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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their 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
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 24 July 2018

11 am

Prayers—read by the Lord Bishop of Leeds.

Oaths and Affirmations

11.06 am

Lord Bethell took the oath, following the by-election under Standing Order 10, and signed an undertaking to abide by the Code of Conduct.

HS2: Budget and Costs

Question

11.07 am

Asked by ***Lord Berkeley***

To ask Her Majesty's Government when they intend to update the cost estimate and business case for HS2 Phase One.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, HS2 cost estimates and business cases are periodically updated as the scheme design is progressed to ensure that the scheme remains affordable and viable. HS2 Ltd is currently developing an updated phase 1 cost estimate, to be finalised prior to the completion of the phase 1 full business case accompanying the authorisation of notice to proceed in June 2019. The Government remain confident that the phase 1 cost estimate will remain within the SR15 funding envelope of £27.18 billion.

Lord Berkeley (Lab): My Lords, I am grateful to the noble Baroness for that Answer. It is good that HS2 is regularly updating its budget, but it is a pity that no one knows about it. The last public budget given was in 2013, which is five years ago. Since then, we have had reports of the land purchase costs going £2 billion over budget and well behind, while a report in the *Sunday Times* last weekend by the consultant to the Infrastructure and Projects Authority using Treasury figures said that the project is up to 60% over budget and was in a "precarious" and "fundamentally flawed" position. Many other reports have also cited increased costs and delays. How can Ministers go on saying that they do not recognise the figures that are coming from all these different sources? Indeed, the Minister has almost repeated that today. Is it not time that we had a review of this project in costs and programme terms, because spending £100 billion with no budget for five years is surely not a good use of public money?

Baroness Sugg: My Lords, I thank the noble Lord for his question, and I greatly respect his lifetime of experience in the rail industry. I am also grateful for the noble Lord's continuing scrutiny of HS2. As I have said, we continually update the cost estimates, but we do not share the details of those estimates as they are commercially sensitive. However, the headline figures will inform the business case as published in 2019. I understand that the article in the *Sunday Times* was based on an end-of-role report from a few years ago, and of course we do not comment on leaked documents. HS2 does not recognise or agree with either the analysis or the figure it contains, while the Infrastructure and Projects Authority recently described the HS2 programme as on target to be completed on time and on budget.

Lord Framlingham (Con): My Lords, can I beg the Minister to do all she can to persuade the Government to abandon this insane vanity project? It is causing misery to thousands of people along the proposed route whose lives it is damaging. It is cutting great swathes through our environment, including damage to ancient woodlands up and down the country. All the billions it is costing would be much better spent on improving the whole of the railway network throughout England and Wales to the benefit of many people.

Baroness Sugg: My Lords, what is needed is a step change in railway capacity, and HS2 will deliver this way beyond what would be delivered by improving existing lines. I am afraid to inform my noble friend that the Government are committed to delivering HS2. It remains on track, with strong cross-party support. The new railway line will bring huge economic benefits that will be felt across the country.

Lord Adonis (Lab): My Lords, I hope that the Minister will stand by HS2 as one of the great things that is happening in the country at the moment. In this dismal decade of Brexit and austerity, two of the shining lights that people will remember are the Olympic Games and HS2. One of the leading figures responsible for delivering both of them is Sir David Higgins, who will stand down as the chairman of HS2 Ltd at the end of this month. Will the Minister convey to Sir David the thanks of this House and the country for his brilliant work on our behalf in helping both to deliver the Olympic Games and to equip us with 21st century infrastructure? It is about time, after the intervening 20th century, that we started to mirror once again the great achievements of the Victorians.

Baroness Sugg: My Lords, I pay tribute to the part that the noble Lord played in HS2. I will certainly pass on his good wishes to the outgoing chairman. This is one of the biggest infrastructure projects that our country has ever seen. Eventually, more than 100 million people are expected to use HS2 trains when the network is fully completed.

Baroness Randerson (LD): My Lords, Sir Terry Morgan is the new chair of HS2, following a very efficiently run spell at Crossrail. Could the Minister confirm whether Sir Terry's remit includes a complete review and reassessment of existing HS2 plans in view of the doubts that are being expressed about the cost envelope?

Baroness Sugg: My Lords, I am sure that the incoming chair will absolutely look at the details of the project very closely. As I said, HS2 is preparing a full business case, which will be the robust and comprehensive

[Baroness Sugg]
assessment of the scheme. That will inform the next phase of the project, when we assess whether it is correct to continue.

The Lord Bishop of Leeds: My Lords, would the Minister agree that there is a problem if you can get up north 20 minutes quicker but you cannot get anywhere once you get there, and that any business case will have to take on board massive infrastructure improvements in the north of England?

Baroness Sugg: My Lords, I very much agree. Of course HS2 will benefit the north, but we are also looking at the connectivity of rail across the north and working closely with Transport for the North to deliver that.

Baroness Young of Old Scone (Lab): My Lords, in view of the escalating size of the HS2 costs and considering what we hope will be today's publication of the new National Planning Policy Framework giving increased protection for ancient woodland, will the Minister commit to the minimal cost—peanuts, indeed—of the Whitmore tunnel, compared with the total scale of the project, to reduce by 60% the destruction of ancient woodland by HS2 phase 2a?

Baroness Sugg: My Lords, in phase 1 we are creating nearly three times as much new woodland compared with the non-ancient woodland affected by HS2. Ancient woodland is, of course, irreplaceable. To compensate for that loss, we have committed to using best-practice measures such as enhancing linkages between woodlands, reusing the ancient woodland soils and creating new mixed deciduous woodland alongside the track.

Lord Cormack (Con): My Lords, my noble friend has made a splendid debut in her job, but I wish that she did not have to defend the indefensible. Will she please consider the enormous cost of this cost envelope, tell the House how many jobs are being provided and spend the summer reflecting on the wisdom of this vast project?

Baroness Sugg: My Lords, as I said, we are confident that phase 1 will be delivered within a funding envelope of just over £27 billion. During construction, HS2 will generate 25,000 jobs and 2,000 apprentices. It will also support growth in the wider economy, which will be worth an additional 100,000 jobs.

Domestic Abuse: Universal Credit Payments

Question

11.15 am

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government what assessment they have made of the implications for their proposed domestic abuse strategy of the default joint payment of universal credit to couples.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, there are no implications on the provision of the default joint payment of universal credit to couples as a result of the domestic abuse strategy and consultation. We already provide split payments and additional support to victims of domestic abuse who request them. More broadly, the Government are currently considering stakeholder responses to the consultation on domestic abuse that closed on 31 May and will publish a response and a draft Bill later this Session.

Baroness Lister of Burtersett (Lab): My Lords, domestic violence, welfare rights and women's organisations are all warning that default joint payments will undermine the new domestic abuse strategy—which rightly includes economic abuse. With all the money bundled together in UC, such payments increase the risk of economic abuse. Requiring a victim to request a split payment, as the Minister said, makes her vulnerable to retribution from a violent partner. Why are the Government not actively trying to find a way of meeting the widespread calls for default split payments?

Baroness Buscombe: My Lords, it is important to stress that most couples can and want to manage their finances jointly, without state intervention, so split payments should not be the default. When an individual suffering from domestic abuse and violence requests a split payment, we will support them in putting the arrangement in place—but split payments in universal credit cannot be the solution, the panacea, to what is a criminal act. They are provided to any individual who requests them as a result of domestic violence.

Baroness Burt of Solihull (LD): My Lords, to get split payments, the survivor of domestic abuse has to disclose the abuse to their work coach and provide written evidence from an official. They are eligible for split payments only when the abuse has already reached crisis point in very exceptional circumstances. Why cannot each partner nominate a bank account, enabling separate payments to be made as routine? I am sure that that is not beyond the wit of man or woman to design a better, safer and fairer system.

Baroness Buscombe: My Lords, as I have already said in a previous answer, most people do not want split payments. They want to be able to judge their household affairs together as one. Therefore, it is important that we and our staff work hard with Women's Aid and ManKind to develop as much as we can our support and training facilities to help people who are subject to domestic violence. It is not necessarily the case that domestic violence has reached crisis point. We treat this carefully as a private matter. We make training for our work coaches in Jobcentres Plus a priority so that we can give the right support at the right time.

Baroness Barran (Con): How will the department ensure that victims of domestic abuse who are in receipt of universal credit can meet their basic needs? I am thinking particularly of those who suffer such severe financial abuse that they struggle to meet their accommodation costs and provide for their children.

Baroness Buscombe: My Lords, we have a range of measures to ensure that a family's basic needs are met, including housing benefit and universal credit housing support. Victims do not need a bank account to claim immediate advance payments from universal credit to cover immediate needs. Fast-track payments can be made into alternative accounts to avoid rent arrears. In addition, child maintenance fees are excepted and a parent can apply for child benefit to be paid direct to them. Work coaches may also signpost and refer domestic violence victims to organisations that can provide further support.

Baroness Sherlock (Lab): My Lords, I wonder whether the Minister has properly understood what Members of the House are saying to her today. The old system used to separate out payments for children, which were paid every two weeks to the main carer, and in-work benefits, which were paid directly into the bank account of the main earner. Universal credit has taken all these payments, and housing payment, and made them available only once a month, all into the bank account of one partner. What happens in practice if the relationship breaks down? The Government have been very good at recognising that financial and economic abuse are part of domestic abuse. It means that a person, often a woman, who is in that situation simply has no access to funds to protect herself and her children. Will the Government please listen? The Scottish Government consulted and decided to commit to going to split payments. Will the Government please think again?

Baroness Buscombe: My Lords, with regard to Scotland, the Scottish Government have discussed split payments with stakeholders and are now starting to think about developing their own policy. We will continue to watch and observe how that proceeds. But I have entirely understood what we are talking about today and I think it is really important to make clear that we want to simplify the system for everyone making claims under universal credit. It is important that we simplify the system. Noble Lords shake their heads, but we want to treat people in the normal way, whereby they have a joint approach, in most instances, to receipt of their income, to managing their household bills and to managing how they can cover their costs on a monthly basis—but with exceptions where people who are suffering abuse or any other kind of coercive action can ask for and will be given split payments as a matter of course.

Baroness Watkins of Tavistock (CB): My Lords, will the Minister please answer two questions? First, is this purely because of cost savings, in that it may be more costly to deliver split payments? Secondly, what about preventing abuse in the first place? If women have their own money, it quite frequently prevents abuse.

Baroness Buscombe: On the latter point, I have to say that the charity Refuge has made it clear that it is not convinced that split payments help. In fact, they can exacerbate violence if the perpetrator of violence knows that their partner has her own pot of money. We have to be extremely careful about this: each individual case is different. This is nothing to do with cost savings. The reality, I know, is that this is all about the legacy. Noble Lords opposite prefer the legacy—the complex, difficult system that the party opposite preferred, which kept people trapped on welfare. It was much more complicated. We are simplifying this through universal credit, which is delivering a much simpler to understand system to support people into work and support them to manage their household finances.

Brexit: Parliamentary Processes

Question

11.23 am

Asked by ***Lord Lea of Crondall***

To ask Her Majesty's Government what assessment they made of the precedents for Parliament providing them with a mandate for international negotiations, including the effect of section 7 of the European Communities (Amendment) Act 1993 on the Maastricht Treaty negotiations, when deciding to oppose Lords Amendment 20 to the European Union (Withdrawal) Bill; and whether they consider any such precedents conclusive in supporting the view that Parliament mandating them in negotiations is not consistent with the constitutional role of Parliament in relation to the conduct of international relations.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, we are not aware of any precedent for Parliament mandating the Government in international negotiations conducted under the royal prerogative. The Government were not prepared to accept such a significant constitutional shift in the amendment the noble Lord referenced.

Lord Lea of Crondall (Lab): I thank the Minister for that reply, but on what basis do the Government claim the prerogative to decide unilaterally what the constitutional position on this is, as if they were the Vatican producing some doctrine covered by infallibility? Secondly, why are we able to pass amendments on the customs Bill, on the single market or, hypothetically, the European Economic Area, but not able to consider the trade-offs, the framework or the mandate? Albeit that we vote against, there could be a parliamentary position with the result that Parliament would be responsible for something. At the moment, Parliament is not responsible for anything coherent. It is irresponsible. Is that wise?

Lord Callanan: I have never been compared to the Vatican before. Is Parliament responsible and wise? Parliament is always responsible and is extremely wise in whatever it says and does.

Baroness Ludford (LD): My Lords, it is apparent to all that the mantra of taking back control and parliamentary sovereignty has been a fig leaf for an executive power grab, as exemplified by the disrespectful

[Baroness Ludford]
publication, on the last day of Parliament, of the White Paper on implementation. I guess that, like last time, we will be lucky to see it before the Statement. Will the Government, even at this late stage, change the habits of a lifetime and emulate the arrangements in the European Parliament, which has full involvement and information on the Brexit negotiations?

Lord Callanan: We will discuss the White Paper later, and the noble Baroness will have a chance to ask further questions on it then. The Executive are accountable to Parliament. DExEU Ministers have given evidence to a broad range of committees on a total of 37 occasions, we have made 108 Written Statements in both Houses, and I think we spent about eight hours last night discussing the very issues that the noble Baroness refers to.

Baroness Hayter of Kentish Town (Lab): My Lords, it is perhaps fitting that John Major's papers are released today. They show how he had to take on, and indeed vanquish, the Eurosceptic Rees-Mogg—that is, Rees-Mogg the elder. Can we hope that today's Prime Minister will show the same courage with Rees-Mogg the younger, and can the Minister take seriously the need for the Government to find a negotiating mandate as to how we exit that would find favour not just within the governing party but within Parliament?

Lord Callanan: As we have said, Parliament will get a vote on the deal. We will discuss the legislation to implement that deal later, and there will be a parliamentary vote on the issue. We hope that it will find favour with Parliament, and no doubt we will extensively debate the legislation to implement it.

Lord Foulkes of Cumnock (Lab): Will the Minister clarify the position regarding the vote on the deal? Does he envisage that one of the options that Parliament might consider is that we remain in the European Union?

Lord Callanan: The vote that Parliament will have will be whether to accept the deal or reject it.

Lord Whitty (Lab): It is bizarre in this day and age that we hide behind the medieval doctrine of Crown prerogative in relation to treaties. In relation to future trade treaties in particular, does the Minister not accept that for the past 40 years we have had effective scrutiny by a Parliament, the European Parliament, in mandates, negotiation and outcome? We are therefore going backwards in parliamentary scrutiny terms if free trade agreements with the EU or anything else do not follow the same pattern. Of course, free trade agreements have the same pattern in the United States Congress. Will the Minister at least concede that we need a proper trade treaty scrutiny committee post Brexit?

Lord Callanan: Scrutiny committees are not a matter for the Government; they are a matter for Parliament. I think the noble Lord will find that the European Parliament gets similar arrangements. The Commission negotiates trade deals that the European Parliament votes to accept or reject, and the position will be the same for this Parliament.

Lord Wallace of Saltaire (LD): My Lords, it was quite clear from the Minister's wind-up remarks last night that the Government are still at a very early stage in negotiating the future relationship. How will it be possible to have a meaningful vote before March 2019 if all that we have is an agreement about the principles of withdrawal and the sketchiest of ideas about the nature of the future relationship in the many different and complex areas discussed in the debate yesterday?

Lord Callanan: We are hoping that the framework that we agree will be a detailed exposition, and the noble Lord will be able to scrutinise it alongside the withdrawal agreement.

Lord Dykes (CB): My Lords, following the question from the noble Lord, Lord Foulkes, does the Minister not realise that, if there is no option in a parliamentary vote and a vote of the people to remain in the European Union after all that has happened and all the Government's mistakes, there will be total uproar in this country?

Lord Callanan: I think there would be total uproar in this country if we did not implement the referendum vote. I am slightly confused about why this call for a second referendum is now being labelled a people's vote, as if somehow the people did not get to vote in the first referendum.

Lord Watts (Lab): My Lords, can the Minister say what the Government will do if Parliament rejects the deal?

Lord Callanan: We hope that Parliament will not reject the deal, but if it does, clearly the Government will have to contemplate that and come back to Parliament with a statement on how we proceed.

Lord Grocott (Lab): My Lords, has the Minister had any advice from any of the remainers on the difference between a people's vote and a referendum?

Lord Callanan: No, I have not had any advice on that, as the noble Lord will probably suspect. This seems to be some sort of spin put on to try to convince the public that there would be another vote, as opposed to a second vote on the same subject.

Pensions: Online Dashboard

Question

11.30 am

Asked by ***Lord McKenzie of Luton***

To ask Her Majesty's Government what progress they have made towards establishing an online pensions dashboard.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, with automatic enrolment we are delivering a complete change in the UK's savings culture. We are

currently exploring the many complex issues associated with developing a pensions dashboard. Our feasibility work is nearing completion and we will report to Parliament in due course. The Government are committed to ensuring that people are supported to plan ahead for retirement, including with automatic enrolment, existing digital services and a new single financial guidance body, launching in January next year.

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for that reply. At a time when 9 million new workplace savers are being auto-enrolled and the average worker changes jobs 11 times during their working life, there is clearly a compelling public policy argument for having mechanisms to track pension pots, including the state pension, throughout life. The DWP has estimated that 50 million pension pots, with some £3 billion in savings, would be lost without a dashboard. Already one in five adults admits to having lost a pension pot.

There is widespread support for the concept of the dashboard, although there are different propositions. We believe that the Government are right to give ownership to the DWP, as a government lead is essential. Does the Minister agree that lessons from overseas show that the best way of providing a comprehensive service is to make participation compulsory? That requires legislation. Given all the work the DWP has done, why are we considering changing tack now? What can we glean when Parliament is not sitting which we cannot not glean when it is? Is there not an issue of capacity, with the universal credit debacle overwhelming the department?

Baroness Buscombe: My Lords, let me first say that the figure of 50 million referred to is an estimate made in 2012 of the number of dormant, not lost, pension pots by 2050. To suggest that 50 million pension pots will be lost unless a pensions dashboard is introduced is wholly inaccurate: I want to make that very clear. We are looking through the whole process and at experience overseas in order to understand more about pensions dashboards. The noble Lord knows that the whole process is very complex. We are working through the options around scheme participation in any potential pensions dashboard. The decision whether to compel participation depends on a number of issues, such as the functionality, delivery model and governance of the dashboard. We will set out the Government's view in due course.

Baroness Kramer (LD): My Lords, can the Minister address this feet-dragging? George Osborne announced that this project would go ahead in 2016, it was meant to be up and running next year, and Guy Opperman, in his role, constantly says that he is actively supporting it. The industry is—to put it mildly—cross, having done all the work it needs to contribute towards creating a pensions dashboard. It is vital so that savers can make the best investments of their pension money, and it is key to fraud prevention. Both of those are crucial issues. Can the Minister confirm that the rumours that the scheme is in jeopardy are false, and can she please finally give us a timetable?

Baroness Buscombe: My Lords, the noble Baroness will know that we are talking about something quite complex. As we look at it, the more we explore and the more questions we ask ourselves and the industry. My honourable friend in another place was right to talk about what was set out in 2016. We want to be careful to ensure that we cover all the challenging issues associated with the dashboard, not least questions of governance, funding, what role the Government might have and whether legislation is necessary. The department has been working closely with stakeholders across the pensions and financial services industry, the regulators, consumer bodies and others, as part of this feasibility study.

Baroness Altmann (Con): My Lords, I welcome the potential of the pensions dashboard and I thank the Minister for her answers so far. It does not sound as if the whole project has been parked, but can my noble friend comment on the accuracy of pensions data and whether the problems of errors in pension recording have led to some concerns about a dashboard containing past pension records? Can she perhaps reassure the House that, at the very least, all auto-enrolment pension records could be put on to a dashboard funded by the industry—not by government but facilitated by her department?

Baroness Buscombe: First, I congratulate my noble friend on being appointed as the chair of pensionsync. I noticed that the question she has just asked was on her blog this week, suggesting that it is perhaps due to errors. I entirely refute that suggestion. The reality is that we already have, as my noble friend well knows, the online Pension Tracing Service to help people more easily locate their pension savings. We have also established the "Check Your State Pension" service, which has provided more than 9 million estimates since its introduction in 2016. We also have the development of a single financial guidance body. This department is doing a huge amount towards a revolution in the way that we support people to save in their retirement. Auto-enrolment, to which nearly 10 million people have actually signed up in the last six years, is an example of where we are working with this quiet revolution.

Lord West of Spithead (Lab): My Lords, the Minister will be aware that war pensions were included in the figure of 2% of GDP that is spent on defence. It is therefore a false figure. Can she assure us that this will be looked at within the ongoing modernising defence programme so that we actually have a realistic amount of money for defence to support the Armed Forces, not least to have some more ships so that when we are all away on holiday on the oceans, we see some grey funnel line around rather than anything else?

Baroness Buscombe: I thank the noble Lord for his question. He knows my particular affection for the Navy.

Noble Lords: Oh!

Baroness Buscombe: I have a personal interest. That said, I must be clear with the noble Lord that there has been growth in the budget for the Navy, which is

[Baroness Buscombe]
ongoing, and for the Armed Forces overall. His point about war pensions is an important one and if I can enlighten him any further, I will certainly attempt to do so in writing. We are doing all we can at the Department for Work and Pensions to support the lives of those in our Armed Forces in every way that they impact upon our department. That is for both those who are serving and those who have served this country well.

Broadband: Full-fibre Coverage

Private Notice Question

11.38 am

Asked by ***Lord Fox***

To ask Her Majesty's Government how they intend to deliver full-fibre broadband coverage, and what will be the cost to the taxpayer for these improvements.

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

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the Government have set out a package of measures in the future telecoms infrastructure review to meet their ambition for national full-fibre coverage by 2033. This seeks to create conditions that will support commercial investment by reducing costs through barrier busting, and create a stable regulatory environment. Additional funding will be required to make sure that all parts of the country are able to enjoy the benefits of world-class connectivity. This will be agreed as part of the forthcoming spending review.

Lord Fox: My Lords, as the Minister knows, those of us on these Benches and the adjacent Benches who worked on the Digital Economy Act spent a lot of time putting forward amendments to bring forward a full-fibre network. We should therefore welcome the Government's conversion to this cause and their realisation that 4% coverage is a national shame. However, to get 100% coverage in 15 years will cost many billions of pounds. Please remember that if the money is coming from commercial sources, in the end it will be the consumer who pays and reimburses those commercial concerns. Clearly the Government must have a funding plan, otherwise these promises would merely be shallow. Will the Minister tell the House what the funding plan is—how much, and who pays?

Lord Ashton of Hyde: My Lords, I am glad that the noble Lord welcomes this ambitious target, because he has been one of the people who have been very critical of where we are at the moment. He is absolutely right that it will cost money. This is an ambitious target to get from where we are now, which is 4%, to nationwide coverage by 2033. We think we will get to about 50% by 2025. It is estimated that it will cost about £30 billion. We estimate that the Government will have to contribute with top-up money to the hardest-to-reach areas in the region of £3 billion to £5 billion.

Baroness Smith of Basildon (Lab): Last Thursday, my noble friend Lord Stevenson of Balmacara asked the Minister's colleague, the noble Viscount, Lord Younger of Leckie, whether he was backing the Chancellor of the Exchequer's call to switch off every copper phone line in the UK to force telecoms firms to improve their rural broadband speeds. The noble Viscount, Lord Younger, said that he had not heard about it, but I am sure the Minister at the Dispatch Box today has had time to consider the Chancellor's words. Does he back the Chancellor's call to switch off every copper phone line in the UK?

Lord Ashton of Hyde: I think what the Chancellor was referring to was an ambition that in due course—we are saying by 2033—there will be nationwide coverage of fibre to the premises, which I think everyone understands is superior in every way to copper wire. Therefore, if we have nationwide coverage of fibre to the premises, we will not need copper wires.

Lord Brabazon of Tara (Con): My Lords, where I live in London I have superfast broadband, something like 70 megabits a second. That is fibre to the green box in the street and old copper wire to my premises. Is that not totally adequate for nearly everybody? Would it not be a huge waste of money and very disruptive to do the last bit in fibre?

Lord Ashton of Hyde: I think that it will be sensible by 2033 because there will be a long-term investment by the market in what is the technology of choice. My noble friend is fortunate to live near enough to the cabinet that he gets that sort of speed from his copper wire. Basically, the further you are from the cabinet, the worse the speed gets. I notice he did not say what speed he gets at his other home in the Isle of Wight, which I believe is slightly slower than that.

Lord Wigley (PC): Will the Minister assure the House that rural areas will not miss out once again with regard to this development, as such a facility is so important in developing rural economies?

Lord Ashton of Hyde: My Lords, the noble Lord makes a familiar and very valid point. The £3 billion to £5 billion that I mentioned to the noble Lord, Lord Fox, will be on the basis of outside in. We want to make sure that the areas that are hardest to reach will be the ones to receive the government money. It is largely a question of competition. In cities and urban areas, there is more competition and the market is better able to supply the required infrastructure, but in rural areas we understand that that is not the case and therefore we are absolutely cognisant of the point he made.

Lord Tebbit (Con): My Lords, some years ago, I bought a house in a remote rural part of the country. It had no supply of electricity, nor of water. I knew

that when I bought it; that was the advantage of it, it was in a rural area. We cannot just say that wherever you live you get every one of the facilities as though you were living in an urban area.

Lord Ashton of Hyde: Where I live, in a reasonably rural area, water was not laid on to houses until relatively recently. I think most people today think that running water in your home is a requirement. I take my noble friend's point. He may not want superfast, let alone ultrafast broadband, but more and more people do, and it is important for the economy. More people need it, so, gradually—as we said, by 2033—it will be available. Of course, he does not have to use it or sign up for it and therefore will not have to pay for it.

Lord Steel of Aikwood (LD): My Lords, further to that question, what does the Minister have to say to people in my former constituency—in, for example, the Ettrick and Yarrow valleys—who, far from waiting for fibre broadband cannot even get email services at present? Surely the Government should be concentrating on that as well as the future.

Lord Ashton of Hyde: Many people in the noble Lord's party have castigated us for lack of ambition. On the one hand, we absolutely understand that they should be able to get superfast broadband, but we are also ensuring that the universal service obligation, which comes in in 2020, will give them a legal right to a minimum speed which will allow them to have email and watch TV at 10 megabits per second. Our ambition, which we are talking about today, is to go much beyond that, as it is an accepted rule that most people require more capacity as time goes on—there will be the internet of things and many other examples of why we need more capacity. I take his point and we are addressing it in the universal service obligation.

The Lord Bishop of St Albans: My Lords, I am grateful for the ambitious targets that Her Majesty's Government are setting. I am concerned, however, because the commitment to get universal coverage for full fibre does not seem to fit with the statement on page 8 of the review:

"In areas where it may not be cost effective to get fibre all the way to the home, even with additional funding, other technologies … can also deliver gigabit connectivity. Bidders will be encouraged to explore innovative solutions".

How does that fit with Her Majesty's Government's commitment?

Lord Ashton of Hyde: I think, if the right reverend Prelate looks at *Hansard*, he will not find that I use the word "universal". In terms of full fibre to the premises, we said that we would have nationwide coverage by 2033. As he suggested, the hardest to reach areas will not be able to get full fibre by 2033. When full fibre is established nationwide, other technologies, such as satellite, will have much more capability, so the hardest to reach places will be able to use alternative technologies. The universal service obligation will still apply and will be uprated in time. We did not say that every premises in the entire United Kingdom will be able to get full fibre by 2033.

Lord Browne of Ladyton (Lab): My Lords, I fear that the Minister may have misunderstood what the Chancellor said in the other place last week. The Chancellor is widely reported as having been overheard by journalists as saying that he was considering fixing a switch-off date for copper wiring to incentivise broadband installation across the country, not what the Minister has reported to the House, which is that when it is all done, a switch-off date will be fixed. The Chancellor said that quite clearly, and it was supported subsequently by a spokesman from the Treasury, who confirmed that the Treasury was looking at options, including setting a switch-off date to incentivise the installation of broadband. That is what my noble friend was asking the Minister whether he agreed with, not what he understood that the Chancellor had said.

Lord Ashton of Hyde: Of course I agree with everything the Chancellor says—unless he is contradictory, of course. I take the noble Lord's point about the switchover. Ofcom will have an important oversight role in protecting consumer interests. The switchover could be under way in the majority of the country by 2030, but the timing will ultimately be dependent on the pace of fibre rollout and on the subsequent take-up of fibre products.

Standing Orders (Public Business)

Motion to Approve

11.50 am

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

That the standing orders relating to public business be amended as follows:

After Standing Order 70, insert new Standing Order 70A:

"70A Laying of documents under Schedule 7 to the European Union (Withdrawal) Act 2018

Where, under paragraphs 3(3) and 17(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, any document is to be laid before Parliament, the deposit of a copy of the document with the Clerk of the Parliaments in accordance with this Order at any time during the existence of a Parliament when the House is not sitting for public business shall constitute the laying of it before the House."

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, on 11 July the House agreed to the fifth report from the Procedure Committee and, in doing so, agreed to new procedure for sifting arrangements for certain instruments laid under the European Union (Withdrawal) Act 2018. The report proposed a consequential amendment to the public business Standing Orders, and today's Motion simply makes those necessary changes. I am aware that concern has been expressed

[LORD MCFALL OF ALCLUITH]
to me, on and before 11 July, about the possible negative instruments which may be laid during the Recess. I refer noble Lords to the withdrawal Act, which makes it clear in specifying the scrutiny period that that means 10 sitting days from the first day back. I hope that that reassures noble Lords. I beg to move.

Lord Tomlinson (Lab): My Lords, I am not clear about this, and I am always slightly suspicious of things that happen on the last day before the summer. Why is the change in Standing Orders needed at all? Why is it needed now? How have we managed in the past, or is it just something that has emerged as a consequence of the European Union (Withdrawal) Bill? Can the Senior Deputy Speaker tell us, if such a change in Standing Orders is imperative now, how will Members of the House be informed that an order has been laid with the Clerk of the Parliaments? If it has no consequence for us, why does it matter at all? I do not think that the explanation satisfies me of the case for this to happen.

The Senior Deputy Speaker: I thank the noble Lord for his question. First, this refers to the EU withdrawal Bill, so we need procedures appropriate to that. A new class of instrument is also being introduced, and we are applying the existing procedure to the new class of instrument. It will very much affect the Secondary Legislation Scrutiny Committee. In anticipation of the workload with increasing numbers of SIs, that committee has taken on two additional committee advisers, and another committee assistant, meaning that it is now supported by a clerk, four advisers and two committee assistants.

There will be a parallel committee established in the House of Commons, which it never had before, and which will be referred to as the European Statutory Instruments Committee. That will be sifting along with the House of Lords committee, and it is anticipated that there will be engagement with both committees to ensure the smoothest approach. It is a new procedure as a result of the EU withdrawal Bill.

If the noble Lord is looking for more reassurance, the debate on 11 July was quite clear on these issues, and I refer him back to that. If he still has problems, he can knock on my door and I will be happy to have a chat.

Lord Adonis (Lab): My Lords, when will the first documents be laid under this change in the standing orders?

The Senior Deputy Speaker: The Government have already laid a number of negative instruments.

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the Minister and the Senior Deputy Speaker on this. He will recall that, when this was discussed in the Procedure Committee, assurances were sought and received. Will he discuss one point with the Government? One of the issues we raised was that, when instruments are laid during recess, they should be easily accessible to all noble Lords and to the public. I was given that assurance by the Chief Whip, which was helpful. We agree with this and it is important that, if they are laid during recess, we have that additional time to scrutinise them before the sitting days. It has become evident that, rather than all of them being available on the website for the Department for Exiting the European Union as we anticipated, they are being published on different department websites. Could he ask if they could also be published on the central website of the Department for Exiting the European Union, so there is no confusion for anybody and everyone can access them by looking at one website and not every different department's?

The Senior Deputy Speaker: I anticipated the answer to the question, but the noble Baroness is ahead of me on that issue. It will be published by the departments on their websites. She makes a good suggestion about it being on the central website. I have already heard whispers that the Government will look at that issue.

Lord Bassam of Brighton (Lab): I am grateful and think it is right that we have increased the clerk capacity to help manage this process, but my understanding from earlier discussions—and perhaps I have just missed something—is that we were going to establish a further committee with additional members on it, so that the process would work for Members and speed up, or at least ensure it is given fuller consideration.

The Senior Deputy Speaker: The noble Lord is correct there was talk about establishing a sub-committee. The committee has an additional member on it at the moment, but the decision about when it will form sub-committees is for the committee itself. It depends on the number and volume of the instruments laid. When it gets to that critical mass, the committee will divide into sub-committees.

Baroness Smith of Basildon: Can I clarify? My understanding is that names have already been requested and both sub-committees are in the process of being established.

The Senior Deputy Speaker: The noble Baroness has information that is superior to mine at the moment, but I am happy for it to be made public.

Lord Chartres (CB): I am a member of the Secondary Legislation Scrutiny Committee and we have already decided to meet twice rather than once a week. That was this morning.

The Senior Deputy Speaker: That is very helpful.

Motion agreed.

Registration of Marriage Bill [HL]

Third Reading

11.57 am

A privilege amendment was made. Bill passed and sent to the Commons.

Assaults on Emergency Workers (Offences) Bill

Third Reading

11.58 am

Bill passed.

Parental Bereavement (Leave and Pay) Bill

Third Reading

11.59 am

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Parental Bereavement (Leave and Pay) Bill, has consented to place her interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Noon

Motion

Moved by ***Lord Knight of Weymouth***

That the Bill do now pass.

Lord Henley: My Lords, I thank the noble Lord, Lord Knight, for taking through this very important piece of legislation, which provides at the very least two weeks of guaranteed time away from work for those employees who have suffered the tragedy of losing a child before that child has had the opportunity to reach adulthood.

I am grateful to the noble Lord for ensuring the rapid progress of this Bill through this House. I am conscious that, in doing so, the Bill has overtaken the progress of the Government's response to the recent consultation, which will now be published after the Bill completes its passage through Parliament. I had hoped to be able to set out in detail the response to the government consultation. However, important work is still ongoing with this. We have had a very welcome, large and detailed number of responses to the consultation —some 1,448 in total. I was pleased to see that high level of engagement on such an issue. We need to make sure that we get this right. If taking a little extra time is what is needed to achieve this, that is the right thing to do.

However, I assure the House that, once the Bill receives Royal Assent, we will work to bring forward the necessary regulations as soon as possible with a view to laying them before the House as early as possible in 2019. That would also keep us on course for our ambition for the new right to come into force in April 2020. I hope that that commitment today will reassure the House that the Government remain committed to delivering on this manifesto commitment.

Lord Knight of Weymouth (Lab): I am most grateful to the Minister for that update and for his assistance and that of his officials, led by the assiduous Shelley Torey. I thank other noble Lords for their assistance and the MPs in the other place—and, finally, to Lucy Herd for her inspiration and assiduous campaigning ever since her son Jack died eight years ago.

Bill passed.

Home Education (Duty of Local Authorities) Bill [HL]

Third Reading

12.02 pm

A privilege amendment was made. Bill passed and sent to the Commons.

European Union (Definition of Treaties) (Partnership and Cooperation Agreement) (Turkmenistan) Order 2017

European Union (Definition of Treaties) (Enhanced Partnership and Cooperation Agreement) (Kazakhstan) Order 2017

European Union (Definition of Treaties) (Comprehensive and Enhanced Partnership Agreement) (Armenia) Order 2018

European Union (Definition of Treaties) (Association Agreement) (Central America) Order 2018

European Union (Definition of Treaties) (Political Dialogue and Cooperation Agreement) (Cuba) Order 2018

European Union (Definition of Treaties) (Framework Agreement) (Australia) Order 2018

European Union (Definition of Treaties) (Partnership Agreement on Relations and Cooperation) (New Zealand) Order 2018

European Union (Definition of Treaties) (Strategic Partnership Agreement) (Canada) Order 2018

Motions to Approve

12.03 pm

Moved by ***Baroness Goldie***

That the draft Orders laid before the House on 4 June and on 7 and 17 November 2017 be approved.

Considered in Grand Committee on 18 July.

Motions agreed.

Occupational Pension Schemes (Master Trusts) Regulations 2018

Motion to Approve

12.03 pm

Moved by ***Baroness Buscombe***

That the draft Regulations laid before the House on 18 June be approved.

Considered in Grand Committee on 18 July.

Motion agreed.

Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018

Motion to Approve

12.03 pm

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

That the draft Order laid before the House on 13 June be approved.

Relevant document: 35th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 18 July.

Motion agreed.

Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) (Amendment) Order 2018

Motion to Approve

12.04 pm

Moved by ***Lord Young of Cookham***

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

Considered in Grand Committee on 18 July.

Motion agreed.

Rendition of UK Citizens

Statement

12.04 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I shall repeat in the form of a Statement the Answer to an Urgent Question in another place. The Statement is as follows:

"The Government take their responsibility to protect the public seriously. We have been consistently clear, where there is evidence that crimes have been committed, that foreign fighters, for example, should be brought to justice in accordance with due legal process, regardless of their nationality. The specific process followed will always be dependent on the individual circumstances of the case.

The case of Alexanda Kotey and El Shafee Elsheikh is ongoing and obviously sensitive. In handling this case, the Government have complied with the ECHR and due process, and we must be mindful to protect the integrity of the criminal investigation. In this instance, and after carefully considered advice, the Government took the rare decision not to require assurances in this case, and it would be inappropriate to comment further on that specific case. Foreign fighters detained in Syria could be released from detention without facing justice. We have been working closely with international partners to ensure that they face justice for any crimes they have committed.

There is little further detail I am able to provide to the House beyond what the Government have already outlined in previous Statements. However, I can reassure the House that our long-standing position on the use of the death penalty has not changed. The UK has a long-standing policy of opposing the death penalty as a matter of principle regardless of nationality, and we act compatibly with the ECHR. In accordance with the Government's *Overseas Security and Justice Assistance Guidance*, we have taken into account human rights considerations. The OSJA provides that where there are strong reasons not to seek death penalty assurances, "Ministers should be consulted to determine whether, given the specific circumstances of the case, we should nevertheless provide assistance".

On the issue of Guantanamo Bay, again our position has not changed. The UK Government's long-standing position is that the detention facility at Guantanamo Bay should close. Where we share evidence with the US, it must be for the express purpose of progressing a criminal prosecution, and we have made that clear to the United States. We have planned and prepared for the risk posed by British nationals returning to the UK as Daesh is defeated in Iraq and Syria, and we are using a range of tools to disrupt and diminish that threat in order to keep the public safe. Each case is considered individually to determine which action or power is most appropriate.

I cannot say more about individual cases in this circumstance. However, the Government have set out the extent to which these tools have been used in our annual transparency report. We will also be introducing new offences in the Counter-Terrorism and Border Security Bill, which is being debated by parliamentary colleagues and which will strengthen our terrorism legislation to increase our ability to prosecute returning foreign fighters in future".

My Lords, that concludes the Statement.

12.08 pm

Lord Rosser (Lab): I thank the Minister for repeating the Answer to the Urgent Question.

Last Friday, the Minister wrote to me, on behalf of the Government, on the Crime (Overseas Production Orders) Bill, and said:

"With regards to death penalty implications, it is the long-standing policy of the UK to oppose the death penalty as a matter of principle. We will ensure that the operation of any agreement, including with the United States, is consistent with this position".

Why, then, are we accepting a request by the United States to share evidence on the two individuals in question under mutual legal assistance, on the basis—to quote the Home Secretary's letter of 22 June to the US Attorney-General—that,

"I am of the view that there are strong reasons for not requiring a death penalty assurance in this specific case, so no such assurances will be sought"?

Contrary to the content of the Answer to the Urgent Question, why did the Government not come to Parliament a month ago to disclose this complete change of approach and any reasons for it on a matter of basic human rights norms, however heinous the alleged crimes—a change of approach which is also contrary to the Minister's letter to me of just four days ago?

Baroness Williams of Trafford: My Lords, I reiterate that we oppose the death penalty in all circumstances. The Crime (Overseas Production Orders) Bill is about outgoing requests. It gives UK law enforcement authorities the power to request electronic data stored abroad where an international arrangement exists for use in UK investigations and court cases. We will ensure that any future international agreement is consistent with our long-standing policy of opposing the death penalty.

Perhaps I may also comment on the change of approach. We have not changed our approach. I refer noble Lords to the *Overseas Security and Justice Assistance Guidance*, which incidentally is long-standing. Part a) says:

"Written assurances should be sought before agreeing to the provision of assistance that anyone found guilty would not face the death penalty".

Part b) reads:

"Where no assurances are forthcoming or where there are strong reasons not to seek assurances, the case should automatically be deemed 'High Risk' and FCO Ministers should be consulted to determine whether, given the specific circumstances of the case, we should nevertheless provide assistance".

Lord Paddick (LD): My Lords, we are told that the UK did not want to try these people in the UK because we were concerned that we did not have enough evidence. Clearly, the Americans also thought that they did not have enough evidence—otherwise, why would they seek assistance from us? If UK and US pooled intelligence is sufficient to convict the accused, the Home Secretary could have avoided this political and moral dilemma by asking the US for its intelligence and agreeing to try the accused in the UK. Why did he not do so? Did the Home Secretary and the Prime Minister decide that the death penalty should be an option?

My party's position is clear: we oppose the death penalty in all circumstances in accordance with the European Convention on Human Rights Article 2 and Protocol 13, to which the UK is a signatory. We take a principled position on this issue. Can the Minister please clarify the Government's position?

Baroness Williams of Trafford: In addition to what I have just said, the UK's position is that we will bring the perpetrators of very serious crimes to justice and we will work with our international partners to do so.

Lord Robathan (Con): My Lords, does my noble friend agree that, whatever position one might take on capital punishment, the good people of the United Kingdom will be bemused by the sensibilities being shown at the moment? Any obstruction put in the way of the prosecution of these murdering terrorists by the British Government would not be understood.

Baroness Williams of Trafford: I most certainly agree with my noble friend that bringing the perpetrators of such heinous crimes to justice is absolutely paramount. However, I reiterate the Government's position: we oppose the death penalty in all cases.

Lord Morris of Aberavon (Lab): My Lords, hard cases never make good law, however horrific these allegations are. Despite what the Minister has said, has not the principle of not sending anyone abroad to face trial where there is a possibility of a death sentence been abandoned? How will the Government deal with the cases of other British citizens who face the death penalty? How will they ever again be able to make representations on their behalf?

Baroness Williams of Trafford: I make it absolutely clear that we have not sent anyone abroad to face the death penalty.

Baroness Stern (CB): My Lords, I declare my interest as co-chair of the All-Party Parliamentary Group on the Abolition of the Death Penalty. As the noble Baroness will know, the APPG has for years worked for abolition, alongside the Government, and has been proud of the Government's commitment to seeing the end of the death penalty everywhere. Death penalty campaigners from all over the world express gratitude to the UK and are grateful for what it does to assist them in the countries in which they work. This development will be a huge blow to the death penalty abolition movement, and will be widely publicised. Is it possible that there will be some statement or reassurance or explanation—preferably an explanation—as to why this case is so different that it requires the Government to overturn a policy that has been maintained for so many years?

Baroness Williams of Trafford: I pretty much agree with everything the noble Baroness says and I hope she will understand that I cannot discuss the details of this case. However, I can say, again, that the Government oppose the death penalty in all cases.

Lord Scriven (LD): My Lords, eight days ago, the *Human Rights and Democracy* report from the Foreign and Commonwealth Office said:

"It is the long-standing policy of the UK to oppose the death penalty in all circumstances as a matter of principle".

When agreeing to send people abroad to stand trial in a country where the Government have not given a categorical assurance that the death penalty will not be used, how can that principle be upheld?

Baroness Williams of Trafford: My Lords, I reiterate the point that we have sent no one abroad to face the death penalty. The Government oppose the death penalty in all cases.

Lord Adonis (Lab): My Lords, I want to be clear on this. Is the noble Baroness saying that Her Majesty's Government may or will provide evidence or information to the prosecuting authorities in a case that could lead to the death penalty? If I have understood that correctly, is she not dancing on the head of a pin when she says that we oppose the use of the death penalty in all circumstances, because this is a circumstance in which the death penalty could occur as a result of the direct actions of Her Majesty's Government?

Baroness Williams of Trafford: My Lords, I absolutely refute the implication that the Government would provide information that would lead directly to someone facing the death penalty. As I have outlined, the guidance is very clear about not seeking assurances, as opposed to sending somebody to face the death penalty in certain circumstances. The Government are quite clear that justice needs to be served.

Baroness Ludford (LD): My Lords, can the Minister shed further light on reports in today's *Telegraph* that death penalty assurances were also waived in a case under David Cameron's Government? How does that fit with the assertion that the UK still has a policy of opposition to the death penalty? She said there were strong reasons for waiving the seeking of assurances in this new case. Will she undertake to publish the assessment carried out under the policy on overseas security and justice assistance that approved the Home Secretary's position, so that we can try to probe whether this is just angels dancing on pinheads and whether the UK has any policy whatever on this?

Baroness Williams of Trafford: I assure the noble Baroness that a very similar question was asked in the other place, and the Security Minister has committed to write out on matters of precedent, as she has asked. The guidance is long-standing, having been in place for eight years.

Non-Domestic Rating (Nursery Grounds) Bill

Second Reading

12.18 pm

Moved by ***Lord Bourne of Aberystwyth***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I am grateful to noble Lords who have given up their time to discuss this Bill. I am looking forward to hearing the considered and expert views of the House. These views are always welcome as we work together to ensure that our laws are both fair and robust.

This Government are committed to supporting sustainable growth in the rural economy. Through the 2014-20 rural development programme, we are investing almost half a billion pounds in England's rural businesses. Our support for rural enterprises includes developing farm and horticultural companies and the Government are also set to continue to commit £3 billion in funds for farm support until the end of this Parliament.

Earlier this year, the Government also launched a wide-ranging consultation on the future of farming. This Bill is an important part of our continued support for the horticultural sector in England and Wales. The agricultural exemption from business rates plays an important role in supporting agricultural productivity. This measure will support our ambitions for a more dynamic and self-reliant agricultural industry.

This Bill received cross-party support in the Commons, where it passed quickly without amendment. We want swiftly to amend the law to ensure that those ratepayers affected will not have to pay business rates. The Bill will deliver on our commitment to support the rural economy and promote this country's rural life.

Noble Lords may be aware that, for almost 100 years, plant nursery grounds have been treated as exempt from business rates as part of the general exemption for agriculture. This practice was widely understood and accepted by the Valuation Office Agency and rating surveyors. However, in 2015 the Court of Appeal decided in Tunnel Tech v Reeves that the exemption did not apply to plant nurseries in buildings which were not occupied together with agricultural land and used solely in connection with agricultural operations on that or other agricultural land. Only at the end of 2015 was it clear that there was to be no appeal on that decision to the Supreme Court.

This did not reflect the Government's policy nor the widespread belief among the sector. The consequence of the 2015 judgment has brought unwelcome change and uncertainty for business rate payers in the horticultural industry. It was therefore understandable that following the judgment the industry expressed concerns about the consequences that the potential imposition of business rates might have on nursery growers, and the Government have listened. We understand that to date only a small handful of nurseries have been affected by the court ruling, but there is the potential that many more would be affected if the Government did not act.

The Government made clear that they would take action. In March 2017, we set out in a Written Ministerial Statement our intention to legislate and, subject to the passage of this Bill, enable the Valuation Office Agency to return to its former practice of exempting all plant nurseries from business rates. A further Written Ministerial Statement was made in 2018 restating the Government's commitment to legislate and for the first time confirming that the measure would have retrospective effect from 1 April 2015 in England and from 1 April 2017 in Wales.

This Bill will preserve a long-standing policy and ensure that plant nurseries solely consisting of buildings will once again benefit from the exemption of business rates for agricultural land and buildings. It will enable the Valuation Office Agency to return to its former practice of exempting plant nurseries and removing those few plant nurseries which have been assessed from the business rates list. Those plant nurseries that have been paying business rates since the 2015 decision on the basis of the Tunnel Tech decision will be eligible for a backdated refund of their business rates.

While the Bill will restore the former practice of exempting plant nurseries in buildings, I make it clear that it will not otherwise disturb the existing boundary of the agricultural exemption. Uses beyond agricultural operations, such as garden centres, will rightly continue to be subject to business rates. The Bill will also provide support and certainty to plant growers in England and Wales who would have otherwise been brought into the rating system on the basis of the Tunnel Tech decision. It ensures that these viable businesses do not become subject to a tax which could have an impact on the cost of farming and produce.

We have been able to bring forward this measure quickly and without amendment because of the support and advice—which I acknowledge—we received from the National Farmers' Union in England and the Farmers' Union of Wales. Their expertise has been invaluable and we are grateful for their assistance.

This Bill is about fairness for business rate payers in the agricultural sector and I commend it to the House. I beg to move.

12.24 pm

The Earl of Lytton (CB): My Lords, it is a great privilege to follow the Minister and, as it were, to open the batting order of discussion on this important Bill. Before going any further, I declare a number of interests as a landowner but not a grower, a property valuer, a one-time employee of the then Inland Revenue Valuation Office and a vice-president of the Local Government Association. That said, I welcome this Bill, which quite properly remedies the outcome of the decision in Tunnel Tech Ltd v Reeves (Valuation Officer) and I applaud the Government on finding a slot to bring this forward in times of considerable legislative congestion.

The pivotal point here is that the decision meant that the operation of Tunnel Tech would have been regarded as some sort of industrial enterprise rather than in the nature of agriculture or a horticultural nursery ground. However, the effect of rating buildings being used as nursery grounds but without other land would have put the company in very considerable contrast and at a disadvantage to an identical building occupied by, say, a market garden or a conventional farm. I am glad that the effects of this decision were not much more widespread than has in fact been the case.

I have to admit to being slightly astounded by the process whereby a court today has been asked to overturn the practice and understandings which have prevailed since 1928. I understand of course that changes in the methods of husbandry have to be taken into account, but I see this as an example of an overly literal interpretation of the present being applied to the legislation of yesteryear. This, coupled with the adversarial arts of legal practice, highlights the dangers of taking a position-based approach as against the broader consideration of intentions and public policy.

I believe that it was not Tunnel Tech which sought to have the additional burden of a business rates assessment placed on it, but the interpretation of the Valuation Office Agency, no doubt backed by the advice of the Treasury Solicitor. Much time and treasure have been expended on taking this case to the Court of Appeal and then further resource expended on the parliamentary processes necessary to reverse what I believe would have been a highly damaging outcome for an important sector of an ostensibly agricultural type of activity. At any moment the department or the Valuation Office Agency could have desisted. Can the Minister inform us as to why that did not happen?

While I welcome the Bill, I further ask the Minister to ensure, along with his departmental colleagues, that before his or any other department or agency embarks on a process of forensically dissecting bits of legislation, all concerned with agriculture and business more widely, they should make a special effort to avoid upsetting generations of established practice unless there is a very good public interest reason to do so.

In recent times, the Valuation Office Agency has been criticised about many things, not least by me in this House. In this instance, the criticism might be that it allowed the administrative role of being the government valuer to merge with and become some sort of proxy for HMRC's role as the taxman. This of course skews the fair and consistent administration of the property valuation system. This is not the stuff of some intellectual plaything. There should be a far clearer differential between the activities of HMRC and the role of the VOA. Sadly, and here I speak from some direct experience, the ill-effects of the present arrangement continue to spread. The risk is therefore of opportunistic excursions into novel interpretations of established practice that may then have to be reversed by Parliament on public policy grounds. To my mind, that is an extremely unwelcome process causing interim uncertainty and damage to cash flow in both the private and local government sectors, and being potentially hazardous to investment and employment. This should be the subject of better oversight. I encourage the Minister to comment. I mention this because there is a potentially very rich seam of trouble to be mined in this area by anyone with disruptive feelings or tendencies. The unplanned and often unforeseen effects on business can be considerable—it would not require any of your Lordships to devote much imagination to it.

Looking forward, if I have any advice for a Government contemplating a post-Brexit Britain—this might be the only pronouncement on Brexit that your Lordships will hear from me, for which you are doubtless very grateful—it is to ensure greater simplicity, transparency, fairness and balance to all our laws and regulations governing business and commerce, in taxation especially. If we want to be internationally slick and competitive, this is where I would start. So far, the Bill represents a welcome if small attempt to roll back the tide, but one can usually be sure that any claim to provide a better, fairer and more transparent regime will, on past performance, produce precisely the opposite.

I wish the Bill well and certainly have no intention to seek to amend it in any form. It has limited application and I hope it has a speedy journey on to the statute book, but let it also be a warning to better manage affairs in our great departments of state.

12.31 pm

Baroness Byford (Con): My Lords, it is a great pleasure to follow the noble Earl, Lord Lytton. I will not go into the detail of his speech because he speaks with great knowledge on the valuation agency and how this instance came about.

[Baroness Byford]

I very much welcome the Bill. It is the smallest Bill I have ever taken part in—only one side of A4—but I am grateful to the Government for bringing it forward and getting it through Parliament so quickly with support from all sides. The case certainly raised great uncertainty in the industry. In fact, the Government's response brings great fairness to all those in the business. When he introduced it, the Minister spoke about the need for sustainable growth. I highlight that because I believe that in the next 50 years we will see very different agricultural produce and methods of agriculture than in the past. Much may well come from having an indoor start.

In Leicestershire we have a nursery grower, James Coles. It is a very well-known company that has been going for a long while. When I spoke to it, it had not been affected by the change. It will be interesting if the Minister could tell us why some people have been affected in some places while others have not. The Minister also recorded the Government's current commitment to £3 billion of grants for farming. That could well go towards looking at new buildings and a new way of producing food.

I record my thanks to the NFU for its briefing. If we thought that the Bill was small, its briefing of seven pages was slightly different. It went into very great detail. I think that all of us taking part in the debate will be fully aware of the various aspects of the issues that it raised. I declare a family farming interest, but, in this case, we do not have an interest in the Bill.

It is of great urgency that we propagate and raise more young plants in this country for sale to other horticultural businesses and to the wider supply trade. Anyone following the vagaries of pest or disease control will know that if we can produce more here and import less we will reduce that risk, which is real. As has been said, the general exemption for agricultural premises stood solidly from 1928 until this case in 2015. Plant nurseries have been treated as agricultural and so are exempt from non-domestic rates, but the court appeal highlighted the gap in the legislation. That is why this legislation is being brought forward today.

As I said earlier, I welcome the legislation, which will enable businesses to flourish. The UK grows excellent products. We are increasing and will continue to increase the amount of homegrown foods, trees and plants, which is important. That will give us greater export opportunities as well.

I shall end by identifying four things that I think are hugely important. The first is to recognise that the agri-food industry is worth some £108 billion. Horticulture, excluding potatoes, is worth some £3.1 billion based on the 2015 figures. The second is the importance of food security and, linked with that, the climate change that we are experiencing now. I am sure that we will need to grow many more trees. The Government have a big push in encouraging the various public bodies and individuals to plant more trees. The third is the importance of new techniques in growing and producing food. Lastly, it is extremely important that we have fairness within the industry. For all those years the industry knew where it stood but then, all of a sudden, the 2015 case gave rise to the need for this Bill.

I hope that the Bill goes through without any need for alteration. It is needed. It affects only a few people, but it could affect more people in future if they diversify in a different way.

12.36 pm

Baroness Pinnock (LD): My Lords, I draw your Lordships' attention to my relevant interests as a councillor on Kirklees Council, a vice-president of the Local Government Association and a member of the Royal Horticultural Society.

We on these Benches fully support the purpose of this Bill, which, as other noble Lords have said, is to address an anomaly arising from a court case in 2015. I thank the noble Earl, Lord Lytton, for raising some significant questions on the process that led to the court case which I hope the Minister will be able to answer, either today or in a letter.

I have some comments and questions for the Minister in relation to this short Bill. The first is on the definition of "nursery grounds". The Government have published a factsheet which is helpful in distinguishing between market gardens, garden centres and nursery grounds. However, it would be helpful if the Minister could clarify further, as many of these businesses straddle the various definitions.

Where a business grows plants from seed in greenhouses or polytunnels, my understanding is that they will be exempted by the Bill, but the retail element, where the plants are sold, will not be. Is that correct? What if the nursery has an online order business? Will the packing and posting buildings be exempt?

What about a garden centre where the main centre of the business is retail? Will the small section where plants have been brought in and are cared for before sale be included—if they are shrubs or trees, they might be there for a year or for several years? Will the totality of that business be classed as a garden centre and be liable to business rates, or will some element of that, too, be exempted as a consequence of the Bill?

Once the definition is clarified, it would be helpful to understand the impact of the changes this Bill will make. I noticed that when the Bill was debated in the other place there was no answer to the question about how many businesses would fall into the exemption. It would be helpful to understand the scale of the changes that the Bill will make. Will businesses that fall into this category be expected to self-identify to the valuation office, or will there be a notification as to their change in definition so that they would be exempt? I think it would be very helpful if the onus were on the valuation office to notify the businesses.

Then, there is the impact on the income of local government. No doubt this may be small in totality, but there may be a significant financial impact on some rural district councils, which may have several businesses falling into this definition of nursery grounds. As local authorities now depend for a large portion of their spending on business rates, this may have an unexpectedly significant effect on some councils. Can the Minister provide assurance on these issues?

With those questions and comments, I am totally positive. This is a constructive Bill to change the anomaly that was the result of the court case. It is right that these businesses are exempt from business rates and I support the purpose of the Bill.

12.40 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, first I draw the attention of the House to my relevant interest as a vice-president of the Local Government Association. I support the Bill and its intention of providing that buildings that are, or form part of, a plant nursery ground should be exempt from non-domestic rates if they are used solely for agricultural operations at a nursery ground. We have heard from other speakers in this short debate that this issue arose as a consequence of the judgment in the Tunnel Tech Ltd v Reeves case in 2015, which highlighted how structural changes in the industry have resulted in purely horticultural operations being rated, as opposed to being exempt. It is welcome that the Government have sought the opportunity to correct this and I congratulate them on it.

We know that since 1928 Parliament has had no intention of rating the agricultural industry. That is absolutely right: I support the industry and support sustainable growth in agriculture and horticulture. We have heard from other noble Lords that there is no longer a distinction between nursery grounds and market gardens: all operators consider themselves to be growers and I agree with that. That is an important point to make here, as is the point made by the noble Baroness, Lady Byford, that the industry is worth £108 billion a year and, excluding potatoes, horticulture is worth £3.1 billion a year to our economy. I agree with the noble Baroness that we produce some wonderful food in this country: we have some wonderful farmers and growers and we need to always be supporting them, so that they can sell their produce to us and also export it. For the United Kingdom it is very much about selling high-quality produce, so we must support them in growing that high-quality produce.

I too received the briefing from the National Farmers Union. It is an excellent briefing, as the noble Baroness said: seven pages long, which is six pages longer than the Bill. It highlights how important this is—at the moment for a small number of growers, but with the potential for many more—so I think it is important to support it. I am also aware that when the Bill went through the other place, no amendments were tabled or agreed. I think that was right and, unusually for me on a government Bill, I am going to suggest that we make no amendments either. I have no intention of tabling an amendment and I hope that other noble Lords will not table amendments, so that very quickly, when we come back in September, the minister can stand up and move to discharge the commitment Motion. That would be the best thing to do, so as to quickly get the Bill on to the statute book. I have looked at it very carefully and I think it is the right thing to do: it is a good Bill and I fully support it.

12.43 pm

Lord Bourne of Aberystwyth: My Lords, first let me say that I have lost a bet: I said that there was nothing more certain than that the noble Lord, Lord Kennedy, would put down an amendment. I owe my team and I probably owe the noble Lord a beer as well. I thank him very much for his support.

I shall deal with the points raised by noble Lords, whom I thank very much for their participation in this debate. I turn first to the noble Earl, Lord Lytton, and his point about the provenance of the decision that led to the Court of Appeal judgment in Tunnel Tech Ltd v Reeves.

We have the separation of powers in this country, and HMRC is not a government department, so the decision in this case cannot be laid at the feet of the Government. It would have been entirely wrong for us to interfere—and it would have been interference—in a wholly unconstitutional way with the valuation office procedures, the valuation tribunal decision and the Court of Appeal decision.

That said, once the decision was made, we faced having to decide whether we should seek to overturn the judgment or let it stand. I think it took everybody by surprise—everybody in the agricultural sector, surveyors. The great mass of people were caught on the hop by this decision, and that certainly included the Government; we were not expecting the decision. However, faced with letting it go through or doing something, I think we have taken the right decision, as borne out by noble Lords' contributions, in deciding to reverse it. The alternative would have been unthinkable for our agricultural industry, and I share what other noble Lords have said about the importance of the agricultural industry and returning some certainty to it. In a way, as other noble Lords will have realised, there is a parallel with the recent legislation on the staircase tax that we have been looking at. In that case, once again, we were confronted with a decision that we did not expect. That is important.

Let me correct a particular point that I made when I said that HMRC is not a government department. It is a government department, but it is a non-ministerial department. I should have stressed that, and it is important that I correct myself on that point.

My noble friend Lady Byford speaks with great knowledge and authority in this area, particularly in relation to her home county of Leicestershire and her experience there. She asked a very valid question: how is it that some have been affected by this judgment and not others? All are affected by this judgment, but so far the valuation has been done only for some. We are therefore moving fairly quickly, because valuations here apply to just a handful of cases involving the reimbursement of backdated money—the retrospective effect. If we did not act, more and more agricultural businesses would gradually be involved.

I join my noble friend and the noble Lord, Lord Kennedy, in thanking the NFU and the FUW very much for their help, their briefing and their great interest and assistance in this case.

I thank the noble Baroness, Lady Pinnock, very much for her support, and indeed for her questions. She asked about the definition of a plant nursery, which it is quite true is not in the legislation. A plant nursery ground, as I understand it, is where small plants or trees are grown in the initial stages of their life with a view to selling them later to somebody else

[Lord Bourne of Aberystwyth]
to complete the growing process. A market garden, which would not be subject to rating, is where fruit, vegetables and flowers are produced to final crop and then sold directly or indirectly to members of the public for consumption. Sometimes businesses are both, in which case there is a split assessment. I hope that is helpful.

I very much agree with the noble Lord about the importance of support for the agricultural exemption and the sector generally, which I think, given the contributions made, is shared across the House.

I come back to the noble Earl's point and understand how the confusion could arise, but HMRC is a non-ministerial department and it is clearly not open to us to interfere in valuation tribunal decisions, and still less, on the same basis, in the Court of Appeal.

I thank noble Lords very much for their support on this.

The Bill was read a second time.

Immigration (Provision of Physical Data) (Amendment) (EU Exit) Regulations 2018

Motion to Approve

12.49 pm

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

That the draft Regulations laid before the House on 2 July be approved.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, these draft regulations form one part of the statutory underpinning of the new EU settlement scheme for resident EU citizens and their family members to obtain UK immigration status. The other parts are the Immigration Rules for the scheme and the associated fees regulations, which were both laid before Parliament on 20 July. Together, these measures will enable the first phase of the implementation of the EU settlement scheme to begin on 28 August.

This will involve the participation on a voluntary basis of employees of 12 NHS trusts, and employees and students of three universities, in the north-west of England. By the way, I had no part in that decision. This phase will enable the Home Office to test the relevant processes and ensure that they work effectively before we begin to open the scheme more widely from later this year.

I trust that the House will welcome the early progress in bringing forward this important scheme, and I thank the 15 institutions that have agreed to take part in the initial phase. It is appropriate that the National Health Service and the higher education sector, which both benefit so greatly from the contribution of EU citizens, should be involved in helping to establish the EU settlement scheme.

On 21 June the Government published a statement of intent on the EU settlement scheme, and I repeated in this House the Oral Statement given by my right honourable friend the Minister of State for Immigration. The statement of intent set out details of how EU citizens and their family members will be able to obtain settled status in the UK. It also set out how the application process will be straightforward and streamlined.

There will be three core criteria that EU citizens will need to meet to be granted status under the EU settlement scheme: proving their identity, showing that they are resident in the UK, and declaring whether they have any criminal convictions. The draft regulations apply the existing powers to take and retain biometrics which apply across the immigration system to the new Appendix EU to the Immigration Rules, which will provide the basis for the Home Office to grant leave to EU citizens and their family members under the EU settlement scheme.

As we set out in the statement of intent, and as we currently require for applications for residence documents under EU law, the draft regulations will enable us to require EU citizens and their family members to provide a facial photograph as part of their application for status under the EU settlement scheme. We need this to help check their identity and to confirm that the passport or identity card they have provided belongs to that person. It will also help us to identify and deter fraudulent applications.

As happens now across the immigration system, the draft regulations will enable us to require non-EU citizen family members applying under the scheme to enrol their fingerprints, where they have not already done so in being issued with a biometric residence card under EU law. We will not be taking fingerprints of EU citizens applying under the scheme.

Recording biometric data and biographical information is important because it enables us to confirm and fix a person's biographical details to their unique biometric identifiers, and establishes a reliable link between the holder and their status. It also allows us to check against existing records to make sure that the applicant is not known to us or to the police by another identity.

Under the scheme, EU citizens—and non-EU family members who already hold a biometric residence card—will be able to upload a passport-style photograph of themselves as part of the streamlined digital application process. Non-EU family members who do not already hold a biometric residence card will, as now, need to attend one of our application centres to enrol their fingerprints and facial image. Consistent with our approach across the immigration system, non-EU citizen children under the age of five will not be required to enrol fingerprint biometrics. A facial photograph will be required for security and safeguarding reasons, but their fingerprints will not be taken.

Approval of the regulations is an important step in getting the EU settlement scheme up and running, thereby enabling us to provide real certainty to resident EU citizens and their family members, and to their employers, about the basis on which they will be able to remain here permanently. I commend these regulations to the House.

Lord Rosser (Lab): I thank the Minister for setting out the purpose and content of this instrument. I also take this opportunity to thank her officials for meeting

me yesterday. If I still have not understood precisely what the regulations are about then that is my fault, rather than their inability to explain it to me.

I want to make one or two points, because the meeting with officials yesterday was helpful. As I understand it—I think this is what the Minister was saying—the next stage is to go to a pilot scheme, which will begin from 28 August. As she also said, it covers certain NHS workers and students. What I want to be clear on is, first, how long will that pilot scheme last? Secondly, at the end of that scheme will a further statutory instrument be needed to extend it to other groups? In other words, will there be an opportunity in this House for a proper debate about how the pilot scheme has worked so that the Government will not simply decide, off their own bat, to extend the scheme to other groups on the basis that the Government think that the pilot has been successful? I would like an assurance on that point.

Can the Minister also say whether the intention is to extend the pilot scheme in stages to other groups or, at its conclusion, to extend it across the board? As I understand it, there will be the requirement for a facial photograph and, as I think the Minister said, in respect of non-EU citizen family members a fingerprint requirement as well. Simply to get this on the record, as much as anything, what will happen as far as the individual is concerned if the facial photograph supplied does not meet the requirements of the check against the ID photograph? Will they be told why it is not considered a facial photograph that meets the requirements? Will they be contacted or given help by Home Office officials in a positive way, bearing in mind that, as I recall, the Government have said that the approach with applications of this kind will be not "Why should it be agreed?" but "Why should it not be agreed?", and that there would therefore be a positive approach from Home Office officials? I would like confirmation that that would apply, for example, where the facial photograph was not deemed to meet the requirements.

I would like to raise one or two other points. The Explanatory Memorandum refers to the consultation outcome and says that account was taken of those discussions. It says:

> "The Home Office has not undertaken a full public consultation, but the policy has been discussed with its internal and external stakeholders".

What points were made in those discussions of which account was taken, and what points were made that the Government did not feel it necessary to take into account? Who were the,

> "groups representing EU citizens in the UK",

with whom this policy was discussed, as referred to in paragraph 10.1 on the "Consultation outcome"?

What will the cost be to the individual of going through this process? I am sticking strictly to the statutory instrument in front of us in relation to the facial photograph and the fingerprints since, subject to what the Minister may say, for a fairly large family it could presumably add up to a not insignificant sum of money. No doubt that is something the Minister will address.

1 pm

It has been very helpful to be given by officials a copy of the Statement made by the Minister of State for Immigration on 23 July, which, as I understand it, is the one that talks about, effectively, pilot arrangements, and a copy of a press release dealing with that. I do not think, although I am happy to be put right if I am wrong, that that was necessarily made clear when the matter was discussed in the Commons, which I think was on or around 16 July. Perhaps some of the issues that were raised in the Commons might not have been raised, had the intentions as far as a pilot is concerned been clear. On the basis that there is to be a pilot to see how well or otherwise it works, I hope that there will be an opportunity, perhaps through a further statutory instrument, for a proper discussion about how it has worked because there are potential concerns about this process simply because of the vast number of people involved, the time it could take, the possibility of people being wrongly rejected and matters of that kind. There are concerns about it. A pilot will be helpful if it draws attention to some of the difficulties and gives a chance for those to be put right before it is extended. I am seeking an assurance that there will be a discussion in this House about how the pilot has gone before the scheme is extended to other groups.

Lord Paddick (LD): My Lords, I, too, thank the Minister for explaining these regulations to the House. I am not as concerned as the noble Lord, Lord Rosser, about whether this is a pilot as my understanding is that there will be a period of three years from now for EU citizens to register and overcome any of the problems that may arise during the pilot scheme, so I am slightly more relaxed on that front. Can the Minister confirm that the continued operation of these regulations will be subject to satisfactory negotiations being concluded with the European Union and each of the 27 remaining EU countries, which will decide on a country-by-country basis what conditions they will impose on UK citizens' residence in their countries if we leave the European Union? As the Minister will know, some European Union countries already require UK workers to register while others do not.

Can the Minister confirm that the database of photographs of EU citizens applying for leave to remain in the UK will be kept not just for the purpose of initial identification to ensure that the applicant matches their national identity document, but in perpetuity? Can she also confirm that every employer in the United Kingdom is expected to carry out a check of every prospective employee against Home Office databases to ensure that the individual has the right to work in the UK, whether they are a citizen of the UK, the EU or any other country?

The Minister has already confirmed that only non-EU members of EU citizens' families will be required to supply a set of fingerprints along with a photograph. If I understood her correctly, this is to ensure that they have not been involved in crime or that in other ways it would not be desirable for them to remain in the UK. Again, will these fingerprints be retained on a database after they have been checked against, for example, criminal records? If the answer to both those questions—

[LORD PADDICK]
about photographs and fingerprints—is yes, are this Government changing their position on having a national identity card database, because this sounds like the beginning of that process?

The regulations are about EU citizens' status in the UK if we leave the European Union. I therefore hope that the Minister will accept that the following question is within the scope of this debate. Can she confirm whether I correctly understood from the briefing by officials that she kindly arranged that there will be free movement of EU citizens into the Republic of Ireland, even if the UK leaves the EU: that there will be no immigration checks on anyone either at the border between the Republic of Ireland and Northern Ireland or at any crossing point between Northern Ireland and the rest of the United Kingdom?

Can she therefore confirm that there will be no way that the UK could control inward immigration from the EU via the Republic of Ireland even if we leave the EU, that the only immigration controls will be those carried out by banks, landlords, the NHS and employers, and that, therefore, an unlimited number of EU nationals could live indefinitely in the UK if they came through the Republic of Ireland?

Can she also confirm that the UK's border security will be totally reliant on the checks carried out by Republic of Ireland immigration officials who, in any event, will be unable to question any EU citizen as to their reason for entry under free movement rules? Presumably, the Irish Government have always been happy to share responsibility for guarding the EU's external borders, but what discussions have the UK Government had with the Irish Government about their immigration officials effectively policing the UK border from the Republic?

Baroness Williams of Trafford: I thank both noble Lords for their questions. The first question from the noble Lord, Lord Rosser, was about an evaluation of the private beta phase, or the pilot phase, which I can confirm will run from 28 August until October. On amendments to extend the scheme any further, we will provide further information in due course about our plans for the phased rollout of the EU settlement scheme later this year so that, in line with the draft withdrawal agreement, it is fully open by 30 March next year. Those plans will absolutely reflect the experience of the pilot phase and the learning that we draw from those who choose to apply under the scheme during that phase.

There will not be a formal report back, but any extension of the scheme will be subject to parliamentary consideration of the required changes to the Immigration Rules for the scheme, further to those for the private beta phase laid on 20 July. We will explain clearly any changes and the reasons for making them at that point.

Lord Rosser: I thank the Minister for giving way. When she mentioned "any extension", is that any extension beyond the pilot?

Baroness Williams of Trafford: Any extension in terms of what the pilot entailed or beyond what was in the pilot? I am not entirely clear about the noble Lord's question.

Lord Rosser: My point was that there is to be a pilot scheme. Will there be an opportunity for a discussion in this House if it is decided, as presumably it will be, to extend the pilot scheme to other groups, or will the Government just decide that the pilot scheme has been successful and be able to extend it without any debate or discussion in this House? That was the point of my question about whether there will need to be a further statutory instrument.

Baroness Williams of Trafford: I understand that any changes at all in the Immigration Rules for the scheme will be laid out, and why they will be laid out. We will need new Immigration Rules to extend the pilot to other groups, which is what I think the noble Lord was asking.

Lord Paddick: My Lords, I am now slightly confused. I am grateful to the noble Baroness for giving way. Presumably, if the pilot works perfectly with this pilot group of EU citizens, it can then be rolled out to cover all EU citizens without any further regulation. Is that the case?

Baroness Williams of Trafford: My Lords, I understand that this is a specific pilot scheme for a specific purpose, so it would then have to come back for extension to other groups. It will be the same thing, but for other groups. I hope that that explains it clearly. It will come back.

On the question of the receipt and retention of the photograph, there are three reasons why we need to receive and retain them. First, as part of the basic checks required to protect the scheme from abuse, we will compare the photograph with the one in the applicant's identity document to confirm that they are one and the same person. Secondly, by keeping a record of the photograph, we can help secure the person's identity and the status we have granted them against any attempt by another person to use those in a fraudulent application. Thirdly, the photograph will be contained in the secure digital status they receive under the scheme and will thereby provide a convenient means by which they can, for example, evidence their right to work to an employer. I will say a bit more about that shortly.

The noble Lord, Lord Rosser, asked about the photograph not meeting requirements and being chucked out. There will be a lot of guidance on how to take a photograph that matches and meets the requirements. If an applicant submits a photograph that is not sufficient, the Home Office will proactively contact them in a positive way—which I think the noble Lord was also driving at. I will underline that we are looking for a reason to grant this status, not refuse it. If there are any problems of any sort with an application, we will contact the applicant to help them resolve the matter, rather than reject it. I think that that was at the heart of the noble Lord's question.

The noble Lord also asked about costs to the applicant. The agreement reached with the EU allows a fee of up to the cost of an equivalent document for UK nationals. We have used the cost of a passport of £75.50 as a point of reference. A fee of £65 to apply for status

under the EU settlement scheme is in line with the current costs of obtaining permanent residence documentation, and it will contribute to the overall costs of the system. The fee for a child under 16 will be half that: £32.50. Where an applicant is granted pre-settled status under the scheme, from April 2019 there will be no fee when they apply for settled status. Applications will be free of charge for those who hold valid permanent residence documentation or valid indefinite leave to enter or remain, or for the children in local authority care. To charge a lower fee than the current fee that EU citizens are charged for permanent residence documentation would disadvantage those who have already paid the £65 fee to require that documentation to confer their exercise of free movement rights. To charge a higher fee would disadvantage those who have followed our advice since the referendum that they did not generally need to apply for EU documentation.

The noble Lord, Lord Rosser, asked about the consultation. We have been engaging with stakeholders throughout the process, including the user groups we have established, involving EU citizens' representatives, embassies, employers, and others. These groups are helping us to develop the scheme and get it right. We have engaged with EU citizens at every stage of the development process and will continue to do so. We will also continue to expand our communications to ensure that EU citizens are aware of the scheme, how it will operate and what information they will need to provide, and so that they are reassured that they will have plenty of time in which to apply for their new UK immigration status.

1.15 pm

We have established a particular user group focusing on potentially vulnerable applicants, which has been mentioned a number of times, to help us to develop the right forms of support for them. Since the publication of the *EU Settlement Scheme: Statement of Intent* on 21 June, we have held more than 20 events across the country, reaching a diverse audience, including representatives of EU citizens, heads of industry, immigration lawyers, regional chambers of commerce and local authority leaders. We have also met and received feedback from the devolved Administrations. This engagement has helped us to improve the drafting of family provisions. I have a two-page list that I hope noble Lords will not mind me not reading—but I have it here for their perusal afterwards, should they want to look at it or take it away.

The noble Lord, Lord Paddick, asked about the retention of photographs. There are reasons why we need to receive and retain, and I have gone through them, but he then asked about the retention of fingerprints. The biometric information collected under the EU settlement scheme will be used and shared only in accordance with the law. It will be mainly for law-enforcement purposes or as specified in the regulations. They include the following: the exercise of a function by virtue of the immigration Acts or in relation to nationality and in connection with the prevention, investigation or prosecution of an offence, or to protect national security. They do not include sharing biometric information with commercial partners.

We will retain biometric information only for so long as its retention is necessary in connection with an immigration or nationality purpose. We will normally delete the fingerprints of individuals granted indefinite leave to remain, including those granted settled status under the scheme, 10 years after the leave has lapsed, should it do so, unless the person is considered a threat of high harm to the UK, where we will retain them indefinitely. If a person becomes a British citizen, their fingerprints are deleted at that point.

The noble Lord, Lord Paddick, asked about a no-deal situation. We have reached an agreement with the EU guaranteeing the rights of EU citizens living in the UK and vice versa, and we do not expect that to be reopened. The Prime Minister has been clear from the beginning of this process that she wants EU citizens and their families in the UK to be able to stay, and she gave a personal commitment to EU citizens in October when she said:

> "I couldn't be clearer: EU citizens living lawfully in the UK today will be able to stay".

We have developed the EU settlement scheme as a basis for them to do so.

The noble Lord also asked about right-to-work checks. The EU citizens granted status under the scheme will be given a digital status, which will be a digital record held by the Home Office, and will control who they wish to share this with to demonstrate their status via a secure passcode. A digital status checking service is already live for some non-EU citizens and will provide the same convenient and secure way for EU citizens to demonstrate their rights. This is part of moving the UK immigration system to digital by default. EU citizens will be able to demonstrate their online digital status to employers and others during the implementation period if they choose to, but it is important to stress that, during the implementation period, EU citizens can demonstrate their right to work or to access benefits and services by showing a passport or identity card.

Finally, to the point about the common travel area and Ireland. The CTA with Ireland and, of course, the Crown dependencies predates the UK's and Ireland's membership of the EU. I am pleased that the EU recognises that, and recognised it early on in the negotiations, and agreed that it should be maintained after we leave. Security checks are undertaken on all passengers arriving into the CTA, and this will continue. The Government are considering a range of options for the future immigration system, and will set out details in a White Paper this autumn. However, I have to say that free movement will end.

What is important is that we control immigration in the national interest, which means being clear about who has permission to live and work in the UK. The CTA does not actually affect this. For example, currently an American can travel to Dublin and then to Belfast, but has no right to work in Belfast without a visa. This could be the case for EU citizens in future. The key point is that everyone will have undergone security checks as they enter the CTA, as is the case now, and they will then need the right permission if they want to work.

[Baroness Williams of Trafford]

The White Paper on our future relationship with the EU makes it clear that we want travel for short-term business trips and tourism to continue. It is good for our economy and for society and, of course, lots of British people enjoy holidays in the EU. But in future we will control the number of people who come from the EU to live and work here. That is behind people's concerns about unlimited immigration. I hope that I have satisfactorily answered all the questions that noble Lords asked. With that, I beg to move.

Motion agreed.

Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018

Motion to Approve

1.22 pm

Moved by ***Viscount Younger of Leckie***

That the draft Regulations laid before the House on 18 June be approved.

Special attention drawn to the instrument by the Joint Committee on Statutory Instruments, 30th Report.

Viscount Younger of Leckie (Con): My Lords, my purpose here today is to speak to draft regulations that encompass two keys elements of the Higher Education and Research Act, or HERA, as I shall refer to it, which require approval. I turn first to Section 9, the transparency condition.

There has been considerable progress in widening the access and success of students from disadvantaged and underrepresented groups into higher education. University application rates for 18 year-olds to full-time study remain at record levels, according to data published by UCAS earlier this month, and the proportion of disadvantaged 18 year-olds entering full-time higher education has increased from 13.6% in 2009 to 20.4% in 2017. However, there is more that could and should be done to fulfil our aim that anyone with the talent and potential to benefit from higher education will be able to do so, particularly on the progress of students from disadvantaged backgrounds to the most selective institutions, and the outcomes, including the retention and attainment of some groups of students. We want to see progress made and have charged the new regulator, the Office for Students, to lead that.

The introduction of the transparency duty through Section 9 of the Higher Education and Research Act is a key measure that will support the OfS in making the further progress we wish to see. This duty requires certain higher education providers to publish information on application, offer, acceptance, completion and attainment rates of students, which can be broken down by ethnicity, gender and socioeconomic background. The duty will apply to all providers registered with the OfS, including both those in the approved and approved fee cap parts of the register. It will ensure that data, similar to that released by the universities of Oxford and Cambridge on admissions recently in anticipation of this duty, is available from August 2019. That greater transparency will shine a spotlight on where higher education providers need to do more to widen the access and success of students from disadvantaged and underrepresented groups.

The duty also requires that the information is provided to the OfS. That will help the OfS to assess the performance of providers in terms of access, student success and progression. To ensure that we see progress, the OfS will be able to take action if a provider does not comply with its obligations, including on the access and participation of students from disadvantaged and underrepresented groups. The OfS has access to a range of interventions and sanctions which incentivise improvements. This can include placing additional registration conditions on providers, suspending providers from the OfS register, and, if necessary, imposing monetary penalties on a provider.

I recall that the duty was broadly welcomed by noble Lords during the passage of HERA. At that time the Government gave a commitment that the OfS would be asked to undertake a consultation in respect of additional data it might request on applicants and students with additional protected characteristics, such as disability and age. I am pleased to be able to report to the House that we have asked the OfS to undertake that consultation, and it has announced that it will do so through publishing a formal consultation and holding consultation events later this year.

Lord Adonis (Lab): I understand that there is great concern in the student world about the sharing of this data with third parties. Can the Minister tell us which third parties this information will be shared with?

Viscount Younger of Leckie: If the noble Lord will allow me to finish the speech, we can have the debate then, and I will certainly bear in mind the point that he made.

The consultation, which is part of a wider consultation on the OfS work on access and participation, is intended to be published at the end of August, and consultation events will be held during September, with findings available early in 2019. The implementation of the duty through these regulations will help ensure that we can make further progress on the access and success of disadvantaged students, as well as supporting informed choice for all.

On the second part of these regulations, Section 39 of HERA, these powers allow the OfS to provide financial support for higher education. These funding powers broadly replicate the funding powers conferred by Section 65 of the Further and Higher Education Act 1992 on HEFCE, but have been expanded so that the OfS can fund any eligible higher education provider. Eligible providers in this new system are those subject to a cap on the fees they can charge, and thus are in the approved fee cap part of the OfS register. Such financial support is important because it gives the OfS the ability to provide financial support to providers to support a range of different delivery models, such as part-time, and to promote student choice, competition and value for money. It also permits the OfS indirectly

to fund qualified schools, colleges or other institutions that are connected to an eligible higher education provider.

Furthermore, these powers ensure that the OfS can continue to provide funding for subjects which cost more to teach than can be met solely from tuition fees, such as those science and medicine courses that are so crucial to the economic and social future of the country. These powers also make it possible for the OfS to provide funding to incentivise and support providers' work on widening participation or to meet the unavoidable costs of small and specialist provision, such as performing arts courses.

I turn to an issue involving the Joint Committee on Statutory Instruments, which has drawn the special attention of both Houses to this statutory instrument in its 30th report. It has stated that there is doubt that there are adequate vires for the regulations. I appreciate that some of what follows may seem rather technical. However, it is important that I put the Government's interpretation of the relevant provisions on the record, given the strength of the committee's views.

Before turning to the detail—which is important—I want to be absolutely clear that I greatly appreciate the invaluable work the Joint Committee does in holding the Government to account for the secondary legislation that they produce. I am especially grateful for the clear way the committee has expressed its views in its recent report and, indeed, for the extensive engagement between its officials and my own during the drafting of these regulations.

The committee's conclusion, as I understand it, is on the basis that the regulations involve subdelegation to the Office for Students and that this is not adequately authorised by the parent Act. Having carefully considered the concerns raised by the committee, and having again consulted those who drafted the provisions, the department respectfully disagrees. The Government's view has always been that the Act was deliberately designed to enable regulations to refer specifically to named categories of registered provider, as created by the OfS.

In technical terms, that was achieved by the inclusion of a specific provision—Section 119(5)(d), which states that regulations made under HERA may,

"include provision framed by reference to matters determined or published by the OfS (whether before or after the regulations are made)".

The division of the register into different categories is then expressed by the Act to be precisely such a matter that the OfS "determines". That is clear if one reads the words of Section 3(2), which uses the word "determines" when it gives the OfS the power to divide the register into categories.

1.30 pm

The net result is that regulations made under HERA, including these regulations, may lawfully include descriptions framed by reference to the registration category of a provider. There may be reservations, perhaps strongly held, about whether this was the right approach as a matter of principle, but I believe that Parliament expressly authorised it when passing HERA, as we specifically referred to an intended use of the power in the very way proposed in this instrument. This is reflected in *Hansard*, where I gave an example of the use of the power under Section 119(5)(d) as one that refers to part of the OfS register. I hope that that reassures the House that what we propose in these regulations is both a legitimate use of the powers given by HERA and consistent with the statutory scheme as the Government described it when we sought Parliament's approval to enact it.

In summary, the transparency condition and financial support regulations work together to enable the Office for Students to promote access, participation and student choice across all higher education. Together, they are part of the vital foundations for the new regulatory framework that will give the Office for Students the tools to deliver sector-wide reform and ensure that higher education delivers for every student. I beg to move that these regulations are approved.

Lord Lucas (Con): My Lords, I very much welcome these regulations. For a long time since the introduction of the higher-level fees, there has been a large expenditure by universities on trying to widen access, but to my mind it has been carried out in a most disappointing manner. Universities are mostly research institutions that understand how research works, but a lot of these expenditures have not been accompanied by evaluation, by publication of what does and does not work or by any sharing of expertise between institutions so that this common enterprise can work better.

I hope that there are some but I have not seen any examples of universities working with other elements of government or the third sector to try to tackle the underlying problems. A lot of these problems are deep, as your Lordships' committee on seaside communities is finding out. The principal reason that some of these communities do not send many people to university is not down to what the universities do or do not do; it is down to the problems inherent in those communities. The best way for universities to tackle this problem is by working with other agencies active in those communities to try to achieve something wider and more co-ordinated. I would love to see more examples of that.

I really hope that my noble friend can assure me that this decade of bad practice is coming to an end, that we will be able to see exactly how universities are spending this money, that the Government, through the OfS, will expect publication of evaluation, that they will expect collaboration, and that they will expect a sector-wide drive towards better performance with a lot of the collaboration that that requires. I think that everybody is aiming in the same direction in terms of what we want to achieve, and it is very unsatisfactory that such huge expenditures are not being used efficiently and effectively.

Lord Adonis: My Lords, I see that my noble friend Lord Watson has a Motion on the Order Paper. Does he intend to move it?

Lord Watson of Invergowrie (Lab): It is being dealt with separately.

Lord Adonis: I am not sure whether to speak on that now or when my noble friend moves his Motion.

Lord Lexden (Con): My Lords, I want to comment very briefly as a member of the Joint Committee on Statutory Instruments. I would like to thank my noble friend for the detailed way in which he has responded to and commented on the committee's 30th report. His remarks will be studied with great interest by members of the committee. I have one question to put to him. When producing its report, the Joint Committee on Statutory Instruments understood that the register may not be finalised or published by the time that Parliament is expected to approve the draft regulations. Will my noble friend tell us the current position?

Baroness Falkner of Margravine (LD): My Lords, I want to focus on what the Minister told us about attempts to widen access and increase transparency, particularly through a better set of data. The noble Lord will know, because I have had this conversation with him in the past, that it is profoundly important not only to increase access for disadvantaged students and students from diverse backgrounds across the sector but to have people at the top among the academic staff and university leadership, particularly in the elite universities, who represent diversity. The figures we have seen from the regulators—there is precious little data in this regard—indicate either that data is not being compiled or that the universities are not prepared to share it with us. Will the noble Lord reassure me that there are genuine attempts on the part of our elite institutions to prepare the ground for diverse minority leadership within institutions—certainly more diverse than currently exists? I have shared with him the figures for, for example, Oxford, where women hold nine of the 44 leadership positions, and not a single ethnic minority.

Baroness Garden of Frognal (LD): My Lords, as ever with such regulations, our task is not to oppose but to seek clarification from the Government over rationale, detail or implementation. I thank my noble friend for her intervention because, although these regulations are to do with students, the point she makes is extremely valid about having diversity elsewhere in universities.

The regulations are largely uncontroversial, but I have some queries. How much resource will it take for universities to supply this information? We note that there is no impact assessment for this. Obviously, the numerical statistics received—of applications received, offers made and accepted, completions and awards made—are fairly straightforward. Gender will probably be straightforward too, although it can be more complex than the male/female of yesteryear, but ethnicity and socioeconomic background might not be straightforward. Will the Government make use of UCAS's multiple equality measure, which records the multifaceted nature of educational disadvantage? This measure groups the UK's 18 year-old population into five groups according to their levels of disadvantage. It incorporates sex, ethnicity, the POLAR3 quintile, school type and eligibility for free school meals.

Disadvantaged students will normally be a matter of family income. However, if students are over 18, they are officially adults and, in theory, should have responsibility for their own income rather than be dependent on parents. We can assume, however, that the socioeconomics of this depends on the family rather than on the independent student. There are many families with very limited money but who are very strong on aspiration and work ethic. Young people from these backgrounds may be less disadvantaged than those from backgrounds that a teacher friend of mine once described as, "Three Mercedes, but no books" families: money but no cultural depth nor work ethic. I doubt the statistics will take account of them, although their achievement may be harder won than some of their poorer colleagues.

I note that a review has been ruled out but the OfS will monitor the effectiveness in relation to widening participation. We welcome the advances that the Minister has already mentioned. UCAS has concluded that in universities with the highest entry requirements the entry gap is widest but has narrowed most quickly. It quotes that the most disadvantaged 18 year-olds are 65% more likely to attend an elite university in 2017 than they were in 2011. However, that was starting from a low base rate and, obviously, considerable disparities remain.

We shall be interested to hear in due course how straightforward it is for universities to comply with this data and its impact on widening participation, which I know we all support.

Lord Watson of Invergowrie: My Lords, I thank the Minister for introducing the first of three statutory instruments relating to the Higher Education and Research Act that we will be debating today—ending the term with a flourish in the twilight zone, which I suspect few of our respective colleagues will envy.

Notwithstanding the technical objections of the JCSI, we will not oppose these regulations. It is clearly important that higher education providers receive the necessary funding to enable them to carry out their teaching functions, and Regulation 5 does this. Provided it is delivered efficiently and fairly then we have no other comment to make in respect of this part of the regulations, although I will have more to say on fees in the debate that will follow this one.

Although higher education providers will regard that part of these regulations as being the most relevant, I have no doubt that the transparency provisions of Regulation 4 will have more long-reaching consequences. This is because the information that providers are obliged to provide under these regulations, as set out in detail in the Explanatory Note, will have a significant impact on the choices made by students—not all of whom by any means are 18 year-olds—when they decide which university and what course to apply for. I endorse paragraph 7.2 of the Explanatory Memorandum, which says that,

"greater transparency is one of the best tools available to drive social mobility".

We know that many institutions do well in having an inclusive and diverse student population broadly reflective of the population as a whole. Equally, a

considerable number do not. The Minister mentioned Oxford and Cambridge universities. A recent survey revealed that several of the most prestigious Oxford colleges each admitted only two black British students as undergraduates in the past three years. Six of Cambridge's colleges each admitted fewer than 10 black and minority ethnic students between 2010 and 2016. Oxford's Wadham College is an excellent example, admitting 68% state school students and sitting in the top five college rankings, while making considerable efforts to widen its participation programme with visits to schools. If it can be done at Wadham, I do not see why it cannot be done at other colleges and universities. It is perhaps, a question of priorities. I endorse the view expressed eloquently by the noble Baroness, Lady Falkner, that the need to develop diversity should be extended to management and leadership levels.

The Government regularly declare that widening participation is a key part of their agenda, and the Office for Students states that its aim is to make higher education more representative of wider society. We certainly wish them well with that. However, in nine of the Russel Group's 24 universities, the proportion of state school students fell over the past year, so it seems that efforts to widen student participation at universities have stalled. It is to be hoped that the transparency provisions of these regulations will help to refocus the recruitment policies of the under-achievers.

There is no doubting the good intentions of both the OfS and the universities, but good intentions are without merit unless they are acted upon. One clear failing concerns the issue of unconscious bias. I repeat a point I made in an earlier debate about the most egregious example of that, which was the admissions process highlighted by UCAS's own researchers last month when they reported that more than half of all applications flagged for possible fraud were from black applicants, even though these applicants constitute only 9% of the total. That is surely wholly unjustifiable and clearly the result of bias. Whether it is entirely unconscious bias is perhaps a moot point.

As I said, greater transparency in the process is clearly necessary, and we have reason to hope that these regulations can help to provide it. While more free school meals students are going to university than 10 years ago, the increase has not been at the same pace as the number of non-free school meals students going to university. Since 2010, the gap between students from independent schools going to the most selective universities and students from state schools going to those universities has grown substantially. To put it another way, disadvantaged pupils' progression to university is as far behind that of their more affluent peers as it was seven years ago, which is simply unacceptable.

Of course it is no coincidence that analysis from the Institute for Fiscal Studies has shown that the ending of maintenance grants finds students from low-income families graduating with the highest debt levels, sometimes in excess of £57,000. Labour believes in the reinstatement of maintenance grants because, no matter how much effort universities put into improving their admissions policies and being transparent about the outcomes, much more remains to be done to reduce the barriers that prevent those from underrepresented groups fulfilling their potential. It will be instructive to return to this subject in three years' time and to assess how effective these regulations have proved to be in widening access to our higher education institutions.

1.45 pm

Lord Adonis: My Lords, I hope that the Minister will forgive me, but I am somewhat confused by the procedure. My noble friend has tabled a Motion to Regret on one of the sets of regulations even though the Minister introduced all of the regulations in his opening remarks. Perhaps I may make a few remarks now on the first of these sets of regulations concerned with transparency before we come on to the data sharing issues in a moment.

No one could have anything against these regulations. It is vital that there is transparency and the Office for Students, which got off to a terrible start in terms of its reputation, the appointments to the board and so on, is at long last starting to concentrate on some of the issues for which it was set up. One of those is to ensure fair access and to encourage universities to publish appropriate data on this. It is an important point, and the Minister's remarks on that at the outset were well made and I support them entirely.

The essential thing to understand is that the publication of data itself will not improve access. It is a tool to that end, but the critical development is what happens university by university and community by community. My concern with the OfS is that, in setting up this new body and getting into a big exercise in establishing systems, protocols and data arrangements, it will concentrate too much in its first year or two on getting the systems in place and not on actually changing the behaviour of universities. There is some evidence for that already.

The first big announcement the OfS has made is to parade, as if it was some enormous achievement in the history of higher education, a register of providers. A register of providers in itself is an entirely neutral thing. No additional provider has been made available simply by the publication of a register. The fact that this may be the first such register is an interesting proposition but it is not a great development in the history of higher education in this country.

As a former Minister in this area, everywhere I go around the country I can see the enormous challenges involved in widening access. I want to bring the Minister's attention to one area which I hope he might be able to write to me about after the debate. I do not expect him to be able to respond to my remarks now, but it is an issue of immense concern which does not come to the attention of this House because of devolution. I spent most of last week in Northern Ireland, where the shortage of higher education places is a very big issue. Northern Ireland exports a very large number of students to universities in the UK because there has been proportionately a much lower cap on places in Northern Ireland than has applied in Britain.

I turn to a subject that was raised with me almost everywhere I went, particularly at Queen's University Belfast. Students and academic leaders told me in graphic detail about the brain drain from which Northern

[Lord Adonis]
Ireland is suffering as a result of the shortage of higher education places. That in itself is a matter of concern. A large number of students in Northern Ireland are studying in Britain and then not returning home, which is very damaging to the economy and probably also to the wider society of Northern Ireland. However, there is an additional dimension that was forcefully made clear to me: this is a particular issue in the nationalist Catholic community in Northern Ireland because of a decision taken by the Stormont Parliament a generation ago not to establish a university in Londonderry. I looked into the history of the decisions that were taken in the 1960s and 1970s. It was decided to set up a new higher education institution in Coleraine rather than Londonderry which, amazingly, still does not have a proper higher education institution. That is greatly resented by the community in Londonderry and acts specifically against the interests of the Catholic community.

Normally this would be a matter for the Northern Ireland Assembly to concern itself with, and indeed part of the reason the Assembly exists is to address issues like this. However, it has now been more than a year since the Northern Ireland Assembly met. The two leading parties in Northern Ireland have conspired to keep the Assembly from sitting. There is no Government in Northern Ireland. Therefore, in this as in other areas such as equal marriage and abortion, this Parliament must surely start addressing these issues if there is no other democratic outlet for Northern Ireland to make its views heard, and for them to be addressed as they should be by Parliament.

This issue of higher education places in Northern Ireland, which goes directly to the issue of access, looks to be of fundamental importance. Will the Minister undertake to do two specific things? First, will he let me know what the powers of the Office for Students are in Northern Ireland? Does it have powers in Northern Ireland equal to the rest of the United Kingdom? Can it get into these issues of access? Secondly, will he ask the Office for Students to look, if it can, at fair access not regarding the number of places, but between different parts of the community in Northern Ireland, because it is clearly an issue that is very strongly felt there?

Viscount Younger of Leckie: My Lords, I thank all noble Lords for their broad acceptance and approval of these regulations. I thank my noble friends Lord Lucas and Lord Lexden, the noble Baroness, Lady Falkner, and the noble Lord, Lord Adonis. I will cover all their questions in turn.

On the big picture, these transparency regulations are very important as part of the setting up of the OfS and its very remit. The whole point is that there should be transparency and universities should be seen to provide value for money for all students. At the end of the day, outcomes are also important: students going in, what they do when they come out and where they go. Linked into the LEO figures we can then better know who is coming in, who is coming out and how they get on. Ultimately, that helps to market our universities at home and abroad, particularly, as I said at the beginning of my speech, looking at social mobility and disadvantaged students who—for first time in some cases—have the chance to go to university and a great opportunity for a career.

The noble Baroness, Lady Falkner, made an interesting point about elite universities and sharing data. That leads into something that the noble Lord, Lord Adonis, will feel strongly about, which is transparency at vice-chancellor and senior leadership level at university. He and I agree on this. He knows, as I do, that we are putting as much pressure as we can on all universities, including the elite ones, to act with restraint. They obviously have a duty to publish certain figures relating to their salaries. I will not go into the details of that; I think that the House knows about it. That will help to lead to that restraint, but it will also help to raise the profiles of the universities abroad. People will be able to look at the figures and at what the universities do, how they operate and how they manage themselves. I hope that it will be a good story and that more people will come to university. There is a linkage there.

My noble friend Lord Lexden asked about the current position of the OfS register. I reassure him that it now exists. The OfS recently confirmed that the first 42 providers have been officially registered. The OfS register is now available for anyone on the OfS website. The OfS will continue to populate the register over the forthcoming months.

The noble Lord, Lord Adonis, asked early on in the debate about the sharing of data. Maybe I can give him a little bit more information. The information-sharing regulations enable the OfS to share information with a range of bodies as set out in the regulations, where this is for the purpose of performing the other body's functions. The OfS will also be able to share information with third parties where it is appropriate to do so and where this is part of an OfS function. There are specific regulations laid down with restrictions for that.

My noble friend Lord Lucas, in welcoming the regulations, asked about the research and evaluation by universities and their sharing of expertise in tackling underlying problems. We have asked the Office for Students to develop an evidence and impact exchange to identify and share good practice on what works and what has the greatest impact.

The noble Lord, Lord Watson, and the noble Baroness, Lady Falkner, spoke about Oxbridge and ethnicity. Wadham was mentioned. "If Wadham can, then why can't the others?", one noble Lord asked. I think I said at the beginning that 18 year-olds from disadvantaged backgrounds are entering full-time higher education at record rates, including the most selective universities, which is positive news, but we have asked the OfS to challenge for and encourage more progress, particularly at our most selective institutions. The publication of transparency data by ethnicity will shine a light on where they need to go further, so I hope that provides some reassurance.

The noble Lord, Lord Adonis, asked about the powers of the OfS in Northern Ireland. I listened carefully to his latter remarks and am grateful for his observations. The OfS is a regulator of higher education in England only but, having said that, let me write to the noble Lord, because his remarks were quite expansive

and extended to the difficulties that Northern Ireland is facing at the moment. I will read his remarks in *Hansard* and write a letter to him to clarify that.

The noble Lord also asked about the OfS concentrating too much on setting up and systems, and not on changing behaviours. I do not agree with him. Yes, a key focus this year is for the OfS to register providers, but it has a wide range of other priorities as set out in the Government's strategic guidance to the OfS published in February, and set out in the OfS's strategy and business plan. On the back of the Higher Education and Research Act, the OfS is very much up and running. The noble Lord mentioned certain problems that arose, but I am glad that he acknowledged that it is moving forward and making progress on a range of matters.

I hope that I have covered the questions asked. Noble Lords have a keen and understandable interest in the implementation of HERA. There is no doubt that today's scrutiny plays a vital role in ensuring that the reform promised by that Act is achieved.

Motion agreed.

Higher Education (Fee Limits and Fee Limit Condition) (England) Regulations 2018

Motion to Approve

1.57 pm

Moved by ***Viscount Younger of Leckie***

That the draft Regulations laid before the House on 2 July be approved.

Viscount Younger of Leckie (Con): My Lords, I thank the noble Lords on the Secondary Legislation Scrutiny Committee for their scrutiny of the fees regulations laid before this House in July and considered in the 36th report from the committee.

My purpose here today is to speak to the fees regulations that require approval. They support our aim that anyone with the talent and potential to benefit from higher education will be able to do so.

UCAS data show that we have made good progress on this. In 2017, 18 year-olds were more likely to enter full-time higher education than ever before, with disadvantaged 18 year-olds 50% more likely to enter full-time higher education than in 2009. The most recent UCAS data on application rates for English 18 year-olds show an increase by 0.2 percentage points on last year's deadline to 38.1%. This is a record high.

However, as I have said before, we know that there is more to do. That is why the Government are currently undertaking a major review of post-18 education and funding to ensure we have a joined-up education system that is accessible to all and encourages the development of the skills that we need as a country. We expect to conclude the review in early 2019.

Turning to fees, the Government announced on 2 July in a Written Statement that maximum fees for students undertaking undergraduate courses in the 2019-20 academic year would remain at 2018-19 levels for the second year running, saving students up to £255.

This is not the only change we have made to help students. From the tax year 2018-19 starting in April 2018, we increased the repayments threshold above which graduates are required to make repayments on their loans from £21,000 to £25,000, rising by average earnings thereafter. We have also taken the opportunity to review policy for EU students. The Written Statement of 2 July I mentioned earlier also announced that existing eligibility rules for students from the European Union, and their family members, who start their courses in England in the 2019-20 academic year will remain unchanged. This means that EU nationals will remain eligible for home fee status, undergraduate, postgraduate and advanced learner financial support from Student Finance England for the duration of their course under the current eligibility rules.

Why are these regulations important? I turn now to the details of the fees regulations being considered today. They are made under Section 10 and Schedule 2 of the Higher Education and Research Act 2017. They will ensure that the Office for Students, the new regulator for higher education since 1 January 2018, has the powers to set maximum fee limits for home students studying at providers in England that are subject to a fee limit condition in 2019-20. These regulations will also ensure that the Government can implement the new regulatory framework under HERA in full; in particular, the requirement for providers to submit access and participation plans to the OfS in order to charge fees above £6,165 for a full-time course.

The existing fee caps, made under Section 24 of the Higher Education Act 2004 will be revoked automatically on 1 August 2019, as a result of Schedule 11(30)(2) of HERA. It is therefore essential that new regulations are made under HERA to ensure that fee caps continue and that students benefit from the freeze in maximum fees. Under HERA, providers can choose to register with the OfS in one of two categories: either the Approved (Fee Cap) or Approved categories. Providers registering in the Approved (Fee Cap) category will, for 2019-20, be eligible for OfS grant funding and will also be subject to maximum fees set through the regulations being discussed today: £9,250 for a full-time course offered by a provider with a teaching excellence and student outcomes award. Students attending Approved (Fee Cap) providers will be able to access loans to cover the full costs of their fees. Providers registering in the Approved category will not be eligible for OfS grant funding or subject to maximum fees. Students attending those providers will be able to access lower rates of loans towards the costs of their fees.

Under HERA, the OfS will be able to limit fees charged by Approved (Fee Cap) providers once these regulations come into force. So without these regulations, providers would be free legally to charge whatever fees they wished. In addition to setting maximum fees for the 2019-20 academic year, these regulations also amend another set of regulations that will allow the OfS to operate under HERA. The Fee Limit Condition Regulations, which came into force on 1 April 2018,

[Viscount Younger of Leckie]
deliver the framework for the capping of student fees for qualifying students and courses at providers registering in the Approved (Fee Cap) part of the OfS register. These regulations amend the Fee Limit Condition Regulations so that persons who have a current grant of stateless leave, and their family members, who are undertaking qualifying courses in the 2019-20 academic year are defined as qualifying persons. This means that they will benefit from the same maximum fees that currently apply to other qualifying persons, such as persons who are settled in the United Kingdom.

These regulations also amend the Fee Limit Condition Regulations so that students already holding an equivalent or higher level qualification who are undertaking pre-registration, nursing, midwifery and other healthcare courses will be defined as qualifying persons and will benefit from maximum fee limits. With those explanations, I beg to move that these regulations be approved.

Lord Adonis (Lab): My Lords, I am grateful to the Minister for introducing the regulations so lucidly. He referred to the review that is taking place on student finance, which is of huge importance, of course, to students and their families and to universities. He said that the report would come in early 2019 but he said nothing more about it. I have three specific questions about the review. First, will it be publishing either an interim report or any interim statements or summaries of evidence taken? I think that could be quite useful in stimulating the public debate that needs to take place around the future of the higher education funding system.

The second point is about consultation. Which groups of students and young people are the Government consulting, because a big and controversial issue has been the failure to include young people in the review team? The one group that is not a part of the review team directly is the group of very young people and students who are directly affected by this. That is a big mistake. The right thing to do, particularly if we are to win support from the generation that is paying these fees in a reformed system, is to have some buy-in from them at the beginning. The failure to put those arrangements in place will cost the Government dear. It would be good to know what consultation is taking place with young people.

Thirdly, what polling among the public and young people is the review doing to ascertain the attitudes of the public at large to the sharing of the burdens of paying for higher education and the attitudes among young people? My view all along, having played a part in the introduction of the original scheme in 2004 but having been opposed to the trebling of tuition fees in 2010, has been that students recognise that in order to be responsible and constructive members of society, particularly in the current climate, where they are very focused on getting jobs and making their way in the world, they need to make some contribution to the higher education system, but they resent the fact that all the costs of the higher education system have been moved to the students and the graduates. Polling might bring that out and might help to establish a basis of agreement on public attitudes, which might make a burden-sharing approach possible which, to be blunt, might mean cutting the level of fees from £9,500 but not eliminating them entirely.

My party's official position is now to eliminate fees entirely. The noble Viscount's position is to have them at £9,500. There is quite a big space between zero and £9,500. Being, as ever, moderate and constructive, I am quite keen that we come in somewhere in the middle of that space. That might be sustainable among the public, rather than doing what I fear may happen, which is lurching from a very high level of fees by international standards to no fees at all.

Finally, when I read the debate in the House of Commons Delegated Legislation Committee on these regulations, the Minister for Higher Education said that he was conducting a listening tour around the country. I am strongly in favour of listening tours; I wish the Government would conduct them on many other issues, too, including Brexit, but that is for a later debate. However, he gives an extraordinary figure for the number of students he has met, which I am hugely impressed by. He said that on his listening tour so far he has met more than 1,500 students. I am not sure whether those 1,500 have been in the hall with him as he has been going around or whether he has personally conducted conversations with them.

I would be very grateful if the noble Viscount could tell us whether he has any findings from the Minister's listening tour or whether the Minister might publish findings from his tour when he has finished it, because knowing that he has conducted a listening tour but not knowing what he has heard is not of great use to Parliament when we come to consider these significant student finance and funding issues after the review reports in the early part of next year.

Baroness Garden of Frognal (LD): My Lords, building on the reviews by the noble Lord, Lord Adonis, can the Minister say what progress the Government have made in appointing the independent reviewer of the teaching excellence framework? I can only apologise if I have missed the announcement somewhere along the line.

What assurances can the Government give that the independent reviewer of the teaching excellence framework will be a genuine exercise that influences the future design of the scheme? We would oppose any attempts to link tuition fee rises to the quality of teaching as determined by the TEF, which we maintain has flawed metrics, several of which have nothing to do with teaching.

Have the Government considered replacing fees with a graduate tax? This statutory instrument makes no attempt to find a solution to the position set out in the recent Economic Affairs Committee report, which estimates that in 30 years' time the Government will have to find:

"an extra £8.4 billion to cover expected losses on the 2017/18 student loans".

Does the Minister have any comment on the immense debt with which the current scheme is burdening future generations?

We are pleased to see in these regulations that the Erasmus year continues to be mentioned. Can the Minister give us any further assurance on government

plans to ensure that we continue to be part of Erasmus, whether or not we leave the EU? It is a programme that brings great benefits to participants and to the economy, as students return with a more significant skill set to offer to employers. Does the Minister have any certainty to offer us on Erasmus?

We continue to be concerned about the changes to nursing funding, and would strongly support reinstating student bursaries. It is good to read here about the exemptions on equivalent and lower qualifications for health professionals. Might that lead to a wider exemption for ELQs in other areas? As we know, loss of ELQ funding is one of the key factors in the disastrous decline in adult education, and we would welcome some good news on that front.

Will the Government carefully monitor the effect on nurse recruitment and retention of the recent changes to funding? We note that the number of applicants to undergraduate nursing courses in the year after the abolition of bursaries was announced fell by 11,750—a reduction of 18%. This compounds the existing shortage of nurses in the UK. Almost every hospital is dangerously short of nurses, and the Royal College of Nursing estimates that there are 40,000 nursing vacancies across the health and social care sectors. That shortage will only worsen if nurses cannot be easily recruited from the EU. I hope the Minister can offer some reassurances on those various aspects.

Lord Liddle (Lab): My Lords, may I add something from a university perspective? I declare an interest as chair of the council of Lancaster University. I welcome the fact that the £9,250 maximum fee is being extended for another year—although of course that has denied to universities for the past two years the inflation increase that they were promised.

The review is necessary given the political climate surrounding fees, and the Government have to take into account the risky financial situation now facing the university sector. Any significant cut in fees would have a big impact on the excellence of our universities, unless it were wholly made up for by an increase in teaching grant. I ask the noble Viscount whether he is in any position to offer the sector any assurance that any cut in fees would be made up for by an increase in teaching grant. If it is not, there will be consequences, particularly for universities like mine, which has ambitious plans for expansion, and also, for a leading academic institution, has one of the best rates of state school pupils and people from deprived backgrounds in the country. We are good on equity as well as excellence, and the possibility is a real cloud over our financial prospects for the future.

One of the issues the Government have to address is that if there is a significant cut in fees following the review and there is no increase in teaching grant, one of the areas that universities are bound to look at is the money set aside for widening participation. At the moment we give a lot of bursaries to poor students. I have met many students at Lancaster who say that the reason why they came there was that we could offer them a £1,000 bursary. With the withdrawal of the means-tested maintenance grant, this has become very significant. I hope that the Government are considering bringing back a means-tested maintenance grant, but the real point I want to make is that these regulations give universities financial certainty for only an additional year. The future prospect is very clouded. Universities need more certainty if they are to be one of the starring sectors of the British economy, as they have been for the last 20 years.

2.15 pm

Lord Watson of Invergowrie (Lab): My Lords, I thank the Minister for introducing and moving these regulations. He will not be surprised to hear me say that we accept they are necessary, because we want to ensure that higher education providers do not have the ability to charge fees in excess of the level of £9,250 set out in the regulations. I make those comments bearing in mind those just made by my noble friend Lord Liddle. We also welcome the fact that the regulations have the effect of freezing fees for a second year although, given the level at which they are set, we believe that is the bare minimum the Government could have done to alleviate the burden on students, until 2020 at least.

Of course, these regulations do not take account of the provisions of the Higher Education and Research Act 2017, which will see different levels of fees across the sector following the introduction of the teaching excellence framework. I imagine those provisions would have been brought into force via these regulations had it not been for the fact that, in the wash-up prior to the snap election, Labour forced the then Government to concede that there would be a review of the TEF. It had been one of the most controversial parts of a Bill which, it is fair to say, was no stranger to controversy.

When these regulations were discussed in another place last week, my Front-Bench colleague Gordon Marsden MP asked the Minister of State for Universities, Science, Research and Innovation—a title which, I imagine, must be challenging to fit on a business card—for a progress report on the appointment of the independent person who will be in charge of the review. That elicited the response that,

"an announcement will be made in due course"—[*Official Report*, Commons, Second Delegated Legislation Committee, 16/7/18; col. 8]—

the catch-all phraseology used when the Government do not really know quite what is happening or when anything actually will. I say to the Minister that if someone, somewhere within the DfE does not inject some urgency to the process then the introduction of the TEF will not fall within the planned timeframe. I think he will share my view that it was always going to be a challenge to gain the agreement of all those involved.

The TEF was intended to address the failure of the 2012 reforms to create a market among universities. The recent report by the Economic Affairs Committee of your Lordships' House noted that there was,

"little evidence to suggest that the higher education sector is suitable or amenable to market regulation".

The committee went on to say that the TEF,

"will not impose sufficient discipline on the sector to ensure the quality of the ever-increasing provision of undergraduate degrees",

because:

"Risk is borne almost entirely by students and taxpayers rather than the institutions".

[Lord Watson of Invergowrie]
Further criticism has emanated from the Public Accounts Committee, which has characterised the student loan system as economically unsustainable and damaging to social mobility.

The Minister will know that I believe strongly that those hardest hit by the 2012 funding changes have been in the part-time and distance-learning sector. I have raised this issue on various occasions in debates, most recently last week when we considered the export value of higher education. The noble Baroness, Lady Garden, has just mentioned adult education. The numbers of part-time students in England have dropped by almost two-thirds in the last six years, while those who have been most deterred from study by the trebling of tuition fees are not 18 year-olds entering full-time higher education but older, especially disadvantaged, students. It is beyond doubt that the main factor in that decline is tuition fees because the scale of the decline in England, where fees are much higher, is 2.5 times greater than in the rest of the UK. The Sutton Trust has reported that the biggest decrease in part-time students has been in the 30 to 49 age group, which is of course prime working age. These regulations are silent on that issue.

In a debate on lifelong learning in April, the Minister said that the post-18 funding review, to which various noble Lords have referred, would look at how we can encourage flexible and part-time learning. We await the details with interest. Hopefully, they will emerge when the interim report to which he referred is published in the autumn.

The introduction of full-time equivalent maintenance loans in the coming academic year will provide some financial support to part-time students, although their family circumstances often starkly differ from those of the typical full-time student. Any changes resulting from the post-18 review will not come into effect for at least three years. Can the Minister point to any further government initiative in the interim that could encourage the reversal of the decline in part-time and distance learning?

I could have introduced the thorny topic of student debt but I think I shall leave that for another day. It is important, though, that the Minister does not gain the impression that, while we are content with these regulations, we are also content with the overall structure and distribution of funding in the post-school education sector. The report of the Economic Affairs Committee, to which I referred earlier, characterised it as "unfair and inefficient". That is a conclusion with which we on these Benches wholeheartedly agree.

Viscount Younger of Leckie: I thank noble Lords for their broad support of the regulations, but I shall pick up on the words mentioned by the noble Lord, Lord Watson. There are some issues circling around; he will be aware of that. Most of the questions focused on the future of fees and I shall spend most of my remarks focusing on the 18-plus review, which was raised initially by the noble Lord, Lord Adonis. I shall give as much information as I can on this important review.

The questions raised by the noble Lord, Lord Adonis, focused on whether there will be an interim report, consultation and polling, which was an interesting question. I think he was asking whether it would be a good thing to poll young people to ascertain their views. That is noted, but I reassure him that part of the extensive programme of engagement with stakeholders and experts includes students and recent graduates, and that is ongoing as part of the review. I shall give a little more information on this.

Noble Lords will know that this review was announced by the Prime Minister on 19 February. It is a major review across post-18 education looking at funding. We want to ensure that there is a joined-up system that works for everyone and is accessible for all. The review will ensure, as an overarching principle, that the system gives everyone a genuine choice between high-quality technical, vocational and academic routes. Students and taxpayers must get value for money and employers must be able to access the skilled workforce they need. Above all, we are also looking at the student experience. We must have a system whereby students go to university and come out feeling that they have had a good experience and have a good degree.

The review is being informed by independent advice. I must stress the independence of this review, so I may not be able to answer some of the questions directly because the review is independent. It is chaired by Philip Augar and one of our colleagues, the noble Baroness, Lady Wolf, is on the panel. There are five leading figures from across the post-18 education and business worlds. There is extensive engagement going on. I reassure the noble Lord and the House that there will be an interim review. I do not have a particular date in mind, but my understanding is—and I will write to noble Lords if I am wrong—that the interim review will come out some time this year. The actual review will come some time early in 2019 and after that there will be a response from the Government.

Lord Lexden (Con): Does this review cover the whole of the United Kingdom, a point that is perhaps particularly relevant in view of the earlier comments by the noble Lord, Lord Adonis, about Northern Ireland? It would be good to know whether the entire country is included.

Viscount Younger of Leckie: My understanding is that it covers England only. I understand that discussions are going on with the devolved Administrations, but the review focuses on England only.

Lord Adonis: I am sorry to interrupt the noble Viscount, but the situation of Northern Ireland is therefore very serious because there is no other means of conducting a review or introducing changes in the current climate. When the review was set up, it looked as if the Northern Ireland Executive might be re-established. That has not happened. Is he in a position to inform the House further about the Government's attitude in respect of Northern Ireland?

Viscount Younger of Leckie: I think I will add that to the letter that I will write to the noble Lord specifically about Northern Ireland. I remember what he said in the previous debate.

The noble Baroness, Lady Garden, and the noble Lord, Lord Watson, asked about progress in appointing an independent reviewer of the TEF. The recruitment of the independent reviewer is under way and an announcement will be made in due course. I have taken note of the comments the noble Baroness made about the TEF and the feelings that were expressed in this House about it last year. If they have not gone away, it is an issue that will be addressed.

I reassure the House that this is a devolved matter—this is going back to the question raised by the noble Lord, Lord Adonis. The review covers England alone, but it comes back to the point that I was making that I will write to him about matters relating to Northern Ireland.

The noble Baroness, Lady Garden, asked whether we can continue to take part in Erasmus. An announcement on the Erasmus programme will be made in due course, particularly to take account of the planning needs of students and universities.

The noble Baroness, Lady Garden, also asked about ELQ exemptions and part-time study. The ELQ rules have been relaxed to support students who already hold an honours degree qualification and who wish to retrain on a part-time basis in a STEM subject. The review of post-18 education and funding will look at how we can encourage learning that is more flexible. This takes account of comments that I made in a recent debate on this important subject, particularly relating to the Open University.

The noble Lord, Lord Watson, and the noble Baroness, Lady Garden, asked about the decrease in part-time study, particularly in the 30 to 49 age group. In this academic year, part-time students will, for the first time ever, be able to access full-time equivalent maintenance loans, as I think the House will be aware.

The noble Lord, Lord Liddle, raised some interesting points about the perspective from universities, and I took note of what he said regarding Lancaster University. It is a fair point, because if fees are capped, less money goes to universities. We are obviously aware of that and will take account of it as part of the 18-plus review. It is part of the overall view of how the future of tuition fees will pan out. That includes the points he made about the means-tested maintenance grant.

My final point is aimed to address something said by the noble Lord, Lord Adonis. He was talking about a range of where tuition fees might be from £0 to £9,250. I took it that the £0 meant that it was still Labour Party policy that, if it were ever to come into government, it would offer free education to students.

Lord Adonis: I do not speak for the Labour Party—that is for my noble friend on the Front Bench—but that was the policy at the last election.

Viscount Younger of Leckie: My point in raising that was to say that this 18-plus review is also looking at these matters. Nothing is ruled in and nothing is ruled out and the independent panel will be looking at it. With that, I commend the regulations.

Motion agreed.

Higher Education and Research Act 2017 (Cooperation and Information Sharing) Regulations 2018

Motion to Regret

2.27 pm

Moved by ***Lord Watson of Invergowrie***

That this House regrets that the Higher Education and Research Act 2017 (Cooperation and Information Sharing) Regulations 2018 create significant powers for the Office for Students to grant access to students' confidential data to a single commercial provider, and calls on Her Majesty's Government to carry out a privacy impact assessment on the Regulations (SI 2018/607).

Lord Watson of Invergowrie (Lab): My Lords, I welcome the opportunity to draw the regulations to the attention of the House, although it is unfortunate, to say the least, that this debate is taking place five weeks after they came into force. However, there is greater cause for concern because, without consultation or public announcement, this negative statutory instrument was laid on 23 May, less than three weeks before coming into effect, with one of those weeks being taken up by the Whitsun Recess. Perhaps the noble Viscount can explain why such timing was employed by the Government, rather than exposing the regulations to proper scrutiny both in Parliament and more widely.

The regulations have caused considerable concern in respect of the significant powers that they create for the Office for Students to grant access to students' confidential data to a single commercial provider. Further, it has to be said that the Explanatory Memorandum does not do what it says on the tin, because the purposes for which the data may be used remain open and vague.

We have a number of concerns, not least that, as I said, there has been no parliamentary debate or public consultation. It almost beggars belief that students and universities, those directly involved, were excluded from the decision to create these invasive powers. Last month, in a Written Question, my Front Bench colleague Gordon Marsden MP asked whether the Department for Education had consulted universities, student bodies or UCAS on the powers relating to confidential data conferred under the regulations. He did not receive a suitable answer, so he tried again when the regulations were debated in another place three weeks ago. This time, the Minister, Mr Gyimah, admitted:

"No specific contact was made with UCAS and the NUS",

adding vaguely,

"but the OFS regulatory framework consultation asked the sector for views on the principles of how the OFS engages with other bodies".—[*Official Report*, Commons, First Delegated Legislation Committee, 2/7/18; col. 10.]

Of 37,000 students who responded to a UCAS survey in 2015, 90% said that they did not want their data to be handed to commercial companies without their consent, yet the Government ignored that decisive view.

[Lord Watson of Invergowrie]

The Minister will recall that significant concern was raised during the passage of the Higher Education and Research Bill in another place. Indeed, Mr Marsden warned of the risk, stating that the proposal,

"would give the state access to all university applicants' full data in perpetuity for users who would only be defined as 'researchers' and without 'research' being defined at all.—[*Official Report,* Commons, 2/7/18; col. 4.]

UCAS also raised the risks and concerns in evidence at that time. The then universities Minister, Jo Johnson MP, responded:

"Only named and approved individual researchers within Government and from approved bodies will have access to the data. All data will be de-identified before being received by these accredited researchers".—[*Official Report*, Commons, 13/10/16; col. 457.]

I can say with some certainty that neither Members of both Houses nor the general public would have inferred from that comment by the Minister that the commercial company, Pearson, would fall into the category of accredited researchers. Yet, it is specifically named in the regulations and indeed, it provides powers for the data to be passed to an unlimited number of persons not named and approved individual researchers.

As the campaign group Defenddigitalme has argued in submissions to noble Lords and MPs, the power to shape the education sector and course content derived from the knowledge that this kind of data holds about students' personal backgrounds, their own and their parents' income, courses, attainment and ongoing activity, will give the holder unprecedented influence.

In January 2017, during a debate in your Lordships' House on the Higher Education and Research Bill, the noble Lord, Lord Kerslake, highlighted his concern at the fact that,

"the Bill allows the Secretary of State to frame the guidance given to the OfS by reference to particular courses. As this House will know, that contrasts sharply with the current legislation—the 1992 Act—in which the Secretary of State is specifically forbidden from setting guidance to HEFCE in this way".—[*Official Report,* 9/1/17; col. 1802.]

It is unclear in the Explanatory Memorandum why Pearson was the most prominent of the designated receiving bodies, although the debate in another place on 2 July revealed that the company was included because it awards HNC and HND qualifications. That hardly makes it unique, and there is no transparency regarding the detailed purposes for which this data will be passed to Pearson, HMRC, the Student Loans Company or indeed others.

There is no clear limitation of purpose or restriction on how the data may be used or distributed further after being handed over to Pearson. Risks include Pearson selling the data directly or as part of a company asset, as that company has done in the past in the USA, with the data of 15 million students. The knowledge gained from the data must give any single company—in this case, Pearson Ltd—a sizeable and some would say unfair commercial competitive advantage over others in the sector. Can the Minister say whether Pearson, or indeed other commercial organisations, will be allowed to sell on the student data that they are given under these regulations? I hope the answer will be in the negative, but if it is not then will the Minister explain to noble Lords why he thinks such action would be appropriate?

The General Data Protection Regulation recognises that any data that is not anonymous, including de-identified or pseudonymous data, is still personal data and falls under its obligations. But there is no assurance that no historical data would be handed over, collected without explanation to the applicants or students, or that personal data would be given to Pearson and the other new bodies in future. Such processing of historical personal data could therefore be without a lawful basis, given the failure to fairly process it during its original collection.

During the passage of the Higher Education and Research Bill, noble Lords and MPs raised concerns about the powers in the regulatory function of the Office for Students and questions of institutional autonomy. Legitimate questions arise as to the powers that these regulations confer on the relationship between the OfS and Pearson, given the former's regulatory function. The appointment of Sir Michael Barber as the chair of the OfS was widely welcomed and there is no intention to impugn his reputation in any way. However, there exists at least the potential for a perceived conflict of interest, given that prior to taking up his new post, Sir Michael had been chief education adviser at Pearson for more than five years.

We believe that it is a significant weakness in the preparations for these regulations that the DfE has not carried out any privacy impact or human rights assessments. The department will not be accountable for the consequent impact on privacy, but the Explanatory Memorandum states that the OfS has the responsibility for any privacy impact assessment. This presumably refers to the privacy impact of individual instances of information-sharing, and that is both perfectly understandable and reasonable.

But I am referring to the bigger picture, to the whole system of data sharing. It is surely irresponsible for a government department to create powers and bring them into operation before fully understanding their likely effects. Creating rights of access to the entire student population's personal confidential data for Pearson Ltd, as well as other listed third parties, is an act of national significance with potential long-term implications for individuals and the sector as a whole. Once personal data has been transferred to commercial bodies such as Pearson, the state and civil society lose oversight and transparency, together with the right to question policy and practice over its processing, yet the DfE does not believe it should be questioning these implications. Perhaps the Minister can explain why not.

This motion calls on the Government to carry out a privacy impact assessment of these regulations. If the Government believe that it is for the OfS to carry out such an assessment, so be it, but they must ensure that the OfS does so because, despite these regulations being in force for more than a month, there are too many unanswered questions surrounding them, and that is not acceptable. I beg to move.

Lord Lucas (Con): My Lords, I am grateful to the noble Lord, Lord Watson of Invergowrie, for bringing this Motion forward. I completely share his disquiet at the way in which these regulations have been framed. I am grateful to the Minister—his department has been in helpful correspondence with me since—but the fundamental problem is in the drafting. The idea that data should be given to a commercial company, one so much at the centre of education as Pearson, for purposes connected to its memorandum and articles—which are written, as you would expect, to allow Pearson to do anything; there are not even any restrictions on illegality, as is conventional—is a fundamental defect in the drafting of the regulations.

There are some good precedents that could have been followed. The one I like, because I know it best, is Schedule 1 to the Freedom of Information Act. Typical expressions might be:

"The Competition and Markets Authority, in respect of information held otherwise than as a tribunal",

or:

"Any person providing local pharmaceutical services … in respect of information relating to the provision of those services".

My understanding from the Department for Education is that, actually, Pearson's requirement to be given information is very limited. It is only in respect of a minor part of Pearson's activities and then not regularly, but only if a problem occurs. That could easily have been set out in these regulations, so that it is clear in what circumstances Pearson could be given information, but it has been stated in the broadest possible terms and quite rightly raised a lot of alarm in people who care about the privacy of information and the privileging of a particular commercial enterprise.

The fault at the root of this is bad drafting and I very much hope that the Minister says that this will not happen again, that we will not use this wide phraseology again, and that the Government recognise that it is entirely inappropriate that they have used it. Given that they have, the Government are relying on data-sharing agreements to protect the data against misuse. Those data-sharing agreements are, naturally, not entirely public documents because, to some extent, they are commercial documents and commercial in confidence. Since they are so central in this case to the protection of public and individuals' information, I hope that my noble friend confirms that all these data-sharing agreements will be made public, redacted if necessary to remove commercial things but so that we can see exactly how explicit and proportionate they are; that the information that is being released is clearly and fully described, so that we can understand that, in practice, the way the department is behaving is something we can live with; and that the department publishes information on what data releases have been going on, so that we can pick up that we need to take an interest in the data-sharing agreements.

This is a very unsatisfactory situation that we have got ourselves into. From my conversations with the department, I think that we will be able to put on an adequate sticking plaster in this case—but I really hope that it is something that we do not do again.

Lord Adonis (Lab): My Lords, I agree with almost every word that the noble Lord, Lord Lucas, has said. My noble friend Lord Watson is to be commended for pursuing this issue with terrier-like commitment. Having now read the debates in the House of Commons, I can say that the gravity of the issues is extremely serious. My one point of difference with the noble Lord, Lord Lucas, is that he said we should learn lessons for the future. We are a Parliament and these are regulations going through Parliament. If we are deeply unhappy with them, on something as fundamental as the sharing of individuals' data, my view is that we should not agree the regulations. The regulations should be redrafted and the Government should be required to resubmit them, and we should not pass them until they have gone through the process again of being examined by the Delegated Powers and Regulatory Reform Committee and we are satisfied that there is no significant invasion of people's individual liberty taking place.

I cannot think of a good reason why we would not do that, except for the fact that we are always steamrollered in these things. We are debating this in what may be—I should not give away my negotiating position—the final moments of the sitting of the House before the summer. But it need not be like that. I do not know whether my noble friend Lord Watson is thinking of pressing this to a vote, but there is a very strong case for him to do so—not just because of the gravity of the issues at stake but to send a very clear message to the Government that we are not prepared as a Parliament to be treated like this when we are representing the people on something as fundamental as data.

The issues that the noble Lord raised are extremely serious. Pearson is the largest single commercial education provider in the country, and these regulations give the Government unfettered power to share data with it. The explanation given by the Minister for Higher Education in the House of Commons was that it would be in respect of HNDs and HNCs where it was believed that illegality was taking place. But that is not codified anywhere in the regulations. As the noble Lord, Lord Lucas, said, the data-sharing agreement is not published, and I understand that it is not even finalised yet—although perhaps the Minister could tell us that in his remarks. That is a completely unsatisfactory situation.

Pearson has huge potential commercial interests in this information. What guarantees do the Government have about Chinese walls operating inside Pearson? What guarantees is he in a position to give to Parliament for us to give to students that their data will not be shared with an organisation that is then going to start trying to sell them other services or use it to target them for promotional activities—or any range of activities that could take place under this?

On sharing, the Minister for Higher Education in the other place said:

"On students' right to know"—

this is where students will actually be informed that their data is being shared with other bodies, so it is about whether they even know, let alone consent—

"the OFS will tell them before it shares data, where appropriate".—[*Official Report*, Commons, 2/7/18; col. 10.]

[Lord Adonis]

What does "where appropriate" mean? This is the crucial thing. Where would it conceivably be appropriate for the Office for Students not to consult students on the sharing of their data with other bodies? That includes public sector bodies. There is big concern about how the Department for Education has been sharing information with the immigration control agencies, which I am informed has apparently been part of the hostile environment. This information has been shared in respect of school governors and, indeed, children, from other databases held in the Department for Education. So it is absolutely essential that students know where their data is being shared. My own view—and I do not think that this is too demanding—is that they should be required to give their consent to the sharing of that information. I see very big scandals coming down the line if that does not take place.

I have two other points. Could the noble Viscount tell the House why these regulations took effect before they were approved by Parliament? I understand that it was because it was done under the negative procedure. However, commitments were given in debates during the passage of what the Higher Education and Research Bill, which many of us spent many hours taking part in, that because of the significance of the issues at stake here, this would be done under the affirmative procedure. I see all kinds of precedents for this on the raft of regulations that will come our way when the noble Lord, Lord Callanan, gets going on transposing the European legislation into the British statute book. If the procedures that have taken place on these three regulations are replicated elsewhere, there will be major breaches of parliamentary oversight.

It is also immensely concerning that student bodies, including the National Union of Students, were not consulted in the construction of these regulations. That became clear in the debate in the House of Commons. The Government tried to elide that fact by saying that they are in regular consultation with them—but they were not consulted. The National Union of Students has formally protested to the Government about the fact that it was not consulted on these data-sharing regulations, which will have an immense impact on students and young people.

This is a sorry tale. Every word the noble Lord, Lord Lucas, and my noble friend Lord Watson said is valid in this case. I do not believe that Parliament should consent to these regulations in their current form. A major scandal could come down the line from them, and if my noble friend is minded to push this matter to a vote, I shall certainly vote with him.

2.45 pm

Baroness Garden of Frognal (LD): My Lords, we on these Benches share the concerns expressed by the noble Lord, Lord Watson, and so eloquently expressed by the noble Lords, Lord Adonis and Lord Lucas. Will the Minister say what data the OfS is likely to share with Pearson? We note that Pearson is the only for-profit organisation on the list; the others are public bodies or registered charities. What is the commercial value of the data that it will be sharing, and will the OfS be charging the awarding bodies for access to this commercially sensitive data?

To pick up on the concerns expressed by the noble Lord, Lord Adonis, will data by which students can be individually identified be sent to the OfS by awarding bodies, and, if so, how will the consent of students to this transfer of data be obtained? It is surely important that that should happen. In summary, how will the OfS comply with the Data Protection Act in this, and can the Minister offer us any reassurances on these very disturbing aspects?

Viscount Younger of Leckie (Con): My Lords, I thank the noble Lord, Lord Watson, for tabling this Motion. The noble Lord has raised concerns that these regulations create significant powers for the Office for Students to grant access to students' confidential data to a single commercial provider. He also calls on Her Majesty's Government to carry out a privacy impact assessment on the regulations. Before addressing the noble Lord's concerns, I reassure noble Lords that these regulations are very much in the interests of students and taxpayers. They enable the OfS to work appropriately with other bodies to address any potential wrongdoing or concerns about quality, students' experience, and the management and governance of the higher education system. These regulations are essential for the OfS to do its job well, and will be accompanied by strong safeguards around data protection and privacy.

The noble Lord, Lord Watson, asked about the timing of the laying of these regulations and proper scrutiny. I reassure him that these regulations are absolutely subject to proper scrutiny, as is any other statutory instrument laid under the negative procedure. They are important to the OfS being able to operate effectively as a regulator.

Lord Watson of Invergowrie: I thank the Minister for that answer, but it does not get to the root of the problem. He talks of scrutiny, but the point is that these regulations came into force some five weeks ago. How does that square with scrutiny? It does not with me.

Viscount Younger of Leckie: They have been scrutinised as part of the scrutiny process. That is where we are—there is no issue to discuss here.

Lord Watson of Invergowrie: Scrutinised by whom?

Viscount Younger of Leckie: They have gone through the scrutiny procedure, as mentioned.

Let me continue. These regulations and the enabling primary legislation provide greater protection, scrutiny and control over information sharing than before. The regulations replicate, and in some cases improve on, the arrangements that HEFCE, OFFA and the DfE had in place for sharing information with other bodies. As HEFCE's and OFFA's enabling legislation did not place controls around co-operation and information sharing in the same way as the Higher Education and Research Act 2017 does for the OfS, the legal framework around information sharing has actually been strengthened. The parliamentary process for the

regulations, including this very debate, also means that there is more scrutiny and oversight of the information sharing than before.

I should now like to address the concerns raised by the noble Lord, Lord Watson, in turn, starting with his question about the consultation with UCAS and universities, and, in particular, students' concerns regarding access to their data. As the noble Lord may know, officials and Ministers have regular meetings and interactions with universities, and they work closely with UCAS. On student concerns regarding access to their data, I reiterate that personal data would be shared only if there were serious concerns and if it were necessary to share that data.

Lord Adonis: The noble Viscount always uses these weasel words. He says, "if it was necessary to share that data". What does that mean? In what circumstances would it be necessary to share that data?

Viscount Younger of Leckie: I think that it would be wise if I continued with my remarks and then, if there are further concerns, I shall be happy to listen.

First, the noble Lord, Lord Watson, referred to the "single commercial provider" within the regulations, which is Pearson Education Ltd. To reassure him and the noble Baroness, Lady Garden, I emphasise that Pearson is included in these regulations solely in its capacity as the awarding body for HND and HNC qualifications. This is in the same way as other awarding bodies have been included in the regulations—namely, the Scottish Qualifications Authority, Gateway Qualifications Company Ltd and the Vocational Training Charitable Trust.

The OfS would share with Pearson only information that related to the provision of HNDs and HNCs. For example, as happens now between the DfE and Pearson, the OfS might wish to alert Pearson to an issue around the quality of this provision or suspicions of wrongdoing relating to HND or HNC provision. This sharing would be done in the interests of students and the taxpayer. Any data sharing would be underpinned by a data-sharing agreement stating that Pearson could not use that data for any other purposes. This is just one of a range of strong safeguards and protections that will be in place, as I will set out shortly.

The noble Lord, Lord Watson, raised a question about Sir Michael Barber and his potential conflict of interest. There are already information-sharing agreements between the DfE and Pearson. Sir Michael Barber no longer works for Pearson and, in any case, he was not involved in the drafting of the regulations. Therefore, I reassure the noble Lord that there really is no conflict of interest. In addition, if it emerged in the future that the OfS wished to share information or co-operate with any other organisation not currently included in these regulations, and this was to fulfil a function of that other body, I make it clear that this would be possible only by amending the regulations.

The noble Lord, Lord Watson, and my noble friend Lord Lucas asked why Pearson is included and whether awarding the HNC and HND makes it unique. They also asked about transparency surrounding what they can do with the data. I reiterate that Pearson is included only because it owns, designs and awards HNDs and HNCs. The collaboration agreement with Pearson will be published—there is transparency. Data-sharing agreements will not be published, as they may contain commercially confidential information about the circumstances that have led to the concerns that are being shared with the other party.

The noble Lord, Lord Watson, asked whether Pearson can sell on data. The answer is: absolutely not. The information sharing will be underpinned by data-sharing agreements which will specify the purposes of the data sharing, and these purposes will not include selling data. If Pearson did so, it would be in breach of the data-sharing agreement and subject to sanctions by the Information Commissioner—a serious matter.

The noble Lord, Lord Watson, asked about parliamentary scrutiny, and I would like to add to the words that I used. The regulations were scrutinised by the JCSI before they came into force, and there was a debate in the Commons in Committee on this very matter. The inclusion of any new body in the regulations would therefore be subject to the same parliamentary scrutiny and oversight as these regulations have received.

Secondly, the noble Lord, Lord Watson, was concerned about the sharing of students' confidential data. Data privacy is a particularly pertinent topic in the current climate, and this is precisely why the Government have strengthened the legal framework underpinning data sharing by the OfS compared to the previous regime. I emphasise, however, that the main purpose of these regulations is to enable information sharing at a provider or course level. Personal data would be shared only if there were serious concerns—for example, around fraud or malpractice—and there was a specific need to share personal data to investigate a specific issue.

The noble Lord, Lord Watson, also raised concerns that students' confidential information will be shared without the consent of those to whom it refers. I reassure noble Lords that any data sharing will be subject to data protection legislation. While consent is one lawful basis on which information may be shared, there are other bases for data sharing; the circumstances will dictate which is most appropriate. The OfS will always seek consent where it is appropriate to do so. However, where data sharing is to investigate wrongdoing or fraud, for example, and seeking consent would jeopardise the investigation, the OfS may rely on another lawful basis for information sharing.

In addition, I reassure noble Lords that these regulations do not oblige the OfS to share any information or to co-operate with any of the bodies in the regulations, including Pearson. They simply make this possible where appropriate. It will be for the OfS, or in some cases the Secretary of State, to decide when to do this, and this will be decided in the context of the general duties and functions of the OfS as set out in primary legislation.

I would like to go further. I reassure all noble Lords that there will be strong safeguards for any data sharing that is carried out with all bodies included in the regulations, including Pearson. For example, any information sharing will be subject to strict data protection laws governing its use, as stipulated by the primary legislation. These regulations do nothing to undermine

[Viscount Younger of Leckie]
data protection law. The OfS will also publish its collaboration agreements with other bodies online, including stating where data sharing agreements are in place.

It might happen, for example, that the OfS needs to share information with another body as part of a joint investigation. In this case, the OfS would also create a bespoke data sharing agreement. This agreement would state what data will be shared, with whom and why, on what legal basis, and how it will be processed and kept secure. This would also set out individuals' rights in relation to their data. The OfS would only ever share data with precisely who needed to see it and only ever precisely what they needed to see to resolve the issue. A data sharing agreement is binding: if any organisation breaches this, the OfS as the data controller would stop this arrangement and, where appropriate, inform the Information Commissioner, who could then take action. Make no mistake: this would apply to every organisation in the regulations, and Pearson would be no exception to this.

I now turn to the final point from the noble Lord, Lord Watson, in which he called on Her Majesty's Government to carry out a privacy impact assessment on the regulations. I thank the noble Lord for raising this point, because data privacy impact assessments are indeed a useful tool. Under GDPR, however, the Government are not obliged to conduct such an assessment. Furthermore, it would not be appropriate to do so. While the Government, in writing these enabling regulations, have identified the overall situations and reasons where the OfS may wish to share information, the need for a data privacy impact assessment should properly be considered by the organisation that will be sharing the data, once the specifics are known. Much of the data sharing would be in response to emerging concerns: for example, where there are suspicions of wrongdoing. It is only at this point that the nature and extent of privacy risks can be properly assessed and fully effective solutions put in place. The OfS is aware of the sensitivities around the sharing of personal data and takes its responsibilities to safeguard personal data extremely seriously. It will consider whether a data privacy impact assessment is needed, and will carry this out where appropriate, before sharing information that could impact on personal privacy.

I hope that, having put a lot of emphasis on these safeguards, I have reassured the House that data sharing—in particular with non-government bodies, including Pearson—will be undertaken in an appropriate way and for the right purpose, with strong protections in place.

Baroness Garden of Frognal: I apologise to the Minister, but could he answer my question as to whether the OfS will be charging Pearson for the data that it shares with it?

Viscount Younger of Leckie: I will write to the noble Baroness with that information. It may not only be a charge; there may be an agreement in place and I would prefer to get the full information to her.

3 pm

Lord Lucas: My Lords, I do not believe my noble friend has answered either of the questions I posed. If the Government are content with drawing a wide power in regulations for a narrow use of personal data, we as a House should react to that by greatly strengthening our scrutiny of such secondary legislation. This got through our scrutiny without being picked up. If this is to be regular practice—if the Government do not say, "Sorry, we will not do it again"—then we must take it seriously. It is entirely inappropriate that we should draw such wide powers for such a narrow purpose when it concerns a sensitive matter.

Secondly, I heard my noble friend say that data-sharing agreements would not be published. I would be grateful if he could write to me to say how in that case we, as Parliament, can exercise proper scrutiny of the way in which data sharing is being carried out; and, secondly, how that attitude fits with the Freedom of Information Act, which I understand requires the reduction of the commercially sensitive elements of a data-sharing agreement. Surely a great deal of what is in there—particularly the detail of what kind of information is being shared and what sort of terms and conditions have been placed on it—cannot be commercially confidential in any real sense.

Viscount Younger of Leckie: I take note of my noble friend's broader points about the scrutiny of secondary legislation—I am simply taking note of that—and I will write to him on his points about data-sharing agreements and their publication. I hope that that will satisfy him.

Lord Watson of Invergowrie: My Lords, I thank all noble Lords who have participated in the debate. I thank the noble Lord, Lord Lucas, for his support, which I welcome, and for sharing our concern about the privacy of the information which is to be shared. I noticed that while he was characterising the fact that the Government have got this wrong he referred, I think, to the Minister saying, "Sorry, we will not do it again". I did not hear those words, or anything that approximated to them, and there is a great likelihood that the Government will, in another setting, do something similar again. That is why we felt it appropriate to table this Motion to Regret.

The noble Lord, Lord Lucas, also referred to the bad drafting and wide phraseology. I concur with him—it is a part of the hole that the Government have dug for themselves.

I appreciate the support of my noble friend Lord Adonis, who spoke about the significant invasion of people's liberty, which we believe this is. Our doubts are not assuaged by the Minister's comments that these regulations will be in the interests of students. He mentioned the issue of quality—we will give him that—but that is not what we are talking about today; we are talking about privacy. I welcome two points made by the Minister. He said that the collaboration agreement with Pearson will be published and that Pearson will be prohibited from selling data that students have given it, as we know it did in the USA.

I have to come back to the Minister on the question of scrutiny. He maintains that this SI has been scrutinised adequately. However, it is all about timing. Yes, the JCSI looked at it, as it does, and the noble Viscount mentioned a debate in the House of Commons. However, that debate took place on 2 July and these regulations came into force on 18 June. I do not call that scrutiny by any standards and it is disingenuous to suggest that these regulations have been scrutinised.

The Minister also said that data sharing would conform to the data protection law. Only weeks after the Government made quite a bit about the new Data Protection Act which is supposed to give people more control over how their data is used, they are passing—I would say pushing through—regulations into law that could ride roughshod over students' data rights, a point we have heard being made by many noble Lords. There is an inconsistency and a disconnect in this which I do not think the noble Viscount has dealt with.

I was rather surprised when the Minister went on to say that the OfS is not obliged to share data. I do not think that any suggestion was made that it is obliged to do so, but the fact that it is merely possible when appropriate is the issue. The sharing of information, including personal details, will clearly take place at some point, but of course the unknown is how often, in what circumstances and what information will be involved. I suggest that many students and their families will be uneasy and I doubt whether their fears will be assuaged by the statement made by the noble Viscount that the regulations will provide greater protection with more security control and transparency than has been the case in the past. That is certainly not the impression which noble Lords have gained in this debate.

It is interesting to note that the Benches opposite have filled up in the past 10 minutes or so, perhaps in anticipation of the denouement of this debate. I have to disappoint them because while I would like to press this issue, given how the debate has unfolded, and although we remain concerned about the lack of adequate assessment of the impact on privacy for those whose data will be made available under these regulations, at this point we will monitor their effect in the immediate period following. I am sure that noble Lords can read between the lines and for now I beg leave to withdraw the Motion standing in my name.

Motion withdrawn.

Brexit: Legislating for the Withdrawal Agreement

Statement

3.06 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I shall now repeat a Statement made in the other place. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement on the White Paper which has been published today, setting out the Government's plans for legislating for the withdrawal agreement and implementation period.

On Friday 29 March 2019, the UK will leave the European Union, giving effect to the historic decision taken by the British people in the 2016 referendum. The Government are committed to delivering a smooth and orderly Brexit. That is why we have already passed the EU withdrawal Act through Parliament to ensure that our statute book functions after exit, whatever the outcome of the negotiations. I am grateful to this House and the other place for the many hours of scrutiny devoted to that vital piece of legislation. We are now embarking on the next step in the process of delivering a smooth Brexit for people and businesses.

Since June last year, the UK has been negotiating with the EU to decide on the terms of our withdrawal. We have made substantial progress: protecting the rights of EU citizens in the UK and UK citizens in the EU; deciding the terms of the financial settlement; and agreeing a strictly time-limited implementation period. Most of the withdrawal agreement, around 80%, has now been agreed with our EU partners, and we have isolated the outstanding issues for further focused negotiation. I will be meeting Michel Barnier again on Thursday to take forward the negotiations at this critical time. We have already agreed a financial settlement, estimated at £35 billion to £39 billion, well below the figures being bandied around by some when we started this negotiation.

The implementation period agreed is finite and allows for the negotiation and conclusion of free trade deals. Many of these arrangements will require new domestic legislation to deliver them in UK law. That is why, last November, we announced our intention to bring forward a new piece of primary legislation to implement the withdrawal agreement in UK law. Today, we are publishing a White Paper setting out our proposals for this important legislation, which will be introduced once the negotiations have concluded and Parliament has approved the final deal. Our expectation is to reach agreement in October. Under the terms of the EU withdrawal Act, Parliament will then have its say on the final deal. If approved, we will bring forward this legislation so that it can be in place for when we leave the EU on 29 March 2019.

In setting out our proposals today, we are giving Parliament the opportunity to scrutinise the plans well ahead of the Bill's introduction, given the need to enact the legislation in the time available and mindful of the importance of maximum scrutiny in this House. By publishing the White Paper today, the Government are providing further certainty to people and businesses here in the UK and across the EU. It also sends a clear signal to the European Union that the United Kingdom is a reliable and dependable negotiating partner, delivering on the commitments that it has made across the negotiating table.

Of course, while we are making good progress, discussions are still ongoing in various areas. This means that some parts of the Bill will become clearer only as we settle the remaining parts of the withdrawal agreement. In the light of that, the White Paper we have published today focuses on those parts of the withdrawal agreement where the text has already been agreed. Let me take them in turn.

[Lord Callanan]

The UK's first priority in negotiating its withdrawal from the EU was to reach agreement on the rights of our citizens. That includes the 3.5 million EU citizens who live in the UK, who are valued members of their communities and play an integral part in the life of this country. Likewise, the approximately 1 million UK nationals who currently live in the EU are equally valued by their host countries and communities".

Excuse me, my Lords. I have a Theresa May cough.

"The agreement reached on citizens' rights will allow EU citizens in the UK, and UK nationals in the EU, to live their lives broadly as they do now and will enable families who have built their lives in the EU and the UK to stay together. The most important next step will be to provide a continued right of residence for those citizens. EU citizens lawfully residing in the UK on 31 December 2020 will be able to stay.

This month, the Home Office published further details about how EU citizens and their families can obtain settled status in the UK. That statement confirms that the settlement scheme will be simple and straightforward for EU citizens and their families to secure their long-term status in the United Kingdom. This Bill will ensure that EU citizens can rely on the rights set out in the withdrawal agreement and enforce them in UK courts. It will also establish an independent monitoring authority to oversee the UK's implementation of the deal on citizens' rights, providing further reassurance to citizens.

All EU member states must implement the agreement in full and provide certainty to UK nationals on the continent. As the Home Secretary recently stated, we now need to know more details on how each member state will fulfil their obligations and implement their side of the agreement. We will be further pressing for those details over the summer.

The next chapter of the paper deals with the strictly time-limited implementation period that the UK agreed with the EU in March. The UK will leave the EU on 29 March 2019. After this, we have agreed an implementation period that will ensure that people and businesses will have to plan for only one set of changes as we move towards our future relationship.

From 30 March 2019 until 31 December 2020, common rules will remain in place, with EU law continuing to apply, and businesses will be able to trade on the same terms as they do now. During this period we will not be a member state and we will have the flexibility we need to strike new trade deals around the world, something many argued we would not be able to achieve in the negotiations.

To legislate for the implementation period, we must ensure that the UK statute book continues to reflect the relevant provisions of EU law as they apply to the UK during this time-limited period. As the House will know, the current mechanism for bringing EU law into UK law is the European Communities Act 1972. Under the EU withdrawal Act, that Act will be repealed on 29 March 2019. Therefore, as set out in the White Paper, the EU withdrawal agreement Bill will contain a time-limited provision so that parts of the ECA are saved until 31 December 2020. These changes will ensure that our statute book functions properly throughout the implementation period, according with the agreement that we have made with the EU.

I turn to the financial settlement, the structure of which was agreed in December on the basis that it would sit alongside our future partnership.

As we have said from the start, nothing is agreed until everything is agreed. That is in keeping with Article 50 and with the guidelines given to the EU for the negotiation.

We will have a framework for our future relationship with the EU alongside the withdrawal agreement. Our approach to that future partnership is set out in our White Paper published earlier this month. There must be a firm commitment in the withdrawal agreement requiring the framework for the future relationship to be translated into legal text as soon as possible. It is one part of the whole deal that we are doing with our EU partners. Of course, if one party fails to honour its side of the overall bargain, there will be consequences for the deal as a whole, including the financial settlement. In addition, we have agreed an obligation for both parties to act in good faith throughout the application of the withdrawal agreement.

The White Paper published today explains that the EU withdrawal agreement Bill will include a standing service provision to allow the Government to meet the commitments of the financial settlement. In the interest of transparency and oversight, it also includes proposals to enhance the existing scrutiny arrangements for the payments made to the EU.

This White Paper sets out our approach to delivering the withdrawal agreement and implementation period into law. I look forward to discussing all the proposals with honourable Members across the House. It is a necessary part of our leaving the European Union and ensuring a smooth and orderly departure. It provides clarity and certainty to EU citizens living here and UK nationals abroad that their rights will be properly protected. It will enact the time-limited implementation period, giving businesses greater certainty and giving the public greater finality with respect to our relationship with the EU. It provides for the appropriate means of paying for the financial settlement.

Above all, with 80% of the withdrawal agreement settled with our EU friends, this White Paper is another key milestone on the United Kingdom's path to leaving the EU. I commend this Statement to the House".

My Lords, that concludes the Statement.

3.16 pm

Baroness Hayter of Kentish Town (Lab): I thank the Minister for repeating the Statement. Perhaps I may use this opportunity to clarify one exchange that I had with his colleague, the noble Baroness, Lady Goldie, on 20 July. We had anticipated this White Paper last week. As I am sure the Minister will recall, he said on 12 July at col. 996 that the White Paper would be published "next week", which of course would have been last week. However, his boss, the Secretary of State, used the rather more familiar word and said that it would be published "shortly", which is why it was able to slip over to this week.

We welcome the White Paper, which is always the best way of understanding and scrutinising a Bill. We congratulate the Government, clearly with me in their mind, on producing the document in time for me to pack it with my bucket and spade as I head off for my holidays, for it is what I will spend the time reading.

I am also glad that we will have the Bill. As the Minister will recall, in the original Bill introduced into this House, the whole of the implementation and withdrawal would have happened under Clause 9 by secondary legislation. We called for it to be under primary legislation and we are delighted that that change was made.

However, I am curious, and concerned, as to why there was no mention of Northern Ireland in the Statement. I understand that it may not be in the White Paper, because it is not yet agreed, but for there to be no mention of it when it is of such importance to us, to our partners and to Parliament was a little curious.

The other curiosity will concern those historians about whom the noble Lord, Lord Hennessy, spoke yesterday. Those historians may evince some surprise as to how much of the very recently passed European Union (Withdrawal) Act will now need to be repealed, starting at the beginning of that Act with Clause 1. As paragraph 56 of the White Paper makes clear,

"EU law will continue to have effect in the UK in the same way as now",

during the implementation period; that is, until the end of December 2020.

One might ask how that can be, given that Section 5(1) of the EU withdrawal Act, which received Royal Assent just 28 days ago, removes the supremacy of EU law after exit day and that Section 1 repeals the European Communities Act 1972 on exit day. Of course, it is only that Act that gives legal authority for such direct effect of EU law. The answer, given in paragraph 60 of the White Paper, is that the implementation Bill will amend Section 1 of the withdrawal Act by saving the ECA, as has just been covered in the Statement.

Much the same will happen with the European Court of Justice. Clause 6(1)—sorry, but the Minister and I became a bit anoraky on the Bill and we understand all the section numbers—of the EU withdrawal Act just passed, removes the role of the ECJ on exit day, but Article 126 of the draft withdrawal agreement says that during transition, so from December 2020 the ECJ,

"shall have jurisdiction as provided for in the treaties".

Paragraph 80 of this White Paper preserves its full role until December 2020. As my noble and learned friend Lord Goldsmith asked when we were scrutinising what is now Section 6, why do this, given we are going to have to repeal it very shortly?

A last example is Clause 5(4) of the withdrawal Act just passed, which extinguishes the Charter of Fundamental Rights on exit day, whereas Article 122, paragraph 1(a), of the draft agreement makes it clear that during the transition—that is, until December 2020—the whole chapter shall apply apart from those articles that enable us to be represented in the European Parliament. So another part of the new Act bites the dust.

Unless there is a withdrawal agreement to implement, this proposed legislation will not even be redundant, because it will not even be introduced. It will be introduced only once the agreement has been through Parliament, but then a whole range of rights, obligations and issues will be left without any legal foundation. As the Minister knows full well, a "no deal" would be a disaster for the UK in myriad ways. Can he confirm that, if there were to be no deal, there would be no agreement on citizens' rights, no agreement on the financial settlement, no transitional arrangements and no arrangements in Northern Ireland, including any to ensure there is no hard border?

I turn to a point that we raised at some point last night—we were here until near midnight, and I am afraid I cannot remember exactly when it was—about the financial settlement. The Secretary of State spent the weekend emphasising that the UK would not pay anything without an agreement on the future framework. Yet the Chancellor of the Exchequer, who is of course in the same Government, has previous dismissed this possibility:

"That is just not a credible scenario; that is not the kind of country we are. Frankly, it would not make us a credible partner for future international agreements".

Needless to say, I agree with the Chancellor of the Exchequer, but it would be useful to know whether the Minister does too.

Has that financial agreement really been agreed? It is about past commitments, not about buying future access to trade. It is because we were full members, signed up to various programmes as members, and our undertaking, as I have understood it from the Prime Minister, is that we will pay that regardless, not dependent on whether the future framework is agreed. Is that correct, as Mrs May said, or are we back to it being conditional?

A final word on the timetable: despite the claim, repeated frequently by the Minister, usually with a straight face, that everything will be agreed by October, even the framework for future relations, there are rather a lot of people, I have to say, in Brussels as well as here, who do not quite share his optimism. If, as seems perhaps more likely, the agreement is reached in November or December, perhaps he can explain how the Government can ensure that there is proper scrutiny and accountability to Parliament in what will be a very tight timetable. Given that I think that that is possible—I look towards the noble Lord the Chief Whip at this point—will it be possible to have a proper debate on this White Paper, so that when we get the Bill, which might be on a very tight timetable, we will have done a lot of the heavy lifting in advance?

Finally, I wish the Minister a very happy holidays. I have not always agreed with everything he has said, but he has brought commitment, hard work and real effort to persuade us of the right of his case, and I hope that he can get rid of that cough, enjoy a very good rest and come back, ready for the fray, well suntanned, well rested and up for perhaps a long Session after the summer.

Baroness Ludford (LD): My Lords, before I comment on the Statement, I note the Prime Minister's Written Statement on a machinery-of-government change, which was published but surprisingly not covered in the Statement. It says that the Prime Minister will lead on the negotiations with the EU, with Mr Raab demoted to being her deputy and with the Cabinet Office Europe Unit having,

"overall responsibility for the preparation and conduct of the negotiations".

That does not seem to be much of a vote of confidence in DExEU, which, with its Secretary of State, and I am afraid to say the Minister here, has been somewhat sidelined. Perhaps the Minister can comment on that.

I welcome this White Paper, although its publication on the last day of term is perhaps somewhat disrespectful to Parliament, as I said in Questions earlier. There is a sense of unreality threaded through it. The Statement says that the Government are,

"committed to delivering a smooth and orderly Brexit"—

this while Ministers continue to sabre rattle about no deal, which makes the assertion later in the Statement about being "a reliable negotiating partner" somewhat difficult to believe. I am afraid that even the Minister could not keep a straight face when he repeated that part of the Statement.

There is a clear assertion that the financial settlement is already agreed, so why does the Secretary of State for Exiting the European Union continue to question the Government's commitment to honouring this bill? We chop and change. We hear one thing from a Statement in Parliament and then we hear quite other things from Ministers in the media, which is completely unacceptable.

On citizens' rights, some of us noted that the Statement says that EU citizens in the UK and UK nationals in the EU will be allowed,

"to live their lives broadly as they do now".

That is quite a loaded word, "broadly". What does it mean? What rights that they have now does it rule out?

Will the withdrawal and implementation Bill incorporate the full text of the withdrawal agreement and the framework on the future relationship? It would be useful to know. Before Parliament comes to the Bill, there will be a Motion, after the negotiations are concluded, on whether Parliament approves the deal—I look at the Chief Whip at this point, as the noble Baroness did. Are the Government planning a decent gap between the tabling of the Motion for approval of the deal and the debates in Parliament? Also, how many days are they scheduling for debate on that Motion? We went round the houses on whether the Motion should be amendable. Are the Government committed to allowing it to be amendable?

The White Paper repeats the commitment,

"to providing Parliament with appropriate analysis prior to the vote",

on the approval Motion so that Parliament can make an informed decision. Will there be independent input into the analysis?

The application of EU law will continue at least until December 2020. The Statement rather glosses over the implications for the EU withdrawal Act, some of which were picked up by the noble Baroness, Lady Hayter. We have to look at the White Paper to attempt to understand the full interaction with the EU withdrawal Act. Paragraphs 63 to 67 will bear much detailed scrutiny. Paragraph 73 proposes the extension of the correcting power until December 2022. Could the Minister bring out the full implications of that? Paragraph 75 says that the new Bill will have provision to "defer, revoke or amend" the SIs that will have been passed under the withdrawal Act. That sounds like Henry VIII powers squared. How shall we deal with it all? It sounds incredibly complicated.

In last night's debate, I talked about how the Government were disingenuous, bordering on dishonest, about some items—and that is certainly true about the reference to the European Court of Justice in this Statement. We have the usual assertion, which the Minister did not quite repeat last night, that the direct jurisdiction of the ECJ ends when we leave. But that is not true, is it? The White Paper also says:

"EU mechanisms for supervision and enforcement will continue to apply to the UK".

Does that include Commission infringement proceedings? It certainly includes the supervision and jurisdiction of the European Court of Justice—which, of course, will have been deprived of its UK judge. Do the Government think we are stupid, and do not understand the full implications of what will happen during the transition period, and even afterwards? The jurisdiction of the ECJ is not ending even if we leave next March, and it would behove the Government to be a little more candid about the reality of the situation.

Lord Callanan: I thank both noble Baronesses for their comments, and I shall take each of their questions in turn. I thank the noble Baroness, Lady Hayter, for her kind wishes for the holiday. Let me extend the same wishes to her: I hope she enjoys reading the White Paper alongside her bucket and spade on the beach. I take her point about timing, but we thought it was important to get the White Paper out before the Recess to give Members of Parliament in another place and here the chance to look at it carefully before we come back in September.

Northern Ireland is not in the White Paper because those provisions are not agreed yet. We did not want to leave the White Paper until everything was agreed; we wanted to give Parliament the opportunity to scrutinise the provisions now. Obviously, those provisions are not agreed, and we will come back to the House when we have an agreement.

As for the implementation period, the EU withdrawal Act will repeal the European Communities Act 1972 on 29 March. We will, however, have to ensure that the UK can continue to apply EU law during the implementation period. This will be achieved by way of transitional provision in which the EU withdrawal Act will amend the Act so that those elements of the ECA strictly necessary for the operation of the time-limited implementation period are preserved for its duration; I hope that is clear.

On no deal, yes, obviously if there is no withdrawal Act, all the issues agreed under the withdrawal Act will cease to apply. We will need to look at those

matters again, but preserving the rights of EU citizens would be a top priority in such circumstances. As for timing, yes, we are still targeting an agreement in October, and the EU also agrees with us in targeting that. I repeat the obvious point that if we do not have an agreement in October, parliamentary time to implement the necessary legislation will, of course, start to get extremely tight.

With regard to a debate on the White Paper, happily the Chief Whip has been sitting here and he tells me that he thinks that a very positive suggestion. Provided that other business is dispensed with in an appropriate way, he will endeavour to find the time for that debate. I hope that summarises his view correctly.

Moving on to the noble Baroness, Lady Ludford, the Prime Minister is of course leading the negotiations. On something of such crucial importance to the United Kingdom, I think it would be expected that she would lead on behalf of the country but she will be ably supported by the Secretary of State, who will back her up in all the critical areas. On citizens' rights, let me repeat the answer that I gave to the noble Baroness, Lady Hayter: of course we want to see citizens' rights preserved and we expect to see them broadly or essentially preserved. I would be happy to write to her with all the details but it is a hugely complicated area. We published the details in December. I am sure that days on debate for the Motion will be agreed by the usual channels.

With regard to the ECJ, as set out in the draft withdrawal agreement the Court of Justice will have an ongoing role on citizens' rights but this role will be temporary and narrowly defined. Our courts can ask the CJEU for a legal view on the interpretation of the citizens' rights parts of the withdrawal agreement if they need answers to questions before they can decide on a case. It will be for the courts to decide whether they need that legal view on interpretation.

Baroness Ludford: Before the Minister sits down, what then does paragraph 78 mean? It says that,

"during the implementation period, the existing EU mechanisms for supervision and enforcement will continue to apply to the UK".

That means the ECJ.

Lord Callanan: I will write to the noble Baroness but I am conscious that Back-Bench Members want to have some time for questions as well.

3.36 pm

Lord Cormack (Con): My Lords, can I draw my noble friend's attention to paragraph 7, on page 5? It says:

"There has been agreement to establish a Joint Committee of UK and EU representatives to oversee and discuss the implementation and application of the Withdrawal Agreement".

That is obviously eminently sensible. Can he possibly give us some details of that group, and reflect on whether there might be wisdom in a suggestion which I made over two years ago that there should be a special Joint Committee of both Houses, as we go through these crucial stages, to look at critical issues? Could that matter please be looked at again?

Lord Callanan: There is always wisdom in my noble friend's suggestions but I think whether there should be a Joint Committee of both Houses is a matter for Parliament rather than the Government. We are working through the details with the EU at the moment on exactly what the composition of the joint committee will encompass. However, we expect it to be multilayered, possibly with one level of officials similar to UKRep and one ministerial level as well, but that agreement has still to be made.

Lord Liddle (Lab): My Lords, returning to paragraph 7, which was referred to by the noble Lord, Lord Cormack, paragraph 7.b. refers to Northern Ireland but the only commitment it makes is that,

"the Government has been clear about its steadfast commitment to the Belfast Agreement".

Is there any reason why, in this document, the Government's commitment to no hard border has not been put down in black and white or why the amendment that this House passed on Northern Ireland and the avoidance of a hard border, which was accepted by the other place, has not been repeated? Do the Government continue to accept what they accepted in December: that there needs in this withdrawal agreement to be a backstop agreement on the avoidance of a Northern Ireland hard border?

Lord Callanan: There was no need to repeat that in the text because it is of course now part of the withdrawal Act, which is the law of the land. We remain committed to there being no hard border and to the backstop, as agreed in December. Negotiations are ongoing with that at the moment and, as I said to the noble Baroness, Lady Hayter, the reason that it is not in this White Paper is because it is not agreed yet.

Lord Kilclooney (CB): My Lords, as someone who lives at the border, I welcome the Minister's Statement and I accept that the Government are fully in support of the Good Friday agreement—the Belfast agreement—which I helped to negotiate. That is not in question. There are two types of crossings at the Irish border. One is by people, one is by trade. It was suggested earlier in the discussion that there was no agreement on the Northern Ireland issue. Can the Minister confirm that the crossing of people—the common travel area between Northern Ireland and the Republic of Ireland—is already agreed by Brussels, Dublin, Belfast and London and is not in question? Let us remove that from the debate.

Secondly, since so many people from Northern Ireland drive into the Republic and back again, will United Kingdom driving licences issued in Scotland, Wales, England and Northern Ireland have the same respect in European Union countries, including the Republic of Ireland, after Brexit?

Lord Callanan: Yes, I can confirm that the common travel area has been agreed. If the noble Lord reads the White Paper we published last week, he will see that driving licences is one of the areas that we need to discuss with the EU. It is a matter of negotiation, but of course it is something that we want to agree and we expect it to be relatively uncontroversial.

Lord Beith (LD): My Lords, I remind the Minister that paragraphs 78, 79 and 80 make it absolutely clear that the jurisdiction of the Court of Justice of the European Union remains throughout the implementation period and that the UK Government can, as if the UK were a member state, take cases to that court should they find that there is a reason to do so. This is a welcome example of having your cake and eating it.

Can the Minister give a guarantee that the necessary domestic legislation which will be required to preserve the rights and entitlements of the Norwegian community in Britain will be in place so that there will be no break or discontinuity for that important group who contribute to our economy?

Lord Callanan: Yes, I can confirm what the noble Lord said about the European Court of Justice. With regard to the Norwegian community, we are currently in negotiations with EEA member states and hope to reach an agreement on citizens' rights similar to that which we have agreed with the EU.

Lord Hamilton of Epsom (Con): I congratulate the Government on the agreement on citizens' rights. Is this not a vindication of not taking unilateral action to guarantee the position of EU citizens in this country without simultaneously guaranteeing the rights of British citizens in the EU? Are we saying that the meaningful vote will be on a Motion or will it be incorporated into the Bill, which will take in the whole EU withdrawal agreement which is part of this Statement?

Lord Callanan: With regard to UK citizens in the EU, it is of course equally important for us to reach agreement on their behalf. That is one of the areas that we are pursuing with other EU member states. Of course, the matter is agreed. We are making preparations to implement our part of the bargain and we need to make sure that EU states are doing similar things for British citizens.

With regard to the exact form of the Motion to be agreed, the meaningful vote is now incorporated into the withdrawal Act.

Lord Adonis (Lab): The Secretary of State has apparently told the House of Commons this afternoon that the Government are making preparations to stockpile food in the event of no deal. Does the Minister think that that is sensible? Secondly, paragraph 118 of the White Paper states, with no qualification whatever:

"The UK will pay its share of the EU's liabilities as at 31 December 2020".

Are there any circumstances whatever in which Her Majesty's Government will not honour that commitment?

Lord Callanan: Obviously I have not had the benefit of listening to what my right honourable friend the Secretary of State said in another place, so I will read what he said before commenting on it, but I am not aware of any plans for the stockpiling of food. It seems to be a fairly ridiculous scare story. It will not have escaped the noble Lord's notice that there are many countries outside the European Union that manage to feed their citizens perfectly satisfactorily without the benefit of EU processes.

Lord Adonis: The Minister has not answered my second question.

Lord Callanan: Remind me what it was again.

Lord Adonis: Paragraph 118 of the White Paper states:

"The UK will pay its share of the EU's liabilities as at 31 December 2020".

Are there any circumstances in which the Government will not honour that commitment?

Lord Callanan: I go back to what I said earlier: this is an agreed part of the withdrawal Act. Article 50 states that there needs to be agreement on the withdrawal Act and on the future economic partnership. Both parts go together. If both are agreed, both are satisfactory and both are approved by this House, of course there will be no problem, but if there is no deal, nothing is agreed until everything is agreed. That applies as much to the financial settlement as it does to the future economic partnership.

Lord Wallace of Saltaire (LD): My Lords, the White Paper makes it crystal clear that the one thing that will change in April 2019 is that we will no longer be present in any of the discussions on security, foreign policy, economics, rules and regulations or whatever, but apart from that, all EU rules and regulations will continue to apply to Britain. That seems to me to fit exactly Jacob Rees-Mogg's definition of vassal status. Surely, the shorter the transition period the better and if, as now seems unavoidable, we are incapable of making much more progress in defining the future relationship after we leave before March 2019 because the Government are still divided on what they want, surely it would be preferable to delay leaving until we have a clearer sense of what our future relationship might be.

I ask a second question, about paragraph 10, which states:

"After the UK has left the EU, power will sit closer to the people of Scotland, Wales and Northern Ireland than ever before. The devolved institutions will see a significant increase in their decision making powers as a result of the UK's exit".

I tried extremely hard, but I could find no reference to the English regions in the document. As the Minister will know, Yorkshire, the north-west and the north-east stand to lose disproportionately more than the rest of England from Brexit, yet there appears to be no awareness that they will also need devolution and, perhaps, a new consultative mechanism. Are the Government considering that?

Lastly, I see that EU citizens will be treated under the Immigration Act 1971 as they move towards settled status. We are well aware that the Home Office charges considerably for moving towards settled status and UK citizenship. Can we be assured that the Home Office will not impose substantial charges as EU citizens in this country go through that process?

Lord Callanan: There are a number of questions there and I will try to answer them as quickly as possible. I agree that the shorter the transition period,

the better. We will not take up the noble Lord's option of delaying leaving. As I am tired of repeating, we are leaving on 29 March 2019. To delay leaving presents the fundamental problem that the EU is legally prohibited from agreeing a future trade deal as long as we are still a member state, so that would just delay the period when we could formally have negotiations and legally agree a trade deal. I certainly agree that the shorter the period, the better.

With regard to the regions and finance, the noble Lord will be aware that the Treasury is currently considering a shared prosperity fund to replace some elements of EU regional finance. With regard to future regional devolution, I fear that those are not matters for me. He will have to ask colleagues in government about that. With regard to EU citizens, the settled status fee is fixed at £65. I am not aware of what charges the Home Office is likely to impose for any other form of citizenship, but I am sure we can find out and write to him.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for the White Paper. Perhaps I may clarify two points with him. In preparing for yesterday's debate on the other White Paper, I had the distinct impression from the food industry, which is quite dependent on third-country citizens, particularly current EU citizens, that it is not entirely clear that its long-term status has been secured. Can my noble friend redouble his efforts to ensure that all sectors, whether food, care or health, are made aware of the arrangements?

I declare my interest, in that I practised EU law in Brussels for a while. What will be the certification procedure for those who wish to convert their EU qualifications into UK qualifications post Brexit? Paragraph 40 of the White Paper refers to the,

"Mutual Recognition of Qualifications Directive",

and states that the,

"arrangements will be provided for, as necessary, in separate legislation".

Will my noble friend explain what the timetable for that legislation will be? Will the certification be clear before we leave the European Union on 29 March?

Lord Callanan: I do not think that I understood all of the questions. The same provisions of settled status apply to workers in the food sector as in every other sector. We are trying to communicate the offer to EU citizens as much as we possibly can after a number of events, in collaboration with various EU embassies, to provide information to their citizens on the processes and procedures for applying, along with DExEU and Home Office staff. We will be doing more of those events.

With regard to lawyers, I do not know whether this answers her question but the existing professional qualifications were recognised as part of the withdrawal agreement for existing citizens. The future recognition of qualifications, after the end of the implementation period, is a matter for negotiation. It is in the White Paper. It is something that we want to agree and we think it mutually desirable, but it has not yet been agreed.

Baroness McIntosh of Pickering: In connection with the mutual recognition of professional qualifications, I would like to know whether the legislation will come before this House and the other place before 29 March. It is a perfectly innocent question. The document states that in,

"the Government's recent White Paper on the future relationship, the UK has proposed that, after the implementation period, there should be a system for the mutual recognition of … qualifications",

but legislation will be needed. I simply want to know the timetable for that legislation.

Lord Callanan: We have still to agree a system of recognition of professional qualifications for after the implementation period. That is in last week's White Paper. Maybe I should write to my noble friend on the exact detail of that.

Lord Lexden (Con): Turning to Northern Ireland, will my noble friend confirm that no arrangements will be made that create any form of difference or division between that part of our country and the rest of the United Kingdom?

Lord Callanan: Yes.

Immigration Detention: Shaw Review

Statement

3.52 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat a Statement made in the other place by my right honourable friend the Home Secretary.

"With permission Mr Speaker, I would like to make a Statement on immigration detention. As the House knows, our immigration system is made up of many different and interconnected parts. Immigration detention is an important part of that system. It encourages compliance with our Immigration Rules; protects the public from the consequences of illegal migration; and ensures that people who are here illegally or are foreign criminals can be removed from this country when all else fails.

Detention is not a decision that is taken lightly. When we make the decision to detain someone, their welfare is an absolute priority. The Windrush revelations have shown that our immigration system as a whole is not perfect and that some elements need much closer attention, and there are lessons we must learn. That is why I welcome the second independent review by Stephen Shaw into immigration detention, commissioned by this Government, which I am laying before the House today. Copies are available from the Vote Office and on GOV.UK. I am very grateful to Mr Shaw for his comprehensive and thoughtful report. It recognises the progress this Government have made in reforming immigration detention since his last report in 2016, but it also challenges us to go even further.

As the review notes, we have made significant changes to detention in the UK in recent years. Over the past three years, we have reduced the number of places in removal centres by a quarter. We detained 8% fewer

[Baroness Williams of Trafford]
people last year than the year before. Last year, 64% of those detained left detention within a month, and 91% left within four; and 95% of people liable for removal at any one time are not in detention at all, but are carefully risk-assessed and managed in the community instead.

In his report, Stephen Shaw commends the 'energetic way' in which his 2016 recommendations have been taken forward. He notes that conditions across immigration removal centres have 'improved' since his last review three years ago. We now have in place the adults at risk in immigration detention policy to identify vulnerable adults more effectively and make better-balanced decisions about the appropriateness of their detention. We have also strengthened the checks and balances in the system, setting up a team of special detention gatekeepers to ensure decisions to detain are reviewed. We have also created panels to challenge the progress on detainees' cases and their continuing detention. We have taken steps to improve mental health care in immigration removal centres and we have also changed the rules on bail hearings. Anyone can apply for bail at any time during detention. In January, we further changed the rules so that detainees are automatically referred for a bail hearing once they have been detained for four months. All of this is good work.

However, I agree with Stephen Shaw that these reforms are still bedding in and that there have been cases and processes that we have not always got right. Now I want to pick up the pace of reform and commit today to four priorities going forward.

First, let me be absolutely clear that the Government's starting point, as always, is that immigration detention is only for those for whom we are confident that other approaches to removal will not work. Encouraging and supporting people to leave voluntarily is of course preferable. I have asked the Home Office to do more to explore alternatives to detention with faith groups, NGOs and within communities. As a first step, I can announce today that we intend to pilot a scheme to manage vulnerable women in the community who would otherwise be detained at Yarl's Wood. My officials have been working with the UNHCR to develop this pilot, which will mean that rather than receiving support and care in an immigration removal centre, the women will get a programme of support and care in the community instead.

Secondly, the Shaw review recommends how this Government can improve the support available for vulnerable detainees. Mr Shaw describes the adults at risk policy as 'a work in progress'. We will continue that progress, ensuring that the most vulnerable and complex cases get the attention that they need. We will look again at how we can improve the consideration of Rule 35 reports on possible cases of torture, while avoiding abuses of these processes, and we will pilot an additional bail referral at the two-month point, halving the time in detention before a first bail referral. We will also look at staff training and support to make sure that the people working in our immigration system are well equipped to work with vulnerable detainees, and we will increase the number of Home Office staff in immigration removal centres.

Thirdly, in his report Stephen Shaw also rightly focuses on the need for greater transparency around immigration detention. I will publish more data on immigration detention, and today I have commissioned the Independent Chief Inspector of Borders and Immigration to report each year on whether and how the adults at risk policy is making a difference.

Fourthly and finally, I also want to see a new drive on dignity in detention. I want to see an improvement to the basic provision available to detainees. The practice in some immigration removal centres of having three detainees in rooms designed for two will stop immediately. I have also commissioned an urgent action plan for modernising toilet facilities and we will also pilot the use of Skype, so that detainees can contact their families overseas.

I am aware of the arguments made on time limits for immigration detention. However, as Mr Shaw's review finds, the debate on this issue currently rests more on slogans than on evidence. That is why I have asked my officials to review how time limits work in other countries and how they relate to any other protections within their detention systems, so that we can all have a better-informed debate and ensure our detention policy is based on what works to tackle illegal migration, but is also one that is humane for those who are detained. Once this review is complete, I will further consider the issue of time limits on immigration detention.

The Shaw review confirms that we are on the right track in our reforms of immigration detention and that we should maintain a steady course. But Stephen Shaw also identifies areas where we could and should do better. My goal is to ensure that our immigration system, including our approach to immigration detention, is fair and humane. This is rightly what the public expect; they want rules which are firmly enforced, but in a way which treats people with the dignity they deserve. The changes that I have announced today will help to make sure this is the case. I commend this Statement to the House".

My Lords, that concludes the Statement.

Lord Rosser (Lab): I thank the Minister for repeating the Statement. I cannot say that I have read the Shaw report. I was probably in a very similar situation to the Minister, in that I received it only an hour or so ago. Inevitably, that rather restricts what one can say about it. One thing that I have noticed is that, under the acknowledgements at the beginning and in the foreword by Stephen Shaw, there is a date: April 2018. Why is this report being brought to Parliament only in July 2018 and on the last day, effectively the last afternoon, before the Summer Recess? What exactly has been going on since then, if I am correct in thinking that he submitted his report in April 2018, which has prevented the report being published?

The report that we have—this second Stephen Shaw report into immigration detention—does not say that everything is right. It simply says that the situation is better than it was, which is a very different thing. The report is not quite the supportive document that the Statement seems to suggest. Let us look at one or two of the points made in the report.

Last year, it seems that 64% of those detained left detention within a month, and 91% left within four months. It depends on what one's definition is, but detention was meant to be only for a short period of time, pending removal. Last year it was found that over half of those in immigration detention were released back into the community—a point made by Stephen Shaw in this report. So if more than half in immigration detention were released back into the community, why was their detention needed at all? The Government's Statement says that,

"immigration detention is only for those for whom we are confident that other approaches to removal will not work".

We are talking about large numbers of people who are detained and not removed but are released back into the community. A number of people seem to be detained who should not be, which is a point made by Stephen Shaw in this report.

Stephen Shaw comments on the issue of indefinite detention and time limits, saying:

"I have not directly considered the case for a time limit on detention",

so we do not actually know what his view is on that issue. But he says in his foreword that,

"the number of people held for over six months has actually increased. The time that many people spend in detention remains deeply troubling".

That is a point that I do not think was highlighted in the Government's Statement on the report. Why has the number of people held for over six months increased? Do the Government agree with Stephen Shaw that the time that many people spend in detention remains deeply troubling?

Virtually all the population reduction in immigration detention has been on the male side, while the number of women in detention has fallen by a much smaller percentage. Yet there is a high level of vulnerability among women detainees—the very people one would have thought should not have been detained. Can the Minister say why that has happened?

The report deals at some length with the adults at risk policy. It was introduced by the Home Office and does not appear to be working properly in its objective of reducing the numbers of vulnerable people in detention. In his visits to immigration removal centres, Stephen Shaw found many people who he felt should not be there, and he comments in his report that,

"every one of the centre managers told me that they had seen no difference in the number of vulnerable detainees",

and that in some cases the numbers had gone up. He also calls for,

"a more joined-up approach between the Home Office and its partners across Government",

which, he says,

"applies particularly to the Ministry of Justice".

In the section in the report on alternatives to detention, Stephen Shaw draws attention to some of the consequences of the policies restricting access to services that go under the umbrella of the hostile environment, which I believe has now been rebranded as the compliant environment. While he says in his foreword:

"Some of what I say in the pages that follow reflects very well upon the Home Office, the Department of Health and Social Care, and NHS England",

he goes on to say that:

"I have found a gap between the laudable intentions of policymakers and actual practice on the ground".

He also comments that,

"the Home Office's strategy of expanding capacity by adding extra beds into existing rooms had exacerbated overcrowding and created unacceptable conditions".

Why has the Home Office's strategy led to the arising of that situation, upon which Mr Shaw has commented adversely? He repeats again in his report his concern that,

"more needs to be done to ensure that individuals who are at risk are not detained".

I conclude by raising three questions for the Government in addition to those I have already asked. We are in a situation where the Chief Inspector of Prisons, the all-party parliamentary groups on migration and on refugees, the Bar Council, the British Medical Association and NGOs have all called for an end to indefinite detention. Do I take it from the Statement that the Government are still not prepared to commit to that objective? Perhaps the Minister could confirm that one way or the other.

I think I am also right in saying that the previous review called for an absolute exclusion on pregnant women in detention. But as I understand it, in 2017, 53 pregnant women were detained, almost all of them entirely unnecessarily, and were subsequently released into the community. If pregnant women are still being detained, will the Government commit now to an absolute exclusion of pregnant women and children from immigration detention? There is also currently no proactive screening process so that survivors of sexual and gender-based violence and others who are recognised as vulnerable under the adults at risk policy are identified before they are detained. Will the Government commit to introduce a proactive screening process to achieve this objective?

Finally, now that we have had the follow-up Shaw review, how will the Government ensure that the detention estate continues to be reviewed and assessed? I note that the Statement made reference to the review of the adults at risk policy, but there is more to it than simply that policy, vital and important though it is, so I ask that question once again—bearing in mind that the Shaw review has once again said that the situation is far from what it should be.

Baroness Hamwee (LD): My Lords, I thank the Minister for repeating the Statement regarding adults at risk and vulnerable people in the detention system. I have always thought that it would take someone very resilient not to become at risk or vulnerable to the effects of detention once detained, however they started that process. That applies even to definite detention, and far more to indefinite detention, when the absence of hope is added to the other conditions experienced. I was grateful to the Minister's colleague Caroline Nokes, the Immigration Minister, whom I met with the noble Lord, Lord Hylton, the other day, for confirming the Home Office's aspiration of a humane system. I welcome the direction in which the Government are going on this.

I will mention again a report to which I have referred before in your Lordships' House—the recent report by the Red Cross on the long-lasting impact on

[Baroness Hamwee]
mental health of everyone surveilled after release from detention; in other words, release from physical detention is not the end of the experience.

There is always talk of numbers and percentages, which is helpful, but it is worth remembering that each person detained is an individual. The silver lining to the Windrush experience was that it rather confirmed that; that is certainly how they were seen by the public during the Windrush reports.

A number that I find shocking is the standard number of days to which the Home Office works in dealing with asylum claims. Also, if someone does not go when he is told to leave the country, he is automatically regarded as a flight risk, to the extent that even when he reports to the Home Office he is picked up from there and put into detention.

I am a member of the Joint Committee on Human Rights, which this morning announced a new inquiry into immigration detention, because human rights—particularly Article 5 of the convention—are engaged. The committee was planning this inquiry anyway, but the evidence that we heard in an inquiry into the Windrush generation's experience particularly drew our attention to issues including access to legal advice, the possibility of challenge to detention and accountability.

Policy is always only a part of the story. Implementation and practice are the other very important side of the coin and, of course, that is very much what Stephen Shaw has focused on. He and Mary Bosworth deserve our thanks for all the work that has gone into this report. I have not been able to read this door-stopper yet—it is about half the size of the last door-stopper, but even so—but I will. It seems to me that the reasons for detention given in the Statement rather illustrate that detention is not, as we are so often told, treated as the last resort, although I believe that it should be the very last resort.

I want to pick up a number of points made by the Minister. She mentioned that the team of special detention gatekeepers has been set up—this is part of the recent history—but the gatekeeper process does not seem to have been working as well as planned. The Statement refers to ensuring that decisions to detain are reviewed. What about the initial decision? Should there not be investigations prior to detention to confirm that there are no indicators of vulnerability?

The Statement also refers to immigration bail, described as all being "good work". Of course, it has been very welcome, but it has not been unfailing. The Minister will recall our exchanges about the problems that detainees have in accessing education. Importantly, it is clear that detainees do not all know that they can apply for bail at any time.

With regard to alternatives to detention, we have heard the organisations that the Home Office is going to work with, but can the Minister assure us that work will go on with other jurisdictions where there are very different practices and that the subject will be not just those whom the Home Office regards as vulnerable but much wider? Mr Shaw comments rather delicately that he is not certain that there has been significant investment in this since the first report.

I must leave time for the Minister to respond—

Noble Lords: Oh!

Baroness Hamwee: But I will go on for the moment.

A pilot of additional bail referral is mentioned. Could we have more details of that? Could we also know the timescale that is anticipated for the review of how time limits work in other countries? I want also to mention prisons. What work do the Government anticipate as a result of this with regard to those who are held in immigration detention in prison?

I have said that I welcome the direction that this takes, but the Minister would expect me to be keen for more and faster work. However, I end by saying that I particularly welcome recommendation 1—unlike the noble Lord, I started at the end rather than the beginning of the report—which deals with promoting voluntary returns. It strikes me that that should have been very much part of the strategic plan for detention, which was the first recommendation in Mr Shaw's first report.

I will end on a gentler note: I wish all colleagues a happy holiday, however long or short that may be.

Baroness Williams of Trafford: That sounds ominous—I am having my holiday.

I will go first to the noble Lord, Lord Rosser, who asked why there was a delay in publishing. I have probably trailed this on several occasions, when I said that Stephen Shaw had published his report and we were considering it and would respond in due course. We have rightly considered what is, as noble Lords have said, a big tome, before responding to it today. I hope that the noble Lord and the House do not see any conspiracy in the fact that it has been responded to on the last day.

The noble Lord said that the Government's efforts had no impact on vulnerability. Stephen Shaw acknowledges real progress and said that it would be folly to abandon our reforms now. The adults at risk policy has certainly strengthened our focus on vulnerability and on the existing presumption against the detention of those who are particularly vulnerable to harm. However, I agree, as does my right honourable friend the Home Secretary, that we need to do more. That is why we will differentiate more strongly between vulnerable cases to ensure that the most complex get the attention that they need, building on the progress that has been made, to provide greater protection for the most vulnerable.

The noble Lord made the point that half the people detained are released and asked whether detention was therefore right in the first place. We would all like the proportion of detainees who are removed to be higher and we are tackling barriers to that. However, people may be released from detention for a wide range of reasons: by the courts, by appeal or by other legal proceedings, or there might have been a material change in their circumstances. That does not necessarily mean that the original decision to detain was inappropriate or wrong.

The noble Lord talked about time in detention being over six months. The Government totally agree that we should detain people for the minimum amount of time, consistent with their removal. Continuing challenges on documenting individuals and late appeals are an issue. The issues of foreign national offenders and public protection also remain important considerations.

I shall have to gallop through my replies. The noble Lord, Lord Rosser, referred to problems with additional beds. He will have heard today that my right honourable friend the Home Secretary has announced that there will be no more than two beds to a room. He also talked about the detention of pregnant women. Decisions on whether or not to detain individuals have never been predicated on absolute exclusions for any particular group. Being pregnant is not of itself a vulnerability, but I understand where the noble Lord is coming from on that. He mentioned indefinite detention. The Government are committed to getting more evidence on this issue into the debate. He will have heard what I said about my right honourable friend the Home Secretary carrying out a review into that and publishing its findings.

The time has run out extremely quickly. I do not know whether that is because noble Lords spoke for too long or because I did, but I have a number of unanswered questions, to which I will reply in writing and place a copy in the Library.

Baroness Lister of Burtersett (Lab): My Lords, I return to the issue of pregnant women, which was of particular concern to your Lordships' House when we considered these matters during the Immigration Bill—indeed, we voted for an absolute exclusion following Stephen Shaw's original recommendation. In his report he quite mildly said that it would "assist" decision-making if the default position were to be an absolute exclusion of pregnant women from detention. The figures show that between July 2016 and January to November 2017 there were still 73 pregnant women detained, of whom 60 were released. For only 15 was there any case for detention. Will the Government look again at the question of an absolute exclusion?

On vulnerability, I am not quite sure I understand the Minister's reply—I appreciate that she has had to move quickly. Have the Government accepted the specific recommendations 11, 12 and 13 in the report on adults at risk? In particular, will they consider the merit of the UNHCR vulnerability screening tool, which a number of voluntary organisations have recommended?

Baroness Williams of Trafford: I am glad that I have got some more time because the noble Baroness, Lady Lister, has nicely segued into some points I was going to make.

On pregnant women—I have made this point many times before—being pregnant does not of itself make you vulnerable. However, I understand where she is coming from.

On vulnerable detainees in general, the noble Lord, Lord Rosser, made the point that the policy was not working. In fact, Stephen Shaw described the adults at risk policy as a work in progress. We all agree that there is more to be done to make sure that the most vulnerable and complex cases get the attention that they need. As to rule 35, which reports on possible cases of torture and which noble Lords have criticised in the past, we will look again at how we can improve on it while avoiding abuse of these processes. We will pilot an additional bail referral at the two-month period—which comes back to the point made by the noble Baroness, Lady Hamwee.

The adults at risk policy requires a case-by-case assessment of the appropriateness of the detention of each individual. The policy means that vulnerable people are detained only when the vulnerability factors are outweighed by immigration considerations. So I do not agree with the noble Lord's point that the policy is not working, but we need to continue with the progress that has been made so as to ensure that vulnerable people get the help that they need.

Baroness Lister of Burtersett: Will the noble Baroness tell me whether recommendations 11, 12 and 13 in the Shaw report have been accepted, because it is not clear from the Statement that they have? In particular, will the Government consider the merits of the UNHCR vulnerability assessment tool?

Baroness Williams of Trafford: Perhaps I might come back to the noble Baroness on this, because obviously I have pulled out some of the highlights of the report and I would not want to give her any details from the Dispatch Box that I am not certain about. So I will write to her on that point.

Lord Deben (Con): My Lords, the Minister has been clear about what the Home Secretary is going to do. However, one of our worries about this report and indeed about the Statement is that it is a work in progress as if we are moving to a position where it will be very much easier to solve these problems. We actually live in a world in which it is going to become very much more difficult. The pressures on immigration will grow not just because of disorder elsewhere in the world but because of such major issues—I say this advisedly—as climate change. We are seeing more and more disruption which will mean that more and more people are being pressed to find somewhere else to be. What worries me about the Statement is that I do not believe that we have yet grasped the magnitude of the problem—the fact that it will get worse and worse and that we ought to be addressing it on a much longer-term basis if we are going to resolve this very serious issue.

Baroness Williams of Trafford: I should say to my noble friend that 95% of people are not held in detention at all. It is used only as a last resort where all the other possible mechanisms for removing people who should not be here have failed. On his point about climate change, I have heard various debates on that. I do not disagree with him that climate change will create more migration effects. However, the weather here over the past few weeks has made me think that people might not want to come here, either, because it is so hot.

Lord Scriven (LD): My Lords, I recommend all noble Lords to go on a skim-reading course, because I got to page 100. Stephen Shaw gets to the crux of this issue on page 100. It is not about individual items but about the culture of the estate and the culture of the Home Office that needs to change. In particular, he asks across the estate, whether it be private or public sector employees who are involved, whether we will move to a position where, rather than just using a competency-based approach, we could adopt a values-based one when dealing with vulnerable people. That

[LORD SCRIVEN]
would help to solve the problems in a much more systematic way than just talking about individual programmes or training.

Baroness Williams of Trafford: The noble Lord frequently brings up this issue. I hope that he will derive some comfort from the fact that my right honourable friend the Home Secretary has made several Statements which to me underline the fact that he thinks that the Home Office should take a much more humane approach. We had this during the Windrush episode, which really threw into stark relief the fact that the Home Office is dealing with human beings, not cases. Today he has talked about some of the changes that he wants to make immediately, such as no more than two people to a room. I am also looking at lengths of detention. All of that says to me that he is taking a very human approach to this. I agree with the noble Lord and I presume that my right honourable friend the Home Secretary will agree with him as well. As I say, this is work in progress.

Lord Dubs (Lab): My Lords, for some time there has been widespread concern about the detention of victims of torture—indeed to the point where people who have been tortured should surely not be detained under any circumstances. Is there anything the Government can do to speed up the process of looking at rule 35 and in the meantime alleviating the position for people who have been tortured and releasing them if that is at all possible?

Baroness Williams of Trafford: My Lords, I agree with the noble Lord. I have an updated position on torture. The vulnerable state in which victims of torture will present themselves has to be sensitively dealt with. That goes to what the noble Lord, Lord Scriven, said: we must treat people with humanity. It is paramount that any of the problems from their experience will be picked up immediately in the risk assessment that people enter into when they arrive in a detention centre. They will be dealt with sensitively and accordingly.

Lord Marlesford (Con): I will quickly follow up the point made by my noble friend Lord Deben. The Statement says that,

"we will increase the number of Home Office staff in immigration removal centres".

What is the present size of the staff? How many people are in the centres of the moment? How many illegal immigrants are there who are not in the centres?

Baroness Williams of Trafford: I have a feeling that we do not release the number of staff that we have in our detention estate, but I will double check. If we do I will get those figures to the noble Lord.

Lord Paddick (LD): My Lords, with the greatest respect, we should be looking for outcomes, not outputs. We should be looking for results, not activity. So why is the number of people being detained for more than six months still increasing? I accept what the noble Lord, Lord Deben, said about this potentially being an increasing problem, but can the Minister tell the House what percentage of people are being detained, as opposed to those who are not? Is that percentage increasing or decreasing?

Baroness Williams of Trafford: The overall percentage being detained is decreasing—it is down by 25%—but I accept that there is an increase in those detained for more than six months. I hope that I explained that adequately earlier to the noble Lord, Lord Rosser, but it is not a satisfactory state of affairs.

House of Lords: Sittings

Motion to Resolve

4.32 pm

Moved by ***Lord Adonis***

To move to resolve that, notwithstanding the announcement by Lord Taylor of Holbeach on 17 April (HL Deb, cols 1074–5), following the adjournment on this day the House do next sit on Monday 6 August.

Lord Adonis (Lab): My Lords, if the noble Lord, Lord Taylor of Holbeach, does not mind my saying so, he is attired in an extremely elegant summer suit. I am told that this betokens his imminent departure to France. Indeed, I am told that he has already made exploratory forays to France and caused preparations to be made and supplies to be procured for a lengthy sojourn in that wonderful country. Indeed, large parts of the Government, however much they hate Brussels, love the vineyards of France and Tuscany, and are departing there en masse in the manner of the Indian viceroy and his court moving from Calcutta to Simla for the duration of the summer. The Prime Minister—a workaholic—is apparently urging Ministers to do some no-deal diplomacy on the side, but I venture that the no deal that the noble Lord, Lord Taylor, really fears is failing to get a table at a famous Michelin-starred restaurant in Nice, rather than negotiating with the Government of France.

With the noble Lord, Lord Taylor, having already booked his easyJet flights—sorry, it is Ryanair; I hope that he is not paying too many extras because of the delays that have been caused in the debate this afternoon—I very much doubt that your Lordships will entertain this Motion positively. I am not even sure that my own Front Bench and my Liberal Democrat friends are that supportive, although it is good to see that a few of them have managed to turn up to conduct the business of the Opposition this afternoon.

However, I do not begrudge noble Lords a holiday—I even take them myself as my duties in opposing Brexit permit. My Motion today proposes that we take nearly two weeks off until Monday 6 August, which, after all, is about the length of holiday that most people get on whose behalf we legislate and deliberate. However, I absolutely think that we should return to do our job in mid-August and not adjourn thereafter. I can tell your Lordships from my highly scientific poll of meetings on Brexit up and down the country in recent weeks that this is the view of most of the British people, too, who do not think that we should adjourn for the summer in the way that we are, and certainly not for 10 of the next 11 weeks.

We should be here in August and September for two reasons. The first is the national crisis which is continuing on Brexit. The negotiations on Brexit are only just beginning seriously because the Government

have only just established a negotiating position. Those negotiations will start and there will be, in the way of European negotiations, constant press conferences and reports from the Commission on their progress. I imagine, given the energy which he has displayed in briefing in the past week, that Mr Dominic Raab will also frequently brief the media on his appearances in Brussels and his tussles with the Prime Minister on who is in charge of the negotiations as this issue is played out over the next few weeks. The only people who will be absent from this constant reporting-back and media attention on the progress of negotiations will be Parliament, on whose behalf all this activity is conducted. Of course, the majority of the period between now and the end of October, which the noble Lord, Lord Callanan, told us is the period within which this treaty is supposed to be negotiated, Parliament will be in recess, which is a deplorable dereliction of duty on the part of this House and the House of Commons.

We had a debate yesterday on the current state of preparation in respect of Brexit. It was a nine-hour debate with a 15-minute response at 11.36 pm from the Minister which he began by saying:

"I apologise if it is not possible to respond to every point raised by noble Lords, but I am conscious of the late hour".—[*Official Report*, 23/7/18; col. 1588.]

Even in our last debate on Brexit, which will be our last debate for the best part of two months, we have a Minister who does not reply to most of the points raised and excuses himself for not replying on the grounds that there is no time to reply because of the time allocated for the debate and the fact that it was being concluded at 11.30 at night. Even then, a vital statement of policy on what the Government will do in respect of the next phase of Brexit negotiations and arrangements is made in a White Paper published after that debate within minutes of the rising of this House in which a lot of significant questions are raised which neither this House nor the House of Commons will have an opportunity to debate.

We were told that Brexit was about taking back control, but there has been a constant rearguard action by the Government to see that this House and the House of Commons have neither control nor oversight whatever of the Brexit process. The fact that the White Paper on vital matters to do with the entire future of the country has been smuggled out within minutes of the rising of Parliament for the Summer Recess is just a testament to the disgraceful way in which Parliament has been treated by the Government throughout this Brexit process.

The House should come back after a reasonable break of two weeks so that it can monitor and debate these vital issues to do with Brexit and the future of the country. It and the other House should be in session, too, because, as a result of Brexit, almost all the other pressing issues facing the country which we should be debating and legislating on have gone by default. There is virtually no legislative programme worth the name on anything besides Brexit: on the public services, on the state of the economy, on housing or on infrastructure—one goes down the list of these vital issues facing the country on which Parliament has been largely AWOL over the past two years because of this constant requirement to engage in Brexit legislation, including, of course, the 157 hours which I and many others of your Lordships spent debating the European Union (Withdrawal) Bill.

I make one other remark in respect of the other issues to which we should be paying attention. I spent a large part of last week in Northern Ireland, a vital part—an integral part, of course—of the United Kingdom. Northern Ireland at the moment has no devolved Executive, no Assembly sitting and no democratic institutions operating. That has been the state of affairs for more than a year. In this Parliament there are no representatives of the nationalist community in the other House of Parliament; indeed, there are not many in this House either; and, of course, Sinn Féin do not take their seats. The Democratic Unionist Party, which has all the seats in the other House of Parliament, represents only one part of the unionist community and takes a line on this massive issue of Brexit which is opposed not only by the overwhelming majority of people in Northern Ireland but by a majority of the unionist population too. What came through very forcibly in my conversations in Stormont, at Queen's University Belfast, and elsewhere in Northern Ireland is the growing and really serious sense, to my mind, of alienation and deep concern about the failure of our institutions to take any account whatever of opinion in Northern Ireland and the vital necessity of legislation and debate on the state of Northern Ireland at the moment.

I should add that over the last three weeks there has been serious, semi-terrorist violence in Londonderry, the second city in Northern Ireland, which has barely been debated in this House or in the other place, and which is of immense seriousness. That is another reason why Parliament should stay in session to consider these issues. There are also basic issues to do with civil rights in Northern Ireland, which I believe Parliament should be addressing. With events that have taken place in recent months in the Republic of Ireland, with the legalisation of abortion, the fact that basic human rights are not being observed in Northern Ireland at the moment in respect of abortion and rights to equal marriage is a deplorable stain on this Parliament. The idea that we should be adjourning for 10 weeks of recess while there are no democratic institutions operating in Northern Ireland and taking account of these grave affairs is, I think, unacceptable.

We are in a state of very great crisis as a country. We are engaged in negotiations that will determine our whole future. We are proposing, ourselves, to leave the scene, to pay no attention to the needs of the country for 10 of the next 11 weeks, which will be 10 of the most vital weeks in the modern history of this country. The legislation and the concerns of the country outside Brexit are largely going by default. The people of this country look on with something between concern and horror at the state of Parliament and our national affairs at the present time and I really do not think, in this context, we should be adjourning for such a long period. That is why I make the modest proposal that we should do our job, we should do what the public expect of us, and after two weeks we should come back and pay close attention to Brexit and legislate on vital matters to do with the future of the country, which have been entirely ignored over the last two years since the Brexit referendum. I beg to move.

Lord Taylor of Holbeach (Con): My Lords, perhaps I can address at least the basic elements of the Motion that the noble Lord, Lord Adonis, has proposed. In some ways it is a Chief Whip's dream—Parliament constantly in session, there to pass government legislation—and I understand that the noble Lord has proposed that we could pass 10 Bills during this time, although there is very little demonstration as to what they might be.

Lord Adonis: I have written an article, but I do not think the noble Lord reads the *Guardian*.

4.45 pm

Lord Taylor of Holbeach: No, I do not read the *Guardian*: I read the *Spalding Guardian* but what used to be called the *Manchester Guardian* has passed me by.

I suggest to the noble Lord that this is all good fun, but the truth of the matter is that government continues, and government continues to negotiate, as indeed it is charged by Parliament to do. We all know that that is the element which the noble Lord chooses to ignore. As I say, there are occasions when the House has to sit in August because it cannot agree to pass legislation, but that is not the case here. We have had an extremely good period of getting through Bills, even though there is widespread debate on all sides of the House about them. We spent 157 hours, as the noble Lord said, considering the European Union (Withdrawal) Bill, and so far in this Session we have passed 28 Bills. Twenty-eight Bills have received Royal Assent on a whole range of sundry matters; it is not just Brexit-related legislation, although there will indeed be other Brexit legislation on the House's forthcoming agenda, because that is what this Government are about. They are about providing good government and dealing with issues as they arrive.

As I say, beyond the narrow self-interest that a Government Chief Whip might always have in Parliament being available to pass and to scrutinise legislation, I cannot accept the noble Lord's Motion. We must bear in mind that it is not only Members who wear themselves out in the interests of Parliament; it is also the staff, who are always here. We are served by excellent staff, and they too are entitled to leave. They can take their leave only when the House is not sitting, and to suggest to them that they have to come back and look after the affairs of the House during recess is a little selfish and, frankly, not in the interests of Parliament in the longer run.

I see the noble Lord, Lord Laming, who is chairman of the Services Committee, on which I serve, in his place. I hope he will be able to elucidate some of the detailed work that is required in this place. Of course, the House can be here at any time, if necessary, to serve the public interest, but certain works are programmed for this period which I think noble Lords would not wish to see abandoned or postponed.

So I am afraid that I do not agree with the noble Lord. We have had a good debate on the Statement on the withdrawal agreement Bill, and I have promised that there will be a debate on the White Paper when noble Lords have had a chance to read and consider it, so that the House can show yet again that it is interested in Brexit and in advising the Government on Brexit, as quite rightly it should. In the meantime, I hope the noble Lord will consider that it is not sensible to accept his Motion.

Lord McAvoy (Lab): My Lords, I understand that my noble friend wishes us to return in 13 days' time and for your Lordships' House to get on with scrutinising Brexit legislation. I confess that this confuses me a little, as earlier in the year he appeared to be calling for Brexit legislation to go as slowly as possible, although I readily accept that that may be my misunderstanding. Government can and does continue over the summer, as does opposition. I feel sure that a break will ensure that noble Lords are fully rested and re-energised for the full job of scrutinising the Government's decisions, or lack of them, on our return. My noble friend has been working long and hard in recent months, and I suggest that he, too, is ready for a break.

Lastly, the staff of the House will have planned breaks months ago and, indeed, deserve a proper break from us. Essential maintenance in the building must also be done. I have to tell my noble friend that we cannot and will not support the Motion before your Lordships' House.

Lord Stoneham of Droxford (LD): My Lords, this is the sort of Motion that Oppositions are often keen to support, provided that they are not going to win. A number of considerations arise from it. There is no doubt that we all need a break—and if I may say so to my friend Lord Adonis, he is being a little parsimonious with the break that he intends to give us. That break is needed for reflection.

I am one of those who, like the Government Chief Whip, are heading for France, where I hope to see the revitalised French nation with its message and vision of hope, and leave behind the sorry picture of this country, so divided as we are on our future.

Noble Lords: Oh!

Lord Stoneham of Droxford: I am somewhat amazed that there is so much interest in this. I should not be, because the Conservatives, in particular, are sensitive to Adjournment votes. I hope your Lordships are all taking with you for your holiday reading the wonderful book by Nicholas Shakespeare, *Six Minutes in May*, because that book shows that it was an Adjournment Motion on the Whitsun Recess that led to the fall of the Chamberlain Government in 1940.

This is the House of Lords, not the House of Commons. That is why, although we are concerned about the fact that for something like 60% of the time ahead of us until the October Council, Parliament will not be in session, we think that it is not the job of the Lords to demand that we should be sitting in August and September; it is for the Commons to decide. It should be they who decide whether Parliament sits.

The Opposition agree that the recess is needed. We need some weeks for reflection. All political parties need that reflection as we go forward to the vital decisions that we shall be taking in the autumn. The problems will still be there in September, and I certainly hope that we on this side of the House will return with renewed vigour to oppose the disaster currently facing the country.

Lord Laming (CB): My Lords, as chairman of the Services Committee, it would be remiss of me not to remind the House of the very great amount of essential work on this building that will begin tonight once the House rises. Of course if the House wished to continue to sit that would be made possible, but Members will, I am sure, recall that the Services Committee and the House of Commons Administration Committee have been working with Strategic Estates on the next critical stages in the programme of fire and life-safety improvements. That work will involve a great deal of disruption to the Palace over the Summer Recess.

As a result of the work the Library suite will be closed, the kitchens will be closed, the dining areas throughout the Palace will be closed, and work will be undertaken on the Committee Rooms in sequence. Some parts of the building, especially at the Commons end, will be inaccessible. Asbestos removal units in the courtyards will restrict parking and traffic access. In addition there will be ongoing work on the stone courtyards conservation project, including on the tunnel between Royal Court and Chancellor's Court. Furthermore, a large crane is to be used to inspect the stonework on the Victoria Tower, which your Lordships will know recently experienced some problems. This will have an impact on vehicle access to Black Rod's Garden, and the corridor between Central Lobby and Peers' Lobby will be closed for retiling throughout the period.

Of course, if the House decided to continue sitting, adjustments to those plans would doubtless be considered and made where necessary. But I emphasise that the fire and life-safety work is important to improve the safety of more than 1 million visitors to this building, who either work in or visit Parliament every year. While the House could therefore function, we should recognise that the work would continue around us and be very disruptive. We should also recognise that some of the services to which we are accustomed are unlikely to operate. If these works were deferred, that decision would come with time and cost consequences.

None of this is to say that the House could not sit if it wished to do so or if a recall was required. Of course it could, but I felt I should remind the House that a lot of planning has been undertaken to make the best use of the opportunity of the Recess, which provides for this essential work to be delivered so that we can maintain our ability to work safely in this 19th-century Palace.

Lord Liddle (Lab): My Lords, I hope that my noble friend Lord Adonis does not press his Motion, not least for the fact that I am due to go on my holidays on 6 August. However, there is a point in what he is saying which is, essentially, that we are at a very critical point in our nation's fortunes, as we acknowledged in our debate yesterday. We are possibly moving in the autumn to one of the greatest crises that we have had since the Second World War.

The October European Council will be a critical moment for the future of this country and if we think about the amount of time between now and then, this House and the other place will not be in session for much of it. Yet throughout this period, we are going to see a lot of these no-deal preparedness briefings coming out from the Government, all of which could be quite controversial. We may see statements coming from Brussels; amazingly, Brussels will be working through August with our officials to try to make sense of the Government's latest proposals. I am particularly concerned about the Conference Recess, from whenever it is in September until October. That gap will come at a point where we will really need, as a House, to focus on what our options are as a country. There are very serious matters raised here and we should all think hard about them.

Lord Swinfen (Con): My Lords, the date of the Recess has been known for over 12 weeks. Why has the noble Lord waited until today for his Motion?

Lord Adonis: My Lords, it is for the perfectly simple reason that we are adjourning today, so today is the appropriate time to consider this Motion. It is on a Motion for the adjournment.

I of course understand the importance of people taking holidays, but most people in this country manage to arrange their affairs so that they take a few weeks of holiday over the summer. They do not take 10 weeks. In the normal course of events it might be reasonable for Parliament to go into recess for a longer period over the summer, although my own view is that in normal times Parliament spends far too much time in recess and far too little attending to the affairs of the nation. However, given our current position, with the crisis in Brexit negotiations that will continue all the way through the summer in the absence of Parliament, and because of Parliament's inability due to the overwhelming concern with Brexit affairs to address the other needs of the nation while we have been sitting, it is a perfectly reasonable proposition for us to continue sitting during the summer. Indeed, I think it imperative if there is to be any parliamentary oversight of the Brexit process. The one thing that cannot happen is Parliament exercising oversight while it does not meet, which it will not over the next two months.

I say to the noble Lord, Lord Laming, that while I understand that he chairs the Services Committee and has a schedule of work and so on, the services of the House exist to serve the House. The House does not exist to meet timetables for the conduct of work in the House. If it is your Lordships' will that we should conduct our duties over the summer, I am sure that the staff of the House will continue to perform their duties with the excellence they always show.

I understand the response of the Government because the Government always want Parliament to go into recess. I know from my time in government that the job of the Chief Whip is to see that the House meets as infrequently as possible and creates as little mischief as possible while it is meeting. That is the job of the noble Lord, Lord Taylor. His role is to see that the Government get everything through as quickly as possible and with as little debate and controversy as possible. Our job is to see that we do our duty, which is to see that things are properly debated and that we meet for the time that is needed to conduct those affairs.

I was much more disappointed by my noble friend Lord McAvoy. I think he felt he had my best interests at heart in saying that I would benefit from a holiday. I

[Lord Adonis]
hugely appreciate his deep, solicitous concern for my welfare. If I may say so, I think that the Opposition have been on one long holiday for the entire period of Brexit, which is part of the reason why the country is in this crisis situation at the moment. A deeply ideological Government are pushing through an extreme policy, but the Opposition have been largely absent from the scene, as we can see this afternoon.

Lord McAvoy: Does my noble friend consider that in the 15 defeats that we inflicted upon the Conservative Government we were not doing our job?

Lord Adonis: My Lords, I am very glad that we scrutinised the European Union (Withdrawal) Bill in the way that we did, but when my noble friend reads the *Guardian*—unlike the noble Lord, Lord Taylor, he reads the *Guardian*—he will see the list of Bills that I am proposing we should debate over the summer. I would be very glad to know which of them my noble friend objects to and whether he objects to us addressing the need for a radical home-building programme or extending rights to abortion and equal marriage in Northern Ireland. I would be very glad to know from him and from my noble friends on the Front Bench whether they believe that those Bills are superfluous and that it is better that we are in recess rather than attending to the needs of the country.

We are in a very deep crisis as a country. It is as well that we put these matters on record because people will look back on our affairs and will observe our affairs from outside. I believe that we have not conducted ourselves in the way that the country would expect. I do not detect huge support for this Motion in the House. Indeed, I am not even sure I have enough support to press the matter to a vote. If some of my noble friends on the Lib Dem Benches will support me and if there is enough support, I will press this to a vote because it is important that noble Lords should have their views recorded on whether we should now go on 10 weeks' holiday. I beg leave to test the opinion of the House.

5.03 pm

Division on Lord Adonis's Motion

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Division No. 1

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Baroness Manzoor (Con): My Lords, I take this opportunity to wish all noble Lords a very enjoyable and relaxing Recess.

House adjourned at 5.14 pm.

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