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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

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.

House of Lords

Tuesday 8 December 2020

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Newcastle.

Arrangement of Business

Announcement

12.06 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. Oral Questions will now commence. Please will those asking supplementary questions keep them sensibly short and confined to two points. I ask that Ministers' answers are also brief.

Heat and Building Strategy

Question

12.07 pm

Asked by ***Lord Best***

To ask Her Majesty's Government, further to the answer by Lord Callanan on 2 July (HL Deb, col 802), when they plan to publish the heat and building strategy.

Baroness Bloomfield of Hinton Waldrist (Con): This is a key policy of the Government. We will publish a heat and building strategy in early 2021 that will set out the immediate actions we will take for reducing emissions from buildings, including deploying energy-efficient measures and transitioning to low-carbon heating. This ambitious programme of work will enable the mass transition to low-carbon heat and set us on a path to meet our net-zero 2050 emissions targets.

Lord Best (CB) [V]: I thank the Minister for her reply—it is good to hear that the heating and building strategy is on its way. Since this directly affects every household in the country, it certainly deserves priority in the follow-through to the PM's 10-point plan. Bearing in mind that heating by gas has to end, but its alternatives—clean electricity and hydrogen—are at least twice as expensive, will the strategy ensure that decarbonising our heating does not lead to a massive increase in fuel poverty?

Baroness Bloomfield of Hinton Waldrist (Con): The noble Lord is absolutely correct in the points that he makes. A number of options have the potential to play an important role in decarbonising heat and we are exploring many of them simultaneously. Improving the energy efficiency of people's homes is the best long-term solution to tackling fuel poverty. The Government have already introduced a statutory fuel poverty target to get as many fuel-poor homes to a minimum energy-efficiency rating. Furthermore, the energy company obligation scheme is focused entirely on low-income and vulnerable households.

Baroness Whitaker (Lab): My Lords, to follow on from the question put by the noble Lord, Lord Best, domestic gas boilers are widely used, not least in blocks of flats. To end reliance on fossil fuels, alternatives will need to be installed. What are the Government's plans to deal with this problem?

Baroness Bloomfield of Hinton Waldrist (Con): The noble Baroness makes good points. The Government are not banning the installation of natural gas boilers, but to achieve net-zero emissions we will have to transition away completely from traditional gas boilers. We are continuing to explore how clean electricity, hydrogen, green gas and indeed shared heat networks in blocks of flats can contribute to achieving our net-zero target.

Lord Taylor of Goss Moor (LD) [V]: I should draw attention to my interests as chairman of a renewable heat company and as an advisor to many developments on planning matters for sustainable communities. The point that I make is one that will apply throughout the development sector and all techniques. The sector needs an early decision—it is welcome that the Government are doing this—but it also needs a long-term decision, because every company, builder, housebuilder and retrofitter needs to know what will be in place for a decade or more in policy terms, not short-term solutions.

Baroness Bloomfield of Hinton Waldrist (Con): The noble Lord raises a good point, but I hope that he is somewhat reassured by the 10-point plan, which has the potential to deliver £42 billion of private investment by 2030, accompanying £12 billion of government investment. This will create and support 250,000 green jobs by 2030. I think that the noble Lord will acknowledge that this is a long-term plan. It will be achieved through a combination of subsidies and investment by the Green Investment Bank.

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I welcome the Government's 10-point plan, but what is being done to install more heat pumps? At the current rate of progress, it will take over 700 years to reach the target set by the Committee on Climate Change of 19 million heat pumps for the country.

Baroness Bloomfield of Hinton Waldrist (Con): I hope that it will not take that long, but one of the main pillars that my noble friend will have read about in the 10-point plan is the installation of at least 600,000 heat pumps per year by 2028. Given that the life of a boiler is usually up to three years, as each boiler rolls over we hope to be able to install more heat pumps at a natural rate. Hybrid heat pumps are being seen as a potential transitional economy, which we are also exploring.

Lord Thurlow (CB) [V]: The numerous commitments to significant government support to the hydrogen development sector in particular give us as a nation, free from pan-European competition regulations, a real chance to direct government investment into British technology and the development of British IP. What effort will be made to direct this investment into UK businesses rather than UK-based subsidiaries that feed the profits of foreign companies?

Baroness Bloomfield of Hinton Waldrist (Con): I think that the noble Lord is referring back to the mistakes that we made in the development of the offshore wind market. We are determined not to make the same mistakes. The profit from the technology that we develop in floating offshore wind and other green technologies, including the significant investment that we are making into hydrogen energy development, will provide, I hope, some reassurance.

Lord Grantchester (Lab): The number of unpublished plans, statutes and White Papers will soon outnumber the scattergun 10-point environment plan. With most buildings being heated by gas, solutions to a decarbonised gas system utilising the existing infrastructure point towards a hydrogen-based gas system. What emphasis or consideration are the Government giving towards a photocatalyst material that utilises more light to harvest more hydrogen from water? That was part of my question to the noble Baroness last week. Is she satisfied that sufficient investment is being directed towards new technologies that can then be commercialised by start-ups to scale them up into solutions?

Baroness Bloomfield of Hinton Waldrist (Con): The noble Lord will be reassured that the hydrogen strategy paper will come out early in the new year. In answer to his question about photocatalyst material, I believe that the Active Building Centre in Swansea is working towards achieving new building materials and coatings that generate electricity from light and, indeed, from heat. This energy could be used to power hospitals and schools as well as homes, or it could be sold back to the national grid. This is being supported by a £36 million government grant.

Baroness Scott of Needham Market (LD) [V]: When the heat and building strategy is published next year, can the Government assure us that they will have taken into account the recommendations made by the Committee on Climate Change in its 2019 report on UK housing?

Baroness Bloomfield of Hinton Waldrist (Con): Of course the work of the climate change committee informs much of the Government's work at the moment. It has to be said that it is often a bit more ambitious than our plans, but it is an integral part of our decision-taking.

Lord Mann (Non-Afl): What will the impact of this strategy be on park homes, old prefabs and mobile homes?

Baroness Bloomfield of Hinton Waldrist (Con): This is indeed a difficult area. The Government's forthcoming fuel poverty strategy aims to reduce barriers to accessing support for households living in these sorts of home types, including park homes and similar. Many suppliers now provide the £140 warm home discount rebate to otherwise eligible households living in park homes through the warm home discount industry initiatives. Such households may additionally benefit from the green homes grant voucher scheme, which can provide up to £10,000 for low-income households in order to improve the energy inefficiency of their homes.

Lord Lilley (Con): Can my noble friend confirm that the cost of installing heat pumps—£10,000 per household plus new boilers—will fall disproportionately on low-income households in the colder, northern parts of this country and least on the virtue-signalling better-off in London? She may recall that I voted against the Climate Change Act because its impact statement showed that the potential cost was twice the maximum benefit. What does the cost-benefit analysis of these measures show?

Baroness Bloomfield of Hinton Waldrist (Con): I recognise the concern that my noble friend raises in his question. However, the cost of not decarbonising heat and developing greener buildings could be an awful lot greater if it falls on future generations. The benefits will be the ability to export green technologies developed in the UK, with support for many more jobs in the green economy. The Government already spend £1 billion per annum supporting poorer households through the ECO and the warm homes discount.

Lord Broers (CB) [V]: Are the Government in their heat and housing strategy doing everything possible to use the heat from nuclear power stations? Some 40% of the energy from nuclear reactors, including small modular reactors, is emitted in the form of heat, which can be captured in district heating systems to heat buildings. It can also be used to produce hydrogen and other low-carbon fuels, thereby making the cost of nuclear power competitive with that of renewables.

Baroness Bloomfield of Hinton Waldrist (Con): The noble Lord is quite right on the science of his question. Indeed, the heat produced by nuclear power stations can be used for many other purposes, rather than just heat networks. After all, nuclear power stations in France are sited often much closer to conurbations than they are here. As for heat networks, the pipe infrastructure is fuel agnostic. Once infrastructure is in place, heat networks can be developed to exploit a range of lower-carbon heat sources. The Government believe that nuclear could have a role in beyond-the-grid applications, including hydrogen production. All nuclear reactor technologies have the potential to feed into the hydrogen market, by producing either low-cost electricity or heat for increasingly efficient electrolysis production.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. We now come to the second Oral Question.

Covid-19: Public Health Information

Question

12.17 pm

Asked by ***Baroness Lawrence of Clarendon***

To ask Her Majesty's Government what plans they have to review public health information on the COVID-19 pandemic to ensure that any (1) linguistic, (2) cultural, and (3) digital issues with such information are addressed.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, the Government provide clear public health information about Covid-19 through a wide range of channels and formats. To ensure the widest reach possible, the Government translate information into multiple languages and formats, including videos, animations and infographics. Information is provided free of charge online, in local and national press, on television and radio, and via the free NHS app and public advertising. They provide guidance in BSL, Braille, large-print and easy-read formats.

Baroness Lawrence of Clarendon (Lab): Do Her Majesty's Government agree that black, Asian and minority communities across the country have been overexposed, underprotected, stigmatised and overlooked during the Covid-19 pandemic? We also know that, for some, language barriers played a part in communication. What special measures do the Government propose to introduce in order to reduce the vulnerability of such communities, especially over the immediate winter months, and where are they in the rollout of the vaccine?

Lord True (Con): My Lords, there is a large packet of questions there. I will obviously try to provide answers to some of them, but I cannot provide answers to all of them. The Government certainly recognise the priority attached to the groups for whom the noble Baroness so rightly and strongly speaks. Our strategy ensures that our audience receives bespoke Covid communications. Our partnership includes 47 BME publications, and core market materials are translated into community languages on request. The Government are overseeing BME audience-focused communications and engagement as part of specific campaigns.

Lord Clark of Windermere (Lab) [V]: My Lords, will the Government publish an equalities plan to ensure that there is the correct infrastructure across the country so that no community is left behind in the rollout of the vaccine? We already know that poorer areas have fewer GPs, so additional facilities need to be in place to ensure that these areas are not left behind in the rollout.

Lord True (Con): My Lords, I am sure that the noble Lord will welcome the fact that this country is leading the world in the availability of vaccines. We have a programme, for which the set of priorities has been published, to distribute that vaccine broadly and widely, without fear or favour, to any group within this country.

Baroness Uddin (Non-Afl): My Lords, the Minister will be aware that government-appointed agencies have allocated a small amount of adverts and health information to be disseminated by small satellite and radio channels. Given that the Government have been fully cognisant of the enormity of the impact of social, economic, digital and health divides in our nation among some communities, and with Covid's detrimental toll on specifically the Bangladeshi communities—among other minority communities, as mentioned by the noble Baroness, Lady Lawrence—what steps are the Minister and his colleagues taking to review some of these materials and to intensify the frequency? Will he agree to meet with me and some of the experts to discuss their communications and review some of the materials and the forward strategy?

Lord True (Con): My Lords, I am sure that the Government—whether it is me or my colleagues who are specifically leading—are always happy to engage with the noble Baroness or anyone else who speaks for the communities concerned. I believe that the diversity and inclusion team within the Cabinet Office, for which I can answer, has allowed for better co-ordination of cross-government efforts to improve accessibility and we will continue to work on that.

Lord Flight (Con): My Lords, clearly there needs to be a professional review of the Covid-19 pandemic in due course to learn for the future how to better contain pandemics. Why, however, does the noble Baroness, Lady Lawrence, limit the public health review to linguistic, cultural and digital issues? Is not the priority how to contain pandemics before they become national and materially damaging to economies?

Lord True (Con): My Lords, it is, of course, highly desirable to contain any pandemic or any threat to the welfare of our citizens. We have to deal with the situation that arises; I believe that the Government have sought to deal with it energetically. We certainly have said that we will consider the lessons learned from this pandemic.

Baroness Jolly (LD) [V]: My Lords, this morning I looked at the English NHS website and could not find Covid-19 information in languages other than English. I then looked at the NHS Scotland site, which had information in 12 languages, including British Sign Language. Given that this information can save lives, when do the Government anticipate making Covid-19 online information available to those living and working in England and are more comfortable reading information in their own language?

Lord True (Con): My Lords, I will refer the noble Baroness's comments about what is available on the NHS website to those responsible. The Government have enabled at least 22 languages to be accessible for Covid publicity.

Baroness Warsi (Con) [V]: My Lords, in the report *Beyond the Data: Understanding the Impact of COVID-19 on BAME Groups,* published by Public Health England in June this year, a number of recommendations were made. Can the Minister explain how many of the recommendations have been implemented six months on and what the impact has been on the number of people contracting Covid and the number of Covid deaths in BAME communities?

Lord True (Con): My Lords, there were a wide range of responses; my noble friend is quite right to say that the report was important. Following on, more than 95% of front-line NHS workers from ethnic minority backgrounds have had a risk assessment and agreed mitigating actions. BEIS issued revised guidance to employers in July and September highlighting the findings of the review and explaining how to make workplaces Covid-secure. Some £4.3 million has been provided to fund new research projects relating to Covid and ethnicity.

Baroness Finlay of Llandaff (CB) [V]: My Lords, I declare that I chair the National Mental Capacity Forum. Will the Government collate all resources available into an online library? This should include resources produced by them and all relevant charities, such as Books Beyond Words, to link easy-to-read pictorial guides and signing videos covering Covid-19 regulations, testing and vaccination to support those with learning difficulties and cognitive impairments, including people with dementia or literacy difficulties. They might find that a resource produced by a different organisation is particularly helpful to their personal situation and would help them understand the pandemic-control measures that are required nationally.

Lord True (Con): My Lords, I endorse the need to reach all vulnerable groups. I take the noble Baroness's suggestion seriously and will ask colleagues to reflect on it.

Baroness Smith of Basildon (Lab): My Lords, we were all delighted to see the news this morning that 90 year-old Margaret Keenan got the first vaccination from nurse May Parsons. However, can I take the Minister back to two points? First, he said that the information was available in many languages and different formats; yet, as the noble Baroness, Lady Jolly, has pointed out, that is not available on the NHS website. I know that he would never want to—even inadvertently—mislead the House, so will he check with his department and report back to the House on how that information is available? I am sure that it is in everyone's interest that it is as widely available as possible.

Secondly, what are the Government doing to combat the anti-vaccination messages online? There has to be some action taken against social media firms. When Margaret Keenan and others come forward to show how important it is that they are taking the vaccine, it is very sad, disappointing and worrying if no action is taken against social media when they try to deny people the protection offered by the vaccine.

Lord True (Con): My Lords, I would never wish to mislead the House; I hope that *Hansard* will reflect that I said that I would take back to colleagues the point about the NHS. The point that I made about languages is broader. I totally agree with the noble Baroness that vaccine disinformation, spread unchecked, could cost lives. We take the issue seriously: we have secured a commitment from Facebook, Twitter and Google to tackle it by not profiting from this material and by responding to flagged comment more swiftly.

Lord Scriven (LD): My Lords, 10% of the adult population in the UK are not internet users. What provision have the Government made for these 5.3 million people to have parity of access to Covid-19 information services? How are the Government measuring whether these are effective?

Lord True (Con): My Lords, the noble Lord makes an important point. In terms of reaching all vulnerable groups, those without access to the internet are important. This is taken into consideration. I can assure the noble Lord that the performance of the Covid campaign is reviewed in detail twice a week between the centre and agencies, but I will underline the significance of the specific point he raised.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed. We now come to the third Oral Question.

Streaming Platforms: Age Ratings

Question

12.28 pm

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what assessment they have made of the partnership between Netflix and the British Board of Film Classification to establish age ratings for streaming platforms; and what plans they have to encourage other streaming platforms to adopt such ratings.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): My Lords, while adoption of the British Board of Film Classification's best-practice age ratings by online platforms is currently voluntary, we welcome their usage by video on-demand platforms. This includes an ongoing partnership with Netflix which, on 1 December, announced that it had become the first platform to achieve complete coverage of its content under the BBFC's ratings. We will continue to engage with industry to encourage other platforms to do the same and will keep the evidence for legislation in this area under review.

Lord Clement-Jones (LD): My Lords, given that at present, under the audiovisual media services directive, the UK cannot regulate non-UK-based video on-demand services, does the Minister agree that BBFC ratings are the best way to inform parents and children whether content is appropriate, because they are trusted and reflect our national concerns on issues such as violence and discrimination? Will the Government take action to promote and ensure adoption by VOD platforms whether regulated here or not?

Baroness Barran (Con): I hope I was clear in my first Answer that the Government are very supportive of the ratings system. Since 2018, we have encouraged voluntary adoption of the BBFC code.

The Lord Bishop of Oxford [V]: My Lords, I thank the Minister for her answer. What will the Government do if other platforms do not follow the Netflix example? According to the BBFC, over 90% of parents said that age-related guidance was helpful, and there is no doubt that voluntary action may be more forthcoming if platforms are very clear that the UK Government expect content consumed here in the UK to be properly signposted with BBFC symbols and content advice. How else do the Government plan to ensure that only age-appropriate content is accessible to young and vulnerable viewers?

Baroness Barran (Con): The right reverend Prelate is absolutely right that the evidence suggests that the overwhelming majority of parents—I think 94%—would like to see a consistent ratings system. We are also aware —this has been raised on many occasions by the public service broadcasters—of the inconsistency in the regulatory environment between PSBs and the platforms. We are looking at that, including asking the PSB panel to review it.

Lord Forsyth of Drumlean (Con) [V]: My Lords, now that Netflix has arrogantly rejected the Secretary of State's excellent request to make clear at the start of every programme that "The Crown" is a work of fiction, what action do the Government propose to take to ensure that Netflix is regulated by Ofcom and is not free to present poisonous and mendacious material as fact?

Baroness Barran (Con): I think my noble friend is aware that my right honourable friend the Secretary of State has made his views about the latest series of "The Crown" extremely clear. Perhaps one positive outcome of this is that Netflix has now made a statement in the public domain that acknowledges that this is indeed a fictionalised account. We are hopeful that Netflix will reflect on this for future programmes to make sure that it serves its viewers to best effect.

Lord Loomba (CB) [V]: My Lords, we have the 9 pm watershed, which provides parents and guardians with a good marker of the content and age-appropriateness of programmes. Now that more and more traditional broadcasters are offering on-demand services similar to those offered by the streaming platforms, can the Minister say what the Government are doing to ensure age-appropriate content in this growing area of broadcasting?

Baroness Barran (Con): The noble Lord raises some wide-ranging points. In addition to what I have already mentioned regarding our approach, we are taking forward a media literacy strategy and developing a one-stop shop which will give companies guidance on how to keep children safe online.

Lord Stevenson of Balmacara (Lab) [V]: My Lords, is it true that the content guidelines carried by Netflix are primarily derived by applying algorithms? Does that not differ significantly from how the BBFC arrives at its clear and consistent advice on content? If that is true, is it accurate for Netflix to say that it is carrying BBFC age ratings on all its programmes?

Baroness Barran (Con): My understanding is that the system that has been agreed between Netflix and the BBFC is that Netflix takes a self-rating approach in line with the BBFC's classification, which is then verified and audited by the BBFC. Both parties appear to be content.

Lord Foster of Bath (LD) [V]: My Lords, far more parents allow their young children to play 18-plus-rated video games than allow them to watch 18-plus-rated films. Indeed, one survey showed that 86% of parents do not follow video game age restrictions. What more can be done to persuade parents and others buying video games as Christmas presents for children to understand the harm that can be done to children by not taking seriously the age rating of video games?

Baroness Barran (Con): The noble Lord raises an important point. We would like to see the Pan European Game Information—PEGI—age ratings, which are used for physical copies of games, also used for online games, and we are pursuing that actively.

Lord Pickles (Con) [V]: My Lords, algorithm or not, this is a very welcome development because it gives families some guidance with regard to the relevant ages. Is my noble friend surprised that other platforms have not joined in? In particular, Disney does not use the system at all. It uses a ratings system based on a Dutch system, which means that films that the BBFC has classified for cinemas and for DVD release carry a different rating on Disney+. That means that they are not aligned with what UK expectations would be. To take one example, "Mrs Doubtfire", a film that deals with bereavement, loss and divorce, is sensibly classified as a 12 by the BBFC but is rated as suitable for all on Disney+. This lack of consistency does not help British families. Will my noble friend meet urgently with Disney+, Amazon Prime and Apple to urge them to join the system?

Baroness Barran (Con): My noble friend raises important points. I know that many of these companies are very focused on a family-friendly approach and that my noble friend the Minister for Digital and Culture meets regularly with the companies working in this area.

Lord Alton of Liverpool (CB): My Lords, while I welcome what the Minister has said about keeping the voluntary, rather than mandatory, arrangements under review, can she explain how Ofcom will judge whether an adult service video on demand provider has taken appropriate measures to prevent access by children and young people to our 18-classified material under the new audio-visual regulations that came into effect last month? How does she respond to the warning reported this morning from the Children's Commissioner that the Government must do more to protect children as messaging apps make more use of encryption?

Baroness Barran (Con): Ofcom in particular uses the on-demand programme service code in relation to these platforms. With regard to the noble Lord's second question, the issues raised around encryption are incredibly important; that is a vital part of our digital world and we need to find a solution. We are working with the industry to find a solution which does not risk child safety but which permits security and cybersecurity.

Lord McNally (LD) [V]: My Lords, is it not already clear that the British Board of Film Classification has tremendous respect from the public, and should not the Government bring the board into closer co-operation with the CMA, Ofcom and the Information Commissioner as we map out the legislation that is promised? As has been shown this morning, we need their expertise.

Baroness Barran (Con): I am very happy to take those suggestions back to the department.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this question has elapsed. We now come to the fourth Oral Question.

Arcadia Pension Fund

Question

12.39 pm

Asked by ***Baroness Drake***

To ask Her Majesty's Government what steps they are taking to ensure that the Arcadia pension fund receives all of the contributions and assets agreed between its owners, any trustees and The Pension Regulator.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): As Arcadia has now gone into administration, the Pension Protection Fund, working with the Pensions Regulator, will now act in place of the trustees and will negotiate on behalf of the scheme to ensure that it is treated fairly compared to other creditors and gets what it is due. If the regulator thinks there has been wrongdoing, it may also be able to use its anti-avoidance powers to get redress.

Baroness Drake (Lab) [V]: I thank the Minister for her reply, but it gives little assurance on the £210 million of security agreed with Arcadia getting to the actual schemes. Covid has a major impact, yet large pension deficits have not just built up over the past nine months but over years, and there will be other companies who took out dividends and assets to a value much greater than deficit recovery payments made, leaving their pension schemes more vulnerable than they should be. Will the Government consider urgent amendments to the Companies Act so that directors' duties to shareholders are subject to a responsibility to repair deficits to pension schemes? We will otherwise have endless cases such as Arcadia recurring.

Baroness Stedman-Scott (Con): I will need to take the issue relating to the Companies Act back to colleagues at BEIS, but we have the Pension Schemes Bill going through the House at the moment. There will be powers to ensure that we hold pension trustees to account, and I am sure that that will make a huge difference.

Lord Young of Cookham (Con): My Lords, further to the point made by the noble Baroness, Lady Drake, about the deficits facing more and more pension funds, should we ask why they are being forced by regulation to invest more and more into government gilt-edged securities, which now have negative returns and are therefore guaranteed to lose pensioners money? Should we not instead be encouraging pension funds to invest in infrastructure, social housing and green projects to generate jobs, prosperity and growth?

Noble Lords: Hear, hear.

Baroness Stedman-Scott (Con): My noble friend is not alone, as witnessed by the endorsement of his points on how pension schemes should invest their money. However, the accounting standards ensure that a standard, objective measure applies to pension liabilities on company balance sheets. This is very different to the role of trustees when deciding on an investment strategy. It is up to trustees to have an investment strategy that suits the specific nature of their schemes. While gilts and bonds have lower returns, they are much less volatile than equity and can be useful as part of a diverse investment portfolio.

Lord Empey (UUP) [V]: My noble friend will be aware that the high street has been under pressure for a long time. We also know that Philip Green has form when it comes to pensions. There will be great disquiet at the fact that this deficit has been allowed to build up. Can my noble friend give me a sense of the Government's liabilities in this regard? What steps we are going to take to ensure that these funds are not again left in a vulnerable position, when we know well in advance that sectors are in severe difficulty?

Baroness Stedman-Scott (Con): There is no government liability, as the Pension Protection Fund is funded by the assets taken into it from schemes, topped up by a levy on eligible schemes. The PPF plans for the long term and, as at 31 March 2020, it had a healthy reserve of more than £6 billion.

Lord Davies of Brixton (Lab): The Minister correctly highlights the role of the Pension Protection Fund, and the employees of Arcadia can take some comfort from that. The problem is that the protection afforded by the fund is incomplete. To lose your job is bad enough; to lose part of your pension as well piles injury on injury. Can the Minister tell us what consideration is being given to improving the level of protection provided by the PPF?

Baroness Stedman-Scott (Con): First, the noble Lord makes a good point about people losing their jobs, and I want to give absolute comfort to the whole House that the Department for Work and Pensions,

through the rapid response team, stands ready to do all it can to help people in this very difficult time. On the second part of his question, we are doing as much as we can at the moment to help companies—through the Pensions Regulator and the Pension Protection Fund—to protect their assets and ensure that trustees act honourably in their duties.

Lord Fox (LD): In answer to a similar question from me last week, the noble Baroness, Lady Bloomfield of Hinton Waldrist, said:

"Where there is evidence of bad practice, it is taken up through the relevant authorities."—*Official Report*, 3/12/20; col. 835.]

Does the Minister agree that the Green family paying itself more than £1 billion while the pension fund is depleted of the money it needs is bad behaviour? If so, are the Government really satisfied that the Pensions Regulator has enough power to deal with those sorts of owners of those sorts of companies?

Baroness Stedman-Scott (Con): I understand the noble Lord's point and the spirit in which he makes it, but it would be inappropriate for Ministers to comment at this stage on this individual case. It is too early to know the position of the pension scheme—whether there is a deficit or how big it is—and, indeed, whether anybody has behaved inappropriately. We need to let the Pension Protection Fund and the Pensions Regulator do their job. If there is any cause for concern, they have a range of powers which they will use.

Baroness Sherlock (Lab) [V]: My Lords, many Arcadia pension scheme members are facing possible job loss and uncertainty, which are the perfect conditions for scammers to exploit anxious people who are looking to access their pension savings. The experience of too many British Steel workers stands as a warning. Once savings are transferred out of the pension scheme, there is no way back and access to the PPF is gone. What active steps will the Government take to apply the lessons of the Rookes review to ensure that Arcadia scheme members are not exposed to financial advisers who may provide poor advice, nor persuaded to put their savings in the hands of fraudsters?

Baroness Stedman-Scott (Con): As always, the noble Baroness raises an important point for people who are in difficult positions. Since January 2018, following its work on the British Steel pension scheme, the Financial Conduct Authority has been working closely with the Pensions Regulator and the Money and Pensions Service to ensure that they monitor pension transfer activity in defined benefit pension schemes that may be subject to increased transfer activity. The three organisations have increased the frequency of their meetings during Covid-19 to consider schemes at risk of higher transfer activity.

Lord Blencathra (Con): My Lords, let us be blunt. Debenhams collapsed after three ruthless vulture funds loaded it with debt and then cleaned it out to the tune of £1.2 billion in dividends. Arcadia was legally robbed by the Greens to the tune of another £1.2 billion in dividends. In the United States, the regulator would have gotten back every cent and they would all be serving life without parole. When are we in this country going to get some proper regulation and legislation to tackle people whose behaviour is de facto criminal, but at the moment technically legally okay?

Baroness Stedman-Scott (Con): I and the whole House absolutely agree that we need to ensure our legislation can deal with those who would plunder pension schemes. That is why we currently have a Pension Schemes Bill going through Parliament. Let me be clear. Where there is mishandling of a pension scheme, the Bill extends the Pensions Regulator's sanction regime, introducing the power to issue civil penalties of up to £1 million and three new criminal offences, including a new sentence of up to seven years in prison for bosses who run pension schemes into the ground or plunder them to line their own pockets.

Lord McKenzie of Luton (Lab) [V]: My Lords, we have just heard about the Pension Schemes Bill and its provisions. When will the new routes to contribution notices, new criminal offences and new information-gathering powers that the Bill makes available to the regulator be available? When the Bill comes into effect, will they be retrospective?

Baroness Stedman-Scott (Con): To give the noble Lord a correct answer, I will need to go back to the department, especially on retrospective issues, and write to him. I will make the answer available to all noble Lords.

Lord Goddard of Stockport (LD) [V]: I noticed that the Minister said that the Government had no liability, and she mentioned the word "honourable" in almost the same sentence. Does she agree that that is cold comfort for the 12,000 people who will have a terrible Christmas? She should perhaps contact the Prime Minister and try to get Philip Green's knighthood revoked because he is clearly less than an honourable man.

Baroness Stedman-Scott (Con): It would not be right for me to comment on individual cases, as I have already said. However, I should point out that a clear, independent process is in place for the forfeiture of an honour, and the final decision on whether to revoke one is made by an independent committee.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has elapsed, which brings an end to Question Time.

12.50 pm

Sitting suspended.

Arrangement of Business

Announcement

1 pm

The Deputy Speaker (Baroness Henig) (Lab): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

UK-EU Future Relationship Negotiations and Transition Period

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 7 December.

"I am grateful for this opportunity to update the House on the progress of our negotiations with the European Union.

Intensive talks continue. In fact, the United Kingdom's negotiating team, led by Lord Frost, has been in talks with the EU almost every day since 22 October and is working tirelessly to get a deal on our future relationship. This also affords us in this place the opportunity to show our collective resolve to get a good deal, our expectations of what that needs to look like, and what we will not accept. While there has been some progress across many areas, familiar differences remain on the so-called level playing field, fisheries and governance. Of these, the level playing field issue is currently the most difficult.

On Friday, after an intensive week of talks in London, the respective chief negotiators, Lord Frost and Michel Barnier, issued a joint statement. This outlined that the conditions for an agreement had not been met, and that talks should pause briefly to allow the Prime Minister and the Commission President to discuss the state of play on Saturday. Following their telephone call, the Prime Minister and President von der Leyen issued a joint statement. It welcomed progress, but noted that an agreement would not be feasible if the issues on the level playing field, fisheries and governance were not resolved. They agreed that a further effort should be made by the UK and the EU to assess whether the outstanding differences can be resolved, and instructed the chief negotiators to reconvene in Brussels.

We are at a critical moment in the negotiations. Teams are negotiating as we speak, and the Prime Minister will call the Commission President later this afternoon to discuss progress again. My right honourable friend the Chancellor of the Duchy of Lancaster is in Brussels today, meeting the European Commission Vice-President; they are meeting in their capacity as co-chairs of the UK-EU Joint Committee under the withdrawal agreement.

We are all working to get a deal, but the only deal that is possible is one that is compatible with our sovereignty, and that takes back control of our laws, trade and waters. While an agreement is preferable, we are prepared to leave on so-called Australian-style terms if we cannot find compromises. As the Prime Minister has made clear, people and businesses must prepare for the changes that are coming on 31 December, most of which are related to our departure from the EU single market and customs union, and not the outcome of these talks.

Mr Speaker, we will continue to keep the House updated as we seek to secure a future relationship with our EU friends that respects our status as a sovereign, equal and independent country."

1.01 pm

Baroness Hayter of Kentish Town (Lab): My Lords, the NFU, Toyota, traders, patients, ports, shippers and, indeed, the national interest are all crying out for a deal; so, in effect, are the OBR's analysis and the Government's own reasonable worst-case scenario planning. In the light of this, does the Minister agree with Tobias Ellwood that it would be

"an abject failure of statecraft … to leave the EU without a deal"?—[*Official Report,* Commons, 7/12/20; col. 546.]

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, we are all working to get a deal but the only deal that is possible is one that is compatible with our sovereignty and takes back control of our laws, trade and waters. Although an agreement is preferable, we are prepared to leave on so-called Australia-style terms. People and businesses must prepare for the changes that coming on 31 December, most of which relate to our departure from the EU single market and customs union, not the outcome of the talks.

Lord Wallace of Saltaire (LD) [V]: My Lords, references to Australia and Canada deny the geography, which is that we must retain close relations across the board with our neighbours whether we are in the EU or outside it. Does the Minister have a response to the remarks of the noble Lord, Lord Hague, in yesterday's *Daily Telegraph*? He said that no deal with our European neighbours would

"create the biggest crisis in our relations for more than a century."

Lord True (Con): I repeat: we are seeking a deal. As the Prime Minister said a few minutes ago, hope springs eternal. There are significant differences. I do not agree that there would be a crisis that could not be surmounted by the British people.

Lord Lilley (Con): Will my noble friend ignore the pleas of those who want us to cave in and accept every demand of the European Union? Does he recall that Canada is even closer to the United States than we are to Europe? It has a perfectly normal trade agreement with the United States that does not require it to accept American laws and rules or give America its fish. Why should we be any different vis-à-vis the European Union from Canada vis-à-vis the United States?

Lord True (Con): My Lords, my noble friend makes a profound geographical point. I agree with him.

Viscount Waverley (CB) [V]: My Lords, with Covid having changed the context of the negotiations fundamentally, and given that any tariffs and disruption will add uncertainty to the UK, the EU and the wider international economy, would it not be sensible to support the most affected communities by presenting alongside any agreement or in the event of a no-deal outcome a realistic action plan that would benefit the economy at large, including by protecting services, manufacturing, fishing, jobs and new business opportunities?

Lord True (Con): My Lords, the continuing Covid emergency is obviously a problem, although I am sure that the noble Viscount will join me in welcoming the wonderful news of the first vaccination happening today. We continue to keep the impact of coronavirus on the delivery of the transition programme, as well

as the potential for disruption, under review. We are considering, as we always do, what mitigations may be needed as the situation evolves.

Baroness Armstrong of Hill Top (Lab) [V]: My Lords, it is clear that, in any trade deal, there must be some compromise on sovereignty. The Government need to be clear with us where they are prepared to compromise. I hope that the Minister will press on the Prime Minister the importance of those regions where the economy relies on manufacturing. The north-east recovered from the closure of its basic industries—mining, steelworks and shipyards—by developing manufacturing, much of which has thrived through exports to the EU. It makes up a higher proportion of the economy in the north-east than it does anywhere else in this country. Companies do not know the rules or the price structure that they will have to work from in less than a month. Even at this late stage, can the Minister assure us that they are not forgotten and that manufacturing companies in the north-east will be able to continue to trade with the EU without massively increased bureaucracy or, indeed, increased costs that will drive them out of business?

Lord True (Con): My Lords, I underline totally the importance of a manufacturing sector to this country. It is absolutely central to this Government's strategy and policy of levelling up. So far as the negotiations are concerned, a huge amount of progress has been made but the UK's position has been absolutely clear from the outset. A negotiation needs each of the two partners to understand the position of the other.

Baroness Noakes (Con): My Lords, is my noble friend the Minister as surprised as I am that none of the noble Lords who has spoken from the Benches opposite has acknowledged, let alone praised, the amazing commitment of my noble friend Lord Frost as he has valiantly sought to negotiate a deal in the UK's interests? Will the Minister join me in expressing this House's thanks for my noble friend Lord Frost's outstanding public service during the negotiations?

Lord True (Con): My Lords, I profoundly agree with what my noble friend Lady Noakes says. It has been an outstanding programme of public service from my noble friend Lord Frost and his team. Let us hope that what we all seek is crowned with success.

Lord Dodds of Duncairn (DUP): In wishing the Government well in their negotiations to achieve a free trade deal that is in everybody's interest, can the Minister update us on the joint committee's parallel discussions about the Northern Ireland protocol? As he knows, businesses in Northern Ireland have written a joint letter asking for an adjustment period, but can he confirm that, in all circumstances, free and unfettered trade from Great Britain to Northern Ireland—and vice versa—will be guaranteed?

Lord True (Con): My Lords, I am happy to underline the importance of unfettered access; I hope that all Members of this House will come round to recognising that. Talks have been going on in the joint committee, as the noble Lord knows. The atmosphere has been good; I hope that we will learn more in due course.

Lord Triesman (Lab) [V]: My Lords, the Minister is obviously very confident that, even without a deal, we will all prosper. I must say, that confidence is not shared by the academic community, which is asking questions that I will put directly to him. Can the Government assure the academic community that it will be an associate to the Horizon Europe programme, which is vital for academic connections and will potentially overcome the damage that has already been done to contracts negotiated over the recent months? Also, will the Government achieve an adequacy agreement so that research data transfer will take place, rather than becoming very much harder? These issues are fundamental to the interests of the United Kingdom.

Lord True (Con): As the noble Lord says, our outstanding academic sector and the adequacy of data are of course extraordinarily important. As he knows, negotiations are continuing, and we must await the outcome.

Lord Lansley (Con) [V]: My Lords, does my noble friend agree that the majority of people have not entered into negotiations with the objective of reducing our standards—on the environment, on labour rights or in other areas? That should be of some assurance to our European colleagues. Will he also confirm that, as an independent country, we cannot agree to take rules from the EU in future? We should negotiate our standards and they should accept that.

Lord True (Con): I agree with my noble friend's final remarks. The UK's reputation for quality, safety and performance is what drives the demand for UK goods. The Government have no intention of harming this reputation.

Lord Dobbs (Con) [V]: My Lords, we voted for Brexit and for a return of fundamental rights. This is a divorce: we hope it is friendly, but it is a divorce none the less. Does my noble friend agree that it is not an option for the EU to go on demanding conjugal rights, even after the divorce is done? What is it about democracy that some members of the EU—and possibly some Members of this House—simply do not get?

Lord True (Con): I will not follow my noble friend in a discussion of conjugal rights; maybe he is writing the latest episode of his current script. I say yes, yes and yes to him. Of course we wish for co-operation with our European friends but, as the Government have repeatedly underlined, they must display an understanding of our wish to make our own laws and control our own borders. That was the democratic resolve of the British people—not once, but twice.

Hong Kong: Sentencing of Pro-democracy Activists

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Monday 7 December.

"We are deeply concerned by recent developments in Hong Kong. As the Foreign Secretary made clear in the most recent six-monthly report on Hong Kong,

[Lord True]
this has been and continues to be the most concerning period in Hong Kong's post-handover history. The apparent focus of the Hong Kong authorities now seems to be on retribution against political opposition and the silencing of dissent. In the light of our concerns, we have taken decisive action in relation to the erosions of rights, freedoms and autonomy in Hong Kong, specifically in response to the national security law. This has included a new immigration path for British nationals (overseas), suspending our extradition treaty with Hong Kong and extending our arms embargo on mainland China to Hong Kong.

We have made clear our concerns about a number of ongoing cases, and that includes the sentencing of the pro-democracy activists Joshua Wong, Agnes Chow and Ivan Lam on 2 December and the charges laid against the major media proprietor Jimmy Lai on the same day. We understand that the three sentenced on 2 December pleaded guilty to inciting people to take part in an unauthorised rally last year. They were not charged under the national security law. As the Foreign Secretary made clear in his statement of 2 December, prosecution decisions must be fair and impartial, and the rights and freedoms guaranteed to the people of Hong Kong under the joint declaration must be upheld. Hong Kong's prosperity and way of life rely on respect for fundamental freedoms, an independent judiciary and the rule of law.

British judges have played an important role in supporting the independence of Hong Kong's judiciary for many years. That independence is a critical factor underpinning Hong Kong's success. We want it to, and hope that it will, continue; however, the national security law that was imposed on Hong Kong in July poses real questions for the rule of law in Hong Kong, and the protection of fundamental rights and freedoms promised by China in the joint declaration. It is therefore right that the UK Supreme Court continues to assess the situation in Hong Kong, and the position of British judges, in discussion with the Government.

We have raised our concerns about these and other cases with senior members of the Hong Kong Government and the Beijing authorities, and we will continue to do so. We urge the Hong Kong and Beijing authorities to bring an end to their apparent campaign to stifle legitimate opposition, and to reconsider their current course. The Government will continue to work with international partners to hold China to account, as we did recently at the UN Third Committee on 6 October, where 39 countries expressed deep concern at the situation in Hong Kong, Xinjiang and Tibet. The UK Government will continue to stand up for the people of Hong Kong and our historic responsibility."

1.13 pm

Lord Collins of Highbury (Lab): My Lords, I welcome this Answer. It is important that we send a united message opposing attempts to erode the rights and freedoms of the people of Hong Kong. Yesterday, my honourable friend Lisa Nandy asked Nigel Adams about the development of a co-ordinated response involving our Five Eyes partners, including the new US Administration. Can the noble Lord say more than simply,

"the Foreign Secretary will … be having conversations with his counterpart"?—[*Official Report*, Commons, 7/12/20; col. 591.]

Have there been any direct discussions with the Biden transition team about the human rights situation in Hong Kong? My honourable friend Chris Bryant yesterday expressed his frustration at Ministers continuing to say that they could not speculate about future sanctions designations. I am sure that the noble Lord will follow the same mantra. If he cannot say who, will he at least commit to when? It is important that we act quickly.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con): My Lords, I thank the noble Lord, Lord Collins, for his remarks about a united response. I thank both him and the noble Baroness, Lady Northover, for their continuing engagement—not just within the Chamber, but more widely—on this important issue of human rights and on our relationship with China and the situation there.

The noble Lord asked about the important area of our ongoing relationship with the US. As he will be aware, we came together with key partners, including the US, Australia and New Zealand, over the situation in Hong Kong. We valued their support. We are going through a transition period with the US. My honourable friend in the other place was correct; my right honourable friend the Foreign Secretary has engaged on this agenda with the incoming US Administration. I also assure the noble Lord that we are continuing with the operational elements of our approach. I have had some meaningful exchanges with the State Department, and we are working closely with our US partners even during this transition period.

The noble Lord again pressed me about the human rights sanctions regime. We are looking at situations across the globe. The intent behind this regime is to look not at a country as a whole but at specific individuals and organisations. I am sure we shall continue to keep those aspects in mind, whatever sanctions are brought forward in future. He asked about the timeline. Patience is a virtue, and I hope that his virtue will not be tested for too long.

Baroness Northover (LD): My Lords, I also welcome the Statement. We all share the Government's concerns. Joshua Wong has been imprisoned for more than a year. As my honourable friend Wendy Chamberlain flagged up yesterday, under the Government's current Immigration Rules, that would mean that he was barred from claiming asylum. Will the Government commit to following the Canadian Government and ensure that those charges are not a barrier to vulnerable activists being able to claim asylum in the United Kingdom? The Minister in the Commons responded sympathetically to my honourable friend, but he did not have an answer. I am sure that the noble Lord has looked at *Hansard* to see what happened in the Commons yesterday. I hope he has a better answer. If he does not, perhaps he can write to us.

Eight students have been arrested for protesting peacefully on university campuses. This reinforces how young people are particularly vulnerable to arrest

under the national security law. Therefore, will the Government amend its BNO visa scheme to allow those born after 1997 to apply?

Lord Ahmad of Wimbledon (Con): My Lords, we have already clarified our position on the BNO status of those born after a given date but who have a direct relationship with someone with that status. They will be considered when the scheme becomes operational. As the noble Baroness knows, that will be from 31 January 2021. As she will appreciate, the three activists—Joshua Wong, Agnes Chow and Ivan Lam—have not been charged under the new national security law. They accepted the charges levelled against them. Inasmuch as I can at this juncture, I assure her that we look at any asylum application to the United Kingdom on the merits of the particular case. If I can provide her with further details, I will write to her, as she suggested.

Viscount Waverley (CB) [V]: My Lords, the Minister referred to the broader relationship with China. The Government were defeated twice in the House of Lords last night over trade deals with China. They have a piecemeal, open-handed approach to their relationship with a country that views democracies and free media as potential threats to its regime, and that is a master at leveraging economic statecraft to strategic effect. Will the Government therefore recognise that a new basis for managing this relationship should not include mutually hawkish policies, but rather be built on consistency, reciprocity and fairness, embracing relationship-building with a whole-government approach that is accepted as a necessity, not a luxury?

Lord Ahmad of Wimbledon (Con): My Lords, it is important to look at our relationship with China from a strategic perspective. As I have said before from the Dispatch Box, the UK wants a mature, positive relationship with China. China is an important member of the international community and a P5 member of the UN Security Council. Its size, rising economic power and influence also make it an important partner in tackling some of the biggest global challenges. As we have already seen on Covid-19, there is an immense scope for co-operation. As we look forward to 2021, the recent announcements that have been made by the Chinese Government provide enormous scope for positive, constructive engagement and wide-ranging opportunities, from trade to co-operation on tackling climate change. China of course is important as we strive to achieve the goals and ambitions that we have set out for COP 26.

In that strategic relationship, it is absolutely right that we protect our own vital interests, including support and our sensitive infrastructure. Equally, we will not accept investment that compromises our national security. And, as we have repeatedly said, in international fora such as the UN Third Committee or the Human Rights Council, where we have direct concerns—whether on Xinjiang in China, or Hong Kong, as we are discussing today—we will raise them. We will raise them bilaterally, in multilateral fora and in partnership with key countries and other member states, because it is important that we speak up against the suppression of human rights, wherever it occurs.

Exams and Accountability in 2021

Statement

The following Statement was made in the House of Commons on Thursday 3 December.

"With permission, Mr Speaker, I would like to make a Statement regarding testing and examinations in schools and colleges next year.

The pandemic continues to cause disruption throughout our education communities and, once again, I pay tribute to all our teachers, school leaders and support staff for the enormous efforts that they are making to keep young people of all ages learning. I also pay tribute to the global teacher of the year award winner, which recognises the most outstanding teacher from around the world. Our very own Dr Jamie Frost, maths lead at Tiffin School in Kingston-upon-Thames, has been shortlisted for this after his tuition website went viral during lockdown, helping millions of pupils in the United Kingdom and around the world to continue their studies at home. He has already won the Covid hero award, and I am sure that the whole House will join me in wishing him luck with the overall prize.

We will not let Covid damage the life chances of an entire year of students by cancelling next year's exams. Exams are the best form of assessment that we have, and we are therefore taking steps to ensure that any student preparing to sit them in 2021 has every chance possible to do their very best.

We support Ofqual's decision that, in awarding next year's GCSEs, AS and A-levels, grading will be as generous and will maintain a similar profile as those grades awarded this year. This is to recognise the exceptional circumstances under which students and teachers continue to work and to make sure that students are not at a disadvantage compared with previous years.

Ofqual is also working with the exam boards to make sure that students studying for vocational and technical qualifications and other general qualifications benefit from the same generous approach. I know that students and teachers are making enormous efforts to catch up with any lost learning. To support those most affected by the continuing disruption, at the end of January, students will be given advance notice of some of the topic areas that will be assessed in their GCSEs and A-levels. That means that they will be able to focus on these areas in more depth and target their revision accordingly. Students will also be given exam aids, such as formula sheets, in recognition of the time lost in the classroom and to give them more confidence and reduce the amount of information that they need to memorise in preparation for exams.

All these measures have been drawn up with the most affected in mind and we will be sharing the advance notice about what exactly the measures will entail with schools and colleges at the end of January. Students taking vocational and technical qualifications or other general qualifications can also expect a number of concessions, including a reduced number of units to be assessed. We want as many students as possible to be able to sit their exams and for that reason we have a contingency package to make sure that they can

[Lord Ahmad of Wimbledon]
do so, including spacing exams more widely, as well as enabling vulnerable students to sit exams at home if they need to.

In the minority of cases where students cannot sit all their papers or where a very small number of pupils miss all of them, there will be means by which they can still be awarded a grade, including additional papers available after the main exam series.

The fundamental problem with this year's exams is that we tried to award grades without actually holding exams. We will not be repeating that mistake. With the measures that I have outlined, we are confident that every student who is preparing to sit exams this summer will be awarded a qualification. As the virus continues to be a fact of life for all of us, schools and colleges are making impressive efforts to ensure that education can continue for those students who must remain at home. We have reviewed and updated the guidance for remote education so that schools, parents and pupils all know exactly what to expect from it. Primary schools need to provide an absolute bare minimum of three hours a day on average of remote education, and secondary schools an absolute minimum of at least four. Schools will also be expected to check and provide feedback on pupils' work at least weekly, as well as informing parents immediately where engagement is a concern. The department will also ask schools to set out details of their remote provision on their websites so that parents can better understand their schools' remote education offer.

As levels of Covid infection continue to fluctuate, we know that different areas will experience varying levels of disruption to learning. We will therefore commission an expert group to assess any local variations and the impact the virus is having on students' education.

I turn to the measures we are taking in respect of the school and college accountability framework for 2021. We need to ensure that the arrangements for inspection and performance measures are fair and reflect the current public health situation. They need to take into account the enormous challenges that schools and colleges have been facing, but, equally, we must continue to provide the information and reassurance that parents need about their children's education. We will not be publishing the normal performance tables based on test, exam and assessment data next year. Instead, my department will publish data on the subjects that students have taken, how well schools and colleges support their students to their next destination, and attendance data, taking account of the impact of Covid-19. We will also publish national and regional data on 2021 exams, tests and assessments. Importantly, we will make the exam data available to Ofsted and to schools, but we will not publish it in performance tables.

I will now let the House know how our plans for schools and colleges are affected by inspections. It is our intention that Ofsted's routine graded inspections will remain suspended for the spring term but will resume in a carefully considered way from the summer term. In the meantime, Ofsted will carry out monitoring inspections in those schools and colleges most in need of support. That will include those currently judged inadequate and some in the 'requires improvement' category. Inspectors will focus on areas that are particularly relevant at this time such as curriculum delivery, remote education and, importantly, attendance. There will also be a focus on those pupils who are particularly vulnerable. However, I stress that they will not make graded judgments and any inspection activity will be sensitive to the additional pressures that schools are working under at this time.

As in the autumn, Ofsted will also be able to inspect a school in response to any significant concerns about safeguarding but also about the delivery of remote education by that school. In both the early years sector and the independent schools sector, the intention is also that standard inspections will remain suspended for the spring, with assurance inspections in the early years and non-routine inspections in independent schools taking place in the meantime. I trust that that provides the House with reassurance that we are providing the right balance in our accountability and inspection arrangements.

I will finish by outlining our proposal for the curriculum and testing in primary schools, recognising the particular challenges they face. Assessments in primary schools next summer will focus on phonics, mathematics and English reading and writing. That means that, for 2021 only, we will remove all tests at key stage 1, the English grammar, punctuation and spelling tests at key stage 2, and science teacher assessments at both key stages. The introduction of a multiplication tables check will be postponed for a further year, but schools may use it if they want to. It is a resource available to all schools, and we encourage them to do so if they can.

We will also add more flexibility to the timetable so that, if there is any disruption due to coronavirus in a school, pupils will be able to take the test when they return to school. These measures will help us to address lost learning time and will give us a chance to support pupils in schools who need help. They will also provide vital information for parents and better help for pupils to make a successful step into the next stage of education —going to secondary school.

Everyone in all of our schools and colleges is working as hard as they can to make sure that no pupils lose out because of Covid and that the future they are dreaming of is still very much within their reach. I am determined that the coronavirus will not jeopardise the life chances of this year's pupils, and I am confident that the plan is the fairest way of doing this. I commend this Statement to the House."

1.21 pm

Lord Watson of Invergowrie (Lab): Well, my Lords, we have had to wait quite some time for the Secretary of State to respond to the concerns of pupils, parents, school leaders and trade unions, all of whom have been seeking clarity on how next summer's exams can be conducted fairly. We welcome many of the measures announced in the Statement, which will mitigate the impact of the pandemic, including those on SATs and the delay in Ofsted resuming its inspections, but we believe that the measures announced on GCSEs and A-levels do not go far enough and leave a number of issues to be resolved.

The first concern is the Government's apparent belief that a one-size-fits-all approach is appropriate. Why should that be the case? The changes being proposed will apply to all students, so everyone will know about the topics to be covered, everyone will be able to bring in certain aids, everyone will be graded more generously and so on. Significant numbers of pupils have been and will continue to be absent from school due to Covid, causing disruption to their education. The pattern across the country is uneven, and students' experiences have been different, so how can making changes that apply to everyone specifically help those who have had the most challenging experiences and therefore need more support?

One size fits all will lead to fundamental inequities between students who have suffered different levels of disruption to their learning, and makes it inevitable that some young people will be examined on what they have not been taught rather than what they have been taught. This is an issue that the interim chief regulator of Ofqual has red-flagged, highlighting the gap in learning loss across different regions, describing it as

"one of the most intractable issues",

with any potential solutions

"fraught with difficulty".

The Minister may point to this as being within the remit of the expert group, but with someone as experienced as the head of Ofqual saying it is close to being unmanageable, does the Minister believe there is a solution to be found? If there is not, the question of whether the exams can ever be fair for pupils in the hardest-hit Covid areas must be addressed.

I mentioned the expert group, but we have had relatively little information on it. Why has it been established so late? Who will comprise the group and will it include representatives of school leaders and teachers? Most importantly, when is it expected to report? Additionally, will minutes of its meetings be published, as now happens with SAGE? Will its members, like those who comprise the DfE's Covid-19 recovery advisory group, be required to sign non-disclosure agreements? That would be completely unacceptable at a time when concerned parents and pupils surely deserve transparency on discussions about their future. How will the Secretary of State ensure that the distribution of grades is spread evenly across schools and postcodes this year, so that the most disadvantaged pupils are treated fairly? We still do not know which parts of the syllabus will be in the exam papers and which will not, leaving schools less and less time to adjust their teaching programmes.

A further concern is why it has now been revealed that funding for catch-up tutoring will be spread across two years. Apparently, around £140 million of the £350 million allocated to the national tutoring programme remains unspent. That might not have been the case had the programme not taken so long to begin its work but, given the widely accepted disparity in the amount of education that school pupils have been able to access since the start of the pandemic, surely every available resource should be used to ensure that every pupil is prepared for this year's exams, rather than rolling over that part of the funding into next year, because for some that will be too late.

The Minister may point to the separate catch-up fund, but that does not justify holding back resources already allocated for spending in this financial year, particularly when it is so critical that they reach those young people most in need. Students should have the opportunity to show what they have achieved in unprecedented circumstances. Despite the delay, these proposals fall short of what is required to facilitate the fair exams that the Secretary of State promised.

Lord Storey (LD): My Lords, I first join the Minister in congratulating Dr Frost but also pay tribute to teachers and school leaders up and down the country who have pulled out all the stops to make sure that schooling for their pupils is happening. We welcome the Statement. Clearly, on this occasion, it has been very thoughtfully worked through and every aspect has been covered, unlike last year's fiasco.

We feel that, had teacher-managed assessments been used, the Government could have given teachers far greater certainty about how to work, what to teach, how to assess and which subjects to prioritise for the rest of the academic year. It is interesting that research carried out by Exeter University shows huge variances across the country in the amount of schooling and learning that children have been afforded. There are huge regional variations, with more teaching and learning in the south compared to the north. There have also been huge discrepancies between types of schools, according to Exeter University's research, which is why continuing with exams will be deeply unfair given the opportunities that this academic year gives students in different parts of the country and the different effects on remote education. Having school assessment grades would have given schools far greater certainty about how to work, what to teach and how to assess.

But we are now going to operate in the way that the Government propose, and I welcome many of the proposals in the Statement. I have a number of concerns to raise, which I hope the Minister will deal with in her reply. Like the noble Lord, Lord Watson, I would like the Minister to give more details about the statement:

"We will … commission an expert group to assess any local variations and the impact the virus is having on students' education."

What does this mean in practice and how will it work, et cetera?

Secondly, we welcome the decision on school accountability for assessments taken, publication of results and how Ofsted will operate. Perhaps the Minister could expand a little more, because this is an opportunity for Ofsted, in a "non-threatening way"—in inverted commas—to support those schools that were judged inadequate and requiring improvement. Perhaps that could happen during this period.

We have concerns also about those children and students who are home educated. This could happen in two ways. Some have chosen to be home educated, but others have had to home educate and deregister from the school, perhaps because a close member of their family has a life-threatening condition and has to be supported and protected, so the child or student cannot go into school. What support is being given in terms of exams and learning for those children and students?

[LORD STOREY]

Finally, when we say that our young people will be sitting exams, but that places additional burdens on schools in terms of organising them. Will additional advice and support be given to schools on how to operate and socially distance students, because it is not an easy thing to do? I do not know whether the Government have considered this, but some of the exams might have to be phased so that all pupils can take them in a very safe environment.

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, I am grateful to both noble Lords for generally welcoming what we have been doing. It has taken some time to make such a comprehensive announcement because we have been working closely with sector groups, school leaders, the unions and parents. We have consulted widely and, as was seen last week, the Statement has generally been well received.

In relation to GCSEs and A-levels, Ofqual specifically looked at whether we could adopt any kind of regional, local school approach. This was quickly assessed as being too unfair. Even within areas where there has been a high prevalence of disease, there may be schools that have not isolated any pupils, while in another area of the country that is in tier 1, such as Cornwall, an individual school has isolated a lot of students. They would have had very different responses to any regional approach. Within a school, you may also have a lot of pupils isolating but some groups who have not isolated at all. When you get down to pupil level, some respond well to remote education and others do not. It was not ideological. It was very quickly looked at, assessed and viewed, particularly with regional boundaries. Do you use local authority district areas, county areas or authority metropolitan borough areas there? You could quickly have injustices at those boundaries if a school with a large number self-isolating happened to be, for instance, in Cheshire, and you have tiered Trafford for having higher disease prevalence just over the border.

It was not possible to adopt those kinds of approaches, so the view was that the approach taken with its package of measures, although at individual level, will help most of all those students who all noble Lords are most concerned about: the children who have been out of education and who may have had Covid or had to self-isolate. Within those disadvantaged students, at some point during the process we considered having optionality of questions, for instance. This was quickly viewed as working against disadvantaged pupils, as the research shows.

No option was off the table. These options were looked at when trying to come up with the fairest system, bearing in mind that these students were part-way through their courses and the general view from children, parents, teachers and the sector was that exams should go ahead. They are the fairest means of assessing a pupil's performance. We believe that the combination of contingencies and the introduction of some of the topic areas mean that children will be examined on what they have been taught. If some topic areas are announced at the end of January and teachers have not reached that part of the curriculum, they would have from then until the start of the exams three weeks later to ensure that it is covered, so we will not be examining children on what they have not been taught.

The external advisory group, which will continue to look at whether there are other ways to reduce and mitigate the differential learning loss—which we do not deny, but do not agree that a regional response is the way to address it—will give the same sort of confidential advice to the Secretary of State to look at any further measures that civil servants give. It is not about lack of transparency, but about pulling together a group of people such as MAT leaders, Ofqual, exam boards, assessment experts, unions and other members, including on special educational needs. It is not about gagging or lack of transparency; it is just the nature of how Ministers need free and frank advice. We and Ofqual will ensure that the generosity of grades, which will be similar to last year's, though not identical, is spread across the relevant institutions.

Regarding the catch-up tutoring, the phased approach to the national tutoring programme that has been adopted will ensure that more disadvantaged students gain from high quality. It is about not only rolling out quantity but ensuring that the quality of what we provide is excellent. This was decided to be the best way to provide that support. Obviously, catch-up for many pupils will go beyond this summer, so we are utilising the resources as well as we can. There are already 188 academic mentors from Teach First in our schools; there will be 1,000 by the end of February. They are in schools in our most disadvantaged areas, which need that one-on-one person who can physically run small group tutoring. We hope that there will be 15,000 through the national tutoring programme, available to reach about a quarter of a million students, but it is important that we maintain that quality and enable those students to catch up.

As the Minister in charge of our specialist maths sixth forms, I am grateful to the noble Lord, Lord Storey, for recognising the achievements of Dr Frost, who got an award for making his maths tuition available during Covid. We are very proud of him and all the other teachers. I agree with the noble Lord that teaching staff, support staff, estate staff and school business leaders have pulled out all the stops to help young people catch up. As he outlined, there are huge variances across regions, but there are huge variances within regions in pupils' experience and we cannot adopt a regional strategy. However, exams are not deeply unfair; they are the fairest way for students. I reiterate to noble Lords that we tend to forget some of the complaints from previous eras about the subjectivity of assessments, although not deliberately done by teachers. BAME communities have complained over the years, and we have a potential issue over the lack of accurate predicated grades for disadvantaged students. But when you enter an exam, you enter with a number: nobody knows your gender, where you come from or your ethnicity. It is an opportunity for pupils to display what they know and how they can apply it.

On the comments regarding Ofsted, yes, it will introduce its monitoring-type visits in the spring. Obviously, it is the same situation for early years and

the independent sector. It is envisaged that this will be more supportive, but it will be a monitoring visit. Given there are disadvantaged students who were already in institutions that Ofsted said were struggling, because they were inadequate and required improvement, we need to know how those institutions are doing, including in responding to the crisis. These will be monitoring visits, but I assure noble Lords that Ofsted retains its powers to go in when there are any safeguarding concerns or serious concerns around educational achievement.

Many noble Lords, and Members in the other place, have raised the issue of home education. Many parents choose to do that and deliver a high quality of education. They are free to do that in our country. However, we must ensure that suitable education, as I believe the legislation says, is being delivered. Most of the original cohort of extremely clinically vulnerable children are back in school, which is the best place for them. There is a tiny cohort—much smaller now—who are still advised to remain at home. It is envisaged that for their exams, there will be some system of home invigilation under exam conditions. This is already being planned for.

In relation to home-educated students who must then register at an exam centre, it is proposed that the papers in exams for a particular subject are spaced as far apart as they can be within the timetable. An English and maths paper will take place before the half-term to ensure that everyone has that under their belt before that holiday. There should be a gap. If they sit one of those papers and there is evidence that they missed other papers for good reasons, rather than because of choosing not to sit them, they can then go into the normal special consideration process and so get a grade. If you miss all those papers, then a contingency paper in that subject will be sat 10 days after the final paper. Obviously, we envisage that if you are ill at the last one, you would have 10 days to get well and sit that paper.

It is obviously hoped that home-educated students, of whom quite a lot were in the cohort who sat exams in the autumn because we could not give them a centre-assessed grade, will either sit all the papers or, if they cannot do that, sit at least one and get a grade, and, if they miss everything, sit the contingency paper. Ofqual will announce the details, but if a child misses all those exams, there will be a very defined set of teacher assessments. We will have to work closely and continue to engage with the home-educated sector on how we can try to ensure that what happened last year does not happen this year, in that many centres said that they did not know the children well enough to be able, with all professional integrity, to give them a grade, and obviously we had to respect that.

This package of measures has been well thought through but, if noble Lords have anything further to add, I will expect to hear from them, not only now but going forward.

1.40 pm

Lord Mackay of Clashfern (Con) [V]: My Lords, I am grateful to the Secretary of State and the Minister for what has been said so far. Is the Minister able to confirm that there will be early and full consultation on the detail of the methods to be used to ensure fairness between those participating in 2021 and between those who have participated and those who will participate in other years?

Baroness Berridge (Con): My Lords, for those participating this year, the generosity of grades will be similar, although not identical, to the generosity of grades in 2020. That is important because it recognises the exceptional circumstances of those two cohorts of pupils and enables the higher education institutions, which will use last year's assessment to award places, to be in a similar situation. What the position will be going forward in relation to the cohort is, I am sure, in Ofsted's in-tray to be dealt with later, but I anticipate that there will be consultation, as there has been in relation to these matters. If my noble and learned friend has anything specific that he wants to raise, I ask him please to communicate it to me.

Lord Griffiths of Burry Port (Lab): My Lords, first, I declare an interest that may prove conflictual. I am the chair of the board of directors of the Central Foundation Schools of London, with one school in Islington and another in Tower Hamlets. Both are pretty densely populated, with considerable levels of poverty and a very high number of free school meals.

I have looked at the Statement, and a lot of thinking has gone into it, but my first question is: do we really have to wait until the end of January for the package of measures referred to? The head teachers whom I spoke to just this morning are desperate to have something before Christmas because the end of January is virtually half term, half way through the school year. There is pressure on schools such as ours and many others to get their teaching programmes accomplished in the short time between then and the examination period, and that really will be at the expense of those in a more parlous situation domestically and economically.

Perhaps I may ask my second question directly from an email that I received from some students who have missed schooling because of the virus. They ask, "How do we ensure fairness for a student whose A-level biology teacher has been out of school for up to 20 days, Teamsing from home, with another A-level biology student whose teacher has been present all term?" The Minister mentioned the disparity of coverage that we are attempting to reach with the measures now under scrutiny, but this affects not just the independent schools, with playing fields and small classes. When numbers are going into a classroom and it is a number who come from a class of 12, with playing fields and constant teaching, the number does not make a difference: they will do better than the pupils whom I know and speak for in this intervention. What can the noble Baroness help us with on that question? Wales has decided not to have exams, and that is probably the fairest way.

Baroness Berridge (Con): My Lords, I thank the noble Lord for his involvement in schools. We depend on thousands and thousands of volunteers in our schools for governance in the school system. In terms of the aids that can be taken into exam rooms for

[Baroness Berridge]
some topic areas, the exam boards are now working at pace to make sure that those are broadly equal across subjects, so that there are no assertions that one subject is easier than another. That work is taking place and, bearing in mind the issue that the noble Lord talks about, they will be completing it as soon as they can. However, there is also the three-week delay in the examination system, which was announced a few months ago. All exams, barring the English and Maths papers, are taking place three weeks later, as I outlined.

With regard to the email, these measures are being taken precisely because there are so many different circumstances, even within one school, as I outlined. Some students might have thrived on the remote teaching facility but others will have struggled with it. It is not possible to take into account every single variant and response to the situation, but, after careful consideration, thorough consultation with the sector was felt to be the most appropriate way to help the most disadvantaged students. We remain convinced that exams are the fairest way for pupils to display their performance. In a way, those students will be more disadvantaged than last year's exam cohort because of how much their teaching has been disrupted this year. However, exams, rather than teacher-assessed grades, are the fairest way to judge pupils' achievements.

Baroness Garden of Frognal (LD): My Lords, I too thank the Minister, and it is a pleasure to follow the noble Lord, Lord Griffiths. This Statement shows, again, the Government's obsession with academic achievement and disregard for vocational and practical skills. I am sorry to contradict the Minister, but exams are not always the best and fairest way to carry out assessment. Coursework and continuous assessment are often far more appropriate, particularly for students who are struggling or for practical skills. The measures that the Government are proposing here—I echo what the noble Lord, Lord Watson, said—will do very little to help disadvantaged children or level up opportunity. Given all the difficulties that students have suffered—again, I echo my noble friend Lord Storey—why will the Government not give more responsibility to teachers to determine grades? They have done a phenomenal job in these very difficult times and are very much better placed to know which children have missed out, which have suffered the greatest disadvantages, and which are better suited to practical forms of assessment and not to exams. Indeed, teachers are better placed to determine the merits of the grades that the children should get.

Baroness Berridge (Con): My Lords, the Statement from my right honourable friend the Secretary of State addressed the fact that similar concessions are being made for vocational and technical qualifications. As the noble Baroness is aware, those assessments are made much more regularly throughout the year—I think that the next ones will be in January. Therefore, concessions will be made. Flexibility has been introduced into assessments during the pandemic, one change being a reduction in the number of assessment units. We are acutely aware of the need to maintain parity and we recognise the lack of education due to the pandemic, which has affected those studying BTEC and other qualifications. I repeat that we pay tribute to all that teachers have been doing, but the more objective way to assess pupils' performance is through exams.

Lord Polak (Con): My Lords, I agree with the noble Lord, Lord Storey: teachers and support staff should be thanked for their professionalism and for the care they have shown in these challenging times. The Civil Service—the members of staff in the department—have also been working particularly hard in difficult times and they too should be commended. I also agree with the Minister that examinations are by far the best way of measuring progress, as I think is universally agreed. But this year students of all ages have faced unprecedented disruption to their studies as a result of the pandemic, and those due to sit some of the most important exams of their lives have perhaps felt the disruption most acutely. Therefore, can the Minister reassure me that the measures the department is taking will ensure that those students are all treated fairly and in the best way possible?

Baroness Berridge (Con): My Lords, I want to thank my noble friend. As a Minister, it is not necessarily always on the tip of my tongue to thank Civil Service staff for what they do. However, I have seen first-hand that they have been working extremely hard, along with schools, to support the sector. As my noble friend outlines, those transition points are very important, and the exams are a key objective marker, particularly for further and higher education institutions. We are not asserting that this package of measures can ameliorate every effect of what has happened; we are living through a global pandemic. However, after careful consultation, we believe this package can, as far as possible, create a situation where exams can take place, allowing pupils who have been working hard throughout the school year to have their abilities and knowledge assessed in that way.

Baroness Blower (Lab): My Lords, I draw attention to my interests as recorded in the register. As we all know, continuing to assert something that is, at best, contentious does not make it true, and so it is with the assertion that exams are the best form of assessment. Our colleagues in Scotland took the wise decision some months ago to cancel the 16-plus exams—the equivalent of GCSEs—in favour of teacher assessment, and my noble friend has already referred to the situation in Wales. A major study in the *Journal of Child Psychology and Psychiatry* in 2019 found that teacher assessment during compulsory education is as reliable as formal external exams. Research from 2019 also shows that GCSEs heap stress on to school students in what we might call "normal times"; clearly we are not in normal times. I wonder therefore if the Minister can answer a question posed by the noble Lord, Lord Baker of Dorking, as quoted in the *Guardian*. He pointed out that

"the school leaving age is 18 … Education goes on from four to 18. So what are you testing people at 16 for?"

I might add that the question is especially pertinent this year when a level playing field both between and within schools is clearly an impossibility, given the

very significant but differential levels of absence from school that have occurred, and which the Minister has acknowledged.

Baroness Berridge (Con): My Lords, in relation to the situation in the devolved Administrations, the Secretary of State is in close contact with his equivalent representatives. In Scotland, yes, there has been some alteration, but the exams at 18 have been kept. The reason why exams in England have been kept at 16 is that the majority of students in England transition at 16 and therefore need that assessment. Northern Ireland has also decided to keep exams. There are differences between the constituent nations of the United Kingdom. We are living in extraordinary times, so we have introduced an extraordinary set of contingencies and changes to relieve the pressure—on teachers, yes, but primarily on students facing the exams. They will have certain aids with them and they will know some of the topic areas.

In relation to the comments from my noble friend, Lord Baker, one has to recognise that he has been the pioneer of the university technical colleges, where students enter the system in an atypical age range of between 14 and 18. We do not accept his view that exams are not necessary at 16 because most students, unlike those in UTCs, do transition at 16.

Baroness Morris of Yardley (Lab): My Lords, I welcome the proposals, which will give young people greater certainty about their chances of progressing into whatever they want to do after school. However, I want to ask a question from the point of view of universities and colleges, because exams are also a clue and an indication to them of what students know and can do. Over the years, they become familiar with the curriculum, so you get continuity in teaching. What work has been done with colleges and universities so that they can offer continuity of teaching and curriculum, and fill in any gaps that exist due to children not having learned as much or had as much time to practise various skills?

Baroness Berridge (Con): I thank the noble Baroness for her comments. As I have outlined, one key to this —and the reason why the exceptional circumstances and generosity in grading this year will mirror, not replicate, last year—is that the higher education institutions dealt with that situation and those grade profiles last year, so we are drawing on that. Information from the exam boards about what aids will be given and which topic areas are outlined will be made available to the universities. We recognise that this is an unprecedented situation for the universities as well, and that they will be dealing with a cohort that has had a different experience of the education system from that in normal times.

1.56 pm

Sitting suspended.

Arrangement of Business

Announcement

2 pm

The Deputy Speaker (Lord Bates) (Con): My Lords, the Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020

Motion to Approve

2 pm

Moved by ***Baroness Scott of Bybrook***

That the Regulations laid before the House on 16 November be approved.

Relevant documents: 35th Report from the Secondary Legislation Scrutiny Committee and 33rd Report from the Joint Committee on Statutory Instruments (special attention drawn to the instrument)

Baroness Scott of Bybrook (Con): My Lords, this instrument prevents enforcement agents—bailiffs—from entering residential premises in England to execute a writ or warrant of possession until 11 January, except in the most serious circumstances. The purpose of this measure is to protect public health by preventing people from being evicted from their homes by enforcement agents at a time when the risk of virus transmission is high and when local authorities and NHS services are typically under additional strain over the Christmas period.

The instrument builds on the Government's previous guidance on enforcement activity during the national lockdown in England, introduced by the national health protection regulations, and the intention for the "winter pause" on evictions that was announced by the Government on 10 September. It also prevents enforcement agents from entering residential properties in order to take control of goods during the national lockdown, which ended on 2 December. This instrument applies to enforcement action in England.

The Government have taken unprecedented action to ensure that renters were protected from eviction at the height of the coronavirus pandemic, including providing significant financial support and agreeing with the courts to use powers in relation to court procedure to stay possession proceedings for a total of six months, until 20 September. However, that stay could only be temporary; the civil justice system and the rules that underpin it must be accessible, fair and efficient for tenants and landlords alike.

Ahead of the end of the stay on possession cases in the courts, the Government put in place a number of measures to carefully manage the resumption of cases so that the courts were not overwhelmed and could make decisions so that the most vulnerable could get the help and support that they need and, in particular, so that tenants could have access to legal advice and support.

The Government also worked with the judiciary and others to put in place new court arrangements that seek to ensure appropriate support to all parties. Those court arrangements are in place and working well, and I pay tribute to the working group convened by the Master of the Rolls, chaired by Mr Justice Knowles, for the key role that it played in these matters.

In addition, the Government took legislative action. The Housing Minister laid a statutory instrument on 28 August to amend Schedule 29 to the Coronavirus

[Baroness Scott of Bybrook]
Act 2020 to require landlords to provide tenants with six months' notice in all but the most serious cases. This approach ensures that tenants will remain safe and have additional time to find new accommodation while empowering landlords to take action where necessary—for example, if a tenant's antisocial behaviour is severely impacting their neighbours' quality of life.

We have also taken some targeted action in respect of the enforcement of evictions to protect public health during the extraordinary circumstances of the coronavirus pandemic. In September, guidance was issued to bailiffs to request that the enforcement of possession orders did not proceed in areas where local lockdown regulations restricted gatherings in residential properties. This was in order to prevent tenants being forced out of their homes at an unsettling time in areas where the public health risks could be greater.

In September, the Government also announced that we would take steps to prevent eviction action from taking place over the Christmas period, ensuring that vulnerable tenants are not forced from their homes at a time when public and local authorities may be dealing with unusual levels of increased demand on services during this time. Bailiffs were issued with guidance that they should not enforce writs or warrants of possession other than in the most serious of circumstances between 11 December and 11 January during the winter pause.

At the beginning of November, following the introduction of the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020, enforcement agents were asked not to enforce evictions nationally at a time when the risk of transmitting the virus was high and a number of significant restrictions were in force. Because the national restrictions were due to end just before the start of the national winter pause, the Government decided that it was appropriate to build on the guidance not to enforce evictions in England during that time with this legislative measure. We therefore laid the instrument in Parliament on 16 November, to come into effect on 17 November.

The draft instrument is consistent with the policy that the Government have adopted in this area since the start of the pandemic. It aims to strike a balance between prioritising public health and supporting the most vulnerable while ensuring that landlords can access and exercise their right to justice in the most serious cases. For that reason, the instrument contains some limited exemptions to the ban on the enforcement of evictions. These exemptions relate to circumstances where the Government feel the health risk is lower or the competing interests of preventing harm to third parties or taking action against serious behaviour are sufficient to outweigh the public health risks of enforcing an eviction.

The instrument provides for the following exemptions to the restrictions on enforcing evictions: first, where the claim is against trespassers who are persons unknown; secondly, where the order for possession was made wholly or partly on the grounds of antisocial behaviour or nuisance, false statements, domestic abuse in social tenancies or substantial rent arrears equivalent to nine months' rent that predate 23 March 2020; or, thirdly, where the order for possession was made wholly or partly on the grounds of the death of the tenant, and the enforcement agent attending the property is satisfied that the property is unoccupied.

The Government believe that it is important that there is a clear, uniform and transparent process for establishing whether an exemption to the ban on evictions applies. For that reason, the instrument contains a requirement for the court to be satisfied that an exemption applies on a case-by-case basis.

The measure will be in force until 11 January. New rules require that all bailiffs must give 14 days' notice of an eviction. This means that in most cases evictions will not resume anywhere in England until 25 January at the earliest. We continue to keep the position under review regarding the enforcement of evictions in local tiers following the expiry of these national restrictions over the midwinter period.

The statutory instrument also set out a nationwide prohibition on enforcement agents taking control of goods inside residential properties while the national restrictions were in place. This measure did not prevent enforcement agents from taking other steps to enforce debts and fines under the taking control of goods procedure, including making contact by remote means such as telephone; visiting but not entering properties; taking control of goods located outside homes or on the highway; and enforcement at business premises. The Government believe that such steps may be safely undertaken in line with the Government's published Covid-secure guidance for enforcement agents using the taking control of goods procedure. The Government's view is, therefore, that this policy strikes a proportionate balance between protecting against the risk of virus transmission and allowing the continuation of the administration of justice.

I know that there has been significant interest from noble Lords about the effect of removing tenants' protection from eviction, which was provided by the stay on possession proceedings between 27 March and 20 September this year. Concern has also been expressed by noble Lords about the impact of that stay on the rights of landlords who are dealing with difficult situations in which there is no reasonable alternative to possession proceedings. These restrictions on bailiff enforcement build on protections introduced earlier this year, including the introduction of six-month notice periods, which mean that renters now served notice can stay in their homes until June 2021, with time to find alternative support or accommodation.

Courts remained open during the national restrictions in November. The court rules and procedures introduced in September will ensure protections for tenants and landlords. For example, landlords are required to send the court information about the impact that the pandemic has had on their tenant. The Government have published comprehensive new guidance for landlords and tenants to explain all these new arrangements and how they impact on court possessions. Our approach strikes the right balance between prioritising public health and supporting the most vulnerable renters, while ensuring that landlords can access and exercise their right to justice. Landlords can action possession claims through the courts, but evictions will not be enforced apart from in the most serious cases.

The Ministry of Justice is grateful for the consideration of this instrument by the Joint Committee on Statutory Instruments. In its 33rd report, the committee reported this instrument to both Houses for elucidation and defective drafting. The committee asked for further information about how the exemptions to the eviction bans should be applied and has confirmed that our explanation was helpful. We accept the committee's findings that the department should have relied on Section 16 of the Interpretation Act 1978 rather than inserting a provision at Section 16(1) and (2) of the instrument that does no more or less than the same thing.

This instrument provides protection to tenants from eviction, ensuring that vulnerable tenants are not forced from their homes at a time when public and local authorities may be dealing with an unusual level of increased demand on services. I beg to move.

2.12 pm

Baroness Neville-Rolfe (Con): My Lords, I refer to my entry in the register of interests. I thank my noble friend for her clear explanation and for all that the Government have done during Covid, particularly at the MHCLG, in inspiring and supporting magnificent voluntary effort during lockdown 1 and giving help to many small businesses. It was Small Business Saturday that reminded us that we can help by buying Christmas gifts from such businesses. However, there is a problem for landlords which this measure highlights. Few landlords are property tycoons. Most are small businesses or individuals letting out a property that they do not need for a while or have bought as part of saving for a pension.

I have spoken to the NRLA, which explained that the provisions mean that landlords cannot repossess properties even where tenants are up to almost 18 months behind with their rents. They actually reward those who were behindhand before the pandemic and have continued not to pay, knowing that landlords cannot remove them. Landlords are being required to subsidise such unsatisfactory tenants—an extraordinary move by a Conservative Government.

On timing, I note that we are debating this measure almost three weeks after it took effect. It runs out on 11 January and in my opinion should not be extended. Court and other processes should start to return to normal—with my thanks to the Government for the advances on vaccines, which have lifted everyone's spirits this month.

On cost benefit, this is yet another Covid SI using the emergency excuse not to do an estimate of the impact on business. This exemption for measures lasting less than 12 months is frankly a scandal. We know from the impact assessment on the fire safety order that there are millions of tenanted dwellings. Therefore, even the process of informing landlords of these new rules and understanding them will cost millions. Add rent arrears, which cost landlords between £328 million and £437 million between March and September, according to work done for the NRLA. Then estimate the time needed to keep chasing tenants; you can see that we are talking about material sums, even if not all are caused by this measure.

Some tenants are in trouble, but many benefit from furlough and the increase in universal credit. In contrast, landlords are largely unable to access help from the various Covid schemes because they own property assets. It is an irony that the small business impact in the Explanatory Memorandum looks only at the enforcement agents, who can be furloughed, not at small landlords, arguably a backbone of many communities. Many of them are helping tenants get through Covid by reducing or delaying rent.

Does the Minister agree with my assessment? If, contrary to my advice, she is tempted to renew this SI, could she undertake a thorough impact assessment to inform her decision and then publish it? We promised in our manifesto to build at least a million more homes of all tenures over this Parliament. We are putting that at risk with measures of this kind.

2.15 pm

Lord Bird (CB): I really liked that contribution from the noble Baroness, and I was grateful to hear the careful way in which the Government are approaching this issue. I must declare two things. First—it is in the register—I run RORA, the Ride Out Recession Alliance, which brings businesses, local authorities, tenant associations and landlords together to try to weather our way through what could be a massive increase in homelessness. Instead of me working with 7,000 to 9,000 people a year, I might end up working with 200,000; I assure you that I do not want that. I am trying to avoid it by building an alliance of interests that sometimes clash, but must have a meeting place. Secondly, I was one of the worst tenants you ever saw. As soon as I got my first tenancy, I did all sorts of terrible things like not paying the rent and having loads of people over for parties. I hope that the landlords who used to know me know that, now that I am grown up, I am not defending the kind of bad behaviour of my 20s and teens.

Let us try and separate those people who have fallen into Covid poverty. The Prime Minister said in the early stages that he would not allow people to fall into long-term homelessness through evictions because of Covid-19. We must ensure that this Government—whatever complexion they are, whatever they say—prevent people falling into Covid-related eviction.

We need to put our thinking cap on and realise that anyone evicted falls into a situation where the cost can double, treble and even quadruple for the taxpayer. Therefore, I am looking to get absolute value for money for the taxpayer. The best value for money is for us to keep the tenant or mortgagee in the home. We must recognise at the same time that people are landlords; if we did not have any landlords, we would have lots more homelessness. If we did not have social landlords, who were also hit by Covid-19, we would have much more homelessness. If we did not have banks offering mortgages, we would have more homelessness. This must be a convergence of energies; it has to be clear. We must stand by our commitment not to allow one person to fall into Covid-related eviction and homelessness.

2.19 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, I draw the attention of the House to my interests as set out in the register. It is a great pleasure to follow the noble Lord, Lord Bird, who has great experience and knowledge in this area, as is clear. I thank my noble

[LORD BOURNE OF ABERYSTWYTH]
friend Lady Scott for setting out the regulations with such lucidity. As we celebrate the great news of the first vaccinations today—it really is great news—we still have some time to navigate difficulties. I understand the need for these regulations over the midwinter period. Eviction is a dreadful thing and in midwinter it is worse, with the added difficulties of accessing services when pressures are severe. NHS pressures are considerable at this time and I see the need to avoid placing additional pressures on our health service and local authorities.

Additionally, these regulations prevent the use of the "taking control of goods" procedure while the health protection regulations are in force. This validates an instruction given out by the Lord Chancellor in England. As my noble friend has set out, there are some limited, sensible exceptions to the prohibition of evictions: trespassers, where there is domestic abuse and so on. I certainly support that as well.

Therefore, I support these regulations, but I want to voice a general concern, in terms similar to my noble friend Lady Neville-Rolfe. The regulations do not do anything to reduce or abate long-term debts from accruing; in many ways, they just postpone the problem and potentially add to mental health pressures on poor tenants who see these debts continuing to mount up.

Many landlords have incurred substantial losses during the pandemic. Most landlords have a single property —they are not property tycoons—and are often not able to access support packages that the Government have put together, so they are severely disadvantaged, too. Some landlords have seen their income—for some, it is their pension—fall or be wiped out altogether. That is not sustainable in the long term.

I believe that a financial package to help renters based on hardship loans may be needed in the future and I would welcome the Minister saying something on this. Also, what happens after 11 January—or 25 January, allowing for that 14-day notice period? Economic pressures are not suddenly going to end on 11 January and neither, I regret, is winter, unless I am missing something. What are the Government's plans? Other than those considerations, I support these regulations.

2.22 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I declare my position as vice-chair of the Local Government Association. I begin by agreeing with the noble Baroness, Lady Neville-Rolfe, regarding Small Business Saturday and the importance of doing whatever we can to support small independent businesses. In her speech, she referred to unsatisfactory tenants who are not paying the rent, but some of those people will be one and the same. Many small business owners and self-employed people have, in Covid-related circumstances, found themselves in situations where they are unable to pay the rent through no fault of their own. As the Minister set out in her introduction, what we are talking about here is a "winter pause".

Of course, it is welcome that people will not be thrown out on to the streets until, effectively, 25 January, but, eventually, many of these people who face eviction now are still going to be facing eviction in January. Based on the campaigning group Shelter's figures, there were already 442,000 adults in rent arrears in July—double the figure from last year. Many of those people will eventually have to go to their local council seeking emergency accommodation. In 2019-20, local authorities spent £1.2 billion on temporary housing for homeless people.

Looking beyond 25 January, my question to the Minister is: what will the Government do to ensure both that people are not evicted and, for those who are inevitably evicted, that local authorities can afford to pay for their accommodation? We should think about where that money is going because, last year, 87% of it went to private landlords. This is taking public money and pumping it into private hands.

The *Huffington Post* today notes that a company is advertising that home owners can get

"'exceptional returns' by turning their properties into HMOs (houses of multiple occupation) and hostels."

It reported:

"The company made £1.8m in profit in 2018-2019 on revenue of £22m."

Huge windfall sums are being made by private landlords through a housing policy based on privatisation, with right to buy and the idea that we will rely on private builders to supply our housing stock. Will the Government look to ensure that we have genuinely affordable public housing for people to live in securely, free from fear of eviction permanently?

2.25 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the House to my relevant registered interests as a vice-president of the Local Government Association, chair of the Heart of Medway housing association and a non-executive director at MHS Homes. Furthermore, my wife, the noble Baroness, Lady Kennedy of Cradley, is director of Generation Rent, which is the voice of private tenants.

I support the regulations as far as they go, but they are not the solution to the problem. They merely delay, rather than prevent, evictions of tenants. Landlords can serve an eviction notice and the courts remain open, but no possession orders can be enforced until 25 January, as the noble Baroness, Lady Scott of Bybrook, said. However, that still leaves people in the terrifying situation of being made homeless in the new year, possibly with no job or with the risk of losing their job.

The Government have it in their power to support both landlords and tenants while at the same time avoiding the disaster of homelessness for people in what we all know will be the worse economic conditions in the new year. They can also avoid the huge cost to the country of people being made homeless. I have carefully read the briefing note from the National Residential Landlords Association and I agree with it on the need to increase local housing allowance to cover the average rent in any given area, not just the bottom 30% of average rents. There are literally hundreds of constituencies where the local housing allowance does not cover the average rent paid in that constituency. That is a huge problem and there are no winners, neither landlords nor tenants—everyone a loser. For me, this seems an obvious thing that the Government need to do.

I also agree with the call to boost the discretionary housing payment available to local authorities, along with suspending the shared accommodation rate for 12 months, enabling those under 35 to claim benefits for living alone. However, I am not convinced that interest-free loans to cover rent are the solution. I can see the advantage for landlords, but whatever solution we come up with must benefit both landlords and tenants to get us through this crisis. Tenants being saddled with more debt does not seem to me to be the way forward. The solution must be a combination of the measures that I have outlined, which have large support across the housing sector. Could the noble Baroness, Lady Scott of Bybrook, tell the House what protections will be made available to tenants living under tier 2 and tier 3 restrictions from 11 January, when the regulations expire?

The Government have the power to make considerable progress to deal with the issue properly and for the long term. What happens after 11 January? What happens if there is a third wave of Covid-19, which is a risk, as we have heard from the medical profession? After the festive season, when people are meeting people indoors, which they have not done for many months, there is a real risk of another wave. What happens then? I fear that we will be back on this issue again in the new year with additional measures. I just wish that we had had had those long-term measures put in place so that we would not have to come back repeatedly every few months. That is to the benefit of nobody, so I look forward to the noble Baroness's response.

2.28 pm

Baroness Wheatcroft (Non-Afl) [V]: My Lords, I support these regulations as far as they go. Clearly, they are necessary. However, that does not mean that there will not be many children who are spending this Christmas in the knowledge that next year they will face homelessness. Too many people in this country have seen their income drop during the Covid outbreak and this has impacted their ability to pay their rent. Therefore, it is quite right that some protection from eviction for rent arrears has been provided.

I am grateful to the noble Baroness, Lady Neville-Rolfe, for pointing out that, as others have since echoed, most landlords are to some extent dependent on the income that they get from these properties, so they, too, have been suffering. Therefore, it must make sense for the Government not just to delay eviction but to make sure that both sides of this equation are helped and to subsidise adequate rental payment for landlords as far as they can.

Like so much to do with Covid, this issue merely highlights deficiencies which had already been prevalent in our society. Many people previously were employed but living on the brink, with no funds to fall back on in the event of any emergency. We saw that drive people to food banks immediately Covid hit. By the end of June there were 98,300 households in temporary accommodation because they had been unable to pay their rent before Covid struck. That is an appalling indictment of a modern society. We know the sort of conditions many of these people are being forced to live in, with children sharing rooms and trying to live, do exercise and do homework in appalling accommodation.

The noble Baroness, Lady Bennett, pointed out that public money is going into private hands to help provide roofs for these people, and that cannot be sensible. What this demonstrates is the need for more social housing. There is too little of it. In the London borough of Lewisham alone, there are 10,000 households on the council house waiting list, with little hope for many of them of ever reaching the top and finding themselves in a property.

This is a long-term issue that should be dealt with but, in the short term, I do have a question for the noble Baroness: what is going to happen to those people who fit into the exceptions, whether for domestic abuse or anti-social behaviour, when the courts find in favour of the landlord and issue an eviction order? What will happen to those people in January, when the winter is at its coldest? Will they add to the homeless figures?

2.32 pm

Lord Campbell-Savours (Lab) [V]: The noble Baroness just raised a very interesting question.

Talk of eviction makes me feel uneasy. In the 1970s, 50 years ago, I ran, on a voluntary basis, an anti-eviction group in the Rossendale and Darwen and Blackburn areas of Lancashire. Our national campaign was a major contributor to the repeal of the Small Tenements Recovery Act 1838, a law that gave local councils almost unlimited powers to evict tenants. I learned an important lesson in that battle: backlogged arrears are problematic in themselves, and when you roll up arrears in packaged payments by retained tenants, in particular where tenants have a previously unblemished rental record, you more often than not aggravate the tenant-landlord relationship.

The best policy for landlords, if they are confident that the tenant's difficulties are in the past and they are unsupported by benefits is, where possible, to write off the arrears and maintain a healthy tenancy. Some landlords, when the tenant has not been in receipt of sufficient benefit to cover the full rent, take a mature view and adopt this approach, despite the cost. They know that there is nothing worse than a resentful tenant. However, some landlords, insensitive to the suffering, do not give a damn, and that is why I am worried about rolled-up arrears post 11 January.

We are told that last year one-quarter of all tenancies nationally were in arrears. So there will be a lot more. For many tenants, the pandemic will have been a nightmare, with cases of acute depression, debt, domestic abuse, alcoholism and perhaps even loss of life—we do not know at this stage. So how can we respond? Yes, we can extend the ban in tier 2 and 3 areas. We can pass the promised rent reform Bill, which we have been briefed on by a number of people from outside. But we could also use the tax system to incentivise a landlord's ability to write off pandemic-induced, rolled-up rent arrears. A system could be introduced similar to that for the self-employed. HMRC could look at the last three-year accounting period and then give partial grant aid, built on a percentage of the previous three years' taxable profits base. We can be sure that it would lead to some very interesting conversations between tenants and landlords and, in particular, those landlords who are not too honest with the taxman.

[Lord Campbell-Savours]

I would like to make it clear that neither I nor any member of my family has an interest in rental property anywhere.

2.35 pm

Baroness Fox of Buckley (Non-Afl): Like many noble Lords, I find it is a great relief to see this extension of the regulations. If once the main fear stalking society was of our loved ones catching Covid, for many people I know that is now equalled by a visceral terror of the blight of bailiffs and eviction notices—but still those eviction notices are on the horizon. My worry is that the regulations just kick a bigger problem down the road. Already, 9% of private renters have suffered job losses, and we know that that is just the tip of the looming unemployment iceberg. Meanwhile, 33% have had a fall in income due to reduced hours and furlough, and we know that furlough, for many, is just joblessness delayed. So how will these renters ever be able to pay arrears? And that, therefore, means that we have to ask: what about the people they owe rent to?

As has already been alluded to, the vast majority of landlords are not anything like massive property magnates; 45% are single individuals who have invested their life savings or redundancy money in just one property. For some, it is their main income. Others are future-proofing their life to supplement meagre pensions. At this stage, they are suffering 20% rental losses, and they know that many rents will not be paid in full, if at all. As the noble Baroness, Lady Neville-Rolfe, reminded us, they are unable to access business support packages because they own a property asset—so now they face a debt crisis, and many are worried about defaulting on mortgages and their future homes.

As for solutions, I—like many noble Lords, I am sure—have been lobbied by special interest groups. They want financial support to pay off Covid-related debt arrears or interest-free Government-guaranteed hardship loans paid directly to landlords. Certainly, that would help both parties. I rather like the look of the proposals in the Reset the Debt report from a variety of churches. However, the real solution is to put a stop to this impending and growing tragedy of increasing homelessness by having a different approach to living with and managing Covid that avoids closing down society. When the Government recently ordered a lockdown based on what is now known to be false data, they guaranteed that more people would be homeless.

The reward for complying with the lockdown was that many millions more were placed in tiers 2 and 3, and that had a devastating impact on the hospitality sector. It is estimated that 30% to 40% of people made homeless this year are—guess what?—former hospitality workers. Many hospitality workers' homes are linked to their jobs in hotels and pubs, so now they are forced on to the street. Many others who work in hospitality have precarious living arrangements that are not protected by the evictions ban. In other words, it is the Government's choice of disproportionate and overly risk-averse policies in relation to Covid that have created a long-term debt crisis and looming evictions. No doubt, it is absolutely unintended, but I urge the noble Baroness that the next time her colleagues mention lockdowns or tiers, she reminds them the costs are growing homelessness, evictions in the long term and many more people on the streets and in fear not of Covid but of homelessness.

2.39 pm

Lord Mann (Non-Afl): My Lords, in summing up, will the Minister comment on the question of tied accommodation? Where someone has lost their employment and is then required to vacate a property, there will be a time lag because, by definition, it will not be possible, if you have made someone redundant, to employ somebody new to live in said accommodation. Therefore, there is an incentive to take one's time in the eviction or disposal of the tenant. It seems to me that that time lag is fairly obvious. What data do the Government have on this, and what plans do they have around tied accommodation?

There is a second group that, in my experience, always gets left out when it comes to legislation on housing rights: those who live in mobile homes that are not mobile. I refer to park homes. With a park home, what people do, in my experience, is purchase, usually relatively cheaply, a so-called mobile home, but rent the space it is on and pay a significant premium for other services—these usually being lighting, which may or may not be where it is meant to be, a tarmac surface in and out of the park-home area, and sometimes heating and other such utilities. An eviction there is an eviction from the space that a person rents, but of course most of these mobile homes are not mobile. They may have been sitting there for 40 years, with the concrete encased into the land, having developed over time. Therefore, the concept that you can dig it up and move it is often used to force people out or to put their rent up—that has been my experience. Coercion based on a lack of housing rights forces the rent up, precisely because people have a capital asset—albeit one that does not really compare to housing as an asset—that they can never capitalise because they are stuck to that particular location.

It seems to me that that there will be an increase in that Covid-related problem. I suspect, from my reading, that this legislation does not apply. What plans do the Government have in that kind of situation to ensure that the same Covid-problem rights will be there for those in mobile homes and those in immobile mobile homes, otherwise known as park homes?

2.42 pm

Baroness Grender (LD): My Lords, I thank the noble Baroness, Lady Scott, for her explanation, and the Housing Minister, the noble Lord, Lord Greenhalgh, for his letter dated 2 December in response to my question to him on 12 November as to why bailiffs are being asked, rather than compelled, not to evict someone from a property. I am pleased that the Government have had a change of heart and introduced this statutory instrument. I also agree with the noble Baroness, Lady Neville-Rolfe, and the noble Lord, Lord Kennedy, that we continue to see a frustratingly piecemeal approach to the issue of the private rented sector, which pleases neither tenants nor landlords.

If, as the Joseph Rowntree Foundation says, 42% of private renters have savings of less than £500, and if 41% have seen a drop in income since March and used

their savings already, it is inevitable that many of the 8 million renters in this country will be in significant arrears. Add to that the shortfall of an average of about £100 a month—even with the support of local housing allowance, which is tagged to the bottom 30% of rents—and noble Lords will understand that there are now 1.9 million households in the private rented sector relying on benefits of some kind, including 1.82 million children, as mentioned by the noble Baroness, Lady Wheatcroft. They cannot all rent at the bottom 30%; it is not mathematically possible to have that proportion of low-cost rentals. We are driving more tenants into debt, and that debt is being passed on to the landlords who can least afford it. It also means that many tenants are having to choose between food, rent, heat or unscrupulous lenders this winter.

It is particularly striking that the purpose of instrument No. 1290, as set out in paragraph 2.2 of the Explanatory Memorandum, is to

"prevent people being evicted at a time when accessing services may be more difficult and when pressure on public services is most acute."

If, as is predicted by many scientists, there is an increase in infections after the more relaxed rules over Christmas, and if that spike is in the days following the Christmas period, will the Minister undertake to ensure that the purpose is maintained beyond 11 January? If the R rate rises, or if people are still designated as living in tiers 2 or 3, will she ensure that this requirement remains in place, because it is for obvious health reasons? I ask particularly what will happen in the scenario where the R rate is above 1? Will bailiffs be allowed to serve warrants of eviction?

On that point, will the Minister clarify the wording, because I think there is a danger here? She said that this can be used for "domestic abuse in tenancies", but the Explanatory Memorandum says

"domestic abuse in social tenancies".

My understanding is that this law applies only to social tenancies, and then only when the survivor of abuse is not likely to reclaim the property. This is terribly important. I am worried that Ministers have, on several occasions, misused this term and implied that it is about domestic abuse across the PRS: it is not. To offer that level of hope is very misleading.

While I appreciate that the notice period means there will be no evictions until 25 January, I think the Minister would probably accept that it was the lack of acceptance of the high probability, as predicted by scientific advisers, of a second lockdown that delayed such things as the extension of the furlough scheme. Of course, that led to a lot of people losing their jobs and to the poverty issues described so well by the noble Lord, Lord Bird. Given that these regulations do not prevent eviction notices being served currently, and do not prevent court proceedings, will the Minister undertake to re-examine the issue of allowing judges to have discretion to prevent an eviction if rent arrears are due to the Covid pandemic, in order to try, as much as possible, to keep people in their homes?

In addition to stopping bailiffs over the Christmas period, will the Government urgently look into an increase in the local housing allowance to cover the median local rent? Will they also consider scrapping the benefit cap, which was never designed for a period of a pandemic and is another constraint in an all-too-expensive private rented sector? The number of families affected by the benefit cap rose by a staggering 93% between February and May. Many families have been exempt, but that exemption will disappear at around Christmas.

Will the Minister consider the recommendation from Generation Rent to introduce grant funding for renters already in arrears? They cannot afford to pay back those arrears as a result of the first wave of the pandemic, and some were in arrears before that, as described by the noble Baroness, Lady Wheatcroft. A coronavirus home retention scheme would, in the long run, serve both tenants and landlords.

Finally, the Government's manifesto promise to scrap Section 21 no-fault evictions is long overdue and would be a strong signal of support for renters who, even now, today, are being served mandatory eviction notices with no explanation or rationale. Frankly, they deserve better.

2.48 pm

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I thank the noble Baroness, Lady Scott, for her explanation of this statutory instrument, which reintroduces the evictions ban for the second lockdown, preventing most evictions until 11 January next year.

Two immediate questions arise. Can the Minister explain why this is being debated only now, many weeks since the implementation of this ban and at the end of the recent lockdown? The second question is that the Government have said they hope and expect that we may get back to some normality in the spring of next year, so why is this eviction ban ending on 11 January? Surely a longer ban would tie in with the expected return to normality.

I have received briefings, no doubt the same as those received by many other noble Lords, from the National Organisation of Residents Associations, Generation Rent and others. They all make the same references. There is clearly a sense of urgency and exasperation in the current situation. Landlords, the vast majority of whom are private individuals and not corporations, as we have heard, feel that they are being asked by the Government to subsidise tenants. On the other hand, tenants feel that the Government are kicking the can down the road while their vulnerability to eviction increases. Between February and August 2020, the number of households renting from a private landlord that were claiming universal credit or housing benefit increased by more than half a million, representing an increase of 36%, and taking the number of PRS households claiming to 1.9 million. However, an estimated half a million of that 1.9 million do not receive enough benefit to cover their rent, so we are in an extremely precarious situation.

As we have heard from other noble Lords, including the noble Baronesses, Lady Grender and Lady Wheatcroft, and my noble friend Lord Kennedy, the various lobbying groups to which I have referred have proposed a number of solutions. It is true that they all would require greater financial commitment by the Government, but what they really require is a long-term interventionist

[Lord Ponsonby of Shulbrede]
approach to what is a present-day crisis. I understand that the statutory instrument we are debating is just one element in a long-term approach, but I would be grateful if the Minister could say something about how she is working with other departments to get a more fully co-ordinated response.

We have heard about some of the proposals which have been put forward. The first was an increase in the local housing allowance to cover average rent, not just the bottom 30% of average rents. Another point was that there should be government grants or loans. I agree with the point made by my noble friend Lord Kennedy that grants are preferable to loans, but either way it would be a form of support for working renters who have seen a large drop in income. Suspending shared accommodation rates for 12 months would enable people aged under 35 to claim benefits if they are living alone. Other changes have also been proposed.

These are clearly hugely urgent and complex matters and we need a co-ordinated approach. While the Ministry of Justice is leading on this instrument today, the issues sit primarily in the Ministry of Housing, Communities and Local Government as well as in other government departments, in particular the DWP, which deals with universal credit and housing benefit. I would appreciate it if the Minister can say how a co-ordinated, long-term approach is being worked on to deal with these systemic issues.

2.53 pm

Baroness Scott of Bybrook (Con): My Lords, I shall give a big thank you for a very balanced debate on this subject, which is a difficult one. The pandemic is serious and impacts all members of our society—not just tenants but landlords, as has been said. I shall not get through all of the questions, but I will go through the debate and send answers in writing to those I do not respond to.

I want to start with a couple of points, before I forget. First, the noble Lord, Lord Mann, talked about mobile homes. I had quite a lot of experience of mobile homes in my other life. I would quite like to look into where we are on that issue and write him with an answer. Secondly, the noble Baroness, Lady Grender, asked me about tenancies. It is about social tenancies and domestic abuse, not all tenancies. I wanted to make those points clear first of all.

Some themes definitely emerged in the debate. Of course we need support for tenants. The noble Lord, Lord Kennedy, talked about that, as did the noble Lord, Lord Bird, and the noble Baroness, Lady Wheatcroft. I absolutely agree that when children are involved, it is even more critical that we look after them. The Government have provided an unprecedented package of financial support which is available to tenants and will remain in place over the whole winter period. Nearly £1 billion of additional support will be available to private renters claiming universal credit or housing benefit in 2021, which will benefit over 1 million households. That will include households in work, so not just those who are out of work. This year, claimants will gain an average of an additional £600 in increased housing support, and that measure has been well received.

The other issue is that we cannot forget the furlough scheme, which has now been extended until March, or the Self-employment Income Support Scheme, which has also been extended. We have provided £180 million in discretionary housing payments so that local authorities can help renters with their housing costs. This also emphasises the importance of local authorities in giving much-needed support and help during difficult times for tenants, not only those in social housing but those in private rented accommodation.

Tackling homelessness has been another priority for the Government. We remain committed to that work because the homeless are some of the most vulnerable in our society. In this year alone, we are spending over £700 million to tackle homelessness and rough sleeping, and the spending review has just committed a further £750 million for next year. We are continuing the project of "Everyone In", which supports rough sleepers. The noble Baroness, Lady Bennett of Manor Castle, asked what we are doing about homelessness support for those facing eviction. The Homelessness Reduction Act, which came into force in 2018, was the most ambitious reform to tackle homelessness. It is interesting to note that over 270,000 households have had homelessness successfully prevented or relieved by securing accommodation for more than six months. We are looking at the whole issue, from before people receive eviction notices right through to if they do, unfortunately, become homeless.

I was pleased to hear—this was the second part of it—that this is about landlords as well as tenants because it is important that we take a balanced view. We have been supporting landlords as well with buy-to-let mortgages while the mortgage holiday will be extended, with applications open until 31 January 2021. We are very grateful to our landlords for their forbearance during this unprecedented time and we continue to strongly encourage tenants to pay their rent, or at least to have an early conversation with their landlord if they have difficulty in doing so. Often, things can be dealt with during that early stage.

The noble Lord, Lord Kennedy, and the noble Baroness, Lady Fox, rightly asked what will happen if tiers 2 and 3 are extended past January. We know that there are concerns about the period from January and perhaps through to Easter, when the vaccine will start to take control of the pandemic. We will continue to keep this policy under constant review because it is important to do so. If any changes need to be made, the Government will consider them. However, we have to remember that occupiers now must be given 14 days' notice of an eviction before the bailiffs can come in. Also, on any new possession, the landlord will have to give six months' notice to any tenant if they require them to leave the property.

We talked a lot about poverty. The Government have put £500 million into a hardship fund to help further reduce the council tax bills of some of the most vulnerable households, those we are talking about. That fund can help them by up to £150 a year.

I thank the noble Lord, Lord Campbell-Savours, for some of his ideas and we will look into them. However, the best way in which to help landlords is to help tenants pay. That is why programmes such as the

furlough scheme are so important because if families still retain an income, tenants can pay and landlords are secure. In addition, mortgage payment holidays of up to six months are available and can help landlords.

The noble Baroness, Lady Bennett of Manor Castle, was absolutely right about having more housing. We have committed at least £44 billion over five years to build more homes in this country.

Lastly, my noble friend Lady Neville-Rolfe mentioned impact assessments. This measure is only temporary, lasting less than 12 months, as part of our Covid emergency response. Therefore, requirements for a formal impact assessment do not apply.

I am sure that I have not answered a number of other questions, but time has taken over.

Motion agreed.

The Deputy Speaker (Lord Bates) (Con): We now come to the Motion to approve the REACH etc. (Amendment etc.) (EU Exit) Regulations 2020. The time limit is one-and-a-half hours.

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

Motion to Approve

3.01 pm

Moved by ***Lord Goldsmith of Richmond Park***

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

Relevant document: 34th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, the regulations have three main purposes: they fulfil the UK's obligation to effectively implement the Northern Ireland protocol with regard to REACH; they provide for access by Northern Irish goods to the Great Britain market; and they amend the existing transitional deadlines for GB businesses to submit information about their chemicals and their safe use into the domestic REACH system. The SI also makes some technical amendments to ensure that cross-references in the UK REACH regulation are up to date at the end of the transition period. After the transition period, UK REACH will regulate the GB market, while EU REACH will apply to Northern Ireland.

The provisions that implement the protocol are straightforward. They redefine the scope of the domestic REACH regime from the UK to Great Britain. They provide for the Northern Ireland competent authority function to continue to be exercised jointly by the Department of Agriculture, Environment and Rural Affairs and the Department for the Economy. The provisions also ensure that there will still be effective enforcement arrangements for REACH in Northern Ireland.

The provisions concerning chemicals moving from Northern Ireland to Great Britain reflect our commitment to unfettered access for Northern Ireland businesses as well as the need to ensure that UK authorities have the appropriate information and regulatory safeguards in respect of chemicals placed on the GB market.

The instrument permanently removes the requirement for a full REACH registration for chemicals that are, or are in, qualifying Northern Ireland goods being placed on the GB market. It replaces that with a light-touch notification process, which will ensure that the HSE will know what chemicals are being placed on the GB market. Information necessary to ensure safe use will also still be passed down the supply chain within Great Britain. Substances of very high concern entering Great Britain from Northern Ireland will still need a UK REACH authorisation. This is necessary in order to manage the risk to GB consumers and workers, and the environment, from these hazardous chemicals. This simply replicates the approach taken at present to placing these substances on the EU market, where the authorisation process ensures that due account is taken of local environmental and other factors. We need to ensure that this happens where these chemicals are being placed on the market and used within Great Britain.

The changes to the deadlines for the submission of notification and registration information to the Health and Safety Executive follow a review of the data submission deadlines in the transitional provisions of UK REACH. The Government had committed to keep these deadlines under review when the first REACH exit SI was debated in the House last year, and the review involved detailed discussions with a range of industry and NGO stakeholders. The initial notification period for existing downstream users and distributors is being increased from 180 to 300 days. The deadline for submitting full registration information, which is currently two years across the board, is replaced by a phased approach that spreads the duty over two, four and six years from the end of that 300-day period.

The phased approach takes a risk-based approach by requiring the submission of data on the highest tonnages and most hazardous chemicals first. The aim is to give companies more time and capability to comply with the legislation by reducing and spreading costs, and giving them more time to negotiate mutually beneficial data-sharing arrangements with other companies in the UK and the EU. This will lead to a reduction in non-compliance and the provision of higher-quality data, leading to GB authorities having access to better data that will facilitate better decision-making. In the meantime, GB authorities will have access to significant other sources of data, so we will still be able to make robust regulatory decisions before full data is submitted to the HSE under UK REACH.

I should like to inform the House that we have worked with the devolved Administrations on this SI and they have given consent. I can confirm that this instrument will be able to function with or without a deal with the European Union. I can also confirm that it has been considered by the JCSI and that no issues have been drawn to the attention of the House.

[Lord Goldsmith of Richmond Park]

I should like to turn to the report by the Secondary Legislation Scrutiny Committee. It is fair to say that the report does not primarily relate to this SI so much as to broader concerns about the future of chemicals regulations, now that the UK has left the EU. In addition to whether this SI changes our ability to regulate effectively before the Health and Safety Executive receives the data about the chemicals on the GB market, these concerns relate to the potential costs to industry of the transition to UK REACH, the HSE's preparedness to take on its new role as the agency responsible for implementing UK REACH and potential outcomes from negotiations with the EU.

We published an impact assessment at the beginning of 2019, alongside the first REACH exit regulations. We have acknowledged that the costs to industry of supplying data into UK REACH could be significant. We have no reason to disagree with industry's own estimates, but I should emphasise the considerable uncertainty. In particular, actual costs will depend on the behaviour of companies here and in the EU, and the terms by which they can agree to continue to share the data needed for the purposes of both UK and EU REACH. One of the purposes of this SI is to help businesses reduce and manage those costs by extending the deadlines for data submission. The aim of reducing costs is also why the UK has been looking to agree an approach to data sharing with the EU as part of a free trade agreement. That would enable us to significantly reduce the requirements on companies to submit data directly to the HSE.

The committee's report is also concerned that the HSE will not immediately have access to the full chemical safety data currently held by the European Chemicals Agency. The Government recognise that our chemicals regime needs to be based on data and evidence, just like any system for regulating chemicals. At the same time, we are using transitional arrangements to smooth the move to UK REACH. These are taken a step further in the risk-based provisions in this SI. Here, also, our negotiation aims would assist us greatly in meeting the need for the data to underpin UK REACH while avoiding costs to industry. However, it takes two to reach a negotiated settlement. If that is not the outcome—and the committee is concerned that it will not be—it would be irresponsible not to make sure that UK REACH can stand by itself and is robust.

The concerns about costs and delays in the HSE receiving registration data sit uneasily together. If we want the HSE to have the full data on chemical safety, there will be a cost. If we want to avoid all the cost, it comes at the price of the HSE not having the data and having to rely wholly on other sources for regulatory purposes. What the Government are endeavouring to do, in previous SIs and in this instrument, is to balance those two needs.

Finally, the committee report questions whether the HSE will be fully prepared to take on the role of the chemicals agency under UK REACH—in particular, its capacity on day one. We have emphasised on a number of occasions that the HSE, along with the Environment Agency, is building on a significant level of expertise. I repeat that Defra is putting significant resources into the build-up to UK REACH, and that the HSE is recruiting heavily for REACH and other chemicals regimes for which it is responsible. The HSE has mapped the workload and regulatory drivers. This indicates that it is not necessary to have a fully staffed organisation on day one. Instead, the approach to recruitment gives time to train and build up the functions and services of UK REACH before key deadlines on registration and evaluation kick in. That is what is important. It is also important to remember that we are carrying over key elements from the EU system, such as the authorisation list and the candidate list for substances of very high concern, and that work does not need to be repeated.

Turning back to the draft SI, I emphasise that this is a simple but necessary instrument. It is necessary to make sure that the Northern Ireland protocol is implemented properly, and to provide easy access to the Great Britain market for Northern Ireland goods, in line with the Government's commitments. The SI is also necessary in order to make a reduction in the burdens on industry, while still providing for an effective chemicals regulatory regime. I beg to move.

3.11 pm

Amendment to the Motion

Moved by ***Baroness Hayman of Ullock***

At end insert "but that this House regrets that the Regulations (1) fail to provide an analysis of the costs of the new domestic Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regime, (2) introduce additional costs and administrative burdens for United Kingdom businesses, and (3) create unacceptable risks around the availability of chemicals safety data; notes concerns about the ability of the Health and Safety Executive to fulfil its additional responsibilities when the domestic REACH regime becomes operable on 1 January 2021; and further regrets that Her Majesty's Government have not addressed concerns raised by Parliament when proposals for a domestic REACH regime were debated in 2019."

Baroness Hayman of Ullock (Lab): My Lords, I thank the Minister for introducing this statutory instrument. My amendment spells out the deficits and risks that remain in the REACH regulations and our disappointment that the Government have brought forward an amended proposal that fails to address any of the serious concerns that were raised when it was debated last year. It shows insufficient understanding of how chemicals are actually managed in complex supply chains, with analysis neither of the cost of setting up the new regime or the additional costs to business.

The Government have said that these regulations are necessary to ensure that UK REACH will operate domestically and to implement the Northern Ireland protocol. But they will not provide the same level of protection from harmful chemicals that we currently enjoy, and there are huge challenges in trying to replicate EU REACH. The Government have failed to demonstrate

that the Health and Safety Executive, as the new regulator, will have the necessary skills and capabilities to match what has been provided by the European Chemicals Agency. When the original SI was introduced, it was indicated that the budget would likely be £13 million a year, and this figure has not been updated. The HSE will have a similar number of chemicals to regulate as the European Chemicals Agency does, with an annual budget of around €100 million. So we have serious concerns about the readiness of the HSE to take on this role and about the lack of staff with the necessary expertise. Despite the Minister's previous assurances, he needs to set out exactly how the new system will be staffed and resourced to ensure that current levels of protection continue.

Schedule 2 amends the 2019 regulations to extend the date by which companies with EU REACH-registered chemicals must provide full safety data. As explained, the deadline has been extended from two years after exit day to be staggered over six years plus 300 days, so that the full registration dossier will now need to be submitted within two, four or six years. I understand the Minister's reasoning behind this, which he just explained, but it does mean that the period in which the new regulator will be unable to protect human health and the environment from harmful substances has been extended. Without this data, it will be difficult, if not impossible, for the HSE to implement legally enforceable restrictions and authorisations.

According to CHEM Trust, this will make the system considerably weaker. The UK may diverge and fall behind the EU quite quickly, with the result that products that do not meet EU standards could be dumped in the UK market. The Government have acknowledged that this is a possibility, so will they actively match new controls on chemicals implemented at EU level to ensure that this cannot happen?

Defra has said that the regulator could use a substantial amount of publicly available information, but this is not adequate for proper regulation. The Secondary Legislation Scrutiny Committee concluded that it was deeply concerning that HSE

"will not have access to the full chemicals safety data currently held by EU REACH."

The Chemical Business Association has said that British businesses do not normally own the testing data required for registrations under UK REACH, as it is held by a consortium of European countries. To reuse the data for the UK system, companies might need to obtain permission from the consortium and will likely have to pay for the extension of rights. If that cannot be obtained, tests might have to be redone to establish safety information, which could involve repeat animal testing.

The UK industry estimates that it will cost of £1 billion to comply with UK REACH, including the cost of resubmitting full registration dossiers already available under EU REACH. The Minister mentioned data sharing, but as yet there is no agreement between the UK and the EU on a data-sharing mechanism for these dossiers—and we are days away from the end of the transition period. There must not be any repeat animal tests, so I ask the Minister, who I know feels strongly about this, what guarantees he can give. How confident is he that this can really be ensured and that it is not just an undeliverable promise?

The regulations that this SI amends remove the supporting committees that ensure that decisions are based on scientific advice and that there is proper scrutiny and oversight. In the UK version, they are replaced by a duty for the HSE to seek external advice, with no formal committees of experts and stakeholders established. Furthermore, the Secretary of State has the final decision relating to the status of particular chemicals. While we hope that it is unlikely that a Secretary of State would diverge from HSE recommendations, it is not explicitly prevented.

In conclusion, we need a regulatory system that provides the same levels of protection for human health and the environment as we have enjoyed under REACH. Otherwise, critical decisions will be made by a body with little experience and with layers of accountability and scientific expertise stripped away. My amendment recognises these deficits and risks, and the lack of government action to date. I beg to move.

3.17 pm

Lord Teverson (LD) [V]: My Lords, I have the privilege of chairing the House's EU Environment Sub-Committee. Soon after the referendum, we looked at the area of REACH chemicals and we had the then Secretary of State—not the present one—and the Permanent Secretary in front of us. It was quite clear that this was an area the department had not spent a lot of time on. It had concentrated on agriculture, fisheries and wider environmental areas, but absolutely not the chemicals area at all. There was a rather naive view among some people at that time that somehow all the data on chemicals in the European Chemicals Agency could be cut and pasted and put on the UK REACH database—something that we disabused them of, as it was quite clear that it was not true.

The department has certainly picked up a lot of speed since then, but not necessarily with the right answers. One could say that never in the history of corporate life has so much cost and red tape been created for absolutely zero purpose whatever. In fact, it will have a very negative effect on the UK chemicals industry—which, let us not forget, is the second largest manufacturing sector in the United Kingdom after the food industry.

The committee took evidence more recently—in fact, earlier this year—from the British Coatings Federation, which told us that 97% of its members buy chemicals from the European Union, some 65% of their exports go to the European Union and some 55% of their imports come from the EU. EU chemicals are absolutely integrated into the UK supply chain. Beyond that, nearly every other physical goods industry in the United Kingdom is affected in some way by the chemicals supply chain as inputs to their own products.

The result of this is not that UK standards will be particularly important—they will be absolutely essential to UK companies, obviously, and UK importers—but that they will continue to follow EU REACH regulations. If companies want to export, or if they export to the United States, they will have to comply with those regulations as well. This means that the only outcome of this is an additional cost and an additional registration system, which is expected to cost the industry some £1 billion extra—I am interested to hear that the

[Lord Teverson]
Minister does not reject that figure. I welcome the fact that this might be spread over more time, but that cost is still very much there.

Because of that cost, there is another issue, which I do not think has been raised so far. It is estimated that some 27% of non-UK businesses importing chemicals—those EU companies—will not bother to register in the UK because of the extra cost of doing so. Of course, they cannot usually be replicated by a UK company's supply because of the intellectual property held by those companies. So we have a system that is unnecessary and is there because of a philosophical choice, not one of safety and not one that is good for British industry.

I have some questions for the Minister. Is the HSE, which I respect hugely in its core functions, really going to have the expertise there in time, and will it be able to recruit sufficiently? I hear the Minister's assurances, but the fact that it is still recruiting some days before the end of the transition period is, I think, a concern. Are the IT systems ready? The Minister did not mention those; they are absolutely fundamental, and I suspect rather more complicated than an Excel spreadsheet. Will there be sufficient independent advice on the science side for the HSE? Will there be animal retesting, which clearly all of us would want to avoid? What happens about those missing chemicals because importers will just not bother to re-register? I hear the wish that there would be some extra connection with EU REACH in the future, but I would really appreciate hearing from the Minister some determination to make sure that there is in future that connection with Europe that enables us to avoid the hugely expensive duplication of information and data.

3.22 pm

Viscount Trenchard (Con): My Lords, I am grateful to my noble friend the Minister for introducing these regulations and explaining their effect. I regret that the Northern Ireland protocol has made it necessary to have two different versions of REACH: UK REACH, which will apply in Great Britain, and the EU version of REACH, which will continue to have effect in Northern Ireland.

I trust that our departure from the EU will enable us to revert to a simpler, clearer, common law style of regulation such as we used to apply before the centralising and harmonising powers obtained by the Commission through the Maastricht treaty were applied. This instrument makes it very clear that there is some way to go before we can start to move in that direction.

It is very difficult to follow the detail of the instrument because it amends the 2019 regulations, which were not designed to apply in a situation where the EU regulations continued to apply in Northern Ireland. Therefore, one needs to refer to several different documents, which I find rather testing.

Paragraph 2.4 of the Explanatory Memorandum introduces a definition of GB REACH, and all references to "UK" in the 2019 regulations are being changed to "GB". However, I ask my noble friend if he agrees that we should call it "UK REACH" rather than "GB REACH", because GB is an island, not a country. Of course, the instrument would still have to apply the EU REACH regime in Northern Ireland. It is more confusing because, as noble Lords are aware, GB is the two-letter acronym used by the EU to refer to the UK throughout its years as a member state.

It occurred to me that since the REACH regimes are different in Great Britain and Northern Ireland, could not Northern Ireland be made subject to both regimes simultaneously? That presumably would not add any additional bureaucratic burden for Northern Irish businesses, since the content of the regimes is identical on IP completion day. However, would it not offer reassurance to the communities of Northern Ireland that they really are still an integral part of the UK and that this United Kingdom Parliament makes laws which apply to them?

Seventy pages of the withdrawal agreement—327 to 397—list the large number of European regulations and directives that will continue to apply in Northern Ireland. Of course, if the Republic of Ireland should eventually decide that it wished to join the UK customs territory, the problems of the north-south border in Ireland would disappear.

The Prime Minister's Greenwich speech in February made clear that

"in doing free trade deals we will be governed by science and not by mumbo-jumbo because the potential is enormous."

In many respects, our rules go further than EU rules, but there are other examples where bureaucratic EU regulatory regimes such as REACH have stifled and inhibited innovation. These measures today will ensure that there will be no cliff edge, that the EU retained version of REACH will work in the UK and that the notification period for existing Northern Ireland product being traded into GB is extended to 300 days, and I welcome them.

I listened to the interesting speech by the noble Baroness, Lady Hayman of Ullock. I think her motives are just to make trouble for the Government but not to try to do anything which might cause fatal damage to an important and necessary measure. However, it is important that, at some point, we fix the impediments and burdens of the REACH regime by developing a simpler, principles-based, pro-competitive chemicals regulatory regime, the outcomes of which may be similar to those of REACH but the detailed regulations of which will be different. I ask my noble friend to confirm that this remains the Government's intention as soon as the short-term changes and issues arising from moving on from the transition period are completed.

3.27 pm

Lord Cameron of Dillington (CB) [V]: My Lords, I would like to echo the regret that others have expressed that we have allowed ourselves to walk into this unnecessary nightmare.

EU REACH started in 2007, and it took nearly 10 years to iron out all the wrinkles and become, according to our own Chemical Industries Association and the charity CHEM Trust, the best chemicals regulatory system in the world. With a staff of 600 people, ECHA—the European Chemicals Agency—deals with tens of thousands of chemicals in over 20 countries, which makes the evaluation and authorisation of individual chemicals good value for money. But more

importantly, it has had 13 years to build up a huge database and prove to the world that its stamp of approval is a recognised safety guarantee when it comes to trading in chemical products—products that touch almost everything we do, from toothpaste, toothbrushes, toys, frying pans, paints, varnishes and chairs to sofas, to name just a few domestic items.

Originally, under Theresa May, and when Michael Gove was Secretary of State, we were going to go for full alignment with EU REACH and try to get associate membership. This would have been a very sensible approach, and indeed was recommended by your Lordships' energy and environment committee, on which I am lucky enough to serve under the able chairmanship of the noble Lord, Lord Teverson. But then UK politics changed, and seemingly alignment with any EU programme or institution became a no-no, whatever the cost.

We are therefore now going to leave the best system in the world at a cost of over £1 billion to a vitally important UK industry; an industry—or industries—which probably employs over 100,000 people. It is an industry which, as the noble Lord, Lord Teverson, mentioned, is inextricably linked with the EU, and, as he said, research indicates that 27% of the EU companies involved do not intend to register with UK REACH.

This latter point means that, in order to stay in business, many of the potential 80,000 new registrations of chemicals with UK REACH will have to be paid for by our own UK companies, large and small, which depend on imports from the EU for their raw materials. Worse than that, because the data and results of tests already carried out on these products often remain the property of ECHA and EU companies themselves, our UK companies may have to pay for another full round of validation tests to register with UK REACH and thus be allowed to stay in business.

This approach is not only economically harmful but could have serious health consequences for our population and our environment. The new regime starts in 23 days and the HSE is as yet unprepared. I gather that it has filled only around 30 of the 130 new posts it says that it needs. We should bear in mind that ECHA employs 400 people dedicated to REACH, and it still took it 10 years to build its database.

Furthermore, our Government, through practical necessity owing to the problems I have just outlined, are now giving UK companies leeway for registration of chemicals of 300 days or up to six years, according to the product. There are thus likely to be serious shortcomings in the HSE's watchdog role in this sector. Indeed, the Government have acknowledged that there is a possibility we will become a dumping ground for chemical products that do not meet EU standards.

That sums up my regrets. I apologise that I have not even touched on the problems of Northern Ireland. However, in the light of what I have said, the added complication of being essentially in two regimes at once is not a situation one would wish on any business.

I plead with the Government to please find a way to commit the UK publicly to aligning UK REACH with EU REACH. Let us try to earn its trust, so that, I hope, we can share their data and avoid having to go through a 10-year learning curve and the unnecessary huge expense and possible environmental chaos that I have described. This is one of our most important industries. We must look after it.

3.31 pm

Baroness Donaghy (Lab) [V]: In supporting my noble friend Lady Hayman of Ullock, I am concerned about the resources and capability of the Health and Safety Executive to carry out its new role, about the risk of safety issues falling through the gaps and about the cost to business, which the noble Lord, Lord Cameron of Dillington, just outlined so graphically. This House is on record as regretting the Government's decision not to participate in the European Chemicals Agency, which would have saved all this uncertainty. I am sure that my noble friend Lord Whitty, whose regret Motion was carried in 2019, will want to say more about that.

Let me make it clear: I am a supporter of the wonderful work carried out by the Health and Safety Executive. I worked closely with it 10 years ago when I was preparing my report on fatalities in the construction industry, and I have been horrified at the extent of the cuts to its budget by successive Conservative Governments. As the UK chemicals authority, the HSE will take on the role that was formerly carried out by the European Chemicals Agency. The question of staffing and resources of the HSE has been raised before. I was a member of Sub-Committee B of the Secondary Legislation Scrutiny Committee in 2019. It expressed concern in its report on the REACH regulations that the HSE did not have the resources to recruit the necessary expert staff. Now the current Secondary Legislation Scrutiny Committee, under the able leadership of the noble Lord, Lord Hodgson of Astley Abbotts, is expressing deep concern about the same thing over a year later. Why have the Government not taken action when they were warned of the difficulties? The new regime comes in on 1 January 2021 but recruitment to the HSE is nowhere near concluded.

What contingency plans exist to ensure that safety and standards are maintained during this crucial period? What assurances can the Minister give that the HSE will be adequately funded? Will the Government work with stakeholders to develop an open and transparent structure? As the noble Lord, Lord Teverson, explained, the advantage of the European Chemicals Agency, which the Government have decided to leave, is that it had a committee structure which ensured that its work would be challenged, and Cruelty Free International has emphasised that this open structure ensures that "the best information is available, including on animal testing."

Will the Government guarantee that there will be no repeat animal testing because of a failure to share data, and how will they carry out that guarantee in practice? In most cases, UK firms do not own the testing data that is required to support registrations under UK REACH. The majority of this data is owned, as has been said, by a consortium of European countries. I appreciate that the Government are seeking agreement with the EU on data sharing, referred to as a chemicals annexe. If this agreement is reached, it would mitigate the need for the chemical industry to provide full data packages to the new agency, thus avoiding considerable cost to business.

[Baroness Donaghy]

I accept that extending some of the dates is intended to assist the industry and give it time to adjust. However, the Secondary Legislation Scrutiny Committee has supported the view of the CHEM Trust, a chemical safety charity, that extending the period to more than six years would hamper the ability of the agency to regulate the chemicals industry. The Secondary Legislation Scrutiny Committee agrees that this could undermine the HSE's ability to regulate chemicals properly.

The noble Lord knows that the House has been expressing concern on these issues for nearly two years. The Government created the uncertainty by refusing to remain within the European Chemicals Agency and agreeing a Northern Ireland protocol without considering its fundamental implications. They now have an obligation to sort out their own mess and maintain the safety and security of the chemicals industry.

3.36 pm

Baroness Altmann (Con): My Lords, I thank my noble friend the Minister for his explanation of these regulations and for his clear delivery to the House of what are clearly regulations that may be of significant concern. In particular, he has assured us, that Defra is putting in resources and that the HSE is recruiting. However, concerns have been expressed about the adequacy of resources for the HSE, which does a tremendous job, and the required oversight, when one compares the budget of the ECHA, with €100 million, and the HSE, with £13 million. What are the targets for recruitment to the HSE? How are we locating the required personnel? Where are they coming from? Can my noble friend say how much the adequacy of the resourcing has been assessed and whether there are any reports that may give us some comfort?

I also encourage my noble friend to relay the message this House has clearly given over the last two to three years, that data on safety and data sharing are essential for public safety. I appreciate that the JCSI report and the concerns raised, as my noble friend already mentioned, may not be directly relevant to this SI. However, clearly, the issues raised are enormously important, and its broader concerns about the potential £1 billion cost to our valuable UK chemicals industry and the readiness of the HSE to conduct its role are serious matters.

As the noble Baroness, Lady Hayman, and the noble Lord, Lord Teverson, rightly said, the risks to our chemicals industry, public safety and indeed economic performance are being imposed for no added value. I have pointed this out many times in the past four years in the various debates on this issue. We are trying to reinvent the wheel, but we do not have the resources to make sure that it is as robust as the wheel we are replacing.

Like my noble friend Lord Trenchard, I regret the need for us to have a separate REACH programme for Northern Ireland and GB—but for rather different reasons. We will have our own GB REACH, but Northern Ireland will be under the EU REACH regime. Both will operate independently, with exporters and importers between the EU, the EEA and Northern Ireland—with Great Britain on the other side—having to ensure that their relevant duties are met under both regimes. Can my noble friend the Minister outline the differences that we anticipate between the two regimes and how firms will be prepared for any such divergence?

The Government have introduced the Northern Ireland notification system, which is light-touch. I congratulate my noble friend the Minister on the decision to make this fee free, but could the option of equivalence possibly be revived? I recognise that becoming an independent sovereign nation offers theoretical opportunities to sweep away red tape, allowing free markets to flourish—but not on dangerous chemicals. What safeguards will there be for the first 300 days? GB importers have to submit information on substances that they import, but who will assess the submissions and how ready is the new UK REACH IT system to receive and assess them?

Finally, can my noble friend comment on the new regime, which requires no submission for consignments below 1 tonne? Also, for those between 1 and 10 tonnes, there will be no requirement to provide data safety reports or chemical safety report risk control measures—at least as far as I could see when I clicked on the requirements under the regime. What risks are potentially involved in omitting such information from consignments under 10 tonnes?

I urge the Government to reconsider their determination to abandon equivalence, and I hope that we will be able to look forward to continued success for our chemicals industry.

3.42 pm

Viscount Hanworth (Lab): My Lords, I am bound to recapitulate on much of what has already been said, but I shall do so with added asperity.

Of all the aspects of a hard Brexit, the decision to leave the European regulation on the registration, evaluation, authorisation and restriction of chemicals—known as REACH, of course—is one of the most gratuitous and damaging. It seems to have come about because of an objection to the role of the European Court of Justice as the ultimate arbiter of any disputes arising. However, it has rarely been called on to perform that role.

The decision to leave REACH appears to have been hapless and inadvertent. This was revealed when the Secretary of State and his Permanent Secretary appeared before the House of Lords EU Energy and Environment Sub-Committee. The two seemed to be under the impression that it would be a simple matter to cut and paste the contents of the European Union REACH database into a UK version. They had to be disabused of this idea. It was pointed out to them that the database contains proprietary information, much of which is subject to commercial secrecy. Moreover, there is often joint ownership of this information. Acquiring the information can involve complicated and protracted negotiations that are liable to impose restrictive undertakings on those who wish to be granted access to it. I recall that the Secretary of State turned to his civil servant adviser with a look of surprise and irritation. This was answered by a look that also seemed to signify surprise and which bore an implication of "mea non culpa". We might have expected the Government to change course and reverse their decision to leave REACH, but that has not happened.

Recently, in its response to an inquiry by the Secondary Legislation Scrutiny Committee, Defra asserted that much of the necessary information is in the public domain and is readily accessible. This is untrue. Either it reveals a persistent misunderstanding of the matter, or it represents an attempt to bamboozle parliamentarians and others. I am unsure which of these two possibilities is worse.

The truth of the matter is revealed by the fact that the statutory instrument allows, in some cases, a full six years plus 300 days from the end of the transition period in which to supply full information to a GB REACH database. This implies a lengthy hiatus, during which time the nation will remain inadequately protected against harmful chemicals, including pesticides and the wide variety of endocrine disruptors that are now coming under increasing scrutiny.

The inadequacy of the putative GB REACH organisation as regards its staffing and financing is revealed by some startling comparisons. REACH is managed by the European Chemicals Agency, which is located in Helsinki. This organisation has more than 500 staff from 27 European countries. It has four scientific committees with experts from all member states, which raise concerns and supply it with information. The annual budget is €109 million and its database comprises 23,000 chemical compounds.

The UK's Health and Safety Executive, which has been given the task of supervising the replacement regime, has so far recruited 40 staff and intends to recruit 130 in all. As we have heard, its budget will be £13 million. This organisation will in no way be comparable to the European system. It will be wholly inadequate for the task that it will face.

The UK chemicals industry is likely to be devastated by the Government's policy to leave the REACH system. The cost to the industry of replacing EU REACH with a national UK regulatory agency has been estimated variously at between £450 million and £1 billion. In any event, it will be very large.

To be registered in the European Union, a British chemicals exporter will have to seek an alliance with a so-called "only representative" within the European Union, who will have to vouch for all of the necessary information that must be provided to EU REACH. This information is to enable REACH to determine which chemicals are in manufactured items and which are abroad in the environment. The proposed UK regulatory agency will not be capable of doing this effectively.

The EU REACH system is increasingly defining the international standards to which chemical companies worldwide are seeking to adhere. To remove the UK chemicals industry from that system is a backward step that will do the industry untold harm. Far from being a case of taking back control, which has been the leitmotif of the proponents of Brexit, this will be a case of losing some of our former influence in international affairs. It is tragic to be reminded that the UK played a major role in creating the EU REACH system.

3.47 pm

Lord Lucas (Con) [V]: My Lords, I very much hope that, in rebuilding REACH to our own specifications, the Government will take advantage of all the innovation that has been taking place in the computational prediction of toxicity so that we end up with a cheaper, faster system that hurts many fewer laboratory animals. I would like to see the UK develop as a centre of excellence for such technology, with the need to recreate REACH providing a flow of business that allows such excellence to develop.

I also hope that we will avoid some of the idiocies of the European system. I do not share the approbation of the noble Lord, Lord Cameron of Dillington, for that system. To use a particular chemical as an example, ammonium sulphamate is an extremely useful herbicide because it decays into fertiliser and has no toxic residues. The European Union's pesticides review led to herbicides containing this chemical becoming unlicensed in 2008, because the Irish rapporteur refused to review the data supplied unless it contained details of animal testing on dogs. As there was already substantial animal data in the package supplied, the data holder felt that further tests without substantiation would cause unnecessary animal suffering.

I find that attitude extraordinary, as I do the European Union's attitude to, say, asulam, which is a much more dangerous chemical but which has incredibly useful properties. It kills bracken and dock but almost nothing else, so if you are trying to prevent a really precious collection of plants from invasion by bracken, it is so much better than any of the alternatives—but the European Union has proved extremely difficult in allowing it to be licensed, in a way that has not happened at all in the United States. And of course the greatest example of European idiocy has been its attitude to glyphosate. So I really hope we will get to a situation where we can take a much more rational and holistic attitude to chemicals than appears to have been possible in the European Union.

In terms of making this a process which works and which we can be confident protects our citizens, for low-use chemicals which are not known to be particularly dangerous, surely we can just look across the water and say, "What they do in the EU? What do they do in the US? Have they raised substantial concerns about these chemicals?" If not, let us just rely on all the work that has been done in the EU, the US and elsewhere, and not obsess about repeating tests, particularly if we are requiring tests on animals, and allow the system in the UK to evolve at a sensible pace, which does not require a lot of people to relicense chemicals at great cost when there is no obvious benefit to us or to them.

3.52 pm

Lord Rooker (Lab) [V]: My Lords, I know that we cannot have normal debates virtually, but I have to say that that last suggestion from the noble Lord, Lord Lucas, was an absolute disgrace. It would be the end of any chemical companies in Great Britain—the United Kingdom—exporting anywhere else if we were known to have such a lax effort in regulating as not doing any work and just looking at what others are doing. I am afraid that that is simply not good enough.

I should declare an interest in the sense that REACH came into force in 2007, during my period at Defra between 2006 and 2008. In fact, it occasioned one of the very rare visits I ever made to Brussels. I also served on European Union Sub-Committee B under

[Lord Rooker]
the noble Lord, Lord Teverson, and of course I was present when the Minister of State, Thérèse Coffey, and the Secretary of State, Michael Gove, turned up not really knowing what the hell was going on. I do not think they had read any of the briefings.

I challenge the Minister to say whether he has ever read the Lords committee report on Brexit chemicals regulation. It was published before he came into the Lords, of course, but there may be a reference to it in his briefings. It would certainly be worth a read, because we now seem to be producing a new system, at the cost of £1 billion, for nothing new—and it will be a second-rate system that puts people in this country at risk, because chemicals will be offloaded on us during the 300-day period.

The noble Lord, Lord Cameron, gave us a list of some of the examples of what chemicals are used for. The fact that we have use of more than 23,000 chemicals makes you wonder what they are for. I can tell you about one key chemical that puts at risk the supply of clean water in the UK. We need chemicals to produce clean water. Those chemicals come from the EU. Therefore, this is a really serious issue. Notwithstanding that, as has already been said, it is our second largest manufacturing sector; there are almost 100,000 jobs in the United Kingdom involved in this industry; and we are virtually destroying our opportunities for growth in exports by going along with a second-rate system by pulling out of REACH.

This was all known about. There are no surprises in any of the issues being raised today. It was all detailed during the first inquiry of your Lordships' Sub-Committee B on Energy and Environment. It was never really taken seriously by Defra—I am not criticising the individuals or the HSE, but I can tell you that the HSE would not be suffering as it is now if the likes of Geoffrey Podger were still the chief executive. This is not a criticism of individuals, but I feel a lack of confidence because the system has been allowed to go into decline. There has been a lack of awareness of safety, whether it is in checking our factories, our pesticides or now our chemicals. We are clearly not ready for leaving the REACH regime on 31 December. Our people will be put at risk.

We might as well not beat about the bush. There is no easy answer to this, and it is not, as the noble Lord, Lord Lucas, said, simply relying on what others have regulated while we allow a free for all in this country, which is what will happen under the 300-day limit. I am full of foreboding, because this is one of the great areas which this House has debated more than once, it is not politically sexy to anybody, it sounds boring and technical, yet there is virtually no walk of life, no product—food, clothing, furniture or anything else—in this country that does not require the use of safe chemicals. We will not get that under the second-rate system that the Government are imposing on the United Kingdom.

3.57 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I will start on a positive note. I welcome the agreement in principle that the UK and EU have reached on the Northern Ireland protocol dealing with Northern Ireland border checks. Can my noble friend say what impact that will have on the regulations before us today?

I thank my noble friend for bringing the regulations before us and for his comprehensive explanation of them, but the noble Baroness, Lady Hayman of Ullock, has done a great service to the House by moving her amendment to the Motion, highlighting many of the issues raised and unresolved in the 34th report of the Secondary Legislation Scrutiny Committee. I urge my noble friend to answer those concerns when he sums up the debate.

On 19 November, the Secondary Legislation Scrutiny Committee reported that it had not seen an impact assessment. My noble friend said that the department produced one in 2019. When might he publish that and might he revise the conclusion reached in paragraph 12.1 of the Explanatory Memorandum to the regulations:

"There will be positive impacts on business, charities or voluntary bodies"?

I would like to see what those impacts are. The memorandum goes on to say:

"This instrument will mitigate potential disruption to chemical supply chains for GB companies."

I do hope that that is indeed the case.

The amendment to the Motion states that the additional costs and administrative burdens for United Kingdom businesses are a matter of regret, as is creating

"unacceptable risks around the availability of chemical safety data."

We know, as others have said, that the chemicals industry is the second biggest manufacturing industry after food and drink. More than 50% of the companies in the British Coatings Federation are UK-owned and 70% are SMEs. They have a highly integrated supply chain with the EU, so there is significant EU-UK trade, and it is obviously important for human and environmental health.

I am fairly agnostic about REACH, but will quote some of the evidence we heard under our excellent chair the noble Lord, Lord Teverson, in the EU Environment Sub-Committee, on which I am privileged to serve. The Royal Society of Chemistry said that there is a

"lack of capacity of fully scientifically trained staff at the necessary levels to be able to fully operate a UK REACH."

Therefore, it has to be asked whether the Chemicals Regulation Division will have the capacity to deal with a high workload for UK REACH from 1 January.

The Chemicals Industries Association said that there is a requirement for "hiring of new staff" who are very "specialised", namely

"toxicologists, ecotoxicologists, experts in risk assessments, economists, chemists and so on."

The Chemical Business Association said that

"The HSE has virtually complete control over the operation of the UK's new regulatory regime",

yet the whole

"Industry has doubts about the competence and the capability of the HSE to discharge this role."

CHEM Trust said that there is a

"massive risk that the UK system has much less information and expertise in it."

I fear that the dual regime we will have, with many in the chemicals sector wanting to register for both UK REACH and ECHA, will damage the ability of the UK chemicals industry to compete, and threaten the viability of future product lines, as we were told in the EU Environment Sub-Committee. I hope my noble friend puts my mind at rest. I ask him to answer two questions. The money that we established for the cost of this exercise alone will be approximately £1 billion. Would that not be better spent on improving, maker safer and more environmentally friendly the chemicals that the industry is producing? He will be aware that many in the chemicals industry want to move their production outside GB to access the wider EU market. What will that cost and how does he hope to prevent such a move?

4.02 pm

Lord Hunt of Kings Heath (Lab): My Lords, like my noble friend Lady Donaghy, and as a former Minister for the Health and Safety Executive, I am a great admirer of the organisation and its proportionate approach to regulation. But it must have the time and resources to do its job properly. If it were given them, I would have every confidence in it. It is clear from all the evidence that we have heard, and in the submissions to the Secondary Legislation Scrutiny Committee and the committee of the noble Lord, Lord Teverson, that that is not the case.

Like the noble Baroness, Lady McIntosh, I was pleased to hear a few minutes ago about the agreement between the EU and the UK Government about arrangements for Northern Ireland. That is good news indeed, but the SI before us shows some of the huge drawbacks of Brexit. We are ensuring that Northern Ireland continues to enjoy the benefits of regulations under the EU REACH programme, whereas we are entering uncertain waters with an industry that is crucial to this country and its economic prosperity.

We have already heard that the Secondary Legislation Scrutiny Committee is concerned about the impact and costs of the new domestic REACH regime. A number of noble Lords have already asked the Minister about the impact on industry and the overall costs. When you align that to issues over the supply chain, what is the Government's strategy to ensure that this industry continues to prosper and thrive in this country and does not move production into the EU?

On the preparedness of the HSE to start the new regime in a few days, we have already heard that the amount of money being given is limited. It is apparent that few of the people it wishes to employ will be ready to start work on 1 January. One hardly gets a sense that it will be good to go then. In his introductory remarks, the Minister referred to this as a "light-touch" regime—but it is a no-touch regime, because the HSE has no capacity to take over on 1 January. A legitimate point to put to him is: what on earth is going to happen in the first few weeks and months of the new regulatory regime? He had very little to say about that at all.

I was interested in comments in our briefings from the Alliance for Cancer Prevention, Breast Cancer UK and the Cancer Prevention and Education Society. They are concerned about the impact of harmful chemicals on the environment and public health. The point that they make is that GB will become a dumping ground for chemicals and products that do not meet EU regulations, without a mechanism for matching EU controls on chemicals and without access to the European database. That seems a relevant consideration.

We have heard a lot from noble Lords who embrace Brexit with enthusiasm, but without much evidence, on the benefits of the new light-touch regulatory regime. I am afraid that, all too often, a light-touch or no-touch regulatory regime leads to lower standards and the dumping that the health organisations are concerned about. I would like to hear from the Minister what the Government are going to do to protect us from that. Even now, it is pretty obvious that we should stay aligned with the European agency. It is the obvious course of action, at least during a transitional phase.

Finally, I come back to this hugely important industry itself. What support will be given for it to override some of the costs it will incur and to encourage it to stay in the UK? This is crucial.

4.07 pm

Lord Whitty (Lab) [V]: My Lords, I will try not to repeat too many points about the lack of preparedness or resources for the HSE which colleagues have made, or to emphasise that, by trying to solve one problem in extending the deadlines, another has been created in making safety standards less strong. I will concentrate on other points. I very much support the regret amendment in the name of my noble friend Lady Hayman. I do that in a literal sense, because I regret that we are where we are, when we do not need to be.

There was a point in the ongoing Brexit saga, and I have taken an interest in this for a considerable time, when I thought that I was on the same side as the Prime Minister—not the present Prime Minister obviously, but Mrs May. Colleagues with long memories will remember that I made a bit of a nuisance of myself in the debate on the EU withdrawal Bill in 2018 about EU agencies. The Government rejected my general case but, in her Mansion House speech, Mrs May recognised three exceptions where we needed to continue a clear relationship with European agencies: medicines, aviation and the European Chemicals Agency. I agreed with that aspect of Mrs May's approach and, had those negotiations proceeded, we might have had a sensible withdrawal agreement and could have at least maintained some degree of associate membership of ECHA and REACH.

I ask the Minister if there is still some hope. We have heard of progress from Brussels, but have not yet seen the details. The Secondary Legislation Scrutiny Committee was informed of a "chemicals annexe". Does that exist? Can we see it? Does it come into force if there is a deal? This morning, the newspapers listed a number of potential sub-agreements, but they do not include chemicals. They include aviation and medicines. Are there sub-agreements that come into force if we reach a deal in the next couple of days? If we do not reach a deal, what will apply then? Parliament will want to see that annexe sharply, and we need to ensure that it meets all the anxieties about the dual registration process, the costs, disruption and delay for what is an expensive, legally complex and restricted system.

[Lord Whitty]

Part of the reason for this amending SI is to reflect the situation in Northern Ireland and a protocol which, I understand, may in essence still be in being. The situation is even more confused by duplicate registration than it is for GB. The HSE is a GB organisation, and there is a separate health and safety executive for Northern Ireland, which has legal status over there. It does not appear to have any role to play in Northern Ireland, because Northern Ireland will remain part of the single market in that respect, and in the EU regulatory structure. That will mean that businesses in Northern Ireland, whether or not they trade with the rest of the EU, or even with the Republic of Ireland, will automatically have to have dual registration. Most of those businesses may be subsidiaries, suppliers or customers of GB-based businesses but, for Northern Ireland business, and for trade between Northern Ireland the rest of the United Kingdom, there will have to be dual registration. Therefore, the cost falls more on Northern Irish businesses than on businesses on the mainland.

We have to remember that many of these businesses are relatively small. As the noble Lord, Lord Cameron, explained, sectors or industries that use chemicals, such as those dealing in furniture, toys and paint, are dominated by relatively small companies. That applies in Northern Ireland as well. The Northern Irish situation will not be resolved by the endorsement of the protocol in any agreement, if it is then complicated by the double structure of regulations, which will hit all firms in Northern Ireland, not just the main chemical manufacturers. It will also cause an issue between Northern Ireland and Great Britain at the ports.

The disparaging remarks of the noble Viscount, Lord Trenchard, and the noble Lord, Lord Lucas, about REACH were uncalled for. There were some hiccups in the development of this system but, by and large, it has now been accepted by the chemicals industries and by most user groups and environmental organisations. We depart from it at our peril; we will have to parallel it, and there is a cost to that which these regulations do not resolve. I support the regret Motion.

4.13 pm

Lord Fox (LD): My Lords, at the start of this debate, the disembodied voice of the Minister floated out over the Chamber. I was reminded of an airline pilot seeking to calm his passengers as unwelcome noises came out of one or two of the engines. Here, in the economy seats of the cabin, anxiety remains high—and, indeed, following this high-quality debate, it is probably higher. Whether through complacency, underestimation or shortage of resources, it is clear that Defra and Ministers have taken an iterative approach to this issue, with statutory instruments following statutory instruments. There have been tweaks and improvements along the way, and we should welcome those.

In essence, the long and detailed speech that I made when the first of these statutory instruments was introduced remains true. Then, as now, the Government played deadline roulette. They introduced deeply unsatisfactory secondary legislation just before it might be needed and dared the opposition to stymie or kill it. This is not the best way to get regulation right. I will not repeat the issues set out by the experts in today's high-quality debate, but it was amazing to hear a Conservative Minister flow over the idea that one of the most important industries in this country will be burdened by £1 billion of extra costs with no benefit whatever. Here is growth that will not happen, taxes that will not be paid and public services that will not be supported. It is absolutely insane that we countenance this approach.

As your Lordships have heard, the big cost is in data, or in the prospect of having to duplicate data merely to re-register chemicals that are already legal in this country. At one point, we had hoped that the Government would seek associate membership of ECHA, but this seems not to be the case. It is disingenuous for the Minister to try to separate UK REACH from this statutory instrument. This SI is, de facto, a central part of UK REACH and it is, therefore, perfectly legitimate to have this wider debate today.

It seems clear that no kind of data sharing will happen on 1 January, with or without a deal. As we heard from the noble Viscount, Lord Hanworth, the Government have said that it will be supplemented by publicly available data. Like the noble Viscount, I contend that using public data is a non-starter. It is just not adequate for implementing controls or for defending those controls against litigation, which is what will happen. In the event that data is not rolled over, the Government have also said that animal testing of substances already registered under EU REACH will not have to be duplicated under UK REACH. However, if we get to the end of the grandfathering process and companies wishing to register chemicals have not had access to these data, either the HSE will have to lower its data standards or new data will have to be generated. Which do the Government prefer: less data, and therefore less safety, or new data, which will inevitably lead to more tests, some of which will be on animals?

Divergence will be a massive burden on industry. The EU recently announced a big reform of its chemical safety laws, which will lead to a rapid divergence between where we are now, with UK REACH, and where the European situation will be. What is the Government's view about divergence? Will they actively seek to track the EU, or will they simply head off in the opposite direction? If it is the latter, the situation in Northern Ireland will become even more untenable and harder to manage. I had prepared a detailed description of how difficult things would be in Northern Ireland, but I shall forgo it and refer your Lordships to that given by the noble Viscount, Lord Trenchard. If he and I both think it will be total chaos, there is a fair chance that it will be.

The position of the HSE and its ability to regulate the chemicals market in this country is clear. It will not have the firepower it needs to deliver the safety it needs and support to industry it needs or do what this country needs to have a safe, functioning chemicals industry. This is a mess of the Government's making. Your Lordships have tried to sort this mess out in the past, and there have been improvements. Whether or not we vote for this regret amendment, the Government have to go back and think again. The passengers in the aircraft are anxious, but that anxiety may not be

irrational; it may be a rational response to a real problem that will create great difficulty for one of our most important industries and for a product that affects and touches everybody, every day and all the time in the United Kingdom.

4.19 pm

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, not surprisingly, REACH never fails to generate high levels of interest in the House, and today is no exception. We have had a wide range of contributions. A number of questions have been asked, and I will do my best to answer as many as I can.

First, I turn to the Motion in the name of the noble Baroness, Lady Hayman of Ullock. The Motion indicates that it is based on the report of the Secondary Legislation Scrutiny Committee and, like that report, it is concerned more with the wider issues of chemicals regulation than with the SI in front of the House today. As such, I suggest that its regrets are somewhat misdirected.

The Motion regrets that these regulations fail to provide an analysis of the cost of the UK REACH regime, but this SI is not setting up the UK REACH regime; that was done by the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019, which the House considered last year. As I said in my opening speech, we published an impact assessment alongside those regulations. All that the present SI is doing is making amendments to provide for the Northern Ireland protocol to change some of the transitional provisions to extend deadlines for the date of submission and update some cross-references. We have not provided an analysis of the cost of UK REACH alongside this SI because it would not reflect what the SI does.

The Motion also regrets that this SI introduces additional costs and burdens for UK businesses; the noble Lords, Lord Fox and Lord Cameron, and others also raised this concern. That is the opposite of what the SI does. It reduces costs and burdens. Extending the transitional deadlines will enable businesses to spread the administrative load over seven years instead of two. They can prioritise the highest-volume and highest-risk chemicals, and they will have time to agree the best terms for the continued sharing of the data on chemicals that is necessary for both UK and EU REACH.

The provisions for the Northern Ireland protocol also put in place the minimum level of burdens that are compatible with the protection of human health and the environment. Northern Irish producers will be able to access the GB market on the basis of a light-touch notification without having to follow it up with full registration.

The Motion also regrets that the SI creates unacceptable risks around the availability of chemicals safety data. The noble Baroness expressed concern about the cost to businesses and called on the Government to reduce them. That is what we are doing in this SI, but then, when we do reduce costs, she says we are creating unacceptable risks instead. The noble Baroness cannot have it both ways.

I agree with her and with the noble Baroness, Lady Donaghy, my noble friend Lord Lucas, and the noble Lords, Lord Fox and Lord Teverson, that the Health and Safety Executive's ability to take on the tasks of the agency is essential to the success of UK REACH. The HSE is very well-placed to be a success in that role, as we have stressed many times. Remember that the HSE and the Environment Agency have played a very active part in EU REACH over the years, taking on some of the most complex substance dossiers.

The HSE has mapped the regulatory drivers and the likely workload, and so it understands what its priority tasks will be. For example, it will be handling applications for authorisations, and is aware that it may receive upwards of 10 applications in the first year. On the back of this, it has focused on outlining the process for authorisations and will have recruited key staff, such as occupational hygienists, to work on the authorisation process. It is also identifying independent scientific experts who will be involved in the development of opinions on authorisation applications.

There was the issue of so-called in-flight authorisations —that is, applications that the EU will not have finished dealing with by the end of the transition period. We dealt with that in regulations last year. There was the issue of the potential costs to businesses. That is why we are negotiating for an approach to data sharing with the EU and why the SI before the House today extends the deadline for data submission. There were concerns about the duplication of animal testing. That is why the last-resort principle is enshrined as a protective provision in the Environment Bill. I could go on.

I would like to try to get through as many of the questions that were asked in the debate as possible. A number of noble Lords, including notably my noble friend Lady Altmann, the noble Baroness, Lady Donaghy, and the noble Lord, Lord Teverson, raised the issue of standards and levels of protection after the end of the transition period, a point also raised forcefully by the noble Lord, Lord Rooker. It will remain a core purpose of REACH to ensure a high level of protection of human health and the environment. The duties and obligations on industry are carried into UK REACH unchanged. This includes the principle that it is for businesses to ensure that they manufacture, place on the market and use chemicals that do not adversely affect human health and the environment.

REACH will also continue to be underpinned by the precautionary principle. We have included provision in the Environment Bill to be able to amend REACH to prevent it from being frozen in time. In answer to both the noble Viscount, Lord Hanworth, and the noble Lord, Lord Hunt, we have deliberately included a range of safeguards. Any amendment to REACH must remain consistent with its aims and principles. We have listed over 20 protective provisions, such as those overarching aims and principles that cannot be changed. I hope that is an indication of our commitment.

My noble friend Lord Lucas referred to alternatives to animal testing, particularly the scope for using computer modelling to predict chemical hazards such as toxicity. The noble Baronesses, Lady Hayman and Lady Donaghy, made the same point. I strongly agree with them about the opportunity here. We do not support animal testing unless it is unavoidable. A range of alternative approaches is available, including computer-based quantitative structure activity relationship

[Lord Goldsmith of Richmond Park]
models, or QSARs. Under EU REACH, the UK was the member state that consistently pushed for the most rigorous application of the last-resort principle by industry and regulators. Under UK REACH, we will no longer be held back by more reluctant players and will be well-placed to encourage the appropriate use of alternative methods of assessing hazard.

My noble friend also spoke about various products such as ammonium sulfamate, asulum and glyphosate. I should note that, as herbicides, these are regulated under separate plant-protection product legislation rather than REACH. From next year we will be taking our own independent decisions in Great Britain on which pesticides can be used, and of course I hope we can move continuously towards reducing our use of such chemicals.

My noble friend Lord Trenchard spoke about the possibility of divergence from EU REACH and was in favour of it, unlike other noble Lords in this debate today. REACH is frequently seen as a gold standard and we have no intention of diverging from the EU just for the sake of it. Equally, we should not allow UK REACH to become frozen. That is why we have made provision in the Environment Bill to enable us to amend it.

There may be good reasons for taking a different approach on different substances to reflect our circumstances here, but that does not mean reducing standards or levels of protection. For example, the UK has been at the forefront of opposing animal tests where alternatives exist. We have already discussed the last-resort principle, and we could be far more rigorous in applying that principle in future. Another example concerns Poland's proposal to the EU to ban the use of methanol in windscreen-washing fluids because of its abuse by Polish alcoholics. That may be sensible for Poland, but it is not something that applies in this country. We can make sure that UK REACH remains up to date and operates in an effective and efficient manner that works for us, but we can do so in a way that is flexible.

The noble Lord, Lord Cameron, argued that we should try to remain as aligned as possible with EU REACH, taking a somewhat different position. As I said, we have no intention of diverting for the sake of it but there may be circumstances where it makes sense for the United Kingdom. Under UK REACH, companies will still need to know about the properties, hazards and potential risks of the chemicals that they manufacture and place on the market. This means that industry will not have to develop different sets of data for use with UK REACH and EU REACH.

The noble Lord, Lord Fox, raised a number of issues that I have already addressed in response to the noble Baroness, Lady Hayman, and others. On costs, an issue also raised by the noble Baroness, Lady Donaghy, the main cost for businesses is in accessing the data that they need to support their registrations, but there is considerable uncertainty about what the costs may be in practice. The Chemical Industries Association and Cefic, the EU organisation representing chemicals manufacturers, have jointly recommended that consortia should restrict charges to administration. One of the purposes of the changes in this SI is to provide time for industry to reach sensible agreements around data and cost sharing.

With regard to the need for data, UK REACH maintains the core principle of "no data, no market". That principle is necessary; it is the means by which the regulator can check that companies are properly meeting their duty to ensure the safe management of chemicals. It also provides assurance to the public that businesses understand the hazards and risks of the chemicals they are using and know how to manage them.

The noble Lord also spoke about the HSE's preparedness, a point echoed by many noble Lords, including the noble Lord, Lord Teverson. I am confident that the HSE is well-placed and equipped to carry out its role as the agency under UK REACH. The Environment Agency is equally well-placed to assist HSE by providing expert advice on environmental matters. Defra continues to provide additional resources to the Health and Safety Executive and the Environment Agency. The HSE is currently recruiting, in total, 130 extra staff to cover the transition to the UK system across all the chemicals regimes that it operates, including scientists and, as I said earlier, occupational hygienists. Forty of these extra staff are being recruited specifically for REACH. The Environment Agency has also increased its resource, with an additional recruitment plan for early 2021. My noble friend Lady McIntosh also asked about the HSE's ability to cope. As I say, Defra continues to provide additional resources to the HSE and the Environment Agency, which are, as I have explained, busy frantically recruiting.

The noble Lord, Lord Whitty, asked a number of questions, many of which I have already addressed. He asked for an update on negotiations and their implications for the discussion that we are having today. I am afraid I am not in a position to do that; I can only apologise. I can tell him that the enforcement function in Northern Ireland is the HSE Northern Ireland.

Putting aside the wider issues that have—quite legitimately—been such a dominant feature of the debate, I must however return to the SI in front of the House. As I said earlier, it is simple but necessary. Without it, the UK would not fulfil its obligations under the Northern Ireland protocol. We would also not fulfil the commitment that we made to the House in March 2019 to keep the data deadlines under review and then to take further steps as appropriate. I commend the SI to the House.

4.30 pm

Baroness Hayman of Ullock (Lab): My Lords, I tabled my amendment today so that this House could demonstrate to the Government the very real and serious concerns about the proposed REACH regulations and the failure of the Government, so far, to act and listen. I thank noble Lords for their support. It has been an interesting debate and I have been pleased to hear from many Members, including the noble Lord, Lord Teverson, for his expertise on the whole matter and the noble Lord, Lord Cameron of Dillington, on how we are leaving the best system in the world and the huge costs that this will create.

My noble friends Lady Donaghy and Lord Hunt of Kings Heath talked about the problems of the HSE, but also their support for it. Nothing I said was intended to criticise the HSE, rather to demonstrate how it needs to be more prepared for its new role. The noble Baroness, Lady Altmann, talked about how the changes being made bringing unnecessary risk without adding value. My noble friend Lord Hanworth and the noble Lord, Lord Fox, clearly explained, in some detail, why the domestic system is so difficult. My noble friend Lord Whitty mentioned the need for associate membership of the European Chemicals Agency; it is deeply disappointing that this has not happened.

The Minister really has not answered the many concerns raised. This Administration have their head in the sand. However, I beg leave to withdraw my amendment today, as this is but a small part of the larger regulations. There will be opportunities to consider the matter further during debate on the Environment Bill.

Amendment to the Motion withdrawn.

Motion agreed.

4.32 pm

Sitting suspended.

High Speed Rail (West Midlands–Crewe) Bill

Report (2nd Day)

4.38 pm

The Deputy Speaker (Baroness Fookes) (Con): My Lords, the Hybrid Sitting of the House will now resume. Some Members are here in the Chamber and others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

I will call Members to speak in the order listed in the annexe to today's list. Interventions during speeches or "before the noble Lord sits down" are not permitted and uncalled speakers will not be heard. Other than the mover of an amendment or the Minister, Members may speak only once in each group. Short questions of elucidation after the Minister's response are permitted but discouraged. A Member wishing to ask such a question, including Members in the Chamber, must email the clerk. The groups are binding, and it will not be possible to degroup an amendment for separate debate. A Member intending to press an amendment already debated to a Division should have given notice in the debate. Leave should be given to withdraw amendments. When putting the Question, I will collect voices in the Chamber only. If a Member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group. We will now begin.

Amendment 9

Moved by ***Lord Randall of Uxbridge***

9: After Clause 58, insert the following new Clause—

"Security provision and public safety during the scheduled works

(1) The nominated undertaker is responsible for maintaining the security of the scheduled works, including public safety.

(2) The Secretary of State must publish quarterly reports on the security provision and public safety in relation to the scheduled works throughout the period in which those works take place."

Member's explanatory statement

The purpose of this amendment is to probe the security and public safety provision of the works.

Lord Randall of Uxbridge (Con) [V]: My Lords, this is my last contribution at this stage of the Bill. Although I had originally intended to take part in the debate on the next group, there are more than enough committed Members of the House to speak to those amendments, so I will listen and cheer them on.

I will take this opportunity to thank my noble friend the Minister most sincerely for her patience in dealing with my concerns and for writing to me with various points of clarification.

I will not detain your Lordships for long on this amendment. Perhaps I should say at the outset that I do not propose to divide the House; rather, this is another of my attempts to draw attention to how HS2 Ltd should look at how it conducts itself to avoid the mistakes that have been made previously, and indeed are still being made. Those mistakes have seriously alienated many local residents along the line and I would not want them to be repeated on the phase of the project that is the subject of this Bill. My proposed new clause would clarify who was responsible for security and public safety. More than that, it would make the Secretary of State publish quarterly reports on the security provision and public safety around the scheduled works.

I do not condone unlawful protests, and I often think that such campaigns do more harm than good, although I admit that I did once say that I would stand in the path of the bulldozers if a third Heathrow runway was built—a line repeated by my successor in the Uxbridge constituency with, I believe, more controversy than I ever engendered. However, in the scheme of things, I am always more of a suffragist than a suffragette.

However, lawful protest is something else. Because of several incidents that have occurred, I would want to ensure that, however frustrating such protests might be for those doing the construction, legal protests were allowed and dealt with appropriately. Noble Lords might have seen recent reports, and indeed video footage, of a security guard who seemed to place his knee on the neck of one such protester. I do not know the full circumstances of the incident, but I do not need to emphasise the sensitivity of such action in these days. My honourable friend Michael Fabricant, the MP for Lichfield, has, rightly, raised this with a Minister in the other place.

There have been a number of other examples of excessive use of force on protesters, which, in my layman's eyes, seem very close to assault. I believe that training is given but I am not sure that it is always observed. I am also rather concerned that one or two individuals, given a uniform of sorts, feel that they are above the law.

[Lord Randall of Uxbridge]

Another area of concern that I hope will not be repeated in this phase of HS2—it should not be, as it relates to the pandemic—is where HS2 construction workers at the height of the lockdown were entering local food shops and other places along the line of transport while completely ignoring social distancing.

There is also of course a need to ensure that the boundaries of the project are secure, so that not only protesters but inquisitive young people cannot enter the site. I recognise that the issue of public safety goes both ways. I therefore feel that HS2 must be properly accountable both in theory and, more importantly, in practice. I ask my noble friend—who, as I said, has been very patient in dealing with this particular Grumpy, as opposed to Swampy—where the public can go to register their concerns, as I am afraid that our confidence in HS2 is at rock bottom. I hope that this will be rectified without the need for my new clause.

Baroness Randerson (LD): My Lords, safety levels in industry in general in the UK are very high. These days, we take rail safety more or less for granted, but that was not the case two decades or so ago. Last year, we had a harsh reminder that we should not take it for granted, with the tragic accident in south Wales.

The noble Lord is right to raise this issue. I put my name down to speak because I was curious to see whether it was a general concern about safety or a specific issue that sparked the amendment. It is clear from what he has said today that his interest centres on the behaviour of employees towards residents and protesters.

4.45 pm

Looking at the issue from a different direction, HS2 is a giant linear building site and, as such, is very difficult to supervise, especially outside working hours. It is a building site that abuts literally thousands of residential sites. Therefore, in some ways, I am surprised that we have not spent more time talking about this issue in these debates, but we should certainly be interested in ensuring that, through these proposed reports or any other mechanism that the Minister is able to propose today, regular assurances are given, via us, to local residents that the highest standards are being taken and used and used on a regular basis within HS2 sites. Along with high standards of safety come high levels of convenience for local people. It is easy for safe and unsafe practices to spill over into inconvenience to local people, and inconvenience then spills on towards danger. Therefore, the noble Lord is right to raise this issue and I shall listen to the Minister's answer with great interest.

Lord Tunnicliffe (Lab) [V]: My Lords, I thank the noble Lord for raising these issues. I take his point about the safety of the public and protesters, and I hope that he will get appropriate assurances from the Minister.

The issue is one of corporate culture, particularly on safety. With the permission of the House, I will take this as an opportunity to say a word or two about safety. The noble Baroness, Lady Randerson, was quite right to say that HS2 is a linear building site. She referred to safety standards two or three decades ago. Those were decades when I was responsible for parts of railway safety. I became managing director of London Underground nine months after we had killed 31 people at King's Cross. That made safety my highest priority for the next 12 years. Essentially, I discovered that safety comes from personal leadership by the people at the top.

Subsequently, I was chairman of the Rail Safety and Standards Board for five years. During the early period of my responsibilities, the Channel Tunnel was completed. That cost 10 lives. We were about to start building the Jubilee Line extension and, pro rata, we would have expected to kill some people, but we decided that that was unacceptable. We set as a major objective of the project that we should kill nobody—and I am delighted to say that we succeeded.

It was a £3.5 billion project, built in extremely difficult conditions under some of the most sensitive, complex and little-understood parts of central London. Leadership was key to conducting the programme to the highest safety standards, which were not traditional in the construction industry at that point. We achieved that by involving the very top people among the contractors. As part of their contracting process, they had to turn up with their managing directors and understand, and commit to, high standards of safety. A key feature of our whole safety philosophy was that London Underground always retained principal responsibility for safety, whoever was doing the work. You cannot subcontract responsibility: you might be able to join other people in that responsibility but you cannot subcontract it.

In preparing for this debate, I looked at the HS2 health and safety policy. It is fine as far as it goes, but I do not know whether there is a real safety culture. Can the noble Baroness take back to the Minister in charge of HS2 my strong recommendation that he makes it his top priority to assure himself that a health and safety culture exists in HS2? I freely offer my help and advice in this task.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Vere of Norbiton) (Con): My Lords, I thank my noble friend Lord Randall for tabling the amendment on this very important topic. The health, safety and well-being of the communities along the route of the new railway, of HS2 staff and of protestors is a primary concern for HS2 Ltd, which has a "safe at heart" approach, putting health, safety and well-being at the heart of the project. That ethos is carried through those employed by HS2 Ltd and those in its supply chain. This goes beyond the worksite itself. People must be safe when they are working on large, complex HS2 construction sites; they must be safe when they live, work or travel near the worksites; and they must be safe when travelling on roads affected by HS2 works and traffic. That is why HS2 Ltd already reports on health and safety in its annual report and accounts, using standard industry metrics. The overall health and safety index score increased throughout the 2019-20 financial year.

We recognise that, given the nature of the works on HS2 and the profile of the project, it is necessary for security personnel to be a part of the project. They

ensure the health and safety of those who work on HS2 and those who live and work near it. Those security personnel are held to strict standards. It is a contractual requirement that all security guards working on the HS2 project must hold a licence issued by the Security Industry Authority. Additionally, the companies that they work for must be part of the Security Industry Authority's voluntary approved contractor scheme, which acts as a quality assurance scheme for the private security industry.

HS2 Ltd has been very clear on the values that it expects to be followed by all staff in its supply chain, and on the behaviours of those in public-facing roles, such as security guards. Actions or behaviours that fall short of these expectations are dealt with firmly but fairly after a thorough investigation. My noble friend Lord Randall asked how members of the public can bring forward concerns. HS2 Ltd operates a freephone community helpline, 24 hours a day and 365 days a year, where anyone can register their concerns. HS2 Ltd has committed to respond to questions and complaints quickly and efficiently, with an acknowledgement within two working days and a response within a maximum of 20 working days if the query cannot be answered straightaway.

Of course, there are also those determined to obstruct the works, with the aim of halting the progress of a project authorised by Parliament. We recognise that members of the public have a right to protest peacefully and in a lawful manner, but it is entirely proper that once Parliament has authorised a scheme, contractors should be allowed to get on with building it. Where any protestors refuse to leave land needed for construction and must be removed, HS2 Ltd works with specialist security staff, the police, the fire service and the ambulance service to do this safely.

Health and safety on worksites, and in the workforce, is of vital importance, especially when it comes to Covid-19. Since the beginning of the pandemic, the HS2 Ltd supply chain has stipulated to all staff and subcontractors the requirement to comply with government and industry guidelines. Where works cannot be delivered in accordance with Public Health England and industry guidelines, sites have temporarily closed to ensure the safety of staff and local communities. Nevertheless, some staff may have to be present to make the safety assessments and to ensure that the sites remain safe and secure.

I was very interested to hear the experience of the noble Lord, Lord Tunnicliffe, and certainly I will take his suggestions back to my colleague Andrew Stephenson MP, the Minister for HS2. It was heartwarming to hear of such a large project being constructed so successfully. The amendment is welcome. It is an opportunity to raise these issues. HS2 Ltd must be held to account by the high standards that it has set. I hope that my noble friend is reassured by what I have said, is less Swampy or Grumpy, is happy, and on that basis is able to withdraw his amendment.

Lord Randall of Uxbridge (Con) [V]: My Lords, I thank noble Lords who have taken part in this short debate, particularly the noble Baroness, Lady Randerson, and the noble Lord, Lord Tunnicliffe. I echo what the Minister said about the opportunity to have such expertise from him, which we should be making use of on this project. I say to the noble Baroness, Lady Randerson, that a lot of these sites are round-the-clock. There are a lot of issues around light pollution and so forth, but it is very difficult to keep an eye on all aspects of it.

I was struck by the noble Lord saying that the leadership at the top must take responsibility and that you cannot subcontract responsibility. Although, as always, I am charmed by the Minister and her warm words, I am not entirely convinced that the practice matches the theory around some of the security personnel. They do a difficult job in difficult circumstances, but one or two—not all of them—are overstepping the mark. It happens in every walk of life, and they must put up with a lot from some of the protestors, especially those protesting illegally. It is not an easy job.

Regarding the Minister's comments about Covid-19, I hope that this will not be an issue for phase 2A, which we are discussing, but I must say again that whatever security was instructed to do, the practice was not as specified. There were numerous incidents where all the things that we were trying to do at the height of the first lockdown—social distancing et cetera —were not being observed. However, I have aired my worries. It is true that we do not so much look at the safety aspect of this but take it for granted, which we should never do. With that, I beg leave to withdraw my amendment.

Amendment 9 withdrawn.

The Deputy Speaker (Baroness Fookes) (Con): My Lords, we now come to the group beginning with Amendment 10. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this or the other amendment in this group to a Division should make that clear in debate.

Amendment 10

Moved by ***Baroness Jones of Moulsecoomb***

10: After Clause 58, insert the following new Clause—

"Impact on ancient woodland

(1) The Secretary of State must lay before Parliament a report every six months throughout the period in which the scheduled works take place, detailing the impact on ancient woodlands.

(2) This report must include—

(a) direct impacts including, but not Ltd to, the loss of ancient and veteran trees and felling of trees designated as ancient woodland;

(b) a comparison of actual works carried out on ancient woodlands, including those covered by additional planning permissions, and works detailed within the Act; and

(c) indirect impacts including, but not Ltd to, noise, dust, vibrations and hydrological or ancient woodland soil contamination.

(3) Upon publication of each report a four-week period is instigated for interested parties to respond and make recommendations for improvements which must be addressed in the subsequent report."

Member's explanatory statement

[Baroness Jones of Moulsecoomb]

This amendment seeks to ensure that the Secretary of State provides regular reports to Parliament on the effect of the HS2 Project on ancient woodlands.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I find myself in the slightly unusual position of introducing an amendment that I did not have anything to do with. I signed up to support the noble Baroness, Lady Young, on this, and about 10 minutes later she told me that she was withdrawing her name because she had been made an offer that she could not refuse from the Minister. I am carrying on with the amendment because it is an exceptionally good one. The Minister has already written to everybody saying that the Government will accept Amendment 13, but it is worth describing the difference between the two amendments. Amendment 10 is a pretty good amendment and something to work towards, even if it is not accepted today.

There are three main differences between the two amendments: first, Amendment 10 would require a report every six months, while in Amendment 13, the reporting would be annual; secondly, "indirect impacts" are explicitly mentioned in Amendment 10, while there is no mention of them in Amendment 13; thirdly, Amendment 10 would require a report to Parliament by the Secretary of State, with a four-week consultation period, while Amendment 13 would require no consultation at all. Noble Lords can see that these are quite big differences, although the amendments are along the same lines.

5 pm

I will describe them a bit more. On six-monthly reporting versus annual reporting, six-monthly reporting would obviously allow closer observation of what exactly is going on. You could follow issues as they arise, as opposed to trying to mop them up, say, a year later. It also allows lessons to be learned, which is not always easy, and would allow those lessons to be learned quickly and before the same season of works starts the following year. That would be quite a big bonus. Also, the report would be to Parliament itself.

HS2 Ltd does not formally recognise the indirect impacts of the development on ancient woodland. I had to find out exactly what "indirect impacts" means. It is the sort of the thing that would be near any construction site, such as dust, debris, light, noise and that sort of thing—the sort of thing that nobody, whether human, animal or insect, likes near them. In fact, it has quite an impact on ancient woodland. It disturbs bats, nesting birds and all sorts of creatures that like the dark and thrive in it.

The ancient tree strategies contain lists of the woods directly affected, but no such list exists for the woods that HS2 considers indirectly affected. The Government's forestry policy document, *Keepers of Time*, explicitly recognises the need for indirect effects to be identified. For HS2 not to do this is very concerning.

Furthermore, correspondence between HS2 and Natural England in 2014 clearly showed that Natural England considered that HS2 Ltd had failed to assess adequately the indirect impact of the original scheme on ancient woodland. The Woodland Trust has kept a list of the woods that it considers indirectly affected; it gave this information to HS2 Ltd in every consultation response that it sent. It allows comparison between what is happening on the ground and what is being proposed by HS2.

Current analysis shows that 10 ancient woodlands will be directly affected by the phase 2a works and that a further seven ancient woodlands will be indirectly affected; in phase 1, there were about 29 in that category. Each of these woods has been assessed on a case-by-case basis and not by drawing an arbitrary line on a map, as HS2 Ltd has done. Sufficient clarity on this would enable further assessment of whether the project is proceeding as planned or is in fact more environmentally damaging than HS2 Ltd admits.

By not publicly accepting that some ancient woodlands are indirectly affected, it is impossible to have an open conversation with HS2 Ltd about these woods and what measures it could put in place to ameliorate, minimise or eliminate the damage that it might be doing. Amendment 10 would enable that conversation to happen and would clearly demonstrate the wider impact of this scheme on both the natural environment and, potentially, humans.

Finally, after the report to Parliament, a four-week consultation period would enable any new and troubling developments to be given an airing so that they could be addressed and reported on in further reports. It would also provide an official mechanism for the centralised collection of public information about what the works look like on the ground compared to what was written in the various environmental statements. At present, this information is gathered in an ad hoc fashion, making it difficult to obtain a clear and accurate picture.

Overall, Amendment 10 is stricter, clearer and—I think—more likely to be accepted by the general public, who do actually worry about bats, nesting birds and insects. And they do worry about the impact dust, debris and general construction mess has on their immediate environment and on ancient woodlands. I beg to move.

Baroness Young of Old Scone (Lab) [V]: My Lords, I will speak on both Amendments 10, in the name of the noble Baroness, Lady Jones of Moulsecoomb, and 13 in my name. They both reflect on the need for better reporting from the HS2 project on its impact on ancient woodlands. I give my apologies to the noble Baroness, Lady Jones of Moulsecoomb, for leaving her holding the baby of her amendment, but she has done a grand job of that.

On my Amendment 13, an annual report on ancient woodland impacts, published by the HS2 undertaker, would enable Parliament and interested parties to see clearly the actual impact on ancient woodlands, and it would allow comparisons with the estimations of ancient woodland damage that had been indicated by the undertaker at the time of the publication of the Bill or in any additional planning applications. It has frequently been difficult to extract such information from the undertaker, and what happens on the ground is sometimes very different from what was indicated at the outset. The report would enable learning to take place and be

recorded. That would help reduce the damage to ancient woodlands across successive works. Also, it has the value that it covers all phases of HS2.

This amendment also provides for the Secretary of State to be able to require such other information as he may specify. I urge the Minister to explain how such reporting would operate and what requirements would be laid upon the undertaker to strengthen that reporting duty as outlined in Amendment 13. The noble Baroness, Lady Jones, has already done a good job on outlining what improvements need to be made, and I am asking for those assurances to be given by the Minister to ensure that the more modest amendment I am putting forward would, in fact, deliver the same impact as the original one.

I want to seek assurances from the Minister on four things. Firstly, I seek that the reports will be provided to the HS2 ecology review group for consideration so it can properly assess their findings, since it is the expert group supporting this work. Secondly, I seek that the reports would, as the noble Baroness, Lady Jones, has said, consider both direct and indirect impacts, covering noise, dust, vibration, hydrological impacts and soil contamination. These can have a major impact on the biodiversity of ancient woodlands and the viability of ancient woods. Thirdly, I seek that the reports would be specifically required to outline how variations in delivery are different from any original published intentions. Fourthly, I want to seek assurances that the Government will respond formally to issues raised in each report and indicate what changes to future practice would be required from the undertaker. Several of these assurances are laid out in Amendment 10 and have been well put by the noble Baroness, Lady Jones.

I do intend to move my Amendment 13 when it is called in its place, but, ideally, the Minister will accept my amendment as she has indicated today, by email, that she will. I hope she can also give the further assurances I have just sought, because that would make the reporting duty meet the requirements more effectively, as well as the requirements the noble Baroness, Lady Jones, and I have sought.

I have observed that over the past 18 months the Minister has been on a kind of journey towards greater understanding of ancient woodland. Indeed, I detect almost a growing feeling on her part for ancient woodland and its importance. I am confident that we will pervert her yet. However, for the moment, I thank her and her team, and the HS2 Minister, Andrew Stephenson, for rolling up their sleeves on this particular issue. I hope that she will accept my amendment and give me the assurances that I am seeking.

Lord Haselhurst (Con) [V]: My Lords, I have to say that I was thinking more of the amendment from the noble Baroness, Lady Jones, than the softer one, if I may say that—not in any derogatory sense—tabled by the noble Baroness, Lady Young. I am entirely in favour of trees and would not want anything that I say to leave your Lordships to think otherwise.

Wanton destruction of ancient woodland or, for that matter, indirect damage to it is a deplorable prospect. However, ancient trees and forests, by definition, have grown without any expectation that they would find themselves in the way of such things as road or rail and ought not to be a permanent block on modern need. We should respect antiquity but not become prisoners of the past. It is inevitable that a high-speed railway needs to be laid straight, which makes it very difficult to plan a course for it that avoids unfortunate clashes. It is therefore a matter of trying to strike the right balance between modern and future needs and what has been gifted to us from the past.

My impression of HS2 is derived largely from close sight of its representatives during the proceedings of the Select Committee. I certainly did not find them to be unaccommodating of many of the arguments put forward in criticism, or qualified criticism, of the project. However, HS2 has to be warned—I hope that it has learnt something from what it came up against during phase 1—and watched over.

HS2 has been reasonably generous regarding the number of trees that it is prepared to plant to counter-balance those that may be lost. As regards the concerns about the indirect effect on trees, as described, expert opinion varies. Some of those trees and the wildlife that frequents them are more resilient than perhaps everyone would believe. It is possible to see this argument against the background that we have become an increasingly tree-loving nation. The Government have provided encouragingly large funds for the spread of trees throughout the country. Newspaper campaigns have been run to encourage everyone, particularly young people at school, to have regard for this aspect of the environment. Even Network Rail has a programme of tree planting, although it may well be closer to urban areas—nothing wrong with that—than going through rural Staffordshire or rural Cheshire. So, I think we can be encouraged by the fact that it is not going to be an easy ride for HS2 and its contractors simply to do what they want: the public are watching them, as, indeed, Parliament should.

5.15 pm

We do not want to be at the level I thought of when reading the amendment in the name of the noble Baroness, Lady Jones, where we could risk, by frequency of inspection and reporting, having bands of inspectors lurking behind every tree. Yes, there has to be continuing oversight by Parliament, and not just by annual review. I suspect that Members in both Houses are going to ask questions and have short debates, including adjournment debates, and pepper the Order Paper with queries if they are aware of matters going wrong. My noble friend Lord Randall has demonstrated that all eyes, and there are many eyes, are peering in the direction of what is going on and whether those in charge of HS2 are conducting themselves in a proper manner.

I thought six-monthly reports was overdoing it; I am prepared to be accommodating towards annual reports, which will be a focus. In fact, there needs to be more frequent vigilance and I am sure that noble Lords and honourable Members of the House of Commons will continue to provide it.

Lord Bradshaw (LD) [V]: My Lords, as with the last amendment, when the noble Lord, Lord Tunnicliffe, spoke, I shall speak from experience. I was involved in all three stages of the route from London to the

[Lord Bradshaw]
Channel Tunnel, which subsequently became HS1. We were subject during that time to a ferocious barrage of quite unpleasant attack. A mild phrase, "the rape of the garden of England", was used, but many less pleasant things were said, and threats of violence were made to the people constructing it.

I make this point because later, much later, I became acquainted with a Labour MP who represented a constituency in Kent adjacent to HS1, and I asked him "How many complaints do you get about noise, visual intrusion and the like from HS1?", all of which were made great play of during the inquiries. He looked at me a bit quizzically and said, "Well, I don't get any, but I get sackfuls of mail about the noise, the dirt and the pollution from the M20." I think we have to bear in mind that these construction sites, as the noble Lord, Lord Haselhurst, said, have to be unpleasant while work is happening but do not have to be unpleasant afterwards. The provisions that have been made by HS2 in terms of planting trees, accommodating various animals and other things go a long way to make up for the environmental damage that it is doing. I am quite sure that the HS2 railway, when it is built, will be a quiet and efficient railway and a much better neighbour than many people find who are have motorways and new roads built close to them.

Lord Cormack (Con): My Lords, I sincerely hope that the noble Lord, Lord Bradshaw, is right. I would hate to see aggressive or arrogant behaviour on the part of anybody.

I pay tribute to three noble Baronesses. The noble Baroness, Lady Jones of Moulsecoomb, has a short fuse, but a wonderful way of exciting our affection and admiration for her campaigning skills. She has total belief in what she says, even when she is wrong. I really do congratulate her on the way she has promoted the cause of ancient woodlands, done with a burning sincerity and not a little good humour—because she is very good-humoured.

The noble Baroness, Lady Young of Old Scone, has as much knowledge on this subject as anyone I know. She tabled a more modest amendment. I have a certain preference for the first one, but hers was a sensible amendment.

Here is where I pay tribute to my noble friend on the Front Bench; it is very good to be able to do so in a wholly unreserved way. I was delighted when I received the email this afternoon telling me she had a good mind to accept the amendment. It is good to be able to support the Government unreservedly on anything at present. Therefore, I thank her very much indeed.

I want to add to what was said by my noble friend Lord Randall in moving Amendment 9. I do not want to talk about those in charge of security—rather, those who are higher up in HS2. There have been examples of very arrogant behaviour towards people whose homes were threatened. I know of a case of a public servant who gave unstintingly to his county and was badgered and bullied when it came to the compulsory purchase of his much-loved family home. I do not want to identify him by saying any more.

It is important that those in charge of driving this great project—and while it does not have my unreserved support, I do believe that it is a great project—display a degree of sensitivity. I am delighted we are putting this amendment in to the Bill, but it is up to those higher up in HS2 to ensure that they handle issues and people with a degree of understanding. It is for the Minister to keep a beady eye on them all the time. When people are effectively driven out of their homes, seeing the countryside they love and in which they have lived—in some cases for generations—despoiled, although it might be true what the noble Lord, Lord Bradshaw, has said, that when it is all over and done with, it will be quiet, or quieter than people fear, nevertheless something will have gone for ever. It is important those in charge of this project are conscious of the wider public responsibility. I hope the Minister will have a gentle word with them on that subject.

I warmly welcome what is being done this afternoon. Again, I am most grateful to the three noble Baronesses.

Lord Carrington (CB) [V]: My Lords, I declare my interests as a landowner, as set out in the register. I am also directly affected by HS2 south of Birmingham. I had not intended to speak on these amendments, but the groupings changed at some point, and my name seems to have been retained. Now, on further research, I think it worth making some basic observations.

HS2 claims that only 43 out of 52,000 ancient woodlands will be affected, and 80% of the 43 will remain intact. Therefore, we are talking about just 0.005% of ancient woodlands. We should also remember that, as we heard last week, some of these ancient woodlands are far from being ancient. I happen to own and manage such a designated wood. It was owned by the Forestry Commission, which felled and replanted it almost entirely with Corsican pine shortly after the last war. The wood failed: Corsican pine was the wrong tree to grow on heavy Oxford clay. I have replanted it with hardwood, and it is thriving, together with all the flora and fauna. I did not need a special report to do this—I just got on with it. HS2 will have a similar responsibility and opportunity.

My real comment is that although these amendments are well intentioned and harmless, they are unnecessary and a further bureaucratic exercise, something that most woodland owners and managers dread. The compilers and others involved in these suggested reports would be better occupied in actually managing these woodlands on the ground with planting, weeding, pruning and pest control. Erecting hides to help manage the barking deer population as well as removing squirrel dreys with poles and setting humane traps for this worst of pests would be a more constructive use of everyone's time.

Having said this, I would certainly not oppose Amendment 13 in the name of the noble Baroness, Lady Young of Old Scone, but I believe that Amendment 10 in the name of the noble Baroness, Lady Jones of Moulsecoomb, is a little over the top.

Baroness Randerson (LD): My Lords, I am pleased to follow on from the noble Lord, Lord Carrington, because he picked up on an issue that I raised in the previous debate on this. Ancient woodland does not

necessarily mean ancient trees—they are of variable quality. However, of course, they include a number of fine pieces of woodland that have rich ecosystems because they have been on that site for a very long time.

I am pleased that the Minister has indicated that she will accept Amendment 13. The previous debate was characterised by very vigorous discussion between Members of this House with a considerable knowledge of environmental issues. There was an obvious level of disagreement among the experts and, therefore, Amendment 13 enables this not to become the subject of the debate. One assumes that the reports concerned will follow on from expert advice.

I hope that these annual reports will not be yet another bureaucratic process but a mechanism to enable public scrutiny of how HS2 is performing in practice and to ensure that there is progress and improvement in standards of land and woodland management as the project progresses. This is a massive project and there is no excuse for getting anything other than the most expert advice on woodland issues. In financial terms, the cost of woodland replanting and improvement is very small indeed in comparison with the costs of the engineering aspects of the project.

I will repeat a question I have asked before and come back to a topic I have dealt with before. Our rich environments—areas of outstanding environmental importance—are not just limited to ancient woodlands: wetlands and meadows can be every bit as important in terms of environmental and ecological significance.

5.30 pm

I ask the Minister, given that the amendment that she has indicated that she will accept is a very gentle amendment and will hardly stretch either the Government or HS2 in terms of complying with it, whether she would consider extending the reports concerned to include other aspects of environmental significance, such as wetlands and meadows. If we look at subsection (2)(b) of the proposed new clause, we see that it says that the reports might include

"such other information as may be specified by the Secretary of State."

So I invite the Minister to consider whether those annual reports indicated as part of this amendment should be wider than just reports on woodland. They should be environmental reports in the general sense of that term, because, while the importance of the woodland is obviously significant, so are the other aspects of our very outstanding countryside.

Lord Rosser (Lab) [V]: My Lords, I do not intend to detain the House for long. I congratulate my noble friend Lady Young of Old Scone on achieving a positive result for her amendment on an issue that she has pursued with great tenacity and persuasiveness, not least during the passage of this Bill. I hope that the Government will also feel able to provide the assurances that my noble friend is seeking. It is very helpful that the Government are accepting the amendment in the name of my noble friend, with its requirement for the nominated undertaker to prepare and publish annual reports about the impact of the construction of each phase of High Speed 2 on ancient woodland. Hopefully, this will raise the profile of the actual adverse impact on ancient woodlands of the construction of HS2 and, by doing so, help achieve a better result as far as the protection of, or damage limitation to, such woodlands is concerned than would otherwise be the case.

Baroness Vere of Norbiton (Con): My Lords, there are two amendments in this group, the first in the name of the noble Baroness, Lady Jones, to which I cannot agree, and the second in the name of the noble Baroness, Lady Young of Old Scone, which, if she chooses to move it, I will be pleased to be able to support. Turning to the first amendment, this might at first glance appear to be very similar to the second amendment—indeed, some noble Lords have referred to it as being "soft" or "gentle". I would like to reassure noble Lords that Amendment 13 is not in any way less good. From my perspective, I would like to highlight the important differences, as did the noble Baroness, Lady Jones of Moulsecoomb. In putting my perspective on them, I hope that noble Lords will agree—and I hope that the noble Baroness, Lady Jones, in particular will agree—that their fears are unfounded, and that Amendment 13 is certainly a very good amendment indeed.

First, Amendment 10 calls for the frequency of reporting to be every six months, whereas Amendment 13 proposes that it be annually. I will explain a bit later why that is appropriate. Secondly, the amendment restricts the reporting required to only those works authorised in this Bill—phase 2a—where we believe, and I hope that the noble Baroness, Lady Young of Old Scone, believes as well, that all HS2 phases could be and should be included in this report.

Thirdly, in the amendment tabled by the noble Baroness, Lady Jones of Moulsecoomb, the report required is narrowed by the definitions of direct and indirect impacts. Again, I will go on to explain how that will be covered in the report that we propose, because we believe that we can go broader than that. Finally, there is a difference with regard to the requirement for a mini-consultation associated with each report.

I do not believe that these differences augment the amendment in the name of the noble Baroness, Lady Jones of Moulsecoomb; rather, they restrict it and place limitations on the value that more reporting on the impacts on ancient woodland could bring. On this basis, and given the knowledge that I am able to support Amendment 13, I hope that the noble Baroness, Lady Jones of Moulsecoomb, will withdraw her amendment.

Turning to Amendment 13, one of the aims of the HS2 project is always to try to reduce its impact on ancient woodland. As has been said before, some impact is inevitable. The environmental statement gives an assessment of the reasonable worst-case scenario. Although impacts on ancient woodland cannot be fully compensated, losses will be addressed through a range of measures, as I have outlined previously.

Through extensive engagement on phase 2a, HS2 Ltd has already found ways to protect some veteran trees which were previously expected to be lost. Furthermore, through the redesign of embankments in the Whitmore Wood area, HS2 Ltd has been able to commit to some reduction in impact on the ancient

[Baroness Vere of Norbiton]
woodland there. Wherever possible, the Government will continue to push HS2 Ltd to go further on this matter.

I am so grateful to the noble Baroness, Lady Young of Old Scone, for her engagement on this matter; she brings vast knowledge and experience. I recognise that her amendment may not go quite as far as she would ideally have liked, but I hope she will agree that the outcome is a significant step forward. Her amendment places a requirement on HS2 Ltd to publish reports annually on the impacts on ancient woodland across the whole of HS2, not only phase 2a. This has the benefit of committing to reporting on phase 1 of the project as well as phase 2a, and, of course, on future phases. The annual nature of reporting fits well within the life cycle of trees, as the works undertaken follow the seasonal pattern of trees, as required by other legislation. But just because the reporting is annual, it does not mean that the monitoring is annual, or that lessons learned are put in place on an annual cycle—it can be more frequent than that.

Furthermore, by not defining the term "impacts", HS2 Ltd will report on a wide range of issues relating to ancient woodlands, including those that could potentially be caused by non-compliance with the code of construction practice. The reporting will include measures undertaken relating to breaches of assurances for ancient woodland and lessons learned, should they occur—and, of course, we all hope that they do not.

The phase 2a draft code of construction practice sets out the management measures that HS2 Ltd will be required to follow during construction of the scheme. This includes measures designed to control and prevent the impacts on which noble Lords have raised specific concerns, including the protection of habitats such as ancient woodland, and the control of dust, water quality, noise, vibration and lighting. I believe that these are the sorts of indirect impacts sought by the noble Baroness, Lady Jones of Moulsecoomb.

But, of course, there is more. There are also specific measures designed to minimise adverse ecological effects, including: developing a programme of ecological surveys to be undertaken prior to and during construction, including on bats; the relocation and translocation of species, soil and plants; the reinstatement of any areas of temporary habitat loss; restoration and replacement planting, for example of trees, hedgerows, shrubs and grassland; and using by-products of construction to enhance mitigation provisions, for example using felled trees to provide dead-wood habitats. There is also a requirement to consult with Natural England, the Environment Agency, local wildlife trusts and with relevant planning authorities prior to and during construction.

By committing HS2 Ltd to report on non-compliance with the measures set out in the code of construction practice, we are ensuring that all these impacts are captured and are not limited to the narrower definition of impacts in the amendment proposed by the noble Baroness, Lady Jones of Moulsecoomb. Further, the reporting will include the variance between what ancient woodland the environmental statement has assessed will be lost or impacted by HS2 and what actually occurs. The environmental statement is a reasonable worst-case scenario; in effect, it is an educated estimate of the impact. I hope very much that reporting on the actual outcome in comparison to the baseline in the environmental statement will have a positive impact on helping future programmes and projects improve their assessments for their own environmental statements and reporting.

I will go further. I am pleased to commit HS2 Ltd to reporting on the volume of metres cubed of ancient woodland soils that have been translocated, and to reporting on the number of hectares of ancient woodland compensation and restoration that have been included in the detailed design of the scheme. I am also pleased to commit the company to reporting on the number of hectares of ancient woodland creation and restoration delivered through all HS2 funds that deliver woodland creation. The intention is to publish the ancient woodland impact reports in the annual environmental report. Ancient woodland mitigation and impacts are discussed in the ecology review group.

The noble Baroness, Lady Randerson, tried her luck in seeing whether we could go further on wetlands and meadows. Of course we recognise the importance of those environments so, if she is in agreement, I will write to her on the steps being taken to make sure that those impacts are also minimised.

I thank the noble Baroness, Lady Young of Old Scone, for Amendment 13, and for taking me on a journey. I am not quite at the same point as she is on it, but I am not quite where I used to be. I hope that she will move her amendment when the time comes, and it will give me great pleasure to support it.

Baroness Jones of Moulsecoomb (GP) [V]: My Lords, I thank all noble Lords who have taken part in the debate, which has been quite interesting for me as well. I reassure the noble Baroness, Lady Young of Old Scone, that I am absolutely thrilled to be left holding the baby. It is a beautiful baby and I am honoured to do so.

I found the contribution of the noble Lord, Lord Haselhurst, to be appalling. I was quite staggered to hear him say things like we must not be held prisoners of the past. Images came to mind of students pulling down statues of slave owners and I wonder if he supports those as well. It is absolutely fantastic if he does. He made comments about how the railway must be straight. It does if trains are going at 250 miles an hour, which is the planned speed for it. Of course, the railway will not do that at first—it will be 225 mph or something—but is still exponentially far less environmentally friendly at that sort of speed. Yes, it has to be a straight railway line because it cannot go around corners, which means that the line will go through a lot of extremely valuable land.

Both the noble Lord, Lord Haselhurst, and the noble Lord, Lord Bradshaw, talked about replacement trees. I congratulate them on wanting replacement trees, but there is also the fact that in the drought of summer 2018, tens of thousands of trees that HS2 Ltd had planted died. It said that it was cheaper to replace them than to water then, which means that 89,000 trees died and were replaced with, again, small trees.

What is needed as a replacement is large trees; if you have to keep replacing them, you will keep on getting small trees. I would argue that HS2 is not entirely reliable about planting its trees.

As usual, the noble Lord, Lord Cormack, was extremely kind to me, apart from the comment about my short fuse, which is sadly true. I am glad that he likes Amendment 10, which is a credit from him and I thank him for it. I congratulate the noble Lord, Lord Carrington, on planting hardwoods instead of pines. I am not sure that I liked his description of Amendment 10 as "well intentioned and harmless". I would like to think it is tough and radical. I also congratulate him on pronouncing my name correctly, which many Peers do not.

The noble Baroness, Lady Randerson, talked about the rich ecosystem that exists in ancient woods. That is the whole point: it is difficult, if not impossible, to replicate that when such biospheres are very precious. This is not just about preserving the past; it is about making sure that our whole environment stays healthy. Sometimes we do not know, until we have lost them, what the precious things we have do overall. I am also glad that she talked about wetlands and meadows, which of course are just as important. Had there been amendments concerning them, I would have supported them fully.

The noble Lord, Lord Rosser, congratulated the noble Baroness, Lady Young, on her incredibly important work on this. I thank the Minister. It was good that she talked about direct and indirect impacts. That was valuable, but I am not clear how the lessons learned will be dealt with by the Government and am not sure if the Minister is able to let us know. In the meantime, I beg leave to withdraw Amendment 10.

The Deputy Speaker (Lord Duncan of Springbank) (Con): Would the Minister care to respond at this point? She will do so later.

Amendment 10 withdrawn.

5.45 pm

Amendment 11 not moved.

The Deputy Speaker (Lord Duncan of Springbank) (Con): We come to the group consisting of Amendment 12. I remind noble Lords that Members, other than the mover and the Minister, may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in the debate.

Amendment 12

Moved by ***Lord Berkeley***

12: After Clause 58, insert the following new Clause—

"Non-disclosure agreements

(1) The nominated undertaker, or any subcontractors thereof, must not enter into any non-disclosure agreement with any party in connection with the scheduled works unless the assessor of non-disclosure agreements related to the scheduled works ("the assessor") has certified that it is in the public interest.

(2) The Comptroller and Auditor General must appoint a person to be the assessor.

(3) The assessor must be—

(a) independent, and

(b) a current or former high court judge, higher judge or Queen's Counsel.

(4) In this section, "independent" means independent of—

(a) Government,

(b) HS2 Ltd, and

(c) persons contracted or subcontracted to carry out the scheduled works.

(5) The assessor must undertake his or her work with a presumption in favour of transparency and public accountability in matters connected to the scheduled works.

(6) The assessor must review any non-disclosure agreement between the nominated undertaker, or any subcontractors thereof, and any party in connection with the scheduled works and in place before this section comes into force to certify whether it is or is not in the public interest.

(7) The assessor may not determine that a non-disclosure agreement is in the public interest for the purposes of subsection (1) or (6) except for the reason that it is justified because of exceptional commercial confidentiality.

(8) If the assessor certifies under subsection (6) that a non-disclosure agreement is not in the public interest that non-disclosure agreement immediately ceases to have effect.

(9) In this section, a "non-disclosure agreement" means any duty of confidentiality or other restriction on disclosure (however imposed)."

Member's explanatory statement

This amendment seeks to require HS2 to subject all proposed NDAs to independent scrutiny.

Lord Berkeley (Lab) [V]: My Lords, I am grateful for the opportunity to debate non-disclosure agreements again. I have tabled the same amendment that we debated in Committee to get a little more information from the Minister concerning some of her answers. I am grateful to her for the meetings that we have had and the answers that she has given. We have to remember that an NDA goes much wider than a particular project —HS2 or any railway.

It is worth pointing out that this amendment, proposing an independent assessor, is something which would be voluntary. She said that NDAs can be entered into voluntarily, but I understand from the way that HS2 has developed the process that if you want information, you have to sign an NDA. It is voluntary if you want the information. In Committee, the noble Baroness, Lady Randerson, pointed out that some local authorities like signing NDAs with other organisations, so that a small group or maybe even one person on the council can keep all the information to themselves and not inform their colleagues.

Another part of the Minister's answer in Committee was that:

"If an independent assessor were appointed to scrutinise such agreements"—

NDAs—

"they would be breaching the privacy of those agreements."

That is a circular argument. I am sure there would be a way of resolving it if both parties wanted to. My final comment is to question what she stated later:

"I am confident that the use of NDAs by HS2 is in the public interest."—[*Official Report*, 12/11/20; col. GC 528.]

I agree that some certainly are in the public interest. We would not want to have every detail of every contractor whose contracts are being negotiated, or

[LORD BERKELEY]
for them to be unable to have an NDA. Clearly that is confidential, but there are over 300 NDAs. HS2 Ltd is also quoted as signing an NDA with its own training body. If that cannot be kept confidential to the extent wanted, it is a bit sad.

I have taken a lot of useful evidence from a report by the former Construction Minister Nick Raynsford, who reviewed the process of NDAs. He concluded that they "undermine public trust" in major infrastructure projects and he criticised the

"widespread use of confidentiality agreements by the HS2 company"

and stated that they had a

"corrosive sense on the part of the public, that planning is no longer protecting their interests."

This issue cannot be resolved today, and I have no intention of dividing the House. Personally, I think that having an independent assessor to review all the HS2 NDAs, and, with the presumption of transparency and public accountability, to check whether they are in the public interest, would be a useful thing. I suspect that it would cost very little and would delay things very little once it got over the initial stages. I end by asking the Minister: what do all these companies have to hide? I emphasise that I do not suggest that there should be no NDAs but that there should be some means of limiting them to those which are for good commercial reasons rather than possibly to avoid embarrassment. I beg to move.

Baroness Kramer (LD) [V]: My Lords, I very much support the noble Lord, Lord Berkeley, in coming back on Report to the issue of confidentiality agreements, more commonly referred to as NDAs. Thanks to more recent news articles, we now know that HS2 has required 339 bodies to sign confidentiality agreements, and that is required because otherwise they get no access to the information necessary to discuss HS2-related issues. I therefore hope that HS2 is now beginning to take on board the concerns of the public and many Members of Parliament, local authorities and civic groups, that confidentiality agreements are hindering the transparency which should underpin such an important project. I say that as a strong supporter of the project; I always have considered HS2 vital to economic growth across the UK.

Of course there are issues of commercial sensitivity which need to be covered by confidentiality agreements, and this amendment both accepts that and provides for it. However, the presumption should always be for transparency, with confidentiality on an exception basis. I have some hope that the Minister, Andrew Stephenson, recognises the problem. Gagging of any kind cuts Ministers off from the information they need. The late and slow leak of information, especially related to cost, land purchases and compensation, has harmed HS2 and generated suspicion. We need to be very open in explaining that, in any project on this scale, projecting costs and timetables is very difficult and will always change. I personally believe that the biggest problem we have with HS2 is understating its benefits, since it will serve us for generations, and most of the longer-term benefits and regeneration benefits away from the stations are not included in the official analysis.

I thank the noble Baroness, Lady Vere, for organising a Zoom meeting between interested Lords, herself, Andrew Stephenson, who is the relevant Minister, DfT staff and HS2 to discuss the issue. I and others have received a follow-up letter. The letter does not exactly allay concerns, but it makes it clear that the risk assurance committee of HS2 will now review the matter and will, I hope, recognise the damage to trust and reputation that has been and is being caused. I have to say that HS2 is not alone. Organisations public and private across the globe are having to revise their notions of appropriate confidentiality. No entity any more can rest in the comfort zone of just releasing good news.

As we made clear in Committee, this amendment does not deal with the settlement agreements usually used to manage whistleblowers. The idea I have heard that settlement agreements do not act as gags is nonsense. Why does the Minister think that Doug Thornton—the best known whistleblower on HS2, who was HS2's director of land and property until he was dismissed when he raised concerns internally—did not sign one? He could have saved himself years of agony if he had.

HS2 has provided me and others with copies of its whistleblowing policy. On paper it looks fine, but pretty much every financial institution, private sector company, hospital, care home, prison, social services department or bank that has been caught in appalling behaviour has an exemplary tick-box whistleblowing system. The system just does not work in practice. That is why the whole issue of whistleblowing needs an overhaul. Following the Zoom call I talked about earlier, I realised that some parties do not understand why the noble Lord, Lord Berkeley, and I have spoken directly to only a few whistleblowers. It is because we are not prescribed persons. I suspect that the noble Baroness, Lady Vere, is not a prescribed person—the Minister, Andrew Stephenson MP, is a prescribed person, but it is a very narrow group. Any whistleblower speaking to me or to the noble Lord, Lord Berkeley, is not protected by PIDA, the Public Interest Disclosure Act. I stop any whistleblower from speaking to me who is not going public anyway, and I am sure that the noble Lord, Lord Berkley, does the same. It is much too risky for them.

I hope very much that when the audit and risk assurance committee of HS2 looks at confidentiality agreements, it will also do a deep dive into its internal "Speak Out" whistleblowing system, including talking to professional bodies such as the Institution of Civil Engineers and the Royal Institution of Chartered Surveyors from which members often seek advice when they run into an issue like this. I also hope that it talks to civil society groups such as WhistleblowersUK and Protect. Those of us who are concerned with these issues are now relying on the Government to make sure that the flaws in the use of both confidentiality and settlement agreements at HS2 are sorted. As the noble Lord, Lord Berkeley, said, the issue goes far wider than HS2 and far wider than rail, but we will be watching and listening because issues that are concealed never actually go away and, when they emerge, they come back to bite a project.

Lord Rooker (Lab) [V]: My Lords, like the noble Lord, Lord Carrington, I thought at one point that I would scratch myself from the remaining amendments.

However, as I noticed my name was still there today, I thought I would do noble Lords the courtesy of not pulling out, although I do not have a lot to say on the detail. I am not familiar with what happened on this in Committee, and my noble friend Lord Berkeley said that it was the same amendment. However, subsection (6) of the proposed new clause looks to me as though it is retrospective. Are the promoters of this amendment seriously contemplating a change in the law to retrospectively have all the current arrangements that, one assumes, have been mutually entered into reviewed by this independent assessor? Have I got that right? I do not quite see where the benefit of that would come from.

I fully accept, of course, that the noble Baroness, Lady Kramer, is in support of HS2, but there are people who could look at this amendment and say, to be honest, that it comes from a desire for disclosure of sensitive information to damage the project. I know she does not have views in that respect and I can remember her support when she was a Minister, but the fact is that this amendment could turn into that problem. I am not familiar with all the details, and I was surprised at the number of non-disclosure agreements; there have been over 300. On the other hand, when one looks at what is involved here—at the scale of the project, the number of contractors, the number of people involved in it or affected by it—that turns out, on reflection, to be quite a small number.

Of course, if it is true that this helps to avoid placing homes and businesses in unnecessary blight, as HS2 claims, that is a good reason for such agreements and for protecting the personal information of the people involved. I am not in favour of curtailing the activities of whistleblowers, but I fully take the point that Members of the House of Lords are in a different position from Members of the House of Commons—rightly so, frankly.

I will leave it there, but I would be interested to hear what the Minister has to say about this amendment, which is ill thought-out and does not have my support.

6 pm

Baroness Randerson (LD): My Lords, I want to speak to the principle behind the amendment rather than its exact terminology.

There was a time when NDAs were exceptional, but well over 300 of them for HS2 show that we have moved a long way from that in terms of commercial procedure. Why do we have FoI questions and FoI legislation? In many cases, processes such as NDAs were being used to hide inconvenient pieces of information. Information is power; it always has been and always will be.

My noble friend Lady Kramer excellently outlined the complex issues associated with this, particularly on proscribed people. That picks up on the Minister's response when we discussed in Committee the issue of the number of people coming forward as whistleblowers.

However, the issue goes far wider than HS2 and will, I am sure, be aired in this House on other occasions. The Grenfell inquiry is totally separate, but that public inquiry has revealed how important the detail of commercial arrangements is and what motivation there may be for such hiding that detail. There is commercial realism, but nevertheless, there is a balance to be struck. When individuals sign these agreements they often do so without fully appreciating the complexity of what they are signing up to.

Lord Tunnicliffe (Lab) [V]: My Lords, I too attended the Zoom session on this issue. I thank the Minister and those present for organising it.

I can see that NDAs were necessary in the consultation stage, but there is a question mark, which is difficult to debate, over whether they were necessary in such volume. More importantly, was there possible misuse to suppress whistleblowers? We were given some assurances about that, which, once again, I found at least partially convincing. I hope that the Minister will repeat those assurances for the record.

There is a more general point as to whether NDAs are overly used in public procurement. I believe that there may be a case for more transparency and that the Government should consider launching a general investigation into transparency in public procurement. However, I agree with the noble Lord, Lord Berkeley, that that is a bigger issue and it would be inappropriate to pursue it further at this point.

Baroness Vere of Norbiton (Con): My Lords, I recognise that transparency is a key issue in relation to HS2. It enables oversight by Ministers and Parliament, and provides accountability to the public on how we are spending taxpayers' money and on how the project is being delivered. This amendment is trying to get to the heart of this issue of transparency. However, I do not recognise that it is of any aid in this endeavour. I am not sure that I can add much more to what I already said in Committee or in subsequent meetings, but I will happily go round the track again to put the Government's position on record.

HS2 enters into two types of agreements—confidentiality agreements and settlement agreements. Confidentiality agreements enable the exchange of information between HS2 and other individuals or organisations, including local councils and businesses. With such an agreement in place, HS2 Ltd can have open and frank conversations with the other party about a range of plans and proposals, some of which may not come off. These could include early considerations of different design options that, if made public, could cause unnecessary alarm and blight local properties.

Confidentiality agreements also enable those other parties to share information with HS2 Ltd without it being made public. These agreements are being made not because HS2 Ltd wants them, but because the other party does. For example, a small local business could share its accounts to determine the compensation available to it. This could not happen if confidentiality was not ensured.

As a number of noble Lords have noted, in the history of HS2 since 2011, 339 confidentiality agreements have been signed. Not all will have been required by HS2; some will have been required by the other contracting party. I know that some feel this is too many. I have to disagree. Thousands of landowners, businesses and councils are involved with the project, so I do not

[Baroness Vere of Norbiton]
think this is disproportionate. I have the feeling that the noble Lord, Lord Rooker, does not think it is disproportionate either.

Confidentiality agreements are not entered into with staff members at HS2 Ltd. There are confidentiality obligations within staff members' employment contracts, but this is standard business practice, consistent with that in other public sector organisations.

Settlement agreements are a completely separate form of legal undertaking. They are entirely voluntary and include confidentiality provisions in line with the guidance set out by the Cabinet Office. These agreements can be signed only when an individual has taken independent legal counsel and fully understands their rights and obligations. Settlement agreements are entered into with a small minority of staff who are leaving HS2 to document mutual actions that avoid tribunal claims, or to keep private the sums involved in certain redundancies.

Neither confidentiality agreements nor settlement agreements can be used to gag those who wish to raise concerns about HS2. Whistleblowers are protected by law and none of HS2 Ltd's business practices contravenes or frustrates this. HS2 Ltd has a whistleblowing procedure called Speak Out, as the noble Baroness, Lady Kramer, noted. This provides a route for staff, contractors and members of the public to raise concerns. The operator of this line is independent of HS2. Queries or concerns raised through this process are investigated by HS2 Ltd's counterfraud and ethics team, and any necessary action is taken. Where necessary, suitable independent third parties will be brought in to investigate the issues raised. Updates are provided regularly to senior HS2 leaders, including non-executive directors, who act within the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

A number of noble Lords have noted that there may be one or two deficiencies in the amendment. It states that an independent third party should have control over how HS2 Ltd uses what it refers to as non-disclosure agreements—NDAs—which are those two previous agreements I spoke about. We do not feel that this is appropriate, necessary or, indeed, helpful. This issue was considered by the Secretary of State for Transport during the passage of this Bill in the other place, including whether it might be pertinent to appoint further observers or implement new complaints processes. The conclusion was that the use of these standard agreements should not be constrained by the imposition of a third party. There is simply no evidence that such an imposition is necessary or in the public interest.

If a party wishes to enter into a confidential agreement with HS2 Ltd, they should be free to do so. Indeed, they should also have the option for the very existence of that agreement to be private. I tried to follow the contribution of the noble Lord, Lord Berkeley, earlier, and I thank him for it, but I was a little confused. On the one hand, he said that he wanted an assessor for the public interest and to look at all the agreements that have happened in the past—which, as the noble Lord, Lord Rooker, pointed out, is slightly problematic—but on the other hand he noted that the use of a third party should be voluntary between the two parties. I could not figure out how that would work or, certainly, what problem it would solve.

I do not believe that the amendment has merit but I recognise that transparency is important. HS2 Ltd already publishes the number of settlement agreements it has signed in its annual report. In addition, HS2 Ltd will begin reporting the cumulative number of confidentiality agreements it has signed in that same report. I believe that HS2 Ltd is using these agreements in the public interest, and I therefore hope that the noble Lord will feel able to withdraw his amendment.

Lord Berkeley (Lab): My Lords, I am very grateful to all noble Lords who have spoken in this short debate, particularly the Minister, for the meetings, the letter and other comments she has made. I shall respond very briefly to some of the comments made by noble Lords.

I say to my noble friend Lord Rooker that this amendment started in the House of Commons probably two years ago. As the Minister said, it was rejected at that stage, but there seemed to be quite a lot of support in some parts of the House, which I thought was interesting.

The noble Baroness, Lady Randerson, mentioned balance. I think that goes to the heart of what I believe is necessary. Of course, there have to be NDAs. My point about NDAs being voluntary was that companies or individuals did not have to sign an NDA if they did not want to—that was the voluntary bit. On the question of balance, we have talked about more than 300 NDAs that have been listed, but I suspect there are very many more among landowners that we have not discussed. Of course, it is perfectly reasonable that they should sign NDAs as part of their negotiations.

This is an issue that will go on. It is helpful that the risk assurance committee set up in HS2 will look at some of these things. I am not actually suggesting that we go back to square one and look at every NDA that HS2 has signed, but one could say that one would look only at new ones signed after the Bill gets Royal Assent. However, this has been a very useful debate and I am particularly grateful to the noble Baroness, Lady Kramer, for her support. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13

Moved by ***Baroness Young of Old Scone***

13: After Clause 58, insert the following new Clause—

"Ancient woodland

(1) The nominated undertaker must prepare and publish annual reports about the impact of the construction of each Phase of High Speed 2 on ancient woodland.

(2) A report must contain—

(a) information about the impact on ancient woodland of the construction of each Phase of High Speed 2 during the period to which the report relates;

(b) such other information as may be specified by the Secretary of State.

(3) The first report must be published before the end of the period of one year beginning with the day on which this Act comes into force.

(4) Subsequent reports must be published before the end of the period of one year beginning with the day on which the previous report was published.

(5) A report is not required in relation to a Phase of High Speed 2 in respect of a period during which no construction works take place for that Phase.

(6) The nominated undertaker must publish reports under this section in such manner as the nominated undertaker considers appropriate.

(7) In this section "Phase of High Speed 2" means—

(a) Phase One of High Speed 2 (within the meaning of section 1 of the High Speed Rail (London - West Midlands) Act 2017);

(b) Phase 2a of High Speed 2;

(c) any other railway line which forms part of the high speed railway transport network referred to in section 1 of the High Speed Rail (Preparation) Act 2013."

Member's explanatory statement

This new Clause would require the nominated undertaker to prepare and publish annual reports about the impact of the construction of each phase of High Speed 2 on ancient woodland.

Amendment 13 agreed.

Schedule 20: Burial grounds

Amendments 14 and 15 not moved.

6.15 pm

The Deputy Speaker (Baroness Fookes) (Con): We now come to Amendment 16. I remind noble Lords that Members other than the mover and the Minister may speak only once and that short questions of elucidation are discouraged. Anyone wishing to press this amendment to a Division should make that clear in debate.

Schedule 23: Party walls etc

Amendment 16

Moved by ***The Earl of Lytton***

16: Schedule 23, page 188, line 16, at end insert—

"9 (1) The Secretary of State must by regulations made by statutory instrument make such alterations as may be necessary to the provision under this Schedule for—

(a) the notification to adjacent owners, and

(b) disputes and their determination.

(2) A statutory instrument containing regulations under sub-paragraph (1) must be laid before Parliament in sufficient time to allow the regulations to come into force not later than the commencement of works authorised by this Act.

(3) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament."

Member's explanatory statement

This amendment seeks to commit the Government to producing statutory guidance to resolve an apparent gap between safeguards under the Party Wall etc Act 1996 and those remaining following the partial disapplication of that Act by Schedule 23 and the alternative measures in Schedule 2.

The Earl of Lytton (CB) [V]: My Lords, in moving Amendment 16, I will speak also to Amendment 17, both relating to party-wall procedures. I thank the Minister and the Bill team for hearing me out on this quite narrow issue and for convening several online meetings. I also thank the noble Lord, Lord Berkeley, and a number of external experts in this specialist field for their advice and support. I remind noble Lords of my own professional involvement in party-wall matters. I hope the Minister will be able to suggest something here, and therefore I trust that it will not be necessary for me to press these amendments.

I proceed by making an apology. In Grand Committee the Minister asked about the numerical incidence of cases in phase 2a that might be subject to party-wall procedures. The estimate of numbers that I provided informally to her was produced by someone else and is probably a mistaken figure, so I confess that I am no further forward. However, I have put out further inquiries and will let her know what the situation is. Of course, cases relating to party-wall procedures under the existing phase 1 are only now beginning to trickle in, so there is a long time lag between setting the Act in motion and cases emerging.

I will summarise for the record the current situation, as follows. First, the Minister told us that Schedule 23 to Bill as drafted, while removing key sections of the Party Wall etc. Act 1996—which I will refer to as "the 1996 Act"—for HS2 purposes, would none the less leave the main elements of the 1996 Act procedures intact. I must beg to disagree. If the claim to entitlements under the 1996 Act is not formally notified, it is incapable of agreement or dissent and there is no default to the dispute procedures or a party-wall award, so the entire rationale and balance of a process that impinges on common-law rights is thereby lost.

Secondly, the Minister suggested that for HS2 arbitration would be simpler and quicker than the 1996 Act dispute procedure, which she claims would delay HS2. I have to say that in all my years of practice I have never heard such a claim, even less seen substantive evidence supporting it.

Thirdly, the Minister averred that Schedule 2 to the Bill provides an adequate replacement for Section 6 of the 1996 Act—the bit relating to adjacent excavation—which is otherwise disapplied by Schedule 23 to the Bill. Replacement in part I can acknowledge, but I have to point out that it is on distinctly less than equal terms. I point in particular to changes in which consent, if a notice is not responded to, is deemed to have been given, instead of the 1996 Act protection of deemed dissent.

Safeguarding adjoining property and the notification of that is, it seems, the sole option of a nominated undertaker—which I will refer to as the NU—whereas this would be challengeable and potentially liable to counternotice under the 1996 Act. To explain further, safeguarding practices may be followed where risks to adjacent buildings arise from HS2 works, but based on internal assessment by the NU in which up to 10 millimetres of building movement is considered acceptable. However, in combination with natural subsoil shifts, this may well be mutually exacerbated and is therefore of considerable significance to owners of nearby buildings even if unimportant in engineering terms.

Fourthly, the Minister stated in Grand Committee that the NU would have to get agreement before

[The Earl of Lytton]
commencing work falling under Schedules 2 and 23. However, there is no apparent mechanism for that in the Bill.

Neither external experts nor I agree entirely with the Minister's analysis, but we do agree on some things: namely, that identical measures already exist in the phase 1 Act, that they were not challenged at the time, and that there was no consultation with expert practitioners on them. I suggest that practitioners were accordingly largely unaware of the proposals. In any event, accepting that phase 1 provisions exist does not make the risks go away.

I submit that for HS2 purposes the 1996 Act process does not remain intact; the essential balances of powers and responsibilities, of investigation and brokering of practical outcomes, cease to exist in the HS2 world. In the 1996 Act, it is a combination of the defining notice, a response and a challenge, followed by an award that gives rise to the rights—not a simple statement in Section 2 of the 1996 Act. The 1996 Act provides that the person proposing works meets the reasonable costs of the neighbour. This follows the obligation to make good any loss or damage occasioned. I am not clear what happens under the Bill, as notice under the 1996 Act customarily sets a clock ticking on costs and expenses. The removal of the requirement for notice, or perhaps a predilection for leaving notice under Schedule 2 to the last moment, might well mean that a prudent neighbour could themselves potentially incur an irrecoverable cost in obtaining advice on physical aspects, possibly before the NU had started to engage.

Of course I accept that we cannot have neighbours running up needless costs for reimbursement or, worse, undermining or destroying essential HS2 works. But this is a far cry from disapplying the provisions for everything that HS2 Ltd may happen to own or control and removing established protections. Hollowing out the 1996 Act and cherry picking the bits that suit HS2 is, of itself, questionable.

I do not see the Bill's arbitration solution covering anything like the same process as the 1996 Act, in which surveyors negotiate the outcome based on a broad investigative process. Arbitration, after all, is a quasi-judicial process of a scope that needs to be defined. It used to be relatively cheap and quick, but a common criticism now is that it has become legalistic, expensive and slow, and so, I suggest, a good deal less flexible than party wall procedures. I think there will be arguments over the scope of arbitration.

It is clear to me that the Bill, by virtue of Schedules 2 and 23, and for HS2 purposes, does a great deal more than harmlessly disapply parts of the 1996 Act. It is a profound change of procedure and balance and will make the Act scarcely recognisable to most practitioners, especially when the customary consensual process is replaced with an essentially an adversarial one in which previous precedents are not a given. In short, it will require a significant realignment of skills and is likely to involve greater legal input. Awards of the type that occur under 1996 Act will not apply, and the intervention of the courts seems more likely. However, I accept that the bird has largely flown here. It is apparent that the Government will not accept any material changes to the Bill in respect of this matter. Fortunately, it is limited to HS2, but it makes for a bad precedent.

In discussions with the Bill team, the desirability of guidance was raised. I see three justifications for this: first, as a guide to professionals, given an unusual procedure and a significant departure from current established practice; secondly, as an indication of what an adjoining owner can expect; and, thirdly, as a means of fostering good order, cost control and consistent administration.

In the hope that there might be a partial solution in this direction, I took the liberty of asking the Royal Institution of Chartered Surveyors, of which I am a fellow, if it would be prepared to set up a working group, as consultee. I am glad to say that it has agreed to do so if the principle is agreed. I hope this will be welcomed. I have already flagged 14 initial points of my own which I believe any guidance should cover.

I now turn to Amendment 16. I recognise the implications of amending the Bill and the potential practical outcomes for the phase 1 Act of so doing, although of course phase 1 represents the greatest likelihood of issues arising because of the urban nature of some of its route, but future phases of HS2 might also benefit from sorting things out now. However, I believe that there ought to be a statutory hook for any guidance, and that is why Amendment 16 is so framed. The purpose will, I think, be entirely clear—namely, to put on the face of the Bill the requirement for guidance, to identify the means of parliamentary scrutiny and, lest it be forgotten or overlooked, to establish a clear timeframe for its coming into force.

Amendment 17, which I shall speak to extremely briefly, is the fallback. If nothing is agreed, this is "exit without a deal". It would leave the 1996 Act provisions largely intact, but I accept that it is far from a perfect fit in the Bill simply to disapply Schedule 23.

Therefore, I invite the Minister to confirm what is intended. If she cannot agree to Amendment 16, might she commit to bringing forward a government amendment at Third Reading or, if not, to guidance?

Finally, on an allied matter, I remind the Minister of the query that I raised earlier about the form and final repository for long-term liabilities and obligations arising from works in, adjacent to or beneath neighbouring properties. HS2 Ltd is a delivery vehicle and, I assume, will at some point cease to exist. Can she indicate where long-term legal responsibility will lie and how it will be enforced? I appreciate that she may need to write to me on this subsequently, but it is an important matter, whatever agreements or arbitration awards are reached. I look forward to her reply. I beg to move.

Lord Berkeley (Lab) [V]: My Lords, I am pleased to be able to support the noble Earl, Lord Lytton, on these two amendments. We had some useful discussion in Committee, and I know that the Minister and her officials have been working very hard on seeing what the problems are and what the best solution is. Amendment 16 is certainly a way forward, because the status quo is, unfortunately, very unsatisfactory.

One problem, which the noble Earl, Lord Lytton, alluded to, is that party wall issues come only well after the legislation is completed. We are now beginning

to see some problems with phase 1. It will be a long time before we see similar problems, although of a smaller scale, with phase 2, but I hope that we can really move forward on this. The RICS and the noble Earl, Lord Lytton, have offered to take this forward, with the hope of creating some statutory guidance, but, if not, there needs to be some other means of ensuring that there is fair play without the project being delayed. I think we all agree that this should not be a way of delaying the project; it should be a way of getting party wall issues resolved quickly and cheaply to everybody's satisfaction. As the noble Earl said, if we do not get it right, the prospect of litigation and even class actions, with knock-on effects for the cost of HS2, would be very real, and I am sure the Minister will agree that we do not want that.

It is clearly the Government's view that Schedule 2 to the Bill would be an alternative way of dealing with access to carry out investigations and notifying owners, particularly before carrying out safeguarding works, given the disapplication, by Schedule 23 to the Bill, of Section 6 of the Party Wall etc. Act 1996, which relates to adjacent excavations for construction. In a minute I shall come up with an example which I fear rather indicates that this is not working at the moment.

6.30 pm

Similarly, paragraph 1 of Schedule 2 refers to Part 7 of the Housing and Planning Act 2016, and is concerned with compulsory acquisition of rights in land. This is not what the party wall Act is designed to do—that is compulsory acquisition, not the party wall issue.

Paragraph 2 and the subsequent parts of Schedule 2 provide for notice, and might in theory extend the spatial limits of Section 6 of the party wall Act, but this seems to be based solely on HS2's assessment of what is necessary. It leaves things permanently on or under an adjoining owner's land or building, all without any test of reasonableness of the proposals, and no process of negotiations or for the reimbursement of professional costs of the adjoining owner in attempting to do so. So, if a consensus is reached, is there any mechanism for setting in place a binding agreement? The answer presumably, if somebody does not agree, is "Take us to arbitration", but, as we have heard many times, that could be very expensive.

My concern is that it is difficult to give an example of what could happen on something where the work has not started. I make no apology for going back to the example I used in Committee of Park Village East outside Euston, where there is a row of listed- building houses next to a road supported by a very high brick wall, which has uncertain foundations because it is very old. The plan is for HS2 to build a 10-metre deep trench below the base of the wall. HS2 does not seem to know what the effect of this work is going to be on the houses, and it has not even told the residents that some time early next year these horizontal ties which I mentioned will be drilled from beside the wall underneath the houses. There will be two rows of them, probably at 1 or 2-metre centres. Then there is the question of what effect that will have on the properties.

Under normal party wall Act legislation, the undertaker would have to submit and get a schedule of conditions undertaken so that both parties—the resident and the nominated undertaker—would know what the state of the building was before any work started. This is absolutely fundamental. There is no evidence of this being done yet, and the residents are getting quite worried. There are various reports, which I do not think I can go into now, which explain how this should be done—but I just want to say a few words about the issue of settlements.

One employee of the nominated undertaker or its contractor asked a resident at a meeting quite recently why the residents needed a condition survey now, since everyone knew that ground anchors would not cause settlement. In my dim and distant past as a civil engineer, I have been involved with a few things like ground anchors. But that is an extraordinary statement, produced without any evidence, when there is, however, strong evidence from HS2's papers that there will be settlement. The question really is: how much, when, and what can be done to stop it?

No design of the trench and the railway has yet been given to the residents. I have heard that the contractors—it is a Skanska, Costain and Strabag joint venture—have not yet been able to obtain insurance against any settlements. However, look at the risk registers submitted to the House of Lords Select Committee, and particularly an entry called C220-P1S1-237. The hazard description talks about the ground movement effects on the unknown condition of the existing asset, which is also a brittle service; the risk description potential for local instability or collapse of existing, weakened or defective basements; close proximity of works or associated ground movements; and—worst of all—risk of serious injuries or fatalities from crushing, engulfment, entrapment of workers or collapse on to and obstruction of the operational Network Rail tracks, causing train derailments, gas explosions or electric explosion. The risk is called high.

This is a serious issue and there is no outcome that we can yet see. How can one of HS2's employees say to a resident who is affected that there will be no settlement? Residents have not been told officially about Schedule 23, let alone the public work implications of the party wall Act. They have heard about ground anchors and have not been given any detail of the design of the anchors that are supposed to hold up the wall. If the residents are concerned about it and want to employ professionals, the professionals must have the technical details to advise the residents on what they can do.

The first issue here is a schedule of condition that should preferably been done by surveyors who can agree on the condition before the work starts—obviously funded by HS2. It is disappointing that HS2 does not even seem to have started the process some six months after the Prime Minister gave the go-ahead. I doubt whether HS2 knows what it is going to build yet. I do not know the answer but I worry that this will be a poor example of what has gone on, which has largely been caused by the mixing of Schedule 23 and bits of the party wall Act.

I have to conclude, for the moment, that this example is a story of incompetence, ignorance and cover-ups that have sadly become too common. I am not going to refer to NDAs again but people need to see what is being built. I do not know what can be changed on the design, or whether there is a design even, but several thousand people are affected by party wall issues. They are more than ever likely to go to arbitration,

[Lord Berkeley]
obstruction and, in the end, the High Court because of a combination of a lack of consultation with the party wall experts, inappropriate legislation and poor communication.

I know that this is all about phase 1 and it cannot be changed now, but we should learn from this lesson. I do not know what can be done about phase 1. We should learn from this lesson for HS2 phase 2. It is a smaller project although, as the noble Earl, Lord Lytton, said, there will be some party walls. It would be a good opportunity to try out what he suggested to achieve something that can deliver proper party wall-balanced solutions without delaying the project. I fully support the amendment.

The Deputy Speaker (Baroness Fookes) (Con): I understand that the noble Lord, Lord Lucas, has withdrawn, so we now turn to the noble Baroness, Lady Randerson.

Baroness Randerson (LD): My Lords, I thank the noble Earl, Lord Lytton, for his sterling efforts to help us poor lay men understand the complexity of the topic involved in these amendments. I have a rather unfashionable approach to experts; I tend to think that we should listen to them. On this occasion, I also urge the Government to do so.

Having reread the Minister's response to the last debate on this, I did not gather from that a good, clear reason why the well-established practice is being abandoned. It is clear that the 1996 Act is well established and has worked well, and it seems strange to replace a consensual approach to a problem with an adversarial system. In my experience, adversarial systems always cost more in the end. They can also prove very unfair to those who do not have the nature or the money to embark on an adversarial fight, which can often last months and years, and who therefore decline to press their case when indeed they should be doing so. I urge the Minister to ensure that HS2 is approaching this in a sensible manner for the next phase of the development.

Lord Tunnicliffe (Lab) [V]: My Lords, I have a lot of sympathy with the noble Earl, Lord Lytton. It seems that the 1996 Act covers these issues, and I am very suspicious of why HS2 needs such a significant change to the provisions of that Act for its project. I am not convinced that it needs these powers. I believe that, with modest alterations, good management should be able to overcome any problems. However, one faces the classic dilemma of a specialist area in an important Act, which is that I cannot know that I am right because we have not been able to listen to various points of view other than the expert knowledge of the noble Earl, Lord Lytton, and it is possible that the project needs these powers. As I understand it, there are likely to be few party walls in this phase of the project. He may be right that a dispute might significantly delay the project. Hence, I am unwilling at this stage to support the amendment if there is a Division.

Baroness Vere of Norbiton (Con): My Lords, as I know the noble Earl is already aware, the Government cannot accept either amendment to the Bill. I will address the first amendment in this group and then move on to the second.

At the outset, I extend my thanks to the noble Earl, Lord Lytton, for the time and effort he has taken to work so constructively with department officials over the last few weeks. He has painstakingly explained his concerns both in writing and over the course of several meetings, as well as in the debate today. I am pleased that this work has been productive and that the first of these two amendments today recognises that we have moved on from the discussions in Grand Committee.

Schedule 23 to the Bill amends the operation of the Party Wall etc. Act 1996—which I too will call the 1996 Act—to enable the railway to be built as swiftly as possible. At the same time, Schedule 23 retains many of the protections for adjoining owners found in the 1996 Act. This schedule exists to reduce delay in construction due to any disputes which could otherwise arise if party wall matters were sorted out solely under the provisions of the 1996 Act. It also ensures the safety of the railway itself by providing for the railway to be constructed to the right engineering standards next to neighbouring properties. Lastly, it ensures that affected adjoining owners are afforded the protections and compensation due to them.

6.45 pm

Referring to Amendment 16 and why the Government cannot accept it, I say, first, that it is not usual to place a requirement on the Secretary of State to make regulations in this way. Secondly, if such regulations were to be made, it would not be a good idea to make commencement of the works authorised by this Bill contingent on those regulations; that would risk delaying the building of phase 2a. Thirdly, Schedule 23 already makes provision for the determination of any disputes which may arise. Lastly, it is not clear how the making of any regulations will help with the concerns raised, which, as I understand it, centre around a lack of consensus among expert practitioners about how the schedule should be interpreted.

I now come back to the real matter at hand. Schedule 23 is relatively new, when it comes to party wall matters. The same provisions and ways of working are in use in phase 1 of HS2 and were agreed to by this House in 2017. When we think of the history of party walls legislation, which has an origin stretching back to the beginning of the last century, a process from 2017 is virtually brand new and, so far, little used. Therefore, for many expert practitioners in party walls, advising adjoining owners on the provisions of Schedule 23 is an unfamiliar art.

I appreciate that these matters can be legally and technically complex. That is why I am pleased that the noble Earl has been liaising with departmental officials as they start to develop non-statutory guidance on how Schedule 23 is designed to operate in relation to phases 1 and 2a of HS2. Furthermore, I am delighted to hear that the noble Earl has already been in touch with his colleagues at the Royal Institution of Chartered Surveyors and that they are very happy to be involved. Of course, my officials will work very closely with it, and they will also work closely with officials in the Ministry of Housing, Communities and Local Government on the draft guidance, which is intended to set out how Schedule 23 applies and to make the legal effects clear. Officials are keen to include areas of

best practice, and, if possible, officials would like to include advice from the president of the Institution of Civil Engineers on how to appoint the most appropriate professional should a dispute arise.

It is hoped that this guidance—I remind noble Lords that it will cover phases 1 and 2a—can assuage any uncertainty among professionals who are used to the Party Wall etc. Act as it normally applies. It could assist those involved, both those working for HS2 and those affected along the line of route, in finding the right advice. I agree with the noble Earl, Lord Lytton, in his assessment of the purposes of the guidance. It will certainly also help to avoid legal disputes.

I turn to Amendment 17, the other amendment in this group, which proposes that the schedule should not stand part of the Bill at all. This was discussed in Grand Committee, and I do not propose to repeat in full all the reasons why this schedule is necessary. However, I will summarise in brief the effect of the proposed modifications and their purposes, reminding noble Lords that this schedule also appears in the phase 1 Act.

First, HS2 Ltd would not have to serve notices under the Party Wall etc. Act 1996 to carry out works to which the Act relates. This means that the adjoining owner does not have the opportunity to serve a counternotice. Nevertheless, works would still have to be carried out in accordance with the plans and sections agreed with the adjoining owner, and, if they are not agreed, they can go to arbitration, of course.

Secondly, a neighbouring owner carrying out works under the Party Wall etc. Act would not have an automatic right to place footings and foundations on HS2 land or to carry out works required to safeguard HS2 buildings and structures. Agreed works could still be carried out, but it is likely they would be fulfilled by HS2 Ltd instead of the neighbouring owner, at the neighbouring owner's expense. Of course, these modifications protect the integrity of the railway.

Thirdly, any disputes would be determined by a single arbitrator, appointed in default of agreement by the president of the Institution of Civil Engineers. This process provides for a much speedier dispute resolution, but it does not remove the right for each party to seek their own representative or expertise should that be needed, and I hope that they would do so. It would ensure that, in a case involving a very complex railway, the dispute is determined by a civil engineer with relevant skills—and a surveyor could be appointed where that is appropriate. In all other respects, the provisions relating to the dispute process, including costs and appeals, would be the same as under the 1996 Act.

As noble Lords will be aware, the route of the phase 2a scheme is rural in nature. Therefore, it is not expected that many party walls will be created by the works authorised by this Bill. I reiterate that, where necessary, the modified process would provide a safe and speedy resolution for both the project and the adjoining owner. I will write to the noble Earl on the question of long-term liability, but, on the basis of my contribution, I hope that he feels able to withdraw his amendment.

The Earl of Lytton (CB) [V]: My Lords, first, I thank all noble Lords who participated in this short debate. In particular, I thank the Minister for her generous comments towards me and, most of all, for agreeing to the principle of guidance; I am sure that many professionals will be extremely relieved by that. With that in mind, I can certainly confirm that I will not press this amendment, in the light of what she said.

On the nature of guidance, again, the Minister may not be in a position to respond to me today but perhaps she could guide me on that. I ask her to comment on how non-statutory guidance will sit alongside the Bill's specific provisions, in the knowledge, of course, that we are all seeking best practice and not just the cheapest and quickest procedure available.

I thank the Minister for agreeing to write to me on the question of residual liabilities. As I anticipated, this matter obviously requires further thought and consideration.

I particularly thank the noble Lord, Lord Berkeley, for his continued support. He gave the interesting example of Park Village East, which is in the phase 1 scheme. I want to explain in non-technical terms my take on this, which is as follows: are the ground anchors being placed underneath a nearby owner's property for the purposes of restraining something else that is not part of that property, or are they to safeguard the adjacent property itself from the HS2 works? If it is the former, I suggest that it is a question of compulsory purchase to acquire the necessary rights. If it is the latter, it might fall under Schedule 2 to the Bill. This highlights the need to clarify what procedure is being engaged in any given instance. That is what I suggest formal notice should do.

The noble Baroness, Lady Randerson, kindly lent me her listening ear; I am extremely grateful to her for her confidence. She asked what I will call the $96 question, which remains unanswered. I am grateful to her for raising that issue.

The noble Lord, Lord Tunnicliffe, asked why significant changes to the Party Wall etc. Act were needed. Crucially, he pointed to the question of good management. I agree with that, but I also note his caveats and reasons why he would not have been in a position to support the amendment had it been pressed to a Division.

I finish by paying tribute to the group of party wall specialists who have put in hours of time to help and advise me. I say this to them: I could not have done it without you. I thank them very much indeed.

On that basis, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Amendment 17 not moved.

6.54 pm

Sitting suspended.

7.01 pm

The Deputy Speaker (Baroness Morris of Bolton) (Con): The Hybrid Sitting of the House will now resume. I ask Members to respect social distancing.

Agricultural Transition Plan
Statement

The following Statement was made in the House of Commons on Monday 30 November.

"With permission, Mr Speaker, I would like to make a Statement on the Government's agricultural transition plan, published today.

The Agriculture Bill received Royal Assent on 11 November. The Agriculture Act 2020 sets out powers to reward farmers and land managers who protect our environment, improve animal welfare and produce high-quality food in a more sustainable way. These powers will also help farmers to stay competitive, with measures to increase productivity and invest in new technology. We will also improve transparency in the supply chain to help food producers strengthen their position in the market and seek a fairer return for the food they produce.

Today, we are publishing further details of our approach to exercising the powers under the Agriculture Act over the next seven years. We will remove arbitrary area-based subsidies on land ownership or tenure and replace them with new payments and new incentives to reward farmers for farming more sustainably, creating space for nature on their land, enhancing animal welfare and delivering the other objectives set out in the Agriculture Act.

The central plank of our future policy will be made up of the three components of environmental land management. The sustainable farming incentive will pay farmers for actions that they take to manage their land in an environmentally sustainable way. This could include schemes encouraging catchment-sensitive farming, integrated pest management and sensitive hedgerow management. Local nature recovery will pay farmers for actions that support local nature recovery, creating space for nature and habitats on farm and encouraging co-operation between farmers. Finally, the landscape recovery component will support the delivery of landscape-scale projects to deliver ecosystem recovery through longer-term land use change. This will help us meet our targets to plant 30,000 hectares of woodland a year by 2025, create and restore peatland, protect 30% of UK land by 2030 and reach net zero by 2050.

We know that this policy marks a significant change. I am also very conscious of the fact that many farm enterprises are dependent on the area-based subsidy payments to generate a profit and that, without them, some might judge they would not be profitable, so we have created a seven-year transition period. We want this to be an evolution, not an overnight revolution. That means making year-on-year reductions to the legacy direct payments scheme and simultaneously making year-on-year increases to the money available to support the replacement schemes.

Between 2021 and 2024, we will help farmers prepare to take part in our environmental land management offer. This will include expanding the existing countryside stewardship scheme and opening the new sustainable farming incentive to every farmer from 2022 onwards.

We recognise that there is a problem with poor profitability in agriculture. The premise behind our new policy is to tackle the causes of that poor profitability rather than simply masking it with a subsidy payment. Our new financial incentives for sustainable farming and nature recovery will be set at a rate to incentivise widespread participation and give consideration to natural capital principles. So in some areas they will go beyond the 'income forgone' methodology of the past.

We will also make a significant number of grants available to support farmers in reducing their costs and improving their profitability, to help those who want to retire or leave the industry to do so with dignity, and to create opportunities and support for new entrants coming into the industry.

The dysfunctional, top-down rules and draconian penalties that were a feature of the EU era will be removed or reformed. The binary divide between advice and enforcement will also be broken down. Instead, there will be a modern approach to regulation, with more holistic assessments of regulatory compliance and greater emphasis on advice and improvement so that farmers and regulators work together to improve standards.

By 2027, we want to see a reformed agricultural sector. We want farmers to manage their business in a way that delivers profitable food production and the recovery of nature, fusing the best modern technology available today with the rediscovery of the traditional art of good farm husbandry. Our plan delivers those objectives, and I commend the Statement to the House."

7.01 pm

Baroness Jones of Whitchurch (Lab): My Lords, I start by declaring two interests—at Rothamsted agricultural research institute and as a member of the South Downs National Park Authority, which is involved in several of the tests and trials.

To those of us who sat through the many hours of debate on the Agriculture Bill, the premise of this Statement is very familiar. As we have said many times, the shift from payments made on the basis of land ownership or tenure to payments for improved environmental performance and other social benefits is very welcome. I am sure that the new levels of detail contained in the transition plan are appreciated by those directly affected. Given that we voted to leave the EU in 2016, I am inclined to say, "What took you so long?".

The Minister will be all too aware of the criticisms from the farming community that these details have been published only three weeks before they are due to take effect. Although the Minister talks about a seven-year transition, the confirmation of an immediate cut in basic farm payments from 1 January 2021 is a bitter pill to swallow, so I would like to probe this decision in more detail.

The transition paper spells out a minimum cut of 5% in subsidies next year, but the opportunity to reclaim these payments does not kick in until 2022. The Statement talks about wanting farmers to come with us on a journey, but this seems the wrong way to go about building their good will towards the huge upheaval necessary to deliver the transformation. Why do the Government feel that this payment gap is necessary? Have they done a risk assessment on the

number of farmers who will be unable to operate with this reduced income? Will there be any financial compensation as part of the resilience package for those whose livelihoods are threatened? How will the £170 million saved by this cut in the first year be reallocated? What proportion will be available in 2022 for individual farmers to claim through the sustainable farming incentive?

Between 2021 and 2024, a total cut of 50% in basic farm payments is proposed. The NFU projects that livestock farmers will have lost between 60% and 80% of their income as a result of these reductions. Can the Minister assure us that, during this period, equivalent payments will be accessible to those who are willing to embrace the philosophy of the new schemes? When we will see the details of these schemes, so that farmers can be reassured that it can work for them on their farms? Is it intended for there to be a variety of projects of different lengths and complexities, so that all landowners and tenants will have the opportunity to make the positive difference to which we all aspire? Can the Minister assure us that any money that is not spent in year one, before the schemes are fully implemented, will be rolled over for payments the following year and will not go back to the Treasury?

I also want to ask about the impact of devolution on these measures. This is an England-only proposal, as agriculture is a devolved matter. As we know, the devolved nations are drawing up their own proposals to maintain more financial support for their farming communities. This could have a detrimental effect on the price of English livestock and arable produce compared with their Welsh and Scottish counterparts.

In his response in the Commons, George Eustice said:

"We will set up a joint group across the UK to do market surveillance, to ensure that there is not disturbance to the internal market and to share ideas on what works."—[*Official Report*, Commons, 30/11/20; col. 42.]

Does the Minister agree that this sounds far too complacent for an issue that many people fear is an immediate and escalating danger to market access and price stability for English-grown food?

Finally, I want to ask about the ultimate goal of this transition. The Government's press release states:

"These changes will be designed to ensure that by 2028, farmers in England can sustainably produce healthy food profitably without subsidy".

Will this mark the end of subsidies for English farming? Is this the future of farming, predicated on a free market principle that you can compete in the market on price or you will not survive? What will this mean for UK farmers competing in a global market where the majority of their competitors, including obviously the EU, continue to receive farm subsidies? Also, what is the strategy for upland farmers, who will struggle ever to make a profit but who represent an iconic part of rural life? What are the implications for our food policy if the race to the bottom on costs becomes the driving principle?

I fear that the consequences of these proposals will be the end of small family farms and the rise of big corporations farming on a grand scale. They may indeed deliver some environmental benefits, but they also risk changing the nature of farming and the rural community for good in ways that I do not think we envisaged when we were debating the Agriculture Bill not so long ago. I hope that the Minister can persuade us that there is a plan for long-term financial support for those delivering environmental outcomes way beyond 2027 and that profit in the long term will not be the only measure of success. I look forward to his response.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I welcome the Statement on the agriculture transition plan. There is much to be commended in the document, which sets out some of the detail that was absent from the Agriculture Bill. However, it is clear that many aspects of the plan are still in a state of flux and are being worked out as the implementation begins.

The document covers the period of 2021 to 2024, although the changeover from direct payments is scheduled to run for seven years. Farmers have been heavily dependent on area-based subsidies and it is welcome that these will reduce on a gradual basis. Next year, the reduction in basic payments of £30,000 will be 5%, followed by a further 15% reduction in 2022 and 2023, and 50% by 2024. For those with payments of over £150,000, the reduction will be 70% by 2024. This is a significant reduction and it is unclear whether it will be replaced by the three components of the Environmental Land Management scheme, especially since the landscape recovery component will not commence until 2024.

Can the Minister reassure us that farming incomes, which will become increasingly dependent on environmental measures, will be capable of sustaining both farmers and their families? I welcome the fact that all farmers will be eligible to apply for the first component of the sustainable farming incentive scheme. This is a step in the right direction in order to gradually introduce some farmers to the Government's environmental agenda. However, there is no detail of how this will reward family farmers financially. The move by the Government to make all farms financially viable by the end of the transition period will need to be monitored very carefully, as some will see it as a leap of faith in the dark.

There is considerable mention of the environmental measures for which the Government will provide payments, including establishing animal health and welfare pathways. However, there is very little in the document that relates to food. Moving farmers from their previous way of working to a new environmental basis will be successful only if they are also able to produce food, whether in the form of animals or horticulture. Does the Minister agree that food production needs to be at the forefront of the reason for agriculture?

I welcome the scheme to help farmers who wish to exit from agriculture. Can the Minister give details of what the payments will be for this section of the scheme? Will it be funded from the £1.8 billion earmarked for agriculture over the next three years? Can he give reassurances that the land and farms thus released will be reserved for new entrants into farming? If the Government's aim to transform our agriculture is to be realised, it will be vital that new entrants are given first preference for the farms of those who are exiting the sector.

[Baroness Bakewell of Hardington Mandeville]

The Government are clearly still at the development stage of their thinking on environmental land management reforms, and they promise to adapt the components as they go along. If some do not work, they will be altered and amended to improve them. This is to be welcomed but it does not provide certainty for farmers. Farming is not a short-term activity; it takes planning ahead and capital investment. The Government are looking to the private sector to help to finance some of their components, but the private sector is unlikely to come forward if it feels that the Government may be likely to move the goal-posts half way through the scheme. Can the Minister give reassurance that the three components of the Government's agriculture policy will be fully tested before farmers are asked to commit their livelihoods to them?

The Government expect the environmental land management scheme to deliver the benefits of England's peat strategy by paying for sustainable peatland management and restoration. Can the Minister provide the House with some more detail on exactly how and when that will be achieved?

I turn to the tree health pilot. It is vital that we protect our iconic trees from pests and diseases, which have decimated our hedgerows and forests in the past. There is evidence that huge numbers of saplings have been planted without any real sense of how they will be cared for and nurtured into adult trees. Can the Minister give reassurance that the thousands of trees that the Government quite rightly want to see planted will be the correct indigenous species to the area in which they are planted? As many as possible must survive to become the forests that the country will need to reach its zero-carbon targets.

I welcome this transition plan and look forward to more detail of the schemes to come, and to the Minister's response.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests, particularly—as the noble Baroness, Lady Jones of Whitchurch, referred to—in a family farm. I therefore understand the importance of more detail. I also understand that change can be daunting, and therefore the importance of advice and guidance on what is a partnership. This will work only if the Government and other bodies working with landowners and farmers of all tenures and sizes, across the country, work together.

Although I am not permitted to repeat the Statement, I will say that my honourable friend the Secretary of State said:

> "We want this to be an evolution, not an overnight revolution. That means making year-on-year reductions to the legacy direct payments scheme and simultaneously making year-on-year increases to the money available to support the replacement schemes."

In a sense, that is my first response to the point about reallocation. It is very important that that is seamless. The first reduction is 5%, which is in the scheme because, very often, there are currency exchange rate fluctuations. That is precisely why, when it comes in in December 2021, there will be a range of other schemes and so forth, which I will elaborate on.

Among other things, there is more detail to come because it is absolutely essential that we co-design all of these schemes with farmers—the people who are going to have to work through them. That is why, picking up the point of the noble Baroness, Lady Bakewell, on new entrants and retirement, we want to co-design these schemes so that they can enable farmers who wish to retire to do so, but we also want to get it right for new entrants. The new entrants support scheme will therefore be developed as a co-design. We are working with organisations that have the capacity and interest to provide lasting opportunities; we want this to be a success to support the next generation. We will support the development of the detailed eligibility criteria through a consultative co-design process, starting by the end of 2020 and concluding by September 2021, with a view to introducing a scheme in, for instance, 2022.

It is very important to say that this is money within the agriculture budget, and it will be retained as part of the work that we want to do. It is money that we promised through our manifesto pledge and we will retain that amount of money.

The issue of uplands has obviously come up in our consideration of the Agriculture Bill. As I have said before, upland farmers are very well placed to benefit from environmental land management, which is going to be very important. In addition to other policies proposed in the agricultural transition plan, we are proposing a specific and time-limited package to support farmers and land managers so they can work with protected landscapes to deliver environmental outcomes. This scheme will deliver funding through the protected landscape bodies to support farmers—particularly upland farmers, 75% of whom live and work in protected landscapes—to make improvements in the natural environment and cultural heritage.

Clearly, long-term financial support under the productivity schemes, in reference to the farm investment fund, will be very important in incentivising and supporting the purchase of equipment, technology and infrastructure—for example, the farm equipment and technology fund and the farming transformation fund. We will work to help with on-farm water storage infrastructure precision. Agriculture equipment is also going to be so important in reducing chemicals and the impact on the environment.

Again, I emphasise the importance of food production, which will be an absolutely essential part, and will remain so, of this dual purpose. With 70% of land farmed in this country, we need to ask farmers to produce excellent food for us at home, and that will be assisted by the productivity grants that will start to come in next year. Work is under way on that and on ensuring that, in the long term, there is a very strong business profile for the production of food. If we remember, the fair dealings provisions that we worked on together also play their part in ensuring that farmers get a fair price and a fair deal for their products.

I think that the interconnection of the environment is an important feature. There are three components. We want a large proportion of farmers to join the sustainable farming incentive early on, as part of moving to the full rollout of ELM in 2024 and, before that, to national pilots. It is all to engage farmers in that work.

It is absolutely right to also mention the work that we are going to undertake on the tree health pilot. Again, eligibility is still under development. We know

that we all benefit from trees, woodland and forestry. Eligible participants will be invited to apply for the pilot based on confirmation by the Forestry Commission of pest and disease issues on their land. If a land manager is eligible for a countryside stewardship tree health grant, they are unlikely to be eligible for a tree health pilot. We want to ensure that this makes a contribution, as all the ELM points are about more tree planting.

A point was made about the internal market. Another important element of the United Kingdom Internal Market Bill is that it will guarantee that companies can trade unhindered in every part of the UK. I have to say again that that Bill will not lower standards. The UK has some of the highest and most robust standards on goods in the world.

We have a strong future for agriculture and horticulture in this country, which have a dual purpose of food production and enhancing the environment. The work and responsibility of Defra is to ensure that farmers have the detail of the schemes. That is why work is already under way on codesigning them. Farming has a strong future, which we must ensure.

7.21 pm

Baroness McIntosh of Pickering (Con) [V]: My Lords, I welcome the Statement and pay tribute to my noble friend for his patient and painstaking approach during the passage of the Agriculture Bill—now the Agriculture Act. I will focus in particular on how all three strands of support outlined in the Statement and White Paper are more of an environmental charter than perhaps sustainable farming and a move to food production, with potentially less reliance on imports.

I press my noble friend to understand the implications for upland farmers. He said that they would be well placed to benefit from land management systems, but how will that be when they do not own the land? Some 47% of farms in North Yorkshire are tenanted, so I would like to understand how this will be beneficial to them. Many have a bent towards livestock farming, at which they have been very successful, but they do depend on the current stewardship and payment schemes. Going forward, I would like to know that a heavy emphasis on food production will continue, so that farmers who do not own but tenant the land will continue to benefit from the proposals for sustainable farming set out in the Statement today.

Lord Gardiner of Kimble (Con): I thank my noble friend. We have worked together on these matters, which is why I go back to the importance of codesign in the tests and trials. We have contracted 72 tests and trials involving 5,000 farmers and land managers. We have nine tests and trials in upland areas: three are taking place across multiple regions, two in the south-west, two in the north-west, one in the West Midlands and one in Yorkshire. We are working with a total of 811 farmers and land managers. Our portfolio of tests and trials involves at least 76 tenant farmers, of whom approximately 62% are upland tenant farmers.

Clearly, we want to ensure that there is a vibrant tenanted sector in this country. I am well aware of the importance of the uplands. I might diverge from my noble friend here. If we had more time, we could go through the many schemes that are coming forward, whether for owner occupiers or tenants, where productivity grants and environmental schemes will be extremely valuable, whatever the tenure. We want to ensure that these schemes are of value to farmers across the piece as they seek to produce excellent food and enhance the environment for us.

The Lord Bishop of St Albans [V]: My Lords, I declare my interest as president of the Rural Coalition and pay tribute to the Minister, who has worked so hard on getting this through. In the ELMS policy discussion document, Her Majesty's Government recognised the bureaucratic burden that the CAP had placed on farmers and administrators. We were optimistic that the rollout of rural broadband would help a great deal, although the comprehensive spending review seems to have drawn back, and many people in rural areas are deeply concerned about how these new processes will be worked through. Can the Minister outline the plans for the ELMS application process and how it is intended to reduce bureaucratic constraints? Can he assure the agricultural community that there will be adequate helplines staffed by those who have been fully trained in these new processes?

Lord Gardiner of Kimble (Con): My Lords, broadband and mobile connectivity in the countryside is clearly very important, which is why the Chancellor announced the first £1.2 billion, as I recall, of the £5 billion scheme that we wish to roll out. Clearly, this is a project of huge importance in rural areas. As the Minister for Rural Affairs, I can assure the right reverend Prelate that I am constantly in communication with DCMS about this.

The right reverend Prelate is right in using word "bureaucracy". That is why we have wanted to simplify the BPS and, as we move forward, remove some of its most complex aspects by removing greening rules and improving arrangements for cross-border farmers, and removing the complicated rule that required farmers to claim payments on their entitlements every two years.

I understand the frustration about whether there should have been more detail but, in our quest for a less bureaucratic ELMS—a less bureaucratic arrangement—I emphasise that we must co-design these schemes with farmers so that the farmer sees it is as their scheme, not the state scheme. We want to make sure that it is not bureaucratic. The advice, support and guidance that will be available to farmers will ensure that, while there will undoubtedly always be worry, they get a helping hand rather than a heavy hand, so that they understand what schemes are available and, I hope, will apply for them and be successful.

Baroness Parminter (LD) [V]: My Lords, the Statement refers to a modern approach to regulation. When will a formal timeline for farm regulatory reform be published so that taxpayers can have confidence that this new approach genuinely delivers public goods for public money?

Lord Gardiner of Kimble (Con): We want to ensure accountability and value for money; we think that the situation has been unduly draconian under previous regimes. This came up with regard to regulatory models

[Lord Gardiner of Kimble]
in the health and harmony consultation and, indeed, in the Dame Glenys Stacey review. There are key improvements that we can make next year: increasing the use of warning letters instead of resorting always to penalties, introducing a greater range of more proportionate penalties for some breaches, improving inspection experience and simplifying, for instance, the cross-compliance guidance. Of course, all this is predicated on ensuring that there is value for money. We will be consulting on this so that we get the appropriate regulatory regime and can ensure that the taxpayer—and anyone else—realises that not doing the right thing has consequences. However, we think that the previous regime was not proportionate.

The Duke of Wellington (CB) [V]: My Lords, as before, I declare my agricultural interests as detailed in the register. I have been most interested by the exchange this evening and, as other noble Lords have done, I commend the Minister for his total commitment to this new government policy.

My concern remains, as it always has been, for the small family livestock farm, and I have not yet heard enough to convince me that this matter is being sufficiently taken into account. In particular, I am not sure how these small farms can be sustained in the intervening period between now and the introduction of the environmental land management schemes in 2024. I am not as confident as the Minister that they will find it easy to adhere to either a widened countryside stewardship scheme or the sustainable farming incentive. And, of course, their income will be cut in 2021 by 5%, rising by 2024 to a cut of 50%, and we should never forget that the small livestock farms depend almost wholly on this taxpayer support.

As the Minister mentioned, they will undoubtedly need a great deal of advice on how to transform their businesses. It is, I fear, an uncomfortable fact that these small livestock farms in England will not be as well treated as their counterparts in Scotland and Wales, where the reduction in the basic payment will come later. I therefore ask the Minister to consult his ministerial colleagues as to whether more cannot be done to support small family farms in the next two to three years, as they are such an important part of so many rural communities in this country.

Lord Gardiner of Kimble (Con): I agree with the noble Duke that the small family farm is an intrinsic part of our landscape and our rural culture. That is why it is important, on taxpayer support, that I should quickly run through the opportunities starting next year. Applications for new countryside stewardship agreements will open from February to March 2021. The farm resilience scheme will open in June 2021. The farming investment fund—equipment, technology and transformation—will open in December 2021. I mention those schemes in particular because obviously, as part of the work we want to do to ensure enhanced productivity, all farmers will be able to apply for them next year. With the countryside stewardship and the sustainable farming incentive, I think that upland farmers and small farmers are well placed to join. Further information is coming out on the sustainable farming incentive national pilot in spring 2021.

It is very important that advice and guidance is given, and I said in an earlier reply that that is part of what we will be doing to ensure that there is a vibrant future for small and livestock farms, not only in producing food but in their custodianship of the land, which I think the pastoral system has been very good at.

Baroness Stuart of Edgbaston (Non-Afl): My Lords, a lump-sum exit scheme is envisaged, and it is assumed that this will bring in new entrants, because new holdings will become available. I am not sure I share the Minister's confidence that that on its own will bring new entrants into farming. But one thing is for certain: we will need a skilled workforce. Can the Minister assure the House that he is talking to colleagues in the Department for Education, which is in the process of publishing a White Paper on further education apprenticeships, so that they will take into account the needs of agriculture in the years to come?

Lord Gardiner of Kimble (Con): I wish that the noble Lord, Lord Curry of Kirkharle, was here because we have been working very closely on the skills leadership group and the imperative, as the noble Baroness has said, of having a skilled workforce as we enhance technology and innovation. Appropriate skills and the skills of countryside management are important. We need a range of educational opportunities at all levels, whether at agricultural college or in apprenticeships; the whole range is very important. This is an area where we in Defra are in touch with the department, because it is very important there is a skilled rural workforce now and in the future.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, reference has already been made to devolution settlements. I wish to refer to the ability of Northern Ireland to diverge from these ELM arrangements in order to meet the needs of our own localised system of agriculture, in terms of different farm patterns, land-leasing arrangements and now, of course, the operation of the Northern Ireland protocol. What can the Minister advise about his ongoing discussions with the Minister in Northern Ireland regarding the ability to diverge from these arrangements to ensure the proper delivery of good farm management for upland and lowland farmers?

Lord Gardiner of Kimble (Con): I understand that today the co-chairs of the EU-UK joint committee have announced their agreement in principle on all issues with regard to the protocol on Ireland and Northern Ireland. I think this will have some impact on some of our areas, and further details will be given. I believe that the Chancellor of the Duchy of Lancaster is making a Statement tomorrow. I put that in the context of the recognition that agriculture is devolved. If one remembers, we included provisions in the Agriculture Act respecting the devolved arrangements of all parts of the United Kingdom, the importance of ensuring that Northern Ireland can make its own provisions as a devolved part of the UK and respecting the protocol on Ireland and Northern Ireland. Our manifesto pledge was to maintain the current annual budget to farmers, and that would mean that the total farm support provided to Northern Ireland farmers

was £330 million. It is within the scope of the Northern Ireland Administration to ensure that they have the policies that they would wish for Northern Ireland farmers.

Lord Inglewood (Non-Afl) [V]: My Lords, I must draw attention to my agricultural interests in the register. Like all other speakers, I welcome the publication of the agricultural transition plan, but, like them, I also recognise that it leaves a huge number of questions still unanswered. Can the Minister confirm that all the money taken away from the BPS each year will be transferred to schemes which will pass it on in its entirety to farmers and land managers and will not be used for the government administration of the scheme? Furthermore, can he confirm that the new arrangements will not lead to additional bureaucracy imposed on the payees, which in turn will cost them money?

Lord Gardiner of Kimble (Con): My Lords, as I said at the outset, and as my right honourable friend the Secretary of State said in his announcement, it is designed so that the reductions in the legacy direct payments will be transferred into a whole range of schemes within the agricultural budget. These might be productivity schemes, environmental land management schemes or slurry schemes, and this will ensure that farmers and land managers have that resource available within the amount of that budget that was promised for every year of this Parliament. The money being transferred from the direct payments will go into the schemes that I have outlined.

Picking up the point about bureaucracy, I assure noble Lords that all Ministers are determined not to replace one sort of bureaucracy with another. Complaints such as "We have not got the detail" are, I believe, precisely allayed by us wanting to ensure that at every turn—whether in simplifying the BPS or in having ways in which we do things differently—the schemes are not bureaucratic, and that their design is straightforward. This is so that people such as me can understand them, and not have to read them three times or employ someone to help with that.

I assure my noble friend Lord Inglewood that the whole point of what we want from the codesign is for all farmers to feel that these are their schemes, because for so many it may involve retirement, new entry or productivity. It is about environmental land management in all its component forms. All the tests and trials in that area involve working with farmers, precisely to ensure that they are not bureaucratic and that we are not asking for mission impossible. We want farmers to have a sense of achievement not only because they produce public benefits, but because they feel that this is a worthwhile part of their joint endeavour in producing food for the nation.

Plant Health (Amendment etc.) (EU Exit) Regulations 2020

Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020

Agriculture and Horticulture Development Board (Amendment) Order 2020

Direct Payments to Farmers (England) (Amendment) Regulations 2020

World Trade Organisation Agreement on Agriculture (Domestic Support) Regulations 2020

Motions to Approve

7.41 pm

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

That the draft Regulations and Order laid before the House on 10 and 12 November be approved.

Relevant documents: 35th and 36th Reports from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 7 December.

Motions agreed.

House adjourned at 7.41 pm.

Grand Committee

Tuesday 8 December 2020

The Grand Committee met in a hybrid proceeding.

2.30 pm

Arrangement of Business

Announcement

2.30 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, the hybrid Grand Committee will now begin. I will not read out the formalities, with which we are quite familiar, but draw noble Lords' attention to the microphone system. Microphones are no longer turned on at all times, in order to reduce the noise. When it is your turn to speak, please press the button on the microphone stand. Once you have done that, wait for the green flashing light to turn red before you begin speaking. Okay, let us begin. The time limit is one hour.

Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020

Considered in Grand Committee

2.30 pm

Moved by ***Baroness Stedman-Scott***

That the Grand Committee do consider the Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, these regulations, which concern policy areas of my department and Her Majesty's Treasury, and apply UK-wide, were laid before both Houses on 16 November. They are required to clear the way for the legislation which will implement our new system of social security co-ordination with the EU, EEA states and Switzerland.

The current EU social security co-ordination regulations—I will refer to these as the SSC regulations—operate to facilitate the EU's free movement rules. They ensure that individuals pay social security contributions in only one member state at a time; they set out which member state is responsible for the payment of social security benefits; they require the export of some benefits to claimants resident in the EU; and they provide for the aggregation of social security contributions when claiming certain benefits and the state pension. These rules require equal treatment for citizens across the EU, overriding any domestic legislation. They have continued to apply to the UK throughout the transition period.

As the Committee will be aware, the Immigration and Social Security Co-ordination (EU Withdrawal) Act came into force on 11 November 2020, Section 6 of which provides a power to modify these SSC regulations, which have been retained in UK law. Before I go into the detail of the draft regulations, I will provide the Committee further details on the context in which they are being made. I hope noble Lords will forgive the lack of originality in what I am about to say, which is very similar to the update provided by the Minister in the other place yesterday.

As I have stressed to your Lordships on a number of occasions, citizens covered by the withdrawal agreement and related agreements with the EEA and Switzerland will be unaffected by these regulations as long as they remain covered by those agreements. Arrangements in this area for UK and Irish nationals moving between the UK and Ireland will also continue unchanged under a recent reciprocal agreement with Ireland.

The Government are negotiating future arrangements with the EU, similar in kind to the social security relationships the UK has with nations outside the EU. This means that there will be changes in social security co-ordination policy with the EU from the end of the transition period, regardless of the outcome of negotiations. The Government have been clear about this, including as the ISSC Bill passed through Parliament and in public communications.

As the Committee will be aware, negotiations with the EU are at a very advanced stage. It is the Government's position that new rules, whether or not there is a future agreement, should take effect from the end of the transition period. These regulations are a core part of our legislative preparation and will stand whatever the outcome. We are also in discussions on future social security co-ordination rules with a number of EEA states and Switzerland.

I will now summarise the regulations we are debating today. Part 1 sets out that the regulations come into force at the end of the transition period, with the exception of some amendments being remade in Part 4. These amendments will come into force on the day after the day on which the regulations are made.

Part 2 revokes the EU SSC regulations retained under Section 3 of the European Union (Withdrawal) Act 2018 and the unilateral fixing statutory instruments made under Section 8 of that Act. The fixing SIs were brought forward to prepare for a scenario in which the UK did not leave the EU with a withdrawal agreement and would have enabled the UK to operate some of the retained SSC regulations unilaterally, so far as possible. This revocation is in line with the approach the Government set out in the draft illustrative regulations shared with the House during the passage of the ISSC Bill.

This means that the rules for those individuals who are not covered by the withdrawal agreement and move between the UK and the EU, EEA states and Switzerland after the end of the transition period will be determined by any new international agreements in place or, in the absence of an international agreement, the respective domestic law in each country. For UK benefits this means, for example, that the UK will no longer export child benefit to children living in the EU,

[Baroness Stedman-Scott]
with the exception of Ireland, delivering on the manifesto commitment. For national insurance contributions this means that, where no reciprocal agreement applies, the rules on payment of national insurance contributions for individuals moving between the UK and the EU, the EEA and Switzerland will be the same as the rules for the rest of the world.

These regulations make four limited savings from the general revocation of the retained SSC regulations in Part 3. First, they save the retained SSC regulations on the co-ordination of benefits in kind; namely, healthcare, which is a policy competence of the Department of Health and Social Care. DHSC has made separate secondary legislation in respect of the reciprocal healthcare aspects of the retained SSC regulations.

Secondly, they save the existing debt recovery provisions which will enable the UK to collect overpaid HMRC benefits and social security contributions on behalf of a foreign social security authority where the individual or employer is present in the UK, as part of a reciprocal agreement on social security. Full details of the specifics of these provisions have also been set out in public correspondence.

Thirdly, they save the retained SSC regulations to the extent necessary to provide for continued operation of the agreement on social security between the Governments of the UK and Gibraltar. I can confirm that it is the intention of the UK and Gibraltar Governments to agree a new relationship not based on the EU SSC regulations. Once that has been implemented, this saving will no longer be required and will later be revoked.

Fourthly, they save provisions relating to aggregation and uprating of the state pension in the absence of agreements being in place with the EU, EEA states and Switzerland by the end of the transition period. This saving will provide for continued state pension aggregation and uprating in those countries up to the end of the financial year 2021-22. In the absence of a future agreement with the EU, the UK would seek to put in place reciprocal agreements on social security with individual EU countries instead; even where such negotiations are progressing well, the saving may be needed for a short period beyond March 2022 to finalise and implement bilateral agreements. For this reason, the saving is not time limited. However, it is a strictly interim measure targeted at those who move to the EU, the EEA and Switzerland after the transition period, while future arrangements are put on a reciprocal footing.

Part 4 makes related amendments in other EU exit legislation. This includes bringing forward the day on which amendments will be made to Section 179 of the Social Security Administration Act 1992 and the equivalent Northern Ireland Act. These amendments were previously made by the Social Security (Amendment) (EU Exit) Regulations 2019 and the equivalent Northern Ireland regulations, which are not revoked by this instrument. These amendments were otherwise due to come into effect at the end of the transition period.

While the UK has left the EU, we are not leaving the European Convention on Human Rights; in my view the provisions of the Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020 are compatible with the convention.

In summary, these regulations make changes to prepare the statute book for the end of the transition period, particularly in relation to preventing the unilateral export of benefits, delivering on the manifesto commitment to prevent people claiming child benefit for children living outside the UK. They also ensure that the Government have the option to make a future social security co-ordination agreement with the EU through an Order in Council before the end of the transition period, should this be needed. I beg to move.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, for the information of those on remote calls, the first 90 seconds of the Minister's speech were lost, but I think the gist of the speech was contained. If there are any particular issues that noble Lords wish to tease out during the questioning, I am sure the Minister will be happy to respond in her summing up. I call the first speaker, the noble Baroness, Lady Ludford. I understand she is having technical difficulties, so we will come back to her. We move on to the noble Lord, Lord Bhatia.

2.40 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this SI has been prepared by the Department for Work and Pensions. It will ensure that, aside from some specific saving provisions, the EU SSC regulations, which are retained on a unilateral basis under Section 3 of the EU withdrawal Act, will not take effect in domestic law from the end of the transition period in the areas of DWP and HMT policy. Now that the UK has left the EU, it is necessary for the new arrangement to be in place from the end of the transition period.

The Government published their approach to negotiations on 27 February 2020 in which they set out their intention to negotiate a future EU-wide agreement on social security co-ordination. The UK is now able to negotiate social security co-ordination arrangements with the EU as a sovereign country, ending free movement. The Government are also in discussion with EEA and EFTA countries and Switzerland about future social security arrangements that will apply between the UK and those countries after the end of the transition period. Thousands of UK citizens work in the EU and other countries in Europe. Similarly, thousands of citizens of the EU and European countries work in the UK.

Can the Minister inform the House that the formalities have been properly laid in the UK, the EU and other countries, so that businesses and individual consultants are not disadvantaged? I particularly wish to highlight the banking and insurance industries, which have thousands of offices in the UK and EU, employing thousands of professional people. If simple processes are not in place at the end of the transition period, a very chaotic situation could arise that affected the property and job markets across Europe. Surely we must not create another problem while we are fighting Covid-19.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the next speaker is the noble Baroness, Lady Janke. She is not there, so we will move on to the next speaker and come back to the noble Baroness later. I call the noble Baroness, Lady Sherlock.

2.43 pm

Baroness Sherlock (Lab) [V]: My Lords, I thank the Minister for her explanation of these regulations. I am also grateful to her for giving me access to her officials, who have been a source of very helpful briefing throughout this process.

Ministers have explained previously that their intention was to revoke the provisions of the social security co-ordination regulations at the end of the transition period, the idea being to clear the decks for the implementation of the contents of a deal with the EU and/or with the EEA and Switzerland. I have repeatedly asked the Minister over the year to spell out what will happen to social security co-ordination after the transition period for those outside the scope of the withdrawal agreement.

Ministers have consistently declined to answer questions on the grounds that the Government aim to get a deal, and that if we can wait until then we will be told everything. We are now here, three weeks before the end of the transition period, debating regulations that terminate the current co-ordination provisions, and we still do not know what is to replace them because we still do not know if there will be a deal.

Can the Minister tell the Committee how, if there is a deal, its provisions will be enacted in law? Specifically, how will Parliament get to examine the content and implications of the deal? If there is no deal, anyone moving between the UK and the EU, including the EEA and Switzerland, will be in the same position as somebody currently moving between here any other country in the world, except of course that we have agreements with many other countries, and far more people move between the UK and the EU and the EEA than anywhere else. According to the House of Commons Library, last year there were some 3.7 million EU nationals living in the UK and the best part of a million UK nationals living elsewhere in the EU, excluding Ireland.

If we end up without a deal, what will the position be? It is good to have it clarified that the regulations save provisions relating to the aggregation and uprating of the state pension. So if there is no deal in place by the end of the transition period, there will at least be continued state pension aggregation and uprating in the EU and EEA states and Switzerland up to the end of the next financial year and potentially for a wee bit longer, if necessary, for ongoing negotiations.

The intention is presumably that, in the absence of an EU-wide agreement, the UK would seek to put in place reciprocal arrangements with individual European states instead. Just for the record, can the Minister confirm that in the absence of a deal with the EU, this means that if a British pensioner moves to France in January she will find that her state pension is uprated in April as though she had never left the UK? Will there be any reimbursement of healthcare charges for her, or indeed for anybody getting long-term exportable benefits? Will there be any healthcare coverage for someone making a short stay in an EU state from the UK after the transition period? What will happen to those affected by Covid, such as students who started their courses virtually, intending to move physically next term? What will be the impact on their entitlements?

The fact that nothing else is safe will leave people moving between the UK and the EU very exposed. The obvious exception is Ireland, with which we now have an agreement, and we are told that there is an intention to have a deal with Gibraltar. These regulations save the intended SSC regulations on social security between the Governments of the UK and Gibraltar. Can the Minister confirm—I apologise if she did this in her opening remarks—whether the extent of those savings is just on uprating and aggregation, like a state pension, as it is with the EU as whole, or whether it is broader for Gibraltar?

The other outstanding areas relate to things such as double payment or aggregation of national insurance contributions. I understand that, at the moment, if there is no deal, the rules that apply to any other country in the world that does not have a reciprocal agreement with the UK will also apply to those moving for work between the UK and the EU or EFTA or Switzerland. I presume they will pay NICs for 52 weeks and then be subject to the local regimes. Could the Minister confirm for the record that someone in that position would therefore end up being potentially liable to paying contributions in both countries, while being insured in the UK only?

Finally, the Explanatory Memorandum says that no impact assessment has been prepared for this instrument, but that, when negotiations are concluded,

"DWP intend to publish … an update to the social security co-ordination impact assessment published during the passage of the … Act."

Can I ask the Minister why no impact assessment was prepared? How soon after negotiations are concluded will DWP update the impact assessment published during the passage of the Act? If there is a deal, can the Minister assure the Committee that we will see an impact assessment for any measures brought forward to implement the deal and an updated impact assessment for these measures before the provisions of any deal are implemented?

This entire process is highly unsatisfactory. We are three weeks from the end of the transition period and Parliament is being asked to approve regulations that remove the transitional provisions without any clarity as to what will replace them. That leaves uncertainty for anyone moving between the EU and the UK who is outside the scope of the withdrawal agreement. It leaves us, as parliamentarians, with no knowledge as to when, how or even if Parliament will get to scrutinise and debate what is coming next. I deeply regret that Parliament has been put in this position, but I look forward to hearing any further clarification the Minister is able to give.

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, I apologise to the noble Baroness, Lady Ludford. We have been unable to connect with her because of various technical reasons, for which I apologise. I return to the noble Baroness, Lady Janke. I hope we can now speak with her.

2.49 pm

Baroness Janke (LD) [V]: I thank the Minister for her presentation. I and others supported efforts to restrain the transfer of widespread powers to Ministers under the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020. The DPRRC recommended the removal of this clause from the Bill.

This order, as the Minister has said, is laid through the powers of the Bill, which are seen by many to be excessive and undemocratic in their scope and the authority they give to Ministers. Revocation of the clauses in this order dismantles the system of reciprocal arrangements for future workers from the EU or the EEA. The social security regulations are widely recognised as a well-established system of administrative co-operation between countries that ensures the effective operation of the co-ordination rules, dispute resolution and secure data sharing. Although the order and the revocation of these clauses from UK law does not apply to existing EU citizens living in the UK or UK citizens in the EU, it is a retrograde step to inhibit and hinder workers, many of whom are essential to the UK.

Like the noble Baroness, Lady Sherlock, I wonder why there is no impact assessment on, for example, how this will affect the care services or the National Health Service. Has there been any consultation with caring services or the NHS? If so, why are we not seeing the results? What about businesses dependent on workers from the EU and the EEA, such as the tech industries, aerospace and the automotive industry?

As others have said, the exercising of these powers underlines the inadequacy of the procedure for amending primary legislation and the use of the wide-ranging powers the Government have given themselves. Important questions arise here, as the messages the Government are sending out at the moment are at best ambiguous and at worst undermining of confidence in the future of the UK economy. The value of and benefits from trade deals and investment depend on the quality of the relationship between Governments. Trust and confidence are key factors.

The whole issue of good faith and trust is in question due to powers the Government have given themselves in the United Kingdom Internal Market Bill. The revoking of the social security regulations adds to the lack of international confidence in the UK. If we are unwilling to ensure future arrangements for such things as pensions and benefits to citizens from other countries —people who bring their essential skills and experience to work here—how can other countries, business and investors have confidence in the UK or its economy?

If these revocations and the revocation of the fixing arrangements that were put in place in case of no deal are agreed, there will be a policy vacuum. How is that to be addressed? What are the Government's plans, and what is the timescale? Are we talking about reciprocal arrangements between each EU country? Presumably that will take quite a long time. Are we correct in assuming that this will be addressed through secondary legislation and that Parliament will have no role to play in future agreements?

It will be important to reassure future trade and investment partners of the robustness of the arrangements underpinning the UK economy. As the noble Lord, Lord Bhatia, said, it is important that this does not end in chaos in our new global context. I would welcome some understanding of how the Government will address this and in what timescale. I look forward to the Minister's response.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): We have been having some gremlins today, but we will try to return now to the noble Baroness, Lady Ludford.

Baroness Ludford (LD) [V]: Thank you. My sincere apologies: I am jinxed on the IT front today. I am on the phone.

I repeat the objections to the powers in Clause 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, which became Section 6 of the Act, which I and others expressed during the passage of the Bill. I cited then the reports of our Delegated Powers Committee, which were rightly damning about the extent of these powers, which include Henry VIII powers.

The committee said in its 49th report of January 2019 that this provision was

"an inappropriate delegation of power"

and that

"the clear impression is that the Government are seeking these powers in order to avoid … having to prepare a detailed bill implementing their policy once it is settled, and any future arrangements with the EU are concluded".

In its 22nd report of August 2020, the committee said that it was a "significant open-ended power".

This statutory instrument fully illustrates the problem. If these regulations were just tidying-up measures, they could have been done under Section 8 of the European Union (Withdrawal) Act. In fact, they make new policy, and that should be done by primary legislation.

This instrument brings forward the day on which amendments will be made to primary legislation: the Social Security Administration Act 1992 and its Northern Ireland counterpart. The Explanatory Memorandum says that these amendments are

"for the purpose of implementing, and giving effect to, reciprocal agreements with international organisations".

Such organisations include the EU.

Can the Minister tell us what other international organisations it is envisaged signing reciprocal agreements on social security with? Can she also tell us what will fill the void as far as the EU is concerned? As I said in Committee on the Bill, and I apologise for quoting myself:

"There is a range of possibilities for a future arrangement on social security co-ordination, from 'skinny' coverage … to something much more similar to the present coverage. The draft agreement that the UK Government published in May 2020 was quite limited. They already said that they would stop the export of child benefit, and expect that arrangements regarding disability and unemployment benefits will change and are less likely to be comprehensive in future. They forecast that some benefits would be available for a time-limited period.

Altogether, these would be quite substantial changes. One other that pensioners fear is the possibility of no uprating in pensions for UK citizens resident in EEA countries in future. Certainly, the draft text of the agreement published by the Government in May did not cover cash benefits other than state pensions. It

also did not cover healthcare costs for pensioners in EEA countries, where they now get a so-called S1 form, which enables them to get healthcare coverage."—[*Official Report*, 16/9/20; col. 1363.]

I assume, as perhaps I did not understand at the time, that that issue is covered by regulations from the Department of Health.

Can the Minister now tell us what we can expect as content for a social security agreement with the EU? Can she also explain why these amendments to primary legislation will be made the day after this instrument is made, rather than on what the Government call IP completion day but the rest of us call the end of transition; namely, 31 December? By the way, if there is an implementation period for any deal that is reached this week, the Government will have a challenge as to what to call it.

The idea of the four fixing SIs was apparently to ensure that the retained EU social security co-ordination regulations were operable in the event of the UK leaving the EU without a deal. Unless the Minister knows something I do not, whether the UK is leaving with or without a deal is currently unresolved. If we leave with a deal, might we again need the fixing SIs, and indeed the five EU regulations to come back into UK law?

The Explanatory Memorandum recalls that EU law, including the five social security co-ordination regulations, will continue to apply to the EEA citizens covered by the withdrawal agreement, and that hence that law continues to form part of domestic law for those purposes. Thus, the Explanatory Memorandum says that this instrument has no impact on anyone covered by the withdrawal agreement.

However, can the Minister explain how revoking the EU SSC regulations in this instrument ensures that they are retained in domestic law for the purposes of the withdrawal agreement? I have not understood—that is probably my limitation—how those Chinese walls work legally and legislatively.

I would also be grateful if the Minister could explain a little more how the savings in Part 3 of this statutory instrument are to work. She referred to this in her opening speech, but I do not quite understand how we revoke the amendments for some purposes but we save them for others. It is a bit of a jigsaw, and I find myself in some difficulty in trying to understand it all.

Leaving those questions aside, the bigger issue is that what is created by the revocation of the five EU regulations which until now were retained law, along with revocation of the four fixing SIs of 2019, is a void. The Government propose to fill that void without any reference to Parliament whatever; they propose to use the amended power in the 1992 Act to implement by Order in Council any reciprocal social security agreements reached and to amend or modify retained EU legislation in order to give effect to them. So Parliament will have no role at all in assessing or agreeing such agreement, which is a perfect illustration of how the Brexit slogan of "take back control" meant only take back control for the Executive. This instrument, as foreseen by our Delegated Powers Committee, is a democratic travesty.

What proposals are there to consult the public and not just the Social Security Advisory Committee on the content and implementation of any new reciprocal agreement? Surely, the Government do not intend to shut out the public as well as Parliament. I thank noble Lords for tolerating my IT problems.

3.01 pm

Baroness Stedman-Scott (Con): I thank the noble Baronesses, Lady Sherlock, Lady Ludford and Lady Janke, and the noble Lord, Lord Bhatia, for their contributions.

The noble Baroness, Lady Sherlock asked about process and timing. I recognise that it is late in the transition period, but that is the nature of EU negotiations. Good progress has been made in this area, and we hope to get the deal over the line. The Government are prepared for all outcomes and have been communicating to citizens the importance of being prepared for rules in this area to change, in all scenarios.

While I acknowledge the points on the timing of the process, I have set out the baseline provisions that will apply on the state pension and national insurance contributions. There will be no unilateral measures in relation to other benefits where long-standing domestic rules do not already provide for this. These affirmative resolution regulations offer an opportunity for the House to scrutinise and approve the baseline that would apply in the absence of future agreement. The Government's position is that it would not be appropriate to continue unilaterally to operate EU rules after we have left the EU and the transition period ends, in doing so creating different dates of change, additional cohorts and complexity for staff and citizens.

The noble Baroness, Lady Janke, talked about plans for bilateral agreements. As I set out, the Government would seek to put in place reciprocal agreements with member states swiftly if no agreement can be reached with the EU. As the Minister in the other place set out, securing reciprocal provisions on the state pension and national insurance contributions are priority areas for the DWP and HMRC but cannot be effectively operated on a unilateral basis. We would prefer a single deal with the EU, of course.

The noble Baroness, Lady Sherlock, asked how the future agreement would be implemented. The mechanism by which any future agreement will be implemented in the various circumstances we could yet find ourselves in remains under review. These regulations ensure—this is a point that the noble Baroness, Lady Ludford, raised—that the Government can use existing powers for this purpose between now and the end of the year, should this be required.

We expect a number of social security benefits to no longer be exportable to the EU in future; this is in line with long-standing UK policy on certain benefits. Certain benefits, such as disability and unemployment benefits, are not exportable when an individual permanently leaves the UK even when there is a social security agreement in place, and in line with communications which the Government published on GOV.UK before the summer.

The noble Lord, Lord Bhatia, and the noble Baronesses, Lady Sherlock and Lady Janke, raised the subject of impacts. As the Minister said in the other place yesterday, the Government remain committed to publishing an updated impact assessment once the outcome of negotiations is known. I can confirm that

[Baroness Stedman-Scott]
those impact assessments will be brought forward. Those covered by the withdrawal agreement are not impacted by this instrument. The measure does not impose any costs on business and ensures that once the SSC rules cease to apply between the UK and the EU, businesses can apply the standard rest of the world rules for national insurance where there is no reciprocal agreement.

The noble Baroness, Lady Sherlock, raised the question of students. The Government have provided guidance to all UK universities via Universities UK to make them aware of the need to communicate to EU students who have moved to start their courses in person in the UK by the end of the transition period that they will need to apply under the points-based immigration system. They will not be covered by the withdrawal agreement's provisions on social security co-ordination and will be subject to any new reciprocal agreement with the EU or any individual member states.

The noble Baroness, Lady Sherlock, also asked about Gibraltar. I can confirm that the Government will seek a bilateral agreement with Gibraltar similar in kind to that agreed with Ireland.

The noble Baronesses, Lady Sherlock and Lady Janke, raised the issue of healthcare. While that is a matter for the Department of Health and Social Care and not in scope of these regulations, the Government will assess their options for reciprocal healthcare if we do not achieve an EU-wide agreement. The Department of Health and Social Care is aware of the concerns of people with pre-existing health conditions and is carefully looking to the impact of any loss of necessary healthcare provisions.

On matters of governance, the UK's proposed legal text, published in May, contains provisions on dispute resolution, data sharing and administrative co-operation between social security authorities. As is standard practice in international social security arrangements, we have been clear when it comes to future arrangements that there should be no CJEU oversight. We remain in close collaborative discussion with member states in this area through the administrative commission, which the UK continues to attend and will continue to attend in an observer capacity.

These regulations are an essential part of the legislative programme and have been laid in preparation for the end of the transition period, as we reset our relationship with the EU. Not proceeding with this legislation would result in the UK unilaterally operating EU rules after the end of the transition period, regardless of the negotiations. For the reasons I have set out, that would not be desirable.

The noble Baroness, Lady Sherlock, asked what would happen if there was no deal. If a British pensioner moves to the EU, the EEA or Switzerland in January 2021, their state pension will be uprated in April 2021. She also raised the issue of double contributions. On social security contributions, the standard rest of the world rules limit the possibility of UK-based employees working overseas and their employers being required to pay social security contributions in two countries at the same time to 52 weeks, while ensuring that they avoid creating gaps in their national insurance record in the UK for short periods of work overseas.

The noble Baroness, Lady Janke, raised the use of delegated powers. During the passage of the parent Act, I set out the exceptional circumstances under which we are operating, and shared draft illustrative regulations for scrutiny at that stage.

The noble Baroness, Lady Ludford, talked about the primary purpose of the amendments for the 1992 Act being to provide powers to conclude an agreement with the EU. She asked whether we would need the revoked provisions again. No, we are saving the only provisions that we may need to rely on.

The noble Baroness asked what a deal would contain. We have set out our approach to negotiations and have been negotiating in line with that. In particular, we are seeking arrangements on state pension and national insurance contributions.

On the issue of consultation, the UK has left the EU and the Government have acted in response to the manifesto commitment to end free movement. The SSC regulations facilitate free movement between member states of the EU on a reciprocal basis. The Government have repeatedly set out an approach to seeking a deal with the EU in this area to reflect the agreements that we have with countries outside the EU. There have been a number of publications to this effect, including our approach to negotiations published on 27 February. The UK has a long-standing policy in relation to the exportability of benefits, and negotiations with the EU have been consistent with that policy.

I thank again all noble Lords for their contributions to the debate on this SI. We will look at *Hansard* and make sure that we have answered all questions. If we have not, we will write to noble Lords—and, in that instance, I beg to move.

Motion agreed.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): The Grand Committee stands adjourned until 3.30 pm. I ask Members to sanitise their desks and chairs before leaving.

3.10 pm

Sitting suspended.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): My Lords, the hybrid Grand Committee will now resume. I will not repeat the usual instructions because your Lordships are aware of them by now. The microphone system for physical participants has changed. Your microphones will no longer be turned on at all times, in order to reduce the noise for remote participants. When it is your turn to speak, please press the button on the microphone stand. Once you have done that, wait for the green flashing light to turn red before beginning to speak. Okey-dokey, let us kick on. The time limit is one hour.

Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020

Considered in Grand Committee

3.30 pm

Moved by ***Lord Callanan***

That the Grand Committee do consider the Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020.

Relevant document: 35th 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, these draft regulations were laid before the House on 8 November 2020. As I am sure noble Lords will recognise, it is important that we have full sovereignty over our regulatory regime for goods at the end of the transition period. This SI will help ensure that we are not challenged if we choose to diverge from EU regulations by removing retained EU treaty rights.

At the end of the transition period, EU treaty rights on the movement of goods stemming from Articles 34 to 36 of the Treaty on the Functioning of the European Union will be retained in UK law unless they are removed by this SI. The rights flowing from these EU treaty articles prohibit the imposition of quantitative restrictions or equivalent measures, such as regulatory requirements, on imports and exports by member states, unless justified under Article 36. This is to encourage the free movement of goods within the single market.

The UK will have its own regulatory regimes after the end of the transition period and the EU will not be treating UK goods as it would goods from a member state. Therefore, these provisions are no longer appropriate to retain, and could impede our ability to diverge from EU goods regulation in future. This is because the provisions prohibit quantitative restrictions or equivalent measures on imports and exports, meaning that divergence from EU regulatory requirements could result in a challenge from a business or importer if it resulted in being a barrier to placing its goods on the market in Great Britain.

Of course, I understand that there is a lot of interest in precisely what these new regulatory arrangements will be. First, I cannot emphasise enough to noble Lords that this instrument does not introduce any of these new regulatory arrangements or any divergence. Any measures relating to specific regulatory arrangements are being dealt with in separate regulations; nor does this instrument deal with other matters, such as the Northern Ireland protocol or the UK internal market, which I know are also of great interest to noble Lords.

I will, however, say a few words on the new regulatory arrangements. Different goods are currently subject to different regulatory regimes. Cosmetics, food products, machinery, et cetera, are all dealt with in their own way, and that will continue to be the case. So I cannot give a detailed overview here, especially as these matters are not themselves the subject of the regulations before the Committee. What I can say is that by and large the regulatory requirements for goods as of 1 January 2020 will remain largely the same as they are now.

The main changes for the end of the transition period are to reflect the fact that we are no longer part of the single market; for example, the CE marking, which denotes compliance with EU rules, will be replaced by the UKCA marking, which shows that a good meets UK rules and was tested, where needed, by a UK-recognised body. This Committee debated that SI a week or so ago. Of course, any further regulatory changes will be a matter for future consultation and future legislation as appropriate.

The Government have published detailed guidance on these new regulatory arrangements and published guidance on the movement of goods between Northern Ireland and the UK. While many of the new arrangements will not apply in Northern Ireland from 1 January next year due to the Northern Ireland protocol, the Government have been categorical in our commitment to unfettered access to the rest of the UK market for Northern Ireland goods. But, again, I stress that these are matters that fall outside the scope of the regulations before your Lordships.

I return to what this SI does. It will remove the aforementioned EU treaty rights so that they no longer apply in England, Scotland or Wales. As some areas of goods fall under devolved competence, my officials have engaged regularly with officials from the Welsh and Scottish Governments. The Government have written to counterparts in Wales and Scotland to formally seek their consent to lay this SI, which they have confirmed. This SI does not cover Northern Ireland as the treaty rights in question will continue to apply in Northern Ireland as of 1 January 2021 by virtue of the protocol.

As I have already mentioned, these regulations will not result in any changes for businesses. However, they will give businesses greater certainty that when UK rules change they will not be rolled back after legal challenges based on treaty articles that no longer make sense once we have left the EU. A stable statute book is clearly in the best interests of businesses.

To be clear, this SI is not a pre-condition for divergence. As of 1 January, Parliament will have the ability to introduce new regulations—or not, as the case may be. Instead, is it about removing potential grounds for legal challenge based on retained treaty articles that have no place in our statute book once we have regained our full independence.

In conclusion, this SI will remove the rights flowing from Articles 34 to 36 of the Treaty on the Functioning of the European Union—reciprocal rights between member states that no longer have a place in a post-exit independent UK. This will protect our ability to regulate goods as we see fit and ensure that potential challenges do not require us to keep in line with EU regulations.

I reassure noble Lords that we have engaged with the devolved Administrations in Scotland and Wales on the changes that this SI makes, have ensured that they have been kept informed of its progress and have obtained their consent.

The safety of individuals, families and communities is a top priority for the Government. As I am sure noble Lords will recognise, it is essential that the UK is able to protect its sovereignty and that we can make our own rules to protect consumers and to prevent

[Lord Callanan]
unsafe and non-compliant products entering the UK market. I commend these regulations to the Committee. I beg to move.

3.37 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I thank the Minister for his explanation of these regulations. I declare my interest as a member of the Common Frameworks Scrutiny Committee of your Lordships' House.

I understand that this very technical statutory instrument, which deals with England, Scotland and Wales, is to end the application of directly effective rights that flow from EU treaty provisions that prohibit the imposition of quantitative restrictions, such as administrative or regulatory requirements, which restrict free movement of non-harmonised goods within the EU or between the EU and Switzerland or the EU and Turkey.

At the end of the transition period, from 1 January 2021, GB will have its own regulatory regime for goods and the intention of this instrument is apparently to ensure that there is no barrier to diverging from EU rules should GB seek to do so after the end of the transition period. As I understand it, it is a protective instrument.

In that regard, will the Minister spell out the nature and the number of meetings and discussions with the devolved Administrations in Scotland and Wales? Can he advise what preparations have been made and what further support funding will be provided for businesses? They have probably been ravaged this year by Covid and because of the uncertainty as we advance towards the end of the transition period. They need help, because many of them are competing with Amazon and the online businesses of the UK.

Furthermore, will common standards for trading be agreed via the common frameworks process and will that be put on a statutory basis? I know there is no reference to that within the statutory instrument, but I appreciate that that could be a direct, or maybe indirect, consequence of this.

Furthermore, I understand that EU rights will continue to apply in Northern Ireland by virtue of the protocol. On that, I am pleased that a "deal" was reached in the joint committee about a couple of hours ago on Northern Ireland border checks that will provide a solution for businesses and, I hope, result in the withdrawal of those controversial clauses in the United Kingdom Internal Market Bill. If the Minister is not able to provide detail and clarity on that today—I suppose that it does not relate directly to this statutory instrument—perhaps he could do so in writing. I hope it will be possible to achieve a free trade agreement that prevents customs friction and provides an implementation period, because that is a vital to all businesses in Northern Ireland or Great Britain.

Obviously, I have read the House of Commons debate on this issue and what was said in your Lordships' Secondary Legislation Scrutiny Committee, which referred to how the statutory instrument could impact on the flow of goods between Northern Ireland and GB. The Minister and the noble Lord, Lord True, have insisted throughout this process and during debates on the United Kingdom Internal Market Bill that there will be unfettered access for goods between Northern Ireland and Britain. The Bill makes provision for that unfettered access for qualifying goods and for the application of market access principles of mutual recognition and non-discrimination. Can the Minister define those qualifying goods? What are they? Businesses trading in Britain, and those trading in Northern Ireland, would like to know what that definition is. What are the qualifying goods in that regard?

It is interesting that an amendment was tabled on Report on the Trade Bill, which should have been reached last night but was not, that sought to ensure that there would be no discrimination in respect of goods and services coming from Northern Ireland into Great Britain. I want assurances from the Minister: will this draft statutory instrument, which deals specifically with England, Scotland and Wales, ensure that there will be no discrimination of goods and that there will be unfettered access for goods and services from Northern Ireland to GB? Maybe he could go a little further and explain the processes involved in that.

We do not want to see a threat to existing supplies of any type of goods within England, Scotland and Wales. The same applies to Northern Ireland. I hope the statutory instrument provides the pathway to do just that. I realise it is highly technical and simply protects the market to allow divergence from EU rules to take place, but in so doing it is important that businesses are protected and that there is no diminution of any type of rights, or any type of damage to businesses, in the short and long term.

3.44 pm

Lord Bassam of Brighton (Lab) [V]: My Lords, I ought to make it clear from the outset that we do not oppose the statutory instrument because we recognise that it is a natural consequence of leaving the EU at the end of the transition period. The instrument was debated some two weeks ago in the House of Commons, when the shadow Minister said that businesses were being left "completely blind" about how to prepare for the end of the transition and that:

"We are no further down the road with a deal, and they have no idea of the terms under which they are going to be trading in a few weeks' time."—[*Official Report*, Commons, 24/11/20; col. 735.]

Two of those weeks have now passed, yet what is so worrying is that those words still bear repeating. Perhaps with the exception of the Northern Ireland protocol issue, which appears to have been resolved today, we are still very much in the dark about what comes next.

The issue with this instrument, as with so much that we in both Houses are being asked to consider, is that it leaves as many questions as answers, as we still do not know what will replace the aspects of the current EU framework that we are disapplying. The Government's argument for getting these instruments on to the statute book without certainty as to what will replace them appears to be that time is running out to pass all the necessary legislation before the end of the transition. We of course appreciate those circumstances, but do the Government not understand that the same pressures apply to businesses in every corner of the country? They also need time to prepare before the Christmas period arrives. This intense uncertainty comes after a

year of hardship, closure and uncertainty due to the Covid panic. It is up to the Government not to continue to add to that burden.

I am grateful to the Minister for his explanation, but the statutory instrument will end the application in England, Wales and Scotland of the rights derived from Articles 34 to 36 of the Treaty on the Functioning of the European Union. The removal of these provisions is to ensure that there is no barrier to divergence from EU rules should the Government choose to diverge from them. What update can the Minister give us on what rights and protections will be in place for EU-UK trade before the end of the transition period? When will businesses have those details?

The statutory instrument does not in itself create divergence, but it is part of paving the way for it. Is the Minister therefore able to update the Committee on where he believes we might seek to diverge from the EU's standards and requirements? What work is being done to ensure that any divergence is beneficial to British and Northern Irish businesses, and does not create new costs and barriers to trade?

What is crucial is that this issue relates not just to UK-EU trade but to the requirements for a new framework for UK-wide trade, because current treaty provisions also govern trade in goods across the UK. We have shown our commitment, not only on the Labour Benches but across the whole House, on the United Kingdom Internal Market Bill to ensuring that there is a strong internal market for the UK, working with the devolved Administrations through common frameworks on a statutory footing. However, yesterday the Government saw fit to overturn all the amendments to strengthen the role of the devolved Administrations that this House sent back to the Commons. In our way of thinking, that does not show a Government who are working to respect the devolved settlements and build a strong internal market for the future.

The noble Baroness, Lady Ritchie, as ever, asked a number of important questions on Northern Ireland. This SI implicates goods moving between Northern Ireland and Great Britain. We support unfettered access for Northern Ireland businesses to the rest of the UK market. However, the Minister knows that there are concerns over the temporary definition of qualifying goods. Is he in a position to give us any further update on this issue?

Finally, we should always remind ourselves that at the last election the voters were promised an oven-ready deal with

"no tariffs, fees, charges or quantitative restrictions across all sectors",

and protections for the environment, our workers' rights, our customers' rights and our security. However, we are a matter of days away and people in every region of the UK are still waiting to know how their livelihoods will be affected. I particularly want to mention the Government's so-called levelling-up agenda. If the Government do not get this deal right, it will be the sectors and areas of the UK that can least afford it that will bear the brunt of that fallout.

This statutory instrument might look like a narrow change, but it raises many vital questions about what comes next. I look forward to the Minister's reply.

3.50 pm

Lord Callanan (Con): I thank the noble Baroness, Lady Ritchie, and the noble Lord, Lord Bassam, for their consideration of this statutory instrument and their valuable contributions and questions—I shall endeavour to deal with as many of them as possible.

I have set out today the importance of this SI and the importance of having full sovereignty over our regulatory regime for goods at the end of the transition period. I emphasise that this SI is not a precondition for divergence; nor does it introduce any divergence from our current rules. By supporting the SI, we will ensure that we are not faced with legal challenges that seek to keep us in line with EU regulations.

To recap: treaty rights provisions prohibit quantitative restrictions or equivalent measures on imports and exports. Therefore, future divergence from EU regulatory requirements could result in a challenge from a business or importer if it led to a barrier being created to placing their goods on the market in Great Britain. This SI will ensure that we have the freedom to regulate goods in Great Britain as we see fit, along with considering the impact on businesses and consumers, while ensuring that the UK product safety system remains among the strongest in the world.

As advised, these regulations will not result in any changes for businesses. However, they will give businesses greater certainty that, if UK rules change, they will not be rolled back after legal challenges based on treaty articles that no longer make sense once we have left the EU.

The noble Baroness, Lady Ritchie, raised the important subject of working with the devolved Administrations. I repeat what I said in my introduction: my officials have had a number of informal meetings with officials from the Governments of Scotland, Wales and Northern Ireland, all individually, on this SI. Officials have also hosted regular meetings with officials from the devolved Administrations to discuss progress in negotiations and the regulatory requirements for goods at the end of the transition period. I say again that consent to this regulation was given by all the devolved Administrations.

The noble Baroness also asked about goods moving from Northern Ireland to Great Britain. We are laying this legislation to ensure that we do not face challenges from manufacturers or importers if in Great Britain we decide to change our regulation of goods in a way that creates barriers to trade with the EU. This does not mean that there will be barriers for goods flowing from Northern Ireland into Great Britain. We have laid legislation to prevent such barriers, including the United Kingdom Internal Market Bill and the unfettered access legislation. This SI will not undo any of those protections. I shall write to both noble Lords on the definition of Northern Ireland qualifying goods.

The noble Lord, Lord Bassam, asked about the protection of rights. The vast majority of these changes will take place regardless of the agreement that we have reached with the European Union on our future trading relationship so that businesses can be confident that their plans and preparations to date have not been wasted.

[Lord Callanan]

We also recognise the impact that the pandemic will have had on industry's ability to prepare. For that reason, we are taking a pragmatic and flexible approach to using some of our retained powers as a sovereign nation to allow businesses time to adjust.

The noble Lord also asked about legislative time. More than 150 SIs required by the end of the transition period have already been laid. Good progress is being made and we remain confident that all required SIs will be in force by the end of the transition period.

The noble Lord and the noble Baroness, Lady Ritchie, also asked about the important subject of business readiness. We are listening to businesses and recognise that they have faced many challenges, particularly from Covid-19. For goods with the new UKCA marking, we are permitting the use of the CE marking for goods in scope of the SI until 1 January 2022 as long as Great Britain and EU technical requirements remain the same. There are easements allowing the UKCA marking to be affixed to a label on a product or on a document accompanying the product until 31 December 2022, and we are allowing new importers of products from the EEA to set out their details on a document accompanying their products until 31 December 2022. Those are all ways in which we are helping to ease the burden on business.

Since the summer, the Government have also been providing support through an ambitious series of business readiness events. My department has published a range of guidance. However, I stress once again that this SI does not introduce any changes for businesses.

The UK will have its own regulatory regime after the end of the transition period and the EU will not treat UK goods as it would goods from a member state. Therefore, the provisions to which this SI relates are no longer appropriate to retain and could impede our ability to diverge from EU goods regulation in future. I commend the regulations to the Committee.

Motion agreed.

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): The Grand Committee stands adjourned until 4.30 pm. I remind Members to sanitise their desks and chairs before leaving the Room.

3.56 pm

Sitting suspended.

Arrangement of Business

Announcement

4.30 pm

The Deputy Chairman of Committees (Lord Lexden) (Con): 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 surfaces they may touch.

The microphone system for physical participants has changed. Your microphones will no longer be turned on at all times, to reduce the noise for remote participants. When it is your turn to speak, please press the button on the microphone stand. Once you have done that, wait for the green flashing light to turn red before you begin speaking. The process for unmuting and muting for remote participants remains the same. The time limit for this debate is one hour.

Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020

Considered in Grand Committee

4.31 pm

Moved by ***Lord Stewart of Dirleton***

That the Grand Committee do consider the Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020.

The Advocate-General for Scotland (Lord Stewart of Dirleton) (Con): My Lords, this instrument forms part of the Government's ongoing work to ensure that there are functioning domestic laws dealing with cross-border civil, commercial and family law matters in place at the end of the transition period that are consistent with the UK's obligations under the withdrawal agreement.

This instrument is made under Sections 8 and 8B of the European Union (Withdrawal) Act 2018. It amends a number of statutory instruments made to remedy deficiencies in domestic legislation arising from the UK's withdrawal from the European Union. The amendments address minor defects in those instruments, clarify the interaction of international conventions and domestic law after the end of the transition period, and ensure that two of those instruments are consistent with the provisions of the withdrawal agreement.

First is the amendment to the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019, which revoke the Brussels Ia regulation, the key EU instrument dealing with jurisdiction and the recognition and enforcement of judgments in cross-border civil and commercial matters. In its place, domestic private international law rules will apply to cross-border cases involving parties from EU member states. However, to ensure that certain employees are not disadvantaged by this change, the civil regulations transpose special protective jurisdiction rules for employment cases from Brussels Ia into UK domestic law. One of those rules ensures that employees who do not have a habitual place of work in any one country can sue their employer in the courts of the EU member state where the business which engaged the employee is or was situated.

An error has been identified in the way the civil regulations transpose this rule. The Government's exit policy intention is to replicate as closely as possible the Brussels Ia employment jurisdiction rules, modified only as necessary to make them work in the UK. However, in relation to one ground of the special jurisdiction rules, the rule has been inadvertently broadened to cover employees without a habitual place of work in any one part of the UK, rather than employees without a habitual place of work in any one country, as is the case in Brussels Ia.

This effect of this is that a larger group of employees will be able to sue employers in UK courts under this rule. This does not reflect the Government's policy intention; nor is it a desirable outcome, as it would mean that employees who have a habitual place of work in another country will now have the option of suing in the UK courts instead, even where the connection to the UK is more tenuous—being only that the employee was engaged by a business situated in the UK. The purpose of the Brussels Ia rule was to provide a jurisdiction only in cases where that other place, a place of habitual work, was not available.

This instrument addresses the issue by amending the civil regulations to ensure that the Brussels Ia employment jurisdiction rules are correctly transposed into UK domestic law, modified only as necessary to make them work in the UK context. It does not represent any reduction in the protection available to employees, but merely properly replicates the existing EU rules.

The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 revoke the Brussels IIa regulation, the main EU regulation dealing with jurisdiction and the recognition and enforcement of judgments in parental responsibility cases, and the maintenance regulation, the main EU regulation dealing with jurisdiction and the recognition and enforcement of judgments in maintenance cases. In their place, the UK will move principally to the 1996 Hague convention for cross-border parental responsibility matters involving parties from EU member states and the 2007 Hague convention for the cross-border recognition and enforcement of maintenance involving parties from EU member states. Where there are no applicable Hague convention rules, the family regulations make provision for the rules that will apply. In the case of maintenance jurisdiction, these are largely the rules as they existed prior to the relevant EU rules taking effect.

Two minor errors have been identified in the amendments made to domestic legislation by the family regulations to reinstate the pre-EU jurisdiction rules for maintenance cases in Scotland. The first of these is the carrying through of a reference to

"actions for adherence and aliment".

These concepts have been abolished in Scots law, making this reference obsolete. This instrument addresses this by simply deleting the reference.

The second error has the unintended effect that, from the end of the transition period, certain applicants seeking maintenance, referred to as "aliment" in Scotland, would be disadvantaged. This would be where that claim is not connected to divorce or other proceedings; the applicant in such a case would be unable to bring the proceedings in Scotland and would have to pursue the paying party in the courts of the country where the paying party is domiciled. This problem is addressed in this instrument through an amendment to the family regulations to restore the jurisdiction of the Scottish court to hear claims for aliment where the applicant is domiciled or habitually resident in Scotland. We have worked closely with the Scottish Government to identify these errors and agree suitable remedies via the instrument we are debating today.

Additionally, the Government recognise that some of the precise effects of the provisions of the family regulations are potentially open to argument. We are grateful to the family law practitioners who have raised concerns about a lack of certainty in the application of the saving and transitional provisions in the family regulations. These intend to ensure that cases started under Brussels IIa or the maintenance regulation rules before the end of the transition period continue under those rules after its end. The concern is whether it is clear enough that those provisions apply to cases begun under the intra-UK maintenance jurisdiction rules, which was the Government's intention. They have also highlighted a possible lack of clarity over the relationship after the end of the transition period between domestic jurisdiction rules in parental responsibility and maintenance matters and the relevant Hague convention rules.

This instrument addresses these areas of uncertainty through amendments to the family regulations to make clear and put beyond doubt that the saving and transitional provisions apply to intra-UK maintenance matters and that the relevant Hague convention rules take precedence over the domestic jurisdiction rules in cases that properly fall under the relevant Hague conventions.

The Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 revoke or amend, as appropriate, domestic legislation which gave effect to the EU mediation directive, other than court rules and matters within the legislative competence of the Scottish Parliament. One of the domestic instruments amended by the mediation regulations, the Fair Employment and Treatment (Northern Ireland) Order, has been amended further by the Employment Act (Northern Ireland) subsequent to the making of the mediation regulations. This amendment came into effect on 27 January 2020; as such, the mediation regulations do not take account of it. This instrument amends the mediation regulations to take account of this later amendment to ensure the meaning of the relevant provision in the Northern Ireland order is clear once it is amended by the mediation regulations.

The Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019 make amendments to the Family Procedure Rules and the Court of Protection Rules that are consequential on the main civil judicial co-operation exit instruments. The instrument we are debating today addresses some minor technical errors in the rules regulations, re-establishing a link between the Family Procedure Rules and the transitional provisions in the civil regulations in respect of maintenance cases arising under the Lugano Convention 2007 and fixing a cross-referencing error in, and omitting an erroneous reference to "EU member state" from, the amendments to the Court of Protection Rules.

In addition to these corrective and clarifying amendments, this instrument amends two of the civil judicial co-operation exit instruments to ensure that their provisions are consistent with the UK's obligations under the withdrawal agreement. The first of these instruments is the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019, which amends the Rome I and Rome II regulations. These EU instruments set

[Lord Stewart of Dirleton]
out the rules for determining, in cases with a cross-border element, which country's law applies, respectively, to contractual obligations and non-contractual obligations. The application of Rome I and Rome II have been extended to intra-UK matters, so are also used, for example, to determine whether English or Scots law should apply to a contract connected to both countries.

The Rome I and Rome II regulations have been retained under the withdrawal Act and will apply as domestic UK laws from the end of the transition period. The Rome regulations amend the retained versions of Rome I and Rome II to take account of the UK no longer being an EU member state. While the amendments are minor, it means that the Rome rules as retained are slightly different in some respects from the EU Rome regulations. The other instrument is the aforementioned family regulations. Both the Rome regulations and the family regulation were made in contemplation of the UK's exit from the EU without an agreement on the terms of our departure. As a result, neither instrument takes account of the withdrawal agreement subsequently agreed by the Government and the EU.

Title VI of Part 3 of the withdrawal agreement contains provisions that determine how transitional matters—that is, matters that commence, but do not conclude, before the end of the transition period—are to be treated. In the case of applicable law rules, Article 66 of the withdrawal agreement provides that the Rome I regulation shall apply in respect of contracts concluded before the end of the transition period and that the Rome II regulation shall apply in respect of events giving rise to damage, when such events occurred before the end of the transition period. The Rome regulations do not reflect Article 66. Instead they provide that the retained versions of the Rome I and Rome II rules as amended by that instrument, and not the EU Rome I and Rome II regulations, apply to such contracts and events.

Likewise, Article 67 of the withdrawal agreement provides that the Brussels IIa regulation and the maintenance regulation continue to apply to matrimonial, parental responsibility and maintenance matters where proceedings are instituted in relevant proceedings before the end of the transition period. The family regulations contain a saving and transitional provision which, although largely consistent with Article 67 in terms of proceedings commenced under Brussels IIa and the maintenance regulation, extends to matters not dealt with in the withdrawal agreement, such as choice of court agreements in maintenance. This instrument amends the Rome regulations and the family regulations to align these instruments with the UK's obligations under the relevant provision of the withdrawal agreement —Article 66 in the case of the Rome regulations and Article 67 in the case of the family regulations.

I should add that this is the first of two instruments that will amend the civil judicial co-operation exit statutory instruments to ensure that their provisions align with the requirements of the withdrawal agreement. The second of these instruments is still being finalised and will shortly be laid before Parliament.

On impacts, as I have noted, the amendments in this instrument correct minor technical errors and clarify ambiguities in the civil, family, mediation and family, and COP rules regulations, and will ensure that the family regulations and Rome regulations are consistent with directly applicable provisions of the withdrawal agreement. As such, they are not expected to have any significant impact on business, charities or the voluntary or public sectors. Indeed, in terms of the errors and ambiguities corrected, the amendments will ensure the civil, family, mediation and family, and COP rules exit SIs have the impact intended by the Government when they were laid before Parliament, as is reflected in the Explanatory Memoranda for those instruments and, in the case of the civil, family and mediation exit SIs, in the impact assessments published in respect of those instruments.

4.44 pm

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, I thank the Minister for explaining in some detail this statutory instrument. This SI fixes the defects in civil regulations, family regulations, mediation regulations, Rome regulations and even the rules of regulations. Is the Minister satisfied that all the problems have been ironed out? With only 24 days until we leave the EU, how many more instruments can we expect to see before the House before we go? Can he confirm that none of the amendments in this statutory instrument are in any way being discussed in Brussels today as part of the negotiations for when we finally leave?

I move on to an issue that I raised with the Minister when we had a private talk with the Minister in another place, Alex Chalk, on a specific concern of mine. I remind the Minister that I sit as a family magistrate in London and deal with the reciprocal enforcement of maintenance orders, which come under these regulations. The issue that we have in our courts is with the question of enforcement of these orders. As the Minister said, they will principally move to being enforced under the Hague conventions of 1996 and 2007. However, the issue that we have in our courts is that we have no powers, as far as I am advised by legal advisers, to enforce these maintenance orders.

Lord Thomas of Gresford (LD) [V]: I have been overlooked and it has gone straight to the noble Lord, Lord Ponsonby.

Lord Ponsonby of Shulbrede (Lab) [V]: I was just concluding my comments, but I think that the noble Lord, Lord Thomas, is after me on the list.

The Deputy Chairman of Committees (Lord Lexden) (Con): When I am in the chair, there is no possibility of the noble Lord, Lord Thomas of Gresford, ever being overlooked. I call him now.

4.47 pm

Lord Thomas of Gresford (LD) [V]: I am very grateful. I am sorry if there has been a glitch. I was ahead of the noble Lord, Lord Ponsonby, on the list that I received this morning.

I do not mind mistakes—everybody makes them—and the helter-skelter of amending the statute book in time for our leaving the EU has no doubt led to many

errors in the wave of 2019 regulations put before us. If the mistakes could not be spotted at the time by government lawyers, perhaps the opposition parties can be forgiven for letting them through. I understand that another SI to amend mistakes is in the pipeline, similar to this, and I would expect others to follow.

First, the 2019 civil jurisdiction and judgments regulations inadvertently broadened the special jurisdiction rules, with the effect that a larger group of employees than the Government intended would be able to sue employers in UK courts. Secondly, the jurisdiction and judgments family rules contain two minor errors. The first are references to "actions for adherence and aliment", concepts that had been abolished in Scots law before I ever came to know that they existed and, secondly, they inadvertently took away jurisdiction from the Scottish court to hear claims for aliment not connected to divorce or other proceedings.

The 2019 cross-border mediation regulations did not take into account alterations made by the Employment Act (Northern Ireland) 2016. Similarly, family procedure and Court of Protection rules contained minor errors. Two of the civil judicial co-operation exit instruments of 2019, which are very important to ensure co-operation with our former European partners, have been overtaken by the provisions of the withdrawal agreement.

I welcome this SI not so much for what it contains but because of its limited purposes—to use the powers that have been granted under various statutes to put right mistakes. There is nothing grandiose about it. The objection, that we hear so much, to the use of Henry VIII powers arises when they purport to carry into effect policy, not when they rectify errors, as here. By contrast, the powers to make secondary legislation that have been so offensive—the ones put back last night into the United Kingdom Internal Market Bill and abandoned this morning—were not just those which would have permitted a Minister to break the law and are contrary to the rule of law championed for so long by this country; that offence was compounded on this occasion by the unprecedented attempt to give such unlawful secondary legislation the status of an Act of Parliament, so that the use of unlawful powers could not be challenged in the courts by judicial review. The proposal was an extraordinary and unprecedented step, which I hope will never be repeated.

Today is an interesting day, not just for last night's reassertion of illegality by a pack of Tory MPs, but as the day that the Prime Minister heads off to meet the head of the European Commission to assert the primacy of British sovereignty, having desperately weakened his own bargaining position by demonstrating that the United Kingdom cannot be trusted to keep its word. But I must be up to date. Perhaps honour has been saved this morning, not by the tooting John Soane-ian cavalry coming over the hill, but by that parfit gentil knight in tarnished armour, Michael Gove, the man the Prime Minister most trusts above all others to put a drooping lance into his back—ironic, is it not?

I take the Whig view of history: that, steadily but assuredly, humanity progresses from darkness into light. Such progress involves the necessary recognition of the rule of law, of human rights, and of international co-operation as an expression of our common humanity. In my lifetime, there has been progress. The forces of fascist dictatorship were crushed in the Second World War. International institutions such as the United Nations and its many agencies were created in its aftermath. Domestically, the welfare state, which had its origins in the reforms of Lloyd George in the early part of the 20th century, progressed and was entrenched. It gives us the National Health Service, and today, V for vaccination day.

However, in the last few years, progress has stumbled. Narrow nationalism proclaimed by populist leaders has re-emerged, blinking, into the light. The most notable instance has been the Donald Trump years—America first, when international co-operation in tackling climate change was abandoned, alliances were broken, the international order challenged, and internally, the concept of welfare, as illustrated by Obamacare, was attacked. It was all un-American.

Today, Mr Johnson will, in the Trump tradition, be arguing for British exceptionalism—Britain first. He will be asserting a faded—

Lord Parkinson of Whitley Bay (Con): I wonder if the noble Lord, with his Whiggish view, could come back to the regulations in hand.

Lord Thomas of Gresford (LD) [V]: I am just about to complete. I was about to say that Mr Johnson will be asserting a faded and outdated concept of Machiavellian sovereignty for which Charles I lost his head and the British Empire went to the wall. Not much to do with this statutory instrument, you may think—as the noble Lord who interrupted suggested, and he was right—but this proceeding does for once give me a platform to add a very small footnote to what is an historic day.

4.53 pm

Lord Stewart of Dirleton (Con): My Lords, if I may answer the noble Lord, Lord Ponsonby, first—however the order should have been, he spoke first. He asked whether it could be confirmed that the amendments under discussion today, as part of this statutory instrument, are not being discussed in Brussels. I am able to confirm that is the case. The United Kingdom will not be asking for bespoke arrangements on civil judicial co-operations such as these.

The noble Lord raised again the matter of enforcement power in magistrates' courts where he sits, as he did in another context to me. I regret to advise the noble Lord that I do not have specific matters in relation to his concerns, but if I can ask him to show patience I will write to him on the matter and hope to allay fears that he may have.

The noble Lord, Lord Thomas of Gresford, spoke generously and gave a generous analogy—the helter-skelter of the times and circumstances in which the instruments containing minor errors were inaugurated. With respect, the noble Lord is quite correct to describe the circumstances with the analogy that he used. I have spoken at some length to members of the Bill team as to how these things happened. They confirmed that it was indeed a matter of the extreme and unprecedented urgency with which drafting took place. I stress to the Committee that these statutory instruments have never been enacted into law; the errors that are identified in

[LORD STEWART OF DIRLETON]
the present statutory instrument, correcting those in the previous ones, are not errors that have caused any inconvenience to any litigant or any member of the public; and they have no caused any disruption to the court system in any part of the United Kingdom. They have been identified in good time and I freely acknowledge the assistance of the specialist stakeholders who have been in touch to point out these recondite areas in which the statutory instruments fell into error or were insufficiently clear.

Finally, the noble Lord, Lord Thomas, raised the matter of his position—interpreting history from a Whig standpoint. I am more of a Butterfield man, and refer to his book *The Whig Interpretation of History*. That is a huge field of history on which I look forward, when leisure permits, to having an interesting discussion with the noble Lord. I beg to move.

The Deputy Chairman of Committees (Lord Lexden) (Con): My Lords, apologies are due to the noble Lord, Lord Ponsonby, and to my fellow Petrean and historian, the noble Lord, Lord Thomas of Gresford, for the confusion over the batting order this evening.

Motion agreed.

Committee adjourned at 4.57 pm.