Vol. 795
No. 240

Tuesday
22 January 2019

PARLIAMENTARY DEBATES
(HANSARD)

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
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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

House of Lords

Tuesday 22 January 2019

2.30 pm

Prayers—read by the Lord Bishop of Worcester.

Children: Special Educational Needs

Question

2.36 pm

Asked by ***Lord Blunkett***

To ask Her Majesty's Government what assessment they have made of whether the resources allocated in the October budget to support children's services will provide sufficient additional funding to meet the needs of children with special educational needs who are not currently in receipt of support through Education, Health and Care Plans.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, the resources allocated in the autumn Budget for children's services support were not intended to make specific provision for children with special educational needs. We provide funding for local authorities to support such children through the dedicated schools grant. Core schools funding will be more than £43.5 billion next year. The national funding formula uses a range of factors which estimate the number of children with additional needs to allocate this funding.

Lord Blunkett (Lab): My Lords, I welcome the £350 million over the next two years, which the Minister decided not to mention—God bless him. But when we think back to the passage of the Children and Families Act under the coalition, there was all-party and no-party support for the idea that those who did not actually need to get a statement would be supported both in open education and in special schools. Now we have a position where people are desperately struggling, including a blind child going to court here in London this week who is struggling to get into open education. In Sheffield there is an effort to get 18 and 19 year-olds through the barrier that stops them carrying on receiving funding. Surely now it is time for all of us to require the Chancellor of the Exchequer in the forthcoming spending review to meet the £1.6 billion shortfall and ensure that children and parents do not have the fear and the struggle they have at the moment to get the support they need to be properly educated.

Lord Agnew of Oulton: My Lords, first I compliment the noble Lord on all he has achieved in his career, starting with a disability. It should be an inspiration to all the children in the system at the moment. I can confirm that the Government are completely committed to helping these vulnerable children. Spending plans beyond 2019-20 will be set at the next spending review, but we are committed to securing the right deal for education, including for those children and young people with special educational needs. More specifically, we are providing education, health and social care teams with legal training. SEND inspections are identifying good practice and where improvement is needed. Parent/carer forums are promoting the engagement of families and putting them at the heart of this issue.

Lord Addington (LD): My Lords, does the Minister not agree that the vast majority of those with special educational needs should not be considered for education, health and care plans because they have moderate or lesser degrees of difficulty? These can be dealt with only by making sure that school staff, teachers and teaching assistants, are properly trained. That will save money all round and make the young people's lives better. What are the Government doing about continual professional development for those people already in the system so that we can meet their needs without their having to go to court?

Lord Agnew of Oulton: My Lords, I completely agree that the first priority is to try to keep children with special educational needs in mainstream education unless they have very severe challenges. To give an example of what we are doing to improve that, we are funding the Autism Education Trust to deliver awareness training for education staff, and we have trained 195,000 people in this programme.

Lord Low of Dalston (CB): My Lords, there appears to be particular difficulty in funding places for children with special needs at special schools—above all when they are residential and may be more expensive. Would the noble Lord not agree that it is vital that funding should be found so that children with special needs receive the most appropriate education?

Lord Agnew of Oulton: I agree with the noble Lord that residential special education is extremely expensive. One of our current problems is that local authorities tend to send a lot of children out of area to expensive residential solutions. We are trying to deal with this by increasing the number of specialist free schools around the country; we announced a £50 million capital funding pot in May of last year, bringing the total to £265 million, and in March we announced sponsors for 14 new special schools. In the announcement in December, to which the noble Lord, Lord Blunkett, referred, we also agreed to remove the cap on applications for new special and alternative provision free schools.

Lord Storey (LD): My Lords, the Minister will perhaps know that up to 2,000 young people on education, health and care plans have received no provision at all. Increasingly, parents are taking legal action against local authorities. Are we not in danger of replicating what is happening in the National Health Service, where litigation costs have become astronomical?

Lord Agnew of Oulton: The noble Lord is right that we are concerned about tribunal costs—indeed, he has asked a Question on this subject that will be taken in a couple of weeks' time, so we will be able to deal with it in more detail then. Last year, we introduced a new

[Lord Agnew of Oulton]
measure to see how many appeals were going to tribunals: it showed that, of all the decisions made in the year by local authorities, only 1.5% were appealed by parents, and a number of authorities are seeing zero or near zero appeals. So the challenge for us is to spread the good practice of those local authorities that have very low levels of appeal, to ensure that those which are less good are learning.

Lord Watson of Invergowrie (Lab): My Lords, it is no surprise at all that the Minister did not refer in any of his replies to the fact that the Ofsted annual report, published last month and looking at SEND provision, painted a bleak picture. It said that children were being failed by the education system. Amanda Spielman, the Government's own Chief Inspector of Schools, said:

"One child with SEND not receiving the help they need is disturbing enough, but thousands"—

which is the case—

"is a national scandal".

And yet the Minister makes no response. At least she provoked the £350 million that my noble friend Lord Blunkett mentioned. But, as he also mentioned, the local authorities are in no way assuaged by that. They have estimated that that amount is less than a third of the deficit in special needs funding which they will be facing by 2021. At least this dysfunctional Government will be history by then. My question for the Minister is this: what would he say to the families of the 2,000 children to which the noble Lord, Lord Storey, referred, who have EHC plans but who are still not receiving any provision from them?

Lord Agnew of Oulton: The noble Lord is taking a figure rather out of context. It is simply wrong to suggest that they are not receiving education; this category is used for several situations, such as when pupils are already in one school but waiting for a place in another, or are over 16 and waiting for a place at a college or sixth form. Some of those deemed to be awaiting provision may also be older and have recently taken up employment, and a decision to end their EHC plan is in the process of being made.

Homophobic Hate Crime

Question

2.45 pm

Asked by ***Lord Scriven***

To ask Her Majesty's Government what steps they plan to take in response to the BBC investigation of homophobic hate crimes.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government take seriously all forms of hate crime, including homophobic, biphobic and transphobic hate crime, as highlighted by the recent BBC report. The Government recently published the *LGBT Action Plan* and a refresh of the 2016 hate crime action plan, in which we committed to measures including a public awareness campaign, improved police training, and reviewing the adequacy of current hate crime legislation.

Lord Scriven (LD): I thank the Minister for that reply. She will be aware that hate crimes based on sexual orientation or gender identity are not considered to be aggravated offences, which means that they carry a lower maximum sentence than other hate crimes committed on the basis of either race or faith. This sends an extremely hurtful and damaging message that anti-LGBT attacks are less serious than those based on other factors. The Government committed to address this in their 2017 manifesto, so when and how will they bring forward legislation to end this form of judicial discrimination?

Baroness Williams of Trafford: My Lords, in fact, local police forces can disaggregate gender identity hate crime if they wish to do so; it is entirely up to local forces. Of course, when a case gets brought to court, the sentence given is entirely up to the court, depending on the severity of the crime.

Lord Lexden (Con): Roughly how large a proportion of these offences, having been recorded by the police, fail to result in charges? If the proportion is low, what can be done to increase it?

Baroness Williams of Trafford: My noble friend raises a valid point. The police and the CPS are looking into whether the charge rates differ from the reporting rates.

Lord Kennedy of Southwark (Lab Co-op): My Lords, fewer homophobic and other crimes based on gender identity are being solved. Does the Minister agree that anonymous social media accounts are playing an increasing role in this type of crime, and does she think that that could be one of the reasons why fewer crimes are being solved? If she does, what is she doing about it?

Baroness Williams of Trafford: The noble Lord raises one of the most important things: a trend in hate crime that we are seeing is the perceived anonymity of online hate crime. Particularly for children who are bullied, which the Question of the noble Lord, Lord Scriven, was about, that is carried with them all day because they bring their phones home, and that can produce some dark thoughts in their minds. The online harms White Paper is due shortly, and I very much look forward to working with the noble Lord on the legislation.

Lord Paddick (LD): My Lords, can the Minister explain why 23% of recorded homophobic hate crimes resulted in a charge in 2014, but only 13% resulted in a charge in 2017? What impact does the Minister think these statistics will have on the confidence of the perpetrators of homophobic hate crime and the fear felt by victims?

Baroness Williams of Trafford: Like the noble Lord, Lord Scriven, the noble Lord raises an important question. In general, the changes in the charge rates are likely to be the result of improved crime recording by the police, and of forces taking on more complex

crimes, such as sexual offences, which of course take longer. We welcome the fact that more victims are coming forward and reporting crimes to the police. However, as I said to the noble Lord, Lord Scriven, the CPS and the police are working together to look at this disparity.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, do the Government have any plans to extend the criminal law to cover people with disabilities, particularly online?

Baroness Williams of Trafford: The noble Lord raises another trend of hate crime online—that meted out against people with disabilities—which is particularly cruel. I have met with disability groups, such as Changing Faces, which noble Lords may have seen in the *Telegraph* campaign over Christmas. All the efforts we are making with regard to the online harms White Paper and the subsequent legislation will address that cohort of people as well.

Baroness Jones of Moulsecoomb (GP): In her opening Answer, the Minister mentioned several categories of hate crime. When will misogyny be included as a hate crime?

Baroness Williams of Trafford: As the noble Baroness will know, we commissioned the Law Commission to look into other types of hate crime to see whether there are current gaps in the law, and we expect it to report back in the next 12 to 18 months. That will include things such as misogyny.

Lord Scriven: My Lords, the Minister answered very well a question I did not quite put. My question was about it not being an aggravated crime. That takes legislation so that a different maximum sentence can be laid. In the 2017 manifesto, the Conservatives committed to making it an aggravated crime, so when and how will legislation be brought forward?

Baroness Williams of Trafford: The noble Lord is absolutely right that those types of hate crime do not constitute aggravated offences. There are other types of hate crime that do not carry the aggravated uplift either. I said that the courts can pass the sentence that fits the severity of the crime that has been meted out.

Lord Newby (LD): My Lords, that was a hugely interesting answer but, again, it was not to the question. Could the Minister possibly answer my noble friend's question?

Baroness Williams of Trafford: I think I did.

Lord West of Spithead (Lab): My Lords, is it a crime or a misdemeanour not to wear a tie on the Floor of the House?

Baroness Williams of Trafford: It is up to the House to decide.

Lord Harris of Haringey (Lab): My Lords, are the Government still committed to making homophobic hate crime an aggravated offence or not?

Baroness Williams of Trafford: My Lords, there are certain aggravated offences in the hate crime area. We absolutely accept that the things the noble Lord, Lord Scriven, was talking about are hate crimes, but they do not currently carry the aggravated offence.

Lord Paddick: My Lords, there was a commitment in the Conservative Party manifesto to make homophobic hate crime an aggravated offence. Are the Government going to fulfil the promise they made in their manifesto or not?

Baroness Williams of Trafford: Yes, my Lords, but the noble Lord, Lord Scriven, was talking about a different type of aggravated offence.

Drones

Question

2.52 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government what progress they have made towards introducing new regulations on the use of drones.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, the Department for Transport introduced legislation last year which made flying a drone above 400 feet or within 1 kilometre of an airport boundary an offence. We also introduced regulations for compulsory registration and testing for drone users, which come into effect in November. Earlier this month, we announced measures to extend the airport flying ban to include aerodrome traffic zones and additional 5 kilometre extensions from the ends of runways. We also announced new police powers to tackle drone misuse, including the ability to issue on-the-spot fines.

Baroness Randerson (LD): Can the Minister explain why compulsory registration of drones has to wait until November? Why can it not happen now? The Gatwick incident demonstrated that no one really knows who is in charge. Is it the Department for Transport, the Home Office or the MoD; is it the police, the Army, the CAA or the airport itself? That is one reason why it took so long to deal with. Whose responsibility will it be the next time it happens?

Baroness Sugg: On the timing of the registration system, since we put the requirement into law last May, the CAA has been working to develop and build an online registration and testing system. It is of course important that we get the IT system right: we expect thousands of people to use it and we want it to be easy to use and future proof, as we expect rapid growth in the sector.

It is fair to say that many lessons were learned from the Gatwick incident. The police at the airport initially led the response, but I can certainly assure the noble Baroness that across the Ministry of Defence, the Home Office and the Department for Transport, we will continue to ensure that we react rapidly to future incidents.

Lord Harris of Haringey (Lab): My Lords, the lessons are always learned after incidents of this nature. In previous answers, the Minister told us that the Department for Transport was not happy that any of the technological solutions were necessarily perfect. Is the perfect not the enemy of the good? Today, we were told by easyJet that the disruption at Gatwick cost it £15 million. Other airlines and the airport operators will have had similar costs, and of course, the public and business faced costs too. What estimate has the department made of the costs associated with these slightly less-than-perfect technological solutions? What would it cost to equip a single airport with that technology, compared with the losses incurred?

Baroness Sugg: My Lords, advancing counter-drone technology is a complex challenge, and I think it fair to say that there is currently no silver bullet in that regard. A number of products are available; when taken together, they can mitigate against a drone. We are working closely with airports to ensure that they have the appropriate measures in place. We also continue to test and evaluate the safe use of a range of counter-drone technologies, and we are looking at future options. This crucial technology will detect drones flying around sensitive areas, airports and other parts of critical national infrastructure. The noble Lord rightly highlighted the economic cost involved; he can rest assured that we are doing everything we can to protect against future drone incursions.

Baroness Hooper (Con): My Lords, I draw attention once again to the Lords EU Committee's report, which was published in 2017 and subsequently debated in your Lordships' House. How many of the recommendations made in that report have been followed through by the department?

Baroness Sugg: I thank my noble friend for highlighting that excellent report. We have taken forward a number of measures and continue to do so. We are working closely with the European Aviation Safety Agency, and have been for some time, on a comprehensive set of regulations for unmanned aircraft. That will put in place a new framework for regulations and mandate the product standards for drones, such as geo-fencing and electronic conspicuity.

Lord Tunnicliffe (Lab): My Lords, does the Minister believe that the measures debated in the recent consultation are sufficient to address incidents such as the one that occurred at Gatwick this winter? Specifically, does she intend to include measures in the draft Bill to clarify who should have the authority to disrupt or destroy a drone?

Baroness Sugg: My Lords, as I said, the challenge is complex and we need to bring many different things into force. We have already brought in measures to make illegal the flying of drones such as we saw at Gatwick. New police powers on that will be included in the draft Bill. As I said, the Home Office continues to test and evaluate the use of counter-drone technology. That has safety implications, of course, so we need to be sure that we get it right.

Lord Dobbs (Con): My Lords, is my noble friend aware that, as the noble Lord, Lord Harris, said, easyJet announced this morning that the drone fiasco at Gatwick cost it £15 million and disrupted 82,000 easyJet passengers, let alone anybody else? Is she also aware of easyJet's announcement that it is confident that it has plans in place to deal with even a no-deal Brexit, and that it will fly more passengers next summer than it did last summer? Does my noble friend agree that Brexit is likely to cause less disruption—

Noble Lords: Oh!

Lord Dobbs: Listen. Does my noble friend agree that Brexit is likely to cause less disruption than one non-existent drone, and that the only things falling out of the skies are the predictions of those who prefer to embrace anxiety rather than rational analysis?

Baroness Sugg: My Lords, I should take this opportunity to thank the staff of easyJet, at Gatwick and everybody else who was involved in the significant disruption, which affected more than 100,000 passengers. As my noble friend would expect, we are working closely with easyJet and everybody in the aviation sector on Brexit. As easyJet said, it is confident that flights will continue, and we share that confidence.

Lord Bradshaw (LD): I sat through the debate on the drones Bill, although I did not take part, and it was evident throughout it that the Government were thoroughly complacent. They brushed away many of the pleas from people in the armed services and people experienced in civil aviation. Will the Minister confirm that the Government are taking this matter really seriously and, instead of taking the libertarian view that drones can go anywhere, realise how dangerous they are?

Baroness Sugg: My Lords, I can certainly reassure the noble Lord that we are taking this incredibly seriously and have been for some time. As noble Lords can imagine, following the Gatwick incursion—the first time globally that we saw such activity—we continue to take it very seriously. Drones are not allowed to fly just anywhere; we had already brought in laws on that last year, and we plan to extend them. We are also bringing in registration and competency tests, introducing powers to help police investigate and issue fixed-penalty notices, working on a counter-drone point, introducing geo-fencing and electronic conspicuity, and working closely on the communications campaign to ensure that all people who fly drones—the vast majority do so safely and responsibly—are fully aware of the law.

Health: Medicines Shortage

Question

3 pm

Asked by ***Baroness Thornton***

To ask Her Majesty's Government what representations they have received from representatives of pharmaceutical companies about an increase in the shortage of common medicines.

Baroness Manzoor (Con): My Lords, the Department of Health and Social Care has well-established procedures to deal with medicine shortages. We work closely with relevant stakeholders, including pharmaceutical companies, to help ensure that risks to patients are minimised when they arise. Medicine shortages are an ongoing issue and we continue to introduce new strategies to help tackle this problem, including the recent introduction of a mandatory reporting requirement for industry to notify us of impending shortages.

Baroness Thornton (Lab): I thank the Minister for her Answer. If Ash Soni, president of the Royal Pharmaceutical Society, says he says never seen so many common drugs—naproxen and even aspirin, for example—affected by shortages, the complacent response from the Government seems inappropriate. It appears there may be many reasons for the shortages, including the looming Brexit deadline. Would the Minister inform the House what the Government intend to do about the export licences that the Secretary of State grants for the parallel trading of drugs? If the pound drops—let us hope it does not do so, but it certainly is a possibility—it will create shortages and profiteering. What strategy do the Government intend to follow under those circumstances?

Baroness Manzoor: My Lords, the production of medicines is complex and highly regulated, as the noble Baroness says, and materials and processes must meet rigorous safety and quality standards. Supply problems can arise for various reasons, such as manufacturing issues, problems with the raw ingredients, regulatory issues and batch failures. I assure the noble Baroness that the Government are doing everything in their power to ensure that contingency plans are in place to address exactly the kind of issue she has just raised.

Baroness Jolly (LD): My Lords, I am pleased that there are contingency plans in place to ship prescription medicines to ensure there is no shortage. Could the Minister confirm to the House what the Government have done to guarantee transportation of generalist and over-the-counter medicines? Will they use lorries and ferries, as with prescription medicines?

Baroness Manzoor: My Lords, all planning scenarios for a no-deal exit are being considered. If it is necessary to use the kind of transportation the noble Baroness mentioned, of course we will do so. For more priority medicines, other plans are being put in place, as well as the six-week stockpiles we have agreed that community pharmacists must hold.

Lord Clark of Windermere (Lab): My Lords, in view of the fact that we have to import a large percentage of our medicines and that the Minister's department has denied there is any problem with Brexit, will she give the House a guarantee that it is looking seriously into the problem of a no-deal Brexit?

Baroness Manzoor: My Lords, absolutely. Having medicines for some of the most vulnerable people in our society is key and fundamental. Of course, as a government department we are doing everything we possibly can to ensure medicines reach those who need them.

Lord O'Shaughnessy (Con): My Lords, my noble friend has given us reassurances about the work that the department has been doing, and it is good to see that, in securing the additional ferry capacity, the need for all medical products—not just prescription only, but general medicines and others—has been catered for. One thing we also need to look out for are those who would seek to take advantage of the situation we face as a country to hike up prices. In 2017, the Government took powers in the health service supplies Act to make sure that, in extremis, we can not only ask for information but also impose prices where we think inappropriate pricing may be happening. Can my noble friend reassure us that, if necessary—and I hope it will not be—the department would be prepared to act?

Baroness Manzoor: I thank my noble friend for that question. From a personal perspective, the answer must of course be yes, and the noble Lord will know that better than I. But I am afraid I do not have that answer, and so I cannot confirm it at this point. I will have to write to my noble friend.

Lord Roberts of Llandudno (LD): Can the Minister tell us exactly what new steps are being taken by the Government to face any shortage of drugs?

Baroness Manzoor: The Government are taking a number of steps. We have introduced the six-week stockpiling, which I have already mentioned. We are also looking at transportation issues and addressing whether there are shortages. We are working with supply chains and manufacturers to get an early indication of where these shortages may arise. I reassure the noble Lord that shortages of various drugs happen throughout the year. This is not a new phenomenon, and we are not clear that it is Brexit related.

Lord Patel (CB): My Lords, I want to reinforce what the noble Lord, Lord O'Shaughnessy, said. In the past, we have experience in this country of wholesale providers of over-the-counter drugs hoarding medicines to demand higher prices later, and the NHS had to pay up. It is right that the NHS agrees to take powers if that is found to be the case, and I hope that the Minister will confirm that.

Baroness Manzoor: I can confirm that. We are talking about concessionary pricing as well. However, I restate that our primary concern is to ensure that patients continue to get their medication and that community pharmacies are reimbursed fairly for the products that they use. The answer is yes.

Healthcare (International Arrangements) Bill

First Reading

3.07 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018

Motion to Approve

3.07 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 13 November 2018 be approved.

Considered in Grand Committee on 15 January.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Order Paper states that this and the following three sets of regulations are due to be moved en bloc, but I am grateful for the courtesy of the noble Lord, Lord Adonis, who advised me in advance that he wished me to move these individually. I will therefore do that. I beg to move the first Motion standing in my name on the Order Paper.

Motion agreed.

Venture Capital Funds (Amendment) (EU Exit) Regulations 2018

Motion to Approve

3.08 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 13 November 2018 be approved.

Considered in Grand Committee on 15 January.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, I beg to move the second Motion standing in my name on the Order Paper.

Lord Adonis (Lab): My Lords, I was not able to speak in Grand Committee on these statutory instruments because the Grand Committee and the Chamber were both considering no-deal statutory instruments at the same time. Having now read the debates on these regulations, I see that the three statutory instruments that relate to alternative investment funds were all dealt with together. The noble Lord said:

"The Government have undertaken an impact assessment on these instruments, which we hope to publish shortly".—[*Official Report*, 15/1/19; col. GC 82.]

This was not picked up by noble Lords in the later discussion, but the obvious point arising is this: if there is going to be an impact assessment that relates to these instruments, should not the House see it before we approve the statutory instruments rather than after? The noble Lord did not say why the impact assessment on these three instruments concerning venture capital funds is going to be published after we have been invited to approve the regulations. Will he expand on that for the House?

Lord Bates: As I said in Grand Committee, whose debate I took note of, an impact assessment will be published shortly. The position has not changed in regard to that. But of course that was in relation to a wider debate that the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Bowles, took part in where they recognised that we sought to transpose a body of EU law into UK law so that we avoided a cliff edge that would be damaging and very costly for financial services. The answer remains the same as I gave in Committee.

Lord Adonis: I understand the explanation, but I do not find it satisfactory. Why is the House being invited to approve these statutory instruments without the impact assessment that relates to the very statutory instruments that we are invited to approve? The Minister simply restated the fact that the impact assessment will be published after we have been invited to approve the regulations. That is unsatisfactory. Surely we should have the impact assessment before we approve these statutory instruments rather than after. He has not explained why that is not possible.

Lord Bates: I realise that the noble Lord is pressing his point and he may find the answer—that the impact assessment will be published shortly—unsatisfactory. Of course the reality is that we are dealing with a volume of statutory instruments to avoid that cliff edge and to avoid costs, because the industry very much supports this process; we agreed it with industry because it wants to avoid that cliff edge. Because we are transposing what is already in existence into UK domestic law to avoid that cliff edge, industry recognises that if it followed those rules before it will follow the same rules thereafter, so the financial impact will be limited. That has been the accepted position throughout this process when we have been going through secondary legislation. None the less we are committed to publishing impact assessments. We are doing that. They are scrutinised by the Regulatory Reform Committee and will be published shortly.

Lord Adonis: My Lords, the Minister has not answered the fundamental question of why we cannot have the impact assessment before we approve these regulations rather than after. I think that the House knows the answer, which is that the impact assessment is not ready. Because of the very hurried nature of the no-deal regulatory planning that the Government are engaging in, he is none the less trying to railroad these regulations through the House this afternoon. I understand the reason, but it is not a satisfactory reason. In no other context would noble Lords find it acceptable to be asked to approve regulations before we have actually seen the impact assessment to which the regulations apply. All the Minister has done now, three times, with the elegance of expression that he always deploys, is simply to restate the fact that the impact assessment has not been completed and is not ready. That is not a satisfactory response.

Lord Bates: I tried to give a response that explained the situation. Usually in this situation, we are transposing one law that is operating today and saying that that law, which is currently in EU legislation, will be brought onshore and will operate after 29 March in the unlikely event that there will be no deal, to avoid a cliff edge. Therefore, it is the same law. Our view—and I think

this is the general view when this has been debated because it applies to all the statutory instruments—is that we are discussing relatively small de minimis amounts, but there is still a process that we need to go through whereby those impact assessments are prepared, submitted to the Regulatory Reform Committee and then released, and they will be released shortly.

Lord Adonis: My Lords, I am sorry to labour the point but—

Lord Trefgarne (Con): I believe this matter came before the Secondary Legislation Scrutiny Committee. I apologise that with 300 pieces of secondary legalisation I do not always remember every detail of every one of them but, be that as it may, the SLSC often asks for changes to the impact assessment, as I believe happened on this occasion. The impact assessment has therefore been published; it is just that a further edition has been asked for.

Lord Adonis: So it has been published and the noble Lord can therefore make it available to the House.

Lord Bates: We submit these things. First, I pay tribute to my noble friend Lord Trefgarne's work in the Secondary Legislation Scrutiny Committee. It is doing an incredible amount to scrutinise this volume of work. In chairing those two committees, my noble friend Lord Trefgarne and the noble Lord, Lord Cunningham of Felling, are doing incredible work. They considered these regulations, as did the other place, as did the Committee, and they did not feel there was a reason to object to this SI, which is needed by the industry to prepare in the unlikely event that we leave the European Union on 29 March without a deal. That is why we arrive at this point.

Lord Rooker (Lab): My Lords, I am just about to go up to Sub-Committee B of the Secondary Legislation Scrutiny Committee. Sub-Committee A met yesterday. In the papers we have upstairs, the grand total of proposed negatives that both committees and the other place have looked at is something like 165 out of 600. After the sifting committee has dealt with a proposed SI, it goes to another committee and then it may come to the Floor of the House. Next week is the end of January. In a month's time the sifting committees will not be able to do anything because if they do any work there will not be enough time for the other processes to take place before 29 March. If there are 600 statutory instruments, how come we have dealt with only about 165 of them?

Lord Bates: I am surrounded by expertise and am trying to listen attentively with both ears to the guidance offered. Effectively, this position was set out in advance. It was very clear from the EU withdrawal Act. Section 8 said what must happen in preparing secondary legislation. The House then met several times to establish a procedure which would give that level of scrutiny. It involved a sifting committee, the Joint Committee on Statutory Instruments and my noble friend's committee, the Secondary Legislation Scrutiny Committee, and we agreed that they would each have different roles. One would test whether an instrument should be affirmative or negative. Then they had to be laid. This SI was laid on 29 November. It was considered by the Secondary Legislation Scrutiny Committee on 10 December, which raised no concerns. It was then considered by the House of Commons and then by the House of Lords. That is the position. I think the system is working well, given the incredible strain which the noble Lord referred to in terms of the offices of this House. We are ensuring that an industry that is crucial to this country is protected in the unlikely event that there is no deal.

Lord Adonis: My Lords, with very great respect, the noble Lord has not answered the question, which is about the impact assessment. It is not about the wider issues to do with the—

Lord Taylor of Holbeach (Con): My Lords—

Lord Adonis: I am not giving way to the Chief Whip until I have completed the point.

Noble Lords: No!

Lord Taylor of Holbeach: This is a point of order. In debate it is customary for Members to speak only once. The noble Lord has made a point. The House has listened to his point. If he wishes to press his point, he has to press his point. I ask him to accept that, on what has been approved by the committees and has been presented to the House today, he should be prepared to accept the word of the Minister.

Lord Adonis: My Lords, the noble Lord was intervening on me. It is not a question of accepting the word of the Minister; the Minister has not replied to the point. Indeed, the noble Lord, Lord Trefgarne, has added further confusion because he said that the impact assessment is available and it has just not been laid before the House, whereas I took the Minister to say that the impact assessment was not available. He told the Grand Committee last week that it would be published shortly. He is clearly still not in a position to lay it before the House. The House is being expected to agree a statutory instrument that will have a vital impact on a major national industry and we do not know the basis on which we are agreeing it. There is confusion between the noble Lord who chairs the relevant committee and the Minister as to whether an impact assessment is even available. The point that my noble friend Lord Rooker made seems to be completely correct. Essentially, we are legislating in the dark this afternoon, and that is a wholly unsatisfactory situation.

Lord Trefgarne: My Lords, perhaps I may have your Lordships' permission to speak once more. In fact, the initial impact assessment was, I believe, withdrawn with the promise of another one, and it is the second one that we await.

Lord Adonis: But is that one available either?

Motion agreed.

Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018

Motion to Approve

3.20 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 28 November 2018 be approved.

Considered in Grand Committee on 15 January.

The Minister of State, Department for International Development (Lord Bates) (Con): I beg to move.

Lord Adonis (Lab): My Lords, I should register the same point, which is that we are expected to agree another statutory instrument without the impact assessment that applies to it, and that situation is wholly unsatisfactory.

Lord Pannick (CB): My Lords, does the Minister agree that it is highly desirable that impact assessments are published prior to instruments of this nature being put before the House? Will he give an undertaking that in relation to further statutory instruments that process will be followed?

Baroness McIntosh of Pickering (Con): My Lords, I should like to make one point before my noble friend replies. I had great difficulty in attending the debate on these statutory instruments last week. For two weeks running, through an unfortunate circumstance of timetabling, these statutory instruments were discussed when an EU item was being debated on the Floor of this House, and I hope that that can be avoided as far as possible. I support the point that has just been made. It is placing us in a very difficult position to take these statutory instruments on trust when we could wait to discuss and pass them once we have the impact assessment before us.

Lord Bates: I hear what the noble Lords and my noble friend have said. The Government will of course use their best endeavours to ensure that the impact assessments are always in place. We are not entirely in control of the process—there are other relevant bodies—but we will always try to make sure that all the information is there for the relevant committees, which do outstanding work in processing these SIs. I certainly undertake to take back noble Lords' comments.

Motion agreed.

Interchange Fee (Amendment) (EU Exit) Regulations 2018

Motion to Approve

3.22 pm

Moved by ***Lord Bates***

That the draft Regulations laid before the House on 22 November 2018 be approved.

Considered in Grand Committee on 15 January.

The Minister of State, Department for International Development (Lord Bates) (Con): I beg to move.

Lord Adonis (Lab): My Lords, I wish to press the Minister further on these regulations, not in respect of the impact assessment, which in relation to these regulations was de minimis, but in respect of the fundamental issue of the interchange fees that will be charged as a result of these regulations to holders of UK credit and debit cards when they seek to use those cards in the wider EEA. Of course, I would have raised this issue in the Grand Committee last week but for the fact that the Grand Committee and the Chamber were both debating EU no-deal regulations at the same time, and, even with my many abilities, I cannot be in two places at once.

The big issue that arose from the debate was that the Government have chosen to apply the caps on fees applying to debit and credit cards which can be charged to traders only within the United Kingdom. They are not proposing to apply those caps to the wider EEA, even in respect of holders of UK credit and debit cards, who could therefore be subject to higher charges either directly by being charged surcharges by traders when they seek to use their cards on the continent or by those higher charges being passed on to traders, who will then put up their prices.

The noble Baroness, Lady Bowles of Berkhamsted, who had played a significant role in the European Parliament on the original interchange regulations that led to these regulations, raised a whole series of concerns in Grand Committee about their asymmetric application. She raised exactly the concerns that I have raised as to what might happen to holders of UK credit and debit cards within the wider EEA if these regulations are passed. She probed the Minister on this crucial policy decision; we are told that these are just rollover regulations but a crucial change is being made to the policy position in respect of credit and debit cards once these regulations go through: the caps on credit and debit cards will now apply only within the United Kingdom; they will not apply within the wider EEA. Holders of UK credit and debit cards could, as I said, be faced as a result of these regulations with a very substantial change in the position after 29 March and be subject to higher charges.

It came out in the debate in Grand Committee that this was a policy choice by the Treasury. It would have been perfectly possible for the Treasury to decide that we would continue to apply the same caps to UK issuers of credit and debit cards within the wider EEA—the same caps as apply within the UK—but a policy decision had been taken not to do so because of the decision to go for symmetrical rather than asymmetrical regulation. I bring this out because it is a huge policy issue; it could have a very significant impact on the lives of British people when they seek to use their credit and debit cards across Europe after 29 March in the event of no deal.

In the normal course of events, this House would seek to debate—at some length, I should imagine, given the interests at stake—this policy change. It would have been subject to proper analysis and scrutiny, but instead there was a 15-minute debate in Grand Committee last week and we are now being invited to pass these regulations on the nod. Why? Because of the urgency of passing no-deal regulations. That situation seems wholly unsatisfactory. The very least I can do

on behalf of the wider public is to draw out these issues; the public need to be aware that they could face increases in prices or in their credit and debit card charges after 29 March, purely as a result of these interchange regulations.

Lord Bates: I am grateful to the noble Lord for raising that point. It was a point of debate on a technical matter relating to whether you treat a country as a third country, which we believe we have no option but to do since we will no longer be in the European Union. At the end of what was a very constructive debate, with some assiduous scrutiny in Committee by the noble Lord, Lord Tunnicliffe, and the noble Baroness, Lady Bowles, I undertook to write to the noble Baroness copied to the noble Lord, Lord Tunnicliffe, responding to precisely that point. I can confirm that I did that this morning; the letter went off and a copy is now in the Library. I would be happy to make a copy available to the noble Lord, Lord Adonis, as well if that would help.

Lord Adonis: My Lords, I am sorry to intervene again, but that response could not be more unsatisfactory. Noble Lords seeking to engage in the debate this afternoon on this fundamental issue are supposed to rely on a letter sent to two noble Lords this morning and placed in the Library of the House—a letter of which none of us was aware and could not conceivably have been aware of when we came into the House. That is the basis on which we are supposed to agree fundamental changes to the law, which could have a big impact on holders of credit and debit cards after 29 March. I place on record once again that, when you probe beneath the surface, this no-deal planning that we are engaged in—which is supposed to be technical—involves, if we have no deal from 29 March, fundamental changes to the terms of trade in respect, here, of just one aspect; a whole load of others are coming. All this has been smuggled in with no debate and no proper scrutiny; we are expected just to take the word of the Minister that he has properly considered it.

The issue at stake is not a question of explanation; the Minister can explain it for as long as he likes. The fact is that there is a fundamental change of policy taking place. That fundamental change could lead to higher prices being levied on UK holders of credit and debit cards after 29 March, in the event of no deal, if they seek to use those cards on the continent. It seems wholly unsatisfactory that we should agree to that situation with no debate whatever.

Lord Bruce of Bennachie (LD): My Lords, the noble Lord, Lord Adonis, makes a very serious point. We have only just achieved the abolition of these charges on credit cards, for which the Government tried to claim credit when in fact it was an EU regulation that achieved it. We are effectively being told that, not only with no deal but possibly even with a deal, these charges could or would be introduced. I believe this should be much more fully debated. The noble Lord has a point when he says that something as fundamentally radical as this, which the public will be very cross about when they find it happening, should not go through just on the nod.

Motion agreed.

Tower Blocks: Cladding

Statement

3.30 pm

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, with the leave of the House I shall repeat as a Statement the Answer given to an Urgent Question in another place by my right honourable friend the Minister for Housing. The Statement is as follows:

"There is nothing more important than making sure that people are safe in their homes. We remain determined to ensure that no community suffers again as the community did so tragically and appallingly at Grenfell Tower.

Within days of the tragedy, a comprehensive building safety programme was put in place to ensure that residents of high-rise blocks of flats are safe and feel safe, now and in the future. Our department has worked with fire and rescue services, local authorities and landlords to identify high-rise buildings with unsafe cladding, and ensured that interim safety measures are in place until they are permanently remediated. These have included measures such as "waking watch", which has been put in place in all high-rise buildings with ACM cladding, with the oversight of the National Fire Chiefs Council. As of 31 December 2018, interim measures have been in place in all 176 high-rise private residential buildings with unsafe ACM cladding.

Permanent remediation must now, rightly, be our key focus. On 18 December we published our plan to implement the recommendations of Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety, which will create a stronger regulatory framework and fix these issues for the long term.

We have repeatedly called on private building owners not to pass costs on to leaseholders who find themselves in this position through no fault of their own. We have also warned private building owners that unless they remove and replace unsafe ACM cladding from their high-rise residential buildings now, local authorities have the power to complete the works and recover the costs from the owner. As a result of our interventions, we have secured commitments from the owners of 268 privately owned buildings, while 212 have either started, completed or have commitments in place to remediate. There remain 42 private residential buildings where the owners' plans are unclear. On this we are maintaining pressure, and we rule out no solutions.

This is obviously a matter of great importance to many colleagues and indeed to many constituents, and that is reflected by the huge amount of activity that is taking place within the department, externally within the industry concerned and, critically, in this House, with an Adjournment Debate tomorrow and appearances by me at Oral Questions and in front of the Select Committee this coming Monday".

3.32 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the House to my relevant interest as a vice-president of the Local Government Association. I thank the Minister for repeating the Answer given in the other place to this Urgent Question.

[Lord Kennedy of Southwark]

I agree with the Minister that there is nothing more important than making sure that people are safe in their own home. The fire at Grenfell Tower happened on 14 June 2017. Today is 22 January 2019. The fact that 19 months later dangerous, even lethal, cladding has not been removed from all buildings is a national scandal. Does the Minister agree that it is time for all the information about individual tower blocks, school, hospitals and other buildings covered in dangerous cladding to be published so that all residents, staff and users can see what the situation is and question those in authority about what they are doing to make sure that the building they live in or use is safe? It is clear from the latest scandal reported in today's *Daily Mirror* that we cannot rely on those who have responsibility for building safety to do the right thing.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lord for his questions and for his welcome of the Statement. I understand, and I shall repeat what was in the Statement: there is nothing more important than making sure that people are safe in their homes. I think we would all agree with that, and that is precisely what I have said today. The measures that are in place ensure that everyone is safe tonight and every night in the buildings where they are. There are two aspects to this. One is making sure that people are safe, and the other is the remediation to make sure that we have a permanent solution to the cladding issue. I have given the figures on that. Even since I last gave figures in this House in answer to the noble Lord on 7 January, the first day after recess, we have made significant progress. He will see that we are closer to ensuring that we complete that process.

Lord Stunell (LD): My Lords, I thank the Minister for his Statement. But even after his emollient words, there are still around 800 families living in privately owned blocks who do not yet know what is going to be done to make their homes safe or who will be responsible for paying for that. If, as the Statement says, no solution is being ruled out, does the Minister not agree that the time has come for the Government to commission local authorities to step in and carry out this work without any further delay?

Lord Bourne of Aberystwyth: I thank the noble Lord for those points. I agree that we are entering that stage where local authorities need to be considering these measures. I update the House, as I did on 7 January, that my right honourable friend the Secretary of State wrote to local authorities in December, indicating that they have the power—and, in extreme circumstances, even a duty—to act here. We have given an assurance that if financial assistance is needed, we will come forward with it. The Secretary of State will be reviewing progress, as officials do every week to ensure that progress is being made. As I indicated to the noble Lord, Lord Kennedy, we have made progress, even since 7 January. Do we need to do more? We do, but officials are pressing forward, as is the Secretary of State.

Lord Porter of Spalding (Con): My Lords, the Government should be commended for the speed with which they have put extra resources into the social sector to make sure that money has not been a barrier to getting the cladding removed. The time must now have come for financial assistance to given to those buildings that are in the private sector. However, I do not believe for one minute that the money should then be written off for the taxpayer. Surely the Government must pursue the people responsible for the inappropriate materials—not just the cladding, but the inappropriate insulation, where it has been used. Every effort should be made to recover that money for the taxpayer, but the current leaseholders should not be the ones having to face that dilemma every night.

Lord Bourne of Aberystwyth: My Lords, as ever, I thank my noble friend for a timely and helpful intervention. While his question related specifically to private residential buildings, I do not want to miss the opportunity of saying that in the public arena and the social sector, we have made £400 million available for remedial activity. I agree with what he says; that is part of the process the Secretary of State is engaged in. We are very aware that we need to complete this process. We want to do it with the assurance that leaseholders will not pick up the bill. That would be morally unacceptable, as we have indicated. I pay tribute to the many private companies that have come forward to say that they will sustain the financial cost of this position. We need to encourage, cajole and ensure that others do the same.

Lord Beecham (Lab): My Lords, first, I refer to my local government interests, recorded in the register. Secondly, I query the arithmetic which says that of 268 privately owned buildings, 212 have been started or completed, and 42 remain. Should that not be 56? If not, what happened to the other 14? More seriously, the Statement avers that local authorities have the power to complete the works and recover the costs from the owner. If they are unable to recover the costs from the owner, will the Government fund the work?

Lord Bourne of Aberystwyth: I thank the noble Lord for the points he has raised; I too questioned the mathematics. I will write to the noble Lord to confirm the position, but I think the other 14 are made up of hotels and other types of buildings that are not private residential buildings.

Lord Shipley (LD): My Lords—

Lord Bourne of Aberystwyth: I always admire the noble Lord's great assiduity. With regard to the other point the noble Lord made about picking up the bill, we have ruled nothing out. I agree with my noble friend Lord Porter that we are seeking to ensure that the cost of this is picked up by the owners, not the leaseholders. That is the position we are in and the position that the Secretary of State is carrying forward. As I have said, officials monitor progress in this area on a weekly basis.

Lord Shipley: My Lords, I remind the House of my entry in the register of interests. In repeating the Answer to this Urgent Question, the Minister referred to the waking watch that has been put in place in all high-rise buildings with ACM cladding. In the case of

social housing tower blocks, will he confirm that the significant cost over many months will be paid by the owners and not loaded on to the tenants' rents?

Lord Bourne of Aberystwyth: My Lords, I understand that that is the position but if I am wrong, I will write to the noble Lord. The most important thing, as I say, is that the Government are determined that the safety of individuals comes first. As he knows, we have committed the £400 million to that, of which I think only £248 million has been deployed. There therefore remains a significant amount of money that will help in this process.

Baroness Neville-Rolfe (Con): My Lords, I commend my noble friend the Minister for keeping us well informed on the wide-ranging progress on Grenfell. Has there been a clear conclusion as to the original cause of the fire, and are there any implications for the safety of electrical and other household goods?

Lord Bourne of Aberystwyth: My Lords, I thank my noble friend very much. The position on possible criminal charges remains outstanding, so I must be careful what I say in that regard. I do not think the cause has been established, as it were, by a court of law. My noble friend is right that there are wider considerations here, and they will certainly inform the Hackitt review on safety requirements, in which we are engaged. It is of course not just on buildings that Dame Judith has reported. We have a very wide-ranging response to the safety considerations, which will inform our process in many other areas as well.

Lord Cotter (LD): My Lords, I want to make a general comment to the Government. Coming from a plastic manufacturing background, I was staggered to read in the newspapers that weekend that plastics were used to encase buildings. I say to the Minister: beware of experts. Based on my plastic manufacturing experience, I would have been very concerned by that. Please can the Government check on these experts?

Lord Bourne of Aberystwyth: Good advice, my Lords, and we will certainly do so.

Lord Sterling of Plaistow (Con): My Lords, over the years the fire brigade has been a key factor in planning. That has changed dramatically. To what degree has the fire service been involved in looking at not just cladding but electrics—mentioned earlier—and escape methods? Can the law be changed in such a way that the fire brigade will always be brought in at the early stages of planning, when life was a safer bet?

Lord Bourne of Aberystwyth: My Lords, I am grateful for my noble friend's question, which enables me to pay tribute to the public services for the great work they have done in this regard, particularly the fire brigade. It is central to the policy we are putting in place and will inform the process. I know it is involved in consultation on document B, regarding the safety of buildings, which I think remains open until 1 March. I am sure that the fire service will take part in that consultation. We have been in touch overnight about matters that have arisen and have its assurance that the building in Manchester, referred to by the noble Lord, Lord Kennedy, is entirely safe and that the process is going forward to ensure that the cladding is removed.

Justification Decision Power (Amendment) (EU Exit) Regulations 2018

Motion to Approve

3.44 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 23 November 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, the Justification of Practices Involving Ionising Radiation Regulations 2004, which I will refer to from now on as the justification regulations, provide a framework in which justification decisions regarding ionising radiation are made. Justification decisions are an important part of our regulatory regime surrounding ionising radiation, as they determine whether a practice involving ionising radiation is justified in advance of being first adopted or approved. In addition, it may be determined that a class or type of practice is no longer justified as a result of a review.

The power to make these decisions is currently provided by Section 2(2) of the European Communities Act 1972. Following the United Kingdom's exit from the European Union and Euratom, and repeal of the 1972 Act, the justifying authority will no longer retain the power to make justification decisions regarding practices involving ionising radiation. This instrument will correct this inoperability by providing the justifying authority with a replacement power to make such justification decisions. The powers to make this secondary legislation are found in the European Union (Withdrawal) Act 2018.

Before I explain the changes in more detail, it may be helpful to provide background information on the Government's position in relation to the justification of practices involving ionising radiation. The UK is committed to maintaining an up-to-date and internationally concurrent justification regime, in order to remain a world leader in radiological safety, as well as maintaining our international reputation and status as a trusted partner with whom to trade nuclear skills, services and materials.

The justification regulations are the first step towards regulatory approval for a new class or type of practice involving ionising radiation, including medical treatments and new nuclear reactor designs. These regulations provide a framework setting out how government determines whether the practice is justified. "Justified" here means that the individual or societal benefit of the practice involving ionising radiation outweighs its potential detriment to health. These decisions are taken by the justifying authority. This can be the Secretary of State of the relevant department or, in some cases, the devolved Administrations, in the form of regulations.

[Lord Henley]

The justifying regulations cover activities which fall within both reserved and devolved subject matters. To ensure consistency in how the process for making justification decisions is dealt with across the UK and different reserved and devolved subject matters, the devolved Administrations have to date been content for the UK Government to establish and make changes to the justification regime, using UK-wide regulations. This instrument will allow the UK Government to make UK justification decisions in reserved areas using UK-wide regulations. It will also allow the devolved Administrations to make justification decisions using regulations covering their own geographic areas for activities falling within devolved subject matters. We have received letters of consent from each of the devolved Administrations agreeing that they are happy to proceed with this instrument.

I will now briefly expand on the amendment itself. On 29 March 2017, the Prime Minister triggered Article 50 and started the UK's exit from the European Union. To give effect to the UK's exit in domestic law, the European Union (Withdrawal) Act 2018 will repeal, as I said earlier, the 1972 Act at the moment of exit. However, to ensure continuity for the UK, the withdrawal Act will preserve EU-derived domestic legislation so that it continues to have effect in domestic law. This will leave our statute book with several EU-related inoperabilities, the power to make justification decisions being one example of this.

The purpose of this instrument is therefore to provide the justifying authority with a replacement power to make justification decisions under the justification regulations, once the current power ceases to be available as a result of the repeal of the 1972 Act. Such a power will be created by this instrument using the powers in Section 8 of the European Union (Withdrawal) Act 2018. It is important to note that this instrument does not allow the Secretary of State or devolved Administrations to make decisions in any other way, or with any greater freedoms than they currently do with respect to the justification regulations. Unlike the wide power under Section 2(2) of the 1972 Act, this replacement power is a narrow one that is limited to making justification decisions for the purposes of the justification regulations. It should also be mentioned that future justification decisions which determine that a new class or type of practice is justified will be made by affirmative regulations and therefore will be subject to debate in the House as usual.

Looking forward, my department is currently aware of several potential justification applications that may require a decision by the Secretary of State in the future. These applications will require a functioning justification regime to ensure that they are subject to the appropriate scrutiny procedures. For example, the HPR1000 reactor, intended for use at Bradwell, is a new nuclear reactor design which would require a justification decision before it could be deployed.

I hope that we can reach an agreement that these amendments are necessary to ensure a functioning statute book on exit day regardless of the outcomes of the negotiations. I therefore commend these regulations to the House.

Lord Adonis (Lab): My Lords—

The Deputy Speaker (Viscount Ullswater) (Con): Order.

Lord Adonis: I am intervening on the Minister before he sits down. Will the organisation called the justifying authority, which I understand is the organisation which takes these decisions, be affected in any way by the regulations, or will it continue in the same way after a no-deal withdrawal as before? This is a very technical area with which I am not familiar, but my reading of the regulations is that there is an organisation called the justifying authority whose decisions at present depend on EU law and the Government are investing those decision-making powers in the same authority but through UK law. Can the Minister confirm that that is the case and that I have understood it properly?

Lord Henley: My Lords, it is complex and technical. There is no one body called the justifying authority; there are a number of different authorities. On certain occasions, it will by my right honourable friend the Secretary of State for Business; on other occasions, if it was a matter relating to health, it could be the Secretary of State for Health. As I made clear earlier, where it was a devolved matter, it could be the devolved Administrations.

Let me give an example to illustrate how a whole range of things are covered—I am thinking of something that has been in the news recently. If prisons wanted to install a new system for examining or scanning prisoners and others as they came through—I believe that that has already been justified—that involves ionising radiation. I shall now add a further complication: one might presume that the Ministry of Justice would be the justifying authority in that matter, but on this occasion it would be the Home Office. In other words, it would have to look at what the risks to people using these things might be and whether the societal benefits that I referred to earlier were greater such that we wanted to install the technology, hence the need for a justifying authority. There are a number of justifying authorities.

Unlike some other regulations that the noble Lord and I have debated, these are both what we could call deal and no-deal regulations. We are just trying to make sure that the right order is in place so that life can continue as before, with the appropriate justifying authority making the appropriate decision.

Lord Pannick (CB): Can I ask the Minister some questions before he sits down?

The Deputy Speaker: My Lords, perhaps I should put the question and then the debate can commence. The question is that this Motion be agreed to.

Lord Pannick: I have two questions for the Minister. When were these regulations published, and has there been any public consultation on their content?

Lord Redesdale (LD): My Lords, I am tempted to ask a number of questions to get them out of the way, because most of these regulations follow the same guidelines. My noble kinsman the Minister has already

said that they will not come into effect if we remain in the European Union for whatever reason. Can he confirm that that is the case for all the regulations, and then I will not have to ask again?

I have only one question on this regulation, which concerns transparency. The noble Lords, Lord Adonis and Lord Pannick, have already talked about the justifying authority, and reading the SI it is clear that it could be any Secretary of State, but as we are dealing with detriment to health and ionising radiation can the Minister say at what point discussions by the justifying authority would be made public? Under what forum would people be able to find out about the decision-making process?

Lord Warner (CB): My Lords, I had not intended to intervene on this set of regulations, but remarks that the Minister made in answering the noble Lord, Lord Adonis, sparked a thought in my mind, given some of the other discussions we have had on no-deal regulations. The Minister said that these justifying authorities, and presumably these regulations, could be just as relevant if there was a deal as they are for no deal. I thought they were being presented to the House as no-deal regulations. If there is a deal, will these no-deal regulations be abolished and will we start again? Or will they carry on on the statute book if there is a deal and be used as though there was a deal or no deal?

Lord Grantchester (Lab): My Lords, the Minister is correct to portray the order before the House today as merely a technical replacement justification power, where "justified" means that the benefit resulting from the practice outweighs the risk and potential health detriment it may cause, under the ionising radiations regulations or the directive. These regulations are a first step towards regulatory approval for any new class or type of practice involving ionising radiation, such as a medical treatment or new nuclear reactor design. These activities are important, and it is important that they are regulated properly. To my mind, they are as needed in any situation as they are needed for exit from the EU. To me it is a straight transposition from an EU-derived power to a UK power to give effect to the UK's exit in domestic law. There should be no issues with this order.

This is the latest type of Brexit—I am calling it a continuity Brexit—to allow EU-derived legislation to continue to have effect in domestic law, and this order is merely a replica of previous ones. I approve the order today.

I understand that the Government Whips' Office in the other place has a new sweetie box as a reward system, whereby Ministers are rewarded for each successful continuity order passed before exit day. I trust that the Minister will be rewarded with a bonus issue for this order.

Lord Henley: On that last point, I have had an assurance from my noble friend Lady Vere that a reward will be on offer—but let us wait until we have got through all four of these before I rely on the generosity of her offer: she might change her mind later.

Let me deal with the points that have been raised. The noble Lord, Lord Pannick, asked when these were published. I can assure him that they were published on 23 November last year. The instrument makes absolutely no changes to policy: it is just a technical amendment to ensure the continued operability of the justification regulations, and therefore a public consultation was considered unnecessary and inappropriate. Subsequent regulations made using the power contained in this instrument will continue to be subject to the consultation requirements, where the justification regulations impose on the making of justification decisions.

Lord Pannick: Can the Minister then give an undertaking that those exit regulations brought before the House that do make policy changes will be the subject of public consultation?

Lord Henley: My Lords, where appropriate, that will happen. I can speak only for regulations that I will bring before this House relating to my department—but the noble Lord will no doubt be in his place to listen to other Ministers and other regulations as they come through. I repeat that, when we come to make further decisions under these regulations, at that moment—because there might be a change in policy—those decisions will be subject to the consultation process that I spoke about. If the noble Lord will bear with me, I will give way on this.

Lord Pannick: I am very grateful for the noble Lord's patience. Is he then giving that undertaking in relation to regulations brought forward by his department—that if they are exit regulations that make a change of policy, they will be the subject of public consultation before they are brought before the House?

4 pm

Lord Henley: That is not what I said. I said that, where appropriate, we will consult if it is possible. Most regulations we are bringing forward deal with the eventuality of a no deal. Obviously, there will be constraints on the full consultation process that the noble Lord is seeking. That was clear in other regulations with which I dealt in the Moses Room on another occasion. As with these, we went into extensive consultations with the devolved Administrations—because they are the relevant bodies—and we have consulted within government, because a lot of different justification authorities abound. Where appropriate, we will consult: I can say no more than that.

The noble Lords, Lord Redesdale and Lord Warner, wanted to know in effect how the justifying authority worked. I think that the noble Lord, Lord Warner, wanted to know whether they were simply no-deal regulations. What I was trying to say was that these are both deal and no-deal regulations—even if there were a deal, we would still need these regulations. They would not become defunct in the event of a deal. We want to make sure that this is right whatever happens, and I hope that will be the case.

Lord Warner: Perhaps I may come back on this, because there is a matter of principle here, particularly following up on what was said by the noble Lord, Lord Pannick. The Minister will recall that we had some fruitful, if somewhat lengthy, discussions in Grand Committee on some of these regulations. We were debating the idea that these were no-deal exit regulations, and there was often a dispute over whether the regulations did or did not change policy. The Government's view on some regulations was not necessarily shared by other Members of this House, but I think we were inclined to be tolerant on the basis that these were no-deal regulations, rather than regulations that would continue into the future. So is it going to be a pattern now that we will get these regulations, in a number of areas, presented as no-deal regulations, but then find that—lo and behold—there has been a change in policy that has slipped through, with no consultation, and that the regulations will continue into the future? The Minister might want to say that I am showing my customary paranoia on this issue, but it is a serious point that we in this House need to be clear on when we deal with these regulations. Our attitude will be very much conditioned by whether they are no-deal regulations or whether they will carry on into the future.

Lord Henley: To make life easier for the noble Lord, I can assure him that the other three regulations—to which I will be speaking later—are purely no-deal regulations. I do not think the noble Lord is paranoid about this—he is quite right to explore these matters. But I want to make clear to him that there is no change of policy in these regulations; we are just trying to make sure that things are okay on 29 March. That is the case, deal or no deal.

I think that that deals with his point and the point made by the noble Lord, Lord Redesdale. I believe therefore that I have answered the questions put before me. I am grateful again to the noble Lord, Lord Grantchester, for his comments.

Motion agreed.

Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2018

Motion to Approve

4.04 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 28 November 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, this instrument will ensure that the UK maintains high standards for the supervision and control of shipments of radioactive waste and spent fuel in the event of no deal. The instrument will set out a regime to ensure that radioactive waste and spent fuel is not shipped into or out of the UK without prior authorisation from the relevant competent authorities. This is vital in order to protect the public and the environment from the dangers of ionising radiation. The instrument will further ensure that the UK continues to meet its commitments to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.

This new instrument is made under powers set out in Section 8 of the European Union (Withdrawal) Act 2018. It is laid to address specific inoperabilities arising from the UK's withdrawal from the EU and Euratom, and would come into force on exit day only in the event of no deal between the UK and EU. The UK is seeking a wide-ranging nuclear co-operation agreement with Euratom while putting in place the necessary measures to ensure that the UK industry can operate in all scenarios. This particular instrument will revoke the then inoperable Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 and replace these with the new 2019 regulations. These new regulations broadly replicate the procedures under the 2008 regulations for the import, export and transit of radioactive waste and spent fuel into and out of the UK, but will reflect the UK's independence from the Euratom community. The instrument applies to the whole of the UK.

The UK has ceased reprocessing other nations' spent fuel. The high-level waste arising from the last of these reprocessing contracts will need to be returned to its countries of origin: Australia, Japan, Germany, and Italy. The instrument will allow for the return of this high-level waste and is of strategic importance to the UK in fulfilling reprocessing contracts and supporting the decommissioning and clean-up mission of the Sellafield site. Further, the UK makes around 400 shipments of radioactive waste a year to Euratom member states. The majority of these are contaminated metals for treatment to Germany and Sweden.

The previous 2008 regulations laid down a set of regulatory procedures for transfrontier shipments that take place within the Euratom community, and a separate set of procedures for shipments entering or exiting the community. Following the UK's withdrawal from the EU and Euratom, the 2008 regulations will become inoperable, as they treat the EU as a single bloc that includes the UK. In order to ensure an operable regime after exit day, the new 2019 regulations will treat Euratom member states and all other countries in the same way. This will result in three operational changes for UK operators shipping to and from Euratom member states.

First, UK operators will need to request authorisation from the relevant competent authority when importing a shipment from Euratom states. The competent authorities are the Environment Agency, Natural Resources Wales, the Scottish Environmental Protection Agency and the Northern Ireland Environment Agency. Secondly, UK operators will need to notify the relevant competent authority of the completion of shipments to Euratom states. Thirdly, when importing from a Euratom state, UK operators will need to provide evidence that they have made an arrangement with the exporter which has been accepted by the exporter's competent authority. The arrangement would oblige

them to take back the radioactive waste or spent fuel if the shipment cannot be completed in accordance with the regulations.

These changes do not affect all of the nuclear industry. At present, six UK operators have authorisations to ship radioactive waste. Officials have estimated the total cost to all impacted industry from these additional steps to be between £1,700 and £6,000 every three years, as well as a minor familiarisation cost for operators of between £100 to £900 each.

Guidance for the new regulations will be published online prior to the coming into force of this instrument. Officials have been engaging regularly with operators who will be affected by the regulations to ensure that business operations may continue with minimal disruption.

This instrument was drafted in collaboration with the devolved Administrations, the UK's environment agencies, the Office for Nuclear Regulation and the Nuclear Decommissioning Authority. The legislative competence is reserved—however, this collaborative approach recognised that the administrative implementation of the regime is devolved.

All operators affected by these regulations have been informed of changes and more detailed engagement has been undertaken with those involved in regular shipments. Further engagement initiatives have taken place through stakeholder workshops, the Euratom Industry Forum and other industry events.

These regulations are vital to the success of the UK's decommissioning programme and to the completion of our last reprocessing contracts. Making them would allow the UK to maintain the highest nuclear safety standards, while ensuring that relevant UK operators can continue to operate in a no-deal scenario. I commend them to the House.

Lord Adonis (Lab): My Lords, as far as I can see from reading the material supporting the regulations, they do not involve any change in the operation of the law. As the Minister says, they have been approved by the devolved authorities, therefore they seem to me straightforwardly technical, but as there is no opportunity on the whole suite of regulations being moved today to raise issues about their management, I want to ask the Minister one question to which I hope he will respond when he replies.

In the original publication of the Order Paper, two further orders were due for debate today: the Conservation of Habitats and Species Order (Amendment) (EU Exit) and the Conservation (Natural Habitats etc.) (Northern Ireland) (EU Exit) Order. They were both on the Order Paper published on 16 January for today, but then they disappeared from the Order Paper published today. When I was preparing for this debate, there seemed to be some controversial issues surrounding those regulations, and they raise significant issues to do with natural habitats.

When the Minister replies—by then he will have been able to be advised by the Box—can he say why those two regulations were withdrawn from debate today, having been on the Order Paper on 16 January for today, what has happened to them and when they will appear before the House? Some of us are having great difficulty tracking the progress of these highly important regulations through the House because they seem to appear on and then disappear from the Order Paper almost at random.

Lord Pannick (CB): My Lords, I have one question for the Minister. He told the House in the previous debate that these are no-deal regulations. Can he identify for the House which parts of these regulations will not be needed if the Prime Minister's deal with the EU were to be approved by the House of Commons?

The Earl of Selborne (Con): I have an observation, rather than a question, to put to my noble friend. He rightly says that these are vital measures, as they are because, in our wisdom, we are apparently to leave Euratom as well as the European Union. Of course, we were members of Euratom before we were members of the EEC. Everyone agrees that Euratom is doing an absolutely first-class job and why in the EU withdrawal legislation we had to leave Euratom remains a total mystery to me. Having made that very bad decision, we clearly have to proceed as my noble friend suggests.

Lord Redesdale (LD): My Lords, I could not agree more with the noble Earl's views on Euratom.

I have a couple of questions. Has the Minister assessed the cost of introducing the IT systems and the necessary bureaucracy which will be over and above the amount of money we have been spending with Euratom to fulfil those exact functions?

Secondly, Regulation 6, on prohibited exports, talks about how we would be stopped from exporting to countries that do not have the right regulatory framework. Can the Minister say whether there has been any discussion with countries that are part of the same agreement and concerned about exporting to the United Kingdom on that basis? As the noble Lord, Lord Adonis, referred to invasive species, I am tempted to move on to the subject of grey squirrels—on which we have had many debates in the past—but I think I will leave it there.

4.15 pm

Lord Grantchester (Lab): I thank the Minister for his introduction to the regulations before the House, which were excellently portrayed and explained by his department's officials in the accompanying Explanatory Memorandum.

Under the UK's commitment to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the present regulations, drawn up while the UK was a member of the Euratom community, become inoperable on exit as internal mechanisms in Euratom members will need to be replaced as far as the UK is concerned. Radioactive waste and spent fuel cannot be moved between countries without these authorisations.

As has been explained, the duplication of authorisation with Euratom countries looks unavoidable, not only because the UK will be treated as a third country but because UK businesses will need to go through both domestic and Euratom procedures. As the Minister stated, this will give rise to a marginal additional cost of compliance, as was also explained in the impact assessment. This is not meaningful, but it allows me to probe into the future a bit.

[Lord Grantchester]

The Minister will remember the debates during the passage of the then Nuclear Safeguards Bill when he was emphatic that, post exit, the UK would seek to maintain a close working relationship with Euratom. Although the regulations are limited to radioactive waste and spent fuel, does the Minister see any quick, easy wins whereby, at the very least, procedures on this and other exchanges with Euratom members could be administratively streamlined without transgressing the important management of cross-border shipments? More widely, the House would be pleased to receive any further updates from the Minister on the shipping of medical isotopes, which was of such initial concern during the passage of that Bill.

Lord Henley: My Lords, I start with the point made by the noble Lord, Lord Adonis, when he referred to orders that seem to have been removed from the Order Paper. I did not quite catch the details, but I think they related to non-invasive species or something of that nature.

Lord Adonis: They were about habitats.

Lord Henley: I do not think that those orders related to my department. The noble Lord will be aware from his time as a Minister that all Ministers answer from the Dispatch Box on behalf of Her Majesty's Government as a whole, not purely their department. I think he would accept from his experience that very often one is not in a position to know why decisions have been made by another department on what has been withdrawn from the Order Paper and what has not. I think he will accept—this is quite fair—that those who advise me on such occasions would be even less likely to know why orders relating to habitats and the other matters he referred to, which are not relevant to the department I represent on this occasion, are or are not on the Order Paper.

Lord Adonis: I understand the Minister's point. Will he write to me to let me know the answer and copy in noble Lords so that we understand what is happening? As I said, that business was supposed to be discussed by the House today but it suddenly vanished.

Lord Henley: Either I will write to him or the noble Lord will be aware that fairly soon—when we have finished with my regulations, whenever that will be and whether I get the sweets from the sweetie box referred to earlier—I will be followed by my noble friend Lord Gardiner from Defra, who might be in a better position to advise him on these matters. We will certainly pass that on to my noble friend. I do not think it would help if I did write to the noble Lord on that subject; I leave it to him to make that point later. He also wanted to know—I think this was at the heart of the question from the noble Lord, Lord Pannick—what the regulations will resemble in the event of a deal scenario. These new regulations have been drafted for a no-deal scenario. The old 2008 regulations would have remained in effect for the implementation period if there was a deal. In the event of a deal, the future supervision and control of shipments of radioactive waste and spent fuel will be subject to negotiations with the EU. This may mean that the 2019 regulations never come into force, or come into force in an amended form. I do not think I can take that any further.

Lord Pannick: With the indulgence of the Minister, I ask whether he agrees that it would be helpful to the House if the Explanatory Memoranda to regulations of this nature were to state clearly that they were regulations brought forward specifically for no deal and to explain why the regulations, in the view of the Government, would not be appropriate at all or in this form if there were a deal. I am looking at the Explanatory Memorandum to these regulations and cannot immediately see that we are told they are no-deal regulations.

Lord Henley: I thought it was implicit in the regulations. I thought I made that clear in my opening remarks. I hope that will satisfy the noble Lord.

Lord Pannick: I am sorry to come back to the Minister. I am not questioning his assertion that these are no-deal regulations; I entirely accept that. I am simply saying that when we perform our scrutiny function and look at these regulations for the purposes of debate, it would be very helpful if the material—the Explanatory Memorandum—were to state for the guidance of Members of the House that they were no-deal regulations and what the position would be if there were a deal. That is all.

Lord Henley: My Lords, I have now set that out. These regulations have been to the appropriate scrutiny committees. They have not queried that part of the Explanatory Memorandum, and I do not think I can take the noble Lord any further.

Lord Warner (CB): Can the Minister clarify something for me? He is saying these are no-deal regulations. Do I interpret his remarks as meaning that, if there is a deal, during the implementation or transition period—whichever you want to call it—we could end up, having reached an agreement with the EU, going back to using the Euratom framework to deal with these problems in future? Is that a distinct possibility if there is a deal?

Lord Henley: As I think I made clear, in the event of a deal during the transition period we revert to the old 2008 regulations and they remain in effect for the implementation period. Thereafter, it depends on the outcome of the negotiations.

I come to the point raised by the noble Lord, Lord Redesdale, about the cost of some new IT system. All I can say at the moment is that no bespoke IT system is required as a result of the procedures set out in these regulations. The cost relates to administrative working hours.

Finally, I notice the point made by my noble friend Lord Selborne and the noble Lord, Lord Grantchester, about Euratom. We will leave Euratom; that has been made clear and is cut and dried. But obviously we will continue to work with it, as we have made clear on a

number of occasions—not least during the passage of the then Nuclear Safeguards Bill, which now seems an awfully long time ago.

Motion agreed.

Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018

Motion to Approve

4.25 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 29 November 2018 be approved.

Relevant document: 9th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, I was going to move this and the next set of regulations jointly, as set out on the Order Paper. However, I received a request from the noble Lord, Lord Adonis, and I am grateful to him for giving notice that he would find it more convenient if we dealt with them separately. I am more than happy to comply with that request. Therefore, we will debate these regulations and then, I hope, as I seek to earn my sweeties from the sweetie cupboard, we will move on to the final Motion in my name.

There are two sets of related regulations being considered today, each requiring a separate vote—that is possibly why the noble Lord, Lord Adonis, would like us to have two separate debates. The Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations define the terms "fissionable material" and "relevant international agreements" for the purpose of the sections of the Energy Act 2013, as amended by the Nuclear Safeguards Act 2018. These terms are used in the related Nuclear Safeguards (EU Exit) Regulations 2018, which will be considered in due course, and set out the detail of the legal framework for our new domestic safeguards regime.

I begin by emphasising that the two sets of regulations are essential to establishing our domestic regime whether we leave the EU with a deal or not. The powers to make this secondary legislation are found in the Energy Act 2013, as amended by the Nuclear Safeguards Act 2018. The territorial extent and application of these regulations is England, Wales, Scotland and Northern Ireland.

Nuclear safeguards are accounting, reporting and verification processes designed to assure and demonstrate to the international community that civil nuclear material is not diverted unlawfully into military or weapons programmes. As was made clear during the passage of the Nuclear Safeguards Act, nuclear safeguards are separate and distinct from nuclear safety and nuclear security.

The nuclear industry is of key strategic importance to the United Kingdom and our departure from the EU in no way diminishes the ambition that we have set out in the nuclear sector deal. The UK has a long and distinguished record as a responsible nuclear state and was a founding member of the International Atomic Energy Agency in 1957. The IAEA ensures that states are honouring their international legal nuclear safeguards obligations in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, the NPT. While not bound by the NPT, the UK has voluntarily accepted the application of two safeguards agreements with the IAEA: a voluntary offer agreement and an additional protocol, as defined in these regulations. These bilateral agreements will replace the trilateral safeguards agreements between the UK, the IAEA and Euratom, and ensure that we continue in our role as a responsible nuclear state when Euratom arrangements no longer apply. The ratification of these agreements was approved by Parliament at the end of last year.

To enable continuity of civil nuclear trade with our international trading partners, the Government have prioritised having in place nuclear co-operation agreements with Australia, Canada, Japan and the USA, as required by these countries. NCAs are legally binding treaties that allow states formally to recognise their willingness to co-operate with each other on civil nuclear matters.

4.30 pm

The UK has now concluded, and the UK Parliament has now approved, the ratification of these new bilateral NCAs with Australia, Canada and the US. The new bilateral NCAs will replace the NCAs that these countries have in place with Euratom, which the UK currently benefits from as a member state. The UK already has a bilateral NCA with Japan.

I want to reiterate the Government's commitment to establishing by December 2020 a regime that will be equivalent in effectiveness and coverage to that currently provided by Euratom, and which will exceed the commitments that the international community expects the UK to meet. Our approach is to establish a regime that will operate in a similar way to the existing arrangements, taking account of best practice in UK regulation-making and considering the need to minimise disruption to industry. Both the Euratom regulations and the nuclear safeguards regulations are structured to require information concerning nuclear safeguards to be supplied to the relevant entity, whether the Commission or the ONR, which the regulator may then forward, as appropriate, to the IAEA.

My department held a consultation on the content of both these and the nuclear safeguards regulations between July and September last year. In total, 28 formal responses were received. A government response to the public consultation was published on 29 November, summarising the comments received. Responses to the consultation did not suggest any major changes to these regulations.

The term "fissionable material" forms a component of "qualifying nuclear material", which is defined in the Energy Act 2013 as amended by the Nuclear Safeguards Act 2018. The definition of fissionable material in these regulations has been based on the definition of "special fissionable material" in paragraphs 1 and 2 of Article XX of the IAEA statute, on definitions.

[Lord Henley]

The second term that these regulations define is "relevant international agreements", which are defined to include six agreements. The first two were signed on 7 June 2018 and are between the UK and the International Atomic Energy Agency. They take the form of the main agreement together with an additional protocol. The other four agreements are three new bilateral NCAs between the UK and the US, Canada and Australia, which were signed in 2018, and an existing bilateral agreement between the UK and Japan, signed in 1998.

The definitions in these regulations are important, as are the nuclear safeguards regulations that this House will consider shortly, and will apply to qualifying nuclear material, including fissionable material, as defined in these regulations. I therefore commend them to the House.

Lord Redesdale (LD): My Lords, I wrote only one speech to the two SIs, so I will make only one—do I get a sweetie as well? These provisions seem necessary. The Minister mentioned that NCAs had been signed with a number of countries. Does there need to be an NCA with Euratom itself if it is representing European countries? There seems to be no mention of that in the Explanatory Notes.

Obviously, these regulations will need to come into effect, but it is rather unfortunate that we are looking at the demise of the nuclear industry at the moment. Only Hinkley Point C, the last of the new nuclear fleet, may be built, and that is in jeopardy as well.

Lord Adonis (Lab): My Lords, these are highly technical regulations and all I have to go on in seeking to scrutinise them is the debate that took place in the House of Commons on 14 January. On the issue of bilateral agreements with other nations, which are clearly vital to the handling of this nuclear material, the Minister, Richard Harrington, gave a comprehensive assurance that exactly the same agreements would be in place after 29 March as before. So that concern, which had been raised in the House of Commons, has been met.

However, in his concluding remarks, the Minister said:

"The nuclear safeguards regulations will also require operators to provide additional nuclear safeguards information to the ONR"—

the regulator—

"on qualifying nuclear material, and to the Secretary of State on certain non-nuclear materials".—[*Official Report*, Commons, Third Delegated Legislation Committee, 14/1/19; col. 5.]

It was not clear to me whether that is a significant statement or an insignificant statement because it depends on what additional material they will be required to make available to the ONR and the Secretary of State. Can the Minister tell us the nature of the additional information that will have to be made available to the ONR, and why, in the event of no deal, additional information needs to be made available to the ONR over and above what needs to be made available now? Those in the industry who are reading accounts of our proceedings may be quite keen to understand that issue.

Lord Grantchester (Lab): My Lords, once again I thank the Minister for his introduction. Although the regulations have been decoupled, my remarks, like those of the Minister, were in a comprehensive single form, but I am happy to bring forward one or two questions on these regulations.

These new regulations on fissionable material conform to and appear to be equivalent to those pertaining under Euratom. This is important for our international agreements and for confidence that the UK takes its responsibilities on nuclear safeguarding very seriously. Regarding the international agreements, it has been encouraging to see the confirmation of new NCAs with the US, Canada and Australia. The Minister will recall that anxieties were expressed during the passage of the Bill that it might not be possible to achieve them. Can the Minister allay any fears that may arise over Japan? I understand that there is already a historic agreement with Japan going back to 1998. Discussions to review it have been mentioned. Is it only a formality that talks are going on with Japan concerning the UK's confirmation on leaving the EU? Will the Minister settle any anxieties about the time it seems to have taken to review this with Japan when the other three nations have already agreed the NCAs, and allay any misgivings that may have arisen following any issues in discussions with Japan concerning new nuclear investments in north Wales?

The consultation seems to have been extremely productive. The recommendations have been taken on by the department and the regulations have been amended to be consistent with those discussions.

Baroness Altmann (Con): I hesitate to participate in this debate, given that this is a very complex issue, but I imagine that members of the public and the industry would wish to be assured that the House is scrutinising issues of such significance from the point of view of public safety. I note that the Secondary Legislation Scrutiny Committee drew these draft regulations to the attention of the House in view of the important issues of public policy.

I note from the committee's report that there will be ways in which our nuclear safeguards will be deficient after March 2019 relative to Euratom, notwithstanding that they meet international obligations. I would be grateful if my noble friend could help the House understand in what way those deficiencies will manifest themselves in the event that we leave with no deal or, if we leave with a withdrawal agreement, during the interim period—before, as I understand it, our standards will meet the Euratom standards by the end of 2020.

Lord Henley: My Lords, I hope that I can deal with most of the points that have been made in the debate by noble Lords. If I miss any, perhaps on Regulation 4, we will be able to catch up on them. The noble Lord, Lord Redesdale, said that he had only one speech for both sets of regulations but I am sure that he will want to come in again if I fail to address his points.

First, the noble Lord asked whether we needed an NCA with Euratom. I can give an assurance that an NCA is not required for these regulations. Secondly, he regretted what he described as the demise of the

nuclear industry. It is sad that last Thursday we had to make the announcement that I think he was referring to. I offered to repeat the Statement made by my right honourable friend in another place but, sadly, the House did not feel that necessary.

It is obviously a difficult situation, although I do not accept that we are looking at the demise of the nuclear industry—I think that it has a future. Being one of the world's great optimists, the noble Lord should remember that some of the problems facing new developments in the nuclear industry—and we are still committed to seeing what we can do there—are possibly down to the success that we have seen in renewables, with the costs of offshore, onshore, wind and solar coming down. That makes the costs of nuclear, for example, much harder to deal with. We would like to bring those costs down but I do not think that they are likely to drop as much as has happened in the case of some renewables. Similarly, the costs of renewables include the cost of electricity storage, which, again, is coming down. Therefore, I suspect that the noble Lord, rather than being a Jeremiah, should always take a positive approach to changes and always look on the bright side of life, if that is possible.

I turn to the noble Lord, Lord Adonis. I am grateful that he referred to the debate in another place on 14 January, and I will certainly pass on to my honourable friend Richard Harrington the noble Lord's welcome for his response to that debate, which I think dealt with most of the points that he raised. However, in my incompetence, I muddied the water and raised further points for the noble Lord. I hope that I will be able to deal with his concerns relating to additional qualifying material and the extra information required for the Secretary of State.

On additional qualifying material, all operators will provide accountancy and control plans to the ONR. That is a new requirement, which will come into effect in January 2021. The noble Lord also asked about the principal requirements of Regulation 45, which concerns the notification of receipt, production and transfer. That regulation requires an operator of a qualifying nuclear facility or other person to notify the Secretary of State of the receipt of a relevant item or qualifying nuclear material, the production, processing, derivation or fabrication of a relevant item from another relevant item or from obligated qualifying nuclear material, and the proposed transfer of a relevant item, together with details of the transferee and their location.

I turn to the process for NCAs and the questions raised by the noble Lord, Lord Grantchester, particularly in relation to Japan. I made it clear that we had concluded new agreements with Canada, the US and Australia. The situation is slightly different with Japan, in that, as I think I made clear in my opening remarks, a bilateral NCA is already in place. It will remain in place following the UK's departure from the EU and therefore it is not necessary to conclude a new one. We have had detailed discussions on this and are in negotiations to ensure that we have appropriate arrangements in place with Japan to allow the agreement to remain operable after our exit from Euratom.

I note the remarks made by my noble friend Lady Altmann on the comments from whichever committee it was regarding these orders. I give an assurance that, with these orders, we are making sure that we have broad equivalence; we will have the same protection in place as existed before.

Lord Grantchester: It appears that there may be an issue with Japan. The Minister says that there is an agreement and we do not need to do anything but also that there are discussions about whether the agreement will remain operable. Could he clarify whether there are any issues at all with Japan?

Lord Henley: I am not aware of any issues. As I said, we have an NCA in place with Japan that goes back to 1998. That will remain in effect but, obviously, we want to continue discussions just in case. If I can help the noble Lord any further I will write to him, but that will probably not be necessary.

Motion agreed.

Nuclear Safeguards (EU Exit) Regulations 2018

Motion to Approve

4.45 pm

Moved by ***Lord Henley***

That the draft Regulations laid before the House on 29 November 2018 be approved.

Relevant document: 9th Report from the Secondary Legislation Scrutiny Committee (Sub-Committee B)

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, these regulations set out the detailed legal framework for the United Kingdom's new domestic civil nuclear safeguards regime after withdrawal from the European Atomic Energy Community, Euratom. The regulations are made under powers set out in the Nuclear Safeguards Act 2018 and in the Energy Act 2013, as amended by that Act. They will replace the current legal framework provided principally by the UK's membership of Euratom. The territorial extent and application of these regulations is England, Wales, Scotland and Northern Ireland.

The regulations are linked to the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018, which we have just considered and passed, and they set out the definitions of "Fissionable Material" and "Relevant International Agreements".

As explained in my earlier speech on the fissionable material regulations, nuclear safeguards are accounting, reporting and verification processes designed to demonstrate that civil nuclear material is not diverted unlawfully into military programmes. This is distinct, as I made clear, from nuclear safety or security. Our approach is to establish a regime that will be equivalent in effectiveness to that currently provided by Euratom. The regime will operate in a similar way to the existing

[Lord Henley]
arrangements, taking account of best practice in UK regulation-making and considering the need to minimise disruption to industry.

These regulations, together with our international agreements, allow the ONR to deliver a safeguards regime that meets our international obligations from day one of exit. The ONR's capacity and expertise will build over time to be equivalent in effectiveness and coverage to that currently provided by Euratom, by December 2020. This will fulfil our policy intent and is the means by which the UK will exceed the commitments that the international community expects us to meet. Both the Euratom regulation and the nuclear safeguards regulations are structured to require information concerning nuclear safeguards to be supplied to the relevant entity, whether the Commission or the ONR, which the regulator may then forward, as appropriate, to the IAEA.

The Nuclear Safeguards Act 2018 passed through Parliament last year. This Act gives the Secretary of State powers to make regulations giving effect to the UK's new domestic nuclear safeguards regime following our withdrawal from Euratom. The 2018 Act also empowers the ONR as the regulator for safeguards. ONR already regulates nuclear safety and security.

These regulations establish the requirements on operators of qualifying nuclear facilities. This covers the records an operator is required to keep, together with the forms which they must send to the ONR, including the requirement for an accountancy and control plan. The regulations also set out the provisions for the ONR, as the new safeguards regulator, when it takes on the roles and responsibilities currently provided by Euratom. Offences, transitional provisions and requirements dealing with notifications to the Secretary of State are also set out in these regulations.

The comments received to the public consultation held on the content of these regulations and the previously discussed fissionable regulations were considered and assisted our final policy deliberations. In response, we have introduced a specific commencement date of 1 January 2021, for accountancy and control plans. This gives operators further time to produce those plans. We have introduced a new exemption for certain educational establishments holding very small quantities of qualifying nuclear material. The specific regulations that are subject to an offence now focus on the areas of the regulations where the UK is subject to international obligations.

In addition, we listened carefully to comments on transitional provisions in Schedule 4 and further developed this to support operators and ensure a smooth move from the Euratom regime to the new UK's safeguards regime. As part of the consultation, we also published an impact assessment for these regulations. A final fit-for-purpose nuclear safeguards impact assessment was published on 29 November 2018.

Good progress has been made on many of the steps required to enable the delivery of a new domestic safeguards regime in the UK. The ONR commenced parallel running of its new IT system alongside Euratom, processing and checking reports received from industry. This will provide the opportunity to identify and make any necessary adjustments before 29 March 2019. The ONR's recruitment target for the first phase of the domestic safeguards regime has been met: 16 safeguards officers are currently in place, seven more than the minimum of nine required to deliver the regime at the end of March, and four nuclear material accountants have been appointed, giving a total team of 20 in post.

In conclusion, these regulations, together with the fissionable material and relevant international agreements regulations that we just agreed, are vital for the operability of our domestic civil nuclear industry. They will ensure that the Government's commitment to deliver a new regime that will be equivalent in effectiveness and coverage to that currently provided by Euratom is met, meeting international obligations from day one of exit, building to be equivalent in effectiveness and coverage to Euratom by December 2020. This will exceed in certain respects the safeguards commitments set out in the new bilateral safeguards agreements between the UK and the IAEA. I look forward to hearing from noble Lords in detail on these orders. I beg to move.

Lord Adonis (Lab): My Lords, we are grateful to the Minister for his introductory remarks. This regulation was debated in the Fifth Delegated Legislation Committee of the House of Commons last Tuesday, and I want to raise an issue that was raised in that debate. The good news, which gives significant resource to Parliament, is that we have the inspectors that we need to ensure the continuity of functions after 29 March, because there had been concerns when the legislation was going through the House that we might not. The Minister gave the figures in his remarks. However, my colleague, Alan Whitehead, the shadow Minister, raised an issue in the Commons that was not replied to by the relevant Minister, Richard Harrington. He said:

> "The Minister said both yesterday and today that additional inspectors had indeed been appointed and that the ONR's recruitment target for the first phase has been met … As I understand the position, we have inspectors in place to carry out inspection to an international standard, but not to the level previously set out in the regime overseen by Euratom. The explanatory memorandum for today's SI states: 'It is intended that these agreements … combined with these Regulations, will allow ONR to establish a new regime which will deliver international standards from day one of exit, building, over time, to be equivalent in effectiveness and coverage to that currently provided by Euratom, and which will exceed international standards'".—[*Official Report*, Commons, 15/01/19; col. 6.]

This seems to be quite a significant issue and I would be grateful if the Minister could amplify on it in his remarks. I am not familiar with the industry, but at the moment the Government take pride—and therefore, presumably, so does the industry—in the fact that our inspection standards are above international standards.

The Minister in the House of Commons said that the continuity regime after 29 March will enable us to have inspections to the international standard but not to the existing Euratom standard. It is not clear to me, and it may not be to other noble Lords, what the difference is between an inspection to international standards and an inspection to Euratom standards. However, if it is such a good thing for our industry to have an inspection to Euratom standards, presumably that is because we believe that there is some specific

public purpose to be gained in having an inspection to that higher level, and that therefore there is some loss to the industry and the wider public interest in having an inspection only to international standards.

This is not my area at all. I do not begin to understand the difference between inspection to international standards and to Euratom standards. The Government's own impact assessment says that we wish to attain inspection to Euratom standards, but in the event of a no-deal Brexit, we will not be able to do so after 29 March. Since it has been raised in these debates, and since there clearly is a difference, I would be grateful if the Minister could tell the House what the difference is between international standards and Euratom standards, what we will be losing by having inspections only to international standards rather than to Euratom standards, and when we will achieve inspection to this gold standard—the Euratom standard—which apparently we are losing.

Lord Pannick (CB): My Lords, further to the point made by the noble Lord, Lord Adonis, this is one of the reasons why the Secondary Legislation Scrutiny Committee, under the chairmanship of the noble Lord, Lord Cunningham of Felling, stated in paragraph 14 of its helpful report published on 13 December 2018 that these regulations raise issues of public policy which require them to be drawn specifically to the attention of the House.

At paragraph 11, the committee explains that it asked the department why the Euratom safeguard standards—which are higher than international standards—could not be met on day one after exit. The noble Lord's department, BEIS, told the committee that:

> "ONR aims to have the required capacity and capability to deliver a regime equivalent in effectiveness and coverage to that currently delivered by Euratom by December 2020".

I imagine that this is a very real concern to the House. Does the Minister accept that on exit day, it will not be possible to maintain the standards currently enjoyed under Euratom, and that it will take until December 2020 to do so? If that is the case, does he really think it is acceptable?

Baroness Altmann (Con): I thank the noble Lords, Lord Adonis and Lord Pannick, for restating the issue that I raised under the last statutory instrument. It is of concern to both the House and the public. Could my noble friend outline for us in what way the regime that will exist from March 2019 will be deficient relative to the regime that exists, once we reach the Euratom standards in 2020? I understand that, as of March, we will not have the required number of trained inspectors. We have inspectors sufficient for the international standards—which are lower than Euratom—but in what way would the regime be different?

5 pm

Lord Grantchester (Lab): My Lords, once again I thank the Minister for his introduction to and explanation of the regulations before the House. These regulations were previously the responsibility of Euratom, under the Euratom treaty. Following the UK's departure from the Euratom community, the UK will take over this responsibility and extend the duties of the Office for Nuclear Regulation to include these. The tripartite agreement that pertained between the UK, the International Atomic Energy Agency and Euratom will be recast between the IAEA and the UK. It has been interesting to follow the developments needed to bring this regime, first, up to IAEA standards—this appears to be being achieved as we speak—and, secondly, up to full compliance with Euratom standards.

The Minister will recall the debates on the then Nuclear Safeguards Bill in scrutinising the plans and mapping out the pathway to achieve these standards on time and on budget. He will also recall the new voluntary offer agreement and additional protocol needed between the UK and the IAEA. Additionally, new nuclear co-operation agreements needed to be in place between the US, Canada, Australia and Japan. It is good to be able to confirm with the Minister that, despite these initial misgivings, the UK has largely been able to achieve all this. With the assistance of other noble Lords debating the regulations today, your Lordships' House made an amendment to that Bill. The Government then brought forward their own amendments in the Commons to maintain co-operation with Euratom until the UK was fully compliant with all the standards necessary. I would be grateful if the Minister would confirm whether I am correct in this recollection.

However, there are one or two issues that need to be clarified in this transition to the full UK regime. First, on the readiness of the inspection regime to start as soon as possible after exit day, the ONR has been able to recruit 20 staff: 16 inspectors and four nuclear materials accountants. Can the Minister confirm whether they will all be fully trained by the end of March, recognising that many of them already work alongside their Euratom counterparts, and whether those 20 will complete the roll-call of personnel? While the Bill was going through your Lordships' House, there was an initial estimate that between 30 and 35 would be required. I understand that the Government are confident that, from the end of March, the UK regime will be at IAEA standards. Does the Minister have a target date for the inspection regime to be equivalent to Euratom standards?

I apologise—I am just comparing my notes, having amended them in debating the previous regulations.

Secondly, there is the issue of costs. At the time of consideration of the Nuclear Safeguards Bill, these were expected to be in the region of £10 million. I understand that the cost to date, including new IT systems, is now at £28 million. This is a sizeable increase. Can the Minister assist us in understanding how this has changed so remarkably? Does that complete the costs needed to make the regime fully compliant with Euratom standards?

Having made these remarks, I am confident about and can endorse the preparations the Government have undertaken to make sure that the UK's regime will be fully compliant and fully up to standard as soon as possible following exit day, and into any transitional period that may or may not now be maintained. I look forward to hearing that the UK has achieved full Euratom standards as soon as possible.

Lord Henley: My Lords, we move to a close on the statutory instruments that I have put before the House. I will start by reemphasising, as I think it is always important to do in debates on nuclear safeguards—which it feels I have been doing for some time—that we are talking about nuclear safeguards, and I defined them earlier. This is nothing to do with either safety or security. We are grateful for the work that the ONR does on those issues and I am sure that, whatever happens, it will continue to do that job. At the moment we are focusing purely on safeguards. I made it clear that additional inspectors would need to be recruited, and I made sure they were there to deliver a safeguards regime that the noble Lord, Lord Pannick, described as "equivalent". I repeat that: we are looking for equivalence in effectiveness and coverage to Euratom, and the ONR will continue to recruit safeguards staff so that we can reach that.

It would probably also help if I said a little in response to the noble Lords, Lord Pannick and Lord Adonis, about how Euratom standards differ from IAEA standards. I also make it clear that reporting will continue from all operators from day one, as happens with Euratom. There is no change there—that is the equivalence we will look for. We have stated that our intention is to have a domestic nuclear safeguards regime equivalent in effectiveness and coverage to that currently provided by Euratom. That means a level of inspections and other regulatory arrangements that goes beyond the internationally agreed measures applied by the IAEA. Under the UK's current safeguard agreements with the IAEA, all facilities containing civil nuclear material in the UK are potentially eligible for inspection by the IAEA. It chooses which are designated for inspection; it has designated two UK facilities that it currently inspects. Euratom standards, however, are applied to all civil nuclear material in the UK.

The proposals for a future UK regime are to conduct assurance and verification activities across all civil facilities, and to all other particular locations where there is civil nuclear material, as part of a proportionate and targeted regulatory regime. The new safeguards regulatory regime will cover all qualifying nuclear materials, including fissionable materials, source materials and ores. It is crucial that the UK meets its international obligations following the withdrawal from Euratom. Compliance will underpin those international nuclear trade agreements we referred to earlier—agreements with the USA, now concluded; Canada; Japan, which dates to 1998; and Australia.

Lord Adonis: I am grateful to the Minister, who is helping the House a great deal. Have I understood correctly that at the moment the IAEA inspects—in what it regards as a proportionate inspection regime—two of the UK's facilities; Euratom inspects them all; and once we leave, only having international standards, we will inspect only some? But what we want to get to, with the Euratom standards, is its current capacity to inspect them all? If I have that right, is not the obvious point that if Euratom thinks it should have the power and ability to inspect them all, the sooner the ONR—which is, as I understand it, our domestic regulator—also has that capacity, the better? If it is not going to be until the end of 2020, let us hope to goodness that nothing happens between now and then.

Lord Henley: The noble Lord is possibly getting confused with safety and security, and thinking not only about nuclear safeguards. We are talking about only three sites, two of which are in west Cumberland—I have forgotten where the third is, but I shall write to the noble Lord. We will continue to be compliant with IAEA standards. I appreciate that, as the noble Lord said, a slightly different safeguards regime—not safety or security—is set out by Euratom. That will take a little longer, which is why we will need not only further inspectors but nuclear accountants. We will be ready to meet the IAEA standards in March and will get up to the Euratom standards on safeguards a little later.

Lord Pannick: The Minister said that it was "only" a matter of safeguards, but does he accept that safeguards are important? Will he also accept that the inevitable consequence of what he is telling the House is that, from 29 March this year until the end of December 2020, there will a diminution in the quality of the safeguards people enjoy in this important industry? Is that acceptable?

Lord Henley: My Lords, I shall be increasingly careful about what words I use when I speak in front of distinguished lawyers such as the noble Lord, Lord Pannick. I will try to avoid using "only" in future. What I am saying is that we will meet our standards in relation to safeguards. My reason for wanting to emphasise safeguards as opposed to safety and security is that one does not want to start creating anxiety as to whatever might happen in terms of safety and security. This measure is nothing to do with safety and security; it is to do with nuclear safeguards, which, as the noble Lord will know probably better than me, is a highly technical term—no doubt he would be able to explain it better than me. We will meet our international obligations in March this year. That is the assurance that I give to the House. It is why, when the Nuclear Safeguards Bill went through the House, it was important to noble Lords such as the noble Lord, Lord Warner, and others that we had the appropriate number of inspectors in place. I gave assurances then that we would have enough inspectors in place and I am grateful that we have been able to honour those commitments, for which we should praise and thank not me but the ONR.

The noble Lord, Lord Grantchester, asked whether it was the same regime. I am trying to make it clear that our aim is to establish a regime equivalent in effectiveness and coverage—the noble Lord, Lord Pannick, cited "equivalent"—to that currently provided by Euratom, but obviously they are not exactly the same. In many respects, it reflects and is based on Euratom regulation 302/2005—which, if the noble Lord, Lord Pannick, would like to study it, could be his bedside reading. These domestic regulations have been drafted to reflect the fact that they will operate appropriately within a UK regulatory and operational

landscape. They also take account of the United Kingdom's obligations under its relevant international agreements.

I think that deals with the issues that were raised, with the exception of costs, raised by the noble Lord, Lord Grantchester, to which I now have a response. Our transitional costs were estimated at some £10 million in the final impact assessment published with the Nuclear Safeguards Bill. The safeguards regulations' final impact assessment gives the higher figure that the noble Lord quoted: estimated transitional costs of £28 million. This difference does not reflect an actual increase in ONR's expected costs; the two estimates are not directly comparable, since they cover different periods. The Bill's impact assessment did not include an implementation period as part of the withdrawal agreement running to 31 December 2020 and therefore included costs only up to March 2019. The regulations' final impact assessment includes the implementation period and therefore includes costs incurred in that period too. I hope that the noble Lord will accept that explanation and I apologise for temporarily losing the relevant bit of paper.

5.15 pm

Lord Adonis: The Minister has not addressed the point raised by the noble Lord, Lord Pannick, which is that we will not reach these Euratom standards until the end of 2020. Can he confirm that there will be this 20-month period where we are inspecting only to the international standard and not to the Euratom standard? As for whether it is a higher standard, the Explanatory Memorandum says that the new regime will be,

"building, over time, to be equivalent in effectiveness and coverage to that currently provided by Euratom, and which will exceed international standards".

The noble Lord, Lord Pannick, must therefore be right when he says that inspecting only to international standards involves a diminution of current inspection regimes, otherwise it would not be the Government's objective to exceed those standards to reach the Euratom standard.

Lord Henley: I hope that the noble Lord, Lord Adonis, is not trying to frighten the horses; I am sure he would never want to do that. What I am saying is that we are going to meet the very high international standards of the IAEA—there were queries about this during the passage of the Nuclear Safeguards Bill—and that we will be there. We have different standards from Euratom and we will rise to those in due course. I do not see our nuclear safeguards regime being in any way at risk following that, but it is up to the noble Lord to make what he wishes of that.

Lord Adonis: When will we reach this Euratom standard?

Lord Henley: I will write to the noble Lord about the precise moment, but we are moving towards that in terms of the extra staff the ONR is seeking to recruit.

Lord Pannick: I am very surprised that the Minister is so reluctant to answer the question from the noble Lord, Lord Adonis, because the committee's report states in terms that his department said that the higher Euratom standards will not be reached until the end of December 2020. His department's response recognises that there will therefore be a lessening of the standards that currently apply. Why will he not just accept the obvious facts that his department has accepted in its answers to the committee?

Lord Henley: The noble Lord, too, I suspect, is trying to frighten the horses. What I am saying is that we are meeting some very high nuclear safeguards standards—nothing to do with security or safety—and we will be there in due course. We have always been clear that we will deliver on our international obligations from day one. That is what I have made clear, and we will build to Euratom standards by December 2020.

Lord West of Spithead (Lab): My Lords, I apologise for not being here at the beginning of the debate. As I understand it, these safeguards relate purely to the ability to monitor that none of the products from the nuclear industry are being used somewhere where they could make a nuclear weapon. Am I correct?

Lord Henley: The noble Lord is absolutely right and he gave a very good definition for the layman. Given his expertise, we would not dismiss him as such, but he gave a very good layman's definition of nuclear safeguards. It is important that I make it clear again that this has nothing to do with either safety or security.

Motion agreed.

Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

5.19 pm

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

That the draft Regulations laid before the House on 6 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, this instrument will ensure that legislation preventing and managing the introduction and spread of invasive non-native species will continue to function when the UK has left the EU. The cost of threats from invasive species has been estimated at around £1.8 billion per annum. Since 2008, a GB-wide strategy has been in place to deliver action to address the threats posed by these species.

The instrument is being introduced under the correcting powers set out in Section 8 of the European Union (Withdrawal) Act 2018. Principally, it makes amendments to the directly applicable EU regulation on invasive non-native species to address technical operability issues as a consequence of EU exit. This statutory instrument applies to England, Wales and Northern Ireland. It also extends to Scotland in respect of imports and

[Lord Gardiner of Kimble]
exports, and to the offshore marine area. Devolved Administrations were closely engaged in developing this statutory instrument.

The instrument maintains existing safeguards. It does not create new or change existing policy. It does not therefore put any new or greater administrative or economic burdens on business or other stakeholders. While there was no statutory requirement to consult publicly on this instrument, officials have held informal discussions with key stakeholders from different sectors in the development of the statutory instrument. Stakeholders had the opportunity to view the instrument before it was laid in Parliament and did not raise any concerns.

Some of the amendments made by this instrument are purely textual: for example, removing references in the EU legislation to the UK as an EU member state. Others make devolved Ministers responsible for a range of measures necessary to operate the existing system, such as the obligations to establish action plans or to undertake official controls.

The instrument also makes a small amendment to Section 11 of the Destructive Imported Animals Act 1932. This amendment ensures we treat EU member states in the same way as other countries with regard to the restrictions on imports of species to which this Act applies. The existing EU list of species which currently prevents and manages the spread and introduction of invasive species will continue to apply across all parts of the UK on exit day. In England, Wales and Northern Ireland, this EU list will become the list of species of special concern.

We will retain the requirement to review this list at least every six years. Any change to the list will be informed by robust scientific advice provided by the UK replacement for the Commission's scientific forum, and the underpinning risk analysis will be based on the same criteria and principles set out in the EU regulation. A decision to amend the list can only be made by the Secretary of State by regulation with the consent of the Ministers in the other parts of the UK.

The instrument also retains the obligation for Ministers to be supported by a committee and to be advised by a scientific forum. We intend to draw on the extensive knowledge and experience of the existing programme board on non-native species to support Ministers and the non-native risk analysis panel to provide scientific advice. These GB bodies will be extended to include Northern Ireland. The UK has significant expertise in invasive non-native species—including in the area of risk analysis, in which we are among the leaders in Europe. The non-native risk analysis panel will continue to draw on the expertise of highly respected scientists from the UK and overseas.

Invasive non-native species are no respecters of boundaries or borders. The UK is committed to ongoing co-operation with the EU member states and other countries after exit. This instrument retains the obligation under the EU regulation for Ministers to make every effort to ensure close co-ordination with other countries including, where appropriate, under regional and international agreements.

With regard to ensuring transparency and accountability of environmental performance, the instrument will require Ministers to report by June 2019, and every six years thereafter, on the implementation of the regulation as well as retain the duty to review and report by June 2021 on how the regulation has operated.

More broadly, of course, just before Christmas the Government published draft clauses on environmental principles and governance, to be included in an ambitious and broader environment Bill that is set for introduction next year. These clauses provide for the office for environmental protection—the OEP—as an independent, statutory environmental body. The OEP will provide independent scrutiny and advice and will hold government to account on the implementation of environmental law once we leave the EU, replacing the current oversight of the European Commission.

The Government were strongly supportive of the strict measures in the EU invasive alien species regulation when it came into force in 2015. These measures remain essential to tackle the significant threats that these species pose to our native plants and animals. This instrument will ensure operability so that the strict protections that are in place for these species are maintained when we leave the European Union. I beg to move.

Lord Adonis (Lab): My Lords, the House is grateful to the Minister for his introduction. First, since this is his department, I will raise with him an issue I raised earlier about the Order Paper. On the original Order Paper for today's business, published on 16 January, we were told that the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and the Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 would also be debated today, but then they mysteriously vanished from the Order Paper. I understand that there is some controversy surrounding those two regulations. Can the Minister tell us why they vanished and what has happened to them?

Lord Gardiner of Kimble: It is very straightforward to bat that away. They had not come out of the JCSI, and we thought that it was important that we had the benefit of the committee's view. Of course, we will need to bring them forward for your Lordships' scrutiny.

Lord Adonis: I see. Is the Minister saying that they had not completed the earlier sifting process?

Lord Gardiner of Kimble: My understanding is that they had not come out of the JCSI, and I think we would all find it helpful in our deliberations—I certainly have on these two matters—to hear what the scrutiny bodies of the House had come forward with on these instruments. It is therefore constructive that, wherever possible, we bring forward instruments which have gone through the scrutiny that we would all like.

Lord Adonis: My Lords, the Minister has made a good point, but that raises the issue as to why the regulations were put on the Order Paper at all if they had not gone through those processes. Some noble

Lords had gone to the effort of preparing for today's debates, thinking that they were coming forward. There seems to be a certain chaos in the proceedings in respect of these no-deal regulations. Every time we come to discuss them, some come on to the Order Paper at short notice, while others vanish from it. I assume that it was not unknown to the Government that they were going through this scrutiny process. Since we have many hundreds more of these regulations to come, to have some good order in how they are considered may be for the convenience of the House.

My only comment on the consultation—again, the House is concerned about who has been consulted and what advice they have given on the basis of the consultation—is that peculiar language is used in respect of it. We have another regulation today where the language is peculiar. Paragraph 10.1 in the Exploratory Memorandum on this regulation says:

"No formal public consultation has been undertaken",

in respect of this order. But it continues:

"Policy officials have held limited informal discussions with key stakeholders from different sectors, including the Invasive Non-Native Species Working Group of Wildlife and Countryside Link",

and then it lists other such organisations. Can the Minister tell the House what constitutes "limited informal discussions"? The words "limited" and "informal" are highly peculiar. Were they limited in the sense that only part of the regulations were disclosed to these august bodies, or limited in the sense that people were limited in what comments they were allowed to express in these consultations? In what respect were they "informal"? Does that mean that they were expected to keep these conversations secret, or that they were held in a pub? What does that word mean in this context?

5.30 pm

The House would expect that consultations were formal and not limited. I do not like the idea of informal limited consultation on regulations of this importance. As the Minister said in his opening remarks, we take great pride in the fact that we have very high standards of regulation. I would not expect that we would be in any way limiting or seeking to make informal consultation on regulations on matters which are of great importance. What is meant by "limited and informal"? To reassure the House that there is complete transparency, will he publish the responses given by all the bodies listed in paragraph 10.1 of the Explanatory Memorandum?

If we were doing this by the normal procedures of the House and some normal standards of parliamentary scrutiny, I would now not expect the House to approve the regulation until noble Lords had the opportunity to read the limited and informal consultation responses set out in paragraph 10.1. I know what the Minister will say, because all these regulations are being railroaded through the House. He will tell us that he is unable to make them available to us and the Question will be put. That is another abject commentary on the procedures of this House in overseeing all this secondary legislation.

Now that my expectations have been so reduced as to what we can expect of the mother of Parliaments in its scrutiny of legislation, I shall not contest the passage of the order because we will not see this limited and informal consultation, but I hope that the Minister will send to noble Lords and place in the Library of the House all the responses listed in paragraph 10.1.

In respect of the other regulations that we have coming, including the conservation of habitats and species regulations, which are clearly going through the scrutiny processes of the House, when I read the Explanatory Memorandum to those regulations, the words "limited and informal" reappeared. Perhaps I can give the Minister notice, so that we can have some better order in our discussion of these matters, that it would be very helpful if the department would publish all the limited and informal consultation responses that there have been before we have unlimited and formal debate on the regulations in the House in due course.

The Earl of Selborne (Con): My noble friend in his helpful introductory remarks reminded us that this country produced its own strategy for invasive non-native species first in 2008. That was followed in January 2015 by the EU invasive alien species regulation. When the second strategy was published later the same year, the document stated that the EU regulation,

"represents a step change in approach and requires Member States to implement a range of measures for the prevention and management of",

invasive non-native species, from which I think we can infer that the EU regulation of January 2015 upped our act and that of other member states.

Of course, invasive non-native species, whether terrestrial, freshwater or marine, can have devastating commercial effects. The question on which we have to satisfy ourselves in scrutinising the regulation and hearing that the EU destined to be retained is: are there opportunities, now that we will be separated by Brexit—if that is to happen—because we can define the area from which we expect to be protected from invasive non-native species? We are no longer thinking just about continental Europe and this country. Rather than wait for the list to be amended in future, is there an opportunity that would not have been available under the previous administration to start looking at the list of invasive non-native species from a totally GB perspective?

Baroness Parminter (LD): My Lords, I thank the Minister for his opening remarks and for agreeing to a meeting with myself and the Labour Front Bench prior to the introduction of this statutory instrument, given that it is the first of what we know will be many for Defra. As might be expected in those circumstances, we on these Benches regret the necessity of these statutory instruments should we exit the EU. However, we support the statutory instrument's intent because controlling non-native invasive species is important for those of us who care passionately about biodiversity loss, which non-native invasive species are a primary means of achieving, and the cost to the public purse.

I will touch on a number of points for clarification. First, the preamble of the invasive alien species regulation, which frames the overall intent and ecological context of the regulations as they stand and therefore guides

[Baroness Parminter]
the implication of any future policy decisions, is not included in this statutory instrument. Can the department say why? I imagine the Minister will say that it is because of the expectation of a forthcoming environment Bill, on which we have heard warm words from the Secretary of State about the inclusion of overarching environmental principles. Of course, this House cannot see that Bill at the moment and therefore cannot be assured that critical matters in the preamble to this statutory instrument, such as the precautionary principle, will be a fundamental building block in it.

That point is particularly important given a letter sent by the noble Baroness, Lady Goldie, to my noble friend Lady Bakewell of Hardington Mandeville—she cannot be in her place today—in which the noble Baroness said: "Policy and decision-makers are likely to want to have regard to supporting material, such as recitals and preambles, to assist them in addressing questions of how policy might be made and how decisions might be taken in future". Therefore, we as a House are beholden to ask the Minister to explain precisely why the preamble was removed from the regulations.

Secondly, as the Minister stated, there is a clear transferral of functions from the EU's committee on invasive alien species and the forum, both of which are independently constituted bodies for the specific purpose set up in the regulations. It would be helpful if the Minister could say a few more words about who in our domestic setting will take on those duties because they are particularly rigorous in terms of both scientific expertise and data processing capacity. I would appreciate more information about that.

Equally, the Minister kindly made it clear that there will be a ministerial duty to ensure close co-operation with European partners and other countries on non-native invasive species. As he rightly said, both flora and fauna are not singularly in our country, but are transported on the wind and via other mechanisms to and from the European mainland, so we need that level of co-operation. Critical in that is the European Union's invasive alien species information system. Clearly, the Minister cannot say at this stage whether we will have access to that critical system, which collates information about non-native invasive species from across the continent, but the department is obliged to say what domestic route we might take to replicate that remarkable database if we do not.

Governance is also an issue. The Minister was very clear that the responsible authorities will have a duty to report, but the overarching question is: who will they report to? He mentioned the office for environmental protection, which is as yet unconstituted because it will be introduced under the forthcoming Bill, and said that the responsible authorities have a reporting duty. As it stands, that office has no capacity to hold the Government to account; therefore, the systems currently in place for the European Commission to hold the Government to account will not be replicated in the processes and procedures in this statutory instrument. Equally, as other noble Lords may comment on, we are not expecting the office for environmental protection any day soon, given that we have not even had the legislation yet. So there is a question about how we are going to manage the reporting in holding the Government to account in the meantime.

Finally, because there are not significant costs to private companies, there has not been an impact assessment for this statutory instrument. Yet the Explanatory Notes make it quite clear that there will be a cost to the Government and public bodies, although it is below the plus or minus £5 million threshold. Given that this is the first statutory instrument—there will be many—there will clearly be significant costs to the Minister's department in delivering the new mechanisms and bodies to deliver the levels of safeguards we need for our environmental protection in this country. I hope the department has—I am sure this is not the right term—a running tally of costs, given that there is no impact assessment that we can see. It is important that we know the costs to the Minister's department, which does not have a significant budget, and that it will have the resources in future to deliver the services that our environment requires.

Baroness Young of Old Scone (Lab): My Lords, I add to the welcome from the noble Baroness, Lady Parminter, for the many happy hours we will spend together with Defra on statutory instruments—this being the first—over the next few weeks and perhaps longer. Many of the issues I will raise will be a common thread in several other statutory instruments as they come forward.

When I was chairman of Natural England, I was always taught that 10% of introduced species survived, 10% of those then bred, 10% of those species increased and 10% of that caused a problem. It was a very small number of introduced species that in the end caused huge problems, but the difficulty at each stage was knowing which 10% were going to be the culprit—so this is a really important piece of legislation.

I share the concern of the noble Baroness, Lady Parminter, about the replacement bodies. We have to set up our own supervisory committee and scientific forum. It will be interesting to hear from the Minister when he thinks they can be established by. I share the concern about the office for environmental protection not yet having had an airing in the environment Bill and therefore not being established in time, should we need it on 29 March, and its powers not being clear. There was considerable welly, if I can use that technical term, behind our duty to report and account to Europe, because the Government could be put into infraction and receive considerable fines if they were not performing to the requirements of the regulation. We will no longer have that requirement, so I am keen to hear from the Minister how he feels the discussions are going on the environment Bill and powers for the office for environmental protection. This will come up with many Defra statutory instruments, so it would be useful to hear quite soon.

The enforcement regime was consulted upon last year, and we need a revised system of enforcement in place by 29 March. Can the Minister bring us up to speed on that?

I also have some concerns about the scientific forum if it represents only UK-based scientists. In the past we had the breadth of EU knowledge to draw upon.

That has implications. I have always been convinced that gathering together scientific advisers and Ministers in Europe achieved a level of ambition in environmental protection that the countries standing alone probably would not have had. Can we hear from the Minister how the Government will track EU best practice and a commitment that they plan to aspire to EU-wide best practice after we leave?

My understanding is that this is an administrative statutory instrument and that a second one on the same issue is due to come forward to deal with implementation, enforcement and permitting. Can the Minister tell us when that is due to be laid if it also has to be in place before 29 March?

There is of course unfinished EU business. The noble Earl, Lord Selborne, talked about the EU regulation on preventing damage from non-native and alien species that came into force in the UK in January 2015. I understand that we have not yet set penalties under the EU regulation, which was due to happen by January 2016; nor have we established an action plan for widespread invasive species or established a surveillance system to monitor newly introduced species, both of which were due to happen by February 2018. Do the Government intend to finish this unfinished businesses and to meet proper standards?

5.45 pm

Lord Teverson (LD): My Lords, one of the privileges I have in this House is to chair your Lordships' EU Energy and Environment Sub-Committee. We were very grateful to the Minister for giving evidence for the Brexit and biosecurity report we produced, and part of biosecurity is invasive species. One thing that particularly stood out for the committee was the cost of getting it wrong in this area, with the example given of the 2001 outbreak of foot and mouth disease: it cost us some £8 billion to solve that crisis over many weeks, to say nothing of the misery caused to the farming community. As we have not yet managed to debate that report—and I suspect we will not do so for some months—perhaps I could ask one or two questions that came out of it concerning invasive species.

My first question is on notification, which has been touched on by other Members. The Minister said that, once we leave the EU, this would be a responsibility for the Secretary of State. But what will happen during the implementation period, if there is one, and after that in terms of the divergence of the European list that we have at the moment? Will we just copy that current list when we start afresh as a third country? But that list will change rapidly over time, so how will we deal with that divergence, particularly when it comes to border control?

On border control, at the moment, one of the fundamental building blocks of protection is an IT system called TRACES, which concerns the transfer of animal products, animals and vegetable products, and whatever bugs and insects they happen to have with them. Are we still looking to try to integrate that system and use it ourselves? Post Brexit, particularly if there is no deal, how will we replicate IT systems for the import and export of these types of materials? That is absolutely fundamental to being able to control the management of this.

We were shocked—and shocked is the right word—by one thing that the Minister from the other end, George Eustice, told us when he appeared before us. We suggested that, if there was no deal, we would have huge border issues around transit times. The Minister said that, in that case, the phytosanitary checks would not be done. That is a pretty dangerous approach, to be honest, and one that is, I suspect, contrary to WHO rules—to WTO rules, sorry; although perhaps it may be contrary to WHO rules too. Can the Minister help me understand how we will approach phytosanitary controls, particularly in the case of no deal—an option that the Government have not taken off the table?

On the island of Ireland, there is clearly no barrier or sea border—ineffective as that might be against certain things, as my noble friend Lady Parminter said when she talked about species coming across the channel. But our committee felt strongly that Ireland as an island should be treated as a single econological area, as it is at present, to some degree. I would be interested to hear the Minister's view on that. A lot of trade goes between the two parts of Ireland but obviously there are no natural barriers at all.

Lastly, I am interested in reference laboratories. I do not know whether they come into this area—they certainly come under biosecurity. I am interested to hear from the Minister whether we should be concerned about reference laboratories in terms of invasive species. This is an area where, as the Minister says, we have great expertise, but it covers only certain areas that other parts of the European Union also cover. Will we up our game through Defra funding to be able to ensure that our scientific and research base is sufficient for this area?

Viscount Ridley (Con): My Lords, I walked through Hyde Park this morning and saw three invasive alien species: Egyptian geese, ring-necked parakeets and, of course, grey squirrels. That reminded me that there is quite a gap between the way we talk about the issue in this place as mainly a bureaucratic issue of getting the right regulations, committees and quangos in place, and what is actually needed on the ground, which is to control and, where possible, eradicate these species. The grey squirrel is doing terrible harm to the position of the red squirrel in this country. Will my noble friend confirm that, in this case, we are not changing policy at all and this is a simple tidying-up exercise, and what needs to follow is more effort going into actually doing something about these creatures?

Baroness Jones of Whitchurch (Lab): My Lords, I refer to my interests as set out in the register. I am grateful to the Minister for setting out the intention of this SI so clearly and for meeting with us prior to today, and to all noble Lords who raised important questions about the consequences of this SI. I share the concern raised about the scale and outcome of the consultations that allegedly have taken place. I agree that it would have been useful to have known the outcome because it might well have informed our debate this afternoon. But I pay tribute to the Minister, who I know takes a lead on this subject in the department. I know that he is passionate about the importance of effective biosecurity measures in the UK and he has

[Baroness Jones of Whitchurch]
been assiduous in his role in that. I know that he will share that expertise in his response to the many questions raised today.

Undoubtedly, biosecurity issues are critical to protecting animal, plant and human health, which in turn protect our environment, economy and food supply chain. As we know, invasive species alone already cost the UK economy at least £1.7 billion a year. Past outbreaks of diseases imported from overseas have killed millions of animals and trees, with new fears on the horizon including ash dieback and African swine fever. Those examples illustrate just how important biosecurity is and the devastating impact that animal and plant diseases can have if they are not controlled. But it is also true that we cannot tackle biosecurity issues alone. We have benefited in the past from EU data-sharing and collaboration and we will continue to need that cross-border liaison if we are to keep our flora and fauna safe in the future.

We debated the widespread consequences for the environment of leaving the EU during the EU withdrawal Bill, and many of those issues remain unresolved. It is a concern that will apply to this SI as well as many others that we will debate in the weeks and months ahead. At this time, with no deal on the horizon, there is a real risk that we will crash out of the EU on 29 March without a transition period. In those circumstances, as several noble Lords have said, we face a real governance gap as there will be no independent authority to which reports on actions on invasive species can be given and any UK biosecurity failings held to account. The promised office of environmental protection, which is supposed to replicate the functions of the European Commission, will not be operational until at least 2020 and we have yet to determine its precise duties, so will the Minister explain how that governance gap will be filled in the interim? Is it intended to revisit this, and other SIs that will also lose out from a lack of governance, to add the oversight of the OEP once the environment (principles and governance) Bill is passed?

In this SI, the obligation to report to the European Commission by 1 June 2019 and every six years thereafter is replaced by an obligation for Ministers to make and publish a report on the same timescales. That is all well and good, but where will those reports go and who will assess their validity? Does the Minister recognise that it is not acceptable simply to publish a report without any independent scrutiny of it, or is it assumed that we will have to rely on our good friends ClientEarth to take the Government to court when there are perceived failings?

I will revisit the EU environmental principles and preambles which we also debated at length in during scrutiny of the EU withdrawal Bill. They set a very important context for the scrutiny of this SI, especially as the EU invasive alien species regulation constitutes a key manifestation of the principle of preventive action. The noble Baroness, Lady Parminter, praised it today. As the Minister will know, Greener UK has expressed concern that the preamble of the IAS regulation is not included in this SI. It quite rightly makes the point that the preamble has a significant purpose in framing the intention and ecological context of the regulation's articles, thereby guiding its implementation. Indeed, during the passage of the EU withdrawal Bill, the Government clarified that the future use of preambles and recitals is key to ensuring that the withdrawal Act meets its aim of providing legal certainty and stability within our domestic statute book. The Government also said that policy- and decision-makers are likely to want to have regard to supporting material, such as recitals and preambles, to assist them in addressing questions of how policy might be made and how decisions might be taken in future, so they ought to be in SIs such as this so that we can be assured that they apply.

Greener UK has also advised that unless the letter and spirit of domestic legislation reflect this core focus in future, we would fail adequately to reflect Article 8 of the Convention on Biological Diversity domestically. Can the Minister tell us why these essential principles and provisions have been omitted in the transposing process? Will he commit to addressing this omission to ensure effective transposition in future?

Turning to the UK structures set out in this SI, we are concerned that the EU structures and governance mechanisms currently in place are not simple or straightforward to replicate domestically; for example, where decisions required for the effective application of EU regulations and directives are currently made by Ministers from the 28 EU member states, with all that breadth of knowledge and input, this SI will assign that role to Ministers from just the three UK countries. On the one hand, we are losing expertise from across the EU and, on the other hand, there is an assumption that the devolved Administrations will co-operate seamlessly. Can the Minister reassure us that mechanisms will be in place on day one after exit day to ensure full co-ordination between the devolved nations?

We are also concerned about the interplay between devolved and reserved competencies, given that each part of the UK has responsibility for its own biosecurity but also contributes to the UK's overall biosecurity. Does the Minister agree that it would be undesirable for an invasive non-native species to be legally imported and/or kept and traded in one part of the UK while those activities were restricted in another part? Does the Minister share my concern that a lack of internal border controls could undermine the goals of one or more of the UK's Administrations if differences were allowed to develop?

At the same time, we are concerned about whether Defra's proposal to replace current access to the EU IAS scientific forum with a UK forum risks creating a knowledge and data gap—another issue raised by my noble friend Lady Young. What assessment have the Government made of the expertise and data-processing capacity of the UK agencies and organisations that will take over these new duties? Also, which organisation will gain responsibility for implementing the invasive non-native species legislation after the UK leaves the EU, and what checks will be put in place to ensure that it has the relevant expertise and resources?

6 pm

Perhaps I may now address the post-Brexit relationship with the EU, which this SI omits to define. As we have argued, the UK currently benefits from EU-wide

regulation, with intelligence-gathering, disease alerts and research all being undertaken at a European scale. After Brexit, the UK will no longer be part of this system. Tackling invasive non-native species in a cost-effective manner is intrinsically a cross-border undertaking, given that these organisms do not respect national boundaries and can enter the UK via land, sea or air.

A recent study identified 47 pests and diseases present in Europe which, if they got into the UK, would cost over £1 billion to clean up. Therefore, what happens in Europe is still of great interest to us. Geographical proximity means that the EU will always be a key source of biosecurity risk to the UK, so shared intelligence and continuing co-operation post Brexit will be essential.

In its excellent report, the House of Lords EU Energy and Environment Sub-Committee urged the Government to maintain as close a relationship as possible with the EU on biosecurity. I pay tribute to the noble Lord, Lord Teverson, and his committee for their work on this issue. They concluded that the most expedient mechanism would be to ensure ongoing access to the EU IAS information system—a point echoed by the noble Baroness, Lady Parminter. Can the Minister confirm that the Government intend to negotiate continued participation in as many of the EU's notification and intelligence-sharing networks as possible, including continued access to the EU IAS information system?

I turn to the trade implications of this SI. As the Minister knows, biosecurity hazards are a constant concern for British agriculture and wildlife, with hundreds of threats intercepted at the border each year. Infections transmitted from abroad, such as foot and mouth and Dutch elm disease, have cost the country billions, and alien species such as signal crayfish and grey squirrels are contributing to the decline of native animals and plants. As trade is the most significant pathway whereby invasive non-native species are moved around the world, the appropriate management of international trade to reduce the risk of invasion via this pathway is particularly relevant, given the likelihood of new UK trade deals being struck post Brexit.

The explanatory document states that there is no policy change, but this SI will enable the UK to establish its own lists of restricted species both by removing items on the EU lists and by adding items where doing so would improve the UK's biosecurity. However, we need to be clear about the terms on which changes to those lists will be made. The ability to secure new trade deals must not be allowed to compromise the UK's biosecurity. Therefore, can the Minister outline the measures that are in place to ensure that any future trade deal does not lead to new uncontrolled pathways for invasive non-native species to enter the UK, or to the UK's becoming an exporter of non-native invasive species to other nations? Meanwhile, the EU is likely to remain the UK's largest trading partner, so what assessment have the Government made of the implications for the UK's ability to trade with the EU post Brexit of removing organisms that are on the EU lists and adding items that are not on the EU lists?

The outcome of last year's consultation on an enforcement regime for the invasive non-native species regulations is still awaited, as has been commented on. It is clear that significant work remains to be done to ensure that the UK has a functioning system in place for monitoring, inspection and enforcement by the time we exit the EU, potentially leaving the UK's biosecurity compromised if it is not. How confident is the Minister that this work will be completed by 29 March 2019, when it would be needed in the case of a no-deal Brexit? I look forward to his response.

Lord Gardiner of Kimble: My Lords, I thank noble Lords for their considerable contributions on a subject that is enormously important. Picking up on what my noble friend Lord Ridley said, I emphasise that there are no policy changes; this is about the operability of this important secondary legislation. I also thank the noble Baronesses for their kind remarks: yes, I am ferociously exercised about this matter because I have seen at first-hand the damage to water courses, trees, flora and fauna that the arrival of these species has caused.

I say to my noble friend Lord Selborne that, yes, there are opportunities—as the noble Lord, Lord Teverson, suggested—which often relate to the speed of implementing biosecurity measures. The Spruce beetle has been discovered in woodland in Kent, for instance; it is about how quickly we can act to eradicate an arrival. These are tremendously important issues.

I say to the noble Lord, Lord Adonis, and the noble Baroness, Lady Jones of Whitchurch, that this is about operability. There is no statutory requirement to consult because it is literally a question of changing a reference to "member state" to "responsible authority", for example. This was certainly done properly in Defra, with stakeholders that we thought would be interested. With enormous respect to the noble Lord, consulting extensively and formally on a matter of operability—we are maintaining operability so that the policies are incorporated in what we retain—rather than on the nature of these obviously essential issues is not only unnecessary but disproportionate. If this was a discussion about the formal nature, consultation would, I agree, be necessary, but this is precisely about operability. There was actually no statutory requirement to consult, but we thought it right to engage with stakeholders, who in fact had no comment to make. However, I am on notice that in any future exercises with Defra, I must be ready for limited, informal commentary. I assure your Lordships that we want to have an open discussion with stakeholders on this issue.

I turn to the many other issues that have been raised. The noble Baroness, Lady Jones—

Baroness Jones of Whitchurch: I am sorry; I do not intervene often but this is important because it will have an impact on forthcoming SI debates. My understanding was that a process would be set up whereby, in advance of all the SIs, a group of interested NGOs and other stakeholders would be brought together so that they could not only make policy changes but iron out any concerns about omissions in the SIs, inappropriate transpositions or issues that been neglected.

[Baroness Jones of Whitchurch]

The Minister has heard me say that Greener UK is still raising concerns about the legislation's having missed out some of the requirements. The preambles were one issue, but there were also other concerns. He does not necessarily have to deal with all that now, but I am concerned that a process that was meant to iron things out does not seem to be working, given that we are being alerted at this late stage to the ongoing concerns of organisations such as Greener UK.

Lord Gardiner of Kimble: I am very mindful of that and I do not want to be dismissive to any noble Lords about the importance of dialogue, consultation and so forth. However, I wanted to raise another point that came up, raised particularly by the noble Baronesses, Lady Jones of Whitchurch and Lady Parminter, about appropriate bodies, and to give a little more detail. There were many questions on which I may want to write in greater detail if there are points that I do not cover in full.

We are proposing that the programme board on non-native species takes over the role of the committee, while the GB non-native risk analysis panel will take on the role of the scientific forum. Both the programme board and NRAP are supported by the GB non-native species secretariat. The remit and membership of the existing GB bodies will need to be expanded to include Northern Ireland, as I mentioned. There is already a close working relationship between existing GB bodies and Northern Ireland. This statutory instrument places obligations on Ministers, who will ultimately have responsibility for taking decisions—for instance, to add a species to the list of species of special concern—and they are obliged to have a committee to support them and to have a scientific forum providing advice.

On the question of providing expertise, which the noble Baronesses rightly raised, I say that we in this country have significant expertise in invasive non-native species. In fact, I am very proud to say that it is acknowledged that we are considered one of the leaders in this respect. We have had a comprehensive framework for assessing the risk posed by these species since 2007 and that framework strongly influenced the EU's approach, including its risk methodology, when the EU invasive alien species regulation came into force in 2015.

The analysis panel is chaired by Professor John Mumford of Imperial College, London. The panel's members are highly respected in the UK's scientific community, including experts from Imperial College, Sheffield University, the Scottish Association for Marine Science, the Animal and Plant Health Agency and the Centre for Environment, Fisheries and Aquaculture Science. Through that body, we draw on expertise from scientists around the world as well as the UK.

On collaboration with the EU, I say to all noble Lords that this instrument is designed to make the matter operable but, going beyond that in terms of the requirements, of course we have obligations relating to invasive non-native species under many international agreements to which we are, as I know for myself, very active participants—for example, the Convention on Biological Diversity, the convention on wetlands of international importance, especially waterfowl habitats, the Ramsar Convention, the Convention on the Conservation of European Wildlife and Natural Habitats and the Berne convention. We are not going to remove ourselves into a silo.

As I said in my opening remarks, we have worked very closely with the devolved Administrations. I think the references within our own United Kingdom are absolutely right. That is clearly important, for all sorts of reasons that I have already described. Borders and boundaries are no respecters when it comes to pest diseases and invasive diseases, so we will be working extremely hard and effectively on this. Scotland is not part of this exercise because it wants to bring forward its own SI under its own arrangements, but it is essential that we can all rely on these UK bodies to help us to come forward with the right mechanism. We are bringing back all the existing list. I do not see this as a diminution. As my noble friend Lord Selborne says, there may be opportunities which we need to think of, particularly in terms of not letting invasive species in. That is absolutely paramount. The noble Lord, Lord Teverson, referred to this in terms of border security, which is vital. We will be replacing TRACES because we want to bring forward our own arrangements, but biosecurity at the border is absolutely essential. I think the point that my honourable friend in the other place was referring to is that in our analysis of day-one readiness—the early days after our exit— goods that come in from the EU would be on the same risk basis. But I am absolutely clear that biosecurity is of vital importance for trade; the noble Baroness mentioned trade issues. This is why we are subject to international obligations as well.

6.15 pm

There were a number of points made by the noble Baroness, Lady Jones of Whitchurch, about obligations. Yes, member states are obliged to report. This obligation will be replaced by an obligation on Ministers to publish a report, drafted by the relevant bodies, on the same six-year cycle. It is intended that this report will be made publicly available on GOV.UK, enabling widespread scrutiny, in the same way that this debate has moved beyond the operability of these matters and into how important it is to have regulation, rigour and expertise with invasive species. Therefore, at no time will there be a position where the Government will not be held to account—looking particularly at your Lordships.

It is important to say that in the interim between exit day and the launch of the OEP, we will set up a body, headed by an independent expert, to receive complaints about breaches of environmental law. Once the OEP is statutorily established, it will have the power to review and take actions on any breaches which occurred from exit day. It is obviously the Opposition's responsibility to hold the Government's feet to the fire, but I hope that your Lordships will accept our bona fides as to absolutely understanding the importance of invasive species, environmental protection and the consultations that will take place—consultations that Members of your Lordships' House and elsewhere will doubtless contribute to.

I am very conscious of what the noble Baroness, Lady Young of Old Scone, said about when are we going to come forward with our own "business as usual" matters on this. I have a note somewhere which recalls that we are expecting the order containing the enforcement regime to be in place by March of this year. We need to get a move on, but all I can say is that we like to think of ourselves as a world leader, and I will be pushing on this because it is important. To have everything in order is part of our responsibility.

The noble Baronesses, Lady Parminter and Lady Jones of Whitchurch, raised the issue of access to the European Commission's intelligence-sharing system. Future access is dependent on the outcome of negotiations with the European Union and on our future relationship. Noble Lords would expect me to say that; it is the truth. This system enables critical information on new incursions. Whatever comes forward, we want to ensure that we collaborate internationally, within Europe, within the whole United Kingdom and within the parts of the United Kingdom, with the expertise that we have, and ensure that that collaboration arrests the progress and stops invasive species. We need, and will develop, contingency plans to mitigate the impact of losing access to that system. We acknowledge that it is an important system and we are negotiating on it.

A number of other points were made. The noble Baroness, Lady Jones of Whitchurch, mentioned the devolved Administrations. I hope I explained that given the intentions from all the very constructive discussions that have been had with all parts—we have had very collaborative discussions in Wales—I cannot imagine any circumstance in which we would all wish to diverge. It would not be possible to manage it if there were that divergence, so I see us working together in the forum.

Again, on the point made about Ireland, on that landmass we need to work with our friends in the Republic, and I know that Northern Ireland will want to work closely on it. Bringing together all the parts of the United Kingdom with the UK expertise in our grasp is important. The island of Ireland, with its two parts, has fewer invasive species than we do in Great Britain, so again it is in its vital interests to be absolutely clear about biosecurity and the pathways for this. I say to the noble Baroness, Lady Jones of Whitchurch, that we are bringing over the list and the only way in which we would wish to change it would be if there were pressing scientific advice as to why that should be the case.

The noble Lord, Lord Teverson, mentioned biosecurity and the evidence and checks. I will look at his remarks but we certainly see border control and the infrastructure of borders as somewhere where biosecurity will always be important. It is one area which I am always very concerned about. We need to make sure that we have that. Regarding the reference labs and research, we have some outstanding scientific endeavour. We have not only world-class reference laboratories in our midst but some of the world's top scientists at our disposal —I often meet them. Again, worldwide and European collaboration in this area will be essential.

We recognise that the preamble to the EU regulation contains critical information about its underlying principles—for example, on the precautionary principle and the inclusion of taxonomic groups of species in the list as species of Union concern. Retained EU legislation will be construed in the light of the preamble after leaving the European Union. The draft clauses of the environment Bill will also introduce a set of environmental principles that will be used to guide future government policy-making and lead us towards a greener future. I think we all share in wanting that.

I have a feeling that there may be more questions but I will look at *Hansard*. As I said, this debate has extended into some interesting areas which are essential for our biosecurity in terms of invasive species and beyond. However, the purpose of this provision is to make us operable with no changes of policy. Clearly, any future changes of policy would need to be considered and I am sure that your Lordships would want engagement, as I would. This instrument is about operability and I therefore ask the House to approve the Motion.

Motion agreed.

Floods and Water (Amendment etc.) (EU Exit) Regulations 2019

Motion to Approve

6.25 pm

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

That the draft Regulations laid before the House on 5 December 2018 be approved.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the instrument before your Lordships makes only technical changes to retained EU law to ensure that floods and water legislation will continue to function when the UK has left the EU. I emphasise that the instrument corrects technical deficiencies and creates no new policy. In addition, we have consulted with the devolved Administrations on the instrument, and they have given consent where appropriate.

Part 1 makes introductory provision about the citation, commencement, territorial extent and application of the instrument. Part 2 makes operability amendments to some primary legislation, such as the Water Act 1989, which applies to England and Wales only. The amendments replace the words "EU obligation" with "retained EU obligations" to reflect the change after the exit from the EU. They also address the use of the term "environmental objectives", which is defined in the water framework directive. The amendments instead define that term by reference to our domestic legislation which implements the water framework directive rather than the EU directive itself.

Part 3 amends technical deficiencies in secondary legislation, and I will highlight the key types of amendments. Regarding the sludge regulations, Regulation 6 amends the 1989 regulations to include a reporting obligation for the Secretary of State and Welsh Ministers on the implementation of the regulations every three years.

[Lord Gardiner of Kimble]

Regulation 7 amends the urban waste water treatment regulations, which apply to England and Wales only. As well as changing references to "EU law", so that they now refer to "retained EU law", a requirement is included that relevant environmental reports are to be published by the Secretary of State and Welsh Ministers.

Regulation 8 deals with water fittings regulations, which extend and apply to England and Wales only.

The amendment in Regulation 9 to the drinking water undertakings regulations, which again extend to England and Wales, changes the word "implements" to "implemented", to reflect that there will be no future requirements to transpose EU directives after exit day.

The Water Industry (Special Administration) Rules are amended by Regulation 12. The special administration regime is an insolvency regime specifically created for water and sewerage companies. It is a reserved matter, but the regime only applies to England and Wales, as Scotland and Northern Ireland have different water industry structures.

The silage, slurry and agricultural fuel oil regulations apply to England only. They are amended by Regulation 13 to allow products such as silos and slurry tanks that are of equivalent standards to the British standards to be installed, wherever they are manufactured.

On the question of the Incidental Flooding and Coastal Erosion (England) Order 2011, Regulation 14 amends the order, which applies to England only. As with the Water Act 1989, it changes the definition of "environmental objectives" so that it relates to our domestic legislation which implements the water framework directive rather than to the directive itself, which will not be part of our law.

Regulation 15 amends the Bathing Water Regulations, which extend to England and Wales. The amendments correct cross-references to the bathing water directive which would be deficient on exit. A requirement is also included for the Secretary of State and the Welsh Ministers to publish a report each year containing monitoring results and other information about bathing water season.

Similar amendments to deal with cross-references to EU legislation are made to the Nitrate Pollution Prevention Regulations by Regulation 16. These apply to England only. An obligation is also placed on the Secretary of State to publish reports on the implementation of these regulations.

Regarding the flood reinsurance regulations, which are dealt with in Regulation 17, this is a reserved policy area and this amendment covers all of the UK. A minor technical amendment is made to the reference on obligations on the scheme administrator arising from "directly applicable" EU legislation. This will instead read as the obligations arising from "retained direct" EU legislation.

6.30 pm

The water supply and private water supplies regulations apply to England only. The amendments in Regulations 18 and 19 fix cross-references which are deficient. Provision is also included so that the Secretary of State has an obligation to produce and publish reports on drinking water quality.

Regulation 20 amends the England and Wales regulations which implement the EU water framework directive. Many of the corrections replace the term "EU instrument" with "retained EU law". These amendments cover England and Wales, reflecting the fact that the two countries share a single set of regulations implementing the directive. The Welsh Government agree to this approach. This policy area is fully devolved for Northern Ireland and Scotland, but we have made very similar operability corrections to the separate regulations governing the cross-border river basin districts of Northumbria and Solway Tweed, which are shared between England and Scotland. This approach was agreed by the Scottish Government.

The inserted Schedule 5 makes a series of modifications to the water framework directive and two other connected directives so that references to those directives continue to work properly after EU exit. These include modifying references to "member States" and to EU legislation. There are also some necessary omissions such as articles about reporting to the Commission and to the Commission resolving issues between member states.

The two sets of water abstraction regulations referred to in Regulations 21 and 22 extend and apply to England and Wales. Regulation 22 fixes cross-references to terminology used in the water framework directive to make it operable.

The regulations amending and revoking EU decisions extend and apply to all the UK and have been drafted in liaison with the devolved Administrations and with their consent.

Having taken your Lordships through each element of the regulations, I hope that you will understand why I want to emphasise that they are about fixing technical deficiencies in the floods and water legislation to ensure that it continues to operate effectively. I emphasise again that this instrument does not introduce new policy and preserves the current regime for protecting and improving the water environment. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I thank my noble friend for introducing so eloquently and thoroughly the statutory instrument before us. Probably the most relevant of my interests is that I work with the Water Industry Commission for Scotland, which is the Scottish water regulator. I have a number of questions that I would be grateful if my noble friend could address in summing up.

Article 20 of the water framework directive says that any change to standards, values, substantive lists and best environment practice should be made only in light of technical and scientific progress. While we have been members of the European Union, we have benefited from scientific and technical expertise being subject to control and review to make sure that we comply with the water framework directive, which was the mother of all directives, with daughter directives under it—I should declare an interest also in that I was an MEP when the nitrates directive was passed, and I do not think that anyone imagined that setting the level of nitrates in water in the way that we did would be quite so prohibitive in areas such as East Anglia, where nitrates already exist in high levels. What will be the procedure if such changes are made, and how will

they be tested against the best scientific and technical advice? I share the concern expressed in our debate on the previous statutory instrument that we have not had the environment Bill setting up the office for environmental protection. There is further concern that it will not come into effect until 2020.

I therefore have two concerns. First, what scientific and technical expertise will be in place to make sure that any changes are monitored against the best possible scientific advice? I refer back to the terrible reputation we had in the 1980s as the sick man or dirty man of Europe. We all have to accept that not just water companies but all of us, as water customers, have paid huge amounts to actually have some of the cleanest rivers and bathing waters in Europe. Obviously, we do not want to jeopardise that.

My noble friend may have addressed my second concern, which relates to Regulation 14, which he said has had cross-border agreement—certainly, the provision relating to the Northumbria river basin has been agreed by the Scottish Government. But it has been put to me that, by doing what the statutory instrument seeks to do, it is reducing the level of compliance with the water framework directive, and I would like to be satisfied that that is not the case. I want to make sure that we are not reducing the level of compliance in relation to the Solway Tweed river basin and the Northumbria river basin. I should declare another interest in that I think I might be a customer of Northumbrian Water during my holidays. Obviously, we want to get that right.

I welcome the specific reporting requirements, which the Minister set out, in relation to the results and grading of assessments and description of measures taken or proposed to be taken. These relate to Regulation 7(3), which amends the urban waste water treatment regulations 1994, Regulation 15, which amends the Bathing Water Regulations in respect of annual reports, and Regulation 16, which amends the Nitrate Pollution Prevention Regulations 2015. So some very good reporting systems are being made public. However, although these reports are being made public, the draft statutory instrument makes no provision for these reports to be reviewed if any failures emerge from them. Such failures would currently be addressed by the European Commission. My question is: what body will deal with any future potential failures? If the reports are made public, would it be a scrutiny committee such as that chaired by the noble Lord, Lord Teverson? What mechanism will there be to make sure that these are reviewed?

An example that might be helpful to the House and to the Minister is that, if the UK can grant derogations under the directives, as we can, the statutory instrument provides that these can be decided and granted by the Secretary of State. Currently, these decisions are also reviewed by the Commission to determine whether they are valid derogations and meet the requirements of derogations. The statutory instrument is silent as to what the review of derogations will be in future. I would like to have the satisfaction of knowing that there is going to be a review in place and what that review will be.

My final concern relates to a comment that the Minister made. He will be aware of my concern, because I have raised it before, that there is no requirement on the Government to transpose future European directives after exit day. We understood—I think it was when the European Union (Withdrawal) Act was going through its scrutiny before it was enacted—that it is open to the Government to apply, for example, any future modifications or revisions to the water framework directive, the urban waste water directive, the nitrates directive or any of the daughter directives of the water framework directive. I would like confirmation that the Government remain open to that, and that we would wish to meet the highest possible standards—provided that the cost is not prohibitive obviously, because we are all water customers as well. If that is the case, what mechanism will the Government seek to use to implement future revisions of the directives which are the subject of the statutory instrument before us today? What would that instrument be?

Baroness Parminter (LD): My Lords, it is a great pleasure to follow the noble Baroness, Lady McIntosh of Pickering; I echo, but shall not repeat, all her comments. I have two further supplementary questions that I hope the Minister might address in his summing up.

First, in the previous statutory instrument the Minister was able to outline to the House an indication of some of the bodies which will be replicating some of the scientific expertise and processes which are at present undertaken by the European Union. That was extremely helpful, and I hope that he might be able to do that for this incredibly important SI as well, given the implications not just for environmental protection but for human health.

My second point follows on from the comments about who will monitor the delivery of the regulations. There is a change from the original EU regulation. In the original, the EU stipulates the format in which people have to report to the Commission, whereas in the regulation that has just been transposed into domestic regulation for us to approve, it is only up to the Secretary of State to indicate what he or she deems appropriate forms of reporting. This arguably leads to the charge that, by not stipulating the format for reporting, it could lead to a less effective means of monitoring the regulations, which I am sure none of us wants. I hope the Minister responds to that point.

Baroness Young of Old Scone (Lab): My Lords, I too commend the noble Baroness, Lady McIntosh, for her points; I support all of them. I will briefly touch on the point made by the noble Baroness, Lady Parminter, about the format of reports. It seems to me that the format being decided not by a collaborative process across Europe but by the Secretary of State is a double whammy. The Government are not just filling in their own report card—they are designing their own report card, which they will then go on to fill in. I hope we can press the Minister on getting assurances that we will as far as possible shadow the extent and rigour of European formats for these reports in the future.

Lord Deben (Con): As the responsible Minister during much of the period in which these European Union regulations were being put into operation, I would

[Lord Deben]
not like to let this occasion pass without pointing out a slight amusement of mine. This transposition from EU law into British law seems to be a perfectly happy and reasonable thing—and we have not heard shrieks from the anti-Europeans on the subject—but at the time of the original regulations Britain had the dirtiest reputation in Europe. We had filthy bathing waters; our drinking water was below the standard of most countries certainly in northern Europe and probably the whole of the then European Union. We were forced, because we had to sign up to this, to improve the conditions of water in this country—I say this as someone who was for some time the chairman of a water company, seeing it from that side of the fence as well as the government side. This House ought to remember that it must keep the Government's feet to the fire, because, before we were a member of the European Union, we would not have done any of these things. I suspect that today, had we not been a member of it, we would have been considerably backward now.

There is a real issue about this too, because we also have to remember that no man is an island—this island cannot do things without affecting other people. We will have to think, were we to leave the European Union, of the points that the noble Baroness, Lady McIntosh, has referred to—that, if we wish to, we will be able to take laws which have been passed in the rest of Europe into our own hands. Of course, it will take much more statutory time to do so; it will not be as easy as it has been up to now. But we have to realise that what we put into the channel from our side will affect people on the other side of the channel, just as what we do in the United Kingdom from the north of Ireland directly affects people in Ireland.

6.45 pm

I remind the Government that, in this reasonable and sensible way of passing what we have on to the future were we to leave the European Union, we are only where we are because of the European Union. Those of us who had to fight that through the other House will recognise just how much we owe to our membership, just how much danger we are in by leaving, just how little the Government have already promised us, just how little there appears to be in the environment Bill, as far as we know, and just how much we will have to fight to maintain the standards in Britain if we are to leave the European Union—which is why it is barmy to do so.

Lord Berkeley of Knighton (CB): My Lords, I will introduce the words "climate change" at this point, simply because it seems, to follow on slightly from the noble Lord, Lord Deben, that constancy and vigilance will be particularly important. If one thinks of the extremes of climate change that we are already experiencing—and there is every indication that it will get much worse—the constancy that the Minister is speaking about becomes extremely important. At times of drought and of far too much rain, many things start to go wrong. Drought is the obvious one, as you do not have enough water, but when there is too much rain—I speak as somebody who lives on a farm—you start getting an enormous amount of run-off of chemicals into the rivers, and things like that. Therefore, this constancy towards regulation, wariness for the future and extreme vigilance are incredibly important in this area.

Baroness Byford (Con): My Lords, I will add just a couple of things. I thank my noble friend the Minister for so clearly setting out the objectives of these transfer regulations, because that is what we are discussing, while looking to the reports in the future. Like other noble Lords, I look forward to the setting up of the environmental body, because it is key to future regulation and checks and balances on what happens. Clearly, it is not good just to have reports; actions need to follow on from them. That has not quite been touched on today.

I will follow the noble Lord who spoke just now of droughts and the rain position. The Minister will know, because I raised it with him quietly earlier, the difficulty that some farmers are having in drought areas. I refer in particular to the position of Norfolk, which was referred to earlier, and the difficulty that farmers there are having because the Environment Agency is dragging its feet and not getting on with the business of giving answers to questions that are raised. Although it is not clear, because it does not quite fall within the remit of these regulations, it raises another issue altogether. We want to make sure that the various organisations that exist now and which are responsible for making things happen are doing the job that they should be doing. If they are not, who then holds them to account? I think it would be the new environment body, but I worry that if we are not careful, we will have so many different bodies, and at the end of the day, who will be in control of saying yes or no? It should be the Government of the day, but the Government of the day have passed some of these responsibilities on to well-established bodies. Clearly, however, in this case the job is not being done, which is causing immense angst for those who are in business there. Without having those sorts of issues settled on what they can and cannot abstract, in future their businesses will be very much in jeopardy.

Lord Teverson (LD): My Lords, I strongly endorse the comments of the noble Lord, Lord Deben. We had real issues about water quality in the south-west, where I live, before we had the various framework directives, particularly the bathing water directive. Through the action of the European Union and a pressure group called Surfers Against Sewage, we now have fantastic beaches in the south-west.

I intervene because I want to personally thank the noble Lord, Lord Deben. Privatisation of the water industry meant that those improvements could be afforded, which meant that water bills in the south-west, and Cornwall in particular, went up by a huge amount. As a result, I was elected as an MEP for Cornwall, Scilly and Plymouth in 1994. I was one of the first two Liberal Democrats ever to be elected to the European Parliament, so I again thank the noble Lord. Perhaps that was not meant to be the result of that policy decision, but we still have excellent beaches in the south-west, and I encourage everyone to visit them,

enjoy them and celebrate the European directive that meant that we could enjoy bathing in the clean waters of the Atlantic in the south-west.

Lord Judd (Lab): I too put on record my congratulations to the noble, Lord Deben, not for the first time, for his forthright and important intervention. It is not very many years since I remember a glorious summer's day bathing off Bournemouth and finding myself swimming next to a gigantic turd. I thought that this was too much, and I wrote to the clerk of the council in Bournemouth to register my protest. I could hardly believe it when I received in reply a letter from the clerk saying, "You must understand that this sewage must have come from Poole; it does not come from Bournemouth". How we have progressed is extraordinary. It would be very unfortunate if we did not place on record our appreciation for all those in the European Union who have worked so hard to produce the legislation and rules which have enabled us to enjoy some of the best beaches in the world.

That did not happen by accident but by a great deal of co-operation and commitment within the European Union. As in other spheres, such as security and so many others, that is crucial to recognise. It is not to overuse the word to say that it is tragic that so few people recognise that in so much of this work, British officials and expertise have played such an important part in developing the policies. We have to reflect on why people with real commitment, insight and expertise found it possible to get us to the state we are in only in the context of Europe. We will, as the noble Lord, Lord Deben, said, have to work very hard not just to sustain what we have inherited but to maintain the dynamism and imagination which have come from Europe.

Baroness Jones of Whitchurch (Lab): My Lords, I refer to my interests as set out in the register and thank the Minister for his explanation and all noble Lords who have spoken this afternoon.

On water regulation in particular, as we have all heard, we have benefited over the years from robust EU regulation which has helped to drive up the quality of our drinking water, our bathing water and groundwater. It is vital that we hold on to those benefits for the future and do not allow standards to fall back through a lack of robust regulation and oversight. It is clear that a number of the themes raised in the previous debate, such as reporting and accountability, are also relevant to this SI.

At a basic level, the draft SI introduces reporting requirements on a par with those currently set out in the EU time cycle. However, as noble Lords have said, accountability ends once those reports are published and made publicly available; there is no mechanism for the requirements to be scrutinised and their failures addressed. The reports include ones on urban wastewater treatment, bathing water and nitrate pollution prevention. In these cases, it seems that Ministers become judge and jury, publishing reports and checking their compliance with the law.

In addition, in the past, derogations would be requested by the Secretary of State and approved by the EU Commission, but now, the Secretary of State seems to have the powers to request and approve them. Why does this SI not include a requirement for reports and derogations to be reviewed and assessed by one of the existing UK environmental bodies on an interim basis until the office for environmental protection is established? Indeed, as the Minister explained in the debate on the previous SI, why can a separate body not be established on an interim basis and why can that not be set out in the SI?

A number of noble Lords talked about moving away from EU standards. It appears that the future application of the regulations will allow the UK to move away from parity with EU standards; I agree with the noble Baroness, Lady McIntosh, the noble Lord, Lord Deben, and others on that point. What thought has been given to the implications of this divergence? Surely we do not have to separate in every respect from what is good in the EU. Surely on a subject such as this, there is a case for retaining those standards post Brexit. What is there to prevent us doing so, given that—as the noble Lord, Lord Deben, reminded us—we owe so much to those directives, which have provided us with improvement, quality and reassurance?

Why must we leave? Why must we go through every SI, deleting "Europe" and inserting "the UK", when it is in our interests to maintain EU standards? For example, if we do not apply the same vigour in maintaining standards of water quality, is there a danger of our exports of foodstuffs or crops to the EU being jeopardised because we could not provide the same proof of water purity, as happens elsewhere in the EU? Similarly, if we do not comply with the same authorisation for bathing water, and therefore do not utilise the EU blue flag scheme that everyone recognises, is there not a danger of us reverting to our reputation as the "dirty man of Europe", with consequences for our tourism trade from EU visitors and for our UK bathers? Is there not a case for ongoing parity with EU rules and standards? Should we not be negotiating continued access to EU-approved mechanisms as a matter of urgency? They have stood us in good stead.

I could make a similar point about plumbing fittings. The Explanatory Memorandum makes it clear that we should no longer give "preferential treatment" to plumbing systems carrying the EU standard and that, in future, goods with British Standard fittings can be installed. What is the benefit of us having a different standard on plumbing fittings? Surely if we operate one system and the EU expects imports of plumbing equipment with the EU standard, that could jeopardise our exports. I cannot see what we will gain from that. It is one of the many ridiculous outcomes of our leaving the EU. Does it not make sense to be EU-compliant with the broadest possible bulk of our goods and services when we are not losing out in any other way? How does this SI ensure that we make the minimum necessary adjustments to our regulations while seeking ongoing parity with the EU as far as possible? I hope that the Minister can address that point.

I now turn to the loss of scientific expertise, which was raised in our previous debate and is equally concerning here. The water framework directive, for example, specifically requires that any changes to its standards

[Baroness Jones of Whitchurch]
should be made only in the light of the best technical and scientific expert advice. At the moment we have access to Europe-wide research and analysis to shape our decisions on such things, but in future that will not necessarily be available to us. While I do not doubt the expertise within our own scientific community, there are issues about the considerable extra workload, in terms of depth and quantity, that we will be placing on our own scientific advisers. So what steps are being taken to ensure that the scientific advice will be of the same technical and authoritative standard? Should this SI not spell out how the advisers will be selected and approved, to ensure that that is the case?

7 pm

Finally, the Minister may have seen the specific technical concerns about the wording raised by Greener UK. This is something I raised in the earlier debate. On this SI, it has raised concerns that the compliance rules have been removed inconsistently. For example, measures required under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 will no longer be in compliance with Article 10 of the water framework directive. This covers issues such as the implementation of emission controls, emission limits and best environmental practices. At the same time, other specific references to directives, such as integrated pollution prevention, urban wastewater treatment and protection against water pollution caused by nitrates from agriculture runoff, have all been removed without explanation. Are the arrangements for consulting NGOs in advance of the publication of these SIs still in place? This process was meant to avoid those inconsistencies and omissions creeping in. Does the Minister feel that those pre-scrutiny arrangements are working well? If so, how come these concerns are still being raised at this point? Is there a process whereby at this late stage these omissions can be corrected? I hope the Minister is able to address these issues and I look forward to his response.

Lord Gardiner of Kimble: My Lords, I thank all noble Lords for their contributions, which have shown that we take these matters extremely seriously.

My noble friend Lady McIntosh and the noble Baroness, Lady Jones of Whitchurch, raised reporting and governance requirements. My noble friend Lord Deben spoke of the role of Parliament and Select Committees in holding the Executive to account. I cannot for one minute believe that that will change, particularly if my noble friend is rightly in his place—and indeed all noble Lords, because clearly we all want to get this right. Our legislative framework already includes provisions for regulators to enforce our existing environmental regulations, and there is our system of judicial review. We will retain our rigorous parliamentary scrutiny and strong domestic legal framework for environmental protection, but we want to go further. I say that particularly to the noble Baroness, Lady Jones.

Lord Davies of Stamford (Lab): I thank the Minister for giving way. Does he not accept that one very important thing we shall lose if we leave the European Union in two months' time is the Francovich principle, under which individuals or groups of people can sue the Government or other state authorities for not observing the law on these matters? It is due to Francovich that on a number of occasions we won considerable improvements to our water quality and the cleanliness of our beaches. That constraint on government, that discipline, will disappear completely if we leave the European Union.

Lord Gardiner of Kimble: Had the noble Lord known what was coming in my remarks, he might have been furnished with the response. As I mentioned in the previous debate, establishing the office for environmental protection will ensure that this and every other future Government benefit from the expertise vested in a consistent, long-term, independent environmental body. We currently propose that the new body should have three main functions: to provide independent scrutiny and advice; to respond to complaints about the Government's delivery of environmental law; and to enforce the Government's delivery of environmental law, where necessary.

The office for environmental protection will report annually on progress in delivering, for instance, the 25-year environment plan. This is similar to the current reports of the European Environment Agency on member state progress. The OEP will be independent and set its own priorities, so it is not for government to direct its priorities. We would expect, however, that the OEP would choose to scrutinise such reports. As I mentioned before, we will put in place a holding arrangement during the interim period between 30 March 2019 and the launch of the OEP, if no withdrawal agreement is finalised. This will provide a mechanism for the OEP to receive a report of any perceived or—

Lord Davies of Stamford: I am sorry to interrupt the noble Lord again, but I am afraid that he may have missed the point. I am sure he knows an awful lot about this subject, so he must know about the Francovich principle. Some 17 successful cases have been brought against the British Government or authorities, and several hundred in the Union as a whole, since the European Court decided on the Francovich judgment. That is a discipline quite different from having regulators. Of course we must continue to have regulators, and the noble Lord has suggested that the Government will now set up another regulator. Regulators are fine, but far more effective as a discipline is the Francovich principle, under which the Government or any other state organisation can be sued in court. They are therefore not only exposed in the courtroom but can be made to pay damages and, no doubt, considerable legal fees. That discipline exists now but will not exist, because the Government specifically have no intention of continuing with it after we leave the European Union—if we do.

I have raised this matter before and I want, if possible, to persuade the Government to continue this valuable principle in our national life, given that it has been an important part of our membership of the European Union. So far, I have got nowhere at all, but I beg the noble Lord to focus his reply on Francovich and not give me instead interesting but irrelevant things, like a new regulator.

Lord Gardiner of Kimble: I will continue to talk about the regulator, but I will say that I know from my experience of the judicial reviews of ClientEarth, of which a number of your Lordships are well aware, that it is clearly a route by which these matters have been dealt with.

As I was about to say, the holding arrangement shows the Government's bona fides, and we will provide that mechanism for the OEP to receive a report of any perceived or claimed breaches of environmental law made during any interim period.

Baroness Young of Old Scone: I was intrigued by the noble Lord's statement that the OEP would enforce regulation and compliance if the Government were not complying. Can he give us further details on the enforcement mechanism? The big worry is that we will have a regulator without the ability to enforce government compliance with environmental standards.

Lord Gardiner of Kimble: I admire the noble Baroness's inquiring mind. Clearly, that will be relevant to the environment Bill in the next Session, and to many of the deliberations in the other place and here. We are embarking on a very important move and I invite your Lordships to be fully engaged. We want to get it right for the long term.

On EU standards, I absolutely get the point expressed —and with passion—by the noble Lords, Lord Judd and Lord Teverson, and my noble friend Lord Deben. But it may be that a future Government of this country want to go further than the EU. We should be less pessimistic about our future in this country, whatever we think about arrangements. There may be intricacies of our national life that mean we want to go further than the EU standards of the time. I get the point, however, and of course we want to safeguard and improve the record that has been achieved. For example, there are some very good statistics on how bathing waters have improved. I particularly admire what Surfers Against Sewage has done—it has been tremendous in raising the public profile of this issue—and I also appreciate what many other organisations have done, in a European context and in the UK. However, the withdrawal Act ensures that existing standards transposed into domestic law will be retained. We want to maintain these high regulatory environmental standards and, as I said, improve on them wherever possible.

On the question of water supply fittings—

Lord Deben: Of course my noble friend is saying exactly what he and I would want. But I remind him that when we were not in the European Union—and if we had not been in the European Union—he and I would have been on the same side, pushing Governments to raise their standards and they would not have raised them. Therefore, we can only go on the past. We are where we are because we were in the European Union. We can have hopes for the future if we leave the European Union but, frankly, I doubt them. We have always been much less good at these things when we were not in the European Union because the Treasury always had a jolly good reason to stop good people like him and me fighting for what we believed in.

Lord Judd (Lab): My Lords, the Minister made great play of the fact that we could perhaps want to go further than the European Union, but there was never any objection to us having higher standards than required in the European Union—never. That is a misconception and it is quite wrong to suggest that.

Lord Gardiner of Kimble: My Lords, I think that in the mood of the times on the environment and all that we have seen, whether in reference to climate change or the use of plastics, this country and the world are moving into a different phase of thinking about things that we did wrong before. Whatever happens, we in this country, with the expertise that we have, should be championing all these things. I do not think, for instance, on scientific expertise that I can do anything other than say that we have some of the world leaders in this matter. Clearly, the UK Technical Advisory Group will continue to liaise with agencies and Governments across the UK, with our European friends and with our global counterparts, precisely because, as has been said, so many of these things have a knock-on influence.

On the issue of the water supply fittings referred to by the noble Baroness, my understanding is that the amendment is to ensure that the UK will not be in breach of WTO rules. Our current legislation makes it clear that UK standards still need to be met when installing water fittings in agricultural storage products, and I stress that products from the EEA and any other country can still be used and installed if they meet the current high UK standards. That is the background.

I will look at the issue of technical omissions because I respect—as I respect all the comments that have been made—what the noble Baroness said about those. The technical omission of certain articles, including Article 10 of the water framework directive, does not impact on the functioning of the water and floods policy regime. Article 10 repeats existing obligations that are already transposed into our domestic law. We are already undertaking these obligations and will continue to undertake them as set out in our domestic law. However, I will pick up the point that the noble Baroness made.

My noble friend Lady McIntosh of Pickering asked about the procedure to change Article 20. Article 20 of the water framework directive is about the technical adoption of the directive. We will continue to co-operate effectively with our European and global counterparts to exchange the latest scientific information. We will of course also liaise with the devolved Administrations through the current UK Technical Advisory Group. She asked about cross-border issues. The Environment Agency and the Scottish Environment Protection Agency collaborate on the cross-border river basin districts in setting standards and developing river basin management plans for Solway Tweed and Northumbria. The SI amendments are operability matters. They will certainly not lead to a lowering of standards. That is not the purpose. In fact, there are no policy changes and we wish to retain our standards, if not improve them.

7.15 pm

I think I alluded to future EU directives. This instrument is about preserving and protecting the existing regime, and it will be for the Government and

[Lord Gardiner of Kimble]
Parliament to consider improvements consistent with our overall approach on the environment set out in the 25-year environment plan. This is again a matter about which we should be positive.

On the technical question of the adoption of Article 20 of the directive, the technical aspects of the directive require updates by the EU Commission. These will be transferred to the Secretary of State in a separate SI. The updates will continue to be for scientific and technical progress, and this will be preserved in the SI.

On the consultation, obviously it is important that we consulted more than 25 external environmental stakeholders. There was an event on 27 September to explain the approach to the drafting and the continuity of existing policy. Stakeholders were invited to view the instrument prior to it being laid. The RSPB and the NFU exercised that opportunity and no concerns were raised by anybody about the instrument because it is about operability and is a technical matter.

I will look at *Hansard* to see whether there are any outstanding matters. This is an operability matter.

Baroness Young of Old Scone: Perhaps I might press the Minister on the consultation arrangements. This is a point I have made previously, and I wish I had pushed it harder. We appreciate that various environmental NGOs and others were given sight of the instrument before it was laid because that gave an opportunity to get expert input into it. I wonder whether there is an opportunity to bring parliamentarians into that process in future SIs because the risk is that an SI is laid and we have no opportunity to amend it in any significant way because of the process. It might be helpful if parliamentarians who are interested in the technicalities of these SIs could see them before they are laid so that they could also have an influence on them at a time when it is possible to make changes.

Lord Gardiner of Kimble: I have a feeling that that may be above my pay grade, but it is certainly an interesting and legitimate point. In all these areas, obviously we want to bring forward statutory instruments and legislation that command the support of Parliament. Parliamentary scrutiny—certainly the scrutiny that your Lordships present—is challenging and keeps a Minister on their toes and the Government's feet to the fire. On this technical matter, I—

The Archbishop of York: The Minister has been very clear about the benefits of regulation, particularly for the environment, which, as he said, were brought about through sheer hard work, campaigning and persuading other people. Nevertheless, does he agree that EU regulations have grown into a jungle that has become very difficult to penetrate?

Lord Gardiner of Kimble: When I read the first draft of the Explanatory Memorandum, my thoughts were that lawmaking can be extremely complicated and that the drafting sometimes takes further reading. The clear message on what we want to do through this SI and the earlier instrument is that we want to safeguard this country's environmental standards. That simple concept sometimes involves fairly intricate matters, so I say to the most reverend Primate that I like and appreciate simplicity, but there are moments when we need to make sure that the law is produced in an intelligible and understandable form.

Lord Deben: Before my noble friend sits down—

Lord Gardiner of Kimble: I have not sat down yet.

Lord Deben: No. I was hoping to say something before my noble friend sat down.

Lord Gardiner of Kimble: I have not sat down but I think that we are starting to elongate this matter and I ought to conclude.

Motion agreed.

House adjourned at 7.20 pm.