noble Baroness, Lady Hayter, further asked about devolved issues. I mentioned that we contacted the Northern Ireland Government on these measures and no concerns were raised. The Department for the Economy confirmed its agreement on 28 April. Although consumer protection is of course reserved in Scotland and Wales, officials in both the Scottish and Welsh Governments have been advised about these regulations and have not raised any objections. Northern Ireland has consumer protection and enforcement devolved to it, as I said. Consumer protection is reserved for Scotland and Wales, but we always look to engage with these devolved bodies on any new measures required.

Finally, the noble Baroness asked about engagement with Which? I have certainly spoken to it about other matters, but not these particular regulations. We hold regular discussions with it and others, such as Citizens Advice, to help shape our consumer policy and, in particular, to understand the impact of the current pandemic on consumers. It will continue to be a vital stakeholder for the work of my department.

In conclusion, these regulations will ensure our consumer rights framework continues to function effectively once the EU CPC regulation ceases to apply to the UK. With that, I commend the regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Baroness Barker) (LD): The Grand Committee stands adjourned until 5 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

4.31 pm

Sitting suspended.

Arrangement of Business

Announcement

5 pm

The Deputy Chairman of Committees (Baroness Barker) (LD): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, and others are participating remotely, but all Members will be treated equally. I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down, and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes. The time limit for debate on the following statutory instrument is one hour.

Competition (Amendment etc.) (EU Exit) Regulations 2020

Considered in Grand Committee

5 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Competition (Amendment etc.) (EU Exit) Regulations 2020.

Relevant document: 30th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the Competition (Amendment etc.) (EU Exit) Regulations 2020 were laid before the House on 30 September 2020.

From 1 January 2021, the UK's competition regime will no longer be integrated with the EU's competition system. Instead, it will function on a stand-alone basis as provided for by the Competition (Amendment etc.) (EU Exit) Regulations 2019, which were approved by Parliament in 2019 to prepare for EU withdrawal. Those regulations will come into force at the end of the transition period, but first they require amendment to reflect the terms of the withdrawal agreement. The purpose of the regulations put before your Lordships today is to implement the UK's obligations on competition law under the withdrawal agreement and to deliver a separate and sovereign UK competition regime at the end of the transition period. The content of the regulations is therefore separate from both ongoing trade negotiations with the EU and the Government's consideration of ways to enhance competition in the UK.

So what do the regulations do? They address three broad topics. The first two topics relate to the jurisdiction of anti-trust and merger cases at the end of the transition period. While the UK was a member state of the European Union, the European Commission had jurisdiction to investigate the UK effects of certain anti-trust and merger cases instead of UK competition authorities. This system has continued during the transition period. This means that there will be a limited set of anti-trust and merger cases that relate to the UK which were opened by the European Commission but not completed before the end of the transition period. These cases are dealt with by Article 92 of the withdrawal agreement. I shall refer to them collectively as live EU cases. Article 92 gives the European Commission competence to conclude live EU cases. These cases will be completed under the law that applied to them when they were opened. This arrangement ensures that competition cases which straddle the end of the

transition period will be brought to an orderly conclusion, in turn giving legal certainty to UK businesses, regulatory authorities and courts.

The third topic addressed by the regulations relates to commitments accepted and remedies imposed by the European Commission in connection with its anti-trust and merger cases. These commitments and remedies often relate to multiple EU member states, including the UK, and the European Commission is normally best placed to secure compliance with them. In accordance with Article 95 of the withdrawal agreement, the European Commission will remain responsible for the monitoring and enforcement of the UK aspects of such commitments and remedies. However, this responsibility can, by mutual agreement, be transferred from the European Commission to the UK's competition authorities.

I will now briefly explain the main changes made by the regulations in relation to these three topics. First, with respect to the European Commission's investigations of live EU anti-trust cases, the regulations amend transitional arrangements made in 2019 to reflect the Commission's continued jurisdiction over these cases. The amendments ensure that the Competition and Markets Authority can assist the Commission in its investigations of live EU anti-trust cases in the way it currently can under the Competition Act. To implement fully the legal effect of the withdrawal agreement, the regulations restrict the CMA from investigating the UK aspects of a live EU anti-trust case until the Commission's case has concluded. This reproduces an effect similar to that which arises currently under EU law. The CMA will of course be free to investigate the UK aspects of any anti-competitive behaviour that occurs after the end of the transition period.

Decisions of the European Commission and the Court of Justice of the European Union made in relation to live EU anti-trust cases will be binding in the UK for the purposes of private claims seeking follow-on damages for a breach of competition law. The regulations ensure that UK authorities must consider any relevant penalty issued by an EU body in a live EU anti-trust case when deciding the amount of a penalty to be issued under UK law.

Secondly, the European Commission will continue to have exclusive competence over live EU merger cases, including in relation to any UK elements of the case. This means that, except in certain circumstances, the CMA will not have jurisdiction to review a merger after the end of the transition period if the European Commission began its own review of the merger on behalf of the UK before the end of the transition period. The exception to this rule is where the European Commission is re-examining a merger case following a successful appeal but is not considering the UK aspects of the merger in its re-examination. To prevent an enforcement gap emerging in the UK, the regulations ensure that the CMA can investigate the merger in these circumstances. The regulations amend the transitional arrangements made in 2019 to reflect the European Commission's jurisdiction over live EU merger cases.

With respect to the transferred UK aspects of EU commitments and remedies, the regulations give to the CMA monitoring and enforcement powers to secure continued compliance with them. These powers are modelled on the CMA's existing powers to monitor and enforce domestic commitments and remedies. The powers will apply also to sector regulators that enforce competition law concurrently with the CMA.

In addition to the changes made in relation to these three topics, the regulations make technical amendments to the 2019 regulations so that appropriate reference is made to the end of the transition period. Finally, as with the approach taken by the 2019 regulations, the regulations revoke a recent EU regulation on investment screening, which will have no practical effect on the UK beyond the end of the transition period because it relates to information-sharing between EU member states.

The provisions on competition law contained in the withdrawal agreement mean that the UK will move smoothly to a separate and sovereign competition regime. The regulations make only those changes which are necessary to give effect to these provisions and to ensure that the UK's competition regime functions as intended by the regulations that Parliament approved in 2019. The regulations will provide legal certainty for the UK's businesses, the CMA and the UK courts. I therefore commend the regulations to the Grand Committee.

5.08 pm

Lord Lansley (Con) [V]: I thank my noble friend for his clear and full explanation of these regulations. Perhaps I may start with a little reminiscence. It feels slightly as if I have come full circle because I was a member of the Standing Committee on the Competition Bill in the Commons in 1998. I remember being in opposition at that time and tabling amendments for the purpose of defining the approach to vertical agreements in what became the Competition Act. Nigel Griffiths, who was then the Labour Parliamentary Under-Secretary in the Department of Trade and Industry, said that he thought the amendments were very interesting and might even agree with them. However, he could not possibly accept them because the Government had not yet been told by the European Commission what the structure of vertical agreements would be in the EU regulations. Instead of being rule-makers, we were rule-takers at that point. We will become rule-makers where this is concerned in the wake of our departure from the EU.

Like their predecessors a year or so ago, these regulations set out a comprehensive set of mechanisms for ensuring that there is a transition, without falling through the gaps between EU competition responsibilities and the UK responsibilities being assumed. I will resist the temptation to ask my noble friend about the competition policy aspects of our negotiations with the European Union, albeit that they might in some specific circumstances impact upon how these regulations are interpreted or whether they will survive the deal itself, when we come to legislate for that.

I will make a couple of points, though. For my first, the best example is given by the question of block exemptions for vertical agreements. A number of definitions have to be understood in relation to that, but the one that illustrates the nature of the point I want to make is the threshold of market share for the

[Lord Lansley]
assumption that a vertical agreement might—not does—have anti-competitive impacts. In the EU regulation, that is a 30% market share.

The issue is: what is the market? Defining the relevant market is very important. There is a whole raft of circumstances in which defining the relevant market when we leave the EU—that is, from 1 January next year—will be a different and potentially debatable proposition. For example, is Northern Ireland in the relevant market for United Kingdom purposes or in the single market? If it is in both, the calculation of the 30% market threshold would be distorted in potentially both jurisdictions. Determining what the relevant market is for a range of different circumstances leads to my first question: what are the Government's and the Competition and Markets Authority's intentions relating to the definition of markets in a range of contexts?

My noble friend referred to my second point: the regulations revoke EU regulation 2019/452, which sets up a screening mechanism for foreign direct investment. Appropriately, they revoke it because it will not apply in the United Kingdom. Indeed, as we discovered in recent weeks, it does not apply to the United Kingdom now. It was not introduced in the United Kingdom on 11 October, as it was, in theory, introduced across the EU, but of course in practice only in those member states that have chosen to implement it. Some have; many have not yet. There is a wider move across many EU member states to try to screen for foreign direct investment. It is part of a broader push on the part of the European Commission to understand how far foreign investment and foreign ownership impact on strategic value chains as part of what it describes as strategic autonomy.

In our context, tomorrow the House of Commons will debate at Second Reading the National Security and Investment Bill. What is the point of my referring to this? It is that I wonder whether my noble friend might be able to tell us a little more. It is clearly not the case that the National Security and Investment Bill creates a directly comparable structure to that revoked in these regulations; it is potentially more interventionist than the screening process in the EU regulation, but it is also in its way much less broad in its application. For example, comparing the list of sectors affected, the EU regulation refers to water infrastructure, which is not mentioned in the 17 sectors in the NS&I Bill. The EU regulation refers to elections infrastructure, food security, sensitive information—I am not quite sure what sensitive information is in this context, but the regulation includes it—and freedom and pluralism of the media.

One or two of these issues continue to be covered by the public interest notifications under the Enterprise Act, with which I was involved. Those will continue and will give us potential remedies, but others will not. Indeed, in my view the Enterprise Act needs some amendment for public interest grounds for the media. I hope we will find an early opportunity to do that. So my second and final question to my noble friend is: are the Government considering any further measures to try to screen foreign direct investment and its impact on our critical infrastructure more generally?

5.15 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, as the Minister outlined, today we are bringing over EU competition regulations into UK law. With only a few score days until the end of the transition period—whatever that is going to look like—there is little chance to make anything other than the fairly minimal and technical arrangements described, although plenty of complications remain, and may well be added to by future legislation, as the noble Lord, Lord Lansley, clearly outlined.

The debate on this SI is also a chance to think about the place of competition in our society. Competition law—or anti-trust law, as the Americans call it—traditionally seeks to maximise competition. In that our current law is clearly failing, with the dominance of a handful of internet companies in cyberspace; the dominance of the great parasite, Amazon, in cybercommerce; and the oligopolistic place of a handful of companies at each stage of our food chain, from seeds and fertiliser supplies to manufacturing fast food.

There is also the fast-growing issue of common ownership—the way in which trading practices and the dominance of a few hedge funds and financial players mean that those companies are owned by a handful of financial firms with no real interest in seeing competition between each of their shareholdings. I would be interested in any comments the Minister is able to make on what plans the Government have to tackle that issue, which has been raised by the OECD, among others, as a growing concern. Small independent businesses, innovators, inventors and creatives are swept up by the logic of our "might is right" business world—bought out, possibly at considerable financial benefit to themselves but at great cost to the rest of us, who are left with a handful of companies dictating what we watch, read, eat and wear, albeit that they might be carefully differentiated by brand into different segments.

If we go to systems thinking, to ecological thinking, what we have is a poor, degraded business environment, lacking in the diversity that brings colour, taste and richness, and resilience—something that Covid-19 has made only too clear. We clearly need different kinds of laws and arrangements.

Yet when we go to other elements of our society, there is far too much competition. The privatisation of public services has led to the cutting of the pay and conditions of workers, a reduction in the quality of provision and the pumping of public money into private hands. The competition is played out in the race to the bottom of provision. I take as an example the report last week from the Children's Commissioner. The commissioner—a commendably brave and stalwart public servant—noted in a tweet that the "market" in residential care homes was broken. I would like to step back and say that this is an area in which the market—competition—should have no place at all. Competition has been and continues to be unable to work out how to provide the best possible provision for mistreated suffering children. It requires co-operation from all those involved, all along the line, from social workers to residential homes to foster carers. To set up a system designed to make profits from this is nothing short of obscene.

We might look to the United States for another area where competition is entirely inappropriate: the provision of prison places. This is also true here in the UK, where private prisons are demonstrably worse than their public counterparts. Privatising—seeking to make profit out of—the coercive power of the state, setting up the companies providing this in competition, can never be right and can lead only to perverse incentives, such as encouraging more imprisonment, however much the individuals in the system might be there for entirely right, humanitarian reasons, as the vast majority are.

We have a society both lacking in competition and with far too much competition, but behind that is a monolith: no competition at all, financialisation, the turning of everything from the water we drink and bathe in to the council houses that were once public assets and the social care that supports our frail elderly and disabled into a source of profits—profits that all too often are sucked out of our society into the nearest handy tax haven, something supported by the same financial sector, the same City of London, that services and supports that tax haven.

We have seen the destruction of a balanced, mixed, healthy and economic ecosystem, with some things working by good competition, such as local market gardeners seeking to produce the freshest, tastiest and most interesting vegetables, local tailors being the best at reviving and updating your wardrobe, and carpenters producing solid, useful and attractive furniture—and other things, such as schools, carers and housing, which are built not on competition but on co-operation, being regarded as the solid foundations of a decent society.

There is no choice at this moment but to support this SI and go forward from where we are but, as the Government keep talking about building back better and levelling up, we need to look at far more foundational issues and laws for our society.

5.21 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, the role of competition in the economy and in protecting consumer choice is extremely important, and the EU competition rules have done so for a defining period of time. I must declare my interests: in the late 1970s, I spent six happy months as an intern—a stagiaire—in DG IV, now DG COMP. I saw a great future for myself as a competition lawyer; sadly, that was not to be.

I thank my noble friend the Minister for introducing these regulations, but a number of questions arise. It is clear that great uncertainty lies ahead for companies under the regime set out in the regulations. As my noble friend Lord Lansley alluded to, there are many unanswered questions on state aid and subsidies, which are still part of the negotiations. In the context of these regulations, what will the definition of "dominant position" be for merger policies once the CMA takes over, as regards any UK company wishing to continue to do business in the EU? If my understanding is correct, there will be a period of time when a UK company is subject to two different regimes, as my noble friend the Minister set out earlier. Obviously, that could lead to a degree of confusion.

On the ongoing rights of the European Commission in looking at live cases, what will be the position for an appeal to be made under any decision taken in those cases? Will it still have the right to appeal to the European Court of Justice or will it have to rely on entirely UK-based remedies? Which body should it apply to in this regard?

I echo what the noble Baronesses, Lady Bowles and Lady Bennett, said about the current unhealthy state of competition and the UK's ability sufficiently to ensure a level playing field and protection for consumers against giant tech firms. This area concerns me greatly going forward, so I would be interested to know what proposals my noble friend has in that regard. In this brave new world of leaving the protections of the EU's competition policies, how can he reassure British consumers that their rights will be protected? Does he at least have an update on what the situation will be regarding roaming charges from 1 January 2021? Will roaming charges revert to UK providers being able to charge fantastic amounts for our use? Obviously no one is going anywhere at the moment but, when travel resumes, will they be able to charge what they deem to be reasonable but others might deem extortionate?

If under the regulations before us today the UK courts no longer have the facility to refer questions of interpretation of competition policy in European Union law to the European Court of Justice, what protection will businesses have from potential unfair competition for their products in the rest of the European Union? It would be helpful to understand what that would be. Can my noble friend assure me also that there is no possibility of a double penalty being imposed under the two regimes appearing to run in parallel for an interim period? I know that the Explanatory Memorandum states clearly that the CMA will "have regard to" penalties that might have been imposed by the European Commission, but it would be helpful to have clarification in that regard.

Can my noble friend also reassure me that businesses that continue to operate in the EU will not face more red tape as a result of the regulations before us than is currently the case? I do not oppose the regulations, but I am deeply concerned about some of their implications.

5.26 pm

Baroness Neville-Rolfe (Con): My Lords, I start by supporting an intelligent policy on competition. As Ovid, one of my favourite classical writers, said:

> "A horse never runs so fast as when he has other horses to catch up and outpace."

When one gets fed up with the sheer scale of Amazon, one ought to remember this wisdom.

I will always be grateful to the CMA in its previous guise as the Office of Fair Trading, because it took a case that brought us over-the-counter medicines. These have been a huge boon that we would never have had without its brave fight against the medical and pharmaceutical vested interests—a huge consumer benefit worth billions in recent years.

However, over the years, the competition authorities, using the existing powers to which my noble friend the Minister referred, have had a tedious obsession with the inequities of the latest tall poppy, usually shortly

[Baroness Neville-Rolfe]
after the temporary period of monopoly profits has passed. I have seen that in my life several times—with the brewing sector, now a fraction of its one-time status thanks in part to the counterproductive beer orders; in ice cream; in dairy, where we still struggle to compete with European cheese and yoghurt manufacturers; and in supermarkets where, during repeated inquiries, the shops' profits were shown to be a fraction of those in regulated industries such as utilities and/or in banks before the crash. True to form, the banks were finally investigated after the devastation of the financial crisis. Even so, I believe that small banks still operate at a disadvantage, although I am glad to see that Sam Woods, deputy governor at the Bank of England, is examining ways of lightening their burden.

I should refer to the register and my interest as a director of a small bank and a shareholder in Tesco and Amazon, although I am better known for my passion for small business dynamism, fuelled by competition, because it underpins a strong economy. I like to speak up for business when I can, because it pays and collects the taxes that nearly all pay and which in turn pay for almost everything in the public sector, and it provides many productive jobs.

Against this background, I thank the Minister for his clear explanation of the amending SI, including the way current EU cases will be treated and any follow-on damages. I look forward to his answer to my noble friend Lord Lansley's question about vertical agreements, market share and the National Security and Investment Bill—though I think that is for another day—and my noble friend Lady McIntosh's question on roaming charges.

As a result of an SI last year, and this one, the CMA will have even more powers than before Brexit, and in theory will be able to exercise a chilling effect in even more areas. I worry that it will be able to impose its huge fines in relation to even more aspects of competition law. We are talking here about British businesses trying to make a living and get through Covid without sacking too many staff.

Although this is not directly relevant today, perhaps I could say in passing that I do not agree that some fines should be increased, as the noble Lord, Lord Tyrie, hinted in Committee on the United Kingdom Internal Market Bill. I suspect he has less experience than I do of being on the business side of an argument with the regulator, and has little idea how terrifying it can be and how distracting for management.

I believe in competition, so in the round I support the CMA, but it has to have the right culture. Can the Minister comment on how best we can achieve that in the new post-Brexit era? The new chair will also be important, and perhaps he can update us on that appointment.

Further, does the Minister accept that we need to look at competition matters through the prism of the national interest? I have been struck by how other member states do this, and I am sure we will see more protectionist competition policies in Brussels now that we have left. I used to have tussles in the Competitiveness Council on the drift to protectionism, which I opposed. That was especially so with the French—their representative was usually a young, good-looking and very persuasive sometime banker called Emmanuel Macron—and with the German Minister, who represented one of the socialist elements in the German coalition. They were keen to erect barriers to help their tech and telecoms sectors. History shows that that is an ineffective strategy.

Finally, does my noble friend agree that we need officials who are skilled and well motivated at the CMA, and who understand the importance of not being both judge and jury? We need a good mix of talent with the right values, objectivity, economic awareness and understanding of data—and not too many from magic circle legal firms here, and their equivalent overseas, bringing their MoJ-style ways, sometimes making a mess and then moving quickly back to private practice.

I do not object to the regulations, but I would like to know how the Government will ensure that all parts of the CMA are well run and effective and, as I said earlier, operate in the national interest in the post-Brexit world. As the Minister said in his opening remarks, we will have a sovereign regime, and we must make a success of it.

5.32 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, there is quite a lot going on with competition because of Brexit. This instrument deals with investigations that are, or will be, ongoing at the end of the transition period, and potential future monitoring in the UK of EU remedies. It also revokes EU regulation 2019/452 relating to screening in foreign direct investments.

The National Security and Investment Bill will replace at least part of the revoked EU regulation, and that Bill has started its passage through Parliament. Then there is the published draft regulation on state aid, which we have not yet considered, which deals with the change of emphasis of this Government compared with the previous direction under Theresa May.

Additionally, the United Kingdom Internal Market Bill, which we shall return to on Wednesday on Report, reserves powers on state aid to the UK and creates a landscape where the UK internal market rules may have to be taken into account, but it does not really solve how that will happen, or clarify its relationship with other aspects of trade and competition policy.

So many things are up in the air because of Brexit negotiations or because they are awaiting consultation. We live in the Pirandello-like state of characters in search of a policy, holding jigsaw pieces of legislation that we hope will one day mesh with other bits that have not yet been cut. Against that background, I thank the Minister for introducing this statutory instrument. As has been said, it modifies the no-deal version of legislation. Reading through the Explanatory Memorandum, it all seems logical, at least for this bit of the jigsaw—even if we do not know the full picture.

The questions that I have focus on whether, or how much, we will end up with enforcement systems for some decisions that are different from those applicable to others, and what practical differences that will make in terms of the strength of powers available.

As I understand it, cases that are decided by the EU, or fall to be decided by the EU under continued competence, can, after decision, either stay with the EU for monitoring and enforcement or by mutual agreement be transferred to the UK. Therefore, my first question is this: what are the likely reasons for choosing whether it stays with the EU or comes to the UK? What reasons would the UK see for that and does the EU have similar or different views? Does it depend on the size or importance of the case or only, as the Minister has already mentioned, on whether it is part of an interconnected set? Is it likely to cause disputes?

Broadly speaking, the European Commission has greater enforcement powers than the CMA—notably very significant fining powers—and the CMA is seeking greater powers, finding those that it has inadequate. As the noble Baroness, Lady Neville-Rolfe, mentioned, the noble Lord, Lord Tyrie, drew some of that to our attention in debate on 16 November on the United Kingdom Internal Market Bill.

The UK firepower relating to refusal to supply information is capped at £30,000, which is plenty for an individual or smaller business but can be inadequate for a recalcitrant large business. It may easily be less than the cost of preparing the disclosure if lawyers are involved; for example, the EU fined Facebook €1.6 million for failing to provide information, while we fined Amazon £30,000. That does not look very comparable.

The UK also has a poor track record on undertakings given to the CMA on mergers—for example, about not closing down establishments or not removing research—despite attempts to strengthen legislation. That legislation and associated undertakings have always ended up legally weak—about as strong as a wet paper bag. I have my theories as to why that is the case, but for now it raises the question whether there will be a stricter regime for cases retained by the EU for enforcement than for those it is mutually agreed to transfer to the UK. That would appear to be the case, as the Explanatory Memorandum states, and the Minister clarified, that the UK monitoring procedures are modelled on existing CMA procedures—that means not the more powerful EU versions.

The cases that are transferred are done so only for monitoring purposes; the EU retains the rights to review, vary and substitute the decisions. If the UK has a weak enforcement system, does that mean that the EU could make up for that when it comes to review or substitution? However, if it is about preservation of jobs or research which have already gone due to weak enforcement, nothing will bring those back.

The big question is not what is happening in this piece of legislation, but when domestic competition policy and domestic enforcement against large companies will become more substantial.

5.38 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I join others in thanking the Minister for a very clear and comprehensive exposition of the SI before us. The SI is very logical and I do not have much detail to raise on it, which is surprising, but I am sure the Minister will be delighted to hear that. I will instead raise three points from the rather good discussion we have had on competition matters more generally, and possibly in the light of future changes.

First is the shadow thrown on all our work in this area by the continuing, drawn-out EU FTA discussions, with particular reference to what would happen if the rumours are to believed—one never listens to rumours, of course—that there will need to be some form of independent competition authority looking at the UK's competition regime to make sure that the EU has confidence that we are operating a level playing field. Can the Minister give us any detail on this? Is this in some sense a way of replacing the CMA, or is the CMA secure in the hands of the Government as we currently view it?

The second point is the shadow that is also cast by the National Security and Investment Bill. I have had the benefit of an introduction from one of its co-sponsors at the Department for International Trade—the Minister, the noble Lord, Lord Grimstone—so I do not need to ask for details at this stage. However, as the noble Lord, Lord Lansley, pointed out, the rather odd situation that we are in—the enormous irony—is that, after the National Security and Investment Bill is introduced, as I am sure it will be shortly, the country will probably have a more interventionist competition authority, but, as he said, one that is more limited in terms of the issues defined in the Bill as "national security". He pointed out the difference between that and our present situation, particularly the concern about whether issues to do with elections, food and media interests will qualify as being considerations under this new legislation. That is something that I think we will have to return to when the Bill reaches your Lordships' House. In passing, I agree with the noble Lord, Lord Lansley, that there are areas of the Enterprise Act in relation to media that need to be updated sooner rather than later.

My final point is the one made by the noble Baroness, Lady Neville-Rolfe. In a very interesting speech, she drew attention to the wider ramifications of the culture created by the CMA and the dangers that that poses for small businesses, which I know are close to her heart: the freezing effect of an investigation on the ability of small enterprises to carry on working and to recruit the specialist staff they might need to fight off any question of their behaviour being in any way in jeopardy. The whole question about how that works and the economy as a whole is beyond the scope of this statutory instrument, but I hope that it is something that we will come back to.

We place a lot of faith in the CMA, most of which is adequately repaid by the skills and stability it has brought to the sector over the years, but it is a judge and jury in its own court and we have to be very concerned about that in the long run. With that, I am very happy to support the SI.

5.42 pm

Lord Callanan (Con): First, I thank all noble Lords for their contributions to the debate. I remind everyone who contributed that these regulations are required to give full and operable effect to a policy that Parliament has already approved in the form of both the withdrawal agreement and the Competition (Amendment etc.) (EU Exit) Regulations 2019.

[Lord Callanan]

My noble friends Lord Lansley and Lady Neville-Rolfe asked about the threshold for market shares in vertical agreements. At the end of the transition period, the Secretary of State will have the power to make regulations to vary or revoke a retained block exemption or to replace it with a block exemption order under the Competition Act, acting in consultation with the CMA, of course. In each case, it will be for the CMA to consider what the relevant geographic and product market will be, and it will have guidance on the factors that it needs to consider.

My noble friend Lord Lansley also asked about the position on foreign investment screening in comparison to the NSI Bill. He also asked whether the Government were considering further measures on foreign investment screening, especially with regard to national security. The answer is that the EU regulation revoked by these regulations relates principally to co-operation between member states on the screening of foreign direct investments. The NSI Bill relates to powers to protect national security in investments, and of course there will be ample opportunity to discuss that Bill in much greater detail when it comes to your Lordships' House.

As always, I listened with great interest to the noble Baroness, Lady Bennett. She ranged far and wide over whether or not the market economy is right, prisons, care homes and council houses. It was all extremely interesting but totally irrelevant to this SI.

My noble friend Lady McIntosh asked about proposals to protect consumer rights after the end of the transition period. The issues of roaming charges and so on are also interesting but are not covered by these regulations. She also asked about positions on appeals under live cases after the transition period—will UK companies be able to rely on the CJEU or on UK bodies? The answer to that question is yes; currently EU law will continue to apply in relation to all live EU cases, and this regulation concerns only the small number of cases that are live at the end of the transition period. UK companies that are subject to merger or anti-trust investigations and decisions in those cases will, of course, be able to appeal any decisions to the CJEU.

My noble friend also asked about UK companies facing red tape, as I think she referred to it, at the end of the transition period. Of course, the UK has left the European Union and, at the end of the transition period, will cease to be part of the EU's competition system. This means that there will be some instances of parallel scrutiny by both UK and EU competition authorities, as is normal in any sovereign competition regime. The same thing would happen with companies that are jointly operable also in the United States. The regulations and the withdrawal agreement set out clearly whether the CMA or the European Commission has jurisdiction over a particular case.

My noble friend Lady McIntosh asked about assurances that UK companies will not be doubly penalised. With respect to those few live cases, the CMA will take into account any penalties issued by the Commission in these cases, which reflect the position which applies during the UK's membership of the EU in relation to a case examined by the Commission and also, lately, after that considered by the CMA.

My noble friend Lady Neville-Rolfe asked about the position of the CMA's chair. She will be aware that Jonathan Scott was appointed as the interim chair on 9 October, and shortly my department will launch a recruitment process for a new permanent chair. She also asked whether a variety of skills are required in the CMA. Of course, the CMA is a highly regarded competition body and will continue to play an important role in fulfilling its statutory function of promoting competition for the benefit of consumers, drawing on its already wide-ranging and broad set of skills from across the public and private sectors.

The noble Baroness, Lady Bowles, asked about the likely reasons for choosing whether enforcement of EU commitments and remedies will stay with the EU or the UK. Of course, it will be for the European Commission and the UK's competition authorities to discuss between them whether it might be suitable to transfer responsibilities to monitor and enforce any EU remedies and commitments.

Lastly, the noble Lord, Lord Stevenson, asked about the status of the CMA under the EU CFTA. These regulations are about the handling of those few live cases at the end of the transition period. Of course, they are not negotiations; negotiations are ongoing, and the noble Lord will quite understand that I am currently unable to comment on the status of those discussions and on the future relationship but, suffice to say, the CMA exists in UK statute and is a world-renowned regulator and functions as our independent competition regulator.

The changes I have described today will give legal clarity to UK businesses and those authorities that enforce competition law in the UK. I reiterate again that these regulations do not bring forward new competition policy, but rather ensure that policy which has already been agreed by Parliament functions in the way that Parliament intended. While, of course, these regulations are technical in nature, without them the UK would fail to implement its obligations on competition law under the withdrawal agreement. The regulations made in 2019 to create a stand-alone competition regime would also contain references that are now inaccurate in light of the withdrawal agreement. Therefore, those inconsistencies between provisions on competition law in the withdrawal agreement and UK competition law would cause significant uncertainty for UK business, the CMA and the UK courts. These regulations will complete the process of preparing the UK's statute book for this purpose, and, therefore, I commend these draft regulations to the Committee.

Motion agreed.

5.49 pm

Sitting suspended.

Arrangement of Business

Announcement

6.14 pm

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): My Lords, the hybrid Grand Committee will now resume. Some Members are here in person, respecting social distancing, others are participating remotely, but all Members will be treated equally.

I must ask Members in the Room to wear a face covering except when seated at their desk, to speak sitting down, and to wipe down their desk, chair and any other touch points before and after use. If the capacity of the Committee Room is exceeded, or other safety requirements are breached, I will immediately adjourn the Committee. If there is a Division in the House, the Committee will adjourn for five minutes.

Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020

Considered in Grand Committee

6.15 pm

Moved by ***Baroness Barran***

That the Grand Committee do consider the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020.

Relevant document: 32nd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, I am pleased to introduce a statutory instrument laid before the House on 14 October. Neither the Joint Committee on Statutory Instruments nor the Secondary Legislation Scrutiny Committee has drawn the House's attention to this instrument.

When the transition period comes to an end, the EU's regulation on data protection, known as the GDPR, will be retained in domestic law through the European Union (Withdrawal) Act 2018. Last year, the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 were made. I will refer to those regulations as the main regulations. They were made to make minor and technical changes to the retained GDPR and the Data Protection Act 2018 to ensure that UK data protection law continued to be operable on exit day.

The instrument before noble Lords seeks to make some limited amendments to the main regulations, most of which address the fact that there has been a transition period. The majority of the changes are to references to "exit day" in the main regulations, which will be updated to read "IP completion day". A small number of other changes relate to the transitional provisions for international transfers of personal data.

Binding corporate rules approved by EU data protection regulators enable multinational companies to transfer personal data within their group globally. The main regulations preserve pre-GDPR binding corporate rules that had previously been authorised by the Information Commissioner as a valid transfer mechanism after the transition period. However, a subset of pre-GDPR binding corporate rules currently relied on by organisations with data flows in the UK may have received authorisation from only EU supervisory authorities. This instrument makes provisions that will allow UK-based group members to use such rules as a valid transfer mechanism, if they obtain approval from the Information Commissioner within six months from the end of the transition period.

UK organisations can currently freely transfer personal data to EU and EEA states, and non-EEA countries for which the EU Commission has made adequacy decisions. The main regulations continue this position on a transitional basis and list the relevant adequacy decisions for clarity. This instrument updates the list to reflect developments since the main regulations were made by adding the 2019 adequacy decision for Japan and removing the reference to the EU's adequacy decision for the US privacy shield. These amendments are not substantive and are entirely in keeping with the original intention of the main regulations, namely the continued free flow of personal data between the UK and third countries that have already been found to meet the requisite standards for data protection.

The main regulations also provided a legal basis for the continued free flow of personal data from the UK to the EU falling within scope of the law enforcement directive, otherwise known as the LED. The approach adopted in the main regulations was to transitionally deem EU member states and Gibraltar as adequate.

Since the main regulations were made, the Home Office has established that the EEA states, Norway, Iceland and Liechtenstein, and Switzerland, have also transposed the LED into their domestic law, which enables data sharing between authorities in the UK and law enforcement agencies within these countries for law enforcement purposes. To enable law enforcement co-operation and data sharing between the UK and EEA states and Switzerland to continue as it does now following the end of the transition period, this instrument adds them to the list of countries that will be treated as adequate, on a transitional basis, under Part 3 of the Data Protection Act 2018. This will be the most efficient way to ensure the flow of personal data, which is fundamental for law enforcement co-operation.

In 2019, an additional statutory instrument was made to amend the main regulations to reflect the arrangements made for personal data transferred from the UK to privacy shield companies in the US. As this adequacy decision has now been invalidated by the CJEU, the amending regulation no longer has any practical effect. Therefore, Regulation 7 revokes that amending regulation before it comes into force.

I have set out why our approach is an appropriate way to address deficiencies in our data protection regime resulting from the UK leaving the EU at the end of the transition period. This instrument will also revoke some EU legislation that would have no practical effect if it were to be retained under the European Union (Withdrawal) Act 2018 at the end of the transition period, such as Council decision 2004/644/EC, which adopts implementing rules of the European Parliament and European Council on the protection of individuals with regard to the processing of personal data by the community institutions and bodies and on the free movement of such data. This retained version of this decision will have no practical effect, so we are revoking it to keep the UK statute book tidy. I beg to move.

6.22 pm

Lord McNally (LD) [V]: My Lords, the late Lord Jenkins—Roy Jenkins—once said that joining the EU was like climbing aboard a moving train. Clearly, getting off a moving train is even more perilous.

[Lord McNally]
I thank the noble Baroness, Lady Barran, for introducing this SI. I do not want to worry her, but I note that those who follow us may be small in number but strong in expertise.

My interest in this matter goes back to the coalition Government in which I served, along with the noble Lord, Lord Vaizey. Data protection then rested with the Ministry of Justice and I was involved in the early stages of the negotiations of what eventually became the GDPR. I will make two points about that experience. First, I saw first-hand as a Minister the respect for the expertise of our civil servants, who had a profound impact on the shape of EU legislation—influence which is now lost by our departure from the EU. Likewise, I was able to engage the help of British parliamentarians in the European Parliament to ensure that the outcomes reflected our needs. The EU is already planning a review of the GDPR. It would be interesting to know what machinery the Government intend to employ to replace the seat at the table and voice in the Parliament that were lost at Brexit.

My second interest comes from my ongoing membership of the EU Services Sub-Committee, on which I serve with the noble Baroness, Lady Neville-Rolfe, who will speak later. Over the last year we have received evidence from a range of sectors, from financial services to intellectual property, from creative industries to research and higher education. All have expressed concern about the lack of certainty about data transfers post 31 December.

In our committee, we have become used to "It'll be all right on the night" answers from Ministers giving evidence to us. My concerns were not assuaged by the Secondary Legislation Scrutiny Committee report, which said that

"DCMS told us that the Commission was currently assessing the UK for adequacy under both the General Data Protection Regulation and the LED"—

the law enforcement directive. Would failure to obtain adequacy arrangements with the EU have a knock-on effect with other third countries and on how third-country agreements interact with each other?

These are matters that will impact data flow in every area, from clinical trials to law enforcement. Is the DCMS giving the sectors any advice about contingency plans if data adequacy does not prove to be the shoo-in that the Government initially implied? We could well end up with a kind of smorgasbord of overlapping and interlocking agreements, to be interpreted from one FTA to another.

My final reason for intervening today was witnessing the look of incredulity on the face of the former Home Secretary and Prime Minister, the right honourable Theresa May MP, as she sat listening to Mr Michael Gove giving assurances on where we are on law enforcement and national security matters. I am sure my noble friend Lord Wallace of Saltaire will cover these matters in more detail, but until I hear that Mrs May is satisfied with the arrangements made I will continue to remain concerned. It will be interesting to know if the Minister shares Mrs May's concerns.

We have come to talk about data as the new oil. How we protect it, use it and exchange it will have a great impact on our future prosperity, our national security and our personal freedoms. It is incumbent on the Government to put arrangements in place that are at least as secure and beneficial as we enjoyed within the EU. This SI is only part of a Rubik's cube of measures needed to carry out those objectives, and I am not convinced that the Government are anywhere near solving it.

6.27 pm

Lord Vaizey of Didcot (Con): It is a thrill to be speaking here this evening. This is my first speech in Grand Committee; I feel as if the set has been designed by Stanley Kubrick, but I will try to give my comments as reasonably as I can. I feel as if I am giving my second maiden speech, so I hope that all subsequent speakers will lavish me and my speech with extraordinary praise.

I begin by saying how enjoyable it is to follow the noble Lord, Lord McNally, who may or may not still be watching the proceedings. He and I indeed worked closely together in the coalition Government on data protection, and in fact it was he who first turned me on to the subject. One of my last acts as a Minister was to grab it and take it over to DCMS to try to realise my vision of DCMS becoming the leading department on digital.

As may have been gathered, data is an extraordinarily dull subject, particularly when it comes to regulations and legislation, but it is true, as the noble Lord, Lord McNally, said, that it is often called the new oil. The reason is that data flows ever more generously around our world; in fact, I am told that the size of the digital universe is now 44 zettabytes, which is 44 times bigger than our physical universe. There are 500 million tweets a day—mostly from President Trump; 294 billion emails a day; 5 billion searches; and 65 billion WhatsApp messages—mostly, no doubt, from Dominic Cummings. It is therefore quite clear that data dominates everything, and there need to be clear rules on how it is used and how it is harmonised across jurisdictions. Data is the new trade route. In fact, the UK, as in so many areas in technology, leads the EU; about 4% of our gross domestic product is now dependent on data companies and industries.

The noble Lord, Lord McNally, rightly spent some time talking about the GDPR. The GDPR is of course a bureaucratic and onerous regulation, but the new version of it came into being just at the time when the "techlash" was gathering momentum, when concern about one's data, the way that it was used and the privacy surrounding it was very much at the forefront, and the GDPR is now seen as a bit of a gold standard. In any event, one of its unassailable merits is that it is now valid across 27 different jurisdictions in the EU, which means that any company using data within the EU knows that it can transfer across different countries. It has been copied in other states, even in countries such as South Korea, which is seen as a technology leader, while California's recent passing of its own privacy law is very much dependent on the GDPR. Bureaucratic it may be, but it has become a model.

One of my concerns, though, about the GDPR is that it is not being used effectively by privacy regulators. I gather that only 3% of the 680 staff at our own Information Commissioner's Office are tech specialists,

and there is so far a failure to use the powers of the GDPR, for example, to take on big tech in the way it transfers the data of citizens between its applications. Think about the way that Facebook and Instagram share data. If the Minister wishes to comment on the ICO and its use of the GDPR, that would be welcome.

Of course, what the noble Lord, Lord McNally, also referred to is probably the most important thing and relevant to these regulations: equivalence across different countries and trade blocs. I notice that Japan recently agreed equivalence with the EU, thus surrendering, perhaps, some of its sovereignty to the EU without throwing a temper tantrum. We have not yet agreed equivalence with the EU, and I am told that if we do not reach a deal then the EU will start to consider data adequacy with us only when we become a third country. That will lead to chaos—chaos, I have to say, compounded by the decision of the European Court to reject the privacy shield between the United States and the EU. You have a three-way pile-up, with the UK caught somewhere in the middle.

However, there is some cause for optimism in the very dull subject of data. I unequivocally welcome the Government's recently published *National Data Strategy*. Launched in September, it addresses some of the real opportunities that the data economy presents. The idea of standardising data across the public sector is extremely welcome, and being able to share data across silos to realise real gains is also very welcome indeed. The focus on data skills and training people in data and in the responsible use of data is a good thing. Some think perhaps that the national data strategy is not ambitious enough. I do not share that view. I think it is a welcome first step and, if implemented properly, will maintain our leadership in this very important area.

However, horizon-scanning ideas are beginning to emerge—for example, the need for companies to value their data. It is astonishing if you look at the accounts of big tech that nowhere will they put a price on the enormous amount of data they harvest from their users. If you put a value on data, you might see companies work harder to make it more secure and—dare I say it or whisper it—it might even be possible for national Governments to tax that data. The wealthiest people in the world really are data billionaires, rather than anything else.

The other emerging idea is that of data trusts. They are a bit like a pension trust where you can put data into, as it were, a separate part of a company and have it governed separately. This could help small companies manage their data more effectively and create whole new industries. For me, all this is very exciting and brings me back to the point to thank the noble Lord, Lord McNally, for first turning me on to data.

6.35 pm

Baroness Fox of Buckley (Non-Afl): To the noble Baroness, Lady Barran, I say that I am hoping that the Government use the opportunity of leaving the EU to review, from scratch, after this SI, some of the laws associated with data protection. I want to emphasise the privacy aspect of data, which I think is hugely important and not without challenges.

When the EU's GDPR law was introduced in the UK, supposedly to protect individuals' data and privacy from exploitation by big government, big tech and big corporates, it managed to become a universally hated piece of legislation on the ground, and privacy issues ended up being drowned out by bureaucracy and rules. As the noble Lord, Lord Vaizey, reminded us, the original catalyst for the new GDPR laws was the 2013 Edward Snowden leaks, which revealed that citizens all over the US and Europe had been caught up in the illiberal harvesting activities of the US intelligence services. Many of us were rightly horrified by the US authorities' invasion of users' privacy.

However, the reaction to this government state overreach was, ironically, to give the state regulators a whole new set of legalistic and bureaucratic powers, like so much of Brussels law-making. I do not think this has helped. However well intentioned, GDPR data protection has become a barrier to communication, rather than a protector of privacy. If you talk to people in universities, charities or small business, and even medical practitioners, you find they just cannot contact anyone unless they find the record of them having given explicit consent to receiving emails in their backlog. It has all become a bit of a nightmare. It has placed huge burdens on small charities, arts organisations and church groups, which are dependent on databases to raise funds and their profiles. Anyone who breaches the rules is threatened with scarily huge fines. Obviously, that frightens people, and I do not think the GDPR rules are fit for purpose, but, of course, big tech and big corporates can afford to get round those fines, employ lawyers who will exploit loopholes, and so on.

I make this complaint not to underplay the importance of digital privacy but as a plea for sensible data-protection rules moving forward, which will safeguard individual freedom and allow small organisations to competitively accrue data to survive. I am also concerned that there is a real problem in relation to a broader climate of compromising privacy. I note that NHS Test and Trace initially broke GDPR rules, which no doubt damaged the public's confidence in its appropriate and secure use of data. I am also looking for some reassurance from the Minister that the sort of state surveillance, data collection and data sharing being used in this pandemic, which is short term and should be extraordinary, will not be sold to the public in the future as the new normal. I also have some concerns that, as we speak, the Government are encouraging big tech to breach users' privacy by demanding that it monitors the communications et cetera of its users, and even censors misinformation. Therefore, the Government are strengthening big tech's authority and giving it the authority to breach data privacy.

Furthermore, did noble Lords note, earlier this month, that there was a draft resolution from the EU Council to weaken end-to-end encryption—E2EE—putting the likes of WhatsApp under pressure to implement back doors for security services and law enforcement to have access to private communications? Obviously, we are not in the EU now, so the UK can ignore this illiberal proposal but, again, can the noble Baroness reassure me that the Government are not tempted to cite national security and law enforcement

[Baroness Fox of Buckley]
to breach privacy? I note the dismay among international journalists, which is just one group who are worried that their data will be used to compromise their professional work and privacy.

Finally, frankly, I worry about a more informal disdain for privacy. I am somewhat dismayed by the number of leaks emanating from the heart of Westminster. WhatsApp, texts, private meetings among colleagues all end up in the public realm or newspapers. This does not show any real regard for private communications. When considering online privacy and data, it is important that we protect private data and encrypted messages, whether from cybercriminals, hackers, oppressive regimes, big tech, big government or even the wrong kind of laws. Actually, this is less about laws and more about having a public debate, establishing that privacy is an important civil liberty, and we should not let the rules get in the way of that discussion.

6.39 pm

Baroness Neville-Rolfe (Con): My Lords, it is always a joy to speak after the noble Baroness, Lady Fox of Buckley, because of her talent for challenge—this time on privacy. This is important, although I think these SIs are narrower than the sort of points that she was interesting us in.

Like the previous regulations that we debated, these make changes to orders relating to life after Brexit—in this case to 2019 regulations on data protection, privacy and electronic communications. Many of the changes are minor and I support them. I refer to my various business interests, most of which are affected by data. I was also the Data Minister at DCMS, and that was during the negotiations on the GDPR which, ironically, we agreed to in good faith to try to help in the negotiations with the European Union in the run-up to the referendum. Indeed, I took over the portfolio from my noble friend Lord Vaizey. Perhaps because he was bored by data, which he has admitted to today, or perhaps because he was so busy with the glamour of digital and its pioneers, he passed it to me with a huge portfolio of ministerial correspondence to deal with, so I had my work cut out. He also gave me the chance to make some progress with nuisance calls, which are a very important consumer issue.

I rise to speak for three reasons. The first is that data is incredibly important to the modern economy. It is the "big oil" equivalent in the 21st century. It is vital to banking, to telecoms, to retail and supply chains, to pop music and entertainment, to aviation, to transport and energy and, with Covid, to pretty much everything else—notably, of course, education, healthcare and border controls. My noble friend Lord Vaizey gave us an idea of the sheer scale of this. He rightly said it was "the new trade route"—I like that as a parallel. It is so important that we cannot slip up in this area. It is possibly even more important than physical trade.

Secondly, I would like to know the latest thinking within the EU on data. I have the honour to sit on the Lords EU Committee. As the noble Lord, Lord McNally, has already said, we tackle data together. It is one of the aspects of the ongoing FTA negotiations that worry us most. The Government in their wisdom—Mr Hancock was the Minister—brought in a special Act, the Data Protection Act 2018, to ensure we were fully compliant with EU rules and norms on exit day. This was to enable the EU to grant the equivalence status we need, which, as we have just heard, Japan has recently acquired. I am not sure I would have done it that way, as the Act is very burdensome, especially for small businesses, charities and local councils. Everyone, including your Lordships, risks breaches, which at the upper limit attract vast fines—an odd way to take back control. Unfortunately, so far, this has not been a successful strategy. As far as I know, we still await an equivalence decision on data. As with financial services, one assumes this is being held back by the EU as a negotiating ploy. To my mind, this is not very responsible, given the huge interest of both sides in proper data flow. Maybe my noble friend the Minister can reassure me and advise that there is a contingency plan for a year or two—as we have seen on the share trading exchanges in the financial services area—if FTA talks falter or fail, or equivalence is formally withheld for any reason. The noble Lord, Lord McNally, touched on this point and suggested that businesses needed to be consulted on contingencies. I certainly look forward to my noble friend the Minister's reply on that.

My third reason for speaking is that I spent time in Washington helping—or trying to help—to sort out a US-EU deal on the privacy shield in 2017, persuading the US to give some ground. I was therefore extremely disturbed at the European Court judgment against the arrangement on 16 July 2020. During discussion on the Trade Bill on 1 October, the Minister suggested that standard contractual clauses had been supported in that judgment and that updated guidance from the Information Commissioner's Office would be available "as soon as possible". Is that now available and what does it, or will it, say? Most important of all: will it solve the problem?

In the meantime, I note that the privacy shield decision is removed from our regulations, as we have heard. I also see the reference to guidance for small businesses and to standard contractual clause templates in paragraph 13.2 of the DCMS's helpful memorandum. But I repeat my question: does this solve the problem? If so, can the Minister kindly explain on the record how and why?

In closing, I support my noble friend the Minister and the Government in getting this and other SIs through in a timely manner before exit day, and I very much hope that she will be able to reassure me.

6.45 pm

Lord Stevenson of Balmacara (Lab) [V]: My Lords, I am grateful to the Minister for her very clear introduction of this SI. The main thrust of it is obvious: it is an amending sequence to make sure that we are ready for the end of the transition period when it comes. Like the other speakers so far, I have no particular concerns about the issues.

I will make two points, which have been touched on already. There is a rather coy comment in the statutory instrument's Explanatory Memorandum about the impact of the privacy shield and, in turn, its impact on the Schrems II decision. Put simply, it says that revoking would have no real effect—but I wonder whether the

Minister could take us a little further down that route when she comes to respond. It seems to me that the issues here are important. If I am right in saying that the decision we are all waiting for, on the transfer of personal data under the data adequacy agreement, will take into account both the GDPR as it was translated in the Data Protection Act and the LED—including the legal consequences of the directive that deal with that aspect of the work—do we not need to have in our mind the considerations that Schrems brought on the privacy shield and related issues? If it is true—and I think it is—that both of these issues will be examined by the EU when it comes to make a decision about data adequacy, we need to have a better response than simply ignoring how the privacy shield would have operated, and now cannot operate, and whether or not it impacts on the way in which we do things. I look forward to the Minister's response on that.

It was good to hear the noble Lord, Lord Vaizey, display both his concern about the dullness of data and his enthusiasm for some of these issues—in particular policy around data, on which his fingerprints are very evident. I welcome him to the unfortunately very small number of Members of your Lordships' House who take an interest in this; I hope that his interest will also span across into intellectual property, which we have not heard enough about recently. Those who are interested tend to be gathered around this table and need a transfusion of new blood every now and then. I hope that he will be able to provide that—not literally, of course.

The noble Lord mentioned the curious case of the Japan free trade agreement, which is referred to in paragraph 7.6 of the Explanatory Memorandum. I have a slightly different take on that. It is interesting that Japan has accepted the accolade of being found to be data adequate, particularly as its relationship with the GDPR is not the same as ours. It certainly approaches data in a slightly different way. As I understand it, the Japan free trade agreement—we have yet to debate it in your Lordships' House but I hope we will do so shortly, and I gather that a date has now been found for such a debate in the Commons—has in it a section to do with digital trade. That may not be in the Minister's main portfolio, but it is important.

The memorandum says that digital trade between the UK and Japan after the transition period has ended will be based on the "free flow" of data. I find that slightly odd and I wonder whether the Minister can comment on it. Surely it is not free flow; it is flow based on the considerations in the GDPR and the LED, transposed into our legislation. A judgment will be made on whether it is a constrained flow, precisely because we have concerns about the free flow of data not being in the best interests of our citizens—a point made by the noble Baroness, Lady Fox.

We need to be a little more certain when we come to this decision because it seems that if we are to make deals with data as part of those functions, we must be secure about what we are actually doing when we sign off these documents. This is an important part of our economy and a crucial part of our relationships with the EU. It would surely not be in the best interests of UK plc to have an agreement with Japan, however important that is, which threw further doubt on our ability to meet the data adequacy concerns.

6.50 pm

Lord Wallace of Saltaire (LD) [V]: My Lords, this is the third SI on this topic that has come before Parliament since the beginning of 2019. My colleagues have been dealing with similar revisions to already revised statutory instruments on other aspects of leaving the EU, and on a wide range on subjects. At least here we have the excuse that the CJEU's ruling on the privacy shield, Schrems II, has necessitated further provision. In a debate earlier this afternoon, the noble Lord, Lord True, told us that the two previous drafts on public procurement had set out adjustments necessary for a no-deal outcome, but that the one we were considering today set out the detailed implications of a deal in that area. I am not sure whether I understood or believed his explanation.

I have several concerns about the implications of this SI. I was told in a briefing a week ago that Dominic Cummings detested the EU's general data protection regulation and was determined that UK legislation should diverge from that standard. Now he has left the Government, but I am not yet sure that his influence has disappeared. The terms of the UK-Japan trade agreement appear to offer individuals fewer protections for their personal data than under GDPR, as many commentators have pointed out. It states that

"each Party should take into account principles and guidelines of relevant international bodies",

such as the OECD. The Minister will appreciate the level of concern among the engaged public about lowering the protection for personal data now that we have left the EU. I thank her and her colleagues for offering briefings on the evolution of the Government's digital strategy to interested Peers and I look forward to reassurance on this important principle.

The free flow of data across borders is a vital element in the digital economy, under appropriate regulatory conditions. I was concerned to read in the Secondary Legislation Scrutiny Committee's comments on this SI that

"DCMS told us that the Commission was currently assessing the UK for adequacy under both the General Data Protection Regulation and the LED."

Can the Minister tell us when the Commission is expected to complete this assessment?

Then there is the question of data sovereignty, which of course was one of the issues in the Schrems II case. My colleague and noble friend Lord Clement-Jones has written powerfully about the need to hold on to our national data assets as the foundation of a strong domestic base for digital enterprise but also as a matter of national and personal security. I note that health data has become a sector particularly vulnerable to multinational companies and hacking.

The UK Government are peculiarly relaxed about UK public data being stored on servers in the United States, in spite of the provisions of US law that make all data stored in the USA subject to surveillance, as others have mentioned. Our current Government, from the Prime Minister downwards, have an obsession with protecting the UK's absolute sovereignty from any incursion by EU regulation or law but seem entirely

[Lord Wallace of Saltaire]
relaxed about extraterritorial American jurisdiction and surveillance. Many of us anticipate that, outside the EU, the UK will not prove to be an independent sovereign state—let alone a sovereign equal of the United States and China—but will become more and more dependent on the United States and a follower of American rules and regulations. If the UK supervisory authority is to diverge from the GDPR, it is most likely that it will converge on US regulation and take the American side in likely disputes with the EU. Do the Government plan to ensure that UK public data is stored in the UK rather than in the United States?

The law enforcement directive struck a careful balance between personal rights and national security. UK officials and Ministers played an active part in negotiating its terms. Our Government were one of the most active in pressing for further data exchanges related to cross-border crime and terrorism, from aircraft passenger names to intelligence on suspects. Cross-border travel, and cross-border crime and terrorist attempts, will not stop now that we have left the EU, but we need to ensure that such exchanges of data are tightly regulated and scrutinised. Until we left, the CJEU provided that scrutiny. Can the Minister tell us what shared mechanism will now be established to scrutinise such exchanges, strong enough to satisfy defenders of civil rights and personal privacy both within the UK and the EU? How confident is she that the UK will be able to ensure its security by maintaining access to these vital but highly sensitive databases?

I recall hearing Conservative MPs assert that we had no need of Europol—for example—when we left the EU because we could rely on our membership of Interpol. That level of ignorance about the quality of different international bodies, that assumption that an organisation that has Russia and China as significant members is preferable to one in which we shared more information with our democratic neighbours leaves some of us close to despair about where the Government may be drifting.

I have one final question. How do the Crown dependencies fit into this post-Brexit pattern of data exchange? Can we be confident that their regulation is as tight and as open to scrutiny as within the UK and on the European continent? We do not want an offshore world around our shores through which financial data, dark money and criminal assets may flow unseen. What discussions are the Government engaged in with the Crown dependencies to ensure that no loopholes in our post-Brexit regulation of data are left on our doorstep? The Minister may wish to write to me on this matter.

6.57 pm

Baroness Barran (Con): I am grateful to all noble Lords for their consideration of this instrument and their thoughtful contributions to this debate. The noble Lord, Lord McNally, pointed out the level of expertise around our virtual and physical Chamber. That is no novelty in this House, although having such a number of previous Ministers from DCMS here today feels like a particular form of pressure.

My noble friend Lady Neville-Rolfe and the noble Lord, Lord McNally, focused on the importance of achieving a data adequacy agreement with the EU. Doing this remains a priority of this Government. We are working constructively with the Commission to secure data adequacy by the end of the transition period and are making steady progress. We see no reason why we should not be awarded adequacy since we remain committed to high standards, but the process is controlled by the Commission and we are realistic about the increasingly challenging timelines for completing this.

To respond to my noble friend Lady Neville-Rolfe's questions about preparation, the UK is taking sensible steps to prepare for a situation where adequacy decisions are not in place by the end of the transition period. In such a scenario, businesses and other organisations would be able to use alternative legal mechanisms to continue to transfer personal data—of course, standard contractual clauses are the most common legal safeguard and would be the relevant mitigation for most organisations.

Guidance can be found on both the GOV.UK website and the Information Commissioner's website regarding steps that organisations may be required to take relating to data protection and data flows by the end of the transition period. Organisations can also call the Information Commissioner's helpline for further information.

The noble Lords, Lord McNally and Lord Stevenson, talked about the rollover of Japan's adequacy decision. Specific UK arrangements have now been confirmed regarding the recent EU adequacy decision for Japan. This secures the necessary protections for UK data as well as EU data, so that data that flows from the UK to Japan will continue to receive the same level of protection after the transition period as they currently do.

More broadly, in relation to the Japan free trade agreement—which was raised, again, by the noble Lords, Lord McNally and Lord Stevenson, as well as the noble Lord, Lord Wallace of Saltaire—the UK-Japan FTA includes three provisions that seek to enhance cross-border data transfer relating to personal information protection, cross-border flows and data localisation. The data provisions the UK has negotiated with Japan exceed those agreed previously in the EU-Japan economic partnership agreement, which contains merely a review clause, and will enter into force on 1 January 2021. The agreement recognises the importance of protecting personal data and commits both parties to maintaining a legal framework that provides for the protection of personal information.

I fear that I may disappoint the noble Baroness, Lady Fox, in her wish to see an end to the GDPR. The GDPR will be retained in domestic law at the end of the transition period, but we will have the independence to keep the framework under review. As with all policy areas, the UK will control our own laws and regulations in line with our interests as we move forward.

The noble Lord, Lord Wallace of Saltaire, questioned the impact on our data protection standards in relation to our trading relationship with the US. We know that, far from being a barrier to innovative trade, certainty and high data protection standards allow businesses and consumers to thrive. As all noble Lords

have remarked, data is now the driving force of the world's modern economies and fuels innovation across all sectors.

I thank my noble friend Lord Vaizey for his kind remarks about our new *National Data Strategy*. Sadly, I missed his maiden speech, so I am glad to have had the chance of a second session. The *National Data Strategy* is ambitious and pro-growth. We seek to ensure that people, businesses and organisations trust the data ecosystem, that they are sufficiently skilled to operate within it, and that they have access to high-quality data, as well as to provide the coherence and impetus for data-led work across government.

A number of noble Lords, including my noble friend Lady Neville-Rolfe and the noble Lord, Lord Stevenson, referred to the Schrems II decision. The UK Government are pleased that standard contractual clauses remain in place as an important mechanism for transferring data internationally, but we are disappointed that the EU's adequacy decision on the US Privacy Shield has been invalidated by the CJEU in its judgment of 16 July. The Government are working with the Information Commissioner to address the impacts of the judgment on UK data controllers.

During the transition period, this includes the ICO supplementing the guidance provided by the European Data Protection Board and the European Commission with targeted advice to help UK controllers. Most recently, and since the Explanatory Memorandum was prepared, the European Data Protection Board has issued guidance on how to assess whether to supplement standard contractual clauses with examples of supplementary measures that could be used, if needed, to ensure that personal data remains protected to the required standard. It has also updated the templates for the standard contractual clauses. These were published for consultation on 12 November and have been updated to cover processor-to-processor and sub-processor transfers. The noble Lord, Lord Vaizey, commented on the boredom of data—maybe this is a small example.

In response to the remarks of the noble Lord, Lord Stevenson, the greatest impact will be on organisations which transfer data to the US, particularly to those US companies who had previously signed the privacy shield. After the transition period, the Secretary of State and the Information Commissioner will have powers to issue new instruments relating to transfers of personal data under Article 46 of the UK GDPR.

My noble friend Lady Neville-Rolfe asked about the burden on SMEs of having no adequacy agreement. Officials in DCMS, who were rightly congratulated on their work in this area, are engaging with SMEs through meetings and webinars to try to help them prepare for a scenario where adequacy decisions are not in place by the end of the transition period. In such a scenario, as noted already, organisations would be able to use alternative legal mechanisms to continue receiving personal data from the EU and the EEA.

The noble Baroness, Lady Fox, asked about the impact on law enforcement of not receiving adequacy. In this scenario, if we do not obtain a law enforcement adequacy decision, competent authorities would be able to rely on alternative mechanisms to continue receiving data from the EU, and transfers will most likely occur using the appropriate safeguards provision.

The noble Lord, Lord McNally, asked how we would continue to influence the development of international data standards. Since the UK is a signatory to the Council of Europe's Convention 108, that is one route; the ICO also has functions to co-operate with data protection regulators in other countries.

I see that I have run out of time, so I apologise to those noble Lords whose questions I did not cover, but I will write. I thank all noble Lords again for their remarks.

Motion agreed.

The Deputy Chairman of Committees (Baroness Watkins of Tavistock) (CB): That completes the business before the Grand Committee this afternoon. I remind Members to sanitise their desks and chairs before leaving the Room.

Committee adjourned at 7.08 pm.

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